Louis Blom-Cooper QC on
The Death Penalty in the US

Geoffrey Bindman on
Amnesty International and Britain

Palestinians Under Occupation –
The Uprising
by Cathryn Davies and Fiona McKay

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by Gavin Millar

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Book Reviews, Letters and News
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CONTENTS

News/Reports
Haldane News ........................................ 1
Features
Thought Crime in Turkey: the Kutlu/Sargin Trial
Pam Brighton ........................................ 2
The Devrunciyo Mass Trials in Turkey
Louise Christian and Isabella Forshall .............. 3
Amnesty Looks at Britain
Geoffrey Bindman ................................... 5
The Quest for Justice at the Polls
Gavin Millar ........................................ 7
Palestinians Under Occupation - The Uprising
Cathryn Davies and Fiona McKay .................. 9
Reproductive Rights - Claiming the Moral High Ground
Allison Lee .......................................... 17
Bindovers: Trick or Treat?
Colin Wells ......................................... 18
US Repression in Puerto Rico
Daniel Nina .......................................... 19
Why Wait till Someone Gets Hurt? Safety Injunctions
Tim Kerr ............................................ 20
Kill or Cure?
The Death Penalty in the US
Louis Blom-Cooper QC .............................. 22
Reviews
Book Reviews ....................................... 24
Letters ................................................ 27
Noticeboard .......................................... 28

The New EC
The membership of the EC is as follows:

International
During the past few months the Society has been active in international work. BILL BOWRING visited the Occupied Territories with a group of lawyers from the International Democratic Lawyers' group. A full report of their visit was published in Palestine.
PAM BRIGHTON visited Turkey to attend the trial of various communists. She writes about the trial in this issue of SL.
A weekend conference on comparative international law is being planned for early next year. Details will be made available as soon as possible.
A Haldane Society trip to Moscow has been arranged thanks largely to the work undertaken by BILL BOWRING when he visited the Soviet Union earlier this year. Sub-committees have been given details.

Seafarers' Legal Advice Centre
A seafarers' legal advice centre has now been established in Dover and Deal to give assistance to seafarers in their dispute with P&O. There are weekly meetings in London and two groups of lawyers travel to Dover every weekend. As a result strong links have been forged between the Society and the NUS at Dover and Deal. If you would like further details or would like to help financially or physically please contact: JO DELAHUNTY or EMILY THORNBERY, 14 Tooke Court, Curzon Street, London EC3: Tel: 01 460 8639.

Regional News
The Manchester delegate this year is PATRICK CASSIDY. If you live in the Manchester area and wish to be involved in the activities of the Haldane Society please contact him on 061 832 4038. Various people in Leeds and Cambridge have organised themselves and made contact with the EC. BILL BOWRING is now the regional groups co-ordinator (01 874 8674).
**Thought Crime in Turkey: the Kutlu Sargin Trial**

I visited Turkey on behalf of the Haldane Society at the beginning of July to observe the Kutlu and Haydar Kutlu, joint General Secretaries of the United Communist Party of Turkey Sargent and Kutlu together with 14 other defendants who had long been charged with various offences under the Turkish Penal Code. Other Haldane delegates have also visited Turkey.

This trial is happening at a crucial time for Turkey, the Turkish government has recently applied to join the EEC and has consequentially demonstrated its willingness to implement Western models, including a new, squeaky clean human rights image. To this end, in January Turkey signed both the European and United Nations Conventions on the Status of Refugees. The Turkish government also declared that free democratic elections would take place in November 1987. However, the only parties allowed to participate in the election were those legalised by the government. Two of the major illegal parties are the Turkish Communist Party, banned since the 1920s and The Turkish Worker's Party which was banned in 1975. Kutlu is General Secretary of the Communist Party and Sargin is the General Secretary of the Worker's Party; both have been living in exile in Europe. It was decided that a joint appeal by these two banned parties and the 31 Haldane delegates in the Memorial Committee of the social democrats and the new Haldane sub-committee has organised this trial, a series of public meetings and a national news media campaign under the title of the Kutlu and Sargin trial.

The Haldane Society has held its Annual General Meeting on Saturday 7 May 1988. We were honoured by the presence of two veteran members, Jack Gaster (a Vice-President) and John Platts-Mills QC the Haldane's President. Jeremy Smethiff of the Executive Committee gave the Annual Report. He outlined a year which had seen many positive policy developments including the strengthening of Haldane publications, not just our regular SL and Employment Law Bulletin – which has had a facelift this year – but also the publication in 1987 of our influential one-off publication which sold like hot cakes.

Unfortunately the AGM was not graced with election this year since there were fewer candidates than places on the Executive. Despite that the organisation continues to flourish though we are skating on rather thin ice financially, as Pauline Hendry's Treasurer's Report made clear.

The resolutions passed at the meeting are published in full in the centre pages of this issue.

**Communist Ideas Outlawed**

Mr Kutlu and Dr Sargent were eventually charged with offences under Articles 141, 141, 142, 143, 144, 145, 146, 147 and 149 of the Turkish Penal Code. 14 others were charged along with them including two of the membership committee, Mr Attila Coskun and Mr Rasil Oz. Mr Coskun is accused of membership of the Communist Party, Mr Oz of expressing sympathy with the General Committee. Both are prominent defence lawyers in Turkey.

Articles 141 and 142 are the basis for the principal charges laid against Kutlu and Sargin. These codes outlaw all communist ideas. Article 141 is phrased in such a way as to make the mere thinking of an idea an offence. Article 142 criminalises anyone who makes propaganda for the socialist cause.

The Kutlu and Sargin trial is not the only political trial presently taking place in Turkey. Two court actions are in progress against the Leftist Party, again based not only on its objectives and not on any alleged acts. There are trials pending against a number of members of the Turkish Peace Association and in 1987 a group of doctors called Physicians for the Prevention of Nuclear war was created; 49 of the founder members were prosecuted and the organisation was banned.

**Lawyers' Attitude Crucial.**

The Kutlu and Sargin trial commenced at the beginning of June. The opening of the trial was attended by a large number of European observers. The trial was adjourned after one day. This was interpreted as a deliberate attempt by the authorities to damp it down. It is difficult for European observers to attend the trial. This has now become the pattern of the trial: one day's hearing followed by a 10 to 14 day adjournment, the date of the next hearing not being fixed until the end of that day's proceedings. During this time Dr Sargent and Mr Kutlu are being held in custody.

Turkish Defence lawyers across the political spectrum view the trial as a crucial test for democratic rights in Turkey. Both lawyers and legal academics in Turkey are campaigning for the reform of the Turkish Penal Code. Defence lawyers have devised a unique strategy for the trial of Kutlu and Sargin; so far 710 lawyers have enrolled on the defence team, many of them leading members of the Turkish Bar.

The Turkish lawyers I spoke to saw the attitude of European lawyers as crucial to the reform movement, particularly English lawyers. Margaret Thatcher and Mrs Thatcher has been Turkey's staunchest ally in Europe, stating in Parliament that 'there is no human rights problem in Turkey' and inviting the Turkish President to visit England last July. In reply to a letter protesting about that visit, Downing Street reportedly said 'Turkey is a staunch and dependable Nato ally with whom we enjoy a close relationship and it is entirely appropriate for President Evren to be a guest in this country.' It is important that the Haldane society campaign to dissuade the government of these views.

The Haldane Society have invited Guglielmo Dernegi to visit Turkey. Guglielmo has been a leading member of the defence team in the Kutlu/Sargin trial. Mr Dernegi is also a leading academic commentator on the Turkish Penal Code. He will be addressing a meeting of the Haldane Society on 23 November. I hope as many members as possible will be able to attend, not only to welcome Mr. Dernegi, but also to discuss plans for a campaign which will lend support to those on trial in Turkey.


Pam Brighton

**The Devrimici Yol**

**Mass Trials in Turkey**

To most British people Turkey is a holiday place with good beaches, hot weather and cheap prices. To the politicians it is a potential bridge between East and West - a country with an American influence but now ambitious to be admitted to the EEC and to Europe. In its struggle for acceptance Turkey has found a friend in Prime Minister Margaret Thatcher and President of State of Turkey, Mr. Kenan Evren, was given four star treatment when he visited Britain last year. He was invited from the Queen, the Prime Minister and a state procession.

While there has been some public attention given recently in this country to the trial of Kutlu and Sargin (see the accompanying article in this issue of SL), virtually nothing is known about the mass trials in Turkey which have been taking place since 1980. We were asked by Turkish organisations in Britain to go to Ankara, as English defence lawyers, to represent 39 defendants - a trial of some 700 people which has been going on for eight years.

On our arrival we went straight to Mamak, the military prison in Ankara. The security was alarming; we had to provide identification, leave our bags behind and were searched. We were taken to a machine gun patrolled outside the court room. Inside the public sat at the back on a rough wooden grundstand. Most of the courtroom was taken up by a number - under police guard - on benches at the front of the court. They were surrounded by soldiers who formed a human barrier between them and the public. Five judges entered and sat on a dais high above the rest of the court room. Also on the dais was the prosecutor. Four of the judges and the prosecutor were identical flowing robes with stand-up red collars, a costume weirdly reminiscent of 'Batman'. One judge was in military uniform without a robe. Below them on the right hand side on benches similar to those of the prisoners sat defence lawyers dressed in considerably less splendid robes. Even a matter of'vagrancy' the defence lawyers were arraigned obviously at a disadvantage to the prosecutor. Behind the shirts and ties of the prosecution were huddled the hundreds of defendants on bail, but only seven or eight of them were present.

The scene in the court room was highly charged. Before the trial started for the day prisoners tried hard to wave to relatives through the barrier of soldiers. Eight years after his arrest, one of the prisoners began to present to the court his personal testimony - he spoke of the torture of himself and others in the police station, which had led to confessions being signed and which he alleged had resulted in the death of one defendant. He also alleged that the prosecutor, who is a policeman (at an earlier stage than in this country) had sanctioned the torture personally.

The 700 defendants in the trial are all accused of being members of a left-wing organisation, Devrimici Yol (meaning Revolutionary Path) which is banned in Turkey. It is a specifically Turkish organisation, not linked to any other country and having mass support in Turkey before 1980. It was formed of various organisations against some defendants of acts of violence during the 'civil war' period in Turkey and the late 1970s when fascist and left wing groups fought on the streets. The military coup of 1980 saw the arrest of over

Louise Christian and Isabella Forshall
were likely to receive either the death sentence or life imprisonment. The trial was expected to go on for another two years. In practice the trial was widely regarded as an irrelevant pretence at the dispensation of justice. This explained why so few of the defendants on bail, many of whom have already served long sentences in prison, bothered to attend.

We received confirmation of this from an unexpected quarter. Eating a late dinner alone one evening, we were approached by a man who at first pretended to recognize us but then later admitted that he was a lawyer working for the Foreign Affairs Ministry and had specially engineered the meeting to convince us of the fairness of Turkish justice. Mr. Ipekseven Recai was passionate in his denunciation of the "terrorists and murderers" who he believed constituted the defendants in the trial. He did not dispute that defendants had been tortured, but he regarded this and the special military rules as a necessary result of the political nature of the alleged crimes. 'You must understand,' he told us, 'that this is a war and the State cannot be neutral. These people are all guilty.' When we told our hosts about this meeting, some of them became very scared to be seen with us in public. Others suggested Mr. Recai must have been from the Turkish police.

Our conversation with Mr. Recai left us with little doubt that the Turkish government is extremely anxious about...
Amnesty's conclusion after all the evidence of oppression and impropriety is over cautious.

By January 1988 about 70 of those arrested had been tried on serious charges. Six, including juveniles, were charged with murder. Many of the rest were charged with lesser offenses. The evidence and the treatment of the accused before trial leaves a bitter taste. The justice of 1985, 1986 and 1987 has been bullied mercilessly. In the case of the 15 year old, the judge listed seven distinct improprieties; in the case of the 13 year old, he listed nine. The presence of those convicted, as related in the report, carries little credibility.

Amnesty's conclusion after all the evidence of oppression and impropriety is over cautious. It stresses its inability to establish the validity of the allegations, but no one with knowledge of proved police misconduct can have much doubt as to where the truth lies. One cannot help thinking of the Sharpeville Six trial in South Africa. The pervasive impression is of a smart revenge - who happens to be in the dock is of secondary importance. At least the English judges had the independence to criticise the police and to throw out some of the more far-fetched charges. But there are a few South African judges like that too.

Sampson investigation demonstrates, as Stalker himself said, that RUC officers unlawfully killed at least five of the six. Amnesty concludes that although 'shoot to kill' was not set out in a written instruction or pinned on the noticeboard, there was a clear understanding that pulling the trigger was what was expected.

In the light of these findings Amnesty recommends an independent judicial inquiry to review all disputed incidents or killings since 1982. It is unclear why an earlier date was not recommended since the International Lawyers Inquiry went back to 1969. It is also hard to understand why Amnesty stops short of recommending prosecutions. However, it does propose that the judicial inquiry should review current legislation and investigate whether there was a deliberate policy of elimination rather than arrest. Further it seeks publication of the Stalker and Sampson reports.

Amnesty's examination of the 'supergrass' trials seems now somewhat out of date: no such trials have taken place since 1985 and it is highly unlikely, in view of the predominately disastrous outcomes that they will continue. However, Amnesty is right to ask for a clear formal policy against reliance on uncorroborated accomplice evidence.

Impotence

The quality of these Amnesty investigations has been high and they have exposed gross violations of human rights which must be rectified and punished. But can Amnesty do anything to bring about this result? Sadly, its recommendations for action reveal its impotence. Sometimes one feels they are toned down in the interest of greater acceptability, but at best they can do no more than invite government action. The present British government has not shown the slightest inclination to accept the invitation.

Amnesty's political stance denies it the opportunity of direct influence or of collaborating with political movements for change. Yet its impartiality, independence and the quality of its work can make it, perhaps with a bit more boldness, a valuable resource for those who are engaged in the political struggle.

References


Gavin Millar

The Quest for Justice at the Polls

In the USA political fundraising and campaigning is big business. Michael Dukakis estimates that he spent $70m on his bid simply to become the 1988 Democratic presidential nominee.

Like big business, elections in the USA are largely unregulated. A candidate in a Federal or presidential election can spend as much as he or she is able to raise. There are no controls on how much airtime can be bought to advertise a campaign on TV. The newspapers are free to say what they like about the candidates or their owners.

Nationally, British general elections are increasingly becoming like their US presidential counterparts. The parties spend millions to sell their candidate for the presidency to the voters. In 1987 the Tories spent a record-breaking £9m worth of corporate financing for their national campaign. Labour came second with £4.2m and the Alliance third (£1.7m). Not a million miles from the result.

In Britain there is a strange and little known backwater of our law: statutory electoral law. This ought to be a major cause for concern and a challenge against injustice in the electoral process. But the reality is different. The two key regulated areas are campaigns and fundraising.

Election Campaigns.

The law here is to be found largely in Part 11 of theRepresentation of the People Act 1983. This Act is very different from all the RPA's which preceded it, stretching back to Victorian times. Like its predecessors the current RPA is a collection of bits and pieces of legislation which are now wholly outdated – first, that the campaigner is the local candidate (rather than the national party) and secondly that the campaign will be fought in the constituency and not nationally.

The result is that the law is silent as to maximum amounts that can be spent on things like mail-shots, posters and billboards as part of a national campaign. Hence the widely differing figures for party expenditure in the 1987 election.

By contrast, the law at local level is both nit-picking and miserly in its regulation of expenditure on Parliamentary campaigns. All spending which promotes or procures the election of a particular candidate must be accounted for by the agent to the returning officer. It is an offence to over-spend.

The present maximum per candidate are arbitrary and unrelated to the spiralling costs of organising a Parliamentary candidate's campaign. They are £3,570 plus 3½p for every entry on the register. In 1987 the three main parties, working within these limits, each spent a sum in the order of £2.5 million on their candidates' constituency campaigns.

The discrepancy between this figure and the sums spent nationally is indicative of the priorities for campaigning in the 1980s.

Quaint Victoriana

The other restrictions on local campaigns in the RPA are pieces of delightful victorianism which bear little relation to the realities of the 1980's. "Treating", "bribery" and "undue influence" by a single candidate in his/her constituency are
outlawed. But the real bribery today is that of the government in office and is therefore wholly unregulated. Tax cuts and council house give-aways are the order of the day. With these in the background, which Tory candidate needs to treat the local issues seriously when the market square?

Moreover the real ‘undue influence’ comes in the form of Sun stories portraying Tony Benn as a schizophrenic and hours of Thatcher as against minutes of Kinnock on the evening news. All the research shows that is now the single most important key to electoral success. How does the law operate in these areas?

Media Circus

Hardly at all is the answer. The RPA says nothing on the subject. The government in private and the Press Council defends a newspaper’s ‘right to be partisan.’ In recent years the publication of bogus polls to create a ‘bandwagon effect’ in favour of Labour has become a regular exercise of the ‘right.’ The traditional and general restriction of the law is to be ‘harmless libel letters.’

Television is not treated so generously. The BBC does not operate by statute but under Royal Charter. It has given evidence already to be important and be air-time allocated and in terms of content but the extent to which these create a quasi-statutory duty enforceable in the courts remains uncertain. Thankfully there is no question of advertising on the BBC. The commercial channels are under statutory duties in these respects and are prohibited from taking ‘political’ ads.

Power Without a Face

The real authority here, however, is not that of the law. It reposes in a body called the Committee on Political Broadcasting and is an archetype of the British ‘constitution in embryo’ – rather like the Lord Chancellor’s Office. It is non-statutory, unknown to the public, swathed in secrecy both in its composition and its operation.

It decides how much free party political broadcast time is allocated to each party. This allocation is critical because the channels purport to balance their news coverage between parties in the same ratio. The Committee is usually chaired by the Prime Minister in London or by the political representatives of the three main parties on it. Traditionally the Liberals do disproportionately well.

The injustices in the way British election campaigns are conducted are apparent. The solutions are not.

Allocations of TV and radio airtime have been challenged in the courts in part, but not in the biggest cases. Small parties repeatedly lose out when the Committee comes to decide. The SNP is a regular challenge in the courts, but it is generally held that in Scotland seats should be allocated according to the balance of support for the parties in their country alone.

The problem is that there is no law requiring the channels to act even-handedly. There is scope for creative argument – though none has yet been made of the argument that barring a particular group from airtime may breach articles 10/14 of the European Convention on Human Rights.

In 1964 the Communist candidate for Kincross and West Perthshire who had lost to the then Prime Minister claimed that Douglas Home’s appearances on party political broad-

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Cathryn Davies and Fiona McKay

Palestinians Under Occupation: The Uprising

The Israeli occupation of Judea and Samaria (the West Bank) and the Gaza Strip is now in its twenty-first year. Israeli claims that it has been the most benevolent in history, but according to Israel’s most trusted pollsters, 71% of the locals believe the occupation is a failure.

Thorny Problems

The injustices in the way British election campaigns are conducted are apparent. The solutions are not. Clearly there has to be an effective statutory duty of fairness in television coverage of politics. But how is it to be defined and how and when is it to be and swiftly enforced? The civil liberties implications of government control have often caused crises of conscience among socialists debating the possibility – not to mention the fear that the boot could be on the other foot if a reforming Labour government were succeeded by a right wing administration. So the time has come for Labour in power to be less ‘liberal’ and indifferent to the excesses of Fleet Street and Wapping?

Funding

Local control is enforced by the RPA’s limits on spending. There is no limit raising money if a campaign can’t spend it.

Once again the issue is the absence of legislative control of national fundraising. The Tories’ attempt to limit Labour’s trade union contributions is in its law and penalty has failed for the moment. So they can argue that their contributions from companies should not be restricted while these continue.

Meanwhile Tony’s fundraising continues to outstrip that of Labour and Lib Dem are currently forced to give up for public funds to particular corporate donations – a point often forgotten by socialist lawyers. A member of a company could challenge on the ground that a donation to Tony’s party in funds is ultra vires the company’s objects. It would be difficult for the company to argue that the donation was designed to bring in a particular contract from the Tories after the election. A case could be fought on the question of whether and to what extent a donation will bring about a government favourable to the private sector of industry (e.g. the construction of industry concerned).

But even if the odd challenge along these lines was successful it would only scrape the surface of the problem. The central issue is the absence of maximum national election expenditure. This would determine fundraising in the same way that a national maximum applies at local elections. An alternative, advocated by several Western European states, would be to prescribe maxes for each party in proportion to their success at the previous election. There could be a case for going further by outlawing fundraising for elections altogether and providing the money to the parties through the public purse.

I hope that this article is just the beginning of a debate in these columns on how justice can be ensured in our electoral process.

The Legal System

Before 1967 the legal systems in the West Bank and Gaza Strip derived from the period of the Ottoman and British Mandate. However, the Jordanian and Iraqi law respectively. On occupation a military government was set up in 1967 and its laws and its legal systems were again substantially modified. Over 1,200 military orders in the West Bank and Gaza Strip regulate matters such as land and property, security and economies over land and water, to a military order prohibiting the picking of wild thyme. This regime arguably contravenes Article 64 of the Fourth Geneva Convention which states that an occupier is obliged to respect the laws prevailing in the occupied terri-

... 286 people have been killed and thousands more injured since the uprising began.

Public Order Trials and the Lawyers’ Boycott

The uprising has led to mass arrests. By 6 January 1988, one hundred and forty-six arrests were made in the centre of Jerusalem. The Israeli government was careful to arrest prominent activists, both in detaining the West Bank and Gaza Strip. These courts were presided over by single judges who are serving Israeli army officers (some without legal qualifications). The Israeli security courts were not able to cope with the number of arrests. In December, 1987, 1,500 arrests were made, despite the fact that the Israeli government had previously appealed to the local authorities to avoid this.

By January, 1988, the Israeli government had isolated the West Bank and Gaza Strip. This was a significant step in the process of normalising the situation in the territories, which has led to the occupation being perceived as a permanent state of affairs.

FREEZE...
visit to take instructions. Previously many convictions based on confessions extracted under duress. Since the uprising almost all the accused plead not guilty but most are found guilty on the basis of the testimony of the army witnesses who are invariably believed. The trials are conducted in Hebrew with inadequate translation into Arabic.

**Force, Might and Beatings**

Daily life has always been an ordeal for Palestinians under occupation. Roadblocks, arbitrary body searches, harassment, humiliation and disruptions are commonplace. The army have the power to stop and search and arrest without a warrant. Everyone must carry an identity card and is an offence to be found outside one's home without it. This does not however stop the army from confiscating them. If someone is arrested, their mark is so clearly placed so they can be recognized by the family. The army are more likely to pick them up in future. In May 1988 in the Gaza Strip the authorities began to compulsorily issue new identity cards, but to prove to the tax office that they have paid all taxes and official debts and that they are not wanted by the security forces.

It is common for Palestinians, especially young men, to be arrested and held for periods of up to 18 days; the length of time for which they can be held and questioned before being brought before a judge (although the period can be extended). Students are particularly prone to harassment. They are frequently stopped, searched and arrested. Soldiers carry out raids and searches on students at accommodation during which they damage furniture and confiscate books and identification cards and beat the inhabitants. Actions are often fuunitive, as a maximum disruption, in instance they may take place at exam times.

In an attempt to re-establish Israeli control over the occupied territories in the face of the growing civil disorder, in January 1988 Defence Minister Rabin publicly announced a policy of 'force, might and beatings'. He added that this would only be in cases where it was required as a last resort and never made a habit of. New reports, newspaper articles and numerous independent reports have shown examples of arbitrary and excessive violence by the Israeli Defence Forces (IDF). Tear gas, rubber bullets, live ammunition and beatings have been used against the Palestinian population not only during and in the vicinity of demonstrations but in hospitals, mosques and private homes. It was estimated by Palestinian sources at the end of June 1988 that 286 people have been killed and thousands more injured since the uprising began.

Amnesty International and other civil rights and medical organisations have reported the misuse of tear gas by Israeli soldiers as a weapon rather than a 'riot control' agent. Tear gas appears to have been the cause or contributory factor in the deaths of more than 40 Palestinians and hundreds have required hospital treatment. Some sections of the population are particularly vulnerable to tear gas inhalation; babies, the elderly and people with respiratory diseases. Most distressing is the effect that exposure to tear gas can have on pregnant women. Spontaneous abortions and foetal deaths have been documented in over 100 cases. The Israelis do not seem to have considered that anyone has died as a result of tear gas. However, they have acknowledged that people with health problems could be harmed, although not under normal circumstances.

There are numerous reports of tear gas canisters being thrown into houses and schools and dropped by helicopter into residential areas where the gas can drift into people's houses. It has been alleged that tear gas has been shot into a mosque while hundreds of people were saying Friday prayers. After Israeli soldiers attacked Shifa Hospital in Gaza on 15 and 18 December 1987 about 100 tear gas canisters were found in and around the hospital. Also, firing at close range has resulted in serious internal injuries in cases where people have been hit by the canister itself.

It is not just over the past six months that live ammunition has been used by the IDF. For example in December 1988 two Israeli Zev Or shooting stencils did drive away and ten were injured. Israeli forces use firearms mainly in confrontations with protesters armed only with stones and petrol bombs.

The United Nations Code of Conduct says that firearms should only be used in the face of a threat or danger to life and where less extreme measures are not sufficient. The official guidelines given to Israeli soldiers at the time they were shooting live ammunition only when lives were endangered, and then to fire at the legs. Yet in cases where demonstrations have escalated, for example on February 18 a doctor at Moqassad hospital in Jerusalem said that 88 patients had been treated there for bullet wounds, mainly to the head, heart, neck and chest. On 23 March 1988, Rabin is reported to have confirmed an alteration to the guidelines to allow soldiers to shoot directly at demonstrators who attack them with petrol bombs as long as they could be individually targeted. As a result in the 5 weeks from mid March to mid April 1988 60 Palestinians were shot and killed. From mid April deaths from live ammunition have continued, but at the previous levels.

**Prisons**

There have consistently been reports of appalling conditions and torture of Palestinian prisoners in Israeli prisons. In November 1987 the Landau Commission, set up by the Israeli government to investigate the activities of Shin Bet (part of the Israeli secret service) concluded that although only part of this report was made public it reveals that Shin Bet investigators had admitted to torture and then lying in court, apparently believing they had the tacit support of their superiors and Israeli judges.

Amnesty International and other human rights organisations have received reports of prisoners being beaten, hooded, handcuffed, forced to stand with arms and legs spread as if they were in cold showers, for long periods, deprived of food, sleep, toilet and medical facilities and subjected to abuse, insults and threats aimed against themselves and their families. Children aged 13 and upwards have been interrogated and subjected to beating and torture.

The prison system has been unable to cope with the large numbers detained during the uprising. Law in the Service of Mu's has reported that in Dabriyeh prison near Hebron there is serious overcrowding with 150 people sharing a room of 100 square metres, food is limited and of a poor quality, there are no blankets, sleep is deliberately limited and toilet facilities consist of a rubbish bin (which constantly overflows) in the middle of the room. Similar reports are made of the other prisons and new detention camps that have been opened to cope with the overflow. One of these camps is in the Neker Desert in Israel itself. This is contrary to international law which states that prisoners must not be transferred from an occupied area (article 76 of the Geneva Convention).

**Detention and Deportation**

A number of specific measures have been used to stifle resistance to the occupation. Among these are administrative detention, house and town arrest, deportation, curfews and censorship. All derive from the Defence (Emergency) Regulations 1945, and their use has intensified since the uprising began.

Administrative detention is imprisonment without trial by order of the military commander for a period of up to six months, which may then be renewed for up to a further six months. Formerly these orders had to be approved by a military judge within 96 hours but a recent military order did away with this requirement. No specific charges need be brought and the evidence in most cases declared secret for the duration of the occupation. Officers in Israel are now able to issue the figure at 1,900 in May 1988 whereas Palestinian sources put the figure far higher.

As an alternative, orders may be issued restricting a person's movement to the area of their town. Again, these orders generally for a period of six months and may be renewed.

Amnesty International has been informed of cases where it has been concerned that individuals have been imprisoned or restricted for the non-violent exercise of the right to freedom of opinion and expression. Students, lawyers, journalists and teachers are particular targets for such forms of punishment. Since 1985, Amnesty International has stated that four of its five fully trained legal field workers have been placed under administrative detention. The Israeli authorities are targeting punishment in this way in an attempt to get at those they see as being at the root of the uprising and to prevent the distribution of information abroad.

Deportation, again by order of the Military Commander, is clearly in breach of international law since both the Universal Declaration of Human Rights and the 1949 Geneva Convention prohibit it. Nevertheless since 1967 over 2,000 Palestinians have been deported from the occupied territories, mostly to Jordan or South Lebanon. There is a right of appeal to a Military Objections Committee but this sits in secret and only has power to make recommendations to the Military Commander. There is also a right of appeal to the Israeli High Court, but, again, the evidence is always declared secret so security grounds, and no order has ever yet been cancelled. In several recent cases the deportees have withdrawn their appeals since the exercise is so obviously meaningless and only serves to legitimise the process.

In January of this year Israeli deport four Palestinians in the teeth of world public opinion. Since then at least 16 others have been quietly shipped to Southern Lebanon.

**Collective Punishment**

It is common for forms of collective punishment such as curfews, road blocks, house sealings and demolitions to be employed. Curfews have been imposed since the uprising began in an attempt to put a stop to the unrest, break up the growing co-ordination that keeps it going and silence the world media. On 1 January 1988 all eight refugee camps in the Gaza Strip and many of the West Bank were placed under curfew, and on 28 March the occupations reopened. Camps further south were declared a closed military area for three weeks with a total curfew in the Gaza Strip and severe restrictions in the West Bank. Telephone lines were cut and fuel supplies stopped. In the camps, the United Nations Relief and Works Agency (UNRWA) stated that the army was preventing the delivery of food and medicine. Reports emerged that those who attempted to leave their homes were beaten or arrested. For example, house arrest orders were placed under curfew at different times during the uprising, sometimes for weeks on end, and schools, universities and colleges have been closed for much of the time.

The incidence of house sealings and demolitions has escalated since 1985. Generally this has taken place after the arrest of a family member suspected of an offence involving security-related violence, but nearly always before the suspect has been issued with an order and found guilty. Thus, the first inhabitants will know is when soldiers appear and give them half an hour or less to remove themselves and their possessions from the house. Sometimes the soldiers
Haldane Society of Socialist Lawyers AGM 1988 Resolutions

1. Puerto Rico
The Haldane Society deplores the fact that 80 years after US colonial intervention, Puerto Rico remains one of the few colonial territories in the Caribbean basin, and notes with alarm that on 30 August 1985, 230 armed FBI agents raided the homes of Puerto Rican activists, and arrested 15 people, who now await trial in Hartford, Connecticut, charged with a bank robbery which took place in 1983. These defendants are in fact members of the Puerto Rican independence movement.

This Society therefore resolves:
(1) to recognise and support the right of the Puerto Rican people to self-determination and independence, pursuant to UN Resolution 1514 (XV) of 1960; 
(2) to demand the immediate withdrawal of the US from Puerto Rico; 
(3) to demand the unconditional release of the Puerto Rican activists presently awaiting trial in Hartford, Connecticut, and to demand that they should have a fair trial by their peers in Puerto Rico; 
(4) to write to the US authorities to demand the immediate release of all the Puerto Rican prisoner of war, Alberto Quiroz Ojeda, who has been remanded in custody since his arrest on 30 August 1985, at 33 months the longest period spent on remand awaiting trial in modern US history.

2. South Africa
The Haldane Society condemns the recent actions of the South African apartheid regime in intensifying the repression of the liberation struggle in Southern Africa, in particular:
(1) the murderous attack on the life of Abie Sachs and the murder of Dulcie September whilst each was on the territory of another sovereign state; 
(2) the unlawful kidnapping and abduction of Mr Ebrahim Ismail Ibrahim from the territory of Swaziland; 
(3) the repression of children in South Africa, including the detention between 1984 and 1986 of 11,000 children without trial, the arrest of 18,000, the holding of 173,000 in police cells awaiting trial, and the killing of 300 children by the security forces; 
(4) the detention in solitary confinement without charge for Mr Gabriel de la Matta, and the detention and torture of an exchange student by the University of the Western Cape without charge; 
(5) the detention of political prisoners without charge by the South African government.

3. Nicaragua
The Haldane Society condemns the attempts by the US to intimidate and undermine the sovereignty and legitimate government of Nicaragua, and resolves:
(1) to demand the immediate removal of all US forces from Central America, in particular condemning the recent provocative maneuvers conducted by US troops on the territory of Honduras; 
(2) to welcome and give all possible support to the peace process initiated by the government of Nicaragua, as the best hope for the end to armed terrorist insurgency in Nicaragua, and for the true self-determination of Central America and the Caribbean basin.

4. Palestine
The Haldane Society condemns the ruthless and bloody repression by Israel of the legitimate struggle of the Palestinian people, particularly in the West Bank and Gaza Strip, territories unlawfully occupied by Israel, and gives its full support:
(1) to the right of self-determination for the Palestinian people; 
(2) to the right of the Palestinian people to an independent state of Palestine, consistent with the legitimate territorial integrity of the state of Israel; 
(3) to diplomatic recognition for the Palestinian Liberation Organisation as the legitimate representatives of the Palestinian people.
5. Soviet Union

The Haldane Society welcomes the resolution of the plenum of the Supreme Court of the USSR on 4 February 1988 rescinding the verdicts and dismissing the cases against N.I. Bukharin, A.I. Rykov, Kh.G. Rakovsky and others, who, in March 1938, condemned as members of the so-called "Anti-Soviet Counterrevolutionary Terrors".

The Society pledges full support to the commission of the Palais de Justice for the trials of M. Gorbatchev on 7 November 1987, which is examining materials connected with the repressions of the 1930s, 1940s and early 1950s; and to the investigations of the USSR Prosecutor's Office and USSR Supreme Court.

The Society applauds the words of Mr M.A. Marov, a member of the USSR Supreme Court, who said (Leipszig 7 February 1988):

"First, the assessments voiced in the report have been arrived at with much suffering by the party and the people, they reflect collective thoughts, and are not dictated by anything apart from the desire to affirm the truth about the past for the sake of the present and the future. Second, it is obvious that, if not now then tomorrow, truth and justice will prevail. I am glad that this has been done now. I am glad that neither the General Secretary, nor the public, nor any of us has shifted the resolution of these matters on to another time and another people's shoulders. It was up to us to do it. And we have done it."

The Society gives full support to the general reform of the Soviet legal system now in progress; and resolves to strengthen ties between the Haldane Society and the Association of Soviet Lawyers.

6. Local Government

The Haldane Society, as the constituent body of a Society of Socialist Lawyers, condemns and abhors the avowed aim of the Tory Government to recreate society in Britain, in particular in local government.

This Society therefore resolves:

(1) to condemn the use of local government legislation, exemplified by Clauses 17 and 18 of the Local Government Act, to prevent the legitimate rights of local authorities to boycott the products of apartheid;

(2) to condemn the attempt, in the same legislation, to use local authorities as a means of repressing gay and lesbian rights;

(3) to condemn the proposed abolition of the Inner London Education Authority, and the senseless and destructive splitting up of London education between the boroughs, with the effect that the poorest boroughs will have the least provision; and the intention, in the Education Bill, to put controls on the teachers and to prevent the propagation of points of view unpopular to the Government;

(4) to condemn the Poll Tax legislation contained in the Local Government Finance Bill, which will penalise the poor in favour of redistribution to the rich, and will damage working class people from registering to vote, while threatening important civil liberties;

(5) to condemn the proposals contained in the Housing Bill, which will increase the numbers of homeless families, while removing properties from local authorities obliged to rehouse them, and which is intended to bring an end to the socialist policy of providing decent housing at an affordable rent for those in housing need;

(6) to condemn the use of surcharge and exclusion from participation in local politics, to penalise labour and other councillors in Lambeth, Liverpool, Camden, Southwark andHackney, who have done no more than to attempt to defend local jobs and services in working class communities. This Society abhors such use of financial penalties, which are savage, intimidating and unparalleled in the British legal system, and are imposed exclusively upon local government.

The Haldane Society resolves to give every assistance, including lobbying and provision of expert advice in Parliament, to defeat or modify the provisions of the legal aid scheme, amended as necessary to include such representation;

(5) calls on the Law Society and the police to make provision for and encourage rape victims to seek legal advice when they attend police stations and before they are called upon to give evidence before any court and to adapt the advice at police stations scheme to ensure that advice can be available on an emergency basis.

9. Clause 28

The Haldane Society condemns the attack on the lesbian and gay community in section 28 of the Local Government Bill. In particular the Society notes that the section may have the following consequences:

(1) that state schools will be inhibited from presenting any positive images of lesbians and gay men or providing any corrective to antagonistic attitudes towards lesbians or gay men;

(2) that local authorities will be inhibited from giving financial assistance to lesbian and gay advice, support or counselling services;

(3) that local authorities will be inhibited from giving financial assistance to arts projects in which lesbians or gay men are portrayed sympathetically; and that public libraries may be obliged to withdraw publications in which homosexual themes are treated positively.

While criticising the whole intention of this section this Society further notes that as a result of the phrasing the section is open to very wide interpretation and therefore condemns it as bad and dangerous law.

This Society recognises that section 28 has been introduced at a time of increasing intolerance and bigotry towards lesbians and gay men and that the clause can only serve to confirm such attitudes.

10. Discrimination Against Lesbians and Gay Men

The Haldane Society supports the introduction of legislative measures designed to prevent discrimination against lesbians and gay men in the workplace on the ground of their sexual orientation.

11. Housing

The Haldane Society unreservedly condemns the proposals in the new Tory Housing Bill which represents the most serious attack on tenants of council housing and on all those needing secure rented homes at reasonable rents for 70 years.

This Society believes that the Housing Bill will do nothing to increase the supply of private rented accommodation and that, on the contrary, its proposals will lead to a decrease in the amount of rented housing available at reasonable rents; that it will increase the numbers of homeless people, the amount of overcrowding and the rate of illegal evictions.

This Society opposes, in particular:

(1) the proposals for abolishing rent control and allowing market rents for new private lettings in circumstances where no guarantee has been given that Housing Benefit will be increased to pay for such rents;

(2) allowing landlords to let on 'shortholds' with no security of tenure;

(3) increasing rents for new Housing Association lettings by cutting government subsidy and by forcing Housing Associations to raise rents from private sources;

(4) creating new unaccountable Housing Action Trusts in selected areas, formed to take over public rented housing and to give it away to private owners;

(5) allowing landlords to take council housing unless a majority of all affected tenants say no to such a takeover.

12. Trade Unions

The Haldane Society demands that the Employment Act 1988 be repealed. It serves only to attack democratically determined internal union structures; to promote divisions within the workplace and the union and to subject the latter to wholly unnecessary financial and administrative burdens.

13. Social Security

The Haldane Society deplores the recent changes made to the Social Security system and demands that instead of legislating to undermine and further restrict an already inadequate benefits system, that positive steps should be taken to make proper financial provision for all those in financial need.

14. Abortion

The Haldane Society:

(1) condemns the current Private Member's Bill introduced by David Alton MP which would restrict abortion rights of the most vulnerable women by criminalising most abortions carried out after 17 weeks of pregnancy, and deplores the increasingly prevalent voice of the very well financed emotive and misleading campaign in support of this Bill which has overshadowed and prevented any honest consideration of the issues;

(2) condemns the present de-facto restriction on NHS abortions due to lack of resources, shortage of staff and reduction in the number of beds in NHS hospitals which will in some health authority areas has resulted in the imposition of a limit for NHS abortions as early as 12 weeks of pregnancy;

(3) also condemns the Bill introduced by Edward Leigh MP which would, in the case of any woman not resident in the UK, require any doctor carrying out an abortion to
16. Royal School for the Blind Training Sheltered Workshops

1. Whereas the Royal School for the Blind (RSB) was established under Royal Charter as an autonomous and independent charity for indigent blind persons in the year 1799.

2. And whereas in 1902 the aforesaid charity was relocated at 205/206 Watmore Road, London, SE1, where it continued to carry on the training and employment of indigent blind persons.

3. And whereas the property used for the purposes of training and employment of indigent blind persons is known as the RSB Training Sheltered Workshops for the Blind.

4. And whereas the aforesaid charity have as the principle aims and purposes the training and employment of indigent blind persons, for which the aforesaid charity receive donations, subscriptions, bequests, donations, and other income; the said income being used for the purposes of the charity.

5. And whereas the Royal School for the Blind Training Sheltered Workshops (MSC) and generous financial contributions from the government and others in furtherance of the aforesaid principle aims and purposes.

6. And whereas they were at the 21 March 1988 approximately 47 registered blind and disabled employees at this workplace, gainfully employed in carrying on the following works.

(a) The making of shoes for the blind
(b) The training of the blind
(c) The sale of the RSB property with the proceeds of the RSB Training Sheltered Workshops for the Blind.

7. And whereas the demise of the RSB Training Sheltered Workshops for the Blind creates enormous and serious economic and social problems for the blind and disabled employees and their families. It will also mean redundancies which, for many would mean remaining at home, and vegetating.

8. And whereas the disabled employees made redundant will thereafter be employed in the RSB Training Sheltered Workshops for the Blind and the Society seeks to fully support the blind and disabled employees (trade unionists) at this workplace.

9. The Haldane Society strongly deplores and deprecates the action of the RSB charity in wanting to sell the RSB property with the proceeds of the RSB Training Sheltered Workshops for the Blind.

10. And whereas the demise of the RSB Training Sheltered Workshops for the Blind creates enormous and serious economic and social problems for the blind and disabled employees and their families. It will also mean redundancies which, for many would mean remaining at home, and vegetating.

11. And whereas the disabled employees made redundant will thereafter be employed in the RSB Training Sheltered Workshops for the Blind and the Society seeks to fully support the blind and disabled employees (trade unionists) at this workplace.

12. And whereas the Society pledges to:

(a) Immediately write to the Charity Commission, regarding the Society's opposition to the proposed sale of the aforementioned property.

(b) Immediately to make a public statement in support of the blind and disabled employees at the RSB Training Sheltered Workshops for the Blind.

(c) To assist the blind and disabled employees at this workplace as far as may be deemed necessary or appropriate to ensure the continuance of the RSB Training Sheltered Workshops for the Blind.

13. Alison Lee

Reproductive Rights: Claiming the Moral High Ground

Recent developments in reproductive technology could bring about the most widespread and momentous changes in the reproductive process and the structuring of family life. Yet the debate concerning the morality of these medical advances has been dominated by traditional concerns of the political right.

A serious attack on civil liberties, and in particular women's rights, is taking place. It is imperative that the left shifts the parameters of the debate.

Following the publication of the Warnock report in 1984, the government introduced legislation to implement its proposals concerning commercial surrogacy, but was unsure how to approach the report's recommendations concerning fertilisation and embryology. A consultation document was published in December 1986, followed by the White Paper Human Fertilisation and Embryology: A Framework for Legislation late last year. This affirmed the government's intention to legislate in this Parliament.

Limited Availability

The moral debate in the Warnock report takes on its terms of reference concern for the continuity of the nuclear family. The family is initially extolled as a valued institution within our present society, and treatment for infertility is recommended for the heterosexual couple, living together in a stable relationship. The arguments for the availability of treatment single women and men and for the availability of non-nuclear family arrangements, and for lesbian and gay couples are rejected out of hand:

1. We believe that as a general rule it is better for children to be born into a two-parent family, a father and mother, although we recognize that it is impossible always to predict with certainty how lasting such a relationship will be.

2. The White Paper, among other things, proposes the establishment of a Statutory Licensing Authority (SLA) to regulate and monitor practice relating to medical, professional and ethical questions. The SLA will exercise its functions not just in relation to experiments on embryos created in vitro and the storage of embryos, but also in relation to the use of donated gametes (sperm and eggs). This aspect of the paper represents an attack on the rights of women wanting artificial insemination by donor (AID).

3. The SLA will licence those providing the infertility services subject to its conditions, report to Parliament, and 'provide guidance to the field on good practice.' The condition for licensing infertility services will undoubtedly contain client-assessment criteria similar to that proposed in the Warnock report. It is stated in the White Paper that a framework for carrying out assessments will be inappropriate, but that in granting licences the SLA will be required to take account of central procedures for deciding whether to offer treatment to particular 'couples'.

4. The White Paper also provides that it will be a criminal offence to offer a treatment donated by a third party to create, by artificial means, an embryo inside the body without and appropriate licence from the SLA.
Bindsovers: Trick or Treat?

There is clearly a need to reform the archaic powers of binding over to keep the peace and be of good behaviour. These powers in their current form are indefensible. The use of bindsovers for non-criminal conduct also raises concern over the sanctions attendant to the power are penal in nature. A person can be imprisoned for an unlimited period for refusing to be bound over even though the substantive offence may be non-imprisonable. Further, a person who agrees to be bound over but misbehaves can be convicted for contempt of court. In the event of a breach of the bindsover order, this amounts to an indirect fine, often in excess of the statutory minimum for the substantive offence.

A second relevant constitutional issue is the need for certainty in the exercise of criminal sanctions. However, bindsovers create uncertainty in the criminal law. The unfettered power of the courts to decide whether or not a person is likely to continue to commit the conduct which the bindsover is intended to prevent can result in a sentence of uncertainty. This saves court time and ensures no conviction follows. However, many public order cases would be avverted by more sensitive policing.

Secondly, where the prosecution case is weak, defendants nonetheless may feel unable to go through the stress of a trial. The defendant may thus plead guilty and receive a lesser sentence. This same principle also applies in the case of jail time. Ideally, a fully staffed, efficient Crown Prosecution Service, able and willing to prosecute where the evidence is weak. In reality, the Crown Prosecution Service does not act as a Ministry of Justice.

The third area in which bindsovers are of some value relates to gross indecency. Where two consenting adults perform a homosexual act in a public place, but the allegations do not fall within section 5 of the Public Order Act 1986, the binder is used by the courts as an alternative to criminal conviction. This compromise is not ideal since it conceals the need to decriminalise the homosexual acts. Tribunals recognise this need in a covert way by binding over defendants. In all three areas, there is need for law reform.

Arbitrary and Uncertain

This power contravenes the rule of law doctrine noted above, and cannot be justified by any recognised constitutional principle.

The use of bindsovers for non-criminal conduct also raises concern over the sanctions attendant to the power are penal in nature. A person can be imprisoned for an unlimited period for refusing to be bound over even though the substantive offence may be non-imprisonable. Further, a person who agrees to be bound over but misbehaves can be convicted for contempt of court. In the event of a breach of the bindsover order, this amounts to an indirect fine, often in excess of the statutory minimum for the substantive offence where.

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Flexibility

Despite these criticisms, the binder has an important practical use in several areas. In public order cases, where there are large scale arrests which often involve hotly disputed factual situations and trivial allegations, the binder is used with some success. This saves court time and ensures no conviction follows. However, many public order cases would be avverted by more sensitive policing.
In April 1985 a worker employed by a firm in Barnsley was admitted to hospital with acute lead poisoning. Only then did it emerge that local factory inspectors had issued improvement notices and prohibition notices the firm for years.

A launderette owner had faulty washing machines which carried on spinning after the doors were opened. A woman had her hand amputated at the wrist as a result. The launderette owner failed to repair the machine even then, and the local Health and Safety Executive were too busy to do anything about it.

Toothless Watchdog

Stories like these make depressingly familiar reading to personal injury lawyers and union officials used to inadequate enforcement of safety standards, both in and outside the workplace. It would be naive to expect the understaffed and underfunded Health and Safety Executive to stop the increase in serious accidents which the Thatcher years have witnessed. The HSE have documented this increase in their own reports.

Every PI practitioner knows that complaints of health hazards and perennial death traps are often ignored until an accident happens because of complacency, unwillingness to be diverted from pursuit of profit, or simple inertia. Must those not in the HSE’s sights be prepared to stand idly by waiting for someone to get hurt?

Creative Lawyering

I would argue that it is time to look closely at an area of the law which has barely if ever been exploited: the right to a preeminent injunction to compel the elimination of a safety hazard.

The development of employees’ injunctions to stop dismisseals arose out of frustration with the inadequacy of damages and industrial tribunal remedies. This provides an instructive parallel: there is now a need to develop the potential for claiming injunctive relief against employers and others who shirk their safety responsibilities under common law.

The process must be to look at the scope for existing case law.

Public and Private Nuisance

Public nuisance is a crime as well as a tort and can ground an injunction if the plaintiff establishes a real risk of imminent and irreparable damage (this criterion is looked at below). The public nuisance cases arose mainly in the last century from the industrial revolution. Several cases were concerned with attempts to prevent smallpox hospitals from opening, by people who lived nearby. They usually failed because the evidence about the risk of infection was not strong enough, and because the judges tended to side with the scientists who were trying to wipe out smallpox. But an injunction was and is available in principle. To succeed the plaintiff has to be one of a class of persons likely to suffer special damage.

Public nuisance claims could in theory be used to combat safety hazards from large scale environmental pollution such as air pollution and lead in petrol and fuel. The difficulty is of course to get strong enough scientific evidence to overcome the soothing and reassuring reports put out by scientists in the pay of multinationals and government.

An injunction is also available to avert a threat to the public welfare if the threat consists of a private nuisance, within the legal meaning of the term. The trouble is that the plaintiff can only sue if she has an interest in the harm affected by the nuisance. For those not falling within that tiny category of plaintiffs the law of nuisance is no help.

Contract Claims

If the person whose safety is threatened is employed by the person who fails to remove the threat, then the employer is in breach of contract. The employee’s duty to provide a safe system of work, etc under Wilson & Clyde Coal v English is usually regarded as part of tort law, but there is a corresponding contractual obligation which can ground constructive dismissal claims if the employee leaves to save themselves from a seriously unsafe system of work.

This is a pretty useless remedy since the worker has to prove that by his or her own acts the breach was “repository” in an industrial tribunal and if successful is left with inadequate compensation and a job. A much better remedy would be to stay in the job and get rid of the safety hazard by injunction. Any breach of contract, répartitory or not, is remediable by injunction at the court’s discretion.

Yet astonishingly there is no reported case that I can find where an employer has eliminated a safety hazard by means of an injunction. If any reader knows of one I would be glad to hear about it. The section in Harvey on Industrial Relations entitled ‘Remedies for Breach of Contract’ does not mention injunctions only in the context of dismissal. Sweet and Maxwell’s Encyclopedia of Health and Safety at Work does not mention injunctions at all.

Negligence and Statutory Duties

If an employer, or some other person subject to a statutory duty, fails in their duty to prevent the plaintiff from suffering damage, then there is an action for damages if the plaintiff is within the class protected by the statute; or if the statute provides for compensation the plaintiff has suffered special damage over and above the rest of the public.

The section in Harvey is also right to an injunction to prevent the breach of statutory duty but this is subject to the wording of the statute which the court could construe as providing for an ‘exclusive remedy’ for an ‘exclusive’ category.

Cases where an employee seeks to force an employer to comply with a statutory duty by injunction could run into this snag because of the powers of the HSE to enforce statutory duties by other means, i.e. improvement and prosecution notices and criminal prosecutions.

A person restrain by injunction a negligent act or omission? This simple question has never been definitively answered by the common law, and it is time that it was – in theory. In practice negligence could consist of a continuing failure to act – as in the case of the launderette owner who allows a ‘death trap’ to go unchecked – or it could involve a plan to introduce a new unsafe practice, such as the introduction of ticket barriers in stations which would prevent escape in the event of fire. The question is of particular relevance outside the employment field since the contractual remedy (above) can be used in employment cases.

Probably the reason so little attention has been given to this question is that traditionally one would seldom foresee negligence.

But in the present era of mechanised industry where corners are increasingly cut in the interests of quick profits, continuing dangerous practices are common and pre-accident negligence is becoming more visible.

Despite this the following legal textbooks make no mention at all of injunctions as a remedy for negligence: Snell on Equity; Sryny on Equitable Remedies; Charlesworth on Nuisance; and Clerk and Lindseth on Tort.

Defence Arguments

Defendants might argue that injunctions should not be granted in negligence cases because they have never been used for that purpose. This is perfectly true and is an entirely valid defence. An injunction to prevent the escape of dangerous substances is not available even when the plaintiff has escaped. But there are special remedies available in cases where the defendant has broken an undertaking to wipe out one of the problems the defendant’s attitude. She moved out with her family, convinced that at least one snake was still at large. The judge said that there was evidence of negligence causing the plaintiff to develop a neuritis which would not improve whilst there was a continuing risk of escape.

Imminence and Gravity

In cases of negligence, nuisance and breach of statutory duty unlike contract suffering damage is an essential part of the action. Injunctions before the damage is suffered can only be granted if the court is convinced that the ‘imminence and gravity’ of the risk is sufficient to justify an injunction.

But ‘imminent’ does not mean the damage must be about to occur. All it means is that the application to the court must not be premature, i.e. that the damage, if it does occur, will occur in such a way that the plaintiff will not be able to get to court in time. So it is also worth remembering some useful words of Russell LJ:

“In truth it seems to me that the degree of probability of future injury is not an absolute standard: what is to be aimed at is justice between the parties, having regard to all the relevant circumstances.”

That was said in the context of a risk of damage to the plaintiffs property which was not about to happen overnight, but by a gradual process of soil erosion. Even the most property-minded judge would not want to accept that it is a risk to life and limb should not be subjected to any stricter test.

Some Thoughts on Practicalities

I would argue that the courts can injunct against unsafe practices in all contract cases and at least some other cases; and the unions and the progressive legal profession should be exploiting this remedy and not waiting for accidents to happen.

Safety standards in the workplace would improve if union safety reps made a point of reporting workplace hazards which were not dealt with before any accident happened. Employers would think twice about allowing an unsafe practice to continue if they received a letter before action requiring them to undertake to stop the hazard. The negotiating hand of the union side would be strengthened by an appropriate action and this would make employers less intransigent.

If an action is brought, the plaintiffs should be those in the most immediate danger of being exposed to the plaintiffs and saying, in effect, that if something is not done someone is going to get hurt.

In non-employment cases where there is no contract the position is more difficult but more thought should be given to preemption of any possible way of preventing the catalogue of avoidable disasters which have marred this decade including Bhopal, Zeebrugge, Opren, Kings Cross, Piper Alpha...
Some 129 countries retain the death penalty, but the majority of the industrialized nations of the Western world have abolished it. (28 nations have abolished it; 38 have eliminated it for their citizens only.) Of the group, the US, Japan and South Africa have used the penalty since 1985. Without a detailed knowledge of Japanese penal law, and with the US's use of the South's tactics to link up to the struggle against apartheid, it is unhelpful to compare the two. (With all due respect to the authors, the number is too low; the death penalty is currently the only penalty that may cause a short-term increase in the numbers of homicides.

Discriminatory Use of the Death Penalty

The death sentence in the US is a lottery. The attitudes and actions of police, prosecutors and judges in imposing the capital punishment for a particular crime are affected by the presence of a suspect or convicted murderer in the same state, county, or city. The racial, social and economic characteristics of the defendant and victim have a significant impact on the likelihood that the death penalty will be imposed. The death penalty is far too often used as a substitute for ineffective and discriminatory strategies in criminal justice. The US should adopt alternative strategies to reduce murder rates, without the use of the death penalty.

There is little evidence that the death penalty deters capital punishment in any significant way. Most recently, the authors of a study published in the Journal of Criminal Law and Criminology have found that the death penalty has little deterrence effect. The authors of this study, who reviewed a sample of 100 capital cases in the US, concluded that the death penalty is not a significant deterrent to murder.

The death penalty is a cruel and unusual punishment. It is applied in an arbitrary and discriminatory manner. The US should abolish the death penalty and replace it with life imprisonment without parole. The US should also ensure that the death penalty is not used as a substitute for ineffective and discriminatory strategies in criminal justice.

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The death penalty is a cruel and unusual punishment. It is applied in an arbitrary and discriminatory manner. The US should abolish the death penalty and replace it with life imprisonment without parole. The US should also ensure that the death penalty is not used as a substitute for ineffective and discriminatory strategies in criminal justice.
**REVIEWS**

**ACTION ON RACIAL HARASSMENT: LEGAL REMEDIES AND LOCAL AUTHORITIES**

Duncan Forbes
Legal Action Group and London Housing Unit. £10

A survey of black residents in a single London borough revealed that 116 people suffered 1,560 incidents of racial harassment in 1985. During the same period local authorities attempted to take action in just six cases throughout the entire city. Such pitiful inaction in response to so vast a problem should cause local government officers, and local government lawyers in particular, to hang their heads in shame.

Duncan Forbes' book was written for local authorities to help them use the law to defend individuals and communities against sustained campaigns of violence and intimidation. The novelty of this approach has dictated the structure of the book, which begins with an examination of general principles of administrative action and reviews the pertinent 'powers' and duties. I suspect that this approach will be criticised by some as academic, but it is important to remember that this is a new and highly controversial area of the law. Any intervention by an authority will be in the face of a current law that fails to recognise the need to combat both racial harassment and the institutional and personal racism endemic in the judiciary. It is therefore crucial that an understanding of the fundamental principles underpins the broad strategy. And the structure may be academic but the style is practical and down to earth with a great many helpful examples.

Another strength of the book is the creative consideration of tabular issues. In a discussion of explicit racial harassment clauses in tenancy agreements, Forbes lists six advantages - such as informing victims of their rights and putting perpetrators on notice. The - and no disadvantages. However he suggests that there is little to be gained by actually seeking prosecution on harassment grounds; a political gesture makes an example of perpetrators. The eight disadvantages cited indicate the probable lack of understanding of the judiciary, the difficulty of legally defining the term itself and the reluctance of judges to accept that a racial motive exists. Instead Forbes suggests a model clause in which the breach of tenancy is itself harassment and where the question of racist motivation is secondary.

These examples also illustrate the limits of using the law in isolation. As a result some of the authorities will see the need for a corporate approach involving the skills and resources of housing, social services, architects and engineers. Forbes discusses the powers available to the various branches of local government, sometimes at inordinate length. More helpfully he also suggests how legal resources combined with a corporate approach can be put at the service of community action; funding can be channelled to support groups, volunteer 'ministers' to sit in with victims, and investigators equipped with video and infra-red cameras. Forbes describes his book as a 'book of ideas' intended to generate thought and discussion. As Tony Offord says in his introduction, with this book the shelf no official should ever have to say to the victim of racial harassment 'We're sorry but there's nothing we can do about it'. As the number of racist murders increases, this book is literally vital.

**THE POLITICS OF CRIME**

John Pitts
Sage Contemporary Criminology

John Pitts is a lecturer in social work and his book is perhaps inevitably written for a sociological audience. It is particularly aimed at the 'radical professional' and 'black intellectual' who he identifies as the principal agents of desirable political change.

Taking a historical approach, Pitts isolates trends in practice and theory from the late 1950s to date. He recognises the 1969 White Paper The Child, The Family and the Young Offender as a radical approach to children in trouble, leading to the 1969 Children and Young Persons Act. He reminds us that this legislation, granting social workers discretionary powers in care and supervision, was an attempt to curtail magistrates' powers and was intended to lead to the gradual replacement of attendance and detention centres by intermediate treatment.

Pitts calls that phase the 'rise and fall of welfare and treatment'. He characterises the Health government and the early 1970s as the 'rise and fall of delinquency management', when social work was annexed to the service of the law and order state, and in particular intermediate treatment lost its central role and its political allies. Developments associated with the 1974 Criminal Justice Act shielded the emphasis from social causes to efficient detection and deterrence.

Pitts also points out the dangers of extending the apparatus of social work, in that it draws young people in and potentially ionises them through the range of 'punishments' towards custody. Here he articulates practitioners' unease that an apparently logical social work type disposal for a client might on occasion be better resisted because of the consequences of 'failure' to keep the programme; a failure which may lead to custody.

The Tory government of the last decade is viewed as the 'era of vindictiveness.' Pitts castsigates the practice and theory of juvenile justice as an opportunistic oscillation from one opposing orthodoxy to another. At times his abbreviation of theory can be difficult to follow but in general the discussion is illuminating. He is at his best when assessing the theory and concentrating on political debate. He makes a clarion call to his fellow practitioners to support the poor and powerless and to press for changes in the distribution of power and wealth.

Pitts presents a practical programme. He asks for new alliances to redistribute power within the juvenile justice system and between the criminal and civil jurisdictions to deal with criminal damage and assault within the community. Above all he calls for a restatement of the orthodoxy of criminal justice. He terms environmental and deprivation. He asks for no exceptions except in the public interest, for direct action to control the introduction of juvenile justice and the introduction of family panels with choices between fines, court heard for the prevention of social disadvantages. Any legal advisors would be well worth the time to read this book.

Overall it is an imaginative and interesting book which offers ways for radical lawyers to examine their own practice at the level of both casework and policy. As Pitts says, at the centre of the inner-city catastrophe are black children and women people in tenancy on harassment grounds; the increasingly dealt with by force and coercion, rather than tolerance, compassion and a willingness to alleviate their problems. We ought to do something about that system beyond casework.

Greg Powell

**LAW, DEMOCRACY AND SOCIAL JUSTICE**

Roger Cotterrell and Brian Bercuss (Eds), Basil Blackwell, Oxford 1988

This collection of ten papers on the contemporary relationship between law and socialist ideas is heartening in at least two respects. Firstly, it identifies a concern with unifying growing running through the tradition of socialist thought and reappears, thankfulness, to dwell on the divisions within socialism. The paper on racism is relative as the right of all citizens to share in society's benefits and to participate in collective life as the central value that links concepts of socialist justice and democracy.

Secondly, it concentrates on economic structure. Far from dwelling on orthodox economic determinism the editors identify the need for an economic structure appropriate for a democratic society, without which the present disman
tlement of the welfare state will continue apace. The contributors take up the challenge in a spirit of construction that contrasts sharply with the depression and malaise into which parts of the left have fallen.

In a clear piece on the function of law, Roger Cotterrell shows how law and state regulation (‘law-government’) is being used to bring about major social change and economic restructuring while official rhetoric asserts its incapacity to do just this. His metaphor is unshelled to show how law is used to control influences on our attitudes, including our attitude to the function of law. The consequence is that extensive use of law to recreate a climate of free enterprise is unquestionably accepted as legitimate at the same time that the function of law to plan and direct activities in the communal interest is viewed as illegitimate.

Cotterrell argues government can be used to bring about a less distorted view of the society we live in, for example, legal arrangements to promote freedom of the press. Thus he outlines the importance of law in both hindering and achieving socialism.

Prosser writes of the need to discuss basic principles of institutional design that can be used to inspire institutional forms. Such principles make up the middle ground between abstract ideology of future socialist society and blueprints detailing specific institutions. Law is crucial as the primary means by which institutions are defined and protected. Prosser outlines how law needs to define the respective roles of planning and markets. Markets cannot be ignored or dismissed out of hand as many on the left have tried to do.

The collection covers a diverse range of issues, including transnational capital and exploitation contracts. The problematic paper is one of the most interesting to many readers (self-interest clearly defined - not being incompatible with socialism). Schachter's paper is entitled Radical Lawyers and Socialist Ideals. Opening with some would go so far as to argue that radical lawyering is a contradiction in terms. The paper identifies the core conflict facing radical lawyers in London. Before writing the paper he found and interviewed 25 'radical lawyers' contacted through an informal network.

So, if not to understand the satisfactions and frustra
tions of colleagues in radical legal practice, let alone for intellectual curiosity, then at least to check the veracity of the reproduction of your words - this book is well worth a look.

Sue McLaughlin
CRIME BOOKS REVIEWED BY BLACK MASK

During a very pleasant dinner in honour of the retirement of our tireless secretary Beverley Lang, Haldane elder Michael Sedlet and I discussed what bed is the perfect place for reading. Michael then contended (not from first hand experience, I hope) that a prison cell is also ideal, provided of course that you have cellmates with similar literary interests. I was reminded of a sad case from my early years in the law. My client, for reasons too complicated to explain, was unexpectedly denied bail in the middle of his trial. As he was reluctantly escorted downstairs to spend the night in the slammer he uttered a heartrending cry . . . I’ve got nothing to read! Quick as a flash I threw him my book of the moment, Lions and Shadows by Christopher Isherwood. The next day he assured me that it was a good read and had helped him through his ordeal. Domestic matters have so overwhelmed me that recently I have found recurring fantasies of a shortlist sentence in a clean and tasteful prison cell.

Luckily, before I turned myself in, false confession in hand, the French government intervened and required me to spend a day queuing at its embassy in order to purchase a visa, at great expense, to enable me to travel through its lovely country. Life at home is so hectic that I actually enjoyed standing in an endless line with fellow non-EEC nationals, book in hand, transported to fictional foreign shores. And herewith my report.

My readers have asked me to report on the most of the books this time and I am grateful to them for introducing new writers to me and widening my reading horizons. I have no space to review them all now, but will for the next issue.

Along with gunpowder and haute cuisine, the Chinese claim to have invented the novel. Some cause detective stories have been around for thousands of years according to Robert Van Gulik, sinologist and translator of Celebrated Cases of Judge Dee. This is an anonymous 18th century novel based on a real life statesman of the T’ang Dynasty, who lived during the 7th century. We don’t know how well it represents life in 7th century China but we can assume that it gives us a feel for 18th century China. Judge Dee is in some ways very like a modern fictional detective. He has a loyal sidekick with a shifty past— Sgt. Hoong—and uses unsophisticated methods and disguises to crack his cases. In this book he solves three murder cases simultaneously, which puts pros like Philip Marlowe in the shade. One case turns out not to be a murder at all but an accidental death which I thought was a nice reversal of the usual convention of apparent accidental death being revealed by the hero to be a murder. Judge Dee is more like an examining magistrate than our sort of judge. He goes about his job in a way that we might find shocking. In keeping with ancient Chinese tradition, torture is the method of detection. The idea is to round up the suspects, torture everyone and see who confesses first. The torture-confession method prevails even today in China. As a small item I’ve heard that in the Independent recently revealed that two senior police officers in north east China beat a young model worker to death in a bid to make him confess to a theft of 14 yen. It seems there is no conviction without a confession and it is presented with the evidence and confesses with or without torture.

But Judge Dee is not all pain and misery. The novel has great irony and tragedy as well as painting a delightful portrait of small town and village life in 18th century China. My favourite part is an inquest, nearly identical in form and content to our own. The inquest report is a village Trentham report. One male corpse, one knife wound at the back of the shoulder, 21/2 inches long, 1/2 inch broad. One side a wound caused by a kick, 1/2 inch deep, 5 inches in diameter... would not look out of place amongst prosecution papers at an Old Bailey trial. It is interesting to note that the judge does not pass sentence, invariably an execution in one or other grisly form. This is left to higher authorities. There are illustrations too.

In The Haunted Monastery and the Chinese Maze Murders Robert Van Gulik has tried hard at compounding and illustrating his own Judge Dee stories. They are not a success. He gives the judge two wives and some children who don’t fit in at all with the judge’s ascetic and puritanical disposition. Some of the drawings are rather soft porn.

There is no conclusion to solve in Nancy Milon’s novel The China Option. It really falls into the political thriller category but I couldn’t resist reviewing it along with Judge Dee. The novel is set in Peking. She inadvently makes contact with an under ground movement of workers and peasants headed by Wei Jungbein, a real-life leader of the democracy movement and now serving a 15 year prison sentence. The plot is exciting but there is a problem with tone and point of view. Is Campbell a fearless and intrepid heroine or a naïve and over-confident American? It’s hard to tell. The best drawn characters are the villainous American general and a national security adviser à la Kissinger. The most disappointing are Chinese. The author’s touch in China for some years and must know it well. Yet she regards the Chinese people as a frightening and anonymous mass. She does not use that old racist cliché ‘incurable’ but judges constantly refer to her Chinese characters as ‘expressionless’. The heroine ‘wondered what the silent sweet-faced young man beside her was thinking. It was impossible to tell.” This is not the China revealed in Judge Dee. People there shed extravagant tears in public, are overwhelmed by lust, greed and anger. Parents are passionately devoted to their children. Even the judge gets very wound up about his case and spends sleepless nights wondering if he has ordered the torture of innocent people. I can’t believe emotions were overwhelmed almost as capitalising during the revolution, but can only conclude this novel does not know the Chinese people.

Celebrated Cases of Judge Dee by Robert Van Gulik, Dover, £3.95
The Haunted Monastery and the Chinese Maze Murders by Robert Van Gulik, Dover, £4.95
The China Option by Nancy Milon, Plato Crime, £3.95

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

LETTERS

RACIAL HATRED: THE DEBATE CONCLUDES

Dear SL,

I write on behalf of the Race and Immigration Sub-Committee to provide some answers to Malcolm Hurwitz’s questions.

Q. Do white people feel guilty about the situation of black people?
A. Perhaps some do. Guilt was not the motivation behind our ideas. The sub-committee has a relatively ethnic bias.

Q. Does collective freedom mean more than individual freedom?
A. It means much more. Freedom for all is much greater than the sum of the parts. Its pre-condition is equality of treatment and opportunity. Socialists should recognise that individual freedom must sometimes be subordinated to such equality. Let us explode libertarian mythology.

Q. How will evidence be obtained of casual racist statements, made in private?
A. Presumably from witnesses who were present. This method seems to work in every other area of the criminal law. Further, racist remarks are never casual.

Q. Why should racism be confronted in toto?
A. Because racism is logically inconsistent to condone some racist statements by not criminalising them. Secondly, partial criminalisation simply has not worked.

Q. How many ideas have ever been suppressed by legislation?
A. Slavery for one. People in this country no longer believe that black people can be the property of whites. Attack the fruit and the plant will wither. Attack the manifestations of racism and one day the ideas will disappear.

Finally a question from us. We did not receive a single reply that suggested an alternative conceptual framework for dealing with legislation dealing with racist hatred. Either you are satisfied with the present law or you are not. If you are not, then what do you want in its place?

D. Dexter Dias

JURY TRIAL DENIED

Dear SL,

GALOP/The Gay London Policing Group is receiving an increasing number of complaints that the police are charging men suspected of minor gay sexual offences under local bye-laws and under provisions of the Public Order Act 1986.

The intention appears to be to deny them the right to the jury trial they would be entitled to were they charged with the appropriate offences under the Sexual Offences Act 1956.

The right to jury trial for offences such as soliciting or gross indecency has been specifically preserved by Parliament, in recognition of the devastating consequences an erroneous conviction can have upon a man’s career and reputation. It now appears that some police officers in a number of forces are deliberately circumventing the intention of Parliament.

We would be interested to hear from anyone who has acted for a man in such circumstances. As many of the byelaws are extremely obscure, a full reference, and preferably a copy of the bylaw in question would be much appreciated.

Philip Derbyshire
GALOP Management Committee

PUNISHED FOR POLITICAL VIEWS

Dear SL,

A leaked prison officers’ report reveals that a 64 year old man normally classified as a Category A prisoner, despite the fact that he is not seen as a security threat. He was sentenced to 14 years imprisonment in 1986 for conspiracy to cause explosions and is being held at Long Lartin prison. The report for his category A review states: ‘Whilst [he] has neither the stature or youth to pose any physical threat to any one... He is extremely well educated, very articulate, hence a good orator... Because of his offence, his obvious political sympathies and his capabilities in manipulating other prisoners, I think he should remain category A.’

Category A means that he is held in more restrictive conditions; his visitors are limited to those who are given advance clearance and he will not be eligible for parole or reduced sentence for good behaviour.

As there is no security reason for him being classified as category A, we believe that he is simply being punished for his political views.

Copies of the prison report are being sent to the National Council for Civil Liberties and Amnesty International.

Jack O’Keefe
Troops Out Movement
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 affiliations.

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 s/he will let you know the dates and venues of the meetings.

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