The Haldane's Response to The Green Paper

John Hendy QC on Conflict in Pietermaritzburg

Another Swipe at Local Democracy by Gavin Millar

Hilary Kitchin on The Culture of Secrecy

Conscription in South Africa by Roger Field

Book Reviews, Letters and News
Haldane Society of Socialist Lawyers

CONTENTS

News/Reports
Haldane News ........................................... 1
Features
Another Swipe at Local Democracy
Gavin Millar .................................................. 3
Report from Blood River
John Hendy Q.C. ........................................... 3
Protecting the Secrecy Culture
Hilary Kitc hin ............................................... 5
Excile or Imprisonment:
Conscientious Objection
in South Africa
Roger Field .................................................. 7
Advising the Victims of Rape
Barbara Cohen ............................................. 9
The Green Paper: ‘Deficient and
Defective’ – Haldane’s Submission
of the Lord Chancellor
SWAPO – A Government in Waiting?
An Interview with Shapua Kaukunanga
The PTA 1999: No Solution in Sight
Peter Wilcock ............................................. 15
Taking up the Public Law Challenge
Kate Markus .................................................. 17
Reviews
Book Reviews .................................................. 20
Letters ......................................................... 23
Noticeboard .................................................... 24

HALDANE NEWS

Conferences
The period from February to May this year has been very busy. Over the weekend of 11 and 12 February the Society hosted an International Human Rights Conference in Birmingham. Speakers included Professor Khikhliev from the USSR, Professor Rigaux from Belgium, Simon Foreman from France, Anthony Arbaster from Charter 88, Jeremy McBride from Intertraps, Tony Gifford and Stephen Sedley. Lynn Wolfmann, British field worker for Al-Haq (ECJ section in the West Bank), Ben Rose of Justice for Palestine and Israel, and Robin Martin of the Nicaraguan Solidarity Campaign addressed fringe meetings. The conference was a huge success in part thanks to the hard work of Bill Bowring whose report of the conference appears below. A pamphlet will shortly be produced containing the text of the most interesting debates of the weekend.

The International Conference on the Bicentenary of the Declaration of Human Rights organised by the International Association of Democratic Lawyers, to which the Haldane Society is affiliated, took place in March. A strong delegation of Society members attended.

Disinvestment
Following on the success of the Law Society disinvestment campaign, the Haldane Society has been an active partner in an initiative with The Society of Black Lawyers and Lawyers Against Apartheid to campaign for disinvestment by the Bar Council from companies involved in South Africa. This campaign aims to convene a Special General Meeting of the Bar Council on the issue of disinvestment. Further details can be obtained from Keir Starmer or Bill Bowring.

The Green Paper
After a packed public meeting on the Green paper the Haldane Society has prepared a full submission on the question of the future of the legal profession. An edited version of this text appears in this issue of SL.

Subcommittees
The Women’s Subcommittee has organised a joint course with LAG on Advising Victims of Rape. The Crime Subcommittee participated in the production of a leaflet on the right to silence in conjunction with the NCCL, and drew up a detailed submission on the Prevention of Terrorism Bill. The Employment Law Subcommittee has decided to cease publication of the Employment Law Bulletin and to concentrate instead on writing articles for trade union journals. The Lesbian and Gay Subcommittee is busy organising a conference – details of which appear in this issue of SL.

Social
Please read carefully the leaflet accompanying this issue where you will find details of the proposed evening of high entertainment on 1 July – see you there!
Miskin Off the Hook

The Lord Chancellor's Press Office has told SL that no action is to be taken over racist remarks attributed to the Recorder of London, Sir James Miskin, at a Magonese House dinner in late February. Sir James described a particular woman as a 'big toger' and also referred to 'murdhous Sikhs' after dinner speech. Lord Mackay last week asked for an explanation. The explanation was forthcoming and Mackay then wrote a further private letter to the Recorder. Its contents could not be made public, the LCD Press Office told us in a view of possible appeal proceedings arising out of the remarks which might be prejudiced.

Would the LCD then make be made public at the conclusion of any appeal proceedings, when no possible risk of prejudice could arise, we asked. It would not, as it would be the looked on as a possibility of appeal proceedings the LD could have considered replying publicly; but since the possibility did exist, the letter must remain private — for ever.

SL then asked whether the LD believed black defendants tried before Sir James would feel confident of being treated as favourably as the blue defendants. The response: the LD could not comment in view of possible appeal proceedings.

The Society of Black Lawyers was less inhibited; its Press Office, Bunmi Ameoru, said that SBL condemned unequivocally the remarks attributed to Sir James and is taking the matter up with him and Lord Mackay.

On the same day, March, as the remarks were reported in the national press, the LD was addressing a London conference on race and criminal justice. It was optimistic, he said, about the number of good quality black candidates becoming eligible for appointment as judges.

The International Human Rights Conference

The Haldane Society's International Conference at West Bromwich on 11-12 February 1989 was both a great success and truly international. 48 members and supporters attended ranging from pupils and articled clerks to John Paine QC, with a good sized contingent from Manchester, and three foreign guests.

On the Saturday afternoon Anthony Arbaster of Charter 88 and Stephen Sedley QC debated the merits of a written constitution and a Bill of Rights enshrining the European Convention on Human Rights. Anthony Arbaster developed Tom Paine's Rights of Man. All we could expect from this government was a Bill of Wrongs. Stephen Sedley, on the other hand, drew on his research into Canada's 'Charter of Rights and Liberties', enacted in 1982, with the first wave of judicial decisions in 1987. This illustrated how effectively common law judges have interpreted a code very similar to the European Convention. His conclusions were disturbing; and he saw Charter 88 more as a mar of desperation after a decade of Thatcher.

Saturday evening saw Francois Rigaux (Professor of Law at Louvain University, Belgium), and Jeremy McBride (Birmingham University, representing Internationalists), take the debate onto the international plane.

François Rigaux stressed the link between the international protection of human rights, and opened up the question of economic and social rights, now enshrined, for instance, in the West German Constitution. Simon Foreman was unhappy that the European Convention deals mainly with individual, not collective rights; but stressed that the originality of the Convention lay in its rules of implementation. From 1 February 1989 there would be a European Convention against Torture, backed by a special committee, with the right to enter prisons and psychiatric hospitals.

Jeremy McBride outlined the work of InterRights, which gives advice and assistance on international human rights law. He was particularly interested in ILO treaties and their implementation, or lack of it, in the UK.

Our fringe meetings were addressed by Lynn Wolchmann, UK Representative of AI-Hayt, the West Bank affili- ate of the International Committee of the Red Cross; and Robin Martin of the Nicaragua Solidarity Campaign.

A Challenge

Human Rights East and West were debated on the Sunday morning. Professor Igor Khokhlov of the Institute for International Relations of the Soviet Foreign Ministry spoke on constitutional changes in the USSR. These changes were simply a first stage; relations between the USSR and the Republics, and the question of local Soviets and extensions were still to be addressed. The new Congress of People's Deputies would contain 2,500 deputies; would be the first such body since the early years of Soviet power, and would be semi-professional. Its basic purposes would be to prevent the number of good people consider further constitutional changes. It would also elect a new body, a Constitutional Supervisory Commission.

Terry Gofford QC of London Arabians, concluded the conference, laid down a challenge. The Haldane Society would, at present, have great difficulty if it had to publish a position paper, other to say it was made up of human rights. He proposed five points: embodiment of human rights in the law; training of the judiciary; public education in rights; re-alignment of international standards; and most important, the extension of democracy.

Gavin Millar

Another Swipe at Local Democracy

The Local Government and Housing Bill was presented to Parliament on 1 January 1989. It will be law by the end of the year. Most of the Bill is devoted to the introduction of a new set of complicated and obscure central government controls on local capital spending and housing finance.

Part I of the Bill, however, is not so emotive. The intention behind it is instantly recognisable to anyone familiar with the current set of Thatcherite obsessions about the activities of 'money left councils. As if to celebrate a decade of backing the town halls the government has offered up to the Tory faithful an attempt to make most of these activities illegal.

Horns of a Dilemma

Objection (a) is the supposedly widespread practice of left wing councils offering 'lucrative' jobs to Labour councillors from neighbouring boroughs.

To counter this Part I provides that anyone holding a 'politically restricted post' (PRP) with a local authority is to be disqualified from standing for election to or being a member of any other council. The idea is that the lucky beneficiaries of this perceived practice should have to

PRP holders are to be made dependent upon Nicholas Ridley for their rights of political activity.

choose between their job and their political career. Any employee earning over £13,500 per annum (or its part-time equivalent) is deemed to be in such a post — as is any officer who acts as a political adviser to a group of councillors.

Thankfully heads and hands are expressly excluded from this definition.

The ban will operate from two months after the Bill becomes law. So it will catch the many local government employees (mostly labour) who wish to stand in the May 1989 elections for the London Boroughs (with their newly acquired role as education authorities). This presumably explains the timing of Part I. These people must either give up their jobs or be prevented from standing again. PRP holders will always have serving members of a local authority when the Bill becomes law will be allowed to complete their terms of office. The ban will operate like any other collective dismissal, not as a personal dismissal, except that there is no right of appeal to the Employment Tribunal.

Fiat of a Mandarin

The Bill does propose that a person nominated by the Secretary of State should have the power to grant exemptions from the ban in individual cases. However, this discretion is wholly unfettered — except that it must 'appear appropriate' to grant an exemption. This means it will be
difficult to judicially review a refusal in a particular case. So the only way out of the dilemma of the PRP will be to go cap in hand to a Whitehall mandarin picked by Nicholas Ridley and pleed for the right to stand. The democratic representation of local electors by a PRP holder will be subject to Whitehall's fiat.

The implications of the ban are still being thought through but are potentially very serious. Under the guise of putting an end to a couple of over-publicised cases of prominent London Labour councillors getting jobs 'from their friends', hundreds of thousands of local authority staff are to be deprived of their democratic right to offer themselves for election. Local government is going to lose the valued services of those people.

Another Trip to Strasbourg?

These sweeping consequences may mean that the PRP will put the UK in breach of its international law obligations. Article 3 of Protocol 1 to the European Convention on Human Rights requires the Council of Europe states to hold free elections 'under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'. In the Belgian case of Mathieu-Mohin and Clerfy the European Court of Human Rights held that the ban on PRP holders standing for election to the Flemish Council, not just the national legislature. It said that any restrictions on the principle must have a legitimate objective and the means used must be proportionate to the attainment of that objective.
Spot the Activist

Obensation (c) is: the appointment of 'politically sympathetic' applicants to non-political officers' jobs in Labour authorities. This time the councils have to appoint only 'merit'. The provisions of the Race and Sex Discrimination Acts will not be affected.

Of course there are just as many (if not more) Tory sympathizers employed in local government as Labour or SDL/SDP. The problem is spotting them. By definition they tend to be more apolitical in appearance. Politically active applicants will be at risk and they are most likely to be leftists.

The key question here is enforcement. Opposition councillors who spot an activist on a shortlist or in post will want to use this provision to get the person removed. Judicial review injunctions are expensive and risky. This is where the District Auditor may assume yet more significance. The DA already has power to issue a 'prohibition order' to prevent an authority pursuing a potentially illegal activity. This mechanism could be used (following an approach by Tory councillors) to block an appointment or even to prevent continued employment.

The provision is complemented by a sweeping new power in the Secretary of State to require 'relevant authorities' (i.e. Labour ones) to follow its rules for the appointment, disciplining and dismissal of staff. These can include a rule preventing them from disciplining or dismissing an officer - unless the step is approved by an 'independent person' appointed by the Secretary of State.

This could have difficult consequences for Labour groups who take control of a council and want to replace senior officers appointed by Tory SDL/SDP predecessors. Some of these officers may have got their jobs because they were known to be politically sympathetic to the earlier ruling group. In effect the Secretary of State can force the incoming Labour administration to work with them whether it wants to or not.

Packed Committees

Obesession (d) is: Labour authorities who 'stack' committees with their nominees. Since Tory ruling groups are not averse to doing this either, this part of the Bill may work in a more even-handed way. The composition of all council committees will now have to be proportionate to the political balance on the council. No democrat could argue with this.

But again the principle is complemented by a second one more clearly aimed at Labour authorities. Where a council co-opt non-members to committees these individuals will in future be non-voting. The only exception is to be on Education Committees. This rule is clearly aimed at police committees and joint consultative (health) committees in Labour areas where the co-option rules have enabled Labour to hold the majority.

A Watchful Eye

Obession (e) is: monitoring the activities of Labour councils for possible illegality. So, clause 5 of the Bill creates another new animal - the 'monitoring officer', a 'big brother' for the 1990s. Every council must appoint one of these. The monitoring officer has a statutory duty to look out for proposals or decisions of the authority which might be illegal and bring them to the attention of all the members.

Where the perceived illegality is a clear-cut breach of statutory duty or ultra vires act then this new mechanism is arguably defensable. But where the complaint is of possible Wednesbury unreasonableness the judgment is subjective and the idea becomes very worrying indeed.

Labour councillors may be deterred from taking creative political decisions by increased exposure to the risk of surcharge if they do so. It works like this. The monitoring officer is worried about being accused of a breach of statutory duty (by opposition members). Moreover s/he has been appointed 'on merit' and holds no particular brief for the majority party. So s/he reports every majority party policy which may have a hint of unreasonableness.

If the Labour group then goes ahead with the decision without first obtaining favourable legal advice the argument that they are guilty of 'wilful misconduct' is bolstered by the argument that they ignored officers' advice on possible unlawfulness.

It would be wrong to see Part I as no more than government reassertion to the Tory faithful that it takes these obsessions seriously and is prepared to legislate. More than this, the new law is an ingenious code for central government control over the composition and internal workings of dissenting local authorities. As such it is part of the wider strategy of curbing local democracy which has evolved further with each Thatcher administration - through rate-capping and abolition of the Metropolitan authorities to the privatisation of essential services.

The government wants to create a single tier of local government in which 'wages' the subcontractors but does not engage in policy making or serious spending. This requires local government as far as possible to be depoliticised. Part I is the most important step yet towards this unhappy goal.

There must be a real doubt about the legality of the PRP provisions, judged on these criteria. They may also fall foul of Articles 10 and 11 of the Convention relating to freedom of political expression and association. For the creation of the PRP is not just about electoral disqualification. Part I also provides that the terms of employment of all PRP holders shall be deemed to include 'such requirements for restricting his political activities... as may be prescribed by the Secretary of State'.

At this point the proposals become positively totalitarian. PRP holders are to become dependent upon Nicholas Ridley for their rights of political activity. The implications of that will seriously alarm socialists. Tory authorities are bound to be tempted to accuse members of their staff active in unions or housing pressure groups of breaches of government-imposed contractual terms. They will be free to injunct, discipline or dismiss them.

Labour authorities will risk judicial review if they fail to follow suit. They will be under pressure to discourage their staff from overt political activity.

In this way the government hopes to create a body of politically docile local government officers whose principal commitment is to their job and not the standard of service they are able to provide.

Out of Work MPs

Obession (b) is the 'polarisation' of political advisers at left-wing authorities. To deal with this the Bill creates a new 'regime' limiting the number of political advisers a council can employ. Only one per political grouping will be allowed - up to a maximum of three.

In practice that means there will be one per ruling group since no majority party (of whatever colour) is likely to provide the opposition with a political adviser at the rate-payers' expense. Moreover no political adviser may earn more than the magic £13,500 p.a. figure. The scrutiny of market forces does not prevent the maximum salary from being pegged at a level that even most out of work ex-Labour MPs would disdain.
of terror waged by Inkatha in the PMB area. The allegations of murder and the alleged motivation are denied by the respondents whose case is being financed by Inkatha. The applicants’ case is being financed by COSATU, the Congress of South African Trade Unions.

What lies behind the conflict in court is a conflict over representation of black people in South Africa. Inkatha is an organisation which would like to be able to claim to represent the 7,000,000 Zulus of the country, a population which extends far beyond the ragged and jigsaw boundaries of the bits of land which go to make up the KwaZulu Natal in Natal. In the rural areas through the traditional structures and the power of the Chiefs, there is no doubt that Inkatha rules. It claims 1,500,000 members. In the urban and suburban industrialised areas PMB and Durban, where the traditional organisation of life has gone, Inkatha has found a problem exerting a hold.

Inkatha is opposed to apartheid and in favour of popular democracy. It has, however, strong ties with the South African State, not least because it is in reality little more than an emanation of KwaZulu. KwaZulu is one of the homelands created by South Africa without a vestige of independence, and abounded by the ANC and other ‘progressive’ forces. Chief Buthelezi (recently returned from a trip to Britain to visit Mrs. Thatcher) continues to be suspicious of the fundamental difference between Inkatha and the ANC is that Inkatha disavows violence. The Inkatha leadership therefore denies the existence of warlords amongst its ranks and that it uses violence to further its influence. Members of Inkatha who use violence are acting on their own initiative and are uncontrollable.

The UDF (United Democratic Front) is the organisation most commonly cited by Inkatha as being the cause of the violence. The UDF is a federation of some hundreds of voluntary organisations in South Africa, from dance societies to sports clubs to church organisations to ethnic associations. It was banned in February 1988. COSATU is the trade union congress which has emerged from the massive growth of black trade unions since the mid-1970s. It is the only progressive mass organisation in South Africa which is not banned.

Urban Growth

Not surprisingly the UDF and the COSATU unions have been growing in influence in the urban and suburban areas as part of the struggle presently going on in South Africa. It has to be remembered that not only are many organisations banned and hundreds imprisoned without trial, but black people do not have the vote. They are therefore deprived of any democratic expression. So organisation whether into stamp clubs or trade unions takes on an added significance.

The view of the UDF and COSATU is that Inkatha has fomented violence and encouraged their warlords with a nod and a wink and (sometimes more) to use violence to terrify people in the townships to join Inkatha. They accept that township people have spontaneously organised self defence and sometimes retaliation. They say that if Inkatha really wished to stop the violence it could discipline its own members. They say that the police and army have encouraged and supported Inkatha both actively by supplying guns and gun licences and by turning a blind eye and failing to investigate crimes alleged against Inkatha whilst harassing those making allegations against Inkatha.

They also say the violence in Natal serves a broader objective of the State by portraying an image of primitive black tribesmen killing each other and thereby being undereeming of respect and support as a people capable of government.

Inkatha on the other hand claim that the violence is a direct product of the ‘people’s war’ waged by the ANC and its objectives of univergallity. They say that UDF and COSATU are effectivley manipulated by the ANC. They too accuse the police of partiality and failure to protect their members.

The applicants’ case is being financed by the Attorney General for Natal (the prosecuting authority) deny any partiality. They attribute much of the violence to traditionsl tribalism and violent culture amongst the Zulu.

Deprivation

It is clear that the living conditions of the people are a major cause of unrest in Natal as in the rest of black South Africa. Apartheid has as its lynch pin, the townships. These are the dormitory towns around the conurbations reserved for particular groups of people. Whilst these are designated by the State, there is no town planning and a jumble of housing springs up ranging from lines of fairly solid two or three roomed brick houses down to the shacks made from packing cases and oil drums.

Though the deprivation is softened by the lush vegetation and warm climate, in many of the newer townships there are no drains, no water and no electricity to the houses. Laveratories and taps are communal. Overcrowding is such that 8 people are housed by an average 11 people.

In some townships schooling has broken down for lack of resources, particularly teachers. Unemployment in the PMB area is over 40%, with 80% consists of under 36 years old. There is no social security system and many wage earners have up to 10 people dependent on their earnings. Apart from those dead and injured in the violence, 20,000 people have been rendered homeless refugees, making a barely supportable situation almost intolerable. It is estimated that 70% of the people in the PMB townships live on or below the handline.

Apart from the poverty, lack of roads and amenities, the most striking thing about the townships is their distance from the small but prosperous town of Pietermaritzburg. From a couple of miles to twenty miles away, the townships are the dormitories from which the PMB workforce comes daily by the ubiquitous combi (individually owned minibus) to work in the downtown factories. The violence in the townships is invisible to the whites, except through the complaints of their servants. The state of emergency prevents reporting beyond repetition of police statements and court proceedings.

The Mthembu case brings this backdrop into sharp focus. In particular it raises the question of the courts’ ability to uphold the law, even apartheid law. COSATU and the Inkatha claim that the criminal courts and process has failed and the civil courts are the last chance to demonstrate to the disillusioned people that the rule of law independent of the State has credibility.

Inkatha say that the bringing of the civil proceedings is an abuse of the process of the court and a finding in favour of the UDF will just incite the continued intimidation and leave no vestige of belief in the impartiality of the courts. A finding that Inkatha was responsible for these murders would severely damage Inkatha’s image abroad.

The judge’s task will not be an easy one. Either Tim Kerr or myself hope to return for the end of the trial when our reports will be published. To the IGI and the press there is a lot to be said. Until then whilst an interim report is under consideration, we feel unable to express concluded views on the many issues raised by the case.

Hilary Kitchin

Protecting the Secrecy Culture

The government’s introduction of the Security Services Bill and Official Secrets Bill will bring Britain’s security forces under statutory control and replace the obsolete section 2 of the Official Secrets Act 1911. It will not however provide any effective structures to guarantee freedom of information. No balance is achieved between the public interest in protecting certain information and security operations, and the demand of citizens to have access to public information – and to be satisfied that democratic values are being maintained.

Supporters of the Bills have described the proposals as creating unprecedented openings into Whitehall. Yet the effect of the new law will be to establish broad limits on disclosure of information and to create uncertainty for publishers and those involved in public debate.

The ‘Need To Know’

Much of the criticism of section 2 and of the government’s White Paper on secrecy focused on the need for greater freedom of information. The standards in these Bills do not measure up to those of the UK’s allies such as the USA, Canada, and Australia, or, quite possibly, to European Convention provisions protecting privacy and freedom of expression.

Yet the Bills have passed through the Commons without amendment, and are expected to emerge from debate in the House of Lords unscathed. A major legislative opportunity to create a more open information environment is being wasted.

Britain’s constitutional history has never yet produced a developed concept of a positive ‘right to know’. Freedom of speech in this country is defined negatively by the absence of a law preventing publication. The Bills will not break that tradition. Within the civil and security services the ‘need to know’ basis for communicating sensitive information – as it is often termed – is an effective cloak of criminalisation upon only what they ‘need to know’ – is not likely to be affected by these Bills.

No More Will Out

The Campaign for Freedom of Information has stated in a briefing paper (1) that the Official Secret Bill ‘in itself will not lead to the disclosure of even a single item of information which is not now available’. Removal of criminal sanctions protecting – for example – housing and education information, will not mean that this material reaches the public, for without ministerial discretion or a legal right of access, civil servants will continue to risk disciplinary action, including dismissal, for unauthorised disclosure.

The new law will therefore create a further six broad categories of information, much of it in low security classifications. The first three are defence, security and intelligence, and will continue to be under the control of the Security of Communications Act 1985 is prohibited. The same applies to ministerial warrants issued under the new Security Serv-
The Interests of the Nation

In 1970 the test for suppression of information in the Conservative government’s first attempt to reform the law was one of ‘serious injury to the interests of the nation’, reflecting the proposals of the earlier Franks report. The present Bill includes documents of low classification (ap- parently broad enough to include EEC memos that are routinely marked ‘confidential/combined with a low stan- dard of damage to the public interest. The effect will be to criminally discloses that would be protected by a robust definition of public interest.

No defendant will be able to claim that they acted in what they believed to be the public interest in disclosing illegality or substantial impropriety. A writer or newspaper pub- lisher, whether repeating information directly received or previously published in the UK or abroad, will be unable to rely on a defence of public interest, may be unable to assess the risk of harm caused by further publication, and in some instances may incur absolute liability. Public knowledge of current developments in European and international af- fairs will be unnecessarily restricted.

After a decade of disclosures of illegality and treachery those in public office will be subjected to a strict regime of silence. The present Security Services Bill has been intro- duced as a direct response to cases before the European Court of Human Rights arising from the disclosures of the ex-MI5 officer ‘whistleblower’, Cathy Mannion.

The NCCIL, which is acting in those cases, has stated that in the absence of a defence of public interest members of the security services are unlikely to make future disclosures even where their internal complaint of illegality has been inadequately investigated. “With the combined effect of the Bills and without any provision for Parliamentary ac- countability, how is the public ever to learn of the unlawful activities of M15?”

... Political, Industrial or Violent Means?

The Security Services Bill, which places certain sections, but not all, of the security forces under statutory control, provides the services with a wide remit in protecting na- tional security. The Bill also grants the Secretary of State the power to determine whether the activities carried out by the security services are “intended to overthrow or undermine parliamentary democ- racy by political industrial or violent means”. Burgling and burgling  can be investigated by warrants from the Secretary of State. How far are the services and ministerial depart- ment accountable to Parliament and to those whose privacy may be invaded by surveillance?

The Bill provides for the appointment of a Commissioner (a judge) and a tribunal whose decisions, including as to jurisdiction, will not be subject to appeal or liaison be questioned in any court. Complaints by individuals will be made initially to this tribunal, which will delegate the investigation of activities allegedly covered by warrants to the Commissioner. The principles applicable on judicial review will determine whether the Minister acted properly in issuing the warrants. A complaining individual will receive a notice that a determination has been made in his favour but no reasons; a negative decision is also notified, again with no right of appeal to the Endling Minister. The Commissioner will report annually to the Prime Minister; the report will be laid before Parliament with a statement that certain items have been excluded on se- curity grounds. These provisions fail to create any effective individual remedy or rigorous Parliamentary safeguards.

Genuine Threats or Suppression of Dissent?

Research published in a recent briefing paper prepared by NCCIListinguishes this view. NCCIL’s research looked at the standards adopted by the UK’s main ‘western allies’, Can- ada, Australia and the USA. They concluded that struc- tures in these countries recognise the need for public confi- dence in the security services; and are therefore aimed at striking a balance between public knowledge of their activi- ties, and public faith in their ability to safeguard security. In particular NCCIL identifies a recognition of the distinc- tion, essential to public confidence in democracy, between dissent and genuine threats. The underlying theme in both UK Bills is a presumption against disclosure; the acknowledge a public ‘right to know’ is no more than nominal. It may be that it is this flaw which will bring the new provisions before the Euro- pean Court of Human Rights in the future.

References
1. Available from the Campaign for Freedom of Informa- tion, 3 Endell Street, London WC1
2. Available from NCCIL, 21 Tabard Street, London SE1

Roger Field

Exile or Imprisonment – Conscientious Objection in South Africa

Since mid-1985 the people of South Africa have lived under an almost continuous state of emergency. The state has used emergency powers to suppress all forms of popular re- sistance. The police, right-wing vigilantes and the army im- plement these laws.

Each February the South African Defence Force con- scripts over 20,000 young whites for the military defence of apartheid. The SADF is a conscript force, consisting largely of young white males, with a small professional permanent force. Regional changes in liberation struggles and corre- sponding countervailing strategies have led the apart- heid state to enlarge and diversify the SADF.

Military obligations for white males have increased ac- cording to the following categories. In 1976, the call-up system was introduced. In 1967, with armed struggles in Namibia, Zimbabwe, Angola and Mozambique, nine months’ service for all became compulsory. This increased to 12 months in 1972. Five years later, ‘national servicemen’ had to do two years full time followed by 720 days of operational duty over the next 12 years.

A Force to be Reckoned With

The SADF’s total force numbers about 640,000, including the SADF reserve force and the SADF reserve force numbers about 640,000, including the SADF reserve force and the SADF reserve force. Each February the SADF conscripts over 20,000 young whites for the military defence of apartheid.

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Despite recent moves to implement UN resolution 435 in Namibia, the SADF continues to conscript black and white Namibians. In South Africa the SADF is widely deployed in the towns and in joint police/army operational centres. These are used for the torture and interrogation of de- tainees, and the local planning and implementation of the state’s counter-revolutionary strategy.

Current emergency legislation permits all members of the SADF to:
- arrest any person
- detain or authorise the detention of anyone for
- interrogate anyone arrested or detained
- after issuing a warning ‘apply or order the application
- search any person, building or vehicle
- seize vehicles, objects and publications
- order anyone to leave any area in which they are

Who Those Say Who

Conscientious objection in South Africa is as old as conscip- tion itself. The earliest objectors were universal pacifists and members of denominations such as Jehovah’s Wit- nesses. In 1974 the South African Council of Churches conference adopted a motion that questioned the validity of military service under apartheid. The state quickly intro- duced a six-year jail sentence for anyone who encouraged or incited others to refuse or fail to perform military service. It was not until 1979 that Peter Moll, a member of the mainstream Baptist Church, confronted the SADF as a ‘selective’ conscientious objector. Moll, who had completed his initial period of service, put forward three objections: South African society was fundamentally unjust; he would be forced to fight fellow South Africans who had legitimate grievances; he refused to fight for apartheid. Moll was sentenced to 18 months in military detention, eventually reduced to one year.

Moll’s stand and the jail sentences handed out to others created the spotlight for the movement against apart- heid conscience. In 1983, as a result of church pressure, the regime introduced a six year alternative service scheme for religiously motivated universal pacifists. A state-appointed Board for Religious Objectors (BBO) would decide eligibility for alternative service – which could only be performed in local or national government departments.

However, it also imposed a six year jail sentence for po- litically or morally motivated objectors and non-pacifist re- ligious objectors. The sentence was calculated on the basis of 150% of the time ‘owed’ to the SADF. All the mainstream churches rejected the scheme as punitive and refused to send representatives to sit on the BBO.

Anti-Conscription Campaigns

After that no one was willing to go to jail until 1987 when Phillip Wilkinson, a Catholic selective objector active in the UDF was imprisoned for failing to render military service. However, the laws fuelled a popular anti-conscript-
Defiance and Support

If UN Resolution 435 proceeds the SADF will withdraw or demobilise some 100,000 troops from Namibia. The SADF has already discounted reducing the numbers to be called up after Namibian independence. This will leave even more conscripts available for internal repression and attacks on neighbouring states.

In its January message to the South African people the African National Congress stressed the value of opposition to conscription: 'An important element in the actions of defiance is the bold stand taken by growing numbers of white youth who - despite the banning of the ECC - have come to realise that they have no business fighting in defence of apartheid. It is of the greatest importance that more young whites should adopt the positions of the courageous 141 conscripts, and others before them, and defy the order of the regime to enrol them into the apartheid murder squads.'

In Britain the Anti-Apartheid Movement's 1988 AGM resolved to 'campaign against the participation of British nationals in the apartheid armed forces, whether as mercenaries or as dual nationals conscripted in South Africa or Namibia'. This campaign will require support at local and national levels.

Internationally, UN General Assembly Resolution 33/185 of 1978 calls on all UN member states to grant asylum or safe passage to those who have left South Africa and Namibia because they refuse to fight in the apartheid armed forces. It is likely that the numbers of war resister asylum applications will increase. Home Office treatment of recent refugee asylum applications suggests that war resisters will need all possible political and legal support and assistance.

This article was written on behalf of the Committee on South African War Resistance (COSAWR), the organisation of called South African war resisters in Britain and the Netherlands. Its publications include Fighting for a Better World: A Job For Life (1988), on EC citizens in the SADF and the role of EC multinationals in maintaining apartheid, £3.50 available from COSAWR, and Resister, COSAWR's bimonthly journal on SA war resistance; church opposition to apartheid and the role of the SADF in maintaining apartheid. Subs: £8 pa and £15 pa institutions, cheques to COSAWR, BM Box 2190, London WC1N 3XX.

Barbara Cohen

Aiding the Victims of Rape

The decision by Judge Pickles at Leeds Crown Court in March of this year to imprison a young woman for contempt of court because she was not sufficiently 'courageous' to give evidence against a man who was said to have violently assaulted her aroused wide public debate. That there was not universal outrage and condemnation of Judge Pickles reflects, I suggest, the continuing and seemingly unsaullable acceptance that are widely held about male violence against women.

By his remarks and the seven day sentence he imposed Judge Pickles joined the growing list of judges who have exposed the gross lack of understanding of the isolated and vulnerable position of women victims of violence, particularly sexual violence, which women encounter once they become involved in our criminal justice system.

'It is well known that women in particular and small boys are liable to be untruthful and invent stories.'

Judge Sutcliffe, Old Bailey 1976

The Court of Appeal promptly agreed to the release of the young woman in the Leeds case and almost as quickly public interest in the issue faded away. The young woman was left still suffering from the trauma of her experience with the law. The criminal justice system continues as before - no more affected by the public outcry on this occasion that it has been in the past.

An Instructive Comparison

The failure of judges and lawyers to appreciate both the personal trauma and the social context of male violence against women, particularly in cases of rape, has been a matter of continuing concern to the Women's Subcommitte of the Haldane Society. Our focus has been the position of the woman as victim and prosecution witness and as lawyers we have concentrated on improving the treatment of women victims receive at court.

The London Rape Crisis Centre makes an instructive comparison with a male victim of street mugging (1). It shows how differently the victim is regarded by police and courts; the man is unlikely to be asked if he resisted; or, if he did not, did he therefore consent to his money being taken; or criticised for not screaming; asked if he regularly gave money away; asked why he was out on the street alone; or criticised for wearing an expensive suit suggesting that he might be carrying money. Moreover, where the offence is rape the questions are far more intimate and demoralising.

Not only are rape trials as much a trial of the woman's character and way of life as of the man's actions but...
also the woman is meant to face this ordeal - with her reputation, her self-respect and personal dignity at stake - completely alone. At the trial, if possibly the earlier old-style communal, the defendant will be represented by solicitor and counsel who will include in their duty to their client the task of undermining the credibility of the victim and exposing and attacking her personal background and lifestyle.

The prosecution’s task is to present relevant evidence, and fairly try to obtain a conviction. The person for whom the case is of greatest importance, who possibly even more than the defendant identifies with the matters at issue, the victim herself, is allowed no part in the preparation of the case, no lawyer to speak or intervene on her behalf. Often the only person she will recognize at court is the man who attacked her.

Relying On the Judges ..... It is, of course, the judge’s duty to protect her from unfair cross-examination and to restrict the use of evidence of her sexual history (in accordance with section 2 of the Sexual Offences (Amendment) Act 1976). However, in practice this duty is often exercised with reluctance, based on ill-conceived views about women and about sexual offences. In 1984 the Criminal Law Revision Committee considered whether rape victims should be allowed legal representation for the trial itself but in another short-sighted decision rejected this proposal, (9) misguidedly relying upon the judges to protect the victim and ignoring their poor record for doing so.

Action

The Women’s Subcommittees concern for rape victims has moved from discussion to action. Firstly, we proposed a resolution to last year’s Haldane AGM which was debated, amended and passed. The resolution, inter alia, called on the bodies responsible for legal training to ‘set up a programme to educate the present and next generation of lawyers and judges on rape and the effect on rape victims, including rape trauma syndrome’. The Bar Council and the Lord Chancellor’s Department were sent copies of the resolution, but their response, other than an acknowledgement, are still awaited. The Law Society was far more positive in its response, acknowledging that this was a topic of concern, in inclusion our visitors’ training and encouraging the Haldane Society to organise such a course. This has now been done.

For the first time, lawyers will have an opportunity to gain some insight into the experience of victims of rape and sexual assault and to receive training on the advice and assistance they could offer. A course entitled ‘Advocating Victims of Rape’ will be held in London on 23 June. Members of the Women’s Subcommittees have been working with Professor Jennifer Temkin, author of Rape and the Legal Process in Beverley Slaney at the Legal Action Group to devise a course which will not only look at law and procedures and the availability of legal aid funding in criminal and civil proceedings and claims for compensation, but will also examine the physical and emotional experiences of women victims and the trauma which may well affect their perceptions and responses for some time after the incident. We accept that this is an area in which lawyers have more to learn than to say, and a majority of the speakers are not lawyers but include a woman’s counsellor, a senior woman police officer and an adviser to victims of crime, all of whom have vital relevant experience from which lawyers will gain. Legal speakers include Professor Temkin, a solicitor and a barrister who have advised and represented rape victims before and during criminal trials.

The speakers are all women; however as male lawyers are, by sheer numbers alone, more likely to participate in rape trials - to defend or prosecute or serve as judge - we hope our male colleagues will see the relevance and importance of this course and will also partake.

References


Full details of the course are available from Beverley Slaney, Legal Action Group, 242 Pentonville Road, N1 9UN, Tel. 01-925-2961.

The Green Paper – Deficient and Defective

The Haldane Society has prepared a detailed response to the government’s Green Paper ‘The Work and Organisation of the Legal Profession’. Our submissions to the Lord Chancellor’s Department, drafted by Kate Markus and Jeremy Smith, are the product of lengthy debate including a public speaker meeting and special meetings of the legal services subcommittees. We publish below a shortened version of the submissions.

Law serves a variety of functions in society, dependent on its socio-economic system. But of these functions, there are two dominant roles which need to be identified, and which despite particular pragmals are conceptually distinct. The first is law as the arbiter of business disputes, and as the regulating system for economic activity. The principal players are corporate fictional ‘persons’ whose concerns are primarily financial. It may be appropriate, in connection with this function of law, to consider the provision of legal services in market terms.

But law has another key role of equal or greater importance (according to philosophy), which is as the framework for providing and enforcing democratic rights (political, social and economic) which form the basis of a just society. These rights exist to protect individuals, and those they do not adequately compensate for the economic disparities within society, they do redress the imbalances to a limited extent. This role of law requires enforcement mechanisms available to all without discrimination on grounds of financial resources.

The Objectives

It follows that any statement of objectives cannot ignore the securing of adequate provisions of legal services in support of democratic rights, and it is axiomatic that of itself the market is incapable of doing, however great the expertise available within it. The Green Paper makes a passing reference to the new Legal Aid Act and Board, and the government’s belief in the adequacy of its provision, but nowhere in the statement of objectives is this belief found in a philosophical commitment to the need for public service. The Green Paper suffers irredeemably from this absence – a key policy objective and a commitment to secure, in all areas and to all citizens regardless of resources, the availability of high standard public legal services. The law is a hard and complex area, and in many areas of work lay advisers are not substitute for those with legal skills and experience to act for; and committed to the interests of, the deprived and disadvantaged.

Our concern is that the government’s policy is actually to reduce provision of public legal services. It appears that the limiting of legal aid by reducing eligibility over a sustained period, and the underfunding of legal aid practitioners, are deliberate objectives of government, which have already caused the disappearance of many traditional aid practices. This trend is likely to grow much worse. Without a clear commitment to public legal services, the changes proposed in the Green Paper, including the emphasis on increased competition, are likely to reduce the provision of services to ordinary people in crucial areas of need. Incentives for solicitors for the business consumer may be justified if active steps are taken to promote public legal services. In this regard, the Green Paper’s passing reference to law centres, whose funding needs and policy role are misunderstood or ignored, are particularly deficient and defective.

In sum, the public’s acceptance or otherwise of the proposed reforms will depend on the extent to which the final legislative proposals demonstrate a commitment to public legal services. We do not deny the need for efficiency and effectiveness in this area of services, nor object to competition within this sector; but a refusal to recognised the different requirements of what we may term ‘democratic legal services’ from ‘business legal services’ would lead to a false conclusion as to the way ahead.

Independence

Whatever proposals are ultimately put forward, it is essential that the independence of the legal profession and the judiciary are not undermined. The overriding responsibility of lawyers, within the law and professional conduct, must be to their clients. Their services must be appropriate to their clients’ needs, and therefore they must have education and training which enables them to provide the full range of legal services. Lawyers must not be constrained by fear, patronage or influence. We wholly oppose the introduction of contingency fees, in part because they create a potential conflict of interests between lawyer and client, in part because they threaten to undermine the legal aid scheme, and may be used as an excuse for reducing legal aid.

Judges too must be, and be seen to be, independent. The...
concept of independence requires that they should not promote the interests of particular interests within society. To that end, they must be representative of society in terms of background and of philosophy. It is essential that any reforms should be directed to promote the broad concept of independence. We are particularly concerned that proposals to give government powers over certification of advocates may lead to undue influence over the legal system and profession for party or sectional interests.

The Providers of Legal Services
Chapter 2 fails properly to analyse legal services or their provision and is confusing the different functions of law and of the providers of legal services. The generalisations that follow in the Paper suffer from this defect. Legal education proposals which will increasingly erode that social justice which the norms and values of our society formally promote will be the greatest and in the long run. In considering the providers of legal services, particular regard needs to be paid to those providing public legal services. Legal aid practitioners must be available in the areas in which their clients reside. The provision of law centres is also crucial. The legal aid scheme made important, but insufficient, progress towards satisfying the unmet need for legal services. Local centres were developed in part to meet needs outside existing, or otherwise lacking, coverage. It is not clear why local authorities should have behaved so unilaterally towards centres, and not sought to fund one as a lever, there is clearly a need for long term centrally provided funding which does away with possible conflicts of interest. The work of local authorities, goes beyond the provision of services to individuals, and their work for local community and voluntary organisations on development and policy issues must be recognised.

Legal Education
The Haldane Society has long argued for a common system of legal education for the profession. However, Chapter 3 is extremely thin in its analysis of the position, and confuses issues of education with issues of specialisation. Our concern is that there is no bias in legal education in favour of ‘bureaucratic law’, and that each receives proper emphasis and encouragement. The core referred to at Annex C fail to get the balance right.

Beyond this, we are worried that subjects of concern to the economically strong may be treated as ‘specialisms’, while those with less social clout, though just as intellectually rigorous, may be less fully considered.

The Green Paper fails to address the key issue of access to legal representation. Although the proposal for a loan system in place of grants would be detrimental to the profession must attract students of all backgrounds to the law, and in particular to the poorer. It must also ensure that woman have equal access.

We have no objection in principle to the establishment of an Advisory Committee on Legal Education. Although, though we have strong views on the need for a broad representation of interests upon it if established. The perception of ‘packaging’ such a body with those known to support the policies of a particular government (which rather than the exception with the present government) would be wholly opposed to the concept of law as being independent of sectional interest.

Professional Conduct
The question remains whether this body should have the same role as that of the profession as a whole. As education, if it is not truly representative of the different roles and perspectives in society, this role is not acceptable. If it were taken to be the role of the body, then we can accept the public interest not to transfer the professional role of conduct to such an advisory body, subject to adequate safeguards.

Our key concern in this area is to prevent illegitimate state pressure being brought to bear on legal practitioners who, fairly but unpopularly, defined or promoted their clients’ interests. Though the present system of purely professional control suffers from lack of public accountability, it at present provides some protection against abuse of governmental power. We believe that the right balance could be struck by requiring that the broad principles of conduct be enshrined in legislation, with more detailed provision and enforcement being left to the profession(s).

Reform of the Profession
The Society has long favoured fusion of the profession, though this is only one component of our vision of a public legal services policy. It is necessary to consider the overall package being put forward, and whether it improves or harms the present state of affairs. The profession has been required to meet the needs of the community carried out by the Bar. In principle, we do not accept that there is a public interest in maintaining artificial distinctions between solicitors and barristers. We support, subject to appropriate safeguarding, increased rights of advocacy for solicitors, and we are not persuaded that this, or indeed more explicit moves towards fusion would of itself reduce the importance of the Bar. We further oppose the proposal to transfer the role of the Bar to the profession(s).

So long as two separate professions co-exist, we accept the case for increased flexibility, and for partnerships between solicitors and barristers. Nor are we opposed in principle to multi-disciplinary partnerships going beyond the existing profession, but in the present context see these relationships as currently carried out by the Bar.

The proposal to be taken forward is all the more important that the government is seen to be addressing the needs for legal services of the dis-advantaged in a serious and committed manner.

We accept the arguments in the Green Paper for extending the basis of appointments to the judiciary, and for greater flexibility in future. We consider, however, that this would be a narrow and conservative and over-tight outlook of most judges dictates more far-reaching changes to promote social justice. Ultimately, there is no logic in appointing the judiciary solely from a caste of advocates since there is no necessary connexion between the attributes of a good advocate and those of a good judge.

A Programme for Public Services
A comprehensive programme for legal services is required, to ensure adequate provision and public accountability. Our own proposals include the following elements:

- The extension of legal provision on an area basis, to suit differing needs across the country. Local government, consisting of representatives of legal service providers, local government, community organisations, advice agencies and others involved in the provision of legal services would formulate plans for legal services in each area.

- In each area, adequately funded legal aid offices and offices of salaried lawyers should exist which would undertake legal advice and litigation.

- at least one law centre should exist in each area, staffed by local government, and/or regional committees should be set up to co-ordinate and rationalise legal services provision, and they should where appropriate establish regional legal service bodies.

- publicly funded access to specialist providers of legal services should be available.

Conclusion
No one can support the maintenance of professional practices which serve the vested interests of a profession rather than protecting the public.

We believe the right balance could be struck by requiring that the broad principles of conduct be enshrined in legislation, with more detailed provision and enforcement being left to the profession(s).
As far as land ownership in Namibia is concerned, what are your plans? Would SWAPO re-enable the ownership of the land more widely?

SK: Yes.

SK: At the moment the most fertile land of our country is owned by a few settlers while the majority of the Namibian people has no land of their own. Obviously that system will change. In SWAPO's view when the government comes we imagine that those who have land must share with those who have none. Of course there will be privately owned land but we will make sure that if somebody has got, say, three or four farms while others have none he has to prepare to share with others. And of course the point we are emphasizing is that everybody who owns land must own it and tend it for the benefit of the society as a whole. At present certain land is owned by individuals who do not tend it but simply prevent others from occupying it. That sort of thing has to come to an end. So there is the possibility that the government will nationalise some of the private lands, that will be done, but of course compensation has to be paid.

SK: Can you ask about the trade unions in Namibia. The major unions have supported SWAPO in the struggle for independence. Will a SWAPO government enact laws to guarantee freedom of association and the right to strike?

SK: Well, I believe so, but that is something I cannot of course guarantee or state categorically because those are the kind of things the constitution of Namibia will contain. But I should think the workers will be free to strike, to demand their money, get their rights, to workers.

SK: Under the UN accords all the parties are supposed to release their detainees by 1st April. Do you expect to get many of your cadres back from detention in South African hands?

SK: Oh yes, it’s provided for in the UN plan that when the UNTAG (UN Transitional Assistance Group) arrives in Namibia on 1 April, the first thing the Secretary General’s special representative will do is to release all discriminatory and repressive laws; and I think release of the detainees and the prisoners will be one of the first issues to be tackled so we expect our cadres who are languishing in South African jails to be released.

SK: Do you know how many SWAPO cadres are to be released?

SK: We’ll only know specifically those who are in jail as a result of court cases. They were sent to prison for some years. But there are hundreds and hundreds of others who are detained indefinitely in South African military bases. We do not always get any indication whether they are still alive. We don’t know that.

SK: And on the other side does SWAPO have detainees? Will you be releasing prisoners and if so can you say how many will you be releasing?

SK: No we have no political prisoners; as far as we are concerned we have agents of the enemy whom we have apprehended who were infiltrated into our ranks with the specific task of eliminating our leaders and our cadres and also causing a lot of damage – these are people who are causing trouble.

SK: How many of these?

SK: Well I do not know the number personally. Naturally as you know where there is a war there must be some enemy agents on both sides and these people are normally released after the war is over and so they will be released and handed over to their masters or whoever wants them.

Peter Wilcock

The PTA 1989 – No Solution in Sight

On 22 March 1989 a new Prevention of Terrorism Act came into force in Namibia. In my view of the political situation in Northern Ireland, it exemplifies the belief of successive British governments that they are dealing primarily with a security problem. Their aim is to contain newsworthy violence rather than to accommodate differing aspirations in Irish politics.

The 1989 Act re-enacts many previous PTA provisions, such as the Home Secretary’s power to prescribe organisations. Many of the re-enacted powers have already been the subject of criticism.

Internal Exile

Both the 1986 and 1987 Colville reports on the workings of the PTA recommended that the power to issue exclusion orders should be abolished. Such an order is tantamount to a sentence of internal exile. A person subject to such an order is stripped of basic civil rights. There is no right to know the evidence on which the order was made, nor to test it in concommitant or appeal. Excessive power is arrogated by the state itself.

Similar criticism of the detention provisions was made by the European Court of Human Rights. The Court recognised as its touchstone the need for a democratic system for a proper balance between the defence of national security and the protection of individual rights.

1) The re-enacted provision enabling a detained person to be held for over four days before being charged or brought before an independent court was contravened the European Convention.

Rather than accepting these criticisms, the Act introduces new provisions for systematic reviews of the pre-detention of a detained person. Reviews are to be carried out by an ‘independent’ officer. In ordinary circumstances the 1984 Police and Criminal Evidence Act (PACE) ensures that such reviews must be carried out after the first six hours and at nine hourly intervals thereafter. Under the PTA, reviews and inspections are needed as well as possible, 48 hours. It is not apparent why people arrested under the PTA need less protection than those arrested under the ordinary law.

A Lot to Live Up To

Any Act calling itself the Prevention of Terrorism Act has a lot to live up to. The rationale is that separate laws are needed to cope with terrorists. The establishment regards this programme as a vindication. All reviews into the workings of the legislation have been based on this premise. Yet is the assumption correct? Since the enactment of PACE the ordinary criminal law is arguably sufficient. All the offences described as ‘terrorism’ within the PTA come within the PACE definition of an arrestable offence, permitting arrest without warrant.

Furthermore, there is scant evidence that the faithfully re-enacted PTA arrest provisions actually succeed in catching terrorists. Less than one in eight of those detained were charged with any offence, let alone one connected with terrorism. These figures do not denote a ‘prevention of terrorism’, unless the threat of random arrest and detention is in itself believed to deter would be terrorists.

What the legislation provides is an easy means of information gathering for the state and security forces. Potential terrorists are defined by the Act in a broad and vague manner. Exploiting public fear of terrorism, draconian information gathering techniques are established with minimal protest. In spite of Lord Colville’s recommendations, the 1989 Act retains the infamous power to charge a person with withholding information about terrorist activities. An equivalent clause is found in the ad

Tory Flagship

The government regarded the powers dealing with those who provide ‘financial assistance for terrorism’ as the flagship of the fleet of amendments they steered through Parliament. It becomes an offence to knowingly enter into an arrangement to facilitate the retention of funds for the

furtherance of acts of terrorism. It is already an offence to contribute towards ‘acts of terrorism’ and proscribed organisations.

The wide definition of terrorism possibly encompasses international Liberation movements, such as the African National Congress, not universally described as terrorist organisations. Additionally, the Act allows contractual restrictions on disclosure of information to be overridden, to enable the authorities to be informed that funds or property are derived from terrorist sources. Recent Drug Trafficking Act case law illustrates that this provision covers lender-client confidentiality. Furthermore, the Northern Irish

Shapa Kaukuwga
A Special Category of Prisoner

Prisoners have a particularly emotive role in Irish politics; the 1981 hunger strikes provide a vivid recent reminder. Both the offenders tend to bind together and the paramilitary connection is often strong. The present government is determined to break these ties: political status is rejected.

It is therefore ironic that the 1989 Act introduces a special category for those convicted of scheduled terrorist offences in Northern Ireland. Remission is to be decreased from one-half to one-third where a person is sentenced to a fixed term of five years or more for a scheduled offence. The change was said to be a response to the recidivism rates of such offenders. In fact less than 20% of those convicted of terrorist offences are reconvicted on similar grounds.

The implication that the change brings the Northern Ireland system into line with England and Wales is false. There is no parole system in Northern Ireland. In addition, the courts are now required to sentence a reconvicted prisoner for the remainder of any unexpired original sentence.

There is no evidence that these changes will prevent the use of violence for political ends. Inevitably, though, they will increase resentment and alienation in both prisoners and their families.

Unnecessary and Dangerous

The passage of the 1989 Act was accompanied by intensive house to house searches in republican areas of Northern Ireland. The 1989 Act will heighten the tension these searches produce by allowing the police and army to order a person to remain in a specified part of a building or vehicle during a search. We now have the Kafkaesque possibility of a person being sent to jail for two years for walking from their living room to their hall.

We now have the Kafkaesque possibility of a person being sent to jail for two years for walking from their living room to their hall.

The PTA is both unnecessary and dangerous. Unnecessary because the stated objective of preventing political violence is just as effectively met by existing criminal provisions. Dangerous because it legalises unwarranted intrusions into individual rights.

Both the original and present Acts were rushed through Parliament. The 1989 Act ensures a future lack of scrutiny. The 'annual review' provision is invidious. It will mean a late night couple of hours' debate in an empty Thursday night chamber, among a hoth-potch of other Irish legislation, not a review in any meaningful sense.

No matter how many PTA's are passed, the violence in Northern Ireland will not stop until the root cause of the problem, rather than the symptom, is tackled. A precondition for an end to the violence in the six counties is that it stops, and in particular the Catholic minority should no longer be subjected to real, or even perceived, discrimination.

References
1. Brogan and Others, The Times, 20.11.89
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This article is based upon submissions to Parliament prepared by the Criminal Law Subcommittee.

Kate Markus

Taking Up the Public Law Challenge

Just over a year ago, a group of practising and academic lawyers got together to discuss the inadequacy of legal services available to groups and individuals involved in public law. Now, after many meetings and a great deal of drafting and redrafting the prospectus for the Public Law Project has been finalised, temporary premises obtained, and the initial funding applications processed. Support for the Project is overwhelming.

In the last decade we have seen the continuing erosion of rights and liberties in Britain, the widening gap between rich and poor, the privatization of many important public services and a shift of emphasis from state care to self-reliance. Some lawyers have been examining their role in the light of these concerns. Ensuring access to effective legal resources is one important component in a strategy for opposing the progress of the right.

For years welfare lawyers in Britain have been involved in public and administrative law issues. Law centres have attracted clients adversely affected by the decisions of a range of public bodies: local and central government, public authorities and corporations, administrative bodies and tribunals – all largely unaccountable through traditional courts process.

The clients are often unable to find sympathy, or in access to, the courts, and can rarely match the resources available to the bodies they are challenging.

Oversretched

Law centres can help their clients to influence decisions other than through litigation – by negotiation, gathering evidence, providing information and helping clients to organise into effective groups. But the services provided by law centres and others do not go far enough. Law centres only cover 10% of England and Wales and, where they do exist, they are overstretched. Many national or regional organisations dealing with working class and other disadvantaged client groups lack any strategic legal resources. Private practitioners are often called on for free legal support; although often given, it is on an ad hoc basis and cannot be relied on.

Sadly, law centres and other advice agencies have to spend far too much time extracting funding from public authorities in crisis rather than working with them on areas of common interest. The pressure of work is so great that there is little opportunity to stand back and assess its effect and direction, nor to keep abreast of constant change in the law.

In public law, strategies are all important. Yet an uncoordinated, sparsely funded legal service is not an effective vehicle for change: lessons learned are rarely spread effectively throughout the country or to other organisations dealing with similar issues.

A National Centre

The Public Law Project aims to address these problems. The central aim of the project is to provide access to public law for those who need it most and, in general, get it least. In many ways the project is like a national community law centre. It will provide a wide range of skills, enabling users to pursue their interests in a domain dominated by complicated law and procedure and generally orientated to the needs of the powerful and the wealthy.

The Project will not only provide practical and legal resources. It will also coordinate its experiences and expertise in public law. It will carry out its own research, working closely with universities and polytechnics. The Project will provide specialist training for students, hold seminars and conferences and encourage development of courses and teaching materials. The enthusiasm of academics has led to several provisional offers of office accommodation and other facilities. London accommodation has already been secured at the Institution of Advanced Legal Studies, but it is hoped to have at least one office outside London.

A Partisan Approach

The use of the law will be an adjunct to the activities of client groups. It is not intended to make clients dependent on the law, nor encourage them to lose control of their own development and achievements. The Project will therefore not rely solely on litigation. Although it must have the potential to litigate to the highest level, legal services are frequently more effectively deployed outside the courts.

Everyone involved wants to see this Project providing a stable legal resource for other organisations, helping to sustain them and their activities in long struggles and in preparation for political or campaigning work. It will be close enough to its users for mutual trust and understanding to develop quickly.

Finally, the Project will adopt a partisan approach to public law issues. It will recognise that law has developed according to the interests of the rich and powerful and does not take account of the needs of whole sections of society. The Project will aim to redress that imbalance and injustice.
POLICING AGAINST BLACK PEOPLE

This book presents research, compiled by The Institute of Race Relations, into the policing of the black community. The evidence was given to Sir Peter Imbert in 1987. It deals primarily with the Metropolitan Police.

Various aspects of policing are covered; the Community, Racism, Black Protest and the Police themselves. Also attached as an appendix is the evidence presented to the Royal Commission on Criminal Procedure in 1979, entitled Police Against Black People.

Each chapter draws upon well documented case histories. These are cited as evidence of the appalling treatment meted out to black people by the police over the last decade. To those familiar with the workings of the criminal justice process, this book will confirm the view experienced by the black community that the police often act as if they were a law unto themselves.

The evidence presented in the book is at times overwhelming. The reader cannot conclude that the reported incidents are merely isolated occurrences. The cases studied are presented as evidence of a systematic and overtly racist style of policing. Reference is made to...policed incidents such as the 1986 disturbances in Tottenham and the Notting Hill Carnival. Individual documented cases include those of Trevor Monroeville, Colin Roach and Cherry Groce.

The commentary touches upon the relationship between the police and the media. It considers how the media may effectively collude with the police by supporting methods of policing which are racist. This adds to the process of 'criminalisation' of black people; 'a form of "sus" journalism has developed to parallel the police's own suspicions of and operation against black people'.

The effects of coercive policing upon black people are summarised as 'an upward spiral of pent-up violence'. Again the Tottenham riots are used to show how an almost irreversible chain of events can start from police mistreatment of black people.

The strength of this book lies in its presentation of case studies. It provides material from which the uninitiated can form a view about policing of the black community. However the book will add very little to the knowledge of those who work in or with the black community. Whilst the book contains plenty of evidence there is no statistical presentation or analysis. The Institute could usefully go on to produce a detailed analytical commentary on the evidence.

The book could then achieve wider currency and would be of greater practical help to those involved in campaigning and working for change in this important area.

Gabriel Black

FEMINISM AND CENSORSHIP:

This is a collection of 30 feminist's essays about censorship. I found it disappointing that in these times of section 29, the broadcasting ban on Sinn Fein, and The Satanic Verses, the feminist contribution to the debate should be so strongly dominated by the issue of pornography. The book focuses almost entirely on the balancing act between freedom of expression and the need to counter negative images of women in pornographic literature.

That said, the book is an accessible guide to the often bitter divisions within the women's movement over pornography. The essays provide concise exposés of the diverse political positions. If there was previously any doubt, the book illustrates that there is no feminist 'party line'.

There are a number of essays on the best way to 'deal' with pornography. Their starting point is Andrea Dworkin and Catherine MacKinnon's attempts to have legislation passed in Minneapolis and Indianapolis, giving women the right to sue pornographers in the civil courts. Both these ordinances have now been overruled.

At the heart of the debate about strategy is a disagreement about the nature of the evil to be eradicated. Catherine Filltn's essay Sex and Censorship: the political implications broadly takes up the Dworkin/MacKinnon position: 'There still persists an "illusion" that there is no provable connection between pornography and violence .... the truth - the irony - is that pornography is violence .... I see no contradiction in campaigning against political censorship and for the censorship of pornography.' Liz Kelly in The UN Ordinances sees the Dworkin/MacKinnon approach not as censorship but an attempt at radical (feminist) law reform.

I found these essays... worked for and... were critical of the legislative approach. As Pratibha Parmar puts it, 'What puzzles me is how women who have defined all men as the enemy can ask the "patriarchal state" to intervene on their behalf and pass laws in the interests of women'. Pratibha Parmar is not the only contributor who thinks it "sycophant" to consider the possibilities of strategic alliances with the state.

Many contributors are particularly concerned that the UN Ordinances have provided a focus for strategic alliances between radical feminists and the moral majority. In the excellent False Promises the writers point out that the "further narrowing of the public realm of sexual speech coincides all too well with the privatisation of sexual, reproductive, and family issues sought by the far right." The legally impressive terms used, for example, 'material in which women are presented as whoreys by nature' smack of the language of the moral majority. As is pointed out, limiting the publication of sexually explicit material would also have grave implications for "safe sex" information campaigns.

The book also features discussion of the implications of the American experience for British legislation. Melissa Benn's essay on Clare Short's "Pope 3 Bill" records the strength of feeling the Bill aroused in this country, and demonstrates the clear link in the common-sense feminist consciousness between pornography and sexual violence against women.

Catherine Filltn has proposed that the Race Relations Act 1976 and the Public Order Act 1986 should be used as models for the creation of an offence of "inciting violence against women". Barrister Sana Osman expertly points out the dangers of relying on legislative models which have "quite clearly failed to serve black people", and the political folly of legislating on the basis of an analogy between the structural oppressions of women and of black people.

Whilst the book is dominated by the issue of pornography, there are a couple of good articles about censorship in other areas. Anne Conway's Censorship in Ireland traces the legal battle over the right of Dublin women's clinics to give abortion referral advice. Noreen O'Donoghue's essay on Out for Ourselves, a book about Irish lesbians and gay men, describes the unsuccessful censorship of the book that was discovered by book dealers as a commercial decision not to stock books which 'wouldn't sell'. I found this compelling illustration of the economic interests that lie at the heart of issues of free speech and censorship.

Finally, I'd like to mention Roe Schwartz's essay A Question of Allegiance! in which she recounts a tale of fascination for all lawyers: the goings-on behind the closed doors of the jury room. Ms. Schwartz was a juror in an obscenity trial, and had to spend a week locked up with her co-jurors reading pornography. She describes the debate amongst the jurors when they retired. Gripping stuff!

The book provides food for thought in a complex area, without assuming vast prior knowledge of the issues, nor patronising the reader. It made me challenge my own ideas, which must be the mark of a good political text. I'd recommend it.

Alison Lee
CRIME BOOKS REVIEWED BY BLACK MASK

I must apologise for my envilling column in the last issue. But, since writing it, I admit that I am doing my reading in a rather cynical mood. So to clear the air I am going to list the things that annoy me most about detective novels. Have you ever noticed that every single character has a purpose in the plot? As soon as someone is introduced I start wondering if he is or is not the murderer. Some authors throw in decays and alibi in the real villain incompasosically, but even then the decay fits in somewhere. The more complicated the plot the worse this tendency. Even more intriguing is the inevitable scene when the detective and her helpers and cronies sit round and solve the crime, with the cronies asking leading questions. Suddenly something happens at the very end, because the reader is still in the dark as to what has happened. Often other times it is a little before the end, so that the detective can find the murderer and tie up loose ends. You may remember the weekly occurrence in the old Perry Mason t.v. series. The real masters of the genre, like Elmore Leonard, don't need to bother with this nonsense. It is that Chandler himself didn't really understand what makes the plot of The Big Sleep and the book is all the better for it. The books I read this time all suffer badly from these defects. Nonetheless they make good reading and are excellent examples of the genre.

V.I. Warshawski (she doesn't like to be called Victoria) is a Chicago detective created by Sara Paretsky and a star of a number of books. She is a feminist lawyer who became disillusioned with her job as public defender and opened a detective agency. She doesn't have much of a sideline but a best friend and surrogate mother who is a doctor and refugee from the Nazis. I like the descriptives of the self-sufficient, live of these two independent women. Warshawski eschews serious relationships with men but takes lovers when she feels the urge and sees them go cheerfully - even accepting the villainous role of one in the murder plot. She always tells you what she is wearing, and offers tips like 'clean hair is the key to an alert mind'. Her politics are clear: 'Most of the guests had taken their seats. The bulk were men. I noted automatically that Rawlings was the only black present. We children of the sixties do affirmative action head counts without thinking.' V.I. carries a gun and is not afraid to fight her way out of sticky situations, so the books have a lot of blood and guts.

Killing Orders takes on the Catholic Church, a formidable force in Chicago. A lesbian stockbroker friend of Vica is murdered whilst uncovering dirty financial dealings by an Opus Dei type secret organisation. A lot of other chicanery is revealed plus a Nicaraguan connection. And the Mafia too.

Bitter Medicine is about the infinite capacity for corruption of the medical profession when profits are threatened. This is an instructive theme for these times, but the plot is complicated by anti abortion fanatics, youth gangs, and too much coincidence. Eventually the whole jigsaw puzzle falls into place when the characters meet over some drinks, some patas, charcuterie and fruit.

Over the Edge by Jonathan Kellerman also has a medical theme. The hero, Alex Delaware, is a child psychologist, as is the author. When one of his ex patients is charged with a grisly series of gay murders, he is hired by the family to advise on a plea of diminished capacity. Naturally Alex becomes convinced that his patient is innocent and he begins to investigate. He has a sort of sidekick/friend, sometimes an adversary, who is a gay policeman and an interesting character. By coincidence of course he happens to be assigned to the case! Despite the usual drawbacks this is a well written and rich book which is exciting to read. Set in Los Angeles (stick with me and you read your way around the American cities), it contains a useful profile of the typical serial murderer and a different approach to mental illness. There is strong criticism of the use of drugs as the only treatment for the mentally ill. Again the correctness of the medical profession in a profit system is revealed.

Unfortunately the hero is just a little bit of a nerd. He has what used to be called a lifestyle in one of the L.A. canyons. His partner is a post feminist paragon who says things like 'Catch you later sweetie'. They have what the author must think is a supportive relationship consisting of plenty of sex, buying each other expensive presents and cooking each other elaborate meals. There are other Alex Delaware books which I'm sure are worth reading.

Missing Persons by David Cook has none of the above faults. It is not really a conventional detective novel at all. But the heroine Hettie, a elderly raver, sets herself up as a 'supergran sleuth', demonstrating the universal fictional notion that anyone can be a private detective. Not that it's any fictional character ever attends private-eye school or any other kind of vocational training. But Missing Persons is a charming entertainment which is really about old age, friendship and the human need for self fulfillment. And it's nice for me to end this column by reviewing a real novel with a detective subplot.

Killing Orders, by Sara Paretsky, Penguin, £2.95

Bitter Medicine, by Sara Paretsky, Penguin, £2.99

Over the Edge, by Jonathan Kellerman, Futura, £3.50

Missing Persons, by David Cook, Arena, £2.99

Black Mask is Beth Prince. She welcomes suggestions for suitable books to review.

A DIFFERENT VIEW OF THE WEST BANK

Dear SL

I refer to the article by Cathryn Davies and Fiona McKay in the Autumn 1988 edition entitled Palestine Under Occupation. Among many misconceptions of international and local law contained in the article I was lead to like concentrate on one or two basic principles. Israel maintains occupation of the territories not as a right, but as a duty under international law, and under the 4th Geneva Convention, which sets down firm rules for the protection of people under an occupying power. There is a misunderstanding of Article 66 of the Geneva Convention. It is a wide-ranging article designed to include matters other than security concerns. For instance it states that the occupying power has a right to ensure its own security and has an obligation to maintain orderly government in the territory. This recinds no rule of international law but supplements Article 43 of the Hague Regulations which speak of the duty of the occupier to regulate social and economic matters.

The military courts are based upon Article 66 of the 4th Geneva Convention under which all rules of law pertaining, including rules of evidence as in common law courts and rights of appeal. Article 72 of the 4th Geneva Convention gives the accused the right to counsel but this is qualified, saying that in grave cases the occupying power is not obliged to allow it. However, in 1967, Israel gave detainees the right to meet with lawyers.

On the matter of identity cards everyone is in jail, Jews, Arabs or any other must carry an identity card which has to be produced on demand and for which failure to produce can result in penalties.

Article 78 of the 4th Geneva Convention allows administrative detention at the discretion of the occupying power who may make a judgment on a particular security risk and 'is consequently entitled to restrict their freedom of action.'

Regulation 112 of the Defence Emergency Regulations of 1945 which are still in force and which were upheld by Jordan when it controlled the area, permit deportations for security reasons. Appeals to the High Court of Justice are allowed.

In other words Israel, which has legal standardscompare with any country in the West, is very careful to stay within accepted international law. It is a different view of the West Bank.

Lionel Bloch

LETTERS

SOCIALISTS DOWN UNDER

Dear SL

I have just been reading the Winter/Spring edition of Socialist Lawyer which I 'stole' from some of my colleagues in the New South Wales Society of Labor Lawyers.

I am writing to you in my capacity as President of the Australian Society of Labor Lawyers to see what useful contacts, if any, can be established between us.

We are a fledgling organization having been established at a national level in 1978 although the Society was founded in Victoria in 1974. There are Societies in each State and Territory and amongst other things, we hold a conference each year.

The conference in 1989 is to be held in Sydney on 11, 12 and 13 August which is the weekend preceding the 26th Australian Legal Convention, also to be held in Sydney.

Apart from making formal contact, our Society was interested in knowing whether or not any members of your Society would be coming to Australia for the Legal Convention or indeed at any other time.

Yours sincerely,

John Howie

The Australian Society of Labor Lawyers.
HALDANE SOCIETY and CRITICAL LEGAL CONFERENCE

LAW AND CRITICAL PRACTICE: HISTORY AND FUTURE POSSIBILITIES

22-24 SEPTEMBER 1989
University of Kent, Canterbury
For offers to contribute and for further details contact:
Beverley Lang, 1 Dr Johnson's Buildings, Temple, London EC4

PROPOSED VISIT TO THE USSR

After the success of last November's visit, it is proposed to send a further delegation of up to 25 Haldane members to Moscow and one other city (perhaps Kalinin) in the second or third week of January 1990. The all-in cost for the week will be about £250 if we stay in hotels of the Soviet trade unions, which are situated in the outskirts of Moscow; or about £450 if we travel with Intourist, who have hotels in central Moscow.

We will enjoy a full programme arranged by the Association of Soviet Lawyers as well as some tourist and cultural activities.

To reserve a place, and to express your preference, please contact:
Bill Bowring, 4 Verulam Buildings, Gray's Inn, London WC1R 5LW. Phone work 405-6114; home 674-8674.

MANCHESTER BRANCH

The MANCHESTER BRANCH of the Haldane Society meets on the 2nd Wednesday of each month at 6.30pm in the Manchester Town Hall, Albert Square, Manchester.

Contact the convenor for further details:
Alison Cantor, 97 Claude Road, Chorltonville, Manchester M21 2DE
Tel: (061) 891 4017 (evenings).

PROGRESSIVE PERSPECTIVES--WOMEN AND THE LAW

Conference organised by the Haldane Women's Subcommittee and the Society of Black Lawyers. For women working in the law and affected by the law. Women only.

SEPTEMBER 1989
London School of Economics, Houghton Street, London WC2

For further details contact:
Alison Lee, Toosk Court, Cursiter Street, London EC4
tel: 01 455 8829

LEGAL ADVICE FOR LESBIANS AND GAYS

8 JULY 1989
London School of Economics, Houghton Street, London WC2

A day conference organised by the Society's Lesbian and Gay Sub-Group. Workshops will include: Immigration, Crime/Policing, AIDS, Employment, Housing, Custody of Children, Local Authority Care, Fostering/Adoption, Human Rights, International Law and Lesbians and Gays working in the Law. The emphasis will be on the practical law as it stands.

Entrance fee: £10 waged, £2 low waged/unwaged.
Access details on request.

For further information please write to the Haldane Lesbian and Gay Sub-Group, c/o 55 Wellington Street, London WC2 ZBN.

For creche places or signers write by 10 June.

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Haldane Society of Socialist Lawyers

SOCIALIST LAWYER

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

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

SUBCOMMITTEES

CRIME

Anita Leaker, Dwek Wyman and Walters, 32 Leightond Road, London NW5 2QF

EMPLOYMENT

Colin Wells, 1 Dr Johnson's Buildings, Temple, London EC4

GAY AND LESBIAN RIGHTS

David Gere, 2 Plowden Buildings, Temple, London EC4

HOUSING

Edmund Jankowski, 25 Keppel Road, London E6 2BD

INTERNATIONAL

Bill Bowring, 4 Verulam Buildings, Gray's Inn, London WC1R 5LW

LEGAL SERVICES

Kate Markus, 96 Chichele Road, London NW2

MENTAL HEALTH

Andrew Buchanan, 1 Dr Johnson's Buildings, Temple, London EC4

RACE AND IMMIGRATION

to be announced.

RECRUITMENT

Beverley Lang, 1 Dr Johnson's Buildings, Temple, London EC4

WOMEN

Alison Lee, c/o 14 Toosk Court, Cursiter Street, London EC4

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