Stephen Sedley on
Judicial Review

Nick Blake on the U.K.
and Refugees

Employment Discrimination
in Northern Ireland by
Paddy O’Connor

Roundtable on Local Authority’s
Powers and Tenants’ Rights

Peter Thornton on the
Public Order Act

Haldane News
Reviews and Letters

and much more . . .
Haldane Society of Socialist Lawyers

SOCIALIST LAWYER

CONTENTS

Public Meeting Programme ........................................ 1
Haldane News ....................................................... 1
Wapping Legal Observers, ........................................ 2
Interim Report ....................................................... 2
Lawyers Against Apartheid ....................................... 3
Rent Decontrol Press Release .................................... 4
Disqualification of the Liverpool City Councillors ............ 4

Features

Judges v The Bomb Owen Davies ......................... 6
The Criminal Justice Bill ......................................... 6
Heather Williams and Mark Seddert ......................... 7
Judicial Review Stephen Seddley ......................... 7
Employment Discrimination in Northern Ireland Paddy O'Connor ........................................ 10
The U.K. and Refugees Nick Blake ......................... 11
Housing Roundtable: Russel Campbell, Camilla Palmer in discussion ......... 16
Public Order Law — The New Act Peter Thornton .......... 17

Reviews

Letters ........................................................................ 19

PUBLIC MEETINGS PROGRAMME

Summer

13th May 1987

‘When Should Socialists Prosecute?’
Speakers: Steven Suley, Helena Kennedy (Barriers); Camilla Palmer (Local Authority Solicitor).

3rd June 1987

‘Refugees’
Speakers: Alf Dubs MP, Irene Khan (UNCHR); Barrie Stow (URAS Refuge Unit).

20th June 1987

ANNUAL GENERAL MEETING
All meetings at 7.15pm at the London School of Economics, Houghton Street, London WC2.

Haldane News

EXECUTIVE COMMITTEE

JAMES WOOD has resigned as Treasurer and the EC has appointed PAULINE HENDY to replace him. Pauline’s appointment has created a vacancy on the EC and the EC hopes to co-opt another member to the EC to help with the workload.

ANNUAL GENERAL MEETING

The AGM is on SATURDAY 20th JUNE at 2.00pm in the Vera Ana Macy room at the London School of Economics, Houghton Street, London WC2.


WRITTEN NOMINATIONS for the posts of Chair, Secretary and Treasurer and for 12 places on the Executive Committee must reach BEVERLEY LANG at 1 Dr. Johnson’s Buildings, Temple, London EC4 NO LATER THAN SATURDAY 23rd MAY 1987. Candidates are invited to submit a biography of up to 50 words.

THE EXECUTIVE COMMITTEE is responsible for the organisation of the Society. It meets monthly and meetings usually last about 3 hours. Everyone on the EC is expected to take an active part in the work of the Society and to take responsibility for a specific area of the Society’s work. For example, jobs on the EC this year have included Meetings Organiser; Minutes Secretary; Editor of Socialist Lawyer; Convenor of the Women’s Subcommittee; the Employment Subcommittee; the Crime Subcommittee; the Recruitment Subcommittee; the International Subcommittee; the Ireland Subcommittee and the Mental Health Subcommittee. There may be additional jobs next year. Experience is not required but we do need hard work, enthusiasm and commitment from EC members. We would particularly encourage newer members to stand for the EC.

WOMEN’S RIGHTS MEETING

The EC apologises to all members for the last-minute cancellation of this meeting. Both speakers found that they could not attend less than 24 hours before the meeting was scheduled to take place and we had no means of informing the membership. TESS GILL had to attend an emergency meeting of her union’s Executive Committee in connection with an industrial dispute and PATRICIA HEWITT had to accompany Neil Kinnock to Bristol for a TV interview. The meeting will be rescheduled — details will appear in the next mailing.

MEMBERSHIP SECRETARY

SHEILA KAVANAGH will be resigning from this post at the next AGM. We are very grateful to her for her work. The job entails sending out and processing membership applications and keeping membership records. Full training will be provided — no experience required! Please would anyone who might be interested in this job contact BEVERLEY LANG at 1 Dr. Johnson’s Buildings, Temple, London EC4. Tel: 01-353 9328.

WAPPING: JANUARY 24th DEMONSTRATION

Many members of the Society were present at the demonstration outside the News International Plant at Wapping on January 24th and witnessed the violence which occurred. JOHN BOWDEN, acting as a Legal Observer, was injured when police charged on the demonstrators.

Advertising rates

Socialist Lawyer welcomes advertising. The rates are:
Full page £100 Quarter page £50
Half page £50 Eighth page £15
The rate for classified advertising is 25p per word. We can distribute insert adverts at £50 for voluntary organisations and at £100 for commercial undertakings.
Please contact HEATHER WILLIAMS at: 1 Dr. Johnson’s Buildings, Temple, London EC4.

Contributions from members are very welcome. If you are interested in writing articles or book reviews please contact NICK PAUL or HEATHER WILLIAMS at: 1 Dr. Johnson’s Buildings, Temple, London EC4.

Editorial Committee

Andrew Buchan, Beverley Lang, Nick Paul, Alastair Small, Keir Starmer, Heather Williams.

1

POLITICAL PRISONERS IN CHILE

The INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS has launched an appeal to give financial support to a Legal Aid Bureau set up in Chile which aims to provide legal defence for political prisoners and to gather and co-ordinate evidence gained during trials. Donations for the purpose of a regular annual, half-yearly or quarterly contribution (as the occasion) should be sent by bank transfer to Account number 310-1467574-50, Banque Bruxelles Lambert, 11, rue de la Voute. The name of the Association Internacional de Juristas Democratas mentioning “Bureau d'assistance juridique au Chi-

CONFERENCE IN CUBA

The NATIONAL UNION OF CUBAN LAWYERS invites all interested lawyers to the Eighth Conference of American Jurists to be held in Havana from September 14th-15th. The subject “Legal Systems in the American Continent”.

The Conference will cover the following subjects: The Rights of the People in the Transition to Socialism; Human Rights; Women’s Rights and Family Law; Right of Work; Penal Law and penitentiary organisation.

Anyone interested in attending the Conference should write to:

UNION NACIONAL DE JURISTAS DE CUBA —
Calle 21 No. 525 esq. D, Vedado — Havana — Cuba. Tel: 32-96025
ZOSIMA LOPEZ — Palacio de las Convenciones — Palco Cuba — Apartado 160464 — Havana — Cuba.

Wapping Legal Observers Group

Interim Report on the Events of 24th January

The Wapping Legal Observers are a group of lawyers who have been monitoring the policing of demonstrations outside the North London Magistrates’ Court since the beginning of the dispute.

Twenty-five members of the group attended the anniversary demonstration on Saturday 24th January. We are in the process of preparing a detailed report on the way the demonstrations were handled.

The dispersed manoeuvres employed by both police and demonstrators are extremely dangerous in that there was insufficient space available for the densely packed crowd to disperse. The ACPO guidelines clearly state: “A generalisation can be made about all the tactics of this nature; that they are only a viable option when there is somewhere else to disperse to. It would be quite inappropriate to use such a manoeuvre against a densely packed crowd.”

In the event, the ACPO guidelines on the use of truncheons and batons many demonstraters were deliberately struck on the head instead of around the arms, legs and elsewhere to cause serious head injuries. The guidelines further stress that the truncheons should primarily be used for self-protection, but on this occasion police attacked demonstrators with truncheons in an attempt to frighten and disperse the crowd.

Mounted police were used without prior warning. The ACPO guidelines state that “a warning to the crowd should always be given before adopting mounted dispersal tactics”. Rather than a slow approach, to enable the crowd to disperse, the horses were charged at speed into densely packed groups of people, causing injury and hysteria.

Despite recent police denials, the Wapping Legal Observers can confirm that the charge was into the crowd, by a number of officers carrying canons on horse.

As in previous demonstrations at Wapping extensve use was made of unwarranted or poorly identified police violence. Demonstrators were observed without identification numbers on their shoulders or helmets.

Powerful police searchlights were used. They were involved in the removal of a demonstrator responsible for throwing missiles etc. but were pointed at the most densely packed parts of the demonstration.

Beverley Lang

Lawyers Against Apartheid

Lawyers Against Apartheid is a recently formed group of lawyers, law students, legal workers and those interested in all legal issues relevant to the struggle against apartheid. It was established at a SATIS (South Africa) The Impounded Society) Conference on political prisoners in South Africa in December 1986. The Haldane Society will be applying to affiliate to this new organisation and present its report at the Conference.

The work of the Group is split up into different areas of expertise and interest as follows:

THE DOMESTIC LEGAL SUPPORT UNIT will be responsible for:

1. Exposing the nature of the apartheid regime within the legal community.
2. Getting anti-apartheid resolutions put to AGMs of the Bar and the Law Society.
3. Campaigning in solicitors firms, barristers’ chambers and amongst other legal bodies (i.e. anti-apartheid publishing, banking and investment practices).
4. Setting up a legal support unit for anti-apartheid activities in the U.K. and providing advice and support for specific areas, e.g. trials arising from AAM activities; legal support for demonstrations and support and advice for local groups.
6. Advising on the legality of labelling in supermarkets.
7. Liaising with COSA/WR re immigration problems of war resisters in the U.K.
8. Considering private prosecutions against companies involved in sanctions busting and exploitation of natural resources.

THE INTERNATIONAL LAW SUB-COMMITTEE will be responsible for:

1. Exposing the international law aspects of South African attacks on frontliners.
2. Campaigning for British adoption of UN Decree No. 1 and rejection of Apartheid on Namibia.
3. Campaigning for recognition of prisoner of war status for captured freedom fighters.
4. Publishing articles and information on the situation in Namibia and breaches of international law.
5. Liaising with other international organisations re legal issues of apartheid.

THE POLITICAL DETENTIONS, TRIALS AND PUNISHMENTS SUB-GROUP will be responsible for:

1. Making links with the new Democratic Lawyers Association being set up in South Africa.
2. Challenging established ideas of South African and Namibian systems, especially the myth of an independent legal system.
Disqualification of the Liverpool City Councillors: The Real Issues

By the time of publication the House of Lords will have given judgment upon the application of the Liverpool Councillors against a decision to surcharge them on the grounds of wilful misconduct. The consequence of such a finding being upheld are grave implications for the Councillors who will be jointly and severally liable for the sum of £160,103. Accordingly some of their number will face bankruptcy. Moreover all will be disqualified from holding office in any local government for five years. Reports concerning the alleged antics of Liverpool Councillors are commonplace in the media. However, the issue which underlies the surcharge and subsequent appeals remain largely unreported.

On the 8th September 1985, Mr McMahon, the District Auditor for Liverpool, issued a certificate under the provisions of the Local Government Finance Act 1983. He certified that the sum of £160,103 was due from named councillors as being the amount of a loss or deficiency caused by their wilful misconduct.

Wilful Misconduct

The wilful misconduct upon which the District Auditor had based his certificate was set down for the financial year 1985/6 until the 14th June 1985. The Councillors have challenged this finding at each stage of their appeal. At that time there was no statutory provision requiring a local authority to make a rate by a specified date. The Councillors argued, therefore, that to be found guilty of misconduct they must be shown to have acted in breach of their discretion as to the timing of the making of a rate. This could only be the case if they had made a decision which was so unreasonable that no sensible Councillor in his or her right mind, applying him or herself to the facts in question could have arrived at it, in accordance with well established practice agreed by both parties that the correct definition of wilfulness in this context was doing something knowing it to be wrong or being recklessly indifferent as to whether it was wrong or not.

The Facts

All the Councillors surcharged were members of the Labour Group. In May 1983 the Labour Party gained an overall majority of seats upon the Council, following a number of years of Liberal rule. In 1984 they increased that majority. They were elected upon a political platform which included the defence of existing jobs and services and the refusal to impose large increases in rents or rates to compensate for cuts in government grant.

No one underestimated the size of the problem which they were facing. The scale of the economic situation existing in the City has been universally acknowledged. Unemployment was at one of the highest levels in the country and the situation had been made by Statutory Instruments rather than an amending Act of Parliament that would give a full opportunity for the issues to be canvassed and discussed with housing to make representations to the Government.

This is an insidious start to this government's contribution to the International year for the Homeless.

Rent Decontrol by Ministerial Order

NICK BLAKE on behalf of the Housing Sub-committee issued the following Press Release on 25th February 1987:

The Haldine Society of Socialist Lawyers today strongly criticised two Ministerial orders laid before the House of Commons last night that will have devastating effect on the principle of rent control.

In one order, the Government have abolished the provisions whereby an increase in a registered rent has to be phased over two years; when the order comes into force the whole of a rent increase will have to be paid all at once. Previous legislation from this government had already reduced the rent phasing from over three years to two.

The second order applies to London, and encourages landlords to use the new shorthold tenancy, where tenants have no security of tenure. It abolishes an existing requirement that shorthold tenancies could only be granted after the landlord had registered a fair rent. London had previously been exempted from these provisions because of threatened protests from Tory MPs in the light of the astronomical levels of London rents.

The Society finds not only the underlying principles behind the orders, objectionable leading as they do to a gradual dismantling of the Rent Acts that have protected tenants from misery and exploitation since 1915; what is also disturbing is the total abrogation of any existing requirement that shorthold tenancies could only be granted after the landlord had registered a fair rent. London had previously been exempted from these provisions because of threatened protests from Tory MPs in the light of the astronomical levels of London rents.

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Loss

It is important to highlight the nature of the alleged loss which the misconduct was said to have caused.

In a written Parliamentary answer in March 1985 the Government had stated that the money would have paid contributions of Housing Benefit subsidy and Crown contributions (paid in lieu of rates of Crown property) to Councils pending the fixing of a rate. Payments to Liverpool were withheld in accordance with this announcement. They
were subsequently made following the setting of a rate. The loss which formed the sum certified was a purely notional figure. It represented the loss of interest which the Council would have earned on these sum had prompt payment been made. The only delay in making the rate in 1985 was allowed to have caused. At each state of their appeal the Councillors argued that the necessary council relationship between the alleged loss and any misconduct was missing since the loss resulted from a purely voluntary act on the part of Central Government. This contention was rejected by the Courts.

Fairness

It is beyond the scope of this article to discuss in detail the jurisdictional arguments advanced at each appellate stage and which occupied the hearing before the House of Lords. They can be summarised quite shortly.

The Appellants wrote to the Appellants on the 20th June 1985 notifying them of their intentions to issue a certificate against them. He set out a summary of the facts upon which he relied. He invited them to reply to these matters by way of written representations. The Councilors replied by way of a collective written response on the 19th July. They had drafted the document themselves with the help of their officers. In a covering letter they expressly reserved the right to add to or develop their submissions. On the 9th September 1985 the District Auditor issued his certificate surcharging the Councilors. In his accompanying Statement of Reasons he rejected the explanations advanced by the Councillors saying that they were not the real reasons for their delay.

The Appellants argued that they had been denied the opportunity to have an oral hearing before the Auditor, prior to him issuing his certificate. The Appellants placed that entitlement upon two footings. Firstly that they had a right to such a hearing in any event, giving the invariable practice of District Auditors to offer oral hearings which stretched back to the previous century. Secondly, that even if no automatic right existed, the entitlement arose in this case since the District Auditor was minded to reject the truth of their written explanations.

In the Court of Appeal, Lawton L.J. accepted that the Appellants had been treated unfairly. Dillon L.J. was of a similar view, although he did not find it necessary to express a final conclusion.

The Respondent disputed the existence of any unfairness. He placed in the alternative that any unfairness which had occurred at this stage was cured in the Divisional Court, who held a complete re-hearing of the issues. The Appellants' response was that such unfairness could only be cured by a hearing of the matter de novo on its merits. A majority of the Court of Appeal found that the defect had been cured by the subsequent hearing. The alternative approach adopted by Woolf L.J. was that there was no unfairness to the Appellants if one looked at the statutory procedure as a whole.

The House of Lords judgment upon this issue will have great bearing upon the future procedures that are adopted at Local Government. It may also contain wider public law implications for other statutory decision making bodies.

In conclusion

In their original representations to the District Auditor the Councillors summarised their position in the following way: "In all these matters, Members of the Council have, throughout, acted in good faith and after taking advice from their officers. They have never at any time sought to avoid their duty to make a rate, or introduce unnecessary delay in its discharge. They have at all times had at the forefront of their minds the interests of the citizens and ratepayers of Liverpool in seeking to maximise the resources available to meet the services, and to preserve the living conditions of Liverpool people. In doing so, they claim that they were entitled to exercise that degree of discretion which, as elected representatives, the law allows them — and the courts have often protected from undue interference the elected representatives of the people.

The surcharge and consequent disqualification from office of the Liverpool City Councillors represent yet another assault upon local democracy in this country.

Cases referred to:
1. Associated Provincial Picture House v Wednesbury Corporation (1940) 1 KB 223
2. R v Hackney B.C. ex parte Fleming (unreported)

Heather Williams and Mark Studdert

The Criminal Justice Bill: An Attack Upon Fundamental Liberties

The Criminal Justice Bill ("C.J.B.") currently making its way through Parliament contains a mixture of dangerous and ill thought out ideas. Some of its proposals have already evoked widespread criticism; in particular, the abolition of the Defendant's right to peremptory challenges and the Attorney General's right to refer sentencing questions to the Court of Appeal. The crime sub-committee of the Haldane Society considered that many of the C.J.B.'s provisions posed a grave threat to the Defendant's right to a fair trial. Accordingly, the Committee prepared a detailed briefing, highlighting the areas which appeared to be of greatest public concern and settling out proposed amendments. The briefing has been extensively used by the Labour Group on the C.J.B. Standing Committee in its efforts to mount a challenge to these provisions. We have also circulated submissions to selected members of the press and media in an effort to publicise what we see as a potentially damaging piece of legislation. This article summarises the main areas for concern, as set out in the briefing, and the changes which were put forward.

Evidence

Part II of the C.J.B. has recently completed its Committee stage in the Commons largely unaffected by proposed Opposition amendments. These provisions are passed two fundamental safeguards in the conduct of criminal trials will be undermined by the SBP Committee.

First, the right to insist on the attendance of witnesses at trial in order to cross examine them as to test their evidence as a "second-hand" and bring to the trial an additional element of perjury. Second, the hearsay rule in relation to documentary evidence has been effectively removed, so that both first and second hand hearsay evidence is now admissible. The inherently unreliable nature of hearsay evidence is ignored.

The provenance of this part of the Bill is the Roskill Report on Atomic Weapons. The Bill also reflects an extension of the rules of admissibility introduced by the Police and Criminal Evidence Act 1984 which made documentary evidence admissible as long as the maker was dead, overseas, or unfoundable and was under a duty to compile a record. The effect of Clauses 14, 15 and 16 of the Bill are:

1. To take away the restrictions of Section 68 of PACE, i.e. no longer necessary for the maker to be dead, overseas etc.
2. To extend admissibility to documentary evidence "received" as well as "made", as long as this was "in the course of trade", for example, a receipt or holder of any paid or unpaid office", i.e.
Justice afforded expert reports as stressed, especially based on particular, the extending these to the Act.

Clause 23 and 26 of the C.J.B. remove the right of trial by jury for offences of driving while disqualified, taking a motor vehicle and common assault and battery. Clause 24 increases from £400 to £2,000 the threshold below which offences of criminal damage are only triable summarily. The right to trial by jury is a fundamental one that cannot be overridden by considerations of administrative convenience and cost, as pleaded by the Government. These are inbuilt advantages to the Defendant of trial by jury. The Standing Committee, for instance, a forensic expert’s attendance in order to cross examine before a jury. The potential import should not be under- estimated, especially in view of the cases which turn on forensic evidence — the Birmingham, Guildford and Woolwich bomb trials come immediately to mind. It is now upon the Government to show the presence of a requirement — one can foresee a Judge measuring the Defendant’s interests against the cost to the public purse of calling an expert to give live evidence.

Though this part of the Bill was born out of the Rookill Report which addressed itself specifically to fraud, those changes in the rules of evidence will apply to all offences.

Our submissions elicited a response from the Govern- ment, although still no less an exercise for the justification for extending them is not in evidence other than that it would ‘seem wrong to have different rules of evidence for different purposes’ yet the Standing Committee holds that the evidence section is busy instituting new procedures, powers and rules to deal with serious fraud as a special case. When viewed together with other parts of the Bill (in particular, the removal of the right of peremptory challenge of jurors), it amounts to a package which may gravely prejudice the fair trial of a Defendant. The practical effect of these sections when taken to their extreme would be the protraction opening speech, based on statements and documents could become virtual- ly the only evidence in the trial, live witnesses being dispensable with so long as the circumstances comply with the Act.

Jurisdiction

The provision is superfluous as the Court of Appeal already has the power to issue guidelines on sentencing and indeed regularity makes use of that power. The proposed power would offend the doctrine of the separation of powers as it allows a Government, through its chief law officer, an opportunity to affect judicial sentencing policies. It is all too easy to imagine an Attorney General bowing to a campaign waged by the tabloid press under the pretext of acting upon “a question of public importance”. It follows the provision which, judges will become more susceptible to outside pressures when they come to sentence offenders and may ultimately sentence more heavily than they would other- wise have done.

The Standing Committee debated this clause in the highly charged aftermath of the controversial sentence meted out in the Raine Vignoles rape case. A Labour amendment to restrict the responsibility for the issuing of such guidelines to a committee of senior members of the Judiciary appointed by the Lord Chief Justice was defeated. A Tory attempt to give the prosecution a right of appeal against sentence also failed. The Clause was agreed to on a vote.

Confinement

Clause 46-70 of the C.J.B. are designed at extending the confinement provisions contained in the Drug Trafficking Offences 1986 to the fruits of other serious crime. It is accepted by the proposals as being desirable in principle. However, there should be grave concern at the breadth of the new powers and the lack of attendant safeguards for those who may be subject to their draconian application.

In the Standing Committee the Government continued to insist, nonetheless, that the provisions as applying to “godfather types” and “the gentleman’s mould”. Refer- ences were made to mansions and porches. 1. The reality of the situation

The starting point for concern is that confiscation orders may be imposed against any defendant who has assets of £10,000 or more. The Society has proposed that confisca- tion be limited to assets which are the proceeds of crime.

The position of third parties is also worrying. Assets received by third parties may be confiscated if they were acquired by way of a gift. This places innocent members of a defendant’s family in substantial jeopardy. We proposed amendments to invoke the provisions of such assets into situations where the recipient was aware of the origin of the asset and that an abnormal hardship would result. The Government conceded that the former was a relevant consideration which the Court should take into account but refused to place other criteria upon a statutory footing.

The C.J.B. provisions empower the High Court to make enforcement order and receivership orders, in respect of all the property referred to above. The orders are made upon ex parte applications by the prosecutor. The order may be made without previous proceedings having even been begun against a person and they may be enforced before such proceedings have been concluded. A defendant who wishes to contest the order may find that he has been bankrupted by the Court in the interim.

It is of particular significance in the light of the merger compensation provision which the C.J.B. proposes. A defendant who is ultimately acquitted may have suffered financial ruin which he is entitled to compen- sation if he is able to show serious default on the part of the prosecuting authorities. The onus of proving such default will be on the applicant, as the difficulties in being able to establish the same are manifest. “Serious default” would not be capable of precise definition or of judgment. We have proposed that the right to compensation be extended to all instances where the applicant has not brought suspicion upon himself.

Compensation

Clauses 71-82 place the criminal injuries compensation scheme upon a statutory footing and as such are to be welcomed. The Society has suggested a number of amend- ments to these provisions. The first being that the proposals are closely designed to extend to victims of rape and other sexual assault.

Clause (80) suggests a statutory endorsement to the princi- ple that the Board may reduce an award if, having regard to, inter alia, the claimant’s character, “his way of life, or the past conduct of which he has been guilty at any time, they consider it appropriate.

In the past the Courts have held that an award may be reduced even though the applicant’s character has no ascertainable bearing upon either the occurrence of the injury or its aftermath. 3. The new provision will simply encourage assessments to reflect subjective prejudices rather than an objective quantification process. Indeed, it is so widely drawn that it may operate unfairly to any person whose lifestyle or background might be deemed unconventional as well as against those with unrelated past criminal records.

Juries

Clause 83 abolishes the defendant’s right to peremptory challenge and instead a defendant may challenge a maximum of three jurors in this way.

This provision should be totally opposed. Thus far the Government have not produced a single shred of evidence to support their contention that peremptory challenges produce perverse judgments. This reform was first canvassed following the Tory back bench outcry over the use of peremptory challenges in the Cypriot apy case. However, no one has challenged the correctness of the world in that case. The Government and its supporters have hit upon the concept of “randomness”. They contend that peremp- tory challenges offend this concept. This amounts to no more than a misleading red herring as jurors have never been selected and employed in a truly random way. The Government originally stated that it would await the outcome of a survey by the Crown Prosecution Service on the use of the right to challenge. In the event, this proposal was introduced before the results of the survey were known.

The more important consideration is that a defendant should feel that he has had a fair trial. Such confidence will not be achieved if they are faced at trial as the hands of people who do not believe to be capable of appreciating properly a defendant’s case, and this is particularly so in cases concerning young black defendants. This proposal can only add to a diminishing respect for the administration of justice in this country.

Children

In Clause 87 the Government extend the duty of parents/ guardians to pay the fine to all their young offenders. The Government’s stated belief is that parents must be made more aware of their responsibility for their children’s behaviour. The provision pays insufficient regard to families who are unemployed and cannot be expected of adequate financial resources. The Government’s proposal is simply that the duty of parents be placed in legislation, without mention of the principles of compensation for the interest of the community.

References

1. Hansard, Standing Committee F, Criminal Justice Bill, Twenty-second sitting, pp. 638-639
2. Hansard, Standing Committee F, Criminal Justice Bill, Twenty-third sitting, p. 662, Mr Douglas Hoare
3. R v Criminal Injuries Compensation Board ex parte Thompson
Judicial Review: Scinding the Retreat?

This is the text of a talk which Stephen Sedley Q.C. gave to a public meeting of the Haldane Society in February 1987.

The Post-War Growth of Judicial Review

For the purposes of what I want to consider in this paper, it is useful to see the post-war growth of judicial review as a process of entrenchment of judicial control over ministerial discretion and judicial review. As a result, those administrations which have been perceived as threatening social or constitutional norms and values. In a series of post-war cases the courts put old doctrines to new uses, driving government out of practically all its traditional refuges. From the 1950s onwards, the Home Office in particular was enfranchised of judicial review. The Nuffield reforms of 1961 proclaimed there was no refuge in non-justiciability. Ridge v. Baldwin in 1964 protected no refuge behind closed doors; ex parte Lain in 1967, many years before GCIR, proclaimed no refuge in the royal prerogative; Assas law in 1989 proclaimed no refuge in privative clauses; the Bromley case in 1981 proclaimed that there was no refuge in an electoral mandate, at least for left of centre parties. In 1995, at last, the courts finally admitted there was to be no refuge in writ actions.

The conclusion is that the judicial review to intervene and control almost every aspect of national and local administration has coincided with a strong national government which has lasting significant and radical new characteristics. First, it has taken over the role of confining and controlling local government, pushing the courts into a secondary role. Secondly, it has adopted an aggressive mode of departmental and ministerial control, in a way that is unprecedented in constitutional and sometimes legal propriety. Thirdly, it has openly and increasingly resented judicial interference when its opponents have invoked principles of judicial review developed in different political circumstances and argued against its application. For part of the higher judiciary have not welcomed the task of policing a Conservative Government. It presents them with a series of invincible choices between expediency and consistency. The first-instance judges who take the Crown Office list are, at present anyway, ludicrously showing more interest in consistency than expediency.

In this situation the still growing volume of judicial review is being propelled by a series of new policies and doctrines designed to reduce the flow of Crown Office work and to enable the judges to become more selective about what they wish to have and to be the beneficiary of (substantive or substantive) and who loses. Their principal tool is discretion, whether direct or indirect.

FIRST, the law is trying in certain specific areas to sanction and immunise the discretion of the administrator or the body which is the effective intermediary between a policy and those who lose.

SECONDLY, the judges are trying to develop the concept of use and judicial discretion in order to refuse leave to appeal where there has been no case made out.

Sanctifying and Immunising the Discretion of the Administrator

The right of the administrative decision-maker to act on private prejudices is now an old and discredited judicial review. The Wednesbury case was itself a straightforward example of judicial refusal to interfere with a local authority's decision. As a ground of immunity from judicial review, which had not infringed any principles of administrative law. In relation to local government the hands-off principle is an important element of political pluralism, recognising that a decision of an elected local administrative body is not because minister or judges don't like it. It accrds to elected local authorities a broad band of political and administrative choice.

The principle does not apply with such obvious force to merely administrative decision-making. But the question whether what was done was arbitrary and irrational accords a large measure of fact-finding discretion to officials where the legislative provision gives it to them in the first place. It is, however, also maintaining the supervisory role of public law. What is happening, however, is that in significant cases of class the courts are adopting a non-interventionist policy amounting to abdication; but, I stress, only in certain fields.

In Pulhofer (1980) 2 WLR 259 not only did the House of Lords refuse to hold that existing accommodation must be adequate for decent human habitation before it excluded an applicant from rights under the Housing (Homeless Persons) Act; they insisted it was for the local authority, not the court, to judge what accommodation, even though the statute quite plainly did not make the local authority the judge of this as it did of other things. And Lord Brightman went on to say:

"On the facts of this case, it is in my opinion plain that the council were entitled to find that the applicants were not homeless for the purposes of the Homeless Persons Act because they had accommodation within the ordinary meaning of that expression.

My Lords, I am astonished at the prolific use of judicial review by the Government and local authorities in their functions under the Act of 1977. For the first time the local authority be the judge of fact. The Act absounds with the formula when, or if, the housing authority are satisfied as to this, or that, or have reason to believe, or, that. Although the action or inaction of a local authority is clearly susceptible to judicial review, it is not reasonable to suggest that in their powers or otherwise acted perversely, I think that great restraint should be exercised in giving leave to proceed to judicial review on a case allowing a desperate one, and the plight of the applicants in the present case commands the deepest sympathy. But it is not, in my judgment, appropriate that the remedy of judicial review, which is a discretionary remedy, should be made use of as a weapon to frustrate the intentions of local authorities under the Act save in the exceptional case.

I express the hope that there will be a leniencing in the nature of discretion, and in cases of hardship by the courts, which are also means of ensuring that there is now appeal for all their other housing problems.

A less publicised example of the way in which the appellate courts are starting to buck away from intervention while still purporting to maintain the grand principles of judicial control is that of the recent decision of ER 941, CA, which concerned the refusal of a student grant to a daughter of an engineer living abroad. Here the question was the ground of the decision of a local authority to refuse the grant, and the local authority's reasons were explicitly Westminster irrelevant, having to do entirely with what the council would get their money back from the government and not at all with relevant material circumstances. By a process of reasoning verging on the absurd, the Court of Appeal held that the mere say-so of the chairman that he had considered all the circumstances was enough to refuse the Wednesbury allegation. They proclaimed grandly that judicial review "in a process which finally conducted with all the cards face upwards on the table, and the vast majority of the cards will start in the authority's hands . What is happening is a reluctance to explain fully what has occurred and why" - and proceeded to let off the hook it was doing. The court was not, of course, saying that a certain degree of discretion was unenforceable when, however, it was lessening the weight of reasons to be given, to be given.

The desire to stifle immigration challenges was the reason for the abortive recent attempt to legislate against the legal status of a group of 200,000 illegal residents. The right to appeal a refusal of asylum is a substantial right. It happens) when, and in only in certain cases.

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In the case brought by the AMA against the Secretary of State for the Environment in 1985, Webster J found that unreasonable failure to consult the Industrial Tribunals just regulations had been breached, with the logical result that the regulations were unlawfully made. One has the feeling that the industrial tribunal would have found that this government was not going to pay any attention to anything the AMA said anyway and was not going to refuse the judge to strike down the regulations, and his willingness instead only to declare that there had been an error of judgment. The fact that public law is not concerned with the rights of applicants but with the abuse of power of which the applicant is unaware or interested is simply irrelevant in principle only to our locus, not to relief. What should the public have to observe an instrument when it has been invalidated? And can the judge’s refusal to quash it make any difference since the invalidity of the judgement in which they were made? If the abuse of power has now been made out against the Respondent authority?

In principle when an instrument is found to have been unlawfully made, the court can strike it down by certiorarit (with a condition when the principle would also operate). That is a case of abuse of power has been made out against the Respondent authority.

There is much else that deserves consideration in this field. There is the problem of Section 13 of the Trespass Act 1881 which in my opinion enshrines a principle of bad law, linked with what one can call the inverse principle of good law. That is to say that the abuse of power has to be a last resort on the point. The abuse of power has to be the need, the only way by which it is deprived or otherwise

The use of discretion in The Granting of Relief

Where the courts do not either respect or abdicate to the primary decision-maker the discretion to grant or refuse leave (which is clearly much affected by what I have been describing above) but also discretion to grant or refuse relief (which is always considerable), and a case of abuse of power has been made out against the Respondent authority.

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The White Paper

The Department of Economic Development (DED) claims that its proposals are an attempt to alleviate the problems facing the economy. The report presents a detailed analysis of the current situation and provides recommendations for future policy directions.

There is no conception of the enormity of the problem of discrimination. There is a recognition of the failure of the last ten years but no analysis of the causes. There is no attempt to combat discrimination — only the maintenance of the blinkered accommodation of the last ten years.

That 'affront and menace to society as a whole' was born in and has prospered upon such tolerance of intolerance as is manifested in the White Paper. This disgraceful document with its head in the sand approach to the problem of religious discrimination should be discarded by any decent government. But no doubt it will be the foundation of future government policy.

Nick Blake

The UK and Refugees:

Recent developments in the law relating to refugees are not only of concern to practitioners of immigration and human rights law; they are revealing about the general retreat from the principles of international and municipal concepts of 'employment equity' as is manifested in the White Paper.

Haldane members will familiar be with the government's advocacy of a new commission as an instrument to combat discrimination. The extension of quotas to the religious discrimination field is discussed as unacceptable and morally objectionable. No reference is made to other forms of affirmative action. Indeed the use of this term has 'confused associations and should be abandoned. A new concept of 'employment equity' is coined which does seem to lack a dynamic edge to it.

The sincerity of the DED's concern for sex and disability discrimination is unconcealed revealed in para. 6.34. Keeping religion separate, they say, from other forms of discrimination might be a reason why they have not asked a national conference to discuss the problem. But the DED's proposal is nothing more than a re-named version of the current agency. No clear proposals are put forward.

Two concrete proposals are extremely limited. A new statutory duty to comply with fair employment practice will only apply to the UK with no attempt to put into practice immigration control to the ticket office of the world. The point is, there is no such thing as a refugee visa. Only refugees who can physically present themselves fail to be considered under the convention. In many of the world's most troubled countries. Therefore, it is evident that these countries will not be able to arrive here without a visa. They will have to get a visa unless they lie. Although the government has insisted that the visa requirement will not be imposed on genuine refugees (in accordance with the convention) they have deprived genuine refugees of the opportunity of making out a case to the British authorities. It will presumably be up to the British government to determine who are genuine refugees, and doubtless the fact that they face discrimination will allow them to argue that they should be allowed to enter. The government has been able to adopt a careful and discriminate stance to accounts given to them. The government is fulfilling its obligations by building an insuperable barrier to prevent them from arriving. They are crying foul or abuse claim, if any actual measure to arrive.

The second limb of the plan is the speedy determination of claims and the early rejection of rejected claims. Although the government have to admit that mode of procedure, they are reluctant whether you are a refugee, you say it is relevant to deciding whether to remove you swiftly having rejected the claim. These absurdities are compounded by the authorisation of papers timing and contents mark it out as a crude attempt to pre-empt the Review in anticipation of severe criticism to the consultation. Once again the authors of this debate. A flavour of the whole paper can be gleaned from para. 2.3.8. Any concept of equality is manifestly rejected. The whole of these discrimination is characterized as being "usually sterile and inconclusive... as though there are instances of discrimination which contribute towards employment discrimination factors". The suggested very complex factors include the state of the economy, the changing level of taxes, tax threshold and state benefits (is it suggested paid in work shy?), gender differences (this presumably is intended as an example of what is not discriminatory).

Other factors include so-called high employment inertia. However their own survey shows that 90.6% of those interviewed intended to work.

According to para. 2.16- the `chill factor', Catholics apparently encourage employers to persist with discriminatory selection processes by their reluctance to apply for jobs with certain companies. Although no evidence is cited in support of this the inference to be drawn is that employers consider that the effort to recruit more widely would be futile.

The E.D.A. project as it now stands indeed. A 'multi-dimensional approach' is preferred — institutionally merging religious, gender and disability discrimination into the Employment Tribunals. "Conspicuousness" is characteristically cited as one advantage.

It might be the best that the most effective aspects of the three separate fields could be combined by bringing each up to the highest level. On the contrary, complaints will only be registered if the claimant is able to bring their case to a hearing before the Industrial Tribunal. Gender specific discrimination, in particular, is mentioned as an example of the powers of this new instrument that is not being used in the immigration appeals system to any significant extent. Even if it is a moot point just how important British has been to refugees, there has been, since 1981, a clear duty not to expect those who fear persecution on the grounds of race, religion, political opinion or membership of a social group and who present themselves to the authorities.

The British Approach to Refugees

The difficulties have been with the interpretation of words such as persecution; establishing a fair procedure for the recognition of refugees, the problem of persecution to an extent, national immigration control to the ticket office of the world. The point is, there is no such thing as a refugee visa. Only refugees who can physically present themselves fail to be considered under the convention. Many of the world's most troubled countries. Therefore, it is evident that these countries will not be able to arrive here without a visa. They will have to get a visa unless they lie. Although the government has insisted that the visa requirement will not be imposed on genuine refugees (in accordance with the convention) they have deprived genuine refugees of the opportunity of making out a case to the British authorities. It will presumably be up to the British government to determine who are genuine refugees, and doubtless the fact that they face discrimination will allow them to argue that they should be allowed to enter. The government has been able to adopt a careful and discriminate stance to accounts given to them. The government is fulfilling its obligations by building an insuperable barrier to prevent them from arriving. They are crying foul or abuse claim, if any actual measure to arrive.

Reference

Ever thought of Shopping your Landlord?

Camilla Palmer, a local authority solicitor, and Russell Campbell, a social reformer, Centre, talk to Keir Starmer for Socialist Lawyer about the role of local authorities in prosecuting and evicting landlords in the private sector.

KS: Camilla, to start with, could you briefly outline the powers that local authorities do have with respect to housing and tenants' rights?

CP: Local authorities do have a wide range of powers. For example, under the Protection from Eviction Act 1977 they have specific power to prosecute for illegal eviction and harassment, also there are powers under the Local Government Acts to prosecute if the local authority considers it expedient for the promotion or protection of the interests of tenants.

In addition local authorities also have power, quite apart from prosecuting, to make various 'orders' in relation to private rented accommodation. These include, for example, 'control orders', giving the local authority control of the property for a period of five years, or under the Housing Acts 'serving' orders requiring the landlord to carry out specific repairs.

KS: So, broadly speaking, it could be said that local authorities have dual powers in this area namely a prosecution which is a criminal prosecution power and an administrative power.

RC: The major cause for concern must be the problem of disobedience and here there is also a problem with the local authority powers that Camilla outlined. With the issue of notices there is very often delay built into the system. Frequently tenants can pursue local authorities to issue notice, often giving the landlord 90 days to repair and then there is no follow up. Very many Housing Act notices are served but few actually result in landlords doing work in default as they have the power to do.

As to harassment and illegal eviction we obviously have tried to act as quickly as possible. An injunction in the county court is a very effective civil remedy here. But in addition a swift response from the council's tenancy relations service, threatening criminal prosecution is a valuable deterrent to further harassment, because illegal eviction and harassment are crimes and penalties are quite severe. Bringing that knowledge home to landlords is often a good remedy in itself particularly with the smaller landlords.

KS: Are you really suggesting that at least in the short term the powers of local authorities to bring criminal proceedings are much more effective than their administrative powers?

RC: Very often yes, especially if the local authorities tenancy relations officer can visit the landlord straight away and simply explain the possibility of criminal prosecution in good faith. Such as Camilla, this can often be done on the same day that we receive a complaint from the tenant. In fact very few criminal prosecutions are actually brought and those that have been brought have not on the whole been very successful. It is really the threat of prosecution that is the main deterrent. I agree.

KS: Camilla, from the point of view of a local authority and given that Russell has outlined the effectiveness of the threat of criminal sanctions, are the powers that the local authorities have to prosecute adequate?

CP: I agree that it is a deterrent and I certainly would not suggest that the local authorities should not prosecute. I do think that there are huge problems. For example it usually taken a very long time for a case to come to court by which time the tenant has often left and will not be interested in giving evidence. And in addition fines the tenants point of view the only remedy is compensation which is generally fairly low whereas in civil proceedings more realistic damages are available as well as injunctions and orders to carry out repairs.

RC: It is generally accepted that we have seen a loosening of control over the last 5-7 years. What effect has this had on the protection of tenants' rights?

RC: There is no doubt that crime and criminal punishment have a lot more to do with crime. The public order law is a substitute for dealing with the longer term issues raised by disrepair and poor conditions.

CP: To add to that my experience is that magnates often think that we are in the wrong court when we try to prosecute the football stadium disasters in terms of deaths from fire in rented accommodation since 1979. The question really must be whether some of these deaths could have been avoided if local authority powers were strengthened and there were adequate resources for inspection.

KS: Camilla, Russell is suggesting that in some cases local authorities are not improving thoroughly. Is this just a question of inadequate resources?

CP: Well, it varies from authority to authority. But to take the example of homelessness, it is certain that Camdon has not got the resources to build new houses and homeless people have been forced to live in Bed and Breakfast accommodation and small hotels, with all the accompanying problems of bad conditions, overcrowding, and lack of suitable facilities for cooking etc.

KS: Over the last few years we have seen the emergence of tenant action groups which seem to lack a very clear idea of what they expect from local authorities as much as from landlords themselves.

CP: Yes, but Tenants' associations are generally most effective in the owner occupied property and in connection with this they certainly do make sometimes very effective representations to the local authority.

RC: I agree. Also if a particular type of action is successful by one Tenants' group others will identify and follow suit. And the Law Centre we refer on federations of tenants' associations in terms of their ability to get action. What is very important, is that when the council made about resources, is that tenants must in addition be able to have local authorities more accountable to them in terms of housing. This requires at least a change in the law making the duties of local authorities clearer. For example it is necessary to replace powers of inspection of property with duties to do, so, likewise in the serving of notices to repair. This will be non-effective if not accompanied by stronger enforcement measures. And, of course, it would mean more funding, but, in the long run, repairing existing houses is cheaper than replacement in a few years time. This requires more than anything a cooperation between the private property sector in the private sector in London still accounts to 27% of all the housing stock, often containing the elderly, ethnic minorities, and women, it is a fact that they should be taken very seriously by all social lawyers.

KS: Camilla, replacing powers with duties, more effective enforcement, and a major strategic rethink towards funding and resources. What effect would all this have on local authority policy and practice?

CP: I'm sure that Camden for example would welcome such changes, but it really does come back to this question of resources. There would need to be a huge increase in the number of Environmental Health Officers if a duty to inspect was introduced. On the other hand, does it seem generally more useful in local authorities that are not as progressive as Camden, since under the present powers they try to give an action against an action with as little as possible so as to protect private sector tenants are concerned.

KS: Just to pick up on one point that was established earlier, given that the threat of criminal prosecution is very effective in deterring landlords in harassment cases, would you say that it is better to concentrate on expanding and strengthening local authority powers to prosecute?

RC: I think that we have to consider strengthening both administrative and criminal functions. But it is a mistake to see increasing power of prosecution has in any way a substitute for dealing with the longer term issues raised by disrepair and poor conditions.

CP: To add to that my experience is that magnates often think that we are in the wrong court when we try to prosecute the football stadium disasters in terms of deaths from fire in rented accommodation since 1979. The question really must be whether some of these deaths could have been avoided if local authority powers were strengthened and there were adequate resources for inspection.

Both Camilla Palmer and Russell Campbell are speaking in a personal capacity and they do not represent any of those local authorities or any law centre.

Peter Thornton

Public Order Law

The New Act

"A popular entertainment given to the military by innocent bystanders." — Andrew Bierce's definition of a riot (Devils Dictionary, 1906) is adopted as the new definition in the Public Order Act 1986, despite its relevance to recent incidents. Nor is Martin Luther King's definition — 'A riot is at bottom the language of the unheard' — despite its relevance to inner city conflict in the 1960s.

The real definition of riot (s1) is much longer, much more cumbersome and generally lesser known. Like the police, we think that it does nothing for the causes of public disorder, nor for the rights of those who wish to protest peacefully. For example the riposte of 1980s simply give the police the right to hurt people to keep the peace. For example the police with Mrs Thatcher called 'a blank cheque', an unprecedented range of police powers of arrest, of control over assemblies (see their involvement in the Pollard Inquiry into Brixton). In short it lump together rioters, hooligans, pickets, anything with activity on the streets must be seen as an affront to public decency.

The Public Order Act 1986

The Public Order Act 1986 is the first major public order statute for fifty years. It extends police controls over processions and creates for the first time control over assemblies of more persons in a public place which is wholly or partly open to the air. It abolishes the common law offences of riot, rout, unlawful assembly and affray and replaces them with a new range of statutory offences: riot, violent disorder, affray, threatening behaviour etc and the controversial offence of disorderly conduct. It includes a new offence of criminal trespass as well as a new offence of contaminating or interfering with goods. It revises and expands the law against incitement to racial hatred and gives the courts a new power to exclude certain offenders from football matches.

The origins of the act

The last major public order statute, the Public Order Act 1936, was fashioned to control the fascist marches of the thirties. It imposed very severe prohibitions and created the exceptional power to ban them 'on reasonable apprehension of serious public disorder'. It emphasised the importance of ordering, abating, insulting words and behaviour etc. It prohibited quasi-military organisations and the wearing of uniforms in connection with political objects as displayed by the black shirts of the British Union of Fascists.
The 1986 Act represents the culmination of seven years' consideration of public order law, starting with a government review of public order law following the disturbances in the Summer of 1981. The Green Paper, Race, Hooliganism and Violence, from Green Paper to White Paper, from Red Line Red Lion Square to Rednar on Brixton, from Law Commission reports to the Popplewell Inquiry, from the Home Secretary and the Home Office, to the Home Secretary, Mrs Thatcher's idea of a peaceful demonstration.

No codification.

But the 1986 Act is not a codifying statute. Despite moves towards codification with the Police and Criminal Evidence Act 1984 and the Law Commission's report on the Codification of Public Order Law (1980), the Public Order Act 1986 is a pot-pourri of political and legal changes, leaving out many important aspects of public order law.

It does not deal with the preventive common law power to arrest for a breach of the peace, which remains at the heart of policing public order, although it removes the concept of breach of the peace from the statute book. It leaves uncurbed sections of the Public Order Act 1936 on uniformed and quasi-military constabularies, and bypasses enactments on the use of the highway and the much used police power to give directions under the Metropolitan Police Act 1947, as well as the increasing use of local and Ministry of Defence powers. It is therefore an incomplete codification of public order law, and the law on indoor public meetings and election meetings and a number of public order offences, including the carrying of offensive weapons. The main argument for codification, that clarification of laws makes them better known and understood, was rejected in favour of the arguments that the 1986 Act is an 'invitation to mischief', that it gives few complaints from shopkeepers, that the protest should be removed to the local park half a mile away and limited to 10 people for one hour. Any organiser who knowingly falls to comply with any of the conditions given, or to go to prison for up to three months. Anyone who takes the trouble and knows breach a condition can be fined up to £400.

Disorderly conduct

If Part I (Processions and Assemblies) reflects the worst of the Public Order Act 1986, there are other provisions to watch out for. Disorderly conduct, a mixture of thirty-five criminal offences, ranging from riot (s1) to possession of a firearm at a football match (Schi), Part I, para 9. Most of the most controversial and controversial are the disorderly conduct (s5). It penalises threatening, abusive or insulting words or behaviour insulting to any person's wife, or any person within the hearing or sight of a person likely to be caused harassment, alarm or distress. The maximum penalty is £500. All offences are aimed at 'minor acts of hooliganism', but it undoubtedly extends the criminal law into areas of annoyance, disturbance and inconvenience. There were a number of safeguards to propose to limit the scope of the offences, the behaviour should be such that it is likely to feel harassed, alarmed or distressed (not that it was merely likely to do so), the degree of harassment should be substantial, there was no need for a power of arrest. But these proposals were rejected. In particular the offence includes an unusual two-stage power of arrest, tatually similar to the arrest power in the repealed offence of 'sus' (being a suspected person).

A bad Act

This is just a foretaste of the Public Order Act 1986. If the flavour is already unpalatable, it will not be sweetened by examples. Two examples of the effects of the Act, 3, 11 and 12, are the requirement to give advance notice to the police of the marches and processions (s11) and the offence of interfering with law enforcement (s12). The only effect of this is to allow the police to have the Act (football exclusion orders) will not come into force until the autumn.

Restringing freedom of assembly

The central and most controversial part of the Act strikes at the very heart of an open democratic society. The object is to control demonstrations by providing the police with sweeping new powers to curtail the right of assembly. To a great extent this object is achieved by extending the 1936 Act powers (Part II). Whereas before the police could only order those who were on demonstrations if they were doing demonstrations and if the police reasonably feared serious public disorder, new conditions can also be imposed on street demonstrations, called assembles, and also the police fear 'serious disruption to the life of the community', serious damage to property or the intimidation of others.

This extends police controls in three areas. First, the non-moving demonstration is now included (s14) as well as marches and processions (s12). This covers open-air meetings. Second, the power to make possession orders has been extended — as long as the group is twenty or more persons (s16). Second, the police may now move people if they have moved away from the concept of public disorder towards something called disturbance to the life of the community. It is a curious kind of crime that the police as meaning inconvenience to traffic and 'normal daily life', and senior officers are in the process of drawing up guidelines. The conditions are as follows:

1. The police must have reasonable grounds to believe that a public meeting is likely to cause alarm or distress.
2. The police must have reasonable grounds to believe that the meeting is likely to cause disturbance to the community.
3. The police must have reasonable grounds to believe that the meeting is likely to cause serious damage to property or the intimidation of others.

The author is a practising barrister and past chairperson of the National Council for Civil Liberties. He has written and been a practising solicitor for over ten years. He has also been on the executive board of the Research and Training Institute and has written Financial training Publications Ltd. 1975.

CRIME BOOKS REVIEWED BY BLACK MASK

Like many other lawyers, I love crime novels. These books annuals are the best thing we have to write about crime writers, beginning perhaps with Dashiell Hammett and Raymond Chandler. They do not deal with any form of political challenge. The only people who are interested in the commune. Currently more left wing and fascinating and much more popular than ever before. Phillip (taken over by Allen and Unwind) has its own series of new crime novels, I hope to review one of these soon.

For the left wing criminal fascination practicians, a book like this is a delight. It is full of truth. Quite simply, for those of us in small groups or action, the police is constantly on our backs, our lives are constantly under threat. The book says, 'The maximum penalty is £500. An all-inclusive power is aimed at "minor acts of hooliganism", but it undoubtedly extends the criminal law into areas of annoyance, disturbance and inconvenience. There were a number of safeguards to propose to limit the scope of the offences, the behaviour should be such that it is likely to feel harassed, alarmed or distressed (not that it was merely likely to do so), the degree of harassment should be substantial, there was no need for a power of arrest. But these proposals were rejected. In particular the offence includes an unusual two-stage power of arrest, totally similar to the arrest power in the repealed offence of "sus" (being a suspected person).

A bad Act

This is just a foretaste of the Public Order Act 1986. If the flavour is already unpalatable, it will not be sweetened by examples. Two examples of the effects of the Act, s13, 11 and 12, are the requirement to give advance notice to the police of the marches and processions (s11) and the offence of interfering with law enforcement (s12). The only effect of this is to allow the police to have the Act (football exclusion orders) will not come into force until the autumn.

Restringing freedom of assembly

The central and most controversial part of the Act strikes at the very heart of an open democratic society. The object is to control demonstrations by providing the police with sweeping new powers to curtail the right of assembly. To a great extent this object is achieved by extending the 1936 Act powers (Part II). Whereas before the police could only order those who were on demonstrations if they were doing demonstrations and if the police reasonably feared serious public disorder, new conditions can also be imposed on street demonstrations, called assembles, and also the police fear 'serious disruption to the life of the community', serious damage to property or the intimidation of others.

This extends police controls in three areas. First, the non-moving demonstration is now included (s14) as well as marches and processions (s12). This covers open-air meetings. Second, the power to make possession orders has been extended — as long as the group is twenty or more persons (s16). Second, the police may now move people if they have moved away from the concept of public disorder towards something called disturbance to the life of the community. It is a curious kind of crime that the police as meaning inconvenience to traffic and 'normal daily life', and senior officers are in the process of drawing up guidelines. The conditions are as follows:

1. The police must have reasonable grounds to believe that a public meeting is likely to cause alarm or distress.
2. The police must have reasonable grounds to believe that the meeting is likely to cause disturbance to the community.
3. The police must have reasonable grounds to believe that the meeting is likely to cause serious damage to property or the intimidation of others.

The author is a practising barrister and past chairperson of the National Council for Civil Liberties. He has written and has been a practising solicitor for over ten years. He has also been on the executive board of the Research and Training Institute and has written Financial training Publications Ltd. 1975.
FLOUTING THE RULE OF LAW

Dear Colleague,

I have little doubt that the Executive Committee of our Society will be giving its attention to the manner in which the present Government and its various agencies, including the police, are so frequently flouting the “rule of law.”

The behaviour of the Special Branch, which does its utmost to breed a climate of fear, is sufficient to undermine the entire edifice of law and order. The recent disclosure that the Special Branch have been using phone taps without the knowledge of the law, which no one may know which chapter of this book is the most aimed at, clearly shows that the custodians of law and order have been collaborated in a conspiracy that is as despicable as it is dangerous. The attempt of the Government to muzzle the press and the freedom of speech is a clear example of the use of the law for the grossest of purposes.

Yours sincerely,

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The meaning of the Employment Laws is the same as the meaning of the law. They are designed to give effect to the right of the worker to be employed and to do work, and the right of the employer to employ and to do work.

Yours sincerely,

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