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SOCIALIST LAWYER

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Robin Oppenheim on the Unions and the Law

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Book Reviews and News

Haldane Society of Socialist Lawyers

SOCIALIST LAWYER

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HALDANE NEWS

Linda Webster

It is with great sadness that we must record the death of Linda Webster in this edition of Haldane News. Linda was an active member of the Lesbian and Gay subcommittee and a member of the executive committee. Her death on the *Marchioness* on August 20 stunned us all. A tribute written by David Geer appears in this issue of ***SL.*** On behalf of all Haldane members we thank Linda for all the hard work and friendship which she put into the Society over the last three years.

D.N. Pritt Memorial Lecture

This year's D.N. Pritt Memorial Lecture, entitled ***Human Rights in Northern Ireland: Britain's Responsibilities*** will be given by **Kader Asmal** on Tuesday 12th December 1989 at 7.15 pm at the London School of Economics, Houghton Street, London W.C.2.

Kader Asmal is a barrister and senior lecturer in law at Trinity College, Dublin. He was born and brought up in South Africa but he has lived and worked in Ireland since 1963. He is a distinguished author and speaker in the sphere of international law and human rights and, in 1983, was awarded the ***Prix Unesco*** in recognition of his work for the advancement of human rights.

Kader Asmal has made a significant contribution to the struggle for civil liberties in Ireland. In 1966 he was a founder member of the Northern Ireland Civil Rights Association and, since 1978, he has been the President of the Irish Council for Civil Liberties.

He was the Chair of the International Lawyers' Inquiry into the Lethal Use of Firearms by the Security Forces in Northern Ireland which was published in 1985 under the title *Shoot to Kill?* He is also a patron of the Birmingham Six Committee. He has drafted various applications to the European Court of Human Rights on behalf of Northern Irish citizens. He has also spoken extensively on the subject of Britain's legal responsibilities in Northern Ireland.

Office

Thanks to members who generously pledged a monthly sum to the Haldane office we are now permanently established in our office at Mount Pleasant, in central London. Subcommittee meetings are regularly held in the office. Keys are available from Keir Starmer or from any subcommittee convenor.

Campaigning Lawyers.

Following an initiative set up by *Amnesty International* a campaigning lawyers' network has been set up which includes the Haldane Society. Full details can be obtained from Bill Bowring.

Subcommittees

The **Crime subcommittee** has been busy with the issue of electronic tagging and privatisation of prisons. Plans are underway in conjunction with other campaigning groups for the monitoring of electronic tagging in Tower Hamlets in the autumn. The **Women's subcommittee** co-organised with *LAG* a successful course on *Advising the Victims of Rape*. A wide variety of foreign affairs have been covered by the **International subcommittee** which continues to go from strength to strength. Plans are already underway for a second delegation from the Society to visit Moscow (see noticeboard in this issue of ***SL***). The one day conference *Legal Advice for Lesbians and Gays* organised by the **Lesbian and Gay subcommittee** was very successful. Meanwhile the **Employment Law subcommittee** has completed its guide to employee rights in Europe. After some quiet months the **Mental Health subcommittee** has come alive again. A whole range of discussions about mental health policy have been mooted in recent weeks.

Workers Support Unit

After much discussion the Workers Support Unit, which aims to expand upon the work done by the Society in the miners, Wapping and seafarers' disputes, was launched in August. Its first task will be to put together a brochure to send to trade unions informing them of the project. The secretary of the unit is Damian Brown.

Manchester

The Manchester branch continues its series of monthly meetings, the latest of which was on *The Ethics of Criminal Proceedings* and was led by Tim Treuherz.

Disinvestment

The requisite number of signatures has now been collected to enable the *Society of Black Lawyers, Lawyers against Apartheid* and the Haldane Society to call for a special meeting of the Bar Council on disinvestment. Full details are available from Bill Bowring.

Dates of EC Meetings.

Executive committee meetings will take place on the third Tuesday of every month at 38 Mount Pleasant, London WC1.

A G M

The Society's Annual General Meeting was held on 6 May 1989. The resolutions that were passed are printed on the middle pages of this edition of ***SL***.

David Geer

Linda Webster

In the weeks since Linda's death I've heard many different people speak warmly and highly of her. Everyone remembered an intelligent, funny, vividly alive person who could be unnervingly forthright but possessed great integrity.

She joined Wellington Street Chambers in May 1988 as a criminal practitioner. She was deeply committed to her work and had few illusions about the Bar. Throughout her pupillage she did valuable work for Islington Legal Advice Centre.

She was also involved in media work, notably with Channel 4 as a legal adviser on projects including the reconstruction of the Birmingham Six appeal and the Gibraltar inquest. Last year she travelled to the United States to advise on a television programme investigating negligence claims over a contraceptive device.

Linda joined the Haldane Society when she was still a pupil and immediately became involved in the Crime and Mental Health Subcommittees. Later she joined the Lesbian and Gay Sub-Group. She had the imagination and the tenacity to bring many different projects to fruition. She led the group's campaigning work against Clause 28 and it was entirely due to her efforts that the group set up the Lesbian and Gay Legal Archive, obtained sponsorship for the project and inherited the huge collection of press cuttings and reports from the Hall-Carpenter Archive.

One of my last memories of Linda comes from the Lesbian and Gay legal conference in July. The last session of the day was devoted to the topic of homophobia in the legal profession. Linda spoke eloquently and wittily of her experiences as an 'out' lesbian at the Bar. That was typical of her. For, regardless of the possible cost to her career, she was determined to be as open about her sexuality in her professional life as she was in her private life. She was too rare a person to lose. The Bar will be much the poorer without her.

Linda Webster, born 27 February 1962; died 20 August 1989, a victim of the *Marchioness* tragedy.

A memorial fund, The Linda Webster Trust Fund, has been set up. Its aim is to assist women in establishing themselves in practice at the Bar. Donations can be made to the Abbey National Building Society, account number K267126W00.

Fenella Morris

Bound by Invisible Threads – Electronic Tagging

The government's 1988 Green Paper *Punishment Custody and the Community* proposes a new sentencing option – the Supervision and Restriction Order (SRO). This would give the courts the power to sentence an offender to a curfew, monitored by an electronic tag attached to his/her leg. The government argues that the SRO would alleviate prison overcrowding, reduce costs within the penal system and maintain the public's confidence in law and order. Private companies have been asked to tender for contracts to fit the electronic tag, monitor the offender's movements and record any violations.

Tags for Employees?

New opportunities to sentence without imprisonment are desireable. However, the proposals for electronic tagging are disturbing. The tag wearer submits to an intrusive form of restriction and an extension of state power over him/her which sets a dangerous precedent for measures of social control. In the US burgeoning technology has sought new markets by proposing the tagging of persistent truants and employees in large factories. In this country the Adam Smith Institute had recommended the tagging of all habitual criminals regardless of whether they are currently serving a sentence. This is a step towards the regulation of any group of which a government may be suspicious for whatever reason.

> **'The Adam Smith Institute has recommended the tagging of all habitual criminals.'**

Alternatively tagging may be used as a soft sentencing option, available to privileged groups. The majority of those tagged in the US, where such schemes have been operating for four years, have been white male homeowners convicted of white collar crimes. In many states it is only available to those who can afford the hire cost of approximately $8 per day. In the UK the main pre-condition for tagging would be a permanent address, which rules out any defendant of no fixed abode and those living in hostels. In due course the tag will probably become available only to home owners because the required consent to the installation and checking of the equipment may be revoked by a parent, co-owner or landlord.

Sentenced by Market Forces

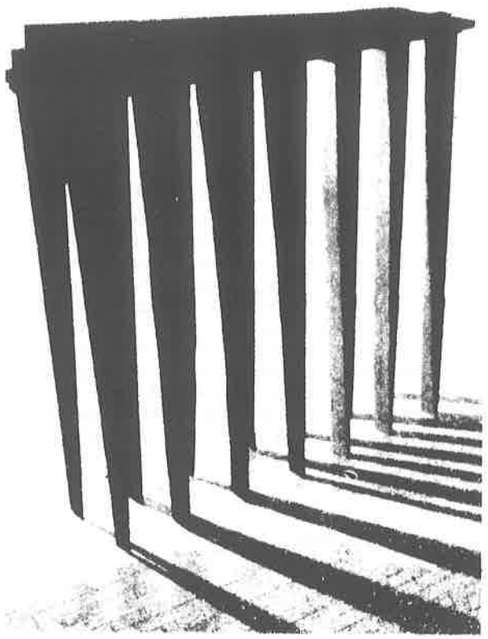
The increased use of technological security devices marks a shift from constructive solutions to the problems associated with crime and social breakdown towards a narrower policing role, which focuses on monitoring compliance rather than rehabilitation. In the interests of cost-cutting and efficiency, untrained security staff will replace skilled and committed staff such as probation officers. The operation of the tagging system will introduce commercial firms into the heart of the penal system. Private companies have vested economic interests distinct from those of the public and the offender. It is undesireable that issues of sentencing involving restrictions on liberty should be influenced by such interests. That firms will seek to influence the courts is evident from a Marconi briefing document which advised the Nottingham Bench upon 'the basic criteria for allowing/selecting potential wearers'. In the long run companies will encourage the courts to use the tag in as many cases as possible by advocating its use on potentially dangerous prisoners or on those who did not deserve it.

At Home with Marconi

A tagged individual would have to consent to employees of a private firm entering his/her home. Questions arise as to how these employees would account for any damage or harm to the tag-wearer or to the public. The government has refused to answer parliamentary questions about the privatised remand centre at Harmondsworth on the ground of commercial confidence. If this approach were extended to questions about the use of electronic tagging, private firms would not be publicly answerable for their role in the penal system. Moreover, the chain of responsibility would be further disrupted by government contractors, subcontracting as Marconi has to Securicor. Employees of both these firms will have access to the individual's home and possibly to social enquiry reports stored on computer at the court.

It is also feared that the tag will fail to reduce the prison population and will lead to the imposition of more stringent conditions on those serving non-custodial sentences. Tagging could even ultimately lead to a increase in the numbers in custody.

Past experience suggests that the courts will not use the SRO as an alternative to a custodial sentences. Over the last decade the courts have been provided with a welter of alternatives to immediate imprisonment, yet they have not only continued to imprison offenders, but have done so in a higher proportion of cases. It is unlikely that the new order alone will alter attitudes to sentencing.



Tagging On Trial

In the US, despite a similar eagerness to reduce the prison population, the tag has been used predominantly to enforce conditions of probation or parole. Further it is possible that the courts will impose SROs as alternatives to non-custodial sentences. In these circumstances the prospects for a reduction in the prison population and a liberalisation of the penal system are bleak.

There are indications that this pattern may emerge in the operation of the trials currently being held at Tyneside, Nottingham, and Tower Bridge Magistrates' courts. The tags are supposed to be used on those defendants who would normally be remanded in prison. However Marconi, which is running two of the trials, has advised the courts that the tag should be used on those defendants 'accused of petty offences who have no previous convictions'.

If the tag is used in this way it will increase the remand population. The strictness of the curfew conditions and the ease with which violations will be noticed by continuous surveillance makes it more likely that breaches will lead to remands in custody. The tag could operate as a trip wire into custody for those who would have been dealt with more flexibly under the current bail system.

These potential inequities could be compounded by the effect which the availability of the tag option will have upon the magistrate's decision on the original bail application in courts taking part in these trials. Although the court may be keen to fill its quota of tag-wearers, the availability of tagging may encourage the magistrate to refuse bail in borderline cases, knowing that the tag can only be offered as an alternative to a remand in custody.

If the tag is assessed solely on the basis of the data gathered from the present trials, the picture of its application and effectiveness will be distorted. Those tagged during trials will have been particularly 'safe' candidates. There is then a danger that over-optimistic data will inform the eventual legislative provisions for tagging, entrenching the tendency to tag those who would previously have been dealt with less restrictively.

Andrew Buchan

A Dose of HM Government Medicine

The government has recently announced its intention to introduce a community treatment order (CTO), although no details have yet been given. In this article I shall outline two of the proposed alternatives.

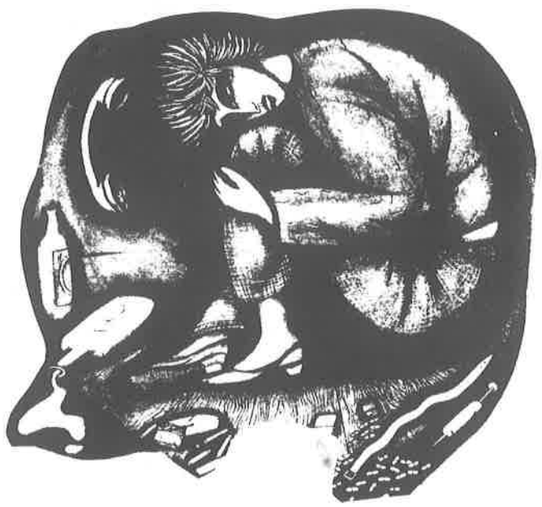
The Mental Health Act 1983 introduced, for the first time, statutory powers enabling doctors to treat a patient for their mental disorder against their will. This power only applied to patients 'liable to be detained' in a hospital or mental nursing home. The common law permits treatment to be given to someone who consents or in cases of necessity, so long as the patient can be presumed to have consented. Attempts to extend compulsory treatment to patients given long term 'leave of absence' in the community have been thwarted by the courts (*R.v. Hallstrom ex p.W 1986 2 AER 306*)

Dumped On The Streets

The proposal arises because some patients (usually diagnosed as suffering from schizophrenia or manic depression) do not like taking their doses of largactil, ativan and lithium. As a result doctors and Mental Health Review Tribunals have been most reluctant to 'release' such patients if there is even the slightest hint or suspicion that they will not continue taking their medicine in the community. It is argued that failure to take the medicine will result in a relapse or premature relapse, requiring further hospital confinement.

The pressure for change has arisen because the government wants to close, and is closing, many mental hospitals. In practice large numbers of mental patients are being dumped on the streets to get the 'community care' that many people are talking about but few are receiving.

The government's justification for closing mental hospitals is that they contain many patients who could, with adequate professional and financial support, live in the community. The minimal community support provided gives the lie to this justification and exposes the policy as yet another right wing cost cutting exercise.



A Monthly Shot

The rationale for this latest proposal is couched in altruistic terms. It is argued that patients would be 'better off' being treated in the community than detained in hospital. Few people would dissent from that view but it poses the question: how do you treat people in the community? Do you fill them with drugs every month through depot injections and forget about them or (not necessarily an alternative) do you organise a system of community care that recognises that patients who have been in hospital for long periods of time require more than just drugs to prevent a relapse? Of course, it's cheaper to give patients a shot of modecate every month than to provide sufficient numbers of community psychiatric nurses, hostels, housing benefits and other support to enable patients to find their own feet.

No research has been conducted in the United Kingdom to justify CTOs. All that exists is anecdotes from mental health professionals who see relapses in a patient's condition. They note that the patient has refused to take their medicine and therefore blame the relapse on that. But patients suffer relapses even whilst on medication. The CTO option concentrates on the medical solution and ignores political, environmental, social and economic problems.

Enforced Medication

The Royal College of Psychiatrists has proposed that a community order be made where:-

(a) the patient is suffering from a mental illness which is of a nature or degree which makes it appropriate for treatment in the community; and

(b) it is necessary for the health or safety of the patient or for the protection of others that such treatment should be provided and it cannot be provided any other way; and

(c) the patient has had a previous period of severe mental illness which responded to medication.

In the event of non-compliance the College proposes that the patient be admitted to hospital for up to 28 days. This proposal is intended to provide a legal framework that encourages compliance, but this approach will not be carried through to enforce medication outside hospital. The proposal allows the normal admission to detention criteria to be sidestepped, although the effects of non-compliance are equivalent to section 2. If this proposal is adopted one wonders how long it will take to amend it to include full treatment in the community.

The Mental Health Act Commission, with debatable authority, proposes that the powers of guardianship be amended from the essential powers of:

(i) requiring the patient to reside at a place specified by the guardian;

(ii) requiring the patient to attend at places and times specified for medical treatment, occupation, training and education;

(iii) requiring access to be given at any place where the patient is residing to any doctor, approved social worker or other specified person,

to include an additional power for the patient to receive medical treatment prescribed by the doctor. The doctor has to be satisfied that the following conditions are met:

That the patient

(a) is suffering from mental illness which is of a long standing, or severe psychotic type; and

(b) is consistently unwilling to take medication apparently because of the impact of the illness on his or her judgment; and

(c) has in the past demonstrated an unwillingness to take the medication advised; and

(d) in the past has developed episodes of acute illness, apparently linked to non-compliance with medication prescribed by a psychiatrist.

Low Risk Strategies

Whilst both the proposals contain measures to prevent abuse, it is clear that the CTO represents a threat to the right of patients to refuse treatment. Any history of refusal could be grounds for continuing the order in the future. The doctor's control or 'leash' will be lengthened with little monitoring of the patient's condition or behaviour. Generally, doctors – as they have demonstrated in the past – will prefer to continue the order rather than take any risks and therefore patients are likely to be put on CTOs for considerable lengths of time. Although it is not envisaged that patients will be given their injections in the community, powers already exist under the Mental Health Act for mental health professionals to gain access to people in the community who need help (sections 115 and 135(1)).

Because the CTO will apply to patients who refuse treatment, in practice a patient's premises will be forcibly entered and they will be carted off to the nearest psychiatric hospital for their monthly 'dose' of intramuscular sedative. When the intramuscular sedative is absorbed, and before it wears off, this process will be repeated. It is hard to see how this will be conducive to building a therapeutic relationship between the patient, members of his or her family, doctors and social workers.

If you are interested in finding out more about the CTO or other mental health issues please contact Andrew Buchan and/or come to the mental health meeting at the Haldane office at 6.30 p.m. on 7 November 1989. Speakers include Dr. David Hill from the London Alliance for Mental Health.

Robin Oppenheim

Trade Union Law – a Tide on the Turn?

For the first time since the miners' strike of 1984–5 the question of whether there is an effective right to strike in Britain is back on the political agenda. The dockers' and railway workers' strike provide illustrations of the difficulties facing trade unions trying to conduct and win strikes within the law.

Court delays stymied any realistic possibility of winning the dock strike. The government announced its intention of abolishing the National Dock Labour Scheme on 6 April, and then did so with breathtaking speed. The TGWU was forced to ballot its members not once but twice because the original ballot expired between the adverse Court of Appeal decision and the favourable House of Lords decision.

By the time the Law Lords had finally given their blessing, the Scheme was dead, the first ballot had expired and the employers had been given a vital breathing space. The TGWU lost the valuable protection of the Scheme's criminal prohibition on employing casual labour. The result of the strike was then not in much doubt.

New Strikes, New Torts

The House of Lords ruling (*Associated British Ports v. TGWU, the Times, 28.7.89*) is a pyrrhic victory for the trade union movement. The appeal succeeded on a narrow point of construction: the statutory duty under the Scheme to work for such periods as are reasonable was held to add nothing to the dockers' contractual obligation to work. The union's instruction to break it could not therefore supply the magic ingredient of 'unlawful means' for the purposes of the allegedly arguable new tort of *causing-loss-by-unlawful-means- i.e. -inducing-breach-of-statutory-duty-(whether-or-not-the-breach-would-itself-be-actionable)-with-intent-to-injure-the-plaintiff's-business* [sic]. Accordingly the strike call was no more than an inducement to break employment contracts and was immune from action. Therefore it was not necessary to decide whether or not the new tort arguably existed, as the Court of Appeal held it did *([1989] IRLR 305)*.

Public sector strikes are now in danger of being caught by this novel tort. If it were to take hold, the government's proposal to outlaw 'essential services' strikes could well be unnecessary.

Moreover, the Lords ignored the Appeal Court's robust interference in the exercise of discretion by Millet J not to grant an injunction. The court considered the 'very serious financial loss to the employers' and a public interest criterion subsumed to 'the economic wellbeing of the nation' (as opposed to that of dockers) to outweigh the right to strike 'while the iron is hot'. Unions will now be faced with a new obstacle at the 'balance of convenience' stage in interlocutory injunction proceedings.

Byzantine Balloting Procedures

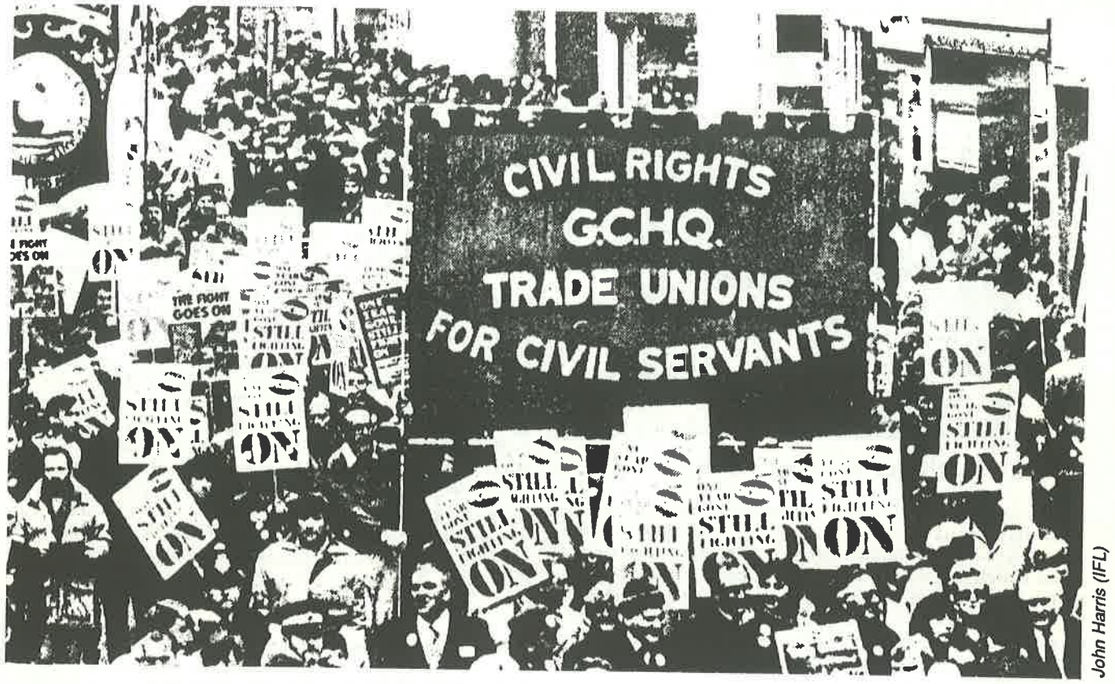
The procedures introduced by the Trade Union Act 1984 have been judicially considered in two recent cases involving the NUR. On 5 May Simon Brown J granted an injunction to prevent strike action by the NUR (*London Underground v. NUR [1989] 380 IRLIB 6*). The judge found that the ballot paper incorporated issues which were not genuine subjects of dispute and rejected the union's contention that reference to an issue which was the subject of the trade dispute was sufficient to attract immunity. In future unions seeking an industrial action mandate will have to confine the question to issues which are clearly the subject of a current trade dispute.

More worrying was the judge's rejection on 10 May of the union's application to discharge the injunction, on the basis that 'justice could readily be achieved by the pursuit of the right to appeal'. This ruling ignores the Court of Appeal's extreme reluctance to interfere with the judge's exercise of discretion (except, it seems, in the dock strike case).

A Foolhardy Foray

British Rail took the NUR to court for its second outing of the summer on 19 June. BR had a very thin case for arguing that there had not been sufficient compliance with the statutory balloting procedure – out of some 50,000 ballot papers issued, 30 members did not receive ballot papers. The case was dismissed both at first instance and on appeal (*BRB v, NUR, the Times, 21.6.89*). The case helped to alienate public opinion from management for its inept handling of the strike.

Riding on the back of BR's foolhardy foray into the High Court was the first case supported by the Commissioner for the Rights of Trade Union Members (CROTUM) – the one woman quango created by the 1988 Employment Act to fund and support disaffected trade unionists in litigation against their union. Apparently an NUR member complained off non-compliance with the statutory balloting procedure on 19 June. A hearing was arranged for the following date. A very expensive silk was instructed by CROTUM at the taxpayer's expense, only for the case to be chucked out of court for lack of time to be heard. It seems the Commissioner was rather underemployed at the time: she had only nine formal applications within her remit.



John Harris (IFL)

A New Code of Practice

As if the statutory balloting procedure were not enough of an obstacle to the pursuit of a lawful strike, the government has issued a draft Code of Practice on trade union industrial action balloting. Strictly speaking the Code imposes no legal obligations, but section 3(8) of the Employment Act 1980 makes it admissible in any proceedings. Past experience shows how easily guidelines in codes of practice can be elevated into rules of law.

Parts of this Code bear no relation to specific rules of law and merely express the government's management-friendly views. For instance:-

- ballots and industrial action when authorised by a ballot are to be used as last resorts (paragraphs 11 and 95)
- full postal balloting is to be the preferred method of conducting ballots (paragraph 32)
- independent scrutineers should be appointed to oversee the balloting process (paragraph 39)
- unions should provide members with information agreed with the employers and a statement of the possible effects of participating in industrial action (paragraphs 57–59).

The most sinister guideline is that a union may 'feel it would not be justified in authorising or endorsing the industrial action unless the number of those voting represents at least 70 per cent of those properly given entitlement to vote in the relevant ballot' (paragraph 98). It is a pity the government does not accept this proposition in judging whether it has a mandate to legislate.

To cap it all, employers and members are to be entitled to any relevant information they require about the conduct of a ballot (paragraph 93). This amounts to a pre-action 'fishing' discovery. The effect could be dramatic – employers and union malcontents will be given a whole array of spurious grounds on which to found injunctions. One can only hope that the government takes heed of the universal criticism of the Code from all sides of industry (ACAS, CBI, IPM and TUC) and abandons it.

Yet Another Green Paper

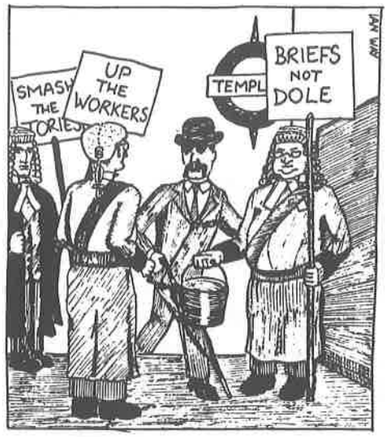
The government's latest Green Paper *Removing Barriers to Employment (Cmnd. 655)* was published in March 1989. It intensifies the Thatcher administrations attack on the right to organise collectively. The pretence of a balance of interests between employer and union is dropped and replaced by stark prejudice.

The pre-entry closed shop is to be attacked. Workers are to be given a statutory right not to be refused engagement on the grounds of non-membership of a trade union. No corresponding right is proposed for victimised trade unionists who find themselves on employer blacklists. They will continue to have no remedy against the employer under *Beyer v. Birmingham City Council [1977] IRLR 211* The rationale for this proposal is frankly stated as the need to cut 'labour costs' (i.e. living standards), not to uphold individual liberty.

The proscription of secondary industrial action is to be extended to make all such action unlawful, except where there is lawful picketing. The change from the EA 1980 is purely symbolic since in practice no union has ever succeeded in establishing lawful secondary action under that Act.

The government proposes to extend the obligation to ballot before industrial action and the curbs on secondary action, to workers under contracts for services (such as casual workers in the catering or construction industries). But the benefits bestowed on employees (unfair dismissal, redundancy and anti-discrimination rights) are not to be given to the self-employed.

The powers of the CROTUM are to be developed. She will be given the symbolic entitlement to appear alongside an assisted union member in the title of the proceedings; thereby graphically committing the state to the cause of the dissident member. Further the Commissioner will be allowed to assist members complaining of a breach of the union rulebook. This will allow the state a subversive role in the internal life of trade unions.



..... And A Bill as Well

The Employment Bill 1989 is a rag-bag of measures. Its most important effect will be in the field of unfair dismissal law; a £150 deposit will be required for those cases which a tribunal considers 'weak'. And in a particularly mean-minded measure, the qualifying period for the right to require reasons for dismissal is to be raised from six months to two years. The scope of the right of time off for trade union duties is also to be restricted.

Looking to Europe

The Thatcher years have left the British lagging behind its West European counterparts in basic employment rights and protection. The ILO has underlined this by condemning British labour laws on eight counts as departing from ILO Conventions.

‘.... employers and union malcontents will be given a whole array of spurious grounds on which to found injunctions.’

Against that bleak background trade unionists are now looking with hope to the European Community Charter of Fundamental Social Rights. The government has expressed its outright hostility to the proposals for rights to a decent wage to be established by law or collective agreement; to annual paid leave and a weekly rest period; to take industrial action and belong to a trade union; to be informed, consulted and to participate in decisions, particularly where technological changes are brought in; to a minimum income for those excluded from the labour market; and to equal treatment for men and women.

Even if the government's opposition were circumvented by majority voting under the Single European Act, the left should be wary of regarding the Charter as an antidote to our repressive labour laws. The rights in the Charter are general in character and capable of restrictive interpretation by a hostile judiciary. The Social Charter is just one aspect of a labour law revolution that must be instituted by any future left government – nothing short of a new Labour Code enshrining positive rights to belong to a union, to organise collectively, to strike and to have worker representation on the board, will do.

Stephen Cragg

Crime and Prejudice

This article looks at the progress of 'hate-crimes' legislation and the police monitoring of anti-gay violence in the United States, and reports on the problems of the Gay London Policing Group (GALOP) in encouraging similar initiatives in this country.

In its Annual Report for 1987/88 GALOP states 'a staggering 28% of [our] casework during 1987/88 was concerned with providing assistance to victims of violent attacks'. The report calls for 'a more coherent strategy to tackle the problem, involving the logging of anti-gay crimes as a separate category'. This year, after failing to receive a positive response from the police, GALOP has instigated the 'Lesbian and Gay Anti-Violence Project' to fund an independent study into the history, scope and prevalence of violence against lesbians and gay men. Such a study, GALOP believes, will provide the necessary database to lobby for legislative change.

The Most Frequent Victims

In the United States however there have been legislative moves towards such a strategy. The most concrete development was President Reagan's approval of an appropriations bill directing the National Institute of Justice to carry out a large-scale study of so-called hate crimes, including anti-gay violence. The Institute has pledged to conduct the study as directed, which can be expected to endorse its 1987 view that 'homosexuals are probably the most frequent victims' of hate crimes. (*the Advocate* 21.11.88).

However, at the same time as this directive was receiving Reagan's approval, a bill requiring the federal government to collect statistics about bias-motivated crimes (known as the Hate Crimes Statistics Bill), failed to clear the Senate after being passed in the House of Representatives by a vote of 383–29. The Bill called for the US Department of Justice to collect state and local data about crimes based on race, religion, ethnicity, or homosexuality or heterosexuality.

Gay campaigners made a tactical decision not to push the bill to a vote so close to the Presidential election after a Republican Senator attempted to include an anti-gay amendment which inter alia stated that 'the homosexual movement threatens the strength and the survival of the American family as the basic unit of society'.

David Hoffman

Simon Norfolk

Hopes for the passage of the Bill this year are good, however. In Wisconsin and California state bills have been introduced which increase the penalties for hate-motivated crimes, including those based on sexual orientation (*the Advocate* 7.7.88). A Minnesota bill now calls for a penalty of one year in prison and a fine of up to $3,000 for anyone convicted of an assault if the attack is motivated by 'the victim's or another's actual or perceived race, colour, religion, sex, sexual orientation, disability...age or national origin'. (*the Advocate* 18.7.89)

Anti-Gay Violence Up

These moves come, at least in part, in response to a study prepared by the National Gay and Lesbian Task Force showing a 42% increase in anti-gay harassment in 1987 over 1986, and stating that the 'data clearly demonstrates that anti-gay harassment and violence is a widespread and critical problem'. The figures echo the feeling of GALOP that incidents are on the increase and are taking up more and more time of gay and lesbian support groups.

In addition to the response of the law-makers, successful demands have been made on some local police forces. In one district of San Francisco 30 of the 150 officers are out as gay. The police work in close cooperation with gay community groups, providing them with details of gay related crimes so they can aid victims. In Boston, GALOP reports, crime report sheets will have an anti-gay crime box check, and officers will be trained to sensitively identify and investigate such incidents.

Of course it should not be thought that the United States administration has transformed itself into an anti-homophobic paradise, but there have been changes which have not been mirrored in this country. GALOP have written to the Metropolitan Police Commissioner and the Home Secretary requesting the recording of hate motivated crimes based on sexual orientation. A reply from a Deputy Assistant Commissioner in the Metropolitan Force stated 'little would be gained from introducing additional administrative measures to monitor such attacks when they appear so infrequent', and a letter from a Detective Chief Superintendent told GALOP that collecting separate statistics on anti-gay attacks would be 'impractical and unreliable'.

Humans and Homophobes

These replies from British police contrast sharply with the prompt response of the Amsterdam police to a request from GALOP for information. They provided details of their data collection methods and work with lesbian and gay groups to overcome problems of under-reporting. Their response concluded by saying '...anti-homosexual violence is only sporadically reported to the police, so that its extent is unknown. Yet we hope that the police will soon get more understanding of the problem'.

As long as the attitude of the British police remains unsympathetic and insensitive to the seriousness of anti-gay and lesbian violence, under-reporting of such attacks is bound to remain high. The police stance leads to few officially reported hate-motivated crimes directed against gays and lesbians. In addition, scaremongering and 'moral panic' in this country can give the perpetrators of hate-crimes a 'soft landing' at the hands of the law enforcement agencies.

A recent Court of Appeal decision (*R.v. Beggs the Times, 4.7.89*) is a case in point. At first instance a judge held that the facts of violent crimes committed by a defendant were strikingly similar to those of a killing by the same defendant when he was allegedly subject to a sex attack from another man. On appeal it was held that the facts were 'strikingly dissimilar' and the charges should not have been tried together. The defendant was acquitted of murder. The GALOP annual reports catalogue numerous other cases of unwillingness on the part of the police and the CPS to prosecute or the courts to convict those who have committed hate motivated crimes against gay men.

The police show considerable reluctance to take seriously demands for change from gay and lesbian groups or to liaise and work with them. They are perceived as a marginal group whose requests are ridiculously demanding or outrageous. In view of the refusal of the police to commit themselves to the monitoring of anti-gay and lesbian attacks, support must be given to the Lesbian and Gay Anti-Violence Project as the first step towards the introduction of wide ranging hate-crime legislation which includes sexual orientation within its ambit.

Nick Blake

The Retreat from Kabul: Socialism and the Export of Force

The withdrawal of Soviet troops from Afghanistan is an appropriate moment to reflect on what principles should underlie the transnational use of force. The withdrawal takes place in the context of a fundamental foreign policy reappraisal by the Soviet Union, and Haldane members who have had the opportunity to discuss these matters recently with Soviet international lawyers will be aware that this reassessment extends even so far as to questioning the wisdom of the Soviet entanglement in Africa and the Cuban presence in Angola.

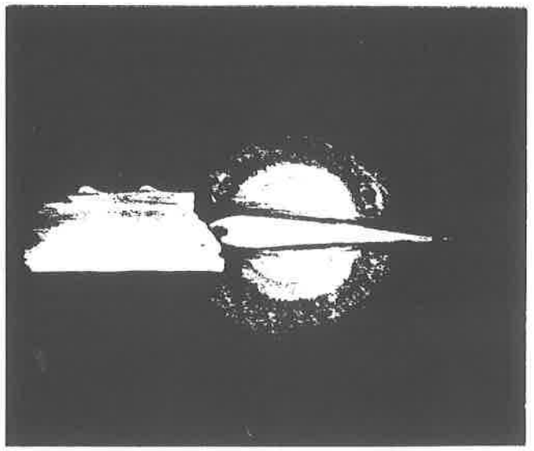
International law can be an elusive concept, and its will'o the wisp nature is particularly apparent when it comes to the question of enforcement. There is a body of opinion on both the left and right of the political spectrum that would reject international relations law as an ideological irrelevance and prefer to get on with foreign policy untrammelled by ethical or other constraints of principle.

The sceptics can point to the failure of international law to prevent wars. Certainly, for all the League of Nations and United Nations activities the twentieth century has been one of humanity's bloodiest epochs, in terms of the frequency of armed conflicts, their duration, and the savagery with which they are fought. The question remains whether a 'realpolitik' balance of powers, now with nuclear weapons as the supreme deterrent, operates either more efficiently or more justly than a set of principles capable of being subscribed to by every sovereign state.

Beyond Proletarian Internationalism

It is the theme of this article, that 'proletarian internationalism' is an inadequate and ineffective basis for socialist lawyers to evaluate when the use of force abroad is justified. In place of what is perceived in the international arena as partisan ideology, we should be developing and seeking to apply legal principles derived from international customary law as developed by the competent institutions of international relations.

This is not denial of politics, nor of the experience of socialist and developing countries that felt it right to send their armed forces beyond their frontiers. We should be bringing socialist principles and experience into foreign relations law so that they become a part of international customary law, as opposed to an alternative to it.



Internationalism is still vital as a political principle. Socialism must be more than a national predilection; a confined, cosy, municipal economy kept in some isolation unit, separate from the rest of the world. More than ever socialism as a global response to humanity's sufferings is international if it is anything at all. But this internationalism should now be expressed through international law.

To some extent this has already happened. International law is no longer the preserve of the colonial or capitalist powers for whom the right to trade and the principles of debt enforcement are more important than the right to self-determination. Instead it is the sovereign states of the world who have agreed on a treaty on the law of the sea which the United States and its closest ally are seeking to undermine and resist.

> **Socialism must be more than a national predeliction ...**

Capitalism has not been tamed or lost its appetite for expansionism, but it is unable to use a particular legal vocabulary to further its activities. It is the right wing in the shape of the Heritage Foundation and its ideological flag bearers in the UK, who are opposed to international law and the United Nations. Paradoxically they share the attitude of, say, the Bolsheviks of the 1920s that their ideology is more important than legal rules or conventions, and their messianic message of market economy must be the only guiding principle in the crusade against communism, state regulation and the like.

The Legal Export of Force

To argue that Cuban intervention in Angola is justified because of the need to spread the gospel of socialism through Africa would be adopting a similar position from an opposite ideological viewpoint. What I would suggest is that the development and application of doctrines of international law can distinguish the legitimate use of international force. A sovereign state has the right to defend itself, and according to the urgency of the situation and the practicality of raising the matter through the Security Council of the UN there is no reason in principle why it should not invite assistance from other sovereign states in order to give effect to its right of self defence.

South Africa's attack on Angola was illegal, the more so as the attack was made with the motive of preserving its equally illegal occupation of Namibia. The problem is thus the removal of the illegal South African force rather than the lawful Cuban one, although once the threat of foreign invasion has been removed, it would desirable for foreign troops assisting the beleaguered power to go as well.

The Stigma of Illegality

The value of international law was most clearly expressed in the ruling on the US attack on Nicaragua by funding of the Contras and the mining of the port of Corinto. Here the International Court of Justice in the Hague was able to pronounce on these illegalities despite attempts by the US to withdraw recognition on the ground that this was a political decision. The difficulty of course is enforcement, but at least the existence of an ICJ judgement can assist in putting diplomatic pressure on the errant state to conform.

Moreover, it is an extravagant delusion to imagine that there was a more effective strategy open to Nicaragua; Soviet or Cuban assistance would probably have provided the very excuse the US was searching for to launch its own full scale military intervention.

International law doctrines can assist in identifying those entitled to the accolade of 'freedom fighter'. Self-certification is of not of much assistance when it includes such a mixed bag as the Contras, UNITA, ANC, PLO and the IRA. But recognition of a liberation movement by the competent international institution – in the case of Africa the liberation committee of the Organisation of African Unity – creates a juridical status for the body concerned which is further enhanced by the movement behaving like a government in being and itself recognising, to the extent that circumstances permit, international legal and humanitarian conventions.

The difficulty with the principle of legitimate invitation is that it could apply across the board to regimes like Guatemala, El Salvador or the former state of South Vietnam. But here the UN Charter is clear that a state cannot pray in aid international law in order to violate it. It may then be necessary to see whether the assisting state is calling an international force in order to violate the principle of self-determination or the Declaration of Human Rights.

The Afghan Experience

In Afghanistan, it seems an almost touching concern for formal legality required that the bulk of Soviet forces were sent in following an invitation for assistance from an engineered coup. The use of force has been disastrous. The Soviets have learned what the British learned in two major incursions last century, that the Afghan tribes are ruthless fighters, who are extremely difficult to defeat on their own terrain. The experience has also served as a reminder that you cannot export revolution.

If the Afghan people are unable to create their own revolution and defend it themselves from the barbarous reactions of some of their people, then no one else can do it for them. Whatever sympathies one has with the principles of the Afghan revolution it may be preferable for it to be defeated by internal opposition than to survive at an unacceptable military price.

Of course the supply of arms to the mujahaddin by the US via Pakistan is a legitimate source of complaint which could have been pursued through diplomatic and legal initiatives. But the complaint loses force when the complaining government has invested in massive foreign forces to protect itself from its own people.

A System of Enforcement

Socialist lawyers should now be developing a system of international law enforcement. The most effective model to date is the European Court of Human Rights, though all supra-national legal institutions have very real problems when dealing with the fundamentals of foreign relations in countries where there is no similar community of culture or interest. It is a disgrace that effective international legal sanctions have not been taken against South Africa.

To persuade the US to submit to the judgement of international law in its foreign affairs would be a daunting achievement. But there seems no reason why bilateral treaties on arms reductions and human rights abuses should not include promises to submit certain disputes to international arbitration.

Until we have an effective system of international law enforcement the *legitimate* deployment of force abroad remains the ultimate sanction for transgressors. It would indeed be an error if the important contribution to peace and legality played by Cuba in southern Africa was forgotten in the retreat from Kabul.

Geoffrey Bindman

Lawyers Under Pressure in Northern Ireland

I recently went to Northern Ireland on behalf of the Haldane Society, as part of a delegation investigating the impact on local lawyers of the killing of Pat Finucane. These are a few reflections resulting from my visit.

The murder of Pat Finucane was deeply shocking even in Northern Ireland, where the murder of innocent civilians is commonplace. Judges have long been targets of terrorist attacks, but Pat Finucane, shot dead by gunmen who broke into his house on 13 February 1989, was the first victim amongst practising lawyers. Judges may be perceived as the agents of a hostile state, but on the face of it, there was no reason to suppose that either loyalist or republican militants would see legal practitioners as a danger to their interests.

Remarkable Independence

The role of the criminal defence lawyer is a crucial one in polarised societies where the government seeks to maintain the form if not always the substances of justice according to law. Whatever misgivings there may be about judicial bias or security legislation which violates international human rights the legal process provides one of the few opportunities for challenging authority in Northern Ireland.

The legal profession in Northern Ireland has responded to the pressures upon it with great courage and integrity. Its remarkable independence has been recognised and praised not only by government ministers but also by the militants on both sides of the sectarian divide. Although there has been justified condemnation of the manipulation of the judicial system through the Diplock courts, those charged with terrorist offences have not for the most part rejected them totally. They have accepted that some element of integrity remains in the legal system, though they may properly regard the conduct of the British government and its agencies as hypocritical.

There is universal agreement that no solicitor has limited his or her practice to partisans of one side or the other. Someone remarked that if the gunman who shot Pat Finucane had instead asked for his legal help he would have given it without hesitation.

A Surprising Failure

The identity of that gunman has not been discovered by the RUC, whose investigation continues. We discussed the investigation with senior RUC officers. They remained optimistic that they would track down the killers. It is surprising that they have not done so. They themselves pointed out that Protestant extremists were easier to trace than Republicans because there was more information about them on the RUC grapevine.

Was Pat Finucane killed with the connivance or encouragement of the British government or the security forces? It has to be said that there is no evidence of their direct or indirect involvement. It is clear, however, that a range of irresponsible, sometimes criminal behaviour by the authorities could easily have led to the belief that that they would welcome Pat Finucane's removal from the scene.

Deaf Ears

Several instances have been reported of RUC officers claiming that particular solicitors were agents of the IRA. Tony Gifford records in his report *Supergrasses* (*Cobden Trust, 1984*) that supergrass Robert Lean told him that police asked him to sign a statement confirming that five well-known solicitors were feeding information to the IRA.

In May 1987 a group of solicitors issued a public statement from the office of an Omagh firm. They reported regular abuse by RUC offers of detainees held in interrogation centres. They claimed that when detainees asked for their solicitors, the latter were called 'IRA men' and 'murderers'. This was despicable conduct said the solicitors, but so far all complaints to the RUC have fallen on deaf ears. Is it too much to ask that the RUC should observe civilised standards towards their prisoners and should stop attempting to set up them and their legal advisers for murder by loyalist gunmen'.

As Bad as Your Client

In February 1988, Brian Gillen told representatives of Amnesty International that, while he was under interrogation by the RUC a week earlier detectives told him that his solicitor was working for the IRA and that the UVF (loyalist para-militaries) should shoot the solicitor. Although the solicitor's hands were 'clean of guns' he should be shot because he was just as bad as the terrorists. The solicitor by the way was Pat Finucane. Is this a coincidence?

> **... if the gunman who shot Pat Finucane had instead asked for his legal help he would have given it without hesitation.**

The senior officers whom we met were adamant that such conduct by their officers was unacceptable and would not be tolerated. But they also admitted that no officer had been disciplined for it. They agreed that it was wrong to assume an identification between solicitor and client which went beyond the professional relationship. Yet they also expressed understanding and sympathy for their junior officers who, they said, were often frustrated by the obstacles placed in their way by solicitors who (no doubt with the highest motives) were helping the guilty to delay or escape punishment.

Stalker's Conversation

The credibility of the accounts just mentioned is strongly reinforced by John Stalker's account (in *Stalker*) of his experience in the Hall of the Law Courts at Crumlin Road in Belfast. John Stalker was speaking to a solicitor. Once again the solicitor was Pat Finucane.

RESOLUTIONS

HALDANE SOCIETY OF SOCIALIST LAWYERS AGM 1989 RESOLUTIONS

1. The Future of the Legal Professions

The Haldane Society supports a legal system in which the law and the way it is applied ensures that all classes, not just the rich and powerful, have equal rights and equal ability to enforce them and that all classes, not just the rich and powerful, are subject to equal justice. Many of the ancient practices and privileges of the legal profession have prevented this. They need to be broken and replaced with ones that ensure working class people get access to the best possible legal service.

Concerns about the Papers

The Haldane Society is concerned that the green papers not only fail to promote public legal services as an objective but are published in the context of the government's desire to reduce public expenditure in this area generally, and also in the context of the government's appalling record in relation to human rights and its design to repress the working class and labour movement. We have the following principal concerns about the proposals:

(1) While the law regulating business affairs will be led at least to some extent by the market within which it operates, democratic rights will not be guaranteed if the provisions of legal services to protect and enforce them are a matter of competition and market forces. Such services must be provided according to need.

(2) The proposals are likely to lead to reduction in legal aid provision and a general reduction for poor and working class people of availability of access to and choice of lawyers. In particular, the loss of the conveyancing monopoly and the introduction of multi-disciplinary partnerships, without any attempt to cater for the inadequacies of the Legal Aid Scheme, will lead to many legal practitioners withdrawing from legal aid work. The proposals as to contingency or other speculative fees will also undermine the Scheme and replace it with a system whereby those with difficult cases or cases involving relatively small amounts of money will be unable to obtain representation.

(3) The proposals fail to address the need for changes in the system of education, training and recruitment of lawyers in order to ensure the broadest possible social representation within the legal profession of those involved in financial and property business.

(4) They do nothing to change the closed and undemocratic means of selecting and promoting the judiciary, arguably the most class-ridden part of the whole legal system.

(5) The proposals for the Advisory Committee and certification of advocates involve too great a degree of government control over the conduct of lawyers.

Legal Services Programme

Major structural reforms involving increased competition for the business consumer can only be justified if sufficient skills and resources are available to enforce democratic rights. There must be a comprehensive programme for legal services with the following elements:

- Determination of legal provision on an area basis, to suit differing needs around the country. Local committees consisting of representatives of legal service providers, local government, community organisations, advice agencies and others involved in the provision of legal services, would formulate plans for legal services in each area.
- In each area, adequately funded Legal Aid offices and/or offices of salaried lawyers which would undertake the bulk of legal advice and litigation.
- A law centre in each area, adequately and securely funded from central government,
- A range of specialist and generalist advice agencies, funded from central government.
- Regional committees to coordinate and rationalise legal services provision and, where appropriate, set up regional legal services.

Reform of the Legal Profession

The Haldane Society recognises the need for reform of the legal profession, but insists that that should only take place in the context of safeguarding and enhancing public legal services, along with a comprehensive legal services programme as outlined above. Such reform should indicate the following.

(1) A common system of legal education. All steps should be taken to ensure the broadest possible intake into the profession. Legal education should not be biased towards business law, but should reflect the needs of the users of legal services.

(2) Fusion of the legal profession, to facilitate access to legal services by ordinary people.

(3) Removal of restrictive practices which are not in the public interest.

(4) The judiciary to be drawn from as wide a social group as possible and not limited to barristers.

(5) Professional conduct to be regulated entirely independently of government.

(6) Establishment of an independent and representative legal services commission, accountable to a Ministry of Justice, with the following role:

- provision of funding and administration of the legal services programme.

- Subject to primary legislation, developing and enforcing lawyers' codes of conduct.
- Supervising legal education and training, and recruitment to the legal profession.
- Supervising training, recruitment, appointment, promotion and conduct of the judiciary.

2. Disinvestment

The Haldane Society welcomes the campaign for disinvestment by the Bar Council from companies involved in South Africa, and RESOLVES to mobilise maximum support for the resolution calling upon the Bar Council to convene a Special General Meeting to debate the following motion:

This meeting notes that companies involved in South Africa are deriving profits from and are participating in a system of legalised racial discrimination and repression.

The Society calls upon the General Council of the Bar to review its investments in order to identify whether funds are invested in any such companies and to disinvest as soon as possible from any companies which are so identified.

3. Protocol 1 of Geneva Convention

The Haldane Society notes:

(1) The illegitimacy of the apartheid regime.

(2) The legitimacy of all aspects of the liberation struggle waged by the people of South Africa led by the ANC.

(3) That the ANC is a party to the Geneva Conventions.

This Society therefore resolves:

To support the campaign for the accordance of Prisoner of War status to captured combatants of the liberation movement in South Africa.

This Society calls upon:

The UK Government to ratify protocol 1 of the Geneva Conventions.

4. Satanic Verses

The Haldane Society notes the publication of the novel 'Satanic Verses' by Salman Rushdie, the reaction by Muslims worldwide and the subsequent response by the British Government, politicians and the media.

This Society recognises:

(a) That all censorship is political:

(b) That in a multi-cultural society there is an implied obligation to be alert and sensitive to the fundamental and intimately held beliefs of members of that society:

(c) That in Britain today deep feelings of outrage are not limited to adherents of the Christian faith and that in a society which is predominantly secular it is an anachronistic impertinence to continue to allow the full force of the criminal law to be used to protect the feelings of this single group whose privileged status derives from centuries of cultural imperialism and religious intolerance:

This Society:

(1) Denounces absolutely the demands for assassinations made by some Muslim leaders, such methods for resolving differences, however fundamental, are wholly repugnant to the basic principles of international law.

(2) Condemns the continuing threats of violence and the actual violence, injury and deaths which have arisen during the Rushdie affair:

(3) Notes the courageous stand of Muslims around the world, risking death by declaring their opposition to the demands for assassination and calls on the governments of their countries of residence to protect them and their families:

(4) Condemns the use of the Salman Rushdie affair by British racists as an opportunity for them to express their abhorrent views under the guise of espousing liberalism and freedom of speech:

(5) Calls for the immediate repeal of the common law offence of blasphemy as being unworkable, providing a platform for religious bigots and a means to impose censorship without accountability on all forms of literature and creative arts:

(7) Condemns the British Government who far too quickly and glibly found it expedient to distance itself from Salman Rushdie, whose criticism of the British Government may have caused discomfort and who, as a Muslim and an Indian, could be more easily written-off as not quite a full-fledged Englishman:

(8) Demands from the British Government the same standards of tolerance of dissent and criticism which it purports to be demanding from the governments of other states.

5. Carlisle Committee Report

The Haldane Society:

(1) Notes the publication of the Carlisle Committee's Report on the Parole System in England and Wales:

(2) Strongly opposes the Committee's recommendation that prisoners should not become eligible for release until they have served one half of their term of imprisonment instead of the current requirement of serving one third of their term:

(3) Supports the National Association of Probation Officers (NAPO) in their opposition to these recommendations, and adopts NAPO's belief that the implementation of the Carlisle recommendations will increase the daily prison population by up to 3,000:

(4) Therefore, believes that far from ameliorating the crisis level of Britain's prison population, adoption of the Carlisle recommendations will aggravate an already desperate situation.

(5) Supports the Committee's recommendations for increasing inmates' access to their parole reports, and for a reduction of sentences generally:

6) Supports the Committee's condemnation of the 'restricted policy' relating to parole for prisoners serving sentence of five years or more for sex/drugs/violence or arson offences as 'flawed in principle and harmful in practice', and deplores Leon Brittan's introduction of this policy by means of an Order in Council, thereby denying Parliamentary debate on this subject.

6. Permanent Support Unit

The Haldane Society notes the work carried out by its members during the miners strike, the Wapping dispute and more recently, the Dover Seafarers dispute and in order to facilitate such work and support when called upon to do so, resolves to establish a worker support unit under the general direction of the Executive Committee with the following aims:

'To provide legal services with the aim of supporting collective action, and rights to trade union membership and recognition, to any employed or unemployed person and for such dependents involved in any form of collective action, in connection with any legal problems whatsoever arising out of such collective action whether such person is a member of a trade union or not'.

7. Human Fertilisation and Embryology

The Haldane Society notes:

(i) The governments intention to legislate in the next Parliamentary session, following its White Paper. Human Fertilisation and Embryology: A Framework for Legislation:

(ii) That the basis for this legislation is the Warnock report, the conclusions of which include a recommendation that reproductive technology should be made available only to heterosexual couples living in a stable relationship;

(iii) That the legislation will include restrictions on experimentation on embryos;

The Haldane Society believes:

(i) That this legislation will have wide-reaching implications for reproductive rights, especially for those wishing to become parents outside of the nuclear family form;

(ii) That in imposing restrictions on who can conceive in this way, the government is attacking women's and particularly lesbian women's rights.

(iii) That any attempt to restrict experimentation on embryos by vesting legal rights in the embryo opens the way for further attacks on the 1967 Abortion Act;

This Society resolves:

(i) To hold a public meeting on the proposed legislation in the Autumn meetings programme;

(ii) To publicise these criticisms of the proposed legislation and to support any campaigns against it.

(iii) To bring our criticisms of the proposals to the attention of Parliament in order to bring amendments or achieve repeat of legislation.

8. Pat Finucane

The Haldene Society concerned about the dangers of the harassment of defence lawyers both in totalitarian and police states (Chile, South Africa, South Korea etc), and in so-called 'democratic' states such as Singapore, Phillipines, Italy (in Sicily in particular), and now in the UK, strongly condemns the allegations of Douglas Hogg against certain lawyers in Northern Ireland, which was immediately followed by the tragic assassination of our colleague Patrick Finucane.

The Society calls upon the UK Government to repudiate these allegations, and to uphold the rights of defence lawyers to defend their clients in the way they think best without fear or oppression.

9. Bhopal

The Haldane Society deplores the recent ruling of the Indian Supreme Court that Union Carbide should pay the Indian Government $470m (£268m) in compensation for the gas leak which killed at least 3,329 people in Bhopal on 3 December 1984. This Payment, in full and final settlement of all claims, means that claimants will receive no more than £500 each. It represents a wholly unmerited victory for Union Carbide, which has therefore been able to avoid the issue of responsibility for the disaster.

This Society wishes to place on record our deep concern at the present use by trans-national corporations and Western imperialist states of less-developed countries, and the South as a whole, as a dumping ground for lethal waste, and a source of cheap labour and cheaper lives.

This Society recognises that the solution of problems of development, the environment and exploitation in the South will require the end of debt slavery, and the planned and peaceful use of the world's resources for all its inhabitants.

This Society supports proposals to convene the Permanent Peoples Tribunal to investigate and adjudicate on the Bhopal disaster.

10. Soviet Peace Proposals

The Haldane Society welcomes the announcement by President Gorbachev at the United Nations on 7 December 1988 that the Soviet Union would, on the first anniversary of the treaty eliminating intermediate and short range nuclear missiles, unilaterally reduce its conventional forces in Warsaw Treaty countries by 50,000 persons and 5,000 tanks.

The Haldane Society demands that Britain and other capitalist countries follow suit by abandoning weapons and strategies of genocide; and urges the Labour Party to adopt a non-nuclear, non-aligned defence policy as the precondition for the preservation and extension of human rights, and the key to victory at the next General Election.

11. The Memorial Committee

The Haldane Society notes that on 28/29 January 1989 500 delegates of the All-Union Voluntary Historical Enlightenment Society ('Memorial') from 108 Soviet towns and cities, held their Constituent Conference in Moscow, USSR, with the support of the architects, artists, cinematographers, theatre workers and designers unions of the USSR, and the journals *Literary Gazette* and *Ogonyok*.

The Society applauds the adoption by the Conference of a programme within a socialist state including: the preservation of the memory of the victims of Stalinism; the compensation of survivors; the creation of Memorial complexes throughout the USSR; active participation in democratic reform; assistance in developing the socialist consciousness of citizens; struggle against acts of unlawfulness; and the education of young people in the spirit of rule-of-law socialist state. The pursuit by Memorial of these aims is a significant contribution to the strengthening and development of socialism.

The Society resolves to send to the Organising Committee of Memorial, 2 Chernyakovsky Street, 125319 Moscow, USSR a copy of this resolution. We pledge ourselves to cooperate with the work of 'Memorial'.

12. The Charitable Society Of In'Ash Al-Usra

The Haldane Society condemns the raiding and partial closure by Israel military occupation forces on 20 June 1988 of the children's home, workshops and offices of In'ash Al-Usra, El Bireh, West Bank. We promise our full solidarity to the women who organise and staff the society; and to the many orphans and families assisted by its work. We recognise that this barbarous act is an integral component of the unlawful policy adopted by Israel to punish and oppress the Palestinian people.

The Society welcomes the decision by the IADL to send an observer to the trial of Mrs Sameeha Khalil (the 65 year old founder and President of the Society), who has been indicted on trumped-up changes.

The Society pledges our full support to Mrs Khalil, and all those patriotic Palestinians and progressive Israelis who work for the just demands of the Palestinian nation. We urge all UK charities to demand the re-opening of the Society, and the dropping of charges against Mrs Khalil.

13. Marital Rape

The Haldane Society deplores the fact that the martial rape exemption continues to survive in England and Wales.

The Society rejects the claim that criminalisaton will cause problems of proof or lead to vexations allegations.

The Society considers that any attempt to justify the exemption is informed by sexism.

The Society therefore resolves:

(1) to condemn the martial rape exemption.

(2) to attempt to re-educate those in the legal profession in regard to the sexist stereotypical images portrayed of women, in particular married women.

(3) to attempt to erode the myths generally associated with marital rape, for example in regard to the traumatic effects of a martial rape.

(4) to contact and work with womens groups in order to urge legislation either reforming the 1976 SOA's use of the word 'unlawful' sexual intercourse (by specifically including the rape of one's wife into the definition of 'unlawful') or by introducing a new offence of 'sexual assault' incorporating the martial rape facts.

(5) to contact an M.P. willing to move a Private Members Bill as stated in (4) above.

14. Trade Union Draft Code

The Haldane Society joins with A.C.A.S. and the T.U.C. in condemning the draft code of practice on Trade Union Industrial Action Ballots for placing yet more procedural hurdles in the way of unions seeking to pursue industrial action.* In particular the proposals will mean the end of workplace ballots unless the union is prepared to risk sequestration of its funds for almost inevitable but significant breaches of the code.

*These additional procedural requirements go far beyond the enabling legislation.

15. London School of Economics

The Haldane Society condemns the blatant interference by this government in elections of the London School of Economics students union.

16. Puerto Rico

The Haldane Society ratifies last year's resolution condemning the US' 90 years of colonial intervention in the Caribbean island of Puerto Rico; rejects any form of criminalization of the struggle of the Puerto Rican people to achieve their right to self-determination and independence by the US Government; and calls on the US authorities to release and withdraw all charges pending against any pro-independence sympathiser.

The Society therefore resolves:

(1) That any plesbicite or referendum that takes place in Puerto Rico, sponsored by the US Government to solve the colonial status, shall be carried out according to the rules and supervision of the United Nations;

(2) To demand, once more, the immediate withdrawal of all US administrative and military institutions in Puerto Rico;

(3) To demand the unconditional release of the four Puerto Ricans that were recently found guilty in the case of the Hartford 15: and the immediate withdrawal of charges against the remaining nine defendants, whose trial is yet to begin:

(4) To demand from the US authorities, the release on bail of the Puerto Rican Patriot Filiberto Ojeda-Rios, who has been detained since 30 August 1985, the longest period spent on remand in the US modern history; also, that meanwhile in prison he receives adequate treatment and diet for his delicate heart condition.

17. Guadalupe, Martinique and Cayene

The Haldane Society deplores the colonial status – Overseas Department – of the Caribbean countries of Guadalupe, Martinique and Cayene, controlled by the French Government; condemns also any form of criminalization of the struggle of those who are resisting the colonial condition; and demands that the French authorities discuss with the people of these countries to bring to an end the current political situation.

The Society therefore resolves:

(1) To recognise the right of the Caribbean people of Guadalupe, Martinique and Cayene, to their right of self-determination and independence according to the UN Resolution 1514 (XV) of 1960:

(2) To demand of the French authorities the unconditional withdrawal of charges against nine pro-independence people from these countries, whose trial is to begin on 22 May 1989:

(3) To call to the attention of the French authorities, that while these people are on remand, their human rights shall be respected.

18. Tube Strike

The Haldane Society condemns unequivocally;

(1) the judicial decision to ban the tube strike called for 8th May 1989;

(2) the labour laws passed by the Tory Government which underpin this decision.

As Stalker walked away after the conversation he was approached by a young police sergeant who asked him if he knew who he had been speaking to. Stalker replied that it was Martin McCauley and his solicitor. The sergeant said 'the solicitor is an IRA man – any man who represents IRA men is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either of them. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors'.

It may well be true that the close relatives of Pat Finucane were IRA activists – his brother, for whom he was acting, was contesting an attempt to extradite him from the Republic on charges of terrorist offences. It may be that Pat Finucane had private sympathies for the republican cause – but there is no shadow of evidence that he ever played an active part in any militant sectarian politics to the detriment of his professional duty. The attitude of the RUC sergeant who spoke to John Stalker is despicable and disgusting. The implication that he was expressing a view shared by his colleagues and senior officers contradicts what we were told by the senior RUC officers whom we met.

using almost identical words. At one point he said 'I state it on the basis of advice that I have received, guidance that I have been given by people who are dealing in these matters, and I shall not expand on it further. Certainly I shall not name individuals or specific cases ...'

Government Hypocrisy

The Law Society of Northern Ireland immediately invited Douglas Hogg to give details so that they could investigate these allegations of professional or even criminal misconduct. It also asked for any accusations to be made outside the protection of parliamentary privilege so that those accused could defend their reputations through court actions. Hogg rejected these wholly reasonable requests.

The government's interest in preserving the image of an effective and independent legal system is obvious. They were so anxious to encourage lawyers to defend alleged terrorists in the Diplock courts that they offered them enhanced legal aid payments to do so. But towards those who take their professional duty 'too seriously' their attitude is very different.

Popperfoto

Hogg's Responsibility

An even more serious contradiction is to be found in the statements of government ministers. While Tom King praised Northern Ireland lawyers his colleague Douglas Hogg went to extraordinary lengths to undermine them.

On 17 January 1989 the Standing Committee on the Prevention of Terrorism (Temporary Provisions) Bill was discussing new provisions to prohibit disclosures likely to prejudice a terrorist investigation. Opposing amendments that preserved the privilege of communications between solicitor and client, Mr. Hogg said 'I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA. [interruption] I repeat that there are in the Province a number of solicitors who are unduly sympathetic to the cause of the IRA. One has to bear that in mind'.

He was immediately challenged by Seamus Mallon MP, 'That is a remarkable statement for a minister to make about members of a profession who have borne much of the heat in a traumatic and abnormal situation. Such words should not be said without the courage to support them. I find it appalling that the minister should make the accusation with such emphasis and without, it seems, the intention of substantiating it'.

Hogg repeated the allegation no less than 11 times

Not Quite Cricket

Pat Finucane represented his clients with a degree of energy and initiative which agents of the government found upsetting. He acted for the family of Gervaise McKerr, shot by the RUC, in their challenge to a coroner's decision not to require the attendance of police witnesses at his inquest. He also acted for the families of others shot by the security forces in civil actions for damages against the government. Such positive assertions of legal rights, going beyond the defence of those charged, could have been seen by the government as outside their rules of the legal game. We already know from other sources – Paul Foot's account of the case of Colin Wallace, the disclosures of Fred Holroyd and the Stalker revelations – that the government is adept at a range of 'dirty tricks'.

Douglas Hogg's failure to resign was a disgrace and he should have been dismissed out of hand. The attack on the integrity of Northern Ireland's solicitors is vicious and disgraceful. The recent revelations concerning 'security leaks' make the case for a full judicial inquiry overwhelming.

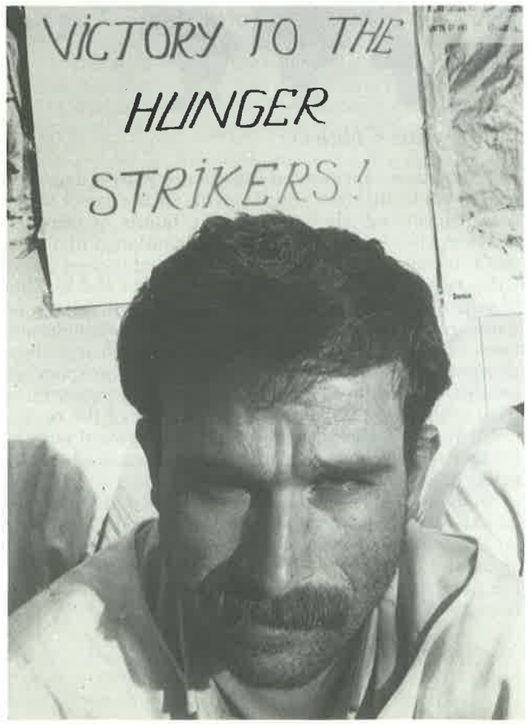
Ewa Turlo

'Get Back Whence You Came' – Asylum in the UK

The arrival in Britain of 3,700 Turkish Kurds earlier this year has highlighted the UK government's restrictive attitude towards asylum seekers. This is exemplified by the denial of appeal rights exercisable in the UK to anyone claiming asylum at their port of entry.

Catch 22

There is no provision in the Immigration Rules to apply for entry clearance from abroad to come to the UK as a refugee. An application for asylum can only be considered when it is made in the UK. Therefore, the first problem is to get to the UK to apply for asylum. The usual way round this is to gain entry clearance as a temporary visitor or student. Once in the UK, an application for asylum can be made. These are usually referred to as 'in country' cases. If the application is made during the validity of a visa, refusal of asylum will attract a right of appeal under section 14 (1) of the Immigration Act 1971. Appeal rights exercisable in the UK are available in a limited number of other cases. Section 5 (3) of the Immigration Act 1971 provides for a right of appeal against a decision to make a deportation order, although the latter right has been curbed by the 1988 Immigration Act. Similar rights of appeal apply to nationals of countries who may enter without prior entry clearance and who are granted leave to enter and also to persons in possession of valid entry clearance who either apply for asylum immediately on arrival or before an Immigration Officer decides to refuse leave to enter in another category.



Jim Hodson

No Rights

The following categories of asylum-seekers usually referred to as 'port cases' do not have rights of appeal exercisable in the UK against refusal of asylum.

1) nationals of countries requiring entry clearance who manage to arrive in the UK without such entry clearance and claim asylum immediately on arrival;

2) nationals of countries not requiring entry clearance and who on arrival immediately present themselves to an Immigration Officer and claim asylum;

3) those who arrive in the UK using false documents who immediately claim asylum on arrival.

Rights of appeal exercisable in the UK are also denied to asylum seekers who entered the UK illegally or who were granted entry and subsequently declared illegal or who are already the subject of deportation orders.

Despite mounting criticism, the government refuses to provide all asylum seekers with the right to appeal to an independent authority. Public and press criticism of the way in which the arrivals of the Turkish Kurds were handled by the Immigration Service and allegations of refoulement in breach of the 1951 UN Convention on Refugees led to responses from Timothy Renton in the *New Statesmen and Society* of 14 July 1989 and from Douglas Hurd in *The Independent* on 26 July 1989. In both cases the government restated its opposition to full rights of appeal for all asylum seekers.

An Independent Safeguard?

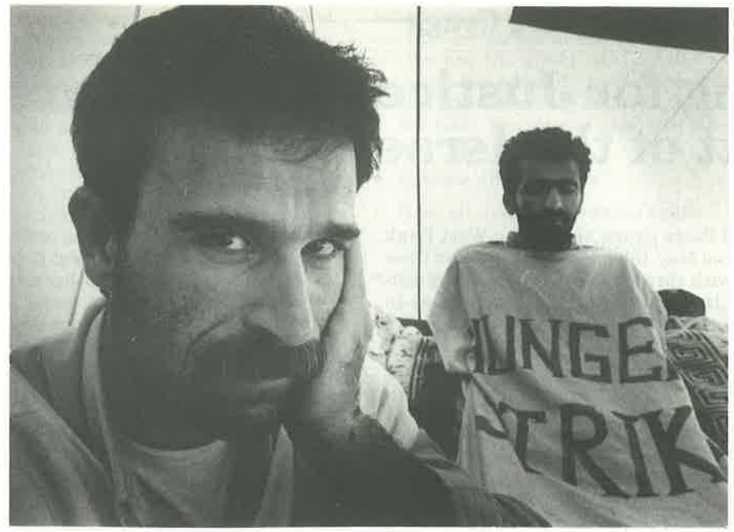
The government emphasises its acceptance that an independent review of cases should, in principle, exist. This independent review is the subject of an agreement between the Home Office, the United Nations High Commissioner for Refugees (UNHCR) and the Refugee Unit of the United Kingdom Immigrants Advisory Service (UKIAS), referred to as the Home Office Referral System.

The referral of such cases to UKIAS was announced in 1983 in the House of Commons, without the agreement of UKIAS. It followed an outcry by Tory MPs over the deportation of a Rumanian national whose asylum application was refused, without right of appeal, and who had no access to legal representation.

In May 1985 around 1,000 Tamils arrived in the UK seeking asylum, fleeing persecution by the Sri Lankan security forces. The Home Office referred 400 Tamil cases to UKIAS. Subsequently, there was a large increase in irregular movements of asylum seekers and in the number of applications made at ports of entry, and a corresponding increase in the number of cases referred to UKIAS.

A New Agreement

In February 1987 the Home Secretary ordered that 57 Tamil asylum seekers should be refused asylum and deported to Sri Lanka within a few days of their arrival in the UK, without having their cases referred to UKIAS



Jim Hodson

or having had access to legal representation. This decision resulted in the asylum seekers stripping on the tarmac and obtaining an injunction and leave to move for judicial review. The referral system to UKIAS was then suspended.

After long discussions it was re-instated in a more restrictive form on 1 September 1988. Under the new regime the Home Office is not obliged to refer all cases to UKIAS.

That means there are now two tiers of asylum seekers, the category to which they belong depending almost entirely on the timing of the application.

Tired, Nervous and Frightened

In almost all cases asylum seekers have no prior awareness of the legal or administrative procedures involved in an asylum application. 'In country' applications are now dealt with by questionnaires; interviews rarely take place.

The procedures are very different when applications for asylum are made at the port of entry. Asylum-seekers are usually interviewed by the immigration service very soon after their arrival. Many are scared, tired, nervous of the Immigration Officers, frightened that any information they give will be passed to their national authorities. Interviews are often conducted by hostile and unsympathetic Immigration Officers. Complaints about interpreters are numerous.

If they are not considered to be suitable candidates for temporary admission by the immigration service, asylum seekers may be detained for weeks while their cases are considered. If the Home Office refuses the application the case will normally be referred to UKIAS. If the decision to refuse is nevertheless maintained, the case is sent to the Minister for a final decision. The decision of Mr Renton is no substitute for a determination by an independent adjudicator. The only recourse left following a refusal by the Minister is an application for judicial review.

Easing the Government's Conscience

There are substantial drawbacks to the Home Office referral system. It does not safeguard the rights of asylum seekers at ports of entry, as was graphically illustrated by the allegations of refoulement of Turkish Kurds seeking asylum who, it is claimed, were not allowed to get off planes to claim asylum. The number of cases referred to UKIAS is high. Their staff work under considerable pressure. It is generally felt that UKIAS is being used to salve the conscience of the Home Office.

The Refugee Unit of UKIAS is a project of the UNHCR and has particular terms of reference. If UKIAS decides not to make representations because a case falls outside the Refugee Unit's terms of reference, this is often misinterpreted by the Home Office as an indication that there is no substance to the asylum claim. The system has been widely criticised by community groups and agencies involved in work with refugees. There is great pressure on UKIAS to withdraw from the agreement.

The government's reasons for refusing to extend appeal rights to all asylum seekers include the following: it would invite abusive asylum claims from bogus refugees; many asylum-seekers are in fact economic migrants; the appeals system would clog up; there is no such right of appeal for most passengers refused entry at ports on non-asylum grounds. However, of 171 cases of Turkish Kurds which had been considered by the beginning of July 1989, 64 had been granted leave to enter the UK – 15 with refugee status and 49 with exceptional leave to remain.

Getting Worse

Access to the UK for refugees has been made increasingly more difficult. In response to the numbers of Tamils seeking asylum, entry clearance requirements were imposed; the first time this had applied to a Commonwealth country. Then came the Carriers Liability Act 1987 which introduced fines for airlines carrying passengers without proper documents. Most recently, entry clearance requirements have been imposed on Turkish nationals. The result has been an increase in asylum seekers arriving with false passports or forged visas (for which they have paid vast sums of money), and a consequent increase in the number of asylum applications made at ports of entry.

Many refugees are motivated by fear of persecution. Those asylum seekers not able to exercise appeal rights in the UK are expected to return to the country they claim will persecute them to appeal against the refusal of asylum in the UK. This prevents substantial numbers of asylum seekers from having their fear of persecution investigated fully by an independent appellate authority in their country of refuge, which amounts to the violation of a fundamental human right.

Debbie Tripley and Steve Cragg

Striking for Justice – The Lawyers' Boycott of the Israeli Courts

Debbie Tripley and Steve Cragg visited the West Bank and Gaza in April and May 1989. Below we publish their notes of meetings with three lawyers representing Palestinians involved in the *intifada* which continues in the occupied territories.

(a) *Raji Sourani*

We saw Raji Sourani in his office above the Main Street in Gaza. He told us that essentially the military orders were the same in Gaza as they were on the West Bank. However according to Sourani the occupation in the West Bank is more liberal. In Gaza lawyers must wait a minimum of a month to be able to see their clients after arrest whereas in the West Bank the period is 'only' 10–15 days.

> **We are faced with clients who are first shot and then arrested and then denied any medical treatment**

Lawyers feel as if they are participating in a dirty war. Lawyers in Gaza have been on total strike from December 1987 – November 1988 for *inter alia* the following reasons;

i) Lawyers were being used as a cover for the organised official crimes of the authorities.

ii) On arrest the army enters houses, asks for all the young men and just takes them from their homes. Often they are beaten until arms and legs are broken. Formerly healthy detainees have died a couple of hours after arrest.

iii) According to Sourani only 10–15% of those arrested are actually 'doing something' at the time of arrest.

iv) Although officially there is a doctor in the detention centres young people still die in custody. In Ansar II Sourani has seen tens of prisoners with broken legs and arms.

v) In court the defence faces two attorneys for the prosecution – the prosecutor himself and the judge. It is often hard to distinguish between the Shin Bet, prosecuting attorney and the judge, e.g. Sourani told us that when making a bail application on behalf of a man with a broken arm the judge told him he wished it had been amputated and refused bail. Another example: Sourani has witnessed defendants being advised that unless they plead guilty their punishment will be doubled and they will go to Ansar III.

During the lawyers' strike Sourani told us he was accused of insulting the court. Sourani explained that the Gaza Bar Association had informed the court that they were going on strike. He was told that the court did not recognise the strike which was for political gain and the lawyers must return. Sourani argued that Israeli doctors could go on strike without sanctions against them but he was still sentenced to 15 days or a fine of NIS 1, 500 (£500).

Sourani believes that a total boycott of the courts is a respectable stance. But he says that lawyers also have to consider the family of the defendant who will go to bad and expensive Israeli lawyers if no others are available because of strike action. The presence of a lawyer is important to the family. In addition Sourani believes a political detainee should be represented and the case politicised, even though acquittal is an extremely remote possibility in a system where the testimony of ten witnesses will not gainsay the evidence of one soldier who says the defendant threw a stone.

(b) *Khaled al Khidre*

During our visit to Gaza we met Khaled al Khidre, deputy Chair of the Bar Association of Gaza. Unlike lawyers on the West Bank Gazan lawyers have retained their Bar Association which was established in 1976. It has around 364 members.

Since December 1987 all Gazan lawyers who belong to the Bar Association have declared themselves on strike. Khidre explained that there were two reasons behind the strike: professional and political.

The lawyers face all the ugliness of the Occupation because of their direct relationship with the accused. Many have found that they cannot defend their clients as they would like. They deal with clients who they feel have already taken their punishment in the form of beatings and interrogation. They find it impossible to challenge the legality of confessions allegedly obtained from their clients. They are unable to provide any form of defence and are not allowed to provide defence witnesses. When their clients are interrogated it takes place behind closed doors.

Khidre felt that many lawyers dealing with the courts felt they were dealing against their consciences.

Only plea bargaining is permissible, he explained to us, a fact borne out of our own visit to the military court in Ramallah on the West Bank. The military courts are surrounded by tight security with iron gates barring their entrance and soldiers querying the credentials of those admitted, like sentries on guard. All of the prosecution wear the Israeli army uniform including the judge who is appointed from among the military. Families of Palestinian detainees queue outside for hours waiting to gain entry to sit in the public gallery and listen to proceedings held in Hebrew and often inadequately translated into Arabic.

Khidre explained if a detainee pleads guilty he will inevitably get a lesser sentence than on a plea of not guilty. Therefore, the only job of the lawyer becomes one of advising ones client to plead guilty.

I am not present during the interrogation, he said, and I am not allowed to see the evidence. All the decisions are taken in advance of the hearing. We are faced with clients who are first shot and then arrested and then denied any medical treatment.

All the legislation relevant to the Palestinians is made by way of Military Order. The hearing of evidence is often in secret under the pretence that it is privileged material. We do not know what evidence there is against our clients and this makes our job very difficult. As lawyers we have felt obliged to struggle against the legal system and to defend our client's psychological comfort.

Since the uprising the punishments have become higher and higher. For example, pre-intifada someone accused of stone throwing could expect to be fined around 100 NIS (about £30). Now that person can expect to be imprisoned for at least 2 years.

We find that since our strike the Israelis have punished us by preventing us from visiting clients. We are always kept waiting outside detention centres. The military courts consider us Palestinians and equal therefore with all Palestinians before them as accused.

The Israelis have tried many times to meet the Bar Association to oblige us to work. For example they have suggested a transfer of cases from the military courts to the civil courts. They have also punished us for our strike by forbidding us to travel abroad.

Our situation in Gaza is different from West Bank lawyers. Many West Bank lawyers come from Jerusalem and so they have the status of Arab/Israeli (since Jerusalem was annexed by the Israelis). This entitles them to better treatment.

In the beginning of our strike we found Israeli lawyers were acting for Palestinians and charging enormous fees. We therefore decided that we would conduct our strike in the following way. The Bar Association has the direct relationship with the client and appoints the advocate to represent the client. There is no direct relationship between the client and lawyer.

We have formulated strike demands which remain unmet. These are:

- Release all detainees
- Give all detainees human rights
- Apply the Geneva Convention
- Stop all killings
- Give respect and special identity cards to lawyers

(c) *Lea Tsemel*

The lawyers who have been working within the military court system on the West Bank were on strike from 3 January 1989 to 25 March 1989. Their grievances were many and concerned the treatment by the system of both themselves and their clients which they described as insulting and humiliating.

They were protesting against the almost total lack of procedures and safeguards when arrests and searches took place, the lack of information provided when a client was in detention, the almost impossible task of obtaining bail for clients, the arbitrary prevention of visits by attorneys and families, torture in detention leading to forced confessions, prison conditions, and the extent of punishment for even minor offences.

In short, their complaints related to the lack of even minimum standards of justice at every stage of the military court system on the West Bank.

We met Lea Tsemel, a lawyer at the forefront of the strike organisation. Lawyers had recently returned to work after certain promises had been made to them and she was waiting to see if they would be implemented before considering a new strike.

The four conditions the authorities agreed to meet were:

- Improved arrangements for lawyers' visits
- The issue of procedures for arrest
- The consideration of punishment and the granting of bail
- Improved information relating to hearing dates

At the time of our meeting none of these pledges had been complied with.

Bethan Harris and Clare Wade

Embryo Research – Rights and Wrongs

The mention of embryo research generates visions of the worst aspects of genetic engineering – the creation of armies of clones, made-to-order babies, the creation of a super race, and so on. The government's white paper *Human Fertilisation and Embryology: A Framework for Legislation* seeks to allay these fears by proposing a framework for the regulation of embryo research and infertility services.

Trusting the Scientists ...

MPs will be presented with two options, either to make embryo research a criminal offence or to permit it with severe restrictions. Attitudes are divided into three camps. Some believe that human life begins at conception, and consequently oppose any process involving the destruction of an embryo, whatever the stage of its development and regardless of the purpose. Some feminists, for example, the Feminist International Network of Resistance to Reproductive and Genetic Engineering (FINRRAGE), with an extreme mistrust of scientists, oppose all genetic engineering and view embryo research as research on *women*, even though the egg is fertilised and remains outside her body. The process is regarded as inherently exploitive of women.

The Warnock Report represents the third line of opinion, recognising that benefits can be gained by restricted embryo research. This view is supported by the Labour Party and the umbrella organisation, *Progress* whose affiliates include the BMA and MENCAP.

Disease Detection

One of the main benefits of embryo research is the prevention of genetic disease. For example, scientists have discovered a means of identifying the genes which cause Cystic Fibrosis in an embryo less than 14 days from fertilisation. At this stage the embryo is no bigger than a fullstop. This allows, by test-tube baby technology, only embryos free of the disease to be put back into the mother's womb. Cystic Fibrosis carriers can have children safe in the knowledge that they will not pass on the disease.

Genetic defects and congenital malformations occur in 2–5% of all live births and are the cause of 40–50% of childhood deaths. If embryo research continues it may be possible in the foreseeable future to detect embryos that would develop specific disorders such as Muscular Dystrophy, Down's Syndrome and Tay Sachs disease. There are at least 50 types of severe genetic disease which may be detectable.

Without the availability of this technique, couples who carry a genetic disorder may decide that the risk of conceiving an affected child is too great for them to contemplate pregnancy. Although ante-natal screening is available to detect some genetic diseases it cannot be done until the eighth to sixteenth week of pregnancy and the only 'treatment' is termination. Early diagnosis would alleviate the enormous suffering caused by multiple terminations of affected pregnancies.

Test Tube Guinea Pigs

Embryo research is also essential to increase the success rate of In Vitro Fertilisation (IVF) – the test-tube baby technique. Infertility affects at least one in ten couples. IVF is used mainly because a woman has blocked fallopian tubes. At present the success rate is only 15%.

Embryo research will help the testing and development of new contraceptives, avoiding the use of women as guinea pigs. It may also enable scientists to identify the characteristics of sperm that will achieve normal fertilisation. Indeed, it will ultimately be possible to provide an accurate prognosis for men with semen abnormalities. Furthermore examination of embryos could elucidate the causes of miscarriage.

No Cloning

The White Paper proposes three types of restriction on embryo research. First, it proposes that the following areas of research should be completely prohibited under the criminal law:

(1) Genetic manipulation of the embryo – defined in the White Paper as 'the artificial creation of human beings with certain predetermined characteristics through modification of an earlier embryo's genetic structure'.

(2) Nucleus substitution – the production of 'carbon-copy clones'.

(3) The gestation of human embryos in other animal species and vice-versa.

(4) The creation of chimeras – the fusion of cells of human embryos with those from another species. This kind of process has been used to produce a 'geep' – sheep/goat chimera.

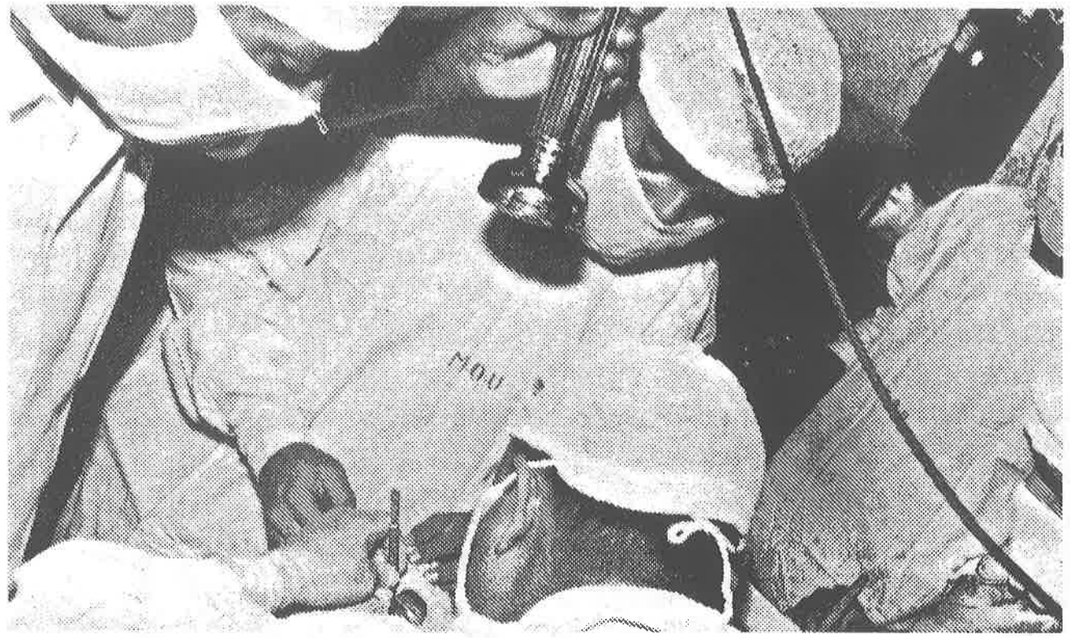
(5) Trans-species fertilisation – the fertilisation of a human egg with a sperm of another species.

> **There are at least 50 types of severe genetic disease which may be detectable**

There is no evidence that any of the above processes have been attempted using human embryos in the United Kingdom.

The second form of restriction on embryo research will be enforced by a new Statutory Licensing Authority (SLA) which will grant a licence 'only if satisfied that the aim of the project was to bring about advances in diagnostic or therapeutic techniques, or in fertility control; that it was scientifically valid; and that the applicant had given adequate consideration to the feasibility of achieving the aims of the project without the use of human embryos ... '. It will be a condition of every licence that no restricted procedure would be carried out on an embryo without the signed consent of the donors of the embryos (or the donors of the gamates used to produce the embryo). The Secretary of State for Social Services will appoint the members of the SLA which will be composed of at least 50% laypersons.

The SLA will have a crucial role in deciding the parameters of genetic engineering on embryos; it will have



to define the meaning of 'therapeutic technique'. This in turn is dependent upon what is understood by the words 'disease' and 'defect'. The SLA is to be responsible for ensuring that research is geared to the prevention of the worst diseases alone, and is not expanded to the weeding out of undesirable human characteristics.

The Fourteen Day Limit

Thirdly, embryo research would be permitted only during the first days from fertilisation or until the primitive streak appears (the point at which it becomes clear whether the collection of cells will continue to develop as an embryo or take a different course, for example becoming an abnormal growth).

There is a risk that anti-abortionists will exploit the time limit of 14 days, arguing that the embryo has the status of a human being at that point, and that the availability of abortion should be reduced accordingly. As part of the pro-choice lobby, it is important to make clear that the 14 day time limit is not arrived at by reference to the embryo's status as a human being. The time limit is recommended as a pragmatic measure, in recognition of the aversion of the general public to the idea that experiments may be carried out on something that looks vaguely like a baby. Fourteen days is an arbitrary line but it has the quality of certainty, and reassures people that the embryo will have no visible human characteristics. The restriction serves to allay alarmist fears.

Alternatively, the time limit can be supported on the basis that the embryo is distinct from other collections of cells, and has a special status deserving some protection. This protection is not absolute and should be weighed against the benefits of research. This is entirely consistent with a pro-choice stance on abortion – while the embryo is part of a woman's body her interests must prevail.

An Emotive Issue

Although Labour MPs have a free vote on this aspect of the proposed legislation, a vote against embryo research would be a vote against party policy, and would provide fuel for the anti-abortion lobby. It would indicate a surrender to the hysteria surrounding the subject and a failure to take account of the human benefits gained from research. The potential for abuse of technology will persist, whether or not experimentation is outlawed and whatever controls are introduced.

The White Paper also empowers the SLA to regulate the provision of infertility services, the main ones being IVF and AID, in which donated sperm is artificially inserted in the woman's womb. Self-insemination would be made a criminal offence. Moreover it is feared that the SLA will be guided by the Warnock Report which recommends a presumption against allowing infertility services for people who are outside the heterosexual nuclear family (see the article by Alison Lee in ***SL*** issue no. 6, Autumn 1988). It is hoped that the Labour Party will propose an amendment that infertility services should only be refused on medical grounds. Already there is a financial restriction on access to these services as an overwhelming number of infertility clinics are outside the NHS.

Fighting Over Embryos

There are also proposals concerning the storage of frozen embryos. In the event of a dispute over the future of such an embryo – like the recent court case between the divorced couple in Tennessee – it will be left to perish after five years' storage. This will provide a degree of certainty to the hundreds of British couples who have frozen embryos awaiting implantation. The area is a minefield of ethical questions – should both parties have equal rights over the frozen embryo or should the mother have more say?

The White Paper proposal, for restricted embryo research seems to be based on common sense. However, the actual regulation of this research will depend on the use the SLA makes of the wide discretion given to it. Of immediate concern is the manner in which the SLA will control access to infertility services. And of course we must be careful to see that all these issues are not sidetracked should the anti-abortion lobby be successful in its attempts to insert an anti-abortion clause into the bill.

REVIEWS

THE BONNOT GANG
Richard Parry
Rebel Press, 1987
£4.95

The setting is Paris at the turn of the century, a city torn by class struggle in the wake of the Commune of 1871, a city of rioting and of strikes; a city that attracted anarchists who produced radical publications like *L'Anarchie* (financed largely by the proceeds of crime).

This is the story of a group of anarchist illegalists, dubbed by the press the *Bonnot Gang* (after 31 year old Jules Bonnot, its oldest member). Its members, almost all in their early twenties, shared a common belief in the theory advanced by Proudhon that property is theft. Their common tools: a nine mm semi automatic Browning pistol, the getaway car and potassium cyanide in case of capture. Their victims: the bourgeoisie. Their exploits: armed robbery and sometimes murder. The book traces the activities of the gang which led to the roundup and mass trial of 21 anarchists in February 1913. Bonnot was killed by police in a shootout the year before, when dynamite was thrown into his Parisian hiding place. He died fighting. Octave Garnier, another leading light, suffered a similar fate soon after. Four of the gang were sentenced to death and the others to terms of imprisonment or to forced labour in camps around the world.

The book is original, almost naively frank, and instantly likeable. It requires no prior knowledge and although it describes itself as a 'history', it often reads more like a novel. I liked the way it combined well-researched fact with lively prose, though at times it reads a bit like a spaghetti western and lacks analysis. The text is enlivened by photographs of the gang and extracts from their letters.

Parry, who is a paralegal, develops some interesting discussion about anarchism as a movement. In the early chapters he looks at the sociological reasons for this wave of French anarchism. He also explains the various strands of anarchist theory which were aired at the regular *causeries* or discussion groups and which led to internal troubles between rival factions. Particularly interesting is the distinction he makes between the Bolshevik influenced theory of the *reprise individuelle* which promoted crime for the greater advancement of the cause and *illegalism* which advocated crime for the individual's own advancement as well. For some anarchists revolution was attainable without crime, through pacifist non-compliance with state rule. The reader is referred throughout to other works which sparked in me a desire to read on. All-told this is a great introduction to the subject and well worth the read.

Katy Armstrong-Myers

FREEDOM, THE INDIVIDUAL AND THE LAW
Geoffrey Robertson
Pelican 1989

CIVIL LIBERTY, THE LIBERTY/NCCL GUIDE,
Malcolm Hurwitt and Peter Thornton
Penguin 1989

Both these new paperback books deal with individuals and the rights they enjoy as against each other and the state. Both books contain a phenomenal amount of information. ***Civil Liberty*** also explains the mechanics of enforcing these rights. Both books are admirably up to date.

Freedom, the Individual and the Law discusses police powers; rights of protest, rights to privacy and the right to a fair trial; freedoms of expression and movement; freedom from undue control and from discrimination; official secrecy, censorship and broadcasting controls. Robertson races through his freedoms at a pace that holds even a disinterested reader's attention. It is not just his witty, zippy style that grips, it is also the immense breadth of his knowledge. He delves back into history to make a legal point, and then to cap it snatches a contemporary comparison from the United States, Australia or Europe. For an amusing illustration he will turn to literature.

Civil Liberty is an excellent guide. It explains the legal background to the rights that Robertson discusses and also deals with workers' and travellers' rights. The text is invariably clear and well-written. It details enforcement procedures, or the lack of them. It even comes complete with addresses of relevant authorities to go to for further advice. The index is sensibly laid out, making it easy to use as a reference.

Civil Liberty aims at encouraging readers to take up their rights, this is perhaps why the book is so optimistic, perhaps to a fault. For instance, the otherwise excellent chapter on workers' rights fails to explain that the two fundamental remedies for unfair dismissal, re-engagement and reinstatement are not specifically enforceable.

European law is interwoven throughout Robertson's analysis. This is as it should be; it's there to be used, is in many cases liberalising and most people still do not think about using it. ***Civil Liberty*** tucks the European Convention into a section of its own. It is useful to have the Convention spelt out but this presentation detracts unnecessarily from the Convention's potential power.

Both books, however, have the same striking omissions. Where are the fundamental rights and liberties? Trade union, workers', housing, health, education and social security rights? ***Civil Liberty*** covers workers' rights and a little bit about health and education, but Robertson is silent. There is little point knowing about access to your employer's computerised records under the Data Protection Act if you haven't got a job, and you couldn't read the computer print out even if you had.

Both books set out to describe the current state of civil liberties and to chart their decline. But it is impossible to understand and arrest this decline without appreciating the origins of our current rights. Both books are glib and Robertson is ill-conceived on this: 'the rights that are allowed to citizens in practice are no more than officialdom, at any particular time, will tolerate'. Rights are fought for and wrenched from the bastions of power, they are not simply tolerated or otherwise according to official whim. It is perhaps the failure to grasp this that has led Robertson to omit so much, to denigrate working class organisation and virtually condone attacks on it. So he holds: 'there may be a certain nobility in trade unionists who fight to get back


Paul Mattsson

their jobs on *the Sun*, but they lack the disinterested quality of those who keep 24 hour vigils outside South Africa House. Whatever reason there may be to limit to six the number of pickets ... it is wrong to put any limits on the numbers who wish to picket as an act of conscience, so long as there is no imminent danger to public order'.

Nonetheless, buy both these books. They complement each other. You will find, as I have, that you use them both for interest and professionally.

Jane Deighton


Andrew Moore/Reflex

WOMEN INSIDE: THE EXPERIENCE OF WOMAN REMAND PRISONERS IN HOLLOWAY

Silvia Casale
The Civil Liberties Trust, 1989

Silvia Casale succinctly encapsulates some of the complex and confusing dynamics of Holloway Prison. Her account gives an insight into the conflict between the interests and needs of women remand prisoners and those of the institution. Although the book tends to address professionals, accounts from women prisoners are included. Reading between the lines one can begin to sense the atmosphere of Holloway.

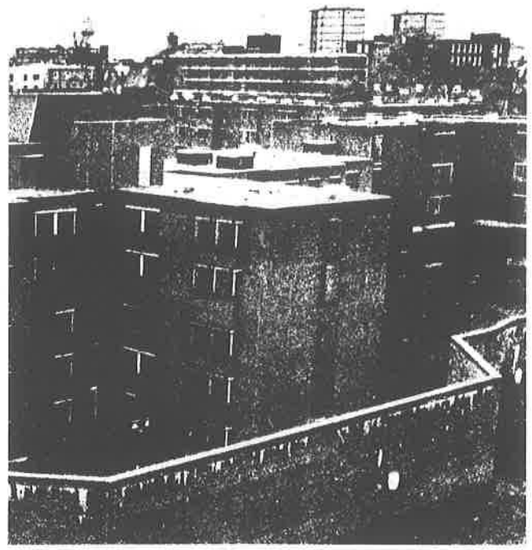
However, this is not the principal aim of the work. Silvia Casale has conducted an empirical study to identify, in her words, 'the civil liberties implications of the remand in custody of women .... and to suggest changes in policy and practice'. Due process, a term taken from U.S. law, is the yardstick by which civil liberties are measured. Silvia Casale shows how the women's access to the legal process is inhibited and due process thus disrupted.

Dislocation is a recurrent theme in the isolation of women from the legal system. As there are comparatively small numbers of women remanded in custody few local remand facilities exist. Instead, women are taken many miles from their home areas, cutting them off from contact with and the support of friends, family, legal and probation

Central Office of Information

services. This isolation and lack of information is debilitating and is compounded by limited letters and no access to telephones. It is with reference to these constraints that Silvia Casale describes how the legal system's failure to function efficiently results in increased and prolonged remands in custody for women. She finds it ironic that although it must be in the interests of the prison system to facilitate legal representation, the same system is reluctant to remove the existing obstacles.

Different aspects of due process are reviewed in turn. Initially, the author emphasises the similarity at Holloway between the remand and sentenced prisoners – high security restrictions are applied indiscriminantly and ultimately all prisoners are treated by the lowest common denominator.



Secondly, Casale reviews legal representation and the problems in making that efficient and satisfactory. Here the additional problems associated with dislocation are apparent. Information and communication is of vital importance. A critical stage, encountered the day after admission, is the reception board where immediate problems, both legal and welfare, could be quickly addressed and resolved before they escalate.

Thirdly, confusion and lack of information surround the matter of bail. Silvia Casale discovered that the right to bail was most commonly denied because of 'unsuitable' accommodation. For women remanded in custody, bail applications are grossly underused and bail conditions take time to meet. The current facilities for making these arrangements are inadequate.

Fourthly, dislocation and especially custody in police cells works against women having access to due process and the best possible chance in court. Lastly, Casale looks at remands for reports, commenting that the length of these remands should be reduced.

While outlining the circumstances of women on remand Silvia Casale offers clear and practical suggestions for how conditions can be improved and civil liberty violations redressed. These include a duty solicitor/legal advice centre providing basic information; routine screening of all receptions and back-up advice; direct telephone access and unrestricted letters; and, finally, bail unit schemes to provide legal advice from within the prison.

These initiatives could greatly improve the impact of lawyers' work, but one is left wondering whose responsibility it is to make these changes. While many of these issues require change from within the institution, others merely require efficient and thorough practise from all professionals involved.

The book also deals with personal needs and welfare issues, continuing to take a practical and problem solving approach. However, several issues are not considered. The role of the autonomous Prison Medical Service is not mentioned, nor is the issue of the inappropriate presence of male prison officers. In addition, some alternatives suggested, such as the feasibility of mixed prisons, need a more thorough discussion than is given in this book.

Civil liberties cannot be detached from women's personal experiences of the prison system. These experiences must remain a central consideration for anyone involved in the legal or penal systems. Silvia Casale's book is a significant move towards this and has, justifiably, been well received.

Judith Elders
Women in Prison

PACKAGE POLITICS

Cue lights, music, camera. Picture the scene: a TV studio, an audience, a guest panel. Of the panel, the first two are white, sober-suited businessmen. One of them is wearing some unusual headgear, a maroon cap of the type worn by American soldiers, marked by unidentifiable insignia. They sit, upright, at ease, on show. Next to them is a slightly built black man in his thirties. He is hunched, uncomfortable, nervous-looking and his eyes dart around the studio audience. An orthodox Jew, a Rabbi, next, who looks earnest, concerned. The final two panel members are as sober-suited as the first two but both black, one of them a reverend and a civil rights worker, the other the Mayor of Kansas City.

What brings this group together? Is it another open-ended discussion of abstruse philosophy, the sort that keeps insomniacs company through the early hours? Could it be an investigative report into corruption in American city politics? No. This is the Oprah Winfrey show, hosted by an American actress; a chat-show with studio audience which plays to millions of Americans (and lately to a lot less Britons) each week. The topic: whether the Ku Klux Klan should be allotted its own television station in America, supported at least in part by public funding.

How appropriate is it to present this subject wrapped in the razmatazz of showbiz, dressed up as entertainment? I ask this because, increasingly, 'popular' television is confronting topics that would previously have been the preserve of heavyweight documentary programmes. In general, that may be no bad thing; the value in producing a first-rate dissection of Thatcher's destruction of the welfare state is minimised if the programme is relegated to Channel Four at prime time and clashes with Eastenders. If you make it entertaining and throw in a famous host, you may get more viewers, the ones who don't read the 'quality' newspapers or subscribe to ***SL***.

But still there is a problem, which had troubled me since I watched the Oprah show. However much control is exercised by the mediator, television means publicity, and free publicity at that, for those who speak on it.

To get back to the studio, the show (why does that word encapsulate my concern?) started with a relatively civilised debate. The sober-suited white businessmen were the Klan ('no pointy hats but plenty of pointy heads' as one character says in *Mississippi Burning*). At first they confined themselves to the narrow issue of their wish for a TV station. Their tactics, particularly of the hatless one, were terrifying; all reason and charm and seeping propaganda. Give them a television programme where they could present their views unchallenged and I dread how easily people would be seduced by their ostensible normality.

But as it becomes clear that many of the audience vehemently opposed not just the grant of funds for the station but their every principle, slowly these men transformed. First the hatted one called for the Klan to be given 'five counties in the North-west; they're almost all white anyway'. Around the audience and at home many people shuddered (I hope) to think what measures the Klan would take to delete the word 'almost' from that sentence. But I thought also of the closet Klansmen out in the wilderness, hearing this call on prime time TV, and thinking how to mobilise.

Soon the abuse began to fly – a white working class Oklahoma farmer dismissed the Rabbi's reasoned arguments by calling him 'Jew-boy'. Finally even the 'sweet-talking' hatless, faceless one, responded to a black American airman (who reminded him that thousands of black colleagues had fought for the freedom of the likes of the Klan) by calling him 'boy'.

We have to understand how easily we can all be fooled by skilled propagandists. Perhaps those civilised debates on esoteric documentary programmes are in some ways more dangerous than the Oprah shows after all. For these everything is reasoned and calm and the mediator controls. Popular television is nothing if not emotional and maybe it's easier to inform through entertainment than anything else.

Picture the scene: cue lights, camera. The Oxford educated BBC voice announces: 'and now a discussion on media access for minority political groups, chaired by Ludovic Kennedy'. On the other channel: cue lights, music, camera and enter Oprah Winfrey, all charisma and energy: 'tonight we have two members of the Ku Klux Klan to argue their case for their own TV station and why *you* should help pay for it. Opposing them we have a Rabbi, a reverend civil rights worker and the Mayor of Kansas City. Also arguing the Klan's case is their lawyer'. Oh yes, he was the slightly-built black man looking hunched and uncomfortable in the middle of the row. After a hard day at work, which do you want to watch?

Penny Barrett

Black Mask will be back next issue

noticeboard

PUBLIC MEETINGS PROGRAMME

30th October 6pm
THE SOCIALIST LAWYER: FROM THEORY TO PRACTICE

an introduction to the work of left wing lawyers and the activities of the Haldane Society. Speakers include Helena Kennedy.

15th November 7.15pm
ELECTRONIC TAGGING: LEG IRONS OR LIBERATORS

Speakers include: Harry Fletcher, NAPO, Tom Stacey, Offenders Tag Association, Peter Thornton, Barrister

29th November 7.30pm
EMPLOYMENT LAW AFTER THE LABOUR PARTY POLICY REVIEW

Chair: John Hendy QC
Speakers: Christine Oddie MEP, Diane Jeuda, USDAW, John Wood, ex P&O NUS striker

12th December 7.15pm
THE D.N. PRITT MEMORIAL LECTURE – KADAR ASMAL HUMAN RIGHTS IN NORTHERN IRELAND: BRITAIN'S RESPONSIBILITIES

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

VISIT TO THE USSR

Following last year's successful visit to the USSR, a further visit by a Haldane delegation of up to 25 members has been organised by Bill Bowring and the Association of Soviet Lawyers. The delegation departs for Leningrad on 13 January 1990 and returns from Moscow on 23 January. A full programme of meetings, informal discussions and sightseeing has been organised. The price per person will be about £350 all in. To reserve a place please contact:
Bill Bowring,
4 Verulam Buildings, Gray's Inn,
London, WC1R 5LW.
Tel: (01) 405 6114 (work) or (01) 674 8674 (home).

LAWYERS AGAINST APARTHEID PUBLIC MEETING

Saturday 9th December 1989 at Warwick University, Coventry. Disco on Friday 8th December. Accommodation available. All welcome. Further details from:
the Secretary, Lawyers Against Apartheid,
PO Box 353,
London WC1R 5NB
Tel: (01) 720 3431.

LAWYERS AGAINST APARTHEID ANNUAL GENERAL MEETING

Wednesday 18th October 1989 7pm – 9pm
NALGO Building, 1 Mabledon Place (off Euston Road, nearest tube King's Cross), London WC1.
Guest Speaker
Non-members welcome to attend.

CRIMINAL LAW SUBCOMMITTEE

Meetings are held every fourth Wednesday of the month at the Haldane office:
Room 205, Panther House,
38 Mount Pleasant,
London, WC1.

Current projects include research into the privatisation of prisons and monitoring the trials of electronic tagging. Other plans up our sleeve. New members most welcome. Contact Sally Hatfield (Tel (01) 353 9328 - work) or come to the meeting.

Haldane Society of Socialist Lawyers

SOCIALIST LAWYER

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

The Subcommittees of the Haldane Society carry out the Society's most important work. They provide an 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	Sally Hatfield, 10A Lavender Hill, London SW11
EMPLOYMENT	Ingrid Simler, Devereux Chambers, Devereux Court, London WC2R 3JJ
GAY AND LESBIAN RIGHTS	David Geer, 2 Plowden Buildings, Temple, London EC4
HOUSING	Annie Jessup, 7 Jennifer House, Reedworth Street, London SE11
INTERNATIONAL	Bill Bowring, 4 Verulam Buildings, Gray's Inn, London WC1R 5LW
LEGAL SERVICES	Kate Markus, 96 Chichele Road, London NW2
MENTAL HEALTH	Fenella Morris, 207 Northwold Road, London E5 8RA
RACE AND IMMIGRATION	to be announced.
RECRUITMENT	Colin Wells, 1 Dr Johnson's Buildings, Temple, London EC4
WOMEN	Alison Lee, 14 Tooks Court, Cursitor Street, London EC4
NORTHERN IRELAND	Jeremy Smith, 45 Balham Park Road, London SW12 8DX

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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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Address_____

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Work address_____

Special interests_____

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Please quote our reference_____)

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