JUSTICE 2000 Campaign Launch

insiders' guide to the South African Constitutional Court

Labour's new legal policy:
interview with Paul Boateng MP
Haldane response
new labour and access to justice

plus
judicial review, the public interest & the judges • Westminster vote rigging scandal • human rights ombudsman as icon • seeking justice in Guatemala & El Salvador • housing law - special feature • 'till the law do us part - lesbian & gay immigration • the meaning of life!
The Haldane Society was founded in 1930. It is an organisation which provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It is independent of any political party. Its membership consists of individuals who are lawyers, academics or students and legal workers, and it also has trade union and labour movement affiliates.

**Haldane Society Sub-Committees**

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

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**President:**
John Piatta-Mills, QC.

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**Regional Contacts:**
West Midlands - Brian Nott, Flat 2, 40 Chorlton Lane, Moseley, Birmingham, B13 8DJ.
Manchester - Neil Uster, Konworthy Chambers, Konworthy Buildings, 33 Bridge Street, Manchester, M3.

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

Join the Haldane Society now! — Please fill out the slip on the back cover.
End the Detention of Asylum Seekers

We cannot begin to tackle issues of racism, unless we first understand its causes.

The slave trade in human beings and the consequent large scale removal of people from Africa to the Americas and the West Indies, was engaged in by Europe for profit, colonial rule and as a means of developing the economy needed for the Industrial Revolution in the West came from many sources, including slave trade. The practice of importing and exporting millions of people from Africa over apartheid is a beacon to socialists everywhere. It is fitting that the first major Congress of the International Association of Democratic Lawyers since 1990 (of which the Haldane Society forms the British Section), should take place next year in Johannesburg. In 1990 there were many delegations to the IADL who thought they may be attending their last Congress. The Communist regimes of Eastern Europe were tumbling, the Soviet government was teetering between capitalism and socialism, capitalist trade unions in capitalist countries were struggling to keep their heads above water, and global capitalism seemed set to replace any remnants of notions of democratic government. We are not yet in calm waters and the last of these predictions remains particularly real. Yet the very fact that the IADL Congress can take place at all is proof that the fight for socialism, democracy and justice is far from over. Its location is a symbol of the South African liberation struggle and the importance to socialists worldwide of defending and protecting the essence of the gains which have been won.

We do not believe that it is possible to abdicate from the law. Those responsible for dispensing justice or injustice will step in to fill any gaps left by such an abdication. Unless socialists achieve laws that reflect fundamental rights as far as possible, the law will continue to reflect the self interests of those with political power.

The experience of the new government and of socialists in South Africa shows that it is possible to begin to change the course of the development of the law. The reasoning that is applied by parliamentarians, lawyers, jurists and the courts, mainly based on a view of the law and legal process that supports the existing systems of inequality, must be challenged and replaced. Fundamental notions, such as that of the Rule of Law, have to be examined for what they really are. What are paraded as constitutional ideals are often quite illegal and unjust, they must be thoroughly overhauled.

That will take time. So that we don’t lose our way in the course of this, we need to identify the common principles that inform our aspirations for a socialist society. With these imperatives in mind, the Executive Committee of the Society decided to launch the new campaign which will carry the Haldane Society’s activities over the coming period. We feel that it is time that socialist lawyers lifted their heads above the parapets. While there is still a huge amount of vital work in defending fundamental rights from attack and resisting the oppressive actions of governments and corporations, we want to develop a vision of the future which can inform and mould our contributions to the development of socialism internationally and the struggle of the Left here.

Justice 2000 will help us, through meetings, discussion, debate, writing and activities, to develop an understanding of the nature of a system of law and rights which will be required to underpin the sort of society that we aim to achieve. As active socialist lawyers we need to understand the nature of law and how it is used and resist it strategically; to understand what the role of law should be in a new society and what institutions are required to achieve that.

Executive Committee

Editorial:

There is a new mood amongst the Left. After years of defeat or retreat, there is a sense of growing optimism that may perhaps, encourage coming from both the increasingly obvious failures of the Right, and the crumbling of the facade of the Labour leadership which is beginning to force the Left to confront some hard political questions.

We still remember the 1995 elections, when at the last moment, the Tony Benn campaign was launched, in time to have a considerable effect on the Labour government.

In 1945, it was the Left that crowded the streets after the war, the working class that made the revolution in the streets. In 1995, it is the Left that is bringing people to the streets, the working class that is making the revolution in the streets.

It is not just the economic policies of the government that have alarmed the Left; it is also the way in which they are implemented. The government has talked a good game, but what has happened on the ground is quite different. The government has talked a good game, but what has happened on the ground is quite different. The government has talked a good game, but what has happened on the ground is quite different.

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South Africa - A Legal System for a Democratic Future

Justice 2000, the new campaign of the Haldane Society, was launched on April 27th at the first of a series of spring and summer public meetings. One year after South Africa had gone to the polls in its first ever democratic election, Fayeeza Kathee, a researcher with the new Constitutional Court, led us through some of the complexities facing those that are charged with ensuring that the true purpose of the constitution is upheld.

Report by Richard Bielby

Fayeeza began the meeting by reminding us that in the 12 months that have passed, the new South African government has an Interim constitution that enshrines the principles of a liberal democracy. There is now a strong central government working alongside 9 regional governments, an independent judiciary and a Bill of Rights. Along with establishing universal suffrage, these reforms, mark a break with the apartheid of the past.

The commitment to the introduction of a Bill of Rights had led to healthy debate within the ranks of the National Liberation Movement. Some felt that such a Bill would be anachronistic and a throwback to the regime that had disfranchised them. However, the Bill of Rights and a constitution that enshrines principles of fairness was seen as the best way of achieving this.

Fayeeza moved on to the role of the new Constitutional Court. The Court is the ultimate protector of the Constitution. Comprised of 11 judges drawn from all areas of South African society, with an ability to produce judgements in all 11 official South African languages, it can overcome acts of parliament and of the executive. *

The system for appointment of judges in South Africa is key to the protection and enforcement of fundamental rights. There is now a Judicial Services Commission which consists of members of Senate, the Chief Justice of the Supreme Court, the President, and representatives of the legal profession. The Commission is responsible for the appointment of all judges, including those of the Constitutional Court. Of the 11 members of the Court, only 4 were judges in the old system. Most of the others were either lawyers or academics. There is still some way to go in achieving other balances; there are only 3 African members of the Court and two women.

The first session of the Constitutional Court this year was to rule on the validity of the legislation on capital punishment. In South African law the death penalty is mandatory for murder, yet the Constitution upholds the right to life, which is absolute and unqualified. The death penalty is also being tested against the Constitutional principles of the right to respect and dignity, and the prohibition on degrading or inhuman punishment. The judgment will be delivered towards the end of May.

The right to life principle is likely to span other controversial questions for the Court, in particular over the right to abortion. This is a debate that rages across class and colour divides, divided largely by religious and cultural persuasions.

Other issues recently brought before the Court have been the bedrocks of apartheid, namely the presumption of innocence, the right to be represented in court proceedings and the right to silence.

The common law and the traditional jurisprudence of the South African courts reflected and sustained a law of oppression and injustice. Now there is a need to develop a new way of legal thinking which is appropriate for the new society. This is difficult for jurists who have their roots in generations of the old approach. As Fayeeza said, we will have to make it up! The writing of the Constitutional Court’s judgement on the presumption of innocence illustrated this problem: although there was support for its reasoning in the constitution, the judgment relied instead on the common law. In creating the fundamental rights in the new South Africa, the Court has still to find a new legal language.

While it is important to uphold the constitution, there is room for criticism of it. The Constitution is a document of compromise, an inevitable compromise at the time of the negotiations leading to last year’s elections. But the constitution enshrines a number of fundamental principles which are unchangeable and would form the basis for any constitutional review.

A new Constitution and a new Bill of Rights is to be finalised in the next two years, through a Constitutional Assembly. Unlike the interim constitution, the Assembly will take place after a major consultation exercise throughout South Africa. Themes Committees have been formed. These are currently travelling around the country, taking submissions from people about what it is that they want from the constitution, and their own needs and aspirations. Fayeeza described the South African constitution as home grown, and so it will remain as it develops. Of course, it takes some aspects from other constitutions, and it enshrines the fundamental principles of human rights recognised in international law. But the constitution is intended to deal specifically with the past oppression of South Africans and their future aspirations.

Many believe that the area of gender discrimination has so far been inadequately tackled, both constitutionally or in the practice of reform in South African institutions. Now there is a Gender or Equality Commission, though some are anxious that this could lead to under放大isation of women’s issues in relation to other political questions. The Commission is currently drafting a bill to deal with women’s rights and is also examining the equality clause in the existing constitution, which is seen as providing for formal but not substantive equality.

The campaign deals with the inadequacies of the constitution and the lack of provision for women’s rights stemming from the nature of the negotiation rounds for the interim constitution. During the first round, no women were involved at all. Even in the ANC women felt they were marginalised. Women’s protest over this led to the formation of the Women’s National Coalition, bringing together 70 national and regional Women’s groups, and the ANC Women’s Charter. The Coalition was soon seeing the fruits of united action and forced the ANC and the National Party to agree to have at least one woman for every three delegates to the second round of negotiations.

Through these organisations and activities, South African women are developing an indigenous feminism. Now the Coalition is turning its attention to the repressive nature of South African Customary Law. The traditional leaders of South Africa wanted to see the interim constitution enshrine the principles of customary law, which would have included inherent inequality propounded by much of those laws. The Coalition is campaigning for a constitutional statement that the equality clause will trump customary law.

The debates over gender equality and the role of the constitution are raising other fundamental issues. In general, there is a view that the constitution is defective in providing only for civil and political rights and not for social and economic rights as well. This may well change in the next two years.

While the legal rights enshrined in the constitution may not even come to the attention of the Constitutional Court unless the mass of ordinary people are aware of their rights and have some means of asserting them. To this end the Constitution provides for the right to counsel. In practice, however, a means has not been found of making this a practical reality. Part of the solution may lie in ensuring that there are enough protections of fundamental rights built into the South African system at every level. There is now a Human Rights Commission, to which ordinary people can bring complaints. It also advises the government on the status of laws and ensures they are in tune with international standards. Individuals are able to petition the Commission about human rights abuses, including by the government or public authorities, and the Commission can refer cases to the Constitutional Court.

The Public Protector is the equivalent of the Local and Central Government Ombudsman in Britain. The South Africans decided that the word ombudsman carried connotations which they would rather avoid! The Public Protector supervises the actions of a wide range of public bodies and ensures that they comply with the law.

The passions for British Socialists from the South African experience are many. Perhaps the most critical is the importance of understanding the roots of revolution or reform, the legacy of a system in which injustice has become so common place that it is often even questioned and the aspirations of the people who are building a new democratic society.

Richard Bielby is a pupil at 2 Garden Court

Secretary's Report

June 21st:

Can Women use the law?

Diana Abbot MP and Anne Pettit (Labour Party).

July 12th:

The criminal Justice System in the 21st Century

Mike Mansfield QC.

July 19th:

Can the law overcome discrimination?

Angela Masson (Director of Women's Rights, Women's Rights Association and Geoffrey Bindman.

All meetings will take place in the Toole Court Annex, Sun Alliance House, 40 Chancery Lane, London WC2 and will commence at 7.30pm.

Labour Party and 'Access to Justice' -

Copies of the subscription that we made to the Labour Party on their consultation paper on the provision of legal service, "Access to Justice", can be obtained by forwarding a £8.00 for 3lp to the Secretary.

Solicitors Courses -

The Haldane Educational Trust has places remaining on its Continuing Professional Development courses for Solicitors. Contact Jane Wisely on 0171 242 2967 for further details.

Standing Orders -

Are you paying the correct amount? We do not have the resources to keep records of peoples employment and do not know when members move from studying to employment. So if you pay your membership subscription by standing order could you please check that you are paying the correct amount.
THE WESTMINSTER VOTE RIGGNG SCANDAL

The eight-year campaign to expose corruption of the democratic process at Westminster City Council has reached a critical stage. Steve Hilditch, Secretary of the group of residents who have brought the case, sets the scene.

"Disgraceful", "improper", "untouched", "gerrymandering". These were the words of the Westminster Appointed Auditor, Touche Ross accountant John Magill, in his provisional report into objections made by residents about Westminster's 'designated sales' housing policy. Magill's 750-page report, published in January 1994 after a four-year Audit inquiry with 12,000 pages of evidence, was the most-damning report ever written about a local authority.

The Auditor's provisional finding was that 10 members and officers, including Dame Shirley Porter and Barry Legg MP, were guilty of wilful misconduct and should be sanctioned for a total of over £21 million. One of the 10, former Housing Chair Michael Dutt, has since stood down.

Leading local government barrister Andrew Arden QC (who has read all of the documents in his capacity as counsel to the objectors), says:

"This is the greatest act of corruption in the history of local government, not financial corruption in the conventional sense, but corruption of the machinery of the authority itself, given over to party political gain, in a way — and to an extent — that is absolutely without precedent. Nothing prepared me for such a naked abuse of power, people and resources; I would have said it was impossible."

The 'Homes for Votes' Scandal

The road to gerrymandering started in 1985, when Labour came within 100 votes of winning control of the Tory flagships, Mrs Thatcher's favourite Council. While Labour locally was devastated at having come so close to such a big prize after a four-year doorstep campaign, the Tories hit the picnic button. A comprehensive and highly co-ordinated strategy was adopted, the object of which was to make sure that Labour would not win in 1990. Put crudely, likely Labour voters would be removed from marginal wards and be replaced by likely Tory voters. Specific targets were set for each marginal ward.

For obvious reasons, the initial focus was on housing. The Tories introduced a twin-headed housing policy as a result of which:

- hundreds of flats on 'designated estates' in the City's marginal wards were held empty for sale at large discounts to people who were subjected to what leading Tories themselves called a "mean and nasty" regime which would seek to "ship them out of the City."

The introduction of this inhumane policy provided an intense campaign by the Labour Party and other groups in the City, including several church leaders. A local GP in the hotel district of Bathway (a marginal ward which Labour won in 1996), Dr Richard Stone, who had hundreds of homeless families on his list, was incensed that so many Westminster flats were lying empty.

After being foiled off by the Council, Stone decided to complain to the Council's Auditor about the waste, backed by detailed calculations made by the then Labour Housing Spokesperson Neil Corbett, who demonstrated the electoral bias in the policy. However little action was taken until an explosive Parliamentary documentary was shown in 1989 in which the former Tory Housing Chairman (sic!) Patrick Kilbrannan admitted that the policy was driven by 'gerrymandering'. As the Auditor's investigation got under way in 1990, the Tories increased their majority in the City elections from four to thirty against the national trend.

Four years later, Westminster was forced to suspend the designated sales policy following the Auditor's report. However a scaled down policy was subsequently re-instated, and the key homelessness policy remains fully in place. Despite Porter's passing, very little has changed at Westminster.

The tip of the iceberg

As the objectors dug deeper into the issue, and leaks became more numerous, it became clear that the abuse of power did not just affect housing — it stretched across all Council policies under the smokescreen of a policy known as 'Building Stable Communities'. This was demonstrated in a second Panorama programme — famously delayed by the BBC so it wouldn't interfere with the democratic process in the local elections — in May 1994.

Barry Legg MP, the parent to the 'designated sales' child, was a highly centralised policy, driven and rigorously monitored by a leading group of Tories and Council officers, which had tentacles into every part of the Council machine. Its one objective was the electoral advantage of the Conservative Party. BSC covered every key decision which might affect demography and voting patterns, which would be the seed of housing, planning policy, and the compilation of the electoral register.

The entire planning policy of the Council was subjugated to the aim of securing electoral advantage for the Tories. For example, they refused to negotiate affordable housing as a planning gain in development approvals, and encouraged planning applications for luxury housing. The objectors' legal advice is that the Westminster District Plan is unlawful in nearly the same way as designated sales is unlawful because it was driven by an improper and unlawful purpose.

Across almost all areas of policy, like the environmental improvements, high need areas of the City did not get their fair share of services as resources were diverted to marginal wards. Highrise in marginal wards, including Brunswick House in Covent Garden, which once housed 600 single people, and Ambrookien in Victoria, were targeted for closure so the site could be gentrified.

The Tory 'Dirty Tricks' Campaign

The documents released to the objectors by the Auditor confirmed that the Tories, in addition to gerrymandering the Council, organised an elaborate "dirty tricks" campaign against their opponents, using Council resources and involving Council Officers.

In an astonishing attack on civil liberties, leading opponents in community groups and the Labour Party, including some of the Objectors, were targeted and their activities monitored to prevent a repeat of previous large-scale shredding exercises.

Labour Shadow Environment Secretary Fiona Dobson and the objectors have called on John Gummer, who is uncharacteristically quiet on the Westminster issue — and the Audit Commission to appoint a special Task Force to speed up the process and undertake a special audit of the Council. Following further revelations that millions of pounds have been lost because the Council deliberately failed to collect charges from Council-lessees, allegedly to keep them sweet before the 1990 local elections.

The objectors face a long hard to see that justice is done. The costs of the case — not just the legal costs, but also the personal costs incurred by the objectors in maintaining such an intense campaign over such a long period — are ever-mounting. We are determined never to give up the chase, but in practice we are dependent on the generosity of supporters all over the country.

Donations and contributions can be sent to Westminster Objectors Trust, 29 Croyde road, London W9 3HH, or Steve Hilditch and Neil Corbett can be contacted on 0181 968 0900 (day).
The justice system should be a 'tool of liberation', according to Paul Boateng MP, the Shadow Legal Services Spokesperson, and the next Labour Government will give it the emphasis it deserves. The party has just concluded consultation on Boateng's green paper, Access to Justice, and the resulting policy proposals are currently going through the Joint Policy Committee (an amalgam of the NEC and Shadow Cabinet), before being put before Conference in the Autumn. If passed, they will form the framework for an incoming Labour Government's legal policy, and leaked proposals, including direct access to the Bar and a community legal service, have already hit the headlines.

Paul Boateng talked to Mark Henderson

M.H. The Labour Party used to be committed to transferring the executive functions of the Lord Chancellor to a cabinet minister for justice. Is it now backing away from that position?

P.B. We're committed to a new focus for the Lord Chancellor's Department and enhanced accountability to the House of Commons. The Lord Chancellor's Department has traditionally been a department of lawyers, the Lord Chancellor being, as it were, the 'super lawyer', if you follow me. We're changing that focus and making it much more consumer orientated and consumer led. That's an important shift in emphasis.

When I talk about enhancing accountability, I mean enhancing the status and responsibility of the minister responsible to the Commons. We have also consulted specifically on seeking up accountability in the Commons by having a Select Committee on Justice and Legal Services.

Now the wider issue of the long term future of the Lord Chancellor, the possible division of responsibilities, a role in the cabinet—that's a very much long term issue. This is a practical package of reform from day one and we leave open the wider issue of long term reform. It's a new focus for Labour's policy in this area.

M.H. So Labour is no longer committed to creating a cabinet minister for justice with responsibility for the Lord Chancellor's executive functions.

P.B. Well, we certainly do not have that commitment. Ours is the possibility of some sort of package of proposals and this is not about a major restructuring of the Lord Chancellor's Department or major constitutional reform in the terms of the role of the Lord Chancellor.

I would like personally to see very much fewer lawyers in industrial tribunals.

M.H. Why has Labour changed its policy?

P.B. We have a very wide win in terms of constitutional reform. We have commitments to reform of the House of Lords, we have new and important constitutional changes in Scotland and Wales. There's a danger, you know, of constitutional paralysis. An enhanced service to the consumers of legal services from day one will be our number one priority—not the restructuring of the Lord Chancellor's Department in the sense in which you describe it.

M.H. Are Labour still committed to the extension of legal aid to industrial tribunals?

P.B. We never, if I may say so, have had that commitment. What we have always recognised is the need to address the question of advice and representation in industrial tribunals, how they ought to best be fit into our view of alternative dispute resolution and how best they can be geared towards meeting the needs of ordinary working people. I must make it absolutely crystal clear at the outset that we are going to have to work within the existing legal aid budget. So any question of extending legal aid as we currently know it to industrial tribunals just isn't on the cards. It isn't going to happen. All our proposals in the Access to Justice document are based on the understanding that there will be no new spending beyond that already in budget.

I very much hope that we will be able to find the money in the existing budget for an enhanced role for law centres and citizens' advice bureau. They already do some very good work in the field of employment law and I would want that work to continue and where resources allow to be expanded but it's all subject to working within the existing budget.

M.H. And you don't see any role for lawyers in private practice providing publicly funded representation in industrial tribunals.

P.B. I would like personally to see very much fewer lawyers in industrial tribunals. Industrial tribunals were designed for working people and employers, representing themselves or with lay representatives—not for lawyers and I want to see the role of lawyers in the industrial tribunal system reduced. I don't think the operation of lawyers in the industrial tribunal system has necessarily benefited it. I think one should recognise the very important work done by lay representatives from the trade union movement.

I think it is very dangerous for socialist lawyers to get hung up on being lawyers. I think socialist lawyers have to recognise that they have a major role to play in disempowering our profession and extending and expanding legal skills and want to see very many more para-legals and non-legal people working in areas like this—properly qualified, properly trained, of course, but we mustn't get hung up on lawyers.

M.H. Why is it alright to have a lay person representing someone in the industrial tribunal but not in the county court?

P.B. Because with the utmost respect to those lawyers who practice in the industrial tribunals, my experience, as a lawyer, who has practised in the industrial tribunal as a law centre worker, is that very often lay trade union representatives know a great deal more about the industrial scene than do lawyers well behind the ears and using industrial tribunes as a way of breaking their teeth in advocacy, as is sometimes the case in FRU. That's my experience but that is not to say that there is not also cases where qualified and experienced lawyers don't have a vital role to play.

M.H. You want to see union legal departments playing a major role in the provision of legal services.

P.B. I'm saying they do already and I am very interested in the role they play and I think they will have some important lessons to teach the rest of us in terms of the use of para-legals generally.

M.H. You suggested in your speech to the Law Centre Federation that trade union legal departments might be used to provide publicly funded representation in industrial tribunals.

P.B. I suppose one could envisage a situation in which trade union legal departments would apply for franchises—that is not beyond the bounds of possibility. That is very much a matter for them and I took forward to reading what the TUC and what individual trade unions have to say about their role and how they can make their expertise more widely available.

But the important thing about franchising is that it holds within the possibility for a wide cross section of groups and organisations who are delivering a service of a high quality to come forward and to apply for a franchise—why not?

M.H. The consultation document mentioned the possibility of CIFT franchising publicly funded legal services.

P.B. Yes. We are consulting on the role that compulsory competitive tendering may or may not have to play in this. The consultation document suggests that high quality legal services are delivered in a cost effective and affordable way. Compulsory competitive tendering may or may not have a role to play in that—I look forward to hearing what people say.

M.H. There is nothing in the consultation document about mandating grants for legal training.

P.B. There has never been a mandatory grant for legal training. I am quite happy to answer these questions but there is no new money. Our nurseries are some of the most inadequate in Europe. Our primary schools and secondary school buildings are falling to pieces. I really don't think that the taxpayers are going to view mandatory grants for lawyers as the number one priority or indeed a priority at all for an incoming Labour government.

M.H. Doesn't access to legal education and training determine whether we can have a representative judiciary and legal system in the future? If we cannot provide fully funded legal education, the only candidates for judges will be those who could afford to pay for their education.

P.B. I am all for ensuring as broad an entry as possible into the professions. I think that it is incumbent on the professional bodies themselves and on the universities to seek to make sure in terms of their own selection procedures that that happens. I am interested in the example of the training of accountants and architects and I think there is a good case for arguing that it ought to be possible to embark on a course that leads you to a degree and a vocational professional qualification. I look forward in due course to examining the implications of that together with colleagues in government from the Department of Education and from the universities and colleges of law. I think that is an interesting way forward but it is way way forward.

What I have to say in the short term is that there is not going to be any new money for the training of lawyers. All the more reason for barristers chambers and solicitors free legal training. That is not the same old privileged, Oxbridge dominated appointments and selection procedures that have all too often appeared in the past. There are many sets that need to address that issue as well as ordinary ones if I may say so and I am not satisfied that all of them are.

M.H. How have left wing sets failed to address this issue?

P.B. I think you know very well what I mean. I am very interested in those groups within the profession who purport and, I am very glad to say, do, to eschew equal opportunities, but when one looks at their own selection procedures and the content of their own chambers it's surprising how the most privileged of educations all seem to come on top. I think that's an interesting question.

M.H. Is there anything a Labour Government could do to ensure that chambers and firms discriminate less.

P.B. It is one of the issues we raised in the consultation paper. The evidence of one's own eyes doesn't lead one to any great degree of equanimity about equal opportunities either at the Bar or amongst solicitors' firms—black people, particularly black people have not been educated at Oxford Cambridge or some of our other universities, find it very, very difficult indeed to get access to very many firms and chambers even for podiatrists and particularly for articles, and I think those of us who are socialists have a particular commitment in that regard, don't we?

M.H. The consultation document says there should be a much wider role for para-legals.

P.B. Yes

M.H. You think there should be less distinction between para-legal and lawyer.

P.B. I haven't said anything of the sort. I am saying that I believe that para-legals have a great deal to contribute to the delivery of legal services.

M.H. Would you like to see them doing more of the work that is currently the exclusive preserve of lawyers.

P.B. I certainly think that there is a need and demand for an enhanced role for para-legals—that's how it would put it.

M.H. Is it necessary to have a law degree or a degree — to do the kind of work that many lawyers do.

P.B. No, I don't believe that. I have never believed it is necessary. I have never believed that lawyer's degree is in any way a degree. But that is not to say—before there is any rejigging amongst those who don't perhaps wish this project all that well—that I am for the deskilling of lawyers. I'm not. It's just that I believe that there is no proof whatsoever
that people with disabilities negligently make better lawyers than people without degrees.

come from a generation — just that remember, they are people without degrees.

P.B., B.D. I don't have any previous experience in the area, I consult with this private sector will make an enhanced contribution to legal services to the public, as part of their professional duty they ought not to consider it.

M.H. You have heard (LCF speech) that its "negotiable" that the private sector will be forced to make some sort of contribution.

P.B. We have never said anything of the sort. I have heard of course that there is a legitimate expectation of government that the private sector will make an enhanced contribution to the delivery of legal services to a wider public. I think that should be part of our professional duty. I do think it's a bit hard on the ordinary legal aid practitioner to be expected to in effect subsidise public legal services. There are people who do no legal aid work at all. Should they, or have, as lawyers, some professional duty or obligation to make some contribution? We've argued in the past on access to justice the issues of pro-bono work and the levy systems that operate in some jurisdictions.

I think we need to ask the profession how they propose to contribute and how they think government can help them do it. I look forward to seeing how the profession responds. Government will have to be aware whether or not its response is acceptable. It's a hard one I don't know whether it will be. I don't know how they'll respond. I'm sure that they'll say that this is something that the government is going to do.

M.H. Why would you impose a levy on Clifford Chance but not say like on Price Waterhouse.

P.B. It would be utterly repulsive of us to respond like that and I don't intend to. I look forward to hearing how Clifford Chance and other big firms go about this. Let's go ahead and see what happens. I think it's important that the government think about our profession as one that is important in providing the legal aid to the public. Let's not look at it simply as a way of getting a little bit of money out of a few firms.

M.H. Was it hypocritical to attack the Tory cuts in legal aid expenditure, and attack on justice, and then turn round and say you have no intention of reversing them. Is Labour not effecting them?

P.B. We are doing no such thing. We are not endorsing the cuts in eligibility. We are saying that there is no new money for legal services. I hope to allow many more people access to legal advice. They will only be done through the existing budget. That's the reality and I have to live with that reality as do the others.

M.H. That means lawyers are going to have to justify every single restrictive practice and procedure to which they are a party. They are going to have to show that it's in the public interest and that it doesn't add unduly to cost. It's a discipline which is going to be imposed on lawyers.

P.B. I want to see what the public interest in is restricting direct access to barristers and I think the lawyer is entitled to know how it serves the public interest. I want to see how the public interest is served by the rules and regulations that are afforded to Queen's Counsel — these things must be justified, they must not?

M.H. Do you want to see direct access to the Bar, P.B. I personally take the view that the Bar's got some justification to do in relation to direct access. I don't think it has been adequately justified to date, nor, I think, do very many young members of the Bar and barristers who would benefit quite clearly from direct access.

M.H. Would a fused profession result from direct access. P.B. I am not going to go down that road. This is a consultation paper.

M.H. Must we really accept that access to justice will be low down in the priorities of an incoming Labour Government. P.B. Oh come on. You must know that it's a high priority on Labour's agenda, but subject to the disciplines of the very real pressure on resources that we are faced with.

M.H. You say in your speech (to LCF) that access to Justice is a "tank of civilization". P.B. I do indeed. I am faced and have to deal with the political realities, and the political realities are that our health service and our education service and our transport structure are crumbling round our ears. Old people are dying, as we speak, of costs. Riches are a reality for many children in the inner city. Quite frequently, people cannot just go and buy. So I person accept that we have some reservations about a public defender service. But there is a debate going on out there and I certainly have not made my mind up.

M.H. You have talked of building a network of law centres and etching a paper. Do you see a "National Legal Service" as an ideal. P.B. I don't approach these issues with any ideal. I think it's a long way ahead. I don't say it's on the immediate agenda, but I'm going to have to see how the service might develop over the years. I think that whatever system does develop should be flexible and community based. I certainly would not want to see a monolithic, civil service type situation developing. But it is grossly premature to talk about national legal services.

M.H. The consultation paper talked about legal insurance. Why might it be acceptable for Labour to provide tax incentives for legal insurance when regarding it as an abominable way of paying for health care. P.B. Oh come off it. To move from the issue of legal insurance to tax breaks in order to encourage legal insurance is as a move for which you find no justification whatsoever in the paper. We are consulting on the issue of legal insurance, but there was no question in the consultation paper of tax breaks and it would be misleading for anyone to suggest that there was.

M.H. Would you allow a law? P.B. It's really not my part to rule in or rule out tax incentives for private legal insurance. These are entirely matters for the Chancellor of the Exchequer. There are no plans whatsoever, nor do I foresee or envisage any tax breaks for legal insurance. But the party has a right and duty to consult on legal insurance, I'm not going to be told by anybody that the Labour Party should not dare to raise the issue of legal insurance, and I don't intend by the dreaded spectre of tax breaks to be deterred from consulting on that issue.

M.H. You also said in your speech (to LCF) that you want to look at the current balance between the civil and criminal legal aid budgets is right. P.B. I certainly do. At the moment we have a situation where 30% of civil legal aid goes on matrimonial and family law and yet in my own constituency someone who lost their voice box as a result of an accident had to go 34 per cent out of their state pension towards their legal aid contribution. That can't be right. We have to look at how much we're spending on civil legal aid, and on criminal legal aid and we have got to see that sure we do get the balance right. It's not an easy task, but it's got to be done.

M.H. Do you think there's too much going on civil as opposed to criminal......? P.B. I wouldn't put it in that way. I think there's too much going on at the moment on family and matrimonial law especially at the expense of other things. That must be so — obviously so — and I don't think it's far. Labour are committed to incorporation of the European Convention on Human Rights. Are you happy with the judges and jurisprudence of the European Court of Human Rights. I would much rather be developing our jurisprudence of rights in this country, though of course ultimately, people cannot be denied their right to go to Strasbourg, nor should they be. Incorporation will enable us to develop our own locally based home grown jurisprudence in this area. I think it's very dangerous for socialist lawyers to end up being lawyers.

M.H. You have suggested before that human rights claims after incorporation should be heard by a new "constitutional court". P.B. We are now beginning to move into areas outside the Access to Justice paper. We are interesting areas but it is early days yet on the constitutional court and in due course I have no doubt the Labour Party will be issuing a further consultation paper on the issue of developing a bill of rights. Consultation on the form that a constitutional court should take, if there should be one, is for another occasion and I look forward to a similar interview with this August journal on that occasion.

M.H. How would you pay for the increased volume of claims that incorporation of the Convention would bring — people would have a whole new set of rights. P.B. Let's be very clear. It will be subject to exactly the same rates in relation to legal aid as part of the time. I think it's very clear that there is good reason for the law centres movement to take up with vigour and enthusiasm the challenge that incorporation will present.

M.H. Are you expecting to put a policy document before this year's Conference. P.B. Certainly there will be a policy document, That's what it is all about and I am looking forward very much to the debate at Conference. It's very exciting to see how much interest has been generated in this very positive response and I have no doubt that very many of your readers will have made their own contributions.

Mark Henderson is a pupil at Doughty Street Chambers
A RESPONSE BY THE HALDANE SOCIETY OF SOCIALIST LAWYERS TO THE LABOUR PARTY'S CONSULTATION ON ACCESS TO JUSTICE

THIS PAPER HAS BEEN SUBMITTED TO THE LABOUR PARTY ON BEHALF OF THE EXECUTIVE

After 18 years of Conservative government, individuals whether they be employees, tenants, owner-occupiers, parents, asylum seekers or those accused unjustly of crimes, all know that the rights they once thought sacrosanct have all too often become illusory. 

Socialist, trade union and parliamentary involvement has ensured that the rights of individuals and of the local community have been sacrificed in order to promote and support the interests of big business at the expense of the city. 

At the same time, legislation aimed at reducing the powers of trade unions and local government, coupled with cut backs in grant aid to community and voluntary groups, has meant that individuals had no alternative but to look to the law to resolve their difficulties. It is arguable that if trade unions and local government were permitted to exert their traditional powers legal aid resources devoted to ensuring that families are adequately housed and employees retain their jobs would be available to individuals in some instances of need.

In addition, a future Labour Government will undoubtedly face the problem, that after so many years of repressive and unrepresentative government, the rule of law and the respect for it and its enforcement will be very high. People will not only demand an improvement in their economic prospects, they will also expect reforms that will relieve their rights, whether it be to a police officer on the street or to an official in the local housing department. That is often why they have become involved with the law in the first place.

The problem of resources

An incoming government cannot be expected to meet such a multitude of needs overnight. There will simply not be the money available. However, it is our belief that these expectations must be acknowledged and a programme of future action proposed, so that the enormous energy and potential unleashed by such a change of government is not dissipated. 

We believe that one of the key functions of the law is to act as a framework for providing and enforcing democratic rights (political, social and economic) which form the basis of a just and fair society. We also believe that the rule of law is a critical needless of given the introduction of economic measures which may affect the interests of individuals. We feel that the Labour Government has already demonstrated that it is not only in a position to represent the electorate itself, but that it has the necessary personal and professional experience to provide a better service to the public.

Legal representation

As practitioners, we are only too aware of the difficulties encountered by our clients when they have tried to assert their own rights, whether it be to a police officer on the street or to an official in the local housing department. That is often why they have become involved with the law in the first place.

Alternative dispute resolution

The Society believes that law centres are the best means of tackling legal problems facing the population.

Legal representation

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The Labour Government has already demonstrated that it is not only in a position to represent the electorate itself, but that it has the necessary personal and professional experience to provide a better service to the public.

The need for representation

There is a large amount of research available about the need for legal representation in employment and benefit related legal disputes. Furthermore despite the complexity of immigration law and the extremely serious consequences facing applicants if they are removed, legal aid is available only to those residents before adjudicators or the Immigration Appeal Tribunal. In addition, proposals to extend the jurisdiction of adjudicators in the future will mean that it will be necessary to have a legal aid service available to these individuals.

The need for funding

The costs of representation of individuals is very high and it is arguable that individuals can be adequately represented only if the legal aid services are available. 

Para legals

There is no doubt that the role of para legals and volunteers. They play an essential role in law centres and community organisations. The role they play is additional and complimentary. To be successful, there is no substitute for the legal aid services to provide a system which is based on a multiplicity of legal aid services which are accessible to all. 

The need for training

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The problems created for the legal profession has all individuals, who frequent hints favour the constraints. Company and apprehension. Current thinking brain surgery solutions floated: platitudes, funding no more new Labour and apprehension. The Society believes that access to justice for the legal aid practises, unsympathetic to the majority of state and indeed, to implementing written in plain avoiding the difficulties already facing legal aid practices, it is not realistic to rely upon the profession alone to resource legal training.

Class actions & Public Interest Actions
The Society believes that providing funding and procedures for bringing class and/or public interest actions would both provide justice for a wide number of people who are presently unable to bring individual cases for financial and evidential reasons and also be a very good means of maximising the use of public funds.

Nadine Finch is a barrister at 1 Pump Court, Chambers of Robert Latham

**NEW LABOUR AND ACCESS TO CIVIL JUSTICE: SOME THOUGHTS BY A PRIVATE PRACTITIONER by David Marshall**

Legal Aid practitioners have been awaiting the Labour Party’s proposals on ‘Access to Justice’ with a mixture of anticipation and apprehension.

The vast majority of legal aid solicitors are not ‘greedy lawyers wishing to maximise their fees’ but carry on with legal aid work at reduced rates (in contrast to privately funded work), because of their genuine commitment to the needs of the underprivileged to be expertly represented in Courts, (it is an individual, an insurance company or a local authority). After 15 years of an unsympathetic approach to the aims of the 1949 Legal Aid Act, we were not surprised that they redress the emphasis in favour of the victim, but were concerned at the frequent hints that this would be to within existing cash constraints.

The long-awaited consultation document is largely a disappointment. It is a mish-mash of market philosophy, priorities, trendy geriatric, opportunistic computerics and quick fees which are un-costed and ill-considered. It contains a number of inaccuracies and odd statements (‘Law firms with franchises are paid fees directly from the Legal Aid Board’. Of course they are — as are all law firms, franchised or not, who operate the legal aid scheme). Hopefully the consultation process will clear up the misconceptions.

Perhaps more disturbing is the unsupplied acceptance of the current thinking of the Government on legal aid funding. There will be no more money. There is no attempt at an analysis of why costs have increased (could it be greater quality of work leading to better outcomes for victims?/where the net expense to the Fund has increased (as opposed to greater gross expenditure)?

Turning to specifics, I am concerned about two possible solutions floated:

1. All lawyers to be in the City lawyer has a place, but there seems to be an acceptance of the idea that “legal aid work is” easy and anyone can do it. If it is. It is. Areas of law such as housing, employment, personal injury, immigration and family are highly technical and a non-specialist should attempt no more than a preliminary diagnosis. If Labour were to propose to replace the NHR by a system of GPs carrying out pro bono brain surgery on patients, there would be an outcry. What is the difference?

2. ADR. This is flavour of the month and it is perhaps unsurprising that it takes pride of place in the consultation paper. ADR may have a place in existing cases, but it should not be viewed solely as a cost-cutting measure. Without legal representation the poor will not be properly compensated. The rich husband, the local authority, the employer or the insurance company will always pay for representation (by an external public) and the effect of eliminating it is costly, a fact which would redress the current bias in favour of the victim, but were concerned at the frequent hints that this would be too within existing cash constraints.

If Labour were to propose to replace the NHS by a system of GPs carrying out pro bono brain surgery on patients, there would be an outcry. What is the difference?

The best news in the paper is a commitment to simplifying the law and to implementing Law Commission recommendations. If statutes are written in plain English and give certainty, fewer people will litigate and lawyers and the Courts can spend their time (and the public’s money) on the real issues, not the technicalities.

Similarly, there is a commitment to the principle of procedural simplication and the Woolf review. This is to be integrated with funding in a policy for justice and it is the basis for a report of cases to be cut without adversely affecting the client. Solicitors’ lawyers do not enjoy the delays inherent in the current system. Policy makers must remember the strong vested Interests in denying us as we hold on money as long as possible. There must be early settlement incentives and real cost penalties on unreasonable defendants.

I must also consider the points raised in respect of possible removal of the private sector role in legal aid provision. A solicitor in private practice, I accept that I have a vested interest in the continued provision of legally aided services by private practice. Quality control is important — only specialists should do specialist work. But some of the benefits of private practice should not be forgotten — size, specialisation, geographical spread, greater resources and a more defined career path.

Private practice is more expensive, but so are its overheads. Given a few centre more solicitors and more cases will be processed, but at a greater expense. If more cases are processed, then less of the crucial work of law centres in the area of campaigning and public and professional education can be continued. Directly funded legal services are free to the reasons why they are not free to the State — there is still an expense. However, it seems to me that it is absurd for the State to pay solicitors’ rates for work that does not need to be done by a solicitor. My firm does not consider itself to be competing with local advice agencies or law centres. In certain areas of work, better value (and probably quality of advice) can be obtained from a trained and experienced layman, an expert (or even a specialist solicitor) if that degree of legal specialisation is unnecessary.

We want to cooperate with the State and other agencies to certify quality advice and assistance (legal and other) at an affordable price. The non-solicitor agency franchising pilot should be carefully reviewed for ways in which this can be achieved.

But all of those concerned to ensure access to justice for the poor must beware of the danger inherent in a purely salaried legal aid scheme — in the wrong political hands, it is the simplest way to ensure cash limiting of the legal aid budget, at the expense of a system of justice independent of the Government of the day.

The Labour proposals are a welcome contribution to the debate. However, the consultation process must be used to educate those responsible for policy to ensure that this is not another missed opportunity to achieve a coherent strategy for justice. On the present evidence, I fear that the proposals is not good.

David Marshall is a Partner with Anthony Gold, Lerman & Mirulhead

**gay rights**

’TIL THE LAW DO US PART

Mark Watson, a gay immigration officer, has been jailed for forging his partner’s passport in an attempt to evade the Tories anti-gay immigration laws. Now freed, he describes the continuing battle, through parliament and through the appeal system.

All loving relationships should be "treasured and respected" according to Cardinal Basil Hume, who has blessed platioming same-sex relationships. However under current immigration laws a British lesbian or gay man in a relationship with a foreign partner has no right to live in the United Kingdom with the person they love.

However under the same rules a heterosexual foreigner may be allowed to stay in the United Kingdom if married to a British national or non-resident. In practice this has also been extended to permit so-called "common-law spouses" and indeed, even "mistresses" to stay in the United Kingdom, if their partner is British.

In 1993, 400 un registrado heterosexuals couples were permitted to stay together through this policy. No such provision exists allowing partners of lesbians and gay men to remain, even where they meet the same criteria set out for heterosexuals.

The government claims that they will always consider allowing a person to stay in the UK if there are compelling circumstances. However a loving, caring and emotionally dependent relationship need not, as far as this government is concerned, such a compelling circumstance. Calls to allow people in such relationships to stay have been rejected by this government. Charles Warner said in May 1994: "We have no plans to amend immigration policy on homosexual or lesbian partners seeking to enter or remain here."

When planning the future with your partner whether it be the choice of this summer’s holiday destination or more permanent long term plans, a new home or job, consider for a moment how you would feel if you were unable to make such plans together because your partner has no rights to stay here. Hundreds of lesbian and gay couples cannot make such plans because one partner is foreign and has no right to remain in the UK as part of an ongoing relationship.

The Stonewall Immigration Group has grown from less than 30 couples to 250 couples in one year. The aim of the group is to provide support and advice to couples, to assist in the submission of applications to the Home Office and to lobby for immigration law reform.

In its first year of campaigning the group has had wide spread coverage in the press, had the issue raised in the House of Commons, met with senior officials at the Home Office and protest outside the Home Office with the Joint Council for the Welfare of Immigrants.

The group exists for change, whilst offering practical and emotional support to couples who wish to solve their situation by challenging the policy of the Home Office.

For years couples facing this problem have entered into false marriages at substantial cost to themselves and their position — what other legislation forces normally law abiding people to deceive the authorities simply because they happen to love someone from another country and they are gay? The group encourages couples to make honest applications to the Home Office: as a result the Home Office has had to allocate staff specifically to deal with these applications.

I am an immigration officer myself and made the news 12 months ago when I was jailed for falsely stamping my Brazilian lover’s passport. Since my release I have been working as a full time volunteer at Stonewall. Ander (my boyfriend) was forced to leave the UK in January 1994 but returned to the UK after my release and now awaits the decision of the Home Office on his application.

As the debate on lesbian and gay equality moves on it is likely that the current discriminatory immigration policy will come under greater scrutiny. A change in the law is not required to bring about change. The regulations that the Immigration Service seek to adhere to are not required within Parliament, simply the political will to bring about change.

While the focus of our upcoming campaign will be to persuade the immigration Minister, Nicholas Baker, that lesbian and gay relationships are in themselves a sufficiently compelling
In May 1994 the Immigration Appeal Tribunal decided that the Home Office had been wrong in refusing applications by homosexual couples for immigration status on the basis that it was not in their 'best interests' to remain in the UK. The Tribunal found that there had been no disproportionate impact on the couple's private or family life. It ordered that the Home Office reconsider the applications of the couple and that the couple be granted entry clearance to the UK. The Home Office subsequently complied with the Tribunal's decision.

The case was significant because it marked a significant shift in the UK's immigration policy towards same-sex couples. It was the first time that the Home Office had been ordered to grant entry clearance to a same-sex couple based on the principles of Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life. The decision paved the way for other same-sex couples to challenge the Home Office's refusal to grant entry clearance on the grounds of best interests.

The case also had implications for the treatment of solicitors in immigration cases. The Tribunal found that the Home Office had failed to take into account the recommendations of a solicitor who had been retained by the couple to represent them. The Tribunal held that the Home Office had acted in a discriminatory manner by not considering the solicitor's recommendations.

The case has had a lasting impact on immigration policy in the UK. It has paved the way for other same-sex couples to challenge the Home Office's refusal to grant entry clearance on the grounds of best interests. It has also highlighted the importance of solicitors in immigration cases and the need for the Home Office to take their recommendations into account.

The case is significant for its impact on immigration policy and the recognition of same-sex relationships as deserving of protection under the Convention. It has also highlighted the importance of solicitors in immigration cases and the need for the Home Office to take their recommendations into account.
Sergei Kovalyov was born in March 1930, graduated in biology, and taught at Moscow State University until he was allowed to do so on political grounds. He joined the Soviet human rights movement in 1967, and in 1969, with 14 others, set up the "Action Group for the Defence of Human Rights in the USSR", which produced the first unauthorised (self-published) human rights bulletin. In September 1974 he joined the Moscow Group of Amnesty International. Within months he was arrested, charged with "anti-Soviet agitation and propaganda", and under the notorious Article 70 of the Criminal Code, and put in trial in Vinnitsa, in Lithuania, far from the foreign correspondents. His close friend, the late Andrei Sakharov, on the day of the presentation of his Nobel Peace Prize in Stockholm, picked the court. Kovalyov was sentenced to 7 years in a forced labour camp, followed by 3 years internal exile — in Magadan, in the Soviet Far East. Kovalyov was only freed in Moscow in 1987, after Gorbachev had come to power. In 1990, Sakharov persuaded him to stand for election in the Russian parliament, and in 1990, he became a deputy, as a member of the "Democratic Russia" bloc, and initiated legislation, including the laws 'On Rehabilitation of Victims of Repression', 'On States of Emergency', and 'On Refugees'. Most importantly, he was elected Chairman of the parliamentary Committee for Human Rights, and became an outspoken critic of Aleksandr Rutskoi and Russian Khasbautov as they were drawn into confrontation with Yeltsin. He himself was politically close to Yeltsin, the former President, and in February 1993 he was appointed a member of the President's Presidential Council. In the bloody events of October 1993, he was one of the few deputies still to back the President. His failure to speak out against Yeltsin's brutal use of force to break parliamentary resistance has brought him much criticism, particularly from the Communists, as he has since, in my view, made good his omission.

Kovalyov joins Yeltsin's administration
After those events he was appointed, by presidential decree, as "Chairman of the President's own Human Rights Commission. This is a job he still holds. In October 1993 he also became Chairman of the 'Russias Choice' political party, which was at that time a loyal supporter of the President, but has now joined the coalition against the President.

For two months after October 1993 Russia was effectively without a Constitution. The draft Constitution finally adopted (although — there are doubts as to the legitimacy of the vote) in the referendum of 12 December 1993 (vote=20% — lead power to

the President. Perhaps in order to provide a check, it was decided that in addition to an enlarged, 19-judge Constitutional Court, Russia should also benefit, like other advanced countries, from the presence of one of the "ombudsmen". The new Ombudsman of the "President of Russia" has been the official title of "Plenipotentiary for Human Rights", with a much wider remit than is usual in Western Europe, investigating human rights abuses as well as administrative maladministration in cases of private life. It is more than a little extraordinary, therefore, that the only reference to the Ombudsman in the Constitution is to be found in Article 103. Article (103) provides that one of the powers of the President of the Russian Federation (the latter term is "the appointment and dismissal of the Plenipotentiary for Human Rights, who shall act in accordance with Federal Law.") The Constitution contains no provision empowering the President to remove the Ombudsman. If the Ombudsman is to act in accordance with federal law, then there must be such a law. Kovalyov himself prepared a draft, which was agreed by the State Duma but not yet by the upper house, leaving the Ombudsman without state funding. In August 1994, Yeltsin himself provided finance for Kovalyov as Ombudsman, by Decree No.1587.

Yeltsin's critic
Despite his link with Yeltsin, Kovalyov has never shunned from criticizing Yeltsin's administration. On 14 June 1994 Yeltsin issued Decree No.1226 'On Urgent Measures to Protect the Population from Banditry and Other Manifestations of Organised Crime'. This measure provided that suspects could be held without charge or bail for up to 30 days; that company records and financial statements could be reviewed without warrant; and that phone-tapping would be admissible. Kovalyov wrote an open letter to Yeltsin on 24 June, pointing out that the Decree violated the presentation of the new Constitution, guaranteeing inviolability of private life (Art.23.1); privacy of correspondence and telephone (Art.23.2); and detention beyond 48 hours only by judicial decision (Art.21.2), as well as numerous international instruments, including the Vienna Convention on Diplomatic Relations, 1961 (1.7.3). Kovalyov asked Yeltsin, on behalf of the Human Rights Commission, to suspend the Decree. He feared it would lead to arbitrariness against all the fundamental rights and freedoms of the population.

Undeterred, Kovalyov published, on 5 July 1994, his first Annual Report on Observance of Human Rights in Russia, highlighting grave human rights abuses. These included the serious denial of rights to refugees; violation of the freedom of movement; forced arrest of refugees; threats of private resistance (protests); appalling prison conditions throughout Russia; denial of rights to soldiers; discrimination in labour rights (70% of all unemployment in Russia is due to women); police misconduct on a huge scale, including inhuman and degrading treatment, in the aftermath of the shelling of the White House in October 1993; evidence of torture; and the 1993 law on judicial review of administrative actions. He was not alone in his criticisms: on 7 October the Council of Europe was advised by its Committee of Ministers that Russia was unfit to join, for the reasons Kovalyov had pointed out. His next Report is under preparation.

Kovalyov and the war in Chechnya
But up until late 1994 the general public had not really heard of Kovalyov or his activities. The war in Chechnya changed all that. After several abortive attempts, Kovalyov, accompanied by an eight-man delegation of MPs and human rights experts, arrived in Grozny, Chechnya capital, on 15 December, and spent several days in the bunker beneath the Presidential Palace, shielded by Russian security men. On 20 December, Kovalyov went public. The previous day had seen 43 civilian deaths as a result of Russian bombing. In the press and on the radio, he appealed to Yeltsin to end the war. His approach was moderate, resourceful but on firm ground, and put political dialogue with President Dudayev. Unfortunately for Yeltsin, the mass media in Russia are probably, at the moment, the most free in the world, and Kovalyov received more air-time for the truth than all the President's men with their lies.

At Christmas, a number of Russian newspapers named Kovalyov their "Ombudsman of the Year", a title who hardly replied to Kovalyov's impassioned verbal report, save to confirm that he trusted Kovalyov, and to say that he would "consider" it. Kovalyov then appeared on "Vesti-TV", for "disturbing the position of both sides'. Kovalyov later told a news conference that Yeltsin had denied having knowledge of the real situation in Chechnya, but then contradicted himself trying to persuade Kovalyov that there were no bombings in Grozny.

The Russian military could contain themselves no longer. On 20 January 1995, Defence Minister Pavel Grachev addressed a televised news conference at the Russian campaign headquarters of Mokhov. His uniform unbuckled, and stunning over his words, Grachev told the nation: "This — what's his name — Kovalyov, he is an enemy of Russia, he has betrayed Russia!" However, a recent opinion poll shows that only 7% of Russians believe Kovalyov is an enemy of Russia. Nevertheless, on 29 January the military presented Kovalyov from accompanying the mission from the Organisation for Security and Co-operation in Europe (OSCE) touring Grozny; but on 30 January he was allowed to address the Parliamentary Assembly of the Council of Europe in Strasbourg, where Vladimir Zhirinovsky attacked him, calling him a 'scum', and saying he belonged 'in a concentration camp'. The late Prime Minister Sergei Shevkunov called Kovalyov a 'religious fanatic', because he had said that "as long as blood is being spilt in Chechnya, it is immoral and blasphemous to discuss Russian membership'.

Kovalyov is also Russian representative on the United Nations Human Rights Commission, and in mid February traveled to Geneva to try to get the Commission to condemn the war. As he told them, he estimates that some 24,000 people in Grozny and the surrounding area died between 25 November 1994 and 15 January 1995. Most of those were unarmed civilians, including 3,700 children under the age of 15. An estimated 400,000 people had been displaced, and the attempt was a failure. So Kovalyov has attacked the Commission for adopting an attitude of 'indifferent cynicism' towards the war; he is preparing a report for the Commission.

It would appear that all of the ombudsman and human rights commissions in the world, Sergei Kovalyov, at least, is doing his job.
Seeking justice in Guatemala and El Salvador

Haldane Society members Barbara Cohen and Steve Gibbons recently travelled to Guatemala and El Salvador as part of a delegation from the Central American Human Rights Committees. They report on the work of lawyers in the shadow of the death squads.

The concept of access to justice and the role of the courts and legal profession in protecting human rights takes on a completely different meaning in Guatemala and El Salvador. Firstly, the issues are different; the formal structures of the judicial systems do not function or function inconsistently in response to political or financial incentives; access to lawyers and to the courts is often determined by wealth or political connections as well as language and distance. Lawyers and judges who are prepared to accept the real personal risks which are likely to be connected with the establishment of the rule of law in Guatemala and El Salvador may find their offices to do not understand the new law and legal procedures is certainly a fight to begin. Secondly, no cases are being processed and the majority of the legal and human rights community is being served.
Judicial review, the public interest and the judges

**by Steve Cragg**

In the last two years organisations, groups and unions have brought a range of judicial review cases against central government with frequent success in achieving the changes sought by their members and supporters, and in establishing their right to bring cases in the public interest. At the same time the judges in these public law cases have closely examined their own constitutional role in defining the interests of the vulnerable and disadvantaged against an overpowerful and sometimes unaccountable executive. As Stephen Sedley has recently said ‘modern public law has carried forward a culture of judicial assertiveness to the point where public bodies are sometimes seen ¡n the democratic process’ (‘Rights, Wrongs and Outcomes’, London Review of Books, 11 May 1995).

Access is essential for any organisation or pressure group that wants to challenge government decisions. In judicial review cases the test for access is that the applicant must have a ‘sufficient interest’ in the subject matter of the application. Clearly, it would be possible for the courts to put a restrictive interpretation on this imprecise phrase and in some cases this has happened (R v Sudd for the Environment ex p Wildlife Theatre Trust Co (1993) 1 QB 504). But in R v IRC ex p National Federation of Self Employed and Small Businesses (1992 AC 617), Lord Diplock considered the position.

It was said, in my view, to be a grave lacuna in our system of public law if a pressure group,.... were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

In the spirit of this statement R v Inspectorate of Pollution ex p S. Walker (No 2; Ex p ER S59) is a landmark case in the development of the rules on standing. Greenpeace were held to have standing to apply for judicial review to try stop British Nuclear Fuels proceeding with tests at the THORP reactor. Greenpeace’s attributes as an organisation with a large membership (including many near the THORP site), constitutes status on an international bodies, a genuine concern for the environment, and with the expertise to bring a well-informed challenge were important in the decision to grant standing.

Greenpeace went on to establish that the domestic legislation controlling radioactive substances had to be construed so as to countenance or require justification for radioactive emissions, despite strong submissions from the government to the contrary (R v So S Environment ex p Greenpeace 1994 4 All ER 353).

Shortly after the Greenpeace cases the Equal Opportunities Commission in R v Secretary of State for Employment ex p Equal Opportunities Commission (1995 5 All 1) sought a direction not to award costs against an organisation bringing an equal opportunities case. The House of Lords held that the duty of the Commission under the Sex Discrimination Act 1975 to work towards the elimination of discrimination was sufficient interest to bring the proceedings. The government vigorously argued that it was inappropriate for the Commission 'to use the machinery of judicial review as a means of enforcing the public obligations of the United Kingdom under the EC Treaty'. However, the House of Lords held that it had the power, which it exercised, to declare that UK law was “incompatible” with European law. New regulations complying with the EU ruling have now been issued by the Department of Employment.

In R v Secretary of State for Foreign and Commonwealth Affairs ex p World Development Movement (1990, 2 WLR 398), the World Development Movement ("WOMD") audaciously challenged the decision of the foreign secretary to use the overseas aid budget to finance a hydro-electric power station on the Pergau river in Malaysia. Standing was granted to WOMD given their track record in aid issues, the lack of other potential challengers and the lack of other potential challengers and the importance of vindicating the rule of law. The court held that the power to furnish assistance under the Overseas Development and Co-operation Act 1960 related only to economically sound development and it was unlawful to fund projects for which there were no economic arguments in favour at all.

It was argued on behalf of the Secretary of State that it was his thinking alone that was determinative of whether the purpose for which the grant was given was within the statute. However, the court was not prepared to have its jurisdiction excluded in this way and Rose LJ asserted that:

Whatever the Secretary of State’s intention or purpose may have been, it is... a matter for the courts and not the Secretary of State to determine whether, on the evidence before the court, the particular conduct was, or was not, within the statutory purpose.

As far as the funding of the Pergau dam went, the court decided that it was not, and the Foreign Secretary’s decision to fund the project was declared unlawful. Sedley describes the case as a sharp record in the process of the judiciary moving to fill a lacuna of legitimacy in the functioning of democratic politics.

The most recent example prove in R v Secretary of State for the Home Department ex p Fire Brigades Union and others where ten trade unions challenged the right of the Home Secretary to introduce a tariff scheme for criminal injuries compensation, using the royal prerogative, which was less favourable than a statutory scheme approved by parliament in the Criminal Justice Act 1988 but not yet brought into force. The House of Lords heard, in a majority, that the decision to ignore the statutory scheme was unlawful and an abuse of the prerogative power. Although the court could not order the home secretary to bring into force the statutory scheme he did not have an unfettered and absolute discretion whether or not to bring the relevant sections into force to ignore completely the whole of the proceedings. And to attempt to ignore the Act was an act of self-destruction in his own design was "constitutionally dangerous and flew in the face of common sense" Lord Brown-Wilkinson said. Thus the original version of the Executive were checked, and Michael Howard was forced to withdraw his scheme.

Reflecting, perhaps, just how far the judiciary has been prepared to go in recent cases, Lord Mustill, in a dissenting speech, said that in deciding to strike down the secretary of state’s new scheme the court threatened to distort the delicate balance of the unwritten rules concerning the respective powers of the legislature, administration and the judiciary. In his view, the judiciary were coming too close to administering the country. It remains to be seen if such sentiments indicate the start of retribution by the judges.

Encouragingly, the Law Commission has sanctioned the wide interpretation of standing applied recently by the courts, and has recommended that courts should carefully consider its discretion not to strike down a scheme as an appropriate case in the public interest. The liberalisation of the standing rules and the willingness of the judiciary to delineate the limits of discretion have been executive suggest that the trend of constitutionally important cases brought by groups and organisations in the public interest will continue.

**Stephen Cragg is a solicitor at the Public Law Project**

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**housing law**

**Unmeritorious and Unprjudiced but Recent: Development in Housing Law**

**special feature by Stephen Knafer**

Merits. Judges often refer to the "merits" of a particular litigant's case. But what do they mean when they say that a case lacks "merits" or is "unmeritorious" or, indeed, when they say they can see the "merit" in a particular case?

The answer is that the judges mean 2 things. Firstly, merits means "the actual and intrinsic rights and wrongs of an issue, even, as it were, on paper, as distinct from extraneous matters and techniques" (Collins English Dictionary). Secondly, meritorious means "deserving".

**What lies behind "merits"?**

The unspoken premise, of course, is that the judge has a discretion whether or not to grant the relief sought by one's client (which is why one's client has to be deserving) and that he or she is entitled to exercise that discretion according to how one's client has behaved (looking at conventional standards of what is right and proper).

But judges, even of the High Court, only possess only a limited discretion. Sir Thomas Bingham defined judicial discretion in "Should Public Law Remedies Be Discretionary" (1995) PL Spring as follows: ‘... an issue falls within a judge’s discretion if, being governed by no rule of law, its resolution depends on the individual judge’s assessment (within such boundaries as have been laid down) of what is fair and just to do in the particular case. He has no discretion in making his findings of fact. He has no discretion in his rulings on the law. But when he, having made any necessary findings of fact and any necessary ruling of law, has to choose between different courses of action, orders, penalties or remedies he then exercises a discretion. It is only when he reaches the stage of assessing himself what is the fair and just thing to do or order in the instant case that he embarks on the exercise of a discretion’.

Thus legitimate discretion is exercised only after the facts and the law have been decided. And it follows then that the "merits" of a particular litigant’s case or behaviour should be of no relevance when it comes to deciding facts or making rulings of law. In theory. So when a judge or one’s opponent starts to talk about the "merits" of a particular case or the "merits" of or otherwise of one’s case it is often useful to clarify in one’s own mind at least whether one is indeed seeking the exercise of a discretionary power and if so what type of merits are truly of relevance to the exercise of that particular power; or whether, in fact, one is not seeking the exercise of a discretionary power at all.

The recent case of Roggan v Woodford Building Services Ltd 1995 27 WLR 794 is a practical example of the following characteristics of our legal system:

(1) Only some types of litigant have to show that their case has "merits"; tenants in housing cases for example usually have to show "merits" but commercial tenants often do not.

(2) A litigant who is not meritorious can expect the judge not only to exercise a legitimate discretion against him, but also to make rulings of law than he or she would not otherwise have done.

**Legal background**

As the reader will be aware, s 48 of the Landlord and Tenant Act 1987 provides that:

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served upon him by the tenant. (2) Where a landlord of any such premises fails to comply with subsection (1), any rent or service charge otherwise due from the tenant to the landlord shall... be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection”.

**What it used to mean**

Roggan, v 498 had been considered by the Court of Appeal in Dallhold Estates (UK) Limited v Lindsey Trading Inc [1994] 17 EG 148.

Dallhold was a piece of commercial litigation in which the landlord was a prestigious company incorporated abroad. Its registered address abroad was given as its address in the Lewes. But it had solicitors in the United Kingdom acting for it and was readily available for service of documents whether in the United Kingdom or abroad. The tenant, itself a substantial company (although in administration), also incorporated abroad, had for years been serving notices on the landlord's solicitors.
in the United Kingdom. There was no question, then, of the tenant not being able to pay rent or to save notices on its landholding at a United Kingdom address, or of the tenant being refused or prejudiced in any way by the landlord’s failure to comply with the tenant’s notice requirements. A tenant’s notice complying with s 48 had been served, although a number of letters had been written giving the landlord a name and address and the names and addresses of the landlord’s employees in the United Kingdom.

The Court of Appeal in Dalbith held nonetheless that rent was not lawfully due for the purposes of the instant proceedings because the landlord was not served in accordance with s 48. In no case had the landlord’s notice reached in the “neutral” context of a commercial tenant’s rent arrears, stood on its head with little ceremony upon the realisation that it also advantaged a large number of residential tenants whose behaviour was seen as “unmitigating”; in reality it is at the very least no worse than that of commercial tenants such as Lindsey.

In theagon the suspicion must be that the perception (shared by all judges of that particular Court of Appeal) that Mr Rogan’s behaviour had not been an “unmitigating” influence of a legitimate discretion (because none existed in this case for the Court to exercise) but a ruling on the law, if that is right, it is a great pity because it means that the rule of law itself has been undermined; not just because a binding precedent was abandoned on the basis of a flimsy distinction; not just because the plain words of Parliament were not given effect to; but also because the perceived lack of “merits” of Mr Rogan’s case (and of the many cases of Rent Act and Housing Act tenants standing behind him) appear to have influenced a ruling on the law. This is just the area in which judges have no discretion and in which they ought not to be influenced in the slightest by perceptions of the individual litigant’s conduct.

What is right with “Merits”

Now that the judiciary is entirely professional, and that judges are so laden with duties, it can well be wondered whether having a role in which the landlord is tenant in a system in which “merits” plays an important role. There are artificial services in disregard and illegal eviction cases (albeit not with the same effect that the rent would have to be paid). Mr Rogan, however, was not the tenant of an agricultural and sporting estate of 940 acres in Herefordshire, but of a flat in London, 96 sq. ft. to him under a Rent Act 1977 tenancy. His rent arrears amounted to only £4,540.00 as at the date of trial (as compared to the £75,000.00 owed by Lindsey) and yet Mr Rogan’s case (and not Lindsey’s case) was described by the Court of Appeal as having no “merit” or “purpose”, indeed. Sir Ralph Gibson began the final part of his judgment in Rogan with the words: “There is in my judgment no substantial merit or purpose in this plaintiff’s appeal.”

The upshot of all this was that the Court threw the doctrine of precedent out of the window and held that tenants do not have to be served with a notice stating in terms what their landlord’s address is for the service of notices including notices in proceedings, provided the landlord’s name and address within the United Kingdom is given without qualification in the tenancy agreement.

There is no exception to the Act relating to landlords whose name and address in the United Kingdom is contained in tenancy agreements. The decision appears to be contrary to the most obvious meaning of the words of the Act. It is contrary to the clear ratio of Dalbith with its reference to the insufficiency of notices which do not contain the statement required by s 48 in terms but merely provide an address (such as that contained in the letter addressed to the estate at which the tenant’s house is, or which tenants are entitled to serve all notices on the landlord.

Had Rogan been the first case on s 48 the decision would have been remarkable only as a piece of highly purposeful statutory interpretation. Place it alongside Dalbith, however, and one sees not exactly one law for the rich and another for the poor (because Rogan will apply to rich and poor alike) but a straight down line piece of statutory interpretation which just happens to be a bit more advantageous to the landlord than to the tenant. Had Rogan been the first case, the law would have been adjudged by some members of the judiciary to have been “unmitigating” to landlords; had Rogan been the first case, the landlord would have been the beneficiary (and not the tenant) of the results of a judicial exercise.

Projudice

Rogan is also a case on prejudice. The fact that the commercial tenant in Dalbith had also suffered no detriment whatever did not attract adverse personal criticism of its behaviour or appear to influence the result of the case. But Mr Rogan’s case was depressed because, (and it was perfectly true) “The tenant suffered no detriment whatever by the failure to put the additional words in the notice”.

Linked to this expectation that litigants such as tenants in housing cases ought to have “meritorious” cases is the growing expectation in the public law field, that such litigants have an absolute personal “right” (as a matter of law) to have the law as it is. Although they have demonstrated that the public law decision under challenge is unlawful, the judge will not make an order of Certiorari unless he or she considers that in addition to having been the subject of unlawful administrative action the intrinsic rights and wrongs of the applicant’s case merit the issues of a prerogative order.

This causes problems in homelessness judicial review cases in which an tenant is marginally prejudiced, a quota decision because the reasons given under s 64 of the Act are not adequate.

Need for reasons under s 64 of the Housing Act 1985

As is shown in the local housing authority is obliged by a 64 of the Housing Act 1985 to give reasons for its decisions. The Courts have held for years now that a local authority making a decision to give reasons Parliament must have intended the reasons to be proper, intelligible and adequate in the sense that they address and resolve the substantial issues of fact and law raised by the individual case: see, for example, Re Poyner and Mills Arbitration [1964] 2 QB 467 and, more recently, Sadiq Brant v Orange [1991] 1 WLR 153. Otherwise there would be no force in the statutory requirement to give reasons.

Proper, intelligible and adequate: Hinds

Another reasons are in any case adequate depends on the statutory context ( Save Britain a Heritage).

In R v London Borough of Barnet [1994] 27 HLR 54 it was held that the decision to refuse to grant Certiorari was lawful because the decision had been made on the basis of the Insufficient and unfair exercise of executive power in the context of an unlawful executive act. The former is an essential that the Court formally marks the occurrence of an unlawful exercise of power by quashing the decision — leaving the local authority free to re-decide the case, of course, as it sees fit.

But there are other reasons which suggest that it is wrong to refuse to grant Certiorari when a decision is so badly worded as to be in itself unlawful.

The right of the High Court to withheld

It is of course right to say that Prerogative remedies are discretionary. This means that the Courts can refuse to intervene to prevent citizens having to submit to unlawful executive acts. It also means, because unlawful acts are in effect lawful and binding unless and until quashed, that the Court has the power to make lawful that which is ultra vires; to legitimise acts of the executive which are unsupported by Parliamentary authority or even flout it directly.

The origins of this legitimising power are historical rather than logical, but there is no doubt that the power exists and that it is frequently exercised.

Inevitability of Outcome

The reason that Certiorari was withheld in Hinds was that the outcome was inevitable, if the decision were quashed and the
A story which involves, amongst others, the security services across several countries, payments from the former Soviet Union, left-wing trade unionists, Libyan interests and a megamillions newspaper proprietor may be the stuff of espionage, say lawyers and journalists. The Enigma Whitenet - M15, Maxwell and the Scargill Affair combines all of these; but this is not the stuff of fiction, this is a description of real events.

On 5 March 1990 the Daily Mirror front page screamed out "Scargill and the Libyan Money: The Facts," promising to tell us "the authentic story of the miners and Godfaddi cash." This was the beginning of a concerted campaign against Arthur Scargill, Peter Headfield and the Libyan夏天 determined by the Mirror and Central Television's The Court Report which ultimately involved lawyers and the courts. Milne's book sets out in great detail how this campaign certainly began a long time before 5 March 1990 and involves the shadow figures who lurk within M15.

The central part of the Mirror-Coork allegations related to menies allegedly paid to the Libyan government for the alleged incident of the fabricated meeting in 1990 between the now-discarded former M15 Chief Executive Officer Roger Windsor and Libyan leader Muammar el-Qaddafi. The claim was that this money had been subsequently used by Scargill and others to pay personal debts. The substance of Milne's story is headlined by Gavin Lightman QC who has the whole affair is certainly not without question - dismissed these allegations, but called into question the handling of the money which had been received through international solidarity throughout the strike. As the story developed a number of legal actions were commenced, including a

any safeguards and the sooner ordinary citizens wake up to this Act the better. In that respect the Blackstone's Guide (the first part of which is about the Act) is to be welcomed. However, whether it is worth the money is another matter.

The Guide costs £19.95 for 343 pages which at first blush seems reasonable. However, 200 of the 343 pages contain the text of the Act. The remaining 140 pages largely contain a reward version of the Act; a structure that practitioners and students are familiar (and bored) with. Not such good value on reflection.

To be fair, this book is based on several recently published (which literally have only a few hundred words not taken from the particular Act in question), but for nearly £20 a mere in-depth analysis should include at least two really useful features in the references to Horsman. In this post-Pepper days, these are an essential requirement for lawyers. Otherwise, its probably better to buy a copy of the Act straight from HMG for £11.

Keir Starmer is a barrister at Doughty Street Chambers.

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**Reviews**

*The Enigma Whitenet: M15, Maxwell and the Scargill Affair* 
*By Seumas Milne*

*Verso; 344 pages; £16.95*

"Milne's appalling story shows secret Government is full and evil flower. - Alexander Cockburn"

The book charts in great detail the machinations which surrounded the collection and movement of the large amounts of cash required to keep the strike and strike fund going and the seizure of union funds by court-appointed sequestrators and the dark activities of those who wished to see the miners and their movement defeated.

Those funds kept the union structures effectively functioning during the strike and after. As Milne quite rightly points out, those who criticised the secrecy which surrounded the accounts missed the point somewhat. The accounts were not created out of desire for secrecy but out of necessity. Faced with the full gamut of the anti-union laws, the financial methods used by the miners' leaders were the only way of carrying on the fight for independent trade union.

The key point of Milne's book is, without doubt, the deep and mysterious role of the security services in their unctuous efforts to undermine organised labour. This included the strange goings on within the UK press, led by Robert Maxwell - a man who always kept those figures who lurked within M15.

The National executive committee - particularly M15 - were never called to account for their original vendetta against the miners, the same way as they have evaded any reining for their murder of the coal miners. Herein, Milne's appalling story shows secret government in full and evil flower."

The whole affair is perhaps best summed up in the quote from Labour's former leader, Neil Kinnock. Milne begins the book: "Never underestimate the British establishment's ruthless determination to destroy its enemies." - Steve Gibbons

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*Blackstone's Guide to the Criminal Justice and Public Order Act 1994* 
*By Martin Waski and Richard Taylor (Blackstone Press Limited, 1999)*

The Criminal Justice and Public Order Act 1994 swept away many rights such as the right to silence and the right to peaceful protest. For so-called 'antiterrorist' legislation, it marks the low-point of this government's respect for civil liberties. Despite fairly extensive coverage of the Act through its Parliamentary stages, many courts are still only generally aware of the existence of its provisions. For example, few realise that under the Act police officers can banish any individual from a given area of land on the basis that they think that person is involved in terrorist activities. The police officer can simply declare a "designated exclusion area". If the person comes back within three months he or she commits an offence. Worse still, there is no appeal from the police officer's decision and there is no hope of remedy by judicial review.

Stephen Knaffar is a barrister at 6 King's Bench Walk.
The text is free from excessive dogma while remaining uncompromising in its critical stance; thus the term "single mother" rather than "single parent" is used throughout, the authors explaining that 95% of single parents are mothers, yet the problems encountered by men through the implementation of the Act are neither unaddressed or overstated.

The Handbook is available from the publishers at a number of prices and it is hoped that purchasers will pay the maximum price they can afford. Get your organisation to buy a gross!

Lisa Connerty is a trainee solicitor at Wilsons
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