AIDS: The Legal Issues
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Incitement to Racial Hatred
by J. Dexter Dias

The Poll Tax: No Representation
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by Bill Bowring

Book Reviews and News
Haldane Society of Socialist Lawyers

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HALDANE NEWS

A Case to Answer?
The Society's Report on the policing of the Wapping dispute received publicity on TV, radio, newspapers and magazines. Nearly 2,000 copies have been sold through mail order and bookshops. Anyone who has still not purchased their copy can order one from BEN EMMERSON, 35, Wellington Street, London WC2. Price: £2.50 plus 50p p&p.

Day Courses for Trade Unions

The Employment Committee has launched a highly successful series of day courses for trade unionists. Topics so far have been Industrial Tribunal procedure and Public Order law in industrial disputes. For details of further courses contact FIONA L'ARBALESTIER at 83, Ward Point, 2, Hotspur Street, London SE11.

Bhopal Action Group

On 2nd December the Society hosted a meeting for American public interest lawyer, ROBERT HAGER who addressed British lawyers on the legal problems arising in the multi-plaintiff action by Bhopal disaster victims against Union Carbide. Unfortunately we only had 2 weeks in which to organise the meeting and so it was not possible to circulate all members with details of the date.

Local Government & Education

BILL BOWRING has taken on EC responsibility for Local Government issues. He can be contacted at 4, Verulam Buildings, Gray's Inn, London WC1. JANE RAMSEY has taken on EC responsibility for Education issues. She can be contacted at 49A Oakmead Road, London SW12.

Gay and Lesbian Rights Working Party

This group is now meeting regularly and is formulating Society policy on changes in legislation as they affect lesbians and gay men. Anyone interested in becoming involved should contact ADRIAN FULFORD at 14, Tooke Court, Cursitor Street, London WC2.

Alton Bill

Opposition to the Alton Bill is being organised by CO-ORD — an umbrella group sponsored by the Haldane Society. The Women's Sub-committee will be providing legal advice and support from lawyers. Anyone interested should contact BARBARA COHEN at 27, Churchill Road, London N15 1AN.

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Developments in Criminology

The Crime Subcommittee has been organizing a series of evening speaker meetings with academics and practitioners on the changing theories of criminology, for further details please contact PAM BRIGHTON at 111, Fortess Road, London NW5.

Employment Bill

A special subcommittee of the Employment Committee has drafted numerous amendments to the EMPLOYMENT BILL. It is in the Committee stage as we go to press. The drafts have been made available to the Labour Party's frontbench team on employment.

Annual General Meeting

The Annual General Meeting will be held on Saturday 7th May 1988 at 2.00 pm. Motions to be proposed at the AGM should be submitted in writing by a proposer and seconder, to Beverley Lang, 1, Dr Johnson's Blgs, Temple, London EC4 NO LATER THAN MONDAY 11th April. Written nominations for the position of Chair, Secretary and Treasurer and for the Executive Committee should be sent to Beverley Lang, 1, Dr Johnson's Blgs, Temple, London EC4 NO LATER THAN MONDAY 11th April. Each nomination should be accompanied by a written consent to nomination by the proposer and seconder. Nominations are invited to provide a biography (maximum 50 words).

Heather Williams

Report on the D.N. Fritt Memorial Lecture: Ken Livingstone

Ken Livingstone, the guest speaker at this year's lecture, chose to speak about the effects and repercussions of the U.S. stock market crash upon the rest of the world. The main theme of his speech was to urge socialists not to take a complacent view of recent events, as they signified part of a major re-structuring of the concentration of power in the world.

Ken Livingstone began by describing the world power structure that had existed since the second World War, when Britain, as a major economic power moved across the Atlantic to the U.S.A., then he highlighted the reasons for the U.S.A.'s decline. He described how a massive imbalance in world power had endured during the period 1945-1955. In 1945 the U.S.A. housed half the productive capacity of the world. It was militarily supreme, secure from effective military challenge from the Atlantic and able to organize the world as it chose. He explained how this power enabled the U.S. to create a system of international financial institutions, beneficial to and supportive of its own economic structure, and to intervene on a military level around the world where it chose.

However, the costs of defending such a world empire were prohibitive. He identified the turning point in American power as the Vietnam war when the U.S.A. found that the extent of its military commitments led to a severe economic crisis. This led to a new style of U.S. foreign policy typified by the cold war and détente. Meanwhile, the U.S. economy continued its gradual decline, its world domination diminishing. By the time the Reagan administration came to power, the U.S. economy was no longer able to support an arms programmes on the scale that Reagan envisaged. However, the president had succeeded in financing such a policy by persuading Britain which had to bear the effects of the crash with a substantially eroded manufacturing base. He predicted that the poorest, weakest countries of the third world were offered the most as the economic burdens were shifted downward on them.

Lastly, Ken Livingstone pictured a long term scenario for the future in which no superpower emerged as dominant and highly influential. Predictions of power differences forewent. He predicted that a weakened U.S.A. would no longer be able to bring the economic logic of its new regimes in the third world. He acknowledged, however, that the U.S. would not relinquish its spheres of military and political influence. That could lead to the short term to conflict and chaos before the emergence of such regimes.

An Assessment

Any assessment of the strength of this analysis is difficult because of its sheer generality. That is a criticism in itself. Clearly, we must consider from the economic perspective the economic logic of the two dominant regimes between Eastern and Western Europe, and the de-nuclearisation of Europe, is a scenario that the left in Britain should be prepared for.

To some extent, Ken Livingstone's analysis is weakened by the number of assumptions upon which it rests. It assumes a very direct correlation between economic, military and political power, so that a decline in the former will lead to a swift and significant reduction in the latter. It also presupposes that the reaction of the U.S.A. to its economic difficulties will be substantial cutbacks in military spending. It may be, at least in the short-term, that the Reagan administration will attempt to reduce the budget deficit by other measures such as increased taxation, direct or indirect, and/or greater cutbacks in the domestic spending programme. Moreover, the extent to which the U.S. government will be able to reduce its economic influence over Western Europe by choice is not clear. Kenya's analysis lies in its broad perspective that it promotes rather than in the accuracy of all its component parts.

Bill Bowring

The Poll Tax: No Representation Without Taxation?

Immedaitely after the last election Margaret Thatcher declared her intention to 'deal' with the inner cities, and, specifically, to deal with the problem of socialism from local government.

The previous four years had seen the start of an unalloyed but not on the structure of local finance, through rather the local and personal tax generally. The government of London and Liverpool who dared to attempt to fail their electoral mandates. That punitive expedition continues as the government will press other Local Government authorities to introduce the measure. It is reported that Labour councillors stand trial. The government has decided to press on with the written report, declaring that the system is one in which everyone who can vote in local elections, and those who use local services, make a contribution to council spending.

On 17th November 1987 the government announced that for England and Wales (except Inner London and Waltham Forest) the poll tax will be introduced in one go on 1st April 1990; in Scotland there will be overnight introduction on 1st April 1990. Following to The Independent on 18th November 1987, Tory backbenchers, following the lead of the Tory Party Conference, won their case, by arguing that phasing in of the tax would confuse voters and prevent local spending Tory councils from gaining any political advantage from the change before the next General Election. Only five months ago the Cabinet agreed on a four-year phasing (now to be enjoyed only by Inner London and Waltham Forest). A vast number of people (Cund. 9714) of January 1986 proposed ten years!

Four taxes in one

The poll tax will in fact be four taxes; a 'personal' charge—a flat rate sum to be paid by everyone over 18; a 'standard' charge to be paid by owners and tenants of second homes in addition to council poll tax; a 'collective' charge to be paid by owners or landlords on behalf of residents of multi-occupied or communal accommodation; and the 'unhelpful rate' charge to be paid by the poorest 20% of households in each council area, to be collected by local government, with the proceeds redistributed to help poorer council wards. The poll tax will be as expensive to collect as rates; and while rates evasion is currently 1%, poll tax evasion is likely to exceed 10%. Although it will not (as far as is known) be necessary to prove payment of the tax in order to vote, registration for the tax will be based on the electoral register. It is expected that 7.6% of the eligible population are not on the register nationally; the figure in London is about 15.2%. All the above figures are from the leaflet Replacing the Rates issued by the Association of Metropolitan Authorities (AMA) to help the local authorities to calculate the figures so far indicated, according to the AMA leaflet, a 91% increase in Kennington is reported; 56% in Wandsworth; 42% in Croydon; and 38% in Bromley.

In it is difficult to see those responsible for enforcement could obtain the information they will need without intrusive door-to-door canvassing

Local government autonomy will be particularly threatened by the fact that councils (and, of course, those who elect them) will lose the ability to decide their own levels of expenditure, since about 80% of income will come from central government, as against 50%-60% at present. Thus a 1% increase in expenditure over government prescriptions will mean a 4% increase in poll tax.

Another Lawyers' Paradise

All of this may give rise to some lawyers at the local government bar, and will no doubt give rise to much litigation generally. But opponents of the poll tax include the Unite Here, United Public Workers, Transport and Retailers' Associations (which said it will be 'administratively complex and administratively unfair to a large proportion of the potential payers and benefiting undoubtedly those who are in no need of any financial help whatsoever') and the public service unions. The president of the General of the Institute of Directors and former head of the government's Policy Unit. It must be of grave concern to socialist lawyers that the government should seek for the first time to tax many who have so far been driven to pay tax; and that electors should be so blatantly punished for their choice of party.

Threat to Civil Liberties

The threat to civil liberties is equally worrying. The NCCL has recently published a Briefing (No 7), dated October 1987, entitled 'The Privacy Implications of the Poll Tax'.
have to be a second, secret file, containing the notes, anecdotes and suspicions the authority have about individuals, to assist them in detecting those evading. The CIPFA report 'Preparation of a Specification of User Requirements for the System of Community Charge in Scotland — A Summary' (August 1987) said the public register will need extensive support files including a domestic property register, a record of those fully or partially exempt from payment of community charge, and other records. 

Although people will have the right to see their entry in the register this right will not extend to the file behind it. If this is a manual file, it is not covered by the Data Protection Act. If it is to be computerised, access could be denied on the ground that the file concerns the collection of a tax. 

During the Committee stage of the Scottish Bill, in January and February 1987, the Minister said: 'The main point where the registration officer might look for information would be other local authority services. I mentioned the housing department; applications for bus pass, museum tickets for local authority facilities, library tickets, and applications for housing improvement grants. 

Earlier Michael Asensee had said: 'It is common sense that requires to solicitors about who bought houses and so on will be part and parcel of the information that he (the registration officer) collects to establish who is liable for the community charge.' The CIPFA report suggests that: rent rolls; housing waiting lists; registers of births deaths and marriages; education authority records; planning and building control records; gas, electricity and telephone records; local authority payroll records; insurance claims; government between the need for efficiency and respect for the privacy of the individual. The government's assurances, says NCCL, are questionable. 

‘Encouraging’ Registration 

In their report 'Community Charge/Poll Tax, The Facts', September 1987, the Rating and Valuation Association and Association of District Council Treasurers indicated their belief that ‘millions of people would attempt to evade the poll tax. In consequence, a substantial section of the local community will not register on the electoral roll and will be disenfranchised.

Further, the report suggests that an ‘expensive and intrusive inspectorate’ will be needed to track the ‘missing million’ or the figures feared to be living in inner-city areas where the turnover of people will be much higher than average. NCCL contends that it is difficult to see how those responsible for enforcement could obtain the information they will need without intrusive door-to-door canvassing.

The Green Paper suggested that there would be a ‘great deal of scope’ for schemes ‘to encourage voluntary registration’ through the administration of local services, for example by issuing membership cards or season tickets with preference rates for leisure facilities, public transport or adult education. Such systems would also enable those providing services to check whether someone was registered and take steps to register those who were not.

The seventh principle of the Data Protection Act states that the subject of a personal file should have the right to inspect that file, and where appropriate, have information in it corrected or erased. The Scottish legislature provides for the individual to have access to and a copy of the whole of the relevant entry in the register, but no right to correct the entry, or to sue for loss where information is provided. Should a couple be jointly and severally liable for tax, as the Scottish bill provides? Does the minister propose to see an entry relating to the other; the implications for battered wives are clear.

Local press; local estate agents; and private data sources like ‘credits’ which provide personal information to their members; or all be used to provide information. Indeed, the report suggests a ‘mutual exchange of information.’

When John Maxton MP asked ‘Will dustmen be asked to provide information that the amount of rubbish collected from a household appears to have increased?’ it may be supposed that another adult is living in the house?, the Minister said: ‘That is a good idea’. (Col 882). Elsewhere, (Col 1030), Michael Ancram said: ‘I am sure that local authorities will be aware of the bounds within which a registration officer must work and will not be prepared to volunteer information that is not necessary for the registration process’. As long ago as 1978, the Lindsop Committee was concerned at the conflict in local information, and pointed out that the Scottish data protection law provides for the individual to have access to and a copy of the whole of the relevant entry in the register, but no right to correct the entry, or to sue for loss where information is provided. Should a couple be jointly and severally liable for tax, as the Scottish bill provides? Does the minister propose to see an entry relating to the other; the implications for battered wives are clear.

Implementation of the poll tax proposals will mean the creation for the NCCL, of a complaint list of the names and addresses of the whole adult population. The registration officer must in each case in the list will be kept separately by each local authority. But since many people move between one authority and another, there will be strong argument for making the data in the registers compatible to facilitate transfers of information. CIPFA therefore recommend the allocation to everyone of a ‘personal identifier’ recording of surname, initials, date and place of birth. In a letter to the Guardian of 11th September 1987, CIPFA stressed that this was not a recommendation for a national personal identifier. But many people regard a national identity card system as the inevitable consequences of the poll tax.

NCCL makes the following recommendations:

1. There should be an undertaking, backed by legislation, that no universal personal identifier or national data base will be allowed to develop.
2. There should be severe restrictions on the kinds of personal information which can be transferred, with a monitoring system to ensure strict controls on transfer.
3. The community charge should not be exempt from registering any transfers of information under the Data Protection Act, nor from any rights of individual access to their own files.
4. The electoral register should be specifically excluded from the proposals.
5. As soon as one member of a couple who are jointly liable claims that he/she is now separated from the other person, that person should no longer be allowed access to his/her entry in the Register.
6. It should set a code of practice for those responsible for enforcement.
7. There should be penalties for unauthorized access to personal data.

All of these are worthy of support — within the context of absolute opposition to the proposal. It is understood that at present the government is consulting local authorities only on the detail of implementation.

The poll law proposals are entirely consistent with government legislation on trade unions, and with the various other recent laws designed to extend the administrative capacity of justice in general. The effect will be without doubt to disenfranchise a large part of the population; to augment the growing army of spies and snipers; and to extend still further the role of criminal and quasi-criminal law into the democratic process.

Big Sister

In English law the time limit for legal abortions is neither 28 weeks nor 'more contentiously viabilitity', but the capacity for bearing as a priori established by the Infant Life (Preservation) Act 1929, and preserved by section 5(1) of the Abortion Act 1967. David Alton’s Private Member’s Bill proposes to make abortion after 18 weeks of pregnancy illegal. The Bill will override section 5(2) of the 1929 Act that 28 weeks’ pregnancy is prima facie proof that the foetus is capable of being born alive and, unless the facts show otherwise, not so capable before that time.

The combined effect of the new Bill and the existing 1967 Act will be that, unless a woman’s life is at stake, any medical termination of a pregnancy which has lasted 18 weeks or more constitutes a criminal offence punishable by life imprisonment.

The Abortion Act 1967 legalised a woman’s right to have an abortion in as much as it provided a defence to prosecution under section 58 of the Offences Against the Person Act 1961. The new Bill is an attempt, using the technological advances of medical science, to undermine that right. If enacted, thousands of women will find themselves in the position of being unable to receive involuntary motherhood.

Of the 8,276 abortions carried out on women between the ages 15 and 19 in 1996, 333 were on women under the age of 16, and 2,492 on women between the ages 17 and 19. The reasons for the abortion differed: from damage due to drugs, abnormality, disease of the mother, hereditary disease, chromosomal abnormality in the foetus, abnormality affecting the management of the mother, malformation, rubella or ‘social reasons’.

In Parliament today, there are two distinct camps on the abortion issue: the ‘pro-life’s lobby whose religious affinities are exercised in opposition to abortion, and a civil libertarian group supporting the principle of a woman’s right to choose.

The abortion law protects women’s fertility rights as well as their individual welfare; these issues cannot be dealt with successfully under the concept of criminal liability.

Legislative History

From the gestation-focused precepts of canon law the English common law evolved criminal sanctions against the procurement of abortion. By the 13th century, abortion of a woman ‘quick with child’ was a misdemeanour unless it resulted in the death of the mother, in which case it was a felony and punishable by death.

The common law was changed in 1803 by an Act which made it a misdemeanour for any person to cause an abortion on a woman who was not, or was not proved to be, quick with child. As the law evolved during the 19th century, the general criminalising effect, with the under common law and earlier statutes, was altered to the ‘with child’ stage found in subsequent legislation and normally taken to mean viability in a way that was contentiously viabilitity.

The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy.

The offences were abolished by the Sex Discrimination Act 1975. The 1975 Act established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy. The Offences Against the Person Act 1961 established contentiously viabilitity for a woman of her own pregnancy.
The Infant Life (Preservation) Act 1929, which does not extend to Scotland, did not cover the difficulty of preventing the abortion of a child capable of being born alive. The Act provided a defence to those who caused or induced abortion only in circumstances where the women were in danger of death or had medical conditions which arose solely to save the life of the mother. However, the Act left serious doubts about the circumstances in which the operation was lawfully permitted.

It was not until an abortion was carried out on a 14-year-old girl who had been raped by soldiers in 1938 that changes in public policy became possible. The man who carried out the abortion, Alec Bourne, a gynaecologist and member of the Abortion Reform League (ARL) was charged under the 1861 Act. At first instance Macquisten J held that 'unlawfully' in section 58 required the prosecution to show that the operation was done not to save the life or health (physical or mental) of the woman. As Bourne was acquitted by the jury, no appeal was possible to test this ruling.

Parliament in the 1930s failed to reform abortion law. This was despite the decision of the court and recommendations made by the ALRA that legislation be amended to allow the performance of the operation for the purpose of saving the life of the pregnant woman.

There were further unsuccessful attempts in 1954 and 1961. It was not until later and the thalidomide tragedy that consideration was given to the plight of women carrying fetuses which were malformed. An independent medical examination was required to allow abortion for congenital defects.

In 1962 Joseph Reeves MP unsuccessfully attempted to introduce a Private Member's Bill to legalise abortion. There were further unsuccessful attempts in 1964 and 1965. It was not until later and the thalidomide tragedy that consideration was given to the plight of women carrying fetuses which were malformed. An independent medical examination was required to allow abortion for congenital defects.

In 1967 the Abortion Act was passed. This Act made it an offence to terminate a pregnancy for any reason, with the exception of the cases outlined above.

At present abortion consists in acting upon a woman with intent to prevent development of a fertilized ovum implanted in the womb, whereas contraception consists in acting with intent to prevent such implantation. In the former case abortion is a serious and illegal act, whereas contraception is treated as a regular method of birth control, for example, contraceptive suppositories may induce menstruation close to or after the time of implantation. Analysed in the light of the advances of medical science the suggested 18 week limit is an arbitrary one.

The interaction of contraception and abortion procedures should be clearly directed to the protection of women's health, and not to their commercial exploitation in the interests of pharmacy, and not criminal law. Anyone concerned to promote equal opportunities for women must also be concerned to ensure that the allocation and distribution of health resources meets women's health needs. Abortion is one of those needs.

The debate surrounding the Abortion Bill may change the future of abortion in this country. Women most in need are those most likely to be the victims. The Bill should be opposed.

References

Linda Webster and Philleps Sands

AIDS: THE LEGAL ISSUES

The recent case of X v Y and another1 appears to be the first in which a legal issue raised by Acquired Immune Deficiency Syndrome (AIDS) has received the attention of an English court. Rose J held that the public interest did not justify a newspaper publishing or using information disclosing the identity of a patient with AIDS, in breach of contract and an admitted duty of confidence, in order to identify practicing doctors who have been treated for AIDS or who have been identified as being under treatment for AIDS.

Issues raised by AIDS are likely to receive increasing attention in future. It is evident that it is in the public interest to protect the potential of the English legal system to deal with these issues and look at the practice in the United States which makes the whole subject of the practice of AIDS and the ways of coming to grips with AIDS-related legal issues.

6. In the UK the rights of people with AIDS are better protected by education than by law.

AIDS is usually fatal and there is no known cure. As of September 1987, over 25% of American men and 10% of the United Kingdom had been diagnosed with AIDS. It occurs when a person with a underlying disturbance in immune function, caused by infection with the Human Immunodeficiency Virus ("HIV"), develops an opportunistic infection which his or her body is unable to fight off. Many more people suffer from a related illness called AIDS-Related Complex ("ARC"). It has been estimated that between 60,000 and 100,000 people already infected with HIV are living with AIDS, and that the number will dramatically increase in the next few years.

The tests currently available only detect the antibodies of individuals who have been infected with the virus, that a person has been exposed to the virus and is apparently healthy, and that it has been devised which shows present infection by the virus.

According to Dari Harris of the Legal Services Group of the Terrence Higgins Trust, which counsels people with AIDS, the number of legal enquiries he has received has risen greatly over the last two years and now stand at well over 100 a month. The majority of these are from people with AIDS, or who are associated with people with AIDS, or their families. He estimates that it is principally motivated by the general difficulty of confidentiality rather than a desire for direct medical protection to people with AIDS who wish to be protected.

The role in the UK will be limited. The English legal system is not traditionally guarantied to the protection of individual rights, and in particular to the prohibition of discrimination against certain minority groups. Existing statutory prohibitions on discrimination do not apply to people with AIDS and there is no right to privacy under the English common law. There are significant problems in framing legal actions and eligibility for Legal Aid is limited. There is the great problem of putting people, some of whom are seriously ill and wish to be protected from the public eye, through the trauma of a public court action. Further there is a real group of AIDS patients who are too ill to take part in the controversy. Dr. John Markers and the Board of the Medical Royal College, have estimated that 15–20% of the people who have AIDS are "too ill" to carry on their cases.

Linda Webster and Philleps Sands

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schools would all be unconstitutional under US law. AIDS-related litigation in the US, both at Federal and State level, is increasing rapidly. No focus on this litigation in two areas, because we believe that it provides the reader with the possible options for development and discussion in the context of AIDS-related litigation in the UK.

AIDS and discrimination in the workplace

Public knowledge that an individual is suffering from AIDS or ARC will frequently result in discrimination in the workplace. People with AIDS who suffer employment discrimination in the UK have turned to the legal system to seek protection. A number of decisions are pending and in cases which have already been decided the question of whether or not an individual has been discriminated against in the workplace because she or he is suffering from AIDS or ARC has been definitively settled at both Federal and State level as a ‘handicap’ within the meaning of the Rehabilitation Act 1973. This is the first step in determining whether or not employment discrimination has occurred, since there are various laws in the US which prohibit discrimination against handicapped individuals — laws which have no counterpart in the UK.

In the UK the Disabled Persons (Employment) Act 1944 as amended by the 1968 Act, places a duty on employers with 20 or more workers to employ ‘registered disabled people’ (3% of the employer’s total workforce). It is not an offence to fail to obey the quota, but in this situation the employer has a further duty to engage suitable disabled people if such vacancies arise.1 This is as far as it goes. There is therefore no effective UK legislation protecting disabled people from discrimination in the workplace. Developments in the US make it clear that the lack of legal protection for disabled people in the UK may ultimately affect the legal position of those suffering from AIDS and ARC.

Until the US Supreme Court decision on 3rd March 1987 in the case of Arline v. Vilonia School District, the most significant opinion on whether AIDS is a handicap was a Memorandum issued by the US Department of Justice in June 1984.2 The Memorandum explored the question of whether AIDS is a handicap within the meaning of Section 501 of the Rehabilitation Act which prohibits discrimination against individuals in programmes conducted or funded by Federal agencies. The following statutory definition of handicapped individuals applies by Section 504:

‘Any person who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.’

Applying this definition the Memorandum concluded that although the disabling effects of AIDS or ARC may be a substantial limitation on major life activities and therefore a handicap, the ability to transmit the disease to others was not a protected characteristic under Section 504. Under this reasoning an employer could lawfully discriminate against a person with AIDS or ARC if it did so out of unfounded fear of the disease. The Memorandum led the US to conclude that in the future litigation in this area will focus on whether contagiousness, without more, qualifies as an impairment.

There has to date been only one Federal Court decision on the specific issue of whether AIDS is a handicap. In Arline v. Vilonia School District, the Federal District Court granted a motion for a preliminary injunction filed on behalf of a child with AIDS who was prohibited from attending school. The court held that AIDS is a protected handicap under Section 504 because there was sufficient evidence to show that the child’s presence in the class room created a risk that the disease would be transmitted. In addition to Federal law several US States and localities have declared discrimination against individuals with AIDS unlawful. Some city governments — San Francisco, Los Angeles and Philadelphia — have enacted special ordinances to prohibit discrimination based on AIDS in areas such as housing, public accommodation, educational institutions and city facilities. In the UK, the enactment of such progressive legislation by central government is almost incomprehensible.

Most States and many local jurisdictions already prohibit discrimination against handicapped individuals under state or local anti-discrimination legislation. Several State Court decisions have also held that AIDS is a handicap under such statutes. In Leckie v. Board of Education,3 a governors aide alleging AIDS discrimination under State handicap laws was served with a notice of hearing. After the hearing was cancelled and subsequently fired after his room mate was admitted to hospital for treatment of AIDS and he reportedly refused the hospital’s request to take an AIDS test. Charged that the hospital discriminated against him on the grounds of a perceived fear that he was contagious, this case may be the first to characterize the Department’s action under Section 504 as an illegal form of discrimination because of whether he was suffering from AIDS or suffered from a related condition.

Privacy, Sodomy Law and AIDS

In 1982 a Mr Baker sought to have Texas’s sodomy statute, which criminalises sexual acts between homosexuals, declared unconstitutional. Mr Baker had been convicted of sodomy in 1980 in Texas. He subsequently challenged the constitutionality of the Texas statute on the basis of whether he was a constitutional right to privacy and equal protection. The District Court extended the test which had previously only been held to apply to marital sex and contraceptive choice — to private homosexual conduct between consenting adults. The court then reviewed the statute and applied what is known as the rational relation test to discover whether it served a compelling interest to justify limiting the right to privacy. The rational relation test requires that the challenged statute be unrelated to a legitimate State interest in order for it to be upheld unconstitutional. The court held that the State is justified in regulating rape and child molestation but that any interest does not extend to private consensual sexual conduct.

In reaching its decision the District Court considered and rejected the argument that the spread of AIDS justified the Texas sodomy statute. The court analysed the position of AIDS in relation to the sodomy statute and came to the conclusion that the statute would only grossly approximate to the goal of preventing the spread of AIDS. The court held that:

1. the statute is under-inclusive because it prohibits the sexual acts of only one high risk group and ignores haemophiliacs and needle sharers; and
2. the statute is over-inclusive because it prohibits the sexual acts of all homosexuals regardless of whether they have AIDS or ARC.

On appeal the 5th Circuit Court reversed the decision of the District Court. The court stated that this was ‘corrected’ as far as related to a legitimate State interest in implementing morality and that implementing morality is a permissible State interest. The 5th Circuit upheld the constitutionality of the sodomy statute on different grounds. As the District court decision remains an important step in recognizing the prevention of AIDS does not justify widespread limitations on homosexual conduct. The 5th Circuit Court held that sodomy statute morality grounds and therefore did not address the AIDS issue.

The Circuit Court stated that it would invalidate legislation under its rational relation test only if that legislation serves no legitimate purpose unrelated to the pursuit of a legitimate State goal.4 As Spiegel points out in an article,5 because some of the conduct criminalised by the Sodomy statute and the Circuit Court may be concluded under the highly ‘deferramental test’ used in Baker that the prevention of AIDS justified the Texas sodomy statute. The Circuit Court’s decision indicates that the courts in future may accept an AIDS related justification for the prevention of AIDS related deferamental test similar to that used by the Baker Circuit Court. If so, any sodomy statutes enacted to prevent the spread of AIDS would be upheld.

Conclusion

We seriously doubt whether English law can adequately prevent discrimination against people with AIDS from the discriminations. Not only are they undoubtedly experiencing, both in the public and private sector, from an invasion of their right to privacy. In our view which is not shared by the Commission, it might be possible for the British courts to invoke an analogous right before an industrial tribunal that to dismiss someone because he or she has AIDS amounts to unfair dismissal. This view has been expressed by the Department of Employment. We do not believe that this is sufficient to prevent discrimination in the workplace, or indeed elsewhere, particularly as the likely remedy of compensa

References

1. Texas Law Report, 11th November 1987
4. See Mapperworth Services Commission, Codes of Practice on the Employment of Disabled People
5. 55 U.S.L.W. 4245 (US March 1987)
7. 29 USC 706 (7) (6) (1983)
9. See 790 F.2d 289 (5th Cir. 1986).
June Tweedie

The CPS: On The Front Line

10.20 am, Court 2, Horseborough Corner Magistrates Court. 50 defendants subjected to the Proces of Justice. The noticeboard is engulfed by new arrivals, leaving no space for the close-type, users, unfamilliar with the system, mill around, anxious and bewildered. Their legal representatives futilely back and forth, attempting to prepare for the few short minutes of court time allocated to each case.

Ten minutes to go before kick-off and something is missing. What are the prosecution's objections to bail? How strong is that prosecution evidence? Have those committal papers been prepared? These questions you may think, but with no answers forthcoming: Where is the prosecution?!

In some cases it is possible to 'go through the gaoler's office, out the back, down the steps, along to the next building, turn right and it's the third on the left' in order to find this elusive but essential bearer of good, bad or indifferent tidings. All too often, as at Horseborough Corner this morning, there will be a collective twiddling of thumbs, until 10.25 am — five short minutes before the usher's stentiment. Court room, with meaningful discussion. However, our intrepid lawyer today still has five whole minutes to put that alternative plea for consideration, to find out just how strongly bail is opposed by experienced agents.

And lo! in the distance appears a pile of white files with legs staggering beneath; a bipolar filing cabinet. It makes a clash, another two months hence — oh shame! Without cross-examination of the witness and with hastily prepared submissions on the new charges. In the light of such a Hobson's choice, the committal went ahead. To add insult to injury, it then transpired that the CPS had no supporting witness, or superiors... A staidigator might well have dismissed the charges as a result, provoking the CPS into examining their insufficiency. As it was, the lay bench committed the case and the CPS came off none the worse.

Further examples of a lack of oversight by the CPS abound. They include charging defendants held in custody with abandoning, having been refused summary trial without even prima facie evidence. Two juvenilees were recently charged with theft of a car radio. There were no admissions and no lesser sentence. The solicitors involved had repeatedly pointed out these inadequacies but nothing was done until the trial date: the charge was then dropped. The police officers had not appreciated the legal problems but, more seriously, neither had the CPS. Expensive court time and legal costs were unnecessarily thrown away.

The CPS Agent

For those on the front line as agents of the CPS, life can be no less frustrating. Agents are told not to accept pleas to lesser charges, and yet they are required to remand the case or to phone the CPS offices. Invariably the answer is 'Well it is taken by someone with knowledge of the case, and the response is 'You're at court with the file. You decide.' The hapless agents' decision is then challenged on return to base. Catch 22.

The inexperienced agent is at times under pressure from police officers at court. The presence of even middle-ranking officers in the courtroom can be intimidating to the young lawyer recently out of college. Dogma which the CPS uses as a basis for their oppositions of agents as to the conduct of their case can be hard to withstand on the day. A recent example involved two prosecution witnesses admitting under cross-

examination to concocting their evidence; the officers were adamant that the show should go on. The agent in question did in fact refuse to continue, but how many times do such trials proceed, due to the agent's inexperience in the face of more experienced litigants. In the end, the result will be an acquittal but, again, court time is wasted and the CPS is compromised.

Magistrates themselves can be exasperated by the CPS. An unfortunate agent was recently 'backed' by the magistrates during a defence application. He strongly criticised for not knowing the individual cases and reading verbatim from the file. At a recent summary trial the prosecutor had brought in the CPS file, a mere collection but the agent apparently knew nothing about it.

Heavy Demands

It is not the intention of this article to criticise the very existence of the CPS. A prosecution service independent of the police is essential. However, we must ask ourselves the question: Is it worth the price we pay?

Jeremy Smith

The Education Bill — Up of State Education

Some economic theorists claim to discern a cyclical pattern of recession which recurs approximately every 60 years. Education reform analysts have now discovered a new 20th century education cycle of more frequent quantification: major new legislation is introduced every 42-44 years. 

If implemented, these measures will change the face of the educational map for at least a generation

The 1944 Act established a set of fundamental (if hardly enforceable) statutory duties. The Minister of Education — the Secretary of State — is required to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose. LEAs, for their part, were given the duty, by section 7, "to carry into effect the policy of the educational development of the community by securing that efficient education during the primary, secondary and higher education ages was given and maintained... and to meet the needs of the population of their area'.

More practically, the LEA is said to have a duty to ensure that education remains at all levels and that the results are of a certain standard. In other words, the LEA is said to have a duty to secure the availability of suitable full-time primary and secondary education and of schools sufficient in number, character and equipment to provide an appropriate variety of instruction and training. Modern further education is based on the 1944 Act's provisions (some of which have never been brought into force). For the return of the primary and secondary sector is moreover touched upon, whilst the relevance of the higher education sector, which involved copious statutory attention, appropriate to its then contentious character. School governing bodies were required, but their functions scarcely received statutory attention or definition.

Even more radically, the Bill changes the face of the educational map for at least a generation. In their totality these provisions seek to demote LEAs to a mere back-up administrative role. As with the Housing Bill, the
The National Curriculum

The 1987 Bill breaks new historic ground in the UK by statutorily requiring certain specified subjects to form a major part of the curriculum of all maintained schools. It is based on the teaching of Welsh, the required curriculum comprises 'core' subjects (mathematics, English, science), and 'foundation' subjects (history, geography, technology, music, art, physical education and, from the age of 12, a modern foreign language) specified in an order of the Secretary of State. For each of the four key stages of schooling, the curriculum must specify the 'knowledge, skills and understanding' which pupils 'of different abilities and maturities' are expected to have by the end of each stage. Also to be specified are the 'matters, skills and processes' comprising 'programmes of study' which are required to be taught in each stage, together with the arrangements for assessing pupils at or near the end of each stage in relation to attainment targets. The Secretary of State may amend the list of core and foundation subjects, and the key stages (i.e. in the Bill are up to 7, 8-11, 12-14, 15 to end of compulsory schooling). The provisions of the national curriculum are laid down by the Secretary of State through Order. Each LEA and governing body has a duty to secure the implementation of the national curriculum. The Bill also establishes a group by and to advise the Secretary of State. By clause 15, each LEA is required to make arrangements for dealing with complaints that the national curriculum is not being duly implemented, anyone aggrieved may thereafter make formal complaint to the Secretary of State.

Admission of Pupils

Under existing law, as part of the process of planning educational provision within their area, LEAs have power to limit intake of pupils into schools maintained by them. The Bill provides for this limit to be removed, requiring schools to admit pupils up to the 'relevant standard number', in effect the physical capacity of the school. This will have the consequence of filling 'popular' schools to capacity, leaving less popular schools with smaller intakes, thereby undermining their viability.

Delegated Financial Management

The Bill requires all LEAs to prepare schemes, to be submitted to the Secretary of State, for allocating to each maintained school their 'share' of the authority's budget, to be managed by the school's governing body. A school's budget share is to be calculated by a specified formula which must take into account the number and ages of pupils, and may take into account 'any other factors affecting the needs of individual schools'. Excluded from calculations of schools' budget shares are capital expenditure, debt repayments, expenditure met from prescribed government grants, and other items of expenditure prescribed by the Secretary of State. A school's budget share is to be available to the governors to spend as they think fit for the school's purposes, subject to any requirements of the scheme, and the governors may delegate their spending powers to the Head. The LEA may withdraw the right to a delegated budget where there is mismanagement, subject to appeal to the Secretary of State. The scheme must apply to secondary schools, and all primary schools with 200 pupils (this number may be

Change of name of the Society

DO YOU WANT THE NAME OF THE ORGANISATION TO BE CHANGED?

YES / NO

(Explanatory note: This is a ballot pursuant to Rule 12(b) which empowers the Executive Committee to cause a postal ballot to be taken 'upon any matter'. It is not a ballot for a rule change. If there is a majority vote against changing the name, the name will remain the Haldane Society of Socialist Lawyers and there will be no further ballot. If there is a majority vote in favour of changing the name, we will proceed to ballot the membership a second time on an alternative choices of name (e.g. National Association of Socialist Lawyers, National Society of Socialist Lawyers, ...). When the members have indicated their preferred choice, we will then proceed to ballot the membership a third time on the proposed rule change to Rule 1 which contains the name of the Society. The RC will be offering free legal advice sessions to all members who find this procedure incomprehensible.)

Statement in Support

The proposal, which we put forward at this year's AGM, to drop the word 'Haldane' from the Society's name genuinely is not jettisoning an anachronism. It is our belief that the present name is a symbol of our inward turned attitude: our image as a Labour-aligned Barriers' club. In the context of the present hostile political climate the inevitable attacks on civil liberties, jury trial, legal aid and the legal rights of trade unions will require us to turn ourselves outward and to build an effective national campaigning organisation. The use of the name 'Haldane' obscures our purpose and perspective and restrains us from giving effect to the great potentiality of the left in the legal sphere. If we are to attract a wide and genuine and campaign-minded links with other progressive forces we must confront this problem.

The main argument put forward at the AGM against changing the name was that of 'name recognition'. Of course, this is the case in the UK, at the International Association of Democratic Lawyers and in the wider Labour movement, the Haldane Society is well-known and respected. Nonetheless the Society must face up to the fact that there are a great number of people to whom the name means nothing, leaving them wondering just who and what we are.

In 1987, against the backdrop of a third and possibly highly significant election, we changed the name of the Society to "International Socialist Lawyers". The inspiration for this change was our determination to reflect the society that we are and to reflect the society that we want to see. We wanted to be more inclusive, more thoroughgoing and more representative of the real nature of the organisation. We were more explicit and proud of it. However, the real issue at stake is the Society's future input into and influence over legislative change. In our view the effectiveness of the
Society will be severely impaired by the proposed name change and that is the paramount consideration.

Crime Subcommittees

Venue of the Annual General Meeting

RULE 10 (i)

At present it reads as follows:

"(i) An AGM of the Society shall be held at intervals of not less than nine nor more than fifteen months, notice thereof shall be sent to each member of the organisation not less than thirty days before the day agreed therefor by the Executive Committee.

The proposal is that the following words should be added at the end of Rule 10 (ii):

"(ii) The venue of the AGM shall alternate between the Northern and Southern regions of England and Wales at a place chosen for the purpose by the Executive Committee.

QUESTION 2

DO YOU WANT THE RULE TO BE AMENDED IN THE FORM SET OUT ABOVE?

YES / NO

Statement in Support

The intention of this proposed amendment is to show early the Society's commitment to encourage all of London membership. Although under the present rules the AGM may be held anywhere, in practice it has always been held in London. Besides, it appears that approximately one-third of the membership lives outside London. The Special General Meeting to be held at Leicester in June showed that many out of London members are keen to participate in the Society and it is hoped that by stating such a commitment and carrying it through life, the Society will gradually become less London centered.

Christine Dawson, Manchester Branch

Statement Against

This proposal could easily impose an intolerable financial and administrative burden on the Society and its officers, and, so far as the Society's membership is situated in one part of the country, an unreasonable expense to those of greater number who may wish to attend future AGM's.

Jack Gaster, Vice-president

Branches and the AGM

(Explanatory note: The purpose of the amendment is to give branches the right to propose motions to the AGM. Individual members and affiliated organisations already have the right to propose motions at the Annual General Meeting. From a drafting point of view, the easiest way to give a branch the power to propose motions or raise other matters is to incorporate the AGM in to incorporate it within, the definition of 'member' for the purposes of these rules. This has already been done for affiliated organisations.)

RULE 12(b)

As it now reads as follows:

"(b) No person other than members shall be present during the AGM unless the Executive Committee or the meeting otherwise directs, and for the purposes of this and the preceding rule 'member' shall include an affiliated organisation.

The proposed amendment is to delete all words after 'direct' in Rule 12(b) and include a new Rule 12(c) to read as follows.

"(c) For the purposes of Rules 10 and 12 inclusive, 'member' as defined in these rules shall mean an affiliated organisation and a branch of the Society.'

QUESTION 3

DO YOU WANT RULE 12 TO BE AMENDED IN THE FORM SET OUT ABOVE?

YES / NO

Statement in Support

Since individual members and affiliated organisations have the right to propose motions to the AGM, it is clearly important that branches have the right to do so as well.

Suzanne Bailey, Manchester Branch

Branches

RULE 5(vi)

As it now reads as follows:

"Any branch of the Society shall be entitled to send a delegate being one of its members to the Executive Committee, but such delegate shall have no right to vote thereon.'

The proposal is that the rule should be amended to read as follows:

"Any branch of the Society shall be entitled to send a delegate being one of its members to the Executive Committee and such delegate shall be entitled to cast one vote on any matter.'

QUESTION 4

DO YOU WANT THE RULE TO BE AMENDED IN THE FORM SET OUT ABOVE?

YES / NO

Statement in Support

The Society is presently trying to increase its membership in order to become a more effective campaigning force. It is clear that many would-be members live outside London and that a major obstacle to recruitment is the image of the Society as London based. The formation of regional branches is therefore a powerful recruiting tool in that socialists working within the law but with little or no contact with London may see a benefit in joining a local group which organises local meetings and campaigns on local, as well as national issues. Such groups may well encourage becoming branches and should be encouraged to do so. To encourage both the formation of branches and groups who are not branches to join the Society should encourage the branches to take an interest in the Society's affairs. The right to send a delegate to EC meetings and to have a vote is an empty right. Out of London members through the branch delegate will bring a welcome out of town perspective on issues and campaigns.

Christine Dawson, Manchester Branch

RULE 6

At present it reads as follows:

"(i) With the consent of the Executive Committee, branches of the Society may be formed and carried on in any locality.

(ii) Only members of the Society or of affiliated organisations may be members of any branch.

(iii) The members of a branch may appoint their own officers and committee and conduct their own business in accordance with the objects of the Society.

(iv) A branch may propose for its own members its own rules, provided that such additional branch rules are approved by the Executive Committee.

(v) Meetings of any branch thereof shall use the name of the Society or any substantially similar name, and be held in accordance with the Society's resolutions and resolution of the Executive Committee of the Society.

(vi) The Secretary of every branch shall keep minutes of the transactions of the branch in such form as may be directed by the Executive Committee, and shall send such minutes to the Executive Committee on request and shall comply with the decisions of the Society.

(vii) There shall be an annual report of every branch.

The proposed amendments are as follows:

In respect of Rule 6(iii): That the rule should be deleted so that any branch of the Society or an affiliated organisation.

QUESTION 5

DO YOU WANT RULE 6 (ii) TO BE DELETED?

YES / NO

Statement in Support

Many persons who become interested in the work done by a local group may well wish to become a member of the group but may see little relevance in joining a national organisation which is still very much London centred. Such people should not be prevented from being branch members and participating in the affairs and providing much needed revenue to the branch, merely because they are not national members. Instead the Executive Committee should be doing more to ensure that the Society is seen as relevant to persons outside London by organizing meetings.
et al out of London. A branch is also in a much stronger position than the national organisation to know whether an applicant for membership is a paid worker.

Christine Dawson, Manchester Branch

Statement Against

I oppose this proposal for the following reasons:

1. During the past year we have been having extensive discussions on issues and activities including our membership and our activities in order to develop into a national organisation with an office and at least one paid worker. These developments can only take place with a substantial increase of membership and of subscription income. We consider that the main potential for an increase in membership is in the major cities and university centres outside London. In order to achieve these aims we should be encouraging people to become national members, not finding ways to enable them to opt out of membership.

2. Most of our income last year was spent on membership mailings, producing Socialist Lawyer and the Workers’ Charter, and preparing and circulating minutes and reports on proposals, and most of the expenditure on Criminal Justice Bill, the Civil Justice Review, the Green Paper on trade union law and the Scrutiny Report. In my view, these activities were equally worthy of support by socialist lawyers in London and outside London. It is true that the expansion of the society which does not have an active local branch does not have the benefit of local meetings. However, the subscription rates have been increased to cover the extra costs. London workers or residents pay a subscription of £20 per annum. Out of this, the annual membership fee is reduced by £12.25. If there is a local branch, it can levy a further subscription to branch members of up to £8 to fund local activities, thus reducing the subscription fees for London members.

3. I appreciate that there may be individuals, or groups of individuals, who wish to associate themselves with the Haldane Societies but do not, for whatever reason, wish to be members. The appropriate status for such groups is the affiliated organisation, not the branch. A good example of this is the newly launched Nottingham Society of Socialist Lawyers which chose to affiliate to the Haldane Societies, rather than to become a branch.

Beverley Lang, Secretary

Statement Against

I would invite members to vote against this alteration. It would permit persons who are not full members of the Society to hold the position of a ‘member of a branch’, to appoint (inter alia) an executive member of the Society, and not to be bound either by the Rules of the Society to pay the subscriptions which all members are bound to pay.

Jack Gaster, Vice-President

In respect of Rule 6 (iv) The proposal is that the rule should be amended as follows:

A branch may provide for its own members its own rules, including the right to charge such additional subscriptions as the branch committee shall determine. The rules relating to Name Object and Membership shall be subject to the approval of the Executive Committee.

Christine Dawson, Manchester Branch

Grant-Maintained Schools (or School Opt-Out)

The Bill’s provision for schools to opt out of LEA control are perhaps its best known aspect in the public mind after the nationalisation of the coal industry. Our Secretary of State Kenneth Baker foresees only a small number of governing bodies seeking to opt out in the early years; the Prime Minister sees it as the start of a far wider process akin to the council house sales programme. The shambolic and haphazard date of financial incentives to opt out may make one doubtful whether the proposals will have a major effect, at least initially.

Opting out can be triggered in two ways. First, a governing body may resolve to hold a secret postal ballot of parents. If such a ballot may be questioned by a number of parents equal to at least 20% of a school’s pupils. Thereafter, all parents of pupils at the school must be balloted, and approval by a simple majority of those voting. A proposal is then made to the Secretary of State and the LEA. If this is accepted, the LEA will be paid a negotiation fee of £200,000.

Kenneth Baker, in his first hand, has a broad power to reject, approve or modify the proposal. Whilst the Secretary of State will fund opt-out schools, the LEA will not be required to keep his expenditure. Thus in effect the ratemaker or poll-tax payer will be the compulsory financier of schools over whom no public policy can be exercised, a fine modern example of taxation without representation.

Higher and Further Education

LEAs will cease to be responsible for the provision of the majority of non-university higher education; the control over and funding of polytechnics (which will become independent companies) is to pass to a new body, the Polytechnics and College Funding Council appointed by the Secretary of State. A new ‘School of Law’ will be given to grant-maintained schools. He has a broad power to reject, approve or modify the proposal. Whilst the Secretary of State will fund opt-out schools, the LEA will not be required to keep his expenditure. Thus in effect the ratemaker or poll-tax payer will be the compulsory financier of schools over whom no public policy can be exercised, a fine modern example of taxation without representation.

Education in Inner London

The Bill’s proposal for changes to the LEA includes a new ‘ILEA Residuary Body’ would be created. These proposals are particularly serious if; or boroughs opt out of the LEA will be left with the responsibility of managing and administering an education service almost certainly comprising the poorest boroughs, and for a geographical area which has no logic in planning terms, but which is the residual and unplanned result of decisions by individual boroughs and the Secretary of State. Moreover, by permitting opting out to take place at the start of any financial year the Authority faces a chronic period of management instability during which its ability to attract and keep staff will be in doubt. One can look in vain for any instance of parental choice being exercised.

The government is帳 quoted in its Education, Science and Training Bill that it is inevitable that any system of local government planning blight; the government’s pretensions to control over what quality education are devoid of any credibility.

CONCLUSION

Overall, the government’s educational reforms show a haphazard combination of laissez-faire, anti-planning and rampant centralism. On the one hand, LEAs will have to find schools which have opted out, over which they have no say, and which may preclude the sensible planning of educational provision. On the other hand, the Secretary of State is seeking to give himself an enormous number of new powers to decide matters of fine detail as well as broad policy. On the one hand, the Secretary of State seeks to give himself the power to dismember universities (and therefore the implicit or explicit ideology) of the curriculum. The government has claimed to be promoting parental choice. In practice, parental choice will not be exercisable, and in some key areas it is completely ignored. Boroughs wishing to opt out of the LEA need not consult parents at all; nor can parents of a school which has opted out vote to return to their LEA. Whilst greater powers are given to governing bodies, it is very doubtful whether there are tens of thousands of governors wishing or willing to become, in effect, business managers of their schools, personally liable for any form of mismanagement. Financial delegation to governors is likely, in reality, to mean more managerial control over education in the hands of a few of the most political people.

The government’s proposals will not be a coherent public education service; on the contrary, if implemented, they will lead to a situation of further fragmentation, further dismembering of the public, democratically accountable, education service.
The men who by today's jargon are described as gay are not gay, they are homosexuals and/or 'buggers'...

Lord Chief Justice, 8th November 1983

It is easy to dismiss such comments as examples of blind prejudice and bigotry. Yet, in recent years attacks such as these have begun to acquire a coherence and have come, more and more, to look like a strategic assault on the lesbian and gay community. The Lord Chief Justice's remark provides just one brilliant example. Such comments attempt to reduce all discussion of gayness to a simple matter of sexual activity — what we do in bed. By doing so any question of the cultural and political challenge posed by lesbians and gay men is ignored. Hence, rather than portraying us as a community — distinguished from other communities by our particular demands and particular perspectives — such comments attempt to present us as isolated individuals, distinct from other people solely on the basis of our sexual identity. In the Lord Chief Justice's words, we are not gay men forming part of a gay and lesbian community (and typically no mention is made of lesbians) but 'homosexuals' and/or 'buggers'. The clear implication of such remarks is that the lesbian and gay community is to be treated as both culturally and politically invisible. By doing so the very right of lesbians and gays to assert a community identity is attacked.

The anxiety of the 'New Moralists' in treating gayness in this manner is clear; by reducing the issues of gay and lesbian identity to a question of sexual practice, it becomes easier for the 'moralists' to assert that the state has a right — and even a duty — to control such activity. If gayness can be equated with the pursuit of a particular kind of sexual pleasure rather than with a whole cultural and political perspective, once the pleasure of a few is perceived as a threat to the health of the majority of the population the state may more easily intervene to police such activity.

Again, by attempting to undermine the notion of a gay and lesbian community — by defining lesbians and gays in wholly atomistic terms — the right is able to attack the values and perspectives of that community without appearing to threaten a broad social commitment to civil liberties.

Such a strategy is not in itself new. Looking back thirty years to the publication of the Wolfenden Report and the campaigning that followed from Wolfenden — culminating in the passing of the Sexual Offences Act of 1967 — we see exactly the same language being used. In part, however, discussion set in these terms was more understandable since the mechanics of reform at the time, the homosexual freedom was something to be won by appealing to notions of tolerance and common humanity — by asking society to see 'beyond a sexual disability' to the essential normality of homosexuals in other areas of their lives.

What is inexcusable about this kind of reductionist rhetoric today is that it seeks to turn debate back to Wolfenden days and to rewrite history without reference to the enormous political and cultural impact of the lesbian and gay movement over the past twenty years.

The Left: Tokenistic Commitment?

The success of such attacks has been largely due to the isolation of the gay and lesbian community. The question that this support for the left has been so half-hearted. In part, such half-heartedness may be explained by the fact that the political institutions on the left — like all institutions — reflected the heterosexual bias present in society at large. But part of the blame must also be laid at the feet of the gay movement itself. Deeply influenced by the feminist movement, lesbians and gay men on the left in the late '60s and early '70s, became a target of political self-examination. For many this entailed rejecting national political power structures and jettisoning the belief that socialism and equality could be won by campaigning through existing political institutions. Following the pattern set by the feminist movement, lesbians and gays withdrew from competing to influence national party politics, to concentrate instead on grassroots community-based activities. For a movement in its infancy the value of consciousness-raising cannot be over-emphasised. By concentrating on personal experiences of oppression and through the exploration of personal power relations, lesbians and gay men have been able to develop new forms of intimacy, community and group identity.

However, many of the difficulties encountered by feminists have also been experienced by lesbians and gay men. Of these the most overwhelming difficulty has been that of moving from the specificity of personal experience to a position where it is possible to theorise. Hence, through an excessive concentration on oppression, political aims have been too narrowly defined.

As a result it has been possible for the political institutions on the left to take a myopic view of the political relevance of lesbians and gay demands. Like many of the perceptions of the feminist movement and the black and ethnic communities, the political perspective of the lesbian and gay movement has been 'catalytic'. Operating on the left the challenge is one which some have been unable to face. It is an oversight to remain unable to meet the demands of these groups. Political and to a central to this political perspective is the belief in the absolute relevance of lesbian and gay views to any socialist debate. To the activists of the '60s gay politics was equated with the role of socialism. To the activists of the '80s gay politics is of far greater importance to socialism as a form of political self-description.

Of course, the lesbian and gay movement will continue to fight over single issues — perhaps the greatest success for the movement in 1987 has been the campaigning around the need for legislative reform. But in the light of mounting opposition from government, the church and the media the chances of success on single issues seem very small.

The Haldane: A Challenge

In June 1987 the AGM of the Haldane Society voted to set up a lesbian and gay working party. The working party is to be able to undertake appropriate activities either in support of a particular local LGBT 'cause' or in a more general way in which the legal system is used to discriminate against lesbians and gays. It could also have an important liaison function with gay and lesbian organisations. These are just personal suggestions.

What is important is that both gay and political perspectives into the Society should not be squandered. The working party should not become just another way of 'being off' lesbian and gay issues. The setting up of the working party is an important step in the Haldane Society in bringing into prominence lesbian and gay political aims and demands. It is, however a very small step in a far more protracted process by which the left must recognise the challenges posed by the lesbian and gay community.
A Licence to Hate: Incitement to Racial Hatred and the Public Order Act 1986

The issue of race is fraught with confusion and contradictions. The complexity of the arguments is often evident, and the issue is one of peripheral, unappealing concern. Socialists and socialist lawyers are not immune from this attitude. The enactment of Part III of the Public Order Act 1986, containing section 5A into the law, is a case in point. Little attention has been paid to racial hatred by the government, the courts, or the academic writers, and it be said, socialist lawyers. Part III effectively codifies the law relating to incitement to racial hatred. But the amendments and additions are conspicuous by their inadequacies. Not surprisingly, the reverie shown by the government for the right to racist expression is in glaring contrast to the cavalier fashion in which its liberties are treated in the rest of the Act.

Given the mounting evidence of increasing racial attacks and harassment and abuse, and the recent shuffling of government law officers, this article has three purposes: i) to clarify the issues created by Part III of the Act; ii) to argue for the more effective enforcement of the existing law; and iii) to argue that further statutory change is still required.

The Historical Context

The history of the law of incitement to racial hatred is an unhappy one. With the demise of the common law crime of sedition, section 6 of the Race Relations Act 1965 was enacted. Lord Scarman described it as being "an embarrassment to the police" and "useless to a policeman on the street". It was repealed by section 70 of the Race Relations Act 1976 which inserted section 5A into the Public Order Act 1936. It became an offence: 'to publish or distribute written matter or to use in any public place or any public meeting or assembly, abusive or insulting words or behaviour which was likely to stir up racial hatred; or to publish material which was likely to stir up racial hatred. The Attorney-General’s consent was required for a prosecution.

From 1976 to 1982 there were 13 prosecutions under the section resulting in 6 convictions. In answer to a Parliamentary Question, the AG stated that from 1979-86 there were a total of 16 prosecutions. There was widespread criticism of the AG’s reluctance to start proceedings. The Runnymede Trust’s 'Report', describing the prosecutions as "few and manifestly unrepresentative", was a contribution to the debate here.

The AG’s consent was much less than enthusiastic. Readers are left to decide for themselves.

Government Perception of Criticism

The government was aware of some of the criticisms. The Green Paper of 1980 identified the following criticisms: i) that there was no police power of summary arrest; ii) that the provocation did not extend to broadcasting; iii) that there was an exemption for material distributed to members of a private association; iv) that the AG’s consent was required; v) that the requirement of 'threatening, abusive and insulting' (inflammatory) words or material was too strict. The White Paper of 1980 further identified: vi) spurious defences where inflammatory material was distributed to anti-racist groups, clergymen and MPs who were unlikely to be stirred to racial hatred; vii) the difficulty of proving a 'distribution' by someone possessing inflammatory material.

At no stage did the government contemplate severing the public order element of the offence, thereby outlawing racist statements or behaviour per se. As the White Paper explained, there is "the need to balance the rights of those who wish to demonstrate and the interests of the wider community... the government believes that the reasonable exercise of freedom of expression... and the right to be protected, however unpleasant the views expressed, and has concluded that section 5A should continue to be based on considerations of public order.

The Bill was introduced in December 1985. It contained model proposals for the amendment of the law to provide for a presumption that there was an all-party backing for more extensive changes. This presumption was later partially redrafted and passed to the Lords with little consideration. The disparate provisions concerning racial hatred (such as the Theosophist and the Anti-Semite Acts of 1984) were to be included in the same Act; to provide, in effect, a code. It created the absurdity of a code without an articulated policy, without research and without commitment.

6 The freedom to be racist is not so much a freedom as the enslavement of racists to a socially destructive ideology.

Changes and Limitations

The 1986 Act created six offences concerning the use of inflammatory language or material likely to or intended to stir racial hatred: the use of words or behaviour, or the display of such material, in a state of Mind, the public performance of plays; distribution or playing of recordings; singing, broadcasting. The Act addressed in form but not in substance some of the aforementioned criticisms. The main changes were the following:

1 Creation of a power of arrest. However, this power is limited to section 18: the provision related to inflammatory words or behaviour, or the display of such material. With the other offences, the police will still have to issue a summons, and the defendant cannot be remanded in custody. Hence, the embarrassment continues.

2 Broader Offences. The offences extend to the broadcasting of racially inflammatory material (films, videos and sound recordings).

3 Removal of the 'private association' exception. The government could see 'no justification' for retaining this exception, believing that preaching to the converted could lead them to further action. But, paradoxically, distribution to individuals is still allowed, as individuals are not 'in a state of Mind'.

4 Broadening of the group racial hatred. The offences are now committed if there is an intention (as an alternative to a likelihood) to stir racial hatred by inflammatory use. This is a cosmetic change as the real issues are evaded. Firstly, the requirement of 'threatening abusive and insulting' behaviour is muddled and impossible.

5 Possession with a view to publishing. This is a new offence, which includes the difficulty of proving 'distribution', it is still needed to show that a distribution was intended. Again, the misconceived excuses can be anticipated (would I be justified for 'educational reasons' or was it 'a collection of racist artefacts'.

The following criticisms were not addressed:

1 The AG’s consent. One of the biggest obstacles to the effectiveness of this Act was the need for the AG’s consent. This was introduced because of the 'political sensitivity' of the offence, and the need for consistency in prosecution policy. The latter has largely been achieved. The AG has consistently not prosecuted. The AG in 1985 gave an undertaking only to prosecute 'serious breaches of the law'. Further, the published criteria for a prosecution involves an evaluation of the prosecution’s prospects and the AG’s strong aversion to the acquittal is harmful to racial harmony. The real and frequent prosecutions which are brought will significantly affect their outcome; at present the offence is considered somewhat anomalous and is regarded with suspicion. Moreover, it is really the case that AG’s err on the side of caution in other areas of public order law, considering acquittals to be damaging to general public order.

2 Private dwellings and private conversations. Although the offence may extend to either public or private, there is an exception for private dwellings. Where racist and audience are in a private dwelling, for example, in a member’s own home, the law is inapplicable. In addition, racial abuse of a neighbour, disturbed by a noise, is, could also be exempt.

3 Racist groups in Great Britain. There must be hatred against a group in Great Britain. Thus where there is no large number of a group in Britain, or where the group is not a victimised group in Britain, no offence will be committed. (Where, for example, a 'group' of Fijians in Britain?) The effect of this requirement is that some racism will be tolerated; racism is acceptable if it is not 'aimed at' a group which is not victimised in Great Britain. The perception of superiority, a justification of violence, the concept must be available to a lot of racists.

4 Sentencing. Judicial perceptions of the offences are disturbing. Defendants have been considered irresponsible or immature rather than socially dangerous. One judge congratulated a defendant who said of a murdered Asian 'one down, a million to go', on his courage in publicly stating his views. Accordingly, the maximum two year sentence on indictment has rarely been involved. Postponement of judgment is suspended and fines rarely exceed £200.

A Conceptual Change

For the offence to be committed, there must be an intention or likelihood of stirring racial hatred. This public order consequence must be present. As long ago as 1976 the government was aware of the increasing acquisition of racist propaganda. 'It tends to be less blatantly bigoted, and purports to make a contribution to public education and debate'. Where the material is inflammatory and moderates the message, the greater is the probable impact on public opinion and social cohesion. But it is not justifiable in a democratic society to interfere with freedom of expression except where it is necessary to do so for the prevention of disorder or for the protection of other basic freedoms'. There are three arguments here.

Firstly, if the government is so concerned with counteracting what it regards as 'intelligent' racism, will the most divisive form in the long term. Accordingly, the judges have a duty to ensure that the propagation of such material infringes upon the freedom of ethnic groups to be considered equal, unthreatened members of the community as a whole. As the European Convention for the Protection of Human Rights states, freedom of expression is limited by the protection of the rights and freedoms of others.'

Finally, on a more conceptual level, socialists must argue that individual freedom is a means of equality, individuality being a precondition of true collective freedom and not an end in itself. Where individual freedom substantially threatens equality, it must be curbed. The freedom to be a racist is not so much a freedom as the enslavement of racists to a socially destructive ideology. Socialists must argue that intellectual racism not only causes violence, it is itself a form of violence against the ethnic community.

A Plan of Action

The new legislation is clearly inadequate. The amendments do form part of new statute, but ease only temporary change. The major obstacles to effective law remain; here is a code without coherence.

Socialist lawyers must campaign for and demand:

a) 1 clarification of the AG's prosecution policy; b) a commitment from the AG to prosecute these offences more frequently and more vigorously; c) greater education for judges on issues of race; d) more realistic sentences for convicted racists.

b) In relation to the future:

1 repeal of the requirement of the AG’s consent; 2 repeal of the requirement that the offence be committed in either public or private; there is an exception for private dwellings. Where racist and audience are in a private dwelling, for example, in a member’s own home, the law is inapplicable. In addition, racial abuse of a neighbour, disturbed by a noise, is, could also be exempt.

3 Racist groups in Great Britain. There must be hatred against a group in Great Britain. Thus where there is no large number of a group in Britain, or where the group is not a victimised group in Britain, no offence will be committed. (Where, for example, a ‘group’ of Fijians in Britain?)

4 ‘threatening, abusive and insulting’ behaviour to be judged by the standard of a non-racist person.

References


2 ‘Incident of Racial Hatred’ 1882; Runnymede Trust P. Gordon.


6 R v John Kingsley Road, 1987, unreported.

This article is written on behalf of the Race and Immigration Subcommittee of the Haldane Society. It is merely the opening of the debate. The subcommittee plans to deal with an even raging a critical enquiry into race issues from a socialist perspective. Voice, feedback and contributions are invited — via Derek Day, Race and Immigration Submitter, 69A Oakmead Road, London W12.
The Transitional Period

The transitional paragraphs appended to the Constitution determine the conditions under which the supposed transition to democracy will take place. They provide that:

1. President Pinochet and the Military Junta will remain in power until March 1989.
2. During this period the Military Junta will have power to exercise all legislative power, including the power to pass laws interpreting the Constitution.
3. The President can assume extraordinary powers in the case of either acts of violence aimed at disturbing public order or if there is a danger of disturbance of the Internal Peace.

The official doctrine of the Pinochet regime is based on the so-called Armed Forces and Police, who propagate doctrines referred to in article 8, or decree intentions for up to three months. These powers are in addition to the Constitutional power to declare a State of Siege or a State of Emergency. They, as well as the emergency powers, have been invoked throughout the transitional period to date. Most sinister of all, the measures which may be adopted by virtue of this provision are 'not susceptible of any legal recourse except re-consideration by the authority which effected them'.

4. Before March 1989 the Military Junta will propose to the country the name of the person who will, subject to ratification by the citizens, be President for the next eight years, and a plebiscite will be held to confirm their choice. If their choice is not approved, the President and Junta will remain in power for a further year and there will then be a Presidential and Parliamentary election. If the choice is approved, the President will proclaim Parliamentary elections for, at the latest, February 1990.

5. It will be seen that the whole transitional process is to take place under the control of the dictatorship. The plebiscite will be a yes/no vote for the chosen candidate, who could well be Pinochet. I endorse the comment made by the Institute of the Study of Juntas in their report on the plebiscite in 1980 which approved the Constitution: 'No dictator has ever lost a referendum'. The plebiscite would take place, as did the 1980 plebiscite, in a state of fear, with ample opportunity for intimidation and fraud. There can be no free choice for the Chilean people under such arrangements.

The greatest danger is that the Pinochet regime will seek to legitimise itself by carrying through the spurious 'return to democracy' envisaged by the 1980 Constitution. This was adopted by a plebiscite in 1983, a voting exercise carried out with no electoral register and organised by the Junta. The constitutional provisions of the Constitution require careful examination by lawyers.

Unlawful Acts

After proclaiming in article 1 that 'all men are born free and equal in dignity and rights', the Constitution proceeds in article 8 to define a whole section of the population who by reason of their opinions are to be outlawed. Article 8 states:

'Every act of a person or a group which is aimed at propagating doctrines which attack the family, which produce sedition, or which produce a conception of the society, the State or the juridical order which is of a totalitarian character or is based on the class-struggle, is unlawful and contrary to the institutional order of the Republic. Organisations, movements or political parties which tend to promote these objectives through their aims or through the activity of their supporters are unlawful. The Constitutional Tribunal will be responsible for taking cognizance of breaches of the foregoing provisions.'

The article continues by laying down that, without prejudice to any other punishment, those who have breached these provisions may not carry out any public duty or have any employment in teaching, journalism, trade unions or similar bodies. They also lose the right to vote for ten years.

This provision alone precludes the Constitution from being considered democratic. The opinions which it outlawes are defined with deliberate vagueness to embrace a variety of socialist, and possibly feminist, ideas. It effectively disenfranchises that large section of the Chilean people who would wish to vote for communist or other left-wing parties.

The Constraints upon Parliament

Even after Parliament has been elected, it is to be subjected to severe constraints. A curious provision states: 'Any Deputy or Senator who exercises any influence before administrative or judicial authorities on behalf of the employer or the workers in the course of industrial conflicts, or who intervenes in favour of any of the parties, shall cease to hold office. A similar penalty will apply to any Parliamentarian who intervenes in student activities in order to affect their normal development.'

The armed forces and the police are entrusted with the mission of确保 the institutional order of the Republic. Their commanders, together with the President and the Presidents of the Senate and the Supreme Court, form the National Security Council, which can make representations on security matters before any constitutional authority. The President must obtain the agreement of the National Security Council, and not that of Parliament, before declaring a State of Emergency, which can last for a period of 90 days and then be renewed. Thus the Military Junta would continue to hold another name, and would wield a power which could override the wishes of Parliament.

The powers of Parliament to amend this Constitution are cumbersome to the point of impossibility. The key provisions may only be amended if all of the following things happen:

1. There is a two-thirds vote of both Chambers of Parliament.
2. The President agrees.
3. The matter is postponed until a fresh Parliament is elected (i.e. in 1997).
4. There is a two-thirds majority vote of both Houses of the new Parliament.

It should finally be noted that the 1980 Constitution makes no provision whatever for local government democracy. The country is divided into Regions, Provinces and Communities. Each Region is to be run by an Administrator chosen by the President, with an advisory Regional Development Council composed of the Administrators, the Provincial Governors, the representatives of the armed forces and the police, and representatives of the main public and private enterprises in the Region, with the private sector being in the majority. Provincial Governors are also to be appointed by the President, and the Mayors in each Commune are to be appointed by the Regional Government (with a significant number of officials and in special cases by the President). Local people will therefore have no say whatever in the choice of their local authorities.

One can find in this Constitution numerous echo-trches of the tendencies of Thatcher's Britain: the crushing of local democracy; the attempt to 'de-politicise' trade union activities; the communitarianism of national security. That is no coincidence; Pinochet has had plenty of advice from Washington. In showing solidarity with the people of Chile we are fighting against forces which threaten democracy and human rights throughout the world.

Tony Gifford, a Vice-President of the Human Rights Society, recently visited Chile on behalf of the UK Parliamentarian Human Rights Group.

Chile's Constitutional Fraud

To visit Chile today is both an inspiring and an appalling experience. Inspiring because so many Chileans continue to resist the Pinochet regime, demonstrating, leafleting, supporting their brethren in prison. Lawyers who act for political prisoners literally put their lives on the line; for to defend those who cannot lead to assassination by the so-called clandestine squads (so-called because everyone knows that they are security police in another guise.)

The appalling becomes more so early in sight to the oppression of the Chilean people. The incidence of torture and unexplained killing has increased over the last two years. Pervasive unemployment in the 'employed' is worse — grim evidence of the worst effects of the Chicago school of monetarist economic policies.
REVIEWS

SPYCATCHER
Peter Wright
Viking Penguin, NY, £19.00 (by credit card over the telephone)

When I picked up this book I tried to clear my mind of everything I had read about it: endless columns inches about the Public's Right to Know, the Integrity of the Secret Service, what Dale Campbell Savours had said in the House, Malcolm Turnbull, horse breeding, fancy Australian hats, Sir Roger Hallis, Sir John Donaldson, Kerry Parker, etc. The only thing that everyone agreed on was that there was an Important Matter of Principle involved. But what about the book?

I'm not going to risk the Bar Council or contempt proceedings by relating its contents. I'll leave that to braver people with more money. Actually the style is quite boring and sometimes difficult for a non-scientist to follow.

You can see one at once why the government are so hoppin mad about the book being published. It's quite true that if secret service officers made a habit of publishing state secrets (as opposed to their memoirs) then there would be no point in having a security service — leaving aside the question of whether it would be a good or bad thing to have one. The Soviets would not feel the need to turn British agents in Moscow or London if they could find out all they wanted to know by walking into Foyle's. But Peter Wright is far too fanatical a right-wing patriot to tell the Soviets anything they don't already know. In fact the book is largely about what they do know — because our people told them.

I wasn't particularly shocked to read about all the naughty things that secret services of all nations get up to. After all, we know all about the Rainbow Warrior. The problem is that governments always think they can gain advantage by spying and they are incapable of agreeing among themselves to lay off. Once one state does it then the others have to follow suit or they feel at a disadvantage. Since it's all supposed to be kept under wraps the temptation to play dirty is irresistible. In public every state wants to claim that it is clean and that it's someone else doing the nasty things. Hence the need to cover up. This has nothing to do with national security and everything to do with loss of political credibility at home and abroad. I suppose it could be argued that if M15 is seen to be incompetent then the CIA and the FBI won't give us their stuff. That may be right or wrong, and if right, may help or hinder national security; but botched litigation and maximum public exposure must surely have done as much to encourage American reticence as the book itself.

The 'Important Matter of Principle' in reality boils down to preventing the public from realizing that all governments lie — as Enoch Powell once remarked.

Tim Kerr

IMMIGRATION LAW AND PRACTICE
Ian A. Macdonald

The law of immigration is a fast developing area of the law and, with a new Act on the way, it is essential for everyone to be acquainted with it. It is no longer acceptable for people on the left to mark down immigration problems as a minority issue; they are a test of how far we are a civilized society. Judging by the present immigration laws, the answer must be, for Britain, not very civilised at all. People of non-British origin are treated in the most appalling way when they arrive at the ports and airports of this country, and if they are lucky enough to be allowed into the country they are often treated as second class citizens thereafter.

This is the second edition of a book which has been proclaimed in its first edition to be the 'Rolls Royce' of immigration law books. Clearly set out, comprehensive and not afraid of exposing the law for what it is — racist and sexist — it lives up to that label. When Nick Blake reviewed the first edition of this book for the Haldane Society he said this: 'A mark of a good immigration book is that it leaves the reader smouldering with anger.' I wholeheartedly agree and came to the conclusion that Macdonald's latest edition has lost none of its fire-power. I am smouldering!

One of the particularly welcome aspects of the book is the historical analysis of the development of the law, drawing on examples from as far afield as Australia and Canada, linked with the explanation of the law of today.

Ian Macdonald does not let the settlement of the book by accepting the argument that any immigration law is bound to distinguish between 'us' and 'them', instead he points to the preferential treatment of EEC visitors and settlers in this country to show the racist undercurrent which permeates all immigration law, whether implemented by the Home or Labour. It's not a question of numbers, it's a question of racism.

This book is a must for the student or practitioner in immigration law — what a shame that the price £10 will probably prohibit that from being the case. Serious thought ought to be given to a softback cheaper version.

Kerst Starmer

SEX AND RACE DISCRIMINATION IN EMPLOYMENT
Camilla Palmer and Kate Poulton,
£14.00

This is a good book. Your reviewer may have ent perimeter adopt a chuck of Anthony Lester QC's bewared . . . written clearly and intelligently not only for lawyers but also for trade union negotiators, personnel managers and advocates in industrial tribunals. It is reasonably priced and it is well presented, with simple headings and numerous cross-references. It contains a large body of accurate information about the statutes and the case law.

The approach is the opposite of strophic or anodyne. On numerous occasions decisions at all levels are concisely set out and followed with: 'This is wrong', and a well-argued critique of the reasons of the court or tribunal.

I have a few quibbles which I will confine to those regarding Kidd and Muggs v DRG. Firstly, why is it always suggested that child care statistics are the appropriate ones to use when assessing what keeps women out of the labour market or in part time employment? What about care for the sick, handicapped or elderly? What about the sheer burden of shopping, cooking, cleaning and running a home — which statistics show are still overwhelmingly regarded as female responsibilities. Secondly, the problem of how to define the pool for purposes of comparison in indirect discrimination cases is addressed but underestimated. How can an advocate know what statistics to compile if s/he does not know until the industrial tribunal gives its reasons (often some weeks after the case was argued) what pool will commend itself to the tribunal. In Kidd the industrial tribunal of its own initiative decided upon and set out fully for the first time in its reasons a pool which was not suggested by either counsel (and which Palmer and Poulton properly criticize). The EAT said that this problem could be overcome by having a preliminary hearing to decide the appropriate pool. This is only true in so far as my knowledge in which this course was proposed the industrial tribunal refused to list the matter for a preliminary hearing. The Applicant's advocates were thus forced with applying to use the long awaited hearing date to resolve the pool issue and adjourning the substantive hearing to another occasion or with continuing to rely upon prophetic guesswork when compiling statistics.

My final grumble is that in my experience, and I have no reason to believe that it is atypical, where respondents fail to supply any or adequate answers to the EOC/CRE questionnaire or depart in evidence from the answers given, the tribunal permits them to do so and declines to draw any adverse inference. The significance of the questionnaire is thus easily overestimated and I suggest that it is overestimated in this book.

Notwithstanding these criticisms I very much like the book. I warmed particularly to the passage where the current problem of the role of collective bargaining and collective agreements as genuine material factor defences in equal pay cases was realistically addressed. I must also say that the thorough and extensive research which has obviously gone into the book drew my attention to previously unknown authorities.

Thanks, Palmer and Poulton.

Vivienne Gay
CRIME BOOKS REVIEWED BY BLACK MASK

Black Mask is flagging, readers, preparing to give birth to Black Maskette and retire temporarily. So I only managed to read three books this time. I was going to read a fourth, She Came Too Late by Mary Wing, published by the Woman's Press, but every time I was about to start, I found someone in my household lying on the sofa utterly absorbed. She was, finally, doing me a serious disservice, spirited away to foreign parts by a guest who couldn't bear to finish it, and find out who did it. I was able to glean from those who read it that it is about an amateur lesbian detective, and a good read.

The first book that I did manage to hold onto is Poetic Justice by Amanda Cross. This is another American novel, first published in 1970, and I'm not sure if it is avowedly feminist as the example of the genre being used to make a very particular political point. Amanda Cross is the pseudonym of Carolyn Heilbrun, a respected Professor of English at Columbia University in New York. Her heroine, Kate Fansler, also teaches English at Columbia, and has been engaged to a lawyer in the District Attorney's office. She is an endearing character, undomestic in an era when even feminists are required by their employers to make real coffee, paste and macaroni. She is, however, a stickler for grammatical and academic rigour. The story revolves around the murder of a rather unpleasant colleague, but is mainly an attack on academic elitism. I doubt if anyone who, in 1967 and 1968, was not around Columbia University during the strike and slut-in of 1967 and 68, and if ii is not familiar with Columbia's School of General Studies can appreciate this book. Luckily I am part of this tiny pocket of the world's reading public and enjoyed it immensely. Lovers of W. H. Auden will also have a good time with this book because his poetry is an inspiration to Kate and apt quotes head every chapter. It is amusing about life in an elite American university. The English Department is filled with dotty characters with topics. Wasp names like Peter Packer Pelling. There are other Kate Fansler, which may be less specific and more appropriate for the general reader.

I wanted very much to like and recommend Morbid Symptoms by Morton S. Mandel, but I only read as much of this American novel I could find this time. It is left wing in a more general way than the others, but there is a lot wrong with it, and it wasn't readable in the compelling way detective novels should be. Our detective is a feminist journalist living in D.C., although some of the instance, which we all know so well, is nicely described. The villains are most suitably South Africans, but there is also an extremely well mounted attack on one of those tedious left wing male collectives made up of men who despite their political correctness are absolute pigs when it comes to interpersonal relations. This is the best part of the book and I really enjoyed the heroine's feminist contempt for these creeps. The style is crisp and Chandleresque with lines like, 'He'd shaved his mustache brown off and, now his disappearing chin had nowhere to go and nowhere to hide.' The problem is the plot and especially the characterisation. I'm not sure if the plot is either too simple or too complicated but it doesn't move quickly enough. There are no clues planted to either encourage or mislead the reader. I was never tempted to flip through to find out what happens next. There are many characters that we lose track of. Although there are a number of grotesque cameos which are very nice, the main character is a particularly repellent grand old man of the left — the main characters seem flat. When we finally find out who did it, I didn't much care because the character was so thinly sketched that I had no real feeling of a personality with the passion to commit such a crime. It's not a well written or well developed book.

Presumed Innocent by Scott Turrow is a real novel, which happens to be a sort of detective story. The author is a lawyer who wrote a very readable account of his first year at Harvard Law School called One L. Harvard Law makes our own dear College of Law look like a nursery school and I have always been grateful to this book for putting into perspective what I consider to be the horrendous experience of studying law. Scott Turrow went on to be an assistant US attorney in Chicago. The blurbs he says he tried and won a number of important cases involving corruption in the Illinois legal system. I am therefore including him in my very loose left wing category. The book is certainly, among other things, an attack on corruption in the legal system, and particularly an American legal system which is part of the political process. Many American cities elect District Attorneys (here called Prosecuting Attorneys) and Turrow graphically shows the inherent flaws in having prosecuting and judicial bodies that are not politically independent. Firstly, this book is a beautifully written and absolutely riveting novel. I will not even hint at the plot, for fear of giving away anything, except to say that the hero is the chief assistant prosecuting attorney in a big city and the murder victim a colleague. No doubt this book is particularly enjoyable for lawyers because it is an inside account by somebody who clearly knows his stuff. I started to think a lot about why no left wing lawyer I know would ever prosecute, yet many District Attorney's offices in American cities with liberal administrations are filled with left wing lawyers. The hero seems to see himself as a public servant rather than as a businessman in a private law firm which exists only to make profits. There are many other meaty topics in this long book for the lawyer to contemplate. The trial section is terrific, being both funny and familiar to an English lawyer, and showing all the differences in the American legal system. I was especially impressed by the fact that all women are referred to formally in the court, Mr. a particular treat is an anti-cop infection for our peril. So get this book and enjoy.

Two final thoughts:
I have yet to find a left wing detective novel written by an English man;
2. Is the woman lawyer the sex symbol of the late 60's? There have been a large number of popular movies and television shows starring women lawyers. Joyce Davenport in Hill Street Blues is the prototype not so young, independent, single, sexually free, and dined for success. She was followed by the women in LA Law and a spate of movie heroines, I haven't seen Legal Eagles but I enjoyed Jagged Edge and the Big Easy which is a terrific movie about a left wing lawyer. Although I have not read Ms. A particular treat is an anti-cop infection for our peril.

Poetic Justice by Amanda Cross, Avon Books £2.95.
Morbid Symptoms by Gilmour Slovo, Pluto Crime £2.95.
Presumed Innocent by Scott Turrow, Bloomsbury £12.95.

Judging Inequality

The Equal Pay Act 1970 was introduced at a time when women's work was assumed to be automatically 70% to 90% of men's. Nearly 13 years on the position has improved very little. Why? This book sets out, not to teach the law, but to establish precisely the reasons why cases fall in industrial tribunals and what could be done about it. It is an excellent, depressing work which does not discuss any way equal pay can be won, but sex discrimination cases are resolved. It is the result of a piece of extensive research by Alice Leonard and it will be useful reading to all those involved in fighting industrial tribunal equal pay or sex discrimination claims: your chance to improve your technique by identifying the common errors of those before whom you appear.

A couple of examples suffice to establish how the book works. Chapter 5 deals with wages going down during the adjudication of claims. In the section discussing legal errors in the good balance is achieved between explaining the fairly complex legal issues and illustrating the types of errors which industrial tribunals make. Another section deals with the use of legal standards, highlighting the fact that the legal responsibility for justifying discrimination in order to escape liability should rest upon the employer. Chapter 2 reveals an unexpected eagerness on the part of the industrial tribunals to permit justification and not to question a single instance. Perhaps we may hope that now Alice Leonard is deputy legal adviser of the Equal Opportunities Commission she will be in a position to implement some of the recommendations she puts forward.

Vivienne Gay

(Black Mask is Beth Prince and she would like any suggestions for suitable books to review.)
PUBLIC MEETINGS PROGRAMME

Wednesday 17th February 1988
THE EMPLOYMENT BILL
Speakers: Arthur Scargill, John Hendy

Wednesday 24th February 1988
AIDS — THE LEGAL IMPLICATIONS
Speakers: Peter Tatchell, Jane Hickman and Adrian Fulford

Wednesday 16th March 1988
THE EDUCATION BILL
Speakers: Brian Simon, Jeremy Smith
Further speakers to be announced
All meetings at 7.15pm at the London School of Economics, Houghton Street, London WC2.
6pm to non-members.

MANCHESTER BRANCH

The MANCHESTER BRANCH of the Haldane Society meets on the 2nd Wednesday of every month at 6.30pm in the Manchester Town Hall, Albert Square, Manchester. Contact the convenor Alison Cantor, 97 Claude Road, Chorltonville, Manchester M21 2DE for further details. Telephone 061 205 1568 (day) or 061 881 4017 (evenings).

14th January 1988
GAYS AND THE LAW
Speakers to be announced

11th February 1988
topic to be decided

11th March 1988
ANNUAL GENERAL MEETING
venue to be decided

Meetings are open to all socialists involved in the law whether members or not.

CLASSIFIEDS

THE CRIME SUBCOMMITTEE is holding a public meeting on the WORKINGS AND PRACTICE OF THE PUBLIC ORDER ACT, an opportunity to exchange information, ideas and experiences relating to the new Act. To be held on Saturday 13th February 1988 at the London School of Economics, 2.00pm-5.00pm. Everybody welcome. (The B.B.C. has asked to film this meeting).

The Haldane Society is planning to publish a joint document on NO FAULT LIABILITY with the General Municipal and Boilermakers' Union (GMBU) in the near future. A special subcommittee of the Employment Committee is working on the Haldane's contribution to this document. If you are interested in finding out more about no fault liability or would like to contribute please contact Andrew Buchan, 1 Dr Johnson's Buildings, Temple, London EC4.

LAWYERS AGAINST APARTHEID are organising a picket of the South African Embassy on THURSDAY 4th FEBRUARY 1988 between 8pm and 10pm. The picket is being held on the 16th anniversary of the imposition of the State of Emergency in Namibia. Lawyers' pickets of the South African Embassy have been held in October 1985 and January 1986. On those occasions fifty lawyers turned out to voice their opposition to the South African regime. Given the continuing and increased repression in South Africa and Namibia, we hope this time to succeed in mobilising even greater numbers.

LEGAL PROOF READER seeks part or full time work. Please write to Heather Williams, 1, Dr Joan's Buildings, Temple EC4 and we will forward.

THE HALDANE SOCIETY is looking for office premises in central London at a modest rental. If you have a spare room please contact BEVERLEY LANG on 01 353 9328.

NOTTINGHAM SOCIETY OF SOCIALIST LAWYERS
Contact Barrie Ward c/o Hayley & Rodgers, 2, Clarendon Street, Nottingham NG1 5SJ. Tel: (0602) 41972.

THE EMPLOYMENT LAW BULLETIN is a highly successful quarterly journal published by the Employment Law Committee of the Haldane Society. It has a wide circulation among Trade Unions, Trades Councils and labour lawyers. Each copy of the ELB costs £1.00. If you wish to subscribe, the annual rates (four issues) are as follows:
- 1-4 subscriptions £3.00 per sub.
- 5-9 subscriptions £4.00 per sub.
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All prices include postage. Please send orders with payment to: Julian Webb, Flat 5, 15-15 Bering Road, London SE12.

(Cheques payable to Haldane Society.)

Haldane Society of Socialist Lawyers

SOCIALIST LAWYER

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

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

SUBCOMMITTEES

CRIME
Pam Brighton, 111, Fortess Road, London NW6.

EMPLOYMENT
Fiona L'Arbalestier, 83 Ward Point, 2 Hotspur Street, London SE11

GAY AND LESBIAN RIGHTS
Adrian Fulford, 14 Tooks Court, Cursitor Street, London WC2.

HOUSING

INTERNATIONAL
Jeremy Smith, 177, Holland Road, London NW6.

LEGAL SERVICES
Kate Marcus, 96, Chichele Road, London NW2.
Rhys Vaughan, 383, Dickenson Road, Longsight, Manchester M13 0WQ.

MENTAL HEALTH
Andrew Buchan, 1, Dr Johnson's Buildings, Temple, London EC4.

RACE AND IMMIGRATION
Jane Ramsey, 48a Oakmead Road, Balham SW12.

RECRUITMENT
Ben Emmerson, 35, Wellington Street, London WC2.

WOMEN
Barbara Cohen, 27, Churchill Road, London NW8 1AN.

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