THE DEATH PENALTY IN THE USA

CONTEMPT OF COURT:
Kenneth Baker makes legal history

GEOFFREY BINDMAN:
Five more Tory years

MICHAEL MANSFIELD, QC:
Defends his criminal justice proposals
The Haldane Society was founded in 1930. It is an organisation which provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It is independent of any political party. Its membership consists of individuals who are lawyers, academics or students and legal workers, and it also has trade union and labour movement affiliates.

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

Join the Haldane Society now! Please fill out the slip on the back cover.

Haldane Society Sub-Committees

At the heart of the work of the Haldane Society, lie the various sub-committees, which cover a broad range of issues and whose work includes campaigning as well disseminating information and stimulating discussion on the particular area. All members of the Society are encouraged to join one or more of the committees or to form new ones. We would also like to revive the Housing and Immigration Sub-Committees and welcome suggestions. Below are listed details of the different committees, including the relevant contact person. For details of recent activities please see Haldane News on page 27.

Crime - Members are welcome to join the committee's mailing list for details of future work & events. Contact: Jo Cooper, tel: 071-354 4514.
International - Meetings, with an invited speaker, are on the second Tuesday of each month at 4 Versailles Buildings, Gray's Inn, London WC1 at 3pm. Contact: Bill Bowering.
Lesbian and Gay - Contact: Tracey Perry and Stuart Walker, 23 Merse House, Temple.
Trade Union and Employment Law - Meetings take place every month at the London School of Economics. Contact: Sam Cussans, tel: 01-254 9863.
Northern Ireland - Contact: Piers Matty, tel: 01-353 5392 and Nadine Finch, tel: 011-404 1313. Meetings: 1st Tuesday of every month at 11 Doughby Street, WC1.
Mental Health - Contact: Fadilla Morris, tel: 01-353 5392.
Africa - Contact: Tui Graham, Raemoert Flat, 17 Knutsfield Road, SK5 9QY, tel: 011-326 0264.
Women - Contact: Smalls Naido, 111 Doughby St, WC1N 2PG.
Environment - Anyone interested in setting up a new sub-committee should contact: Simon Carrus, tel: 011-622 1401.
Insight

Hackney Miscarriage

On 20th January 1992, eight Stoke Newington drug squad officers were transferred to other stations. The officers are under investigation following allegations of drug planting, drug dealing and fabricating evidence. Hackney Community Defence Association (HCDA) has called for the re-opening of cases where allegations of wrong-doing by police officers have been made, and for a judicial inquiry into policing in Hackney.

Central America Delegation

In early May, Haldane Society members participated in a six person delegation to Central America organised by the Central America Human Rights Committee.

They took part in a conference organised by the El Salvadoran legal institute, HIJES, entitled, 'A New Salvador, a New Constitution.' Jurists from Argentina, Brazil, Chad, Guatemala, Haiti, Namibia, the Philippines, South Africa and the UK discussed with Salvadorean legal and constitutional reforms and the problems encountered in their respective transitions.

The delegation presented their views at the conference and met government and opposition before travelling to Guatemala to meet lawyers, human rights organisations and government officials. The meetings aimed to identify lawyers’ organisation in both countries with whom stronger links could be made, and to evaluate the most effective way in which UK lawyers can contribute to resolving the problems of impunity faced in both countries.

A report will be widely distributed to legal and political bodies in Britain and abroad. A symposium is planned for November where Central American lawyers will be invited to share their experiences and discuss strategies with their British counterparts.

If you would like further information, please contact Patrick Costello of CAHRC, 83 Margaret Street, London W1H 1BB.

Human Rights in Northern Ireland

The 6th-8th April was not an auspicious time for a conference on human rights given the media’s saturation by the election. Nonetheless, the Northern Ireland Human Rights Assembly was a resounding success.

It was attended by over 200 people, and provided with 250 written submissions. The Assembly aimed to examine the effect on human rights of the conflict in Northern Ireland, as measured against internationally recognised standards. Evidence was not restricted to human rights abuses in Northern Ireland but included the Republic of Ireland and Britain. Organisations involved included the British and Irish Human Rights Project, the Belfast-based Committee on the Administration of Justice, Liberry, the National Peace Council and the Campaign for Press and Broadcating Freedom.

The Assembly consisted of 12 commissions and four plenary sessions over the course of three days. Each commencement examined one area of human rights — for instance, the right to life, torture and inhuman and degrading treatment, liberty and security of the person, and the right to a fair trial. They were chaired by international human rights experts from the USA, South Africa and Europe.

Of particular interest were the many submissions alleging that the human rights of both Republicans and Loyalists were being violated.

In February the Campaign Against the Child Support Act (CAGS9A) launched a co-operation movement, providing information and advice to mothers to help them refuse illegal DSS pressure and to protect them from the discretionary powers the Act gives DSS officers which would broaden their scope for racism, sexism and homophobia. CAGS9A wants the Act repealed.

For more information, leaflets and posters, contact the Campaign Against the Child Support Act, King’s Cross Women’s Centre, 21 Tavistock Street, London WC1H 9WD.

Campaign Against the Child Support Act

The Child Support Act, which takes effect in April 1993, forces single mothers an income support to claim child maintenance from absent fathers regardless of the mother’s wishes, the father’s income or the needs of his second family.

The Treasury will benefit while women will be pushed into greater financial dependence on men — including violence and driven off government support into low-paid jobs. Black families headed by single mothers will be among the hardest hit.

The new Child Support Agency will take over many court functions. Civil liberty concerns arise, such as the lack of legal aid to challenge Agency decisions, the possibility of genetic fingerprinting of children, the exclusion of representatives at Child Support Appeal Tribunals and imprisonment for maintenance debt.

HCDA is dealing with 14 cases concerning Stoke Newington drug squad officers, dating back to spring 1989. In all these cases claims have been made that drugs, usually crack cocaine, have been planted. Five people are at present serving prison sentences, two have served their time and are seeking leave to appeal, four were acquitted and are now intending to sue the police, and three are awaiting trial.

HCDA is re-investigating these cases with a view to establishing a pattern of injustice. We have a list of more than 20 officers against whom allegations have been made. It is said that police officers have been supplying street level dealers with drugs; ensuring that their clients have not been arrested, perhaps tipping them off about an imminent drugs raid; and putting their competitors out of business by arresting them and planting drugs with them. The beauty of such an operation is that the police are seen to be doing their job — backing away hard drug dealers. And, of course, a lot of the people they have prosecuted are entirely innocent.

Graham Smith

JOHN PICKERING & PARTNERS

John Pickering & Partners have a vacancy for a trainee solicitor or newly admitted solicitor to work in Liverpool. Please write with CV to: Mike Huphreys, John Pickering & Partners, 19 Castle Street, Liverpool L2 4SX.
... Court orders would be consistently ignored in the belief, sometimes justified, that at some time in the future they would be set aside. This would be a recipe for chaos.

- Lord Donaldson, Master of the Rolls

The UK constitution can be imprecise to potentially fundamental changes if the non-voluntary nature of the people is carefully manipulated by the establishment. It is remarkable that England - 'the cradle of democracy' - kept the ordinary man disfranchised until the Reform Act was passed in 1832. Women, of course, had to wait until 1918 for a limited right to vote and yet another decade before securing equal voting rights. Campaigners for constitutional reforms were told that their requests were 'not in line with the British way of doing things'.

The 'British way' of reform appears to be a chance-dependent piece-meal evolution of the constitution, dictated by uncontrollable political pressure on parliament or a fortuitous case reaching the courts. The latter mode of reform operated in the case of M v Home Office and Kenneth Baker. This case arose from a relatively mundane legal matter and assumed an extraordinary significance due to some remarkable 'accidents, mistakes and misunderstandings' in the handling of an asylum application by the Home Office. Commenting on the first instance judgment of Simon Bawes J, Lord Donaldson MR said, 'I agree with the judge that this is a matter of high constitutional importance. I would do very much the very highest.

Summary Rejection

M was a 28-year-old schoolteacher, alleged to have been tortured as a political opponent of the Zairian regime. On 12th April 1991 he was examined by a doctor of the Medical Foundation for the Care of Victims of Torture who noted 'the scars he bears are entirely compatible with the causes he ascribes to them. He is suffering a degree of deafness and partial trouble quite likely to have arisen from his misadventures'. He shows some evidence of depression and his continued detention can only aggravate these symptoms and he could easily become a serious suicide risk.' Immediately upon his arrival in the UK on 23rd September 1991, he had claimed asylum on the basis that he was a refugee within the meaning of the Geneva Convention 1951. On 11th March, and without the benefit of the subsequent medical report, the Home Office rejected his application and ordered him to leave the UK.

Empty Promises

M's solicitors appeared before the duty judge, Garland J, on 1st May at 5.30pm. He was told that if M would be flown to Kinshasa via Paris from Heathrow airport. Manifestly, he had no time to study the papers or to consider the arguments. Denying the application as not be frivolous, Garland J sought, and believed to have obtained, an undertakings from the Home Office counsel that M would not be flown out of the jurisdiction until a judge had had time to give proper consideration to M's application. On the basis of this undertaking alone, he refrained from giving leave to apply for a judicial review of the Home Office's decision.

Nonetheless M boarded the aircraft at 6.29 pm and it took off at 6.47 pm. The undertakings of immigration authorities were 'wholly insufficient to amount to the discharge of this particular undertaking by anyone fixed with the knowledge of its terms.' A senior Home Office official was informed about the undertaking at 5.50 pm when M's flight could still have been aborted.

From touching down at Paris at 7.47 to taking off for Kinshasa at 10.29 pm, M was in transit at Charles de Gaulle airport. The Immigration Minister, Peter Lloyd, learnt about the undertaking shortly before 10 pm. When he explored the possibility of bringing M back from Paris, Mr Platt, Assistant Under Secretary of State for Immigration, expressed doubts about the legality of any attempt by the United Kingdom authorities to return the applicant from Paris. Influenced by this erroneous advice and believing that the undertaking was 'a mere request', the minister decided to take no steps. In his leading judgment in the Court of Appeal, Lord Donaldson observed that even the time scale could not have excused the failure to halt the journey in Paris. He said that, whilst the Home Office could legitimately remain convinced that M was a bogus asylum seeker, it was not entitled to remain inactive even when faced with a mere judicial request. Inactivity could only be justified if the Home Office view was correct, yet that was the very issue which was before the courts.

A Last Minute Flurry

On being informed over the telephone by M's solicitor, Dr. Majid, that the Home Office had failed to bring M back from Paris, Garland J issued a mandatory order. The Order required 'The Secretary of State for the Home Department by himself, his servants or agents do forthwith procure that... M be returned within the jurisdiction of this Court.' This order was 'irregular', partly because injunctions, characterized as such, cannot be issued against the Crown. However, Lord Donaldson, referring to R v Secretary of State for the Home Office ex parte Majid, 'indicated that Garland J could have achieved the intended result by a skilful use of the Writ of Habeas Corpus which he said was 'inherently interin character'.'

The order moved the Home Office into a related flurry of activity, culminating in the booking of a flight at 9 pm on 2nd May for M to return to Kinshasa. The minister, Peter Lloyd, met with the Secretary of State, Kenneth Baker, and some advice at 4 pm on 2nd May. Mr Baker ordered the cancellation of M's return. According to his Affidavit, two factors operated on his mind. The release he received from Mr Lloyd that the underlying asylum decision was the right one and 2. Legal advice that the order of Garland J was made without jurisdiction and that an application to set aside the order would be made at the first opportunity.

Mr Baker went on to say 'I am sure that I never had it in contemplation to act in defiance of an order of the court, much less to hold myself above the law. If I am wrong in any of these conclusions or if the legal advice on which I acted was wrong, then it is a matter of sincere regret to me and I unreservedly apologise to the Court.' On 3rd May 1991 the Home Office succeeded in having the order set aside, persuading Garland J that he did not have the power to make such an order.

Ambit of Ministerial Liability

Four days later M started proceedings against the Home Office and the Home Secretary alleging that both or either was in contempt of court by breaching the undertaking and/or defying the order before it was set aside. The matter was referred to the Home Office by the Power: '... I am sure that I never had it in contemplation to act in defiance of an order of the court, much less to hold myself above the law...'

- Kenneth Baker MP

Dr Amir Majid, barrister and Senior Lecturer in Law at the City of London Polytechnic, analyses a Court of Appeal decision of extraordinary constitutional significance, which lead to kenneth Baker M.P. becoming the first government minister to be held in contempt of court.
... this is a matter of high constitutional importance. Indeed, I would say of the very highest.'

- Lord Donaldson, Master of the Rolls

... he was fully binding until it was set aside.

Since mid-1988 Brent has lost about 50% of its grant in real terms and much of its capacity to provide an independent strategic legal service. In 1990, an attack on the centre was deflected in part by a 'hold your hand, partnership funding' lobbying letter from the Legal Aid Board. In 1991, in the absence of any follow-through by the Board, the Council, now controlled by a peculiarly doctrinaire and dogmatic group of Conservatives, returned to the attack and, in April 1992, cut a further £60,000 from this year's budget.

A Maladroit Piece of Overkill

The Council requires the law centre services, it still funds to be provided through three CABs-run 'one stop shop' centres of excellence'. Their work is to be confined to: 'first stage advocacy, which includes preparation of case work for handover to other legal practitioners where litigation is essential.'

In a typically maladroit piece of overkill, the resolution of the Housing Committee discloses the riling group's real intentions: 'Litigation against the Council is not ruled out provided ... that contentious matters are brought to [our] attention ... for a view to be taken by Brent Councillors ... at the earliest opportunity.'

There is some doubt whether the riling group will have a majority for its proposals, particularly since they include a forced partnership between the CABs and a proper group of Councillors led by one of the Labour defectors. However, the only real hope for the Centre is that the Lord Chancellor will allow the Legal Aid Board to make its proposal and fund the loss half of its service.

Councillor Irwin Colle, Brent's Conservative Housing Chair, told the 'independence' that the 'one stop shops' were 'all part of our contract culture, which is going to be followed by every other local authority'.

This claim alone should embarrass at least some Labour and Liberal Democrat councillors elsewhere in the country into a careful reconsideration of their positions.

Notes
1. Legal Aid Board, Report to the Lord Chancellor on the Operation and Finances of the Legal Aid Act 1988 for the year 1990-1, p. 27, para 9.46.
AN IRISHWOMAN WITH AN UNWANTED PREGNANCY

WHERE DOES SHE GO?

WHAT DOES SHE DO?

"...a problem exported is a problem solved."

...a problem exported is a problem solved.

The recent Irish case of Attorney General v. Attracted much media attention in Britain. X was a pregnant 14-year-old girl who was prevented by High Court injunction from leaving Ireland for an abortion. The injunction was obtained by the Attorney-General to uphold the ‘right to life of the unborn’ as guaranteed by Article 40.3.3 of the Irish Constitution. Abortion is a criminal offence in both the North and South of Ireland under the Offences Against the Person Act 1861. When abortion law became liberalized in mainland Britain in 1967, Irish women began taking the ‘abortion trail’ to London and Liverpool and the demand for backstreet abortions in Ireland diminished. For several years the state turned a blind eye: ‘a problem exported is a problem solved.’ But, by the late 1970s, attitudes polarised. The Supreme Court recognised a previously unacknowledged constitutional right to privacy that husband and wife could import contraceptives for their own use.1 There was also a growing women’s movement. Reactionary Catholic and pro-family groups were concerned that the laws might extend the constitutional right to privacy to legal abortion. They founded the Pro-Life Amendment Campaign (PLAC) to ‘co-ordinate the missionary ban on abortion’ by adding to the Constitution a recognition of the right to life of the unborn child. After a long and extremely divisive campaign, Article 40.3.3 of 1983 was passed by a narrow majority in 1983. It reads as follows:

'...a problem exported is a problem solved.'

Constitution

The recent Irish case of Attorney General in Ireland

1. The right to life of the unborn child is not absolute. It is dependent on the welfare and best interests of the child. The right requires that actions be taken to safeguard the health and safety of the mother.

2. The 1983 Constitution was passed by a narrow majority in the referendum. It was widely criticized for being overly restrictive and not allowing for the possibility of a voluntary abortion in certain circumstances.

3. The law on abortion in Ireland is considered to be one of the strictest in the world. It has been described as "an absolute ban on abortion".

4. The Supreme Court has ruled that abortion is not a constitutional right in Ireland.

5. The government of Ireland has stated that it will not change the law on abortion unless there is a national referendum.

6. The issue of abortion remains a highly sensitive and contentious issue in Ireland, with strong pro-choice and anti-abortion movements.

7. The European Court of Human Rights has ruled that the Irish abortion law violates the right to privacy and the right to mental health.

8. The issue of abortion has been a major political and social issue in Ireland for many years, with debates on the issue often polarizing the country.

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11. The issue of abortion has been a major political and social issue in Ireland for many years, with debates on the issue often polarizing the country.
In responding to Dr Vogler and Marcel Lemonde, I do not say as pathological for the French model of investigating serious crime by means of a juge d'instruction, nor for the French inquisitorial system of trial. Misunderstandings have arisen about my proposals for change that I should like to clarify. My mere mention of the juge seems to some to indicate that I am advocating the wholesale adoption of this system. French jury trial, dominated by an inquisitorial procedure and by a judiciary which retires with the lay jury members, is an anachronism to me. There are enough other problems with the role of the English judiciary without making them part of a juge. Jury trial is still the most democratic element of our criminal system. It should be broadened and strengthened so that all contested criminal issues are tried by a jury on the adversarial basis.

The opposition to fixed fees is not about fat cats improving their waistlines but about ensuring basic protection for defendants' rights.

The juge becomes an extra safeguard, not a substitute for proper legal advice or legislative enactments like PACE.

Fruits of the Poisoned Tree

In France the Code Napoléon provides for a right to silence in the face of interrogation by the juge. She is obliged to remind all interviewees of this right. It is emasculated by the inefective nature of the lawyers, the lack of legal aid, the lack of access in a police station, prolonged custody and the unspoken feeling that silence in the face of far-reaching enquiries equals guilt.

All of this brings us back to the essential principles mentioned earlier and the need for the Royal Commission to put teeth into the gums of PACE. The most obvious method of implementing these principles occurs with confession evidence, which still features centre-stage in most cases. There should be a new exculpatory role of evidence, whereby the failure to meet certain preconditions renders automatically inadmissible any statement, oral or written, obtained in breach of the 'fruits of the poisoned tree' doctrine in America. These are suggested preconditions:

i. Access to a lawyer from the moment of arrest;
ii. Right to private legal consultation;
iii. Right to legal representation at all interviews;
iv. Right to silence;
v. All interviews to be audio/video recorded;
vi. Non-interview confessions to be verified in interview;
vii. All confessions to be reported in front of a juge within 24 hours;
viii. Strict adherence to basic custody welfare conditions on sleep, food, clothing, exercise and medical attention.

Legislation should not allow the police nor the courts any discretion to circumvent these provisions. Further, there should be no prosecution let alone conviction merely on confession evidence - a decision which could be taken by a juge.

Blinded by Science

Allied to police investigation is the work of government scientists, some of whom over the years have failed to inspire confidence, particularly where one senior scientist admitted he had been economical with the truth. The problems here arise from inadequate and misleading briefings by the police, tailoring reports to police specifications, omitting negative findings, misdescribing positive findings, inadequate record-
EXECUTIONS IN THE US ARE ESCALATING ALARMINGLY AMID A CUMBERSOME AND SOMETIMES IRRATIONAL APPEALS PROCEDURE.

MANDY BATH DESCRIBES RECENT DEVELOPMENTS - AND Passes ON A PLEA FOR HELP FROM BELEAGUERED AMERICAN LAWYERS.

So ordinary-looking, so apparently harmless. Those were my first impressions of the low, red-brick building in a quiet backstreet in the sleepy Texas town of Huntsville. But behind those walls that cold, blustery night in February a human life was being counted down to extinction. This was the Walls Unit, the Texas Department of Corrections' place of execution.

As midnight struck a cheer went up from a crowd of 70 to 80 outside. They had come to celebrate the death of Johnny Frank Garrett, a chronically psychotic, mentally retarded man who, at the age of 17, committed an admittedly gruesome murder. But, as a juvenile offender, he would not have been executed in the vast majority of countries which retain the death penalty. Only Iran, Iraq, Nigeria, Pakistan and Bangladesh share with the USA the dubious distinction of killing children in the name of justice.

THE EXECUTIONS ARE ESCALATING ALARMINGLY. In January, Wyoming executed its first prisoner in 26 years. In February, Delaware resumed its use of the death penalty after almost half a century. Arizona came next. And, on 21st April, Robert Harvis was asphyxiated in San Quentin's gas chamber - the first execution in California since 1967. Throughout the USA, 170 prisoners have been executed since 1977; 13 have already died in the first four months of 1992. Texas is way out in the USA death penalty league with 46 executions since 1982. News of death warrants reaches the Texas Resource Center (the only lawyer's group handling Texas death penalty appeals) at a rate of ten or more a month.

Since the beginning of 1992, Texas has been dispatching inmates at a rate of two a month. There are 345 still waiting.

Leonce Hernandez is on death row for the murder of two police officers. Years after his conviction evidence emerged that his brother, Raul, had confessed to the crime. And Raul's case came forward with a sworn statement that he saw his father commit the murders. But the state of Texas argues that Hernandez's innocence claim is now 'inefficient.' Texas places strict limits on the presentation of new evidence and say that Hernandez ought to have raised the matter long ago in the state court.

A VOTE WINNER?

Hernandez would be dead now if it had been up to the Supreme Court. It takes four votes to grant review, and Hernandez got them. But five votes are required to stay an execution and Hernandez did not have that crucial fifth vote. It was a macabre scenario: the Court agreed to decide whether the US Constitution permits the execution of an innocent person, but also agreed that its petitioner could not be executed.

The Court of Criminal Appeals finally intervened and stopped the execution with minutes to spare.

The state's response? It requested and was given a new execution date on 15th April. Again the Texas Court of Criminal Appeals granted a stay, an indefinite one this time. So Hernandez is back on death row, waiting to learn his fate.

US public opinion does not acknowledge that the criminal justice system may be fallible. The fact that in recent years 40% of death sentences have been overturned by federal courts is held up, not as proof that the system sometimes errs, but rather as a worrying indication that criminals are getting off on technicalities. Some miscarriages of justice in the UK lead to Royal Commissions and serious soul-searching. In the USA they go unremarked or disbelieved.

Texas alone has been forced to release four death row inmates since 1977 after evidence of their innocence emerged. Just this year, two inmates in Virginia and North Carolina were granted executive clemency days before their execution because of doubts about their guilt.

Yet politicians win applause and votes when they promise to cut down on those 'trivial' federal appeals and speed up executions. One member of Congress, falling over himself to look tougher than his opponents, described as 'pro-criminal' a recent federal bill which proposed expanding the death penalty to cover 53 additional crimes - because it retained a minimal degree of federal judicial review of capital convictions.

INNATE EVIL

Each death row inmate has his story. At the beginning of this year there were 2,547 such stories to be told across America.

The crimes committed may well be monstrous, but so, too, is the murkiness of abuse, neglect and violent ill-treatment noted out to many of the perpetrators before they themselves
The tiny band of ten lawyers staffing the Texas Resource Center are in a state of permanent exhaustion."

turned to crime. Some, as children, were treated no better than animals. While this does not excuse the crime it may help to explain it. Often there was no state money available to help these abused or mentally ill youngsters when they needed it.

"Thank you so much for caring about us," one death row prisoner in Oklahoma called out as I left. These are the forgotten, the reviled, probably the most despised human beings in America today. In a society not renowned for its imagination or compassion, criminals are considered a human sub-species who were just born 'mean.' It's OK to kill them, so the theory goes, because they are not like 'us.' My friend on Oklahoma's death row would disagree, but who can hear him through the walls?

Lawyers to Blame?

Those under sentence of death in America today are characterized by their object poverty, minimal intellectual capacity and by the often shockingly deficient legal representation they received at trial. By the time cases reach the experts in the legal resource centers, it is often too late to repair the damage done at trial. Defence counsel may have done no pretrial investigation and presented little or no evidence in defence or mitigation. There are cases where the jury took as little as seven minutes to decide on the death sentence after they were offered no real reason to do otherwise.

'Time is rapidly running out for hundreds of inmates. The courts, including even the US Supreme Court, are unprogressive in their mission to expedite the appeals process in the interests of 'finality.' 'Finality' is judicial-speak for execution. Must it take a blood-bath of executions before the US public wakes up? How many Leonel Herreras and Edward Ellikis must be added to the list of probable miscarriages of justice before enough voices cry stop? When we allow our elected governments to use the power we bestow on them to kill us, who is safe?

The death penalty is the greatest unredressed human rights violation in the USA. It will take energy from beyond the country, as well as within it, to bring about abolition. A lawyer in the Texas Resource Center put it succinctly: "Send money and go home!" British lawyers, law students or others with a few months to spare will be welcomed with open arms by the beleaguered resource center. They will help with case investigation, and other pro-bono work. You need common sense, a clean driving licence and stamina. An ability to listen and fast food is an advantage. You will not be paid. You will be part of a committed team whose members say "Why do I do what I do? How can anyone do anything else?"

For further information about working as a volunteer, contact: Amnesty International, International Secretariat (USA death penalty research desk), 1 Easton Street, London WC1X 9JH. Tel: 071-403-5885.

Two organisations in the UK which campaign against the US death penalty are: Amnesty International, British Section, 99-119 Borough High Street, London EC4Y 8BL. Tel: 071-2196000; and Shaw Heath (the campaigning wing of the death row penal network, Lifeline) PO Box 956, Shrewsbury-by-Sea, West Sussex, BN44 6ZN.

...the Court agreed to decide whether the US Constitution permits the execution of an innocent person, but also agreed that its petitioner could meanwhile be executed.

Discounting electoral puffery, Labour made explicit and credible promises: extension of legal aid eligibility and expansion of the number of advice centres were two of them.

Roy Hattersley's Charter of Rights - though far from the constitutional revolution it purported to be - nevertheless contained a significant list of progressive changes. Among these were a Freedom of Information Act; parliamentary scrutiny of the security services; statutory guarantees for freedom of the press and right of privacy (a difficult balance); new rights for immigrants and refugees; and strengthening the laws against sex and race discrimination on lines demanded for several years by the E.O.C. and the C.R.E.

What can we look forward to instead? It is no surprise that none of Labour's proposals are duplicated by the Tories.

In their election manifestos, most of the section headed 'Freedom under the Law' is either 'crack-down' and 'clamp-down' rhetoric, interspersed with generalised praises about fairness and the enjoyment for 'everyone lawfully settled in this country' of the full range of opportunities in our society.

So we must assume that the strategies already announced and partly implemented by Lord Mackay will be continued. These include the changes embodied in the Courts and Legal Services Act, reforms in criminal procedure to be recommended by the Royal Commission, changes forecast by the Civil Justice Review, and elements of the so-called 'Citizen's Charter' programme including some form of 'lay adjudication.' A Courts Charter is promised in the manifestos.

It is simplistic to dismiss these strategies as mere cost-cutting exercises or superficial privatization. They reflect valid impatience among the public and wanton restrictive practices and inefficiencies condoned by the complacency and selfishness of generations of lawyers. Far from rejecting these aspects of Tory policy, we should welcome the extension of rights of audience not just to solicitors but to others with relevant specialisation.

... the polarisation and class division already so blatant between commercial and legal aid lawyers can only intensify.
Since 1979 local government in Britain has faced fierce attacks. Will the new European Charter of Local Self-Government provide the armoury with which to fight back? Former councillor and local government law expert Bill Bowring assesses the chances.

Since the work of Sidney and Beatrice Webb and the other Fabians a century ago, local government in Britain has been a powerful base for the left; a means of progressive empowerment of the oppressed. Unfortunately, the Tories spotted this too. The constitutional entrenchment of local government rights could arm Conservative local authorities, perhaps with the assistance of the courts, to resist the progressive measures of a reforming government.

Nevertheless, just as there are irreducible human rights which cannot be violated, whatever the justification, there are basic principles of local democracy too, which socialists should respect.

A Charter Party?

Very few people in Britain know that the Council of Europe, responsible for the European Convention on Human Rights, has adopted a "European Charter of Local Self-Government", which came into force on 1st September 1988 - the year of the crudest assaults on local government in Britain. 19 European states have signed the Charter and 15 have ratified it; Britain has done neither. It is quite consistent with her dubious record in complying with the Human Rights Convention and her lack of enthusiasm for the European Community's Social Charter. The Labour Party Manifesto included a commitment to ratify the Convention, but the proposals have not received much attention, and little or no discussion on the left.

If Britain ratifies the new Charter, our government will be committed to the principle that "local authorities are one of the main foundations of any democratic regime" and to the existence of local authorities "endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment."

State parties to the Charter are bound, for example, by article 1, which provides that "The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution." Article 9 requires a State party to ensure that "local authorities shall be entitled to adequate financial resources of their own."

A theme running through the whole Charter is the right of local authorities to be consulted on the allocation of resources, and about changes that affect their powers. Would it be a mistake for the left to campaign for speedy ratification of the Charter?

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Claire Glasman and Anne Neale, from Women Against Rape, welcome the recent criminalisation of marital rape and call for legislative reform to increase the protection of women and children from domestic sexual assaults.

In October 1991, the House of Lords ruled that rape in marriage is illegal. They overturned a common law exception which has lasted for 250 years, although it was only based upon the personal opinion of a 17th century witch-hunting judge. This was a huge victory for all women and for WAR's 15 years' campaign.

We are now pressing for legislation to confirm this ruling. We want to ensure that the success of future prosecutions does not depend on the woman's case coming before a sympathetic judge, and we want to signal to the courts, the police and individual men that no rape will be tolerated.

The woman should not be made a compellable witness... The police must respond to her call because of the immediate danger to her, rather than the certainty of prosecution...

In June 1991 Labour MP Harry Cohen presented the Sexual Offences (Amendment) Bill, which we drafted, to reform the law of rape. Our objectives were: to redefine rape, confirming that consent is the determining factor, not relationship, circumstances, the kind of penetration or even the sex of the victim; to outlaw all forms of sexual coercion, whether physical, financial or emotional; to provide for emergency benefits, housing and compensation, to give women financial protection from the rapist who pays the rent, and to abolish any compulsion to testify against violent partners and give women representation in court.

Compellability is Coercion

The Law Commission confirms the need for legislation, treating rape in marriage 'just like any other rape' with 'no extra hurdles to prosecution.' Significantly, the Commission also calls for a review 'of the general law on the compellability of victims of domestic violence,' recognising that compulsion could deter many women from calling the police. There are many legitimate reasons why a woman may not want to go to court including fear of financial consequences for herself and her children, or wanting her husband stopped but not jailed. Women have been imprisoned for refusing to testify, even some police officers agree that compulsion simply inflicts further coercion on the woman.

Over 400 organisations, including many refugees and rape crisis lines, endorsed WAR's open letter to the Law Commission:

'The woman should not be made a compellable witness... The police must respond to her call because of the immediate danger to her, rather than the certainty of a prosecution... The woman's assessment of risks of reprisals against herself or her children must always be taken into account. Black women and other women who experience police racism and other hostility... must be guaranteed that reporting rape will not be a pretext for the police, on entering their communities, to act illegally.'

A Second Rape at Court

Recent publicity about wrongful convictions of both black and white men for rape show that these injustices have less to do with vindictive police or lack of evidence than with the failings of a legal system that pays insufficient attention to victims and defendants. Prejudices and carelessness are endemic among police, lawyers and judges. Women have described police interviews and rape trials as their 'second rape.' As witnesses, they have no control over how their case is pursued or presented. We are complaining to the Bar Council about one prosecuting barrister who was even rebuked by the defence for grilling the woman, and who also left no key evidence, resulting in an acquittal.

Women Against Rape's forthcoming book, The Power to Refuse: rape in the home and outside (Crossroads Books, 4.50), is ourexpanded evidence to the Law Commission on rape in marriage, compellability and related issues. It is also a grassroots reference book on the history and social implications of rape in marriage, the movement to criminalise it, and our proposals for further legal change. Contact Women Against Rape, King's Cross Women's Centre, 77 Tavistock Street, London, W1.

Note:
1. Rape Within Marriage, ov. 203, January 1992
The Tories' record in maintaining and extending the draconian 'emergency legislation' governing the North of Ireland was not an election issue. This omission is mirrored in the public discussion surrounding the Royal Commission on Criminal Justice. Here barrister Piers Mostyn describes the most recent extension of legal powers.

'The Northern Ireland (Emergency Provisions) Act 1991 (EPA) is a brutal assault on civil liberties that makes defendants' problems in England look like a tea party. A degree of complacency is only too predictable; the new legislation comes 19 years after the first Emergency Provisions Act and 70 years after its predecessor. What is surprising, post-Runciman, is the major extensions of the already draconian powers, which passed through Parliament without public comment or criticism,'

'The new Act has three principal functions: to consolidate existing legislation; to incorporate those sections of the Prevention of Terrorism Act 1989 relating solely to the North of Ireland; and to add new powers. The EPA followed a major review conducted by Viscount Colville. He made only three proposals for 'progressive' reform: the video-recording (without sound) of all interviews; the abolition of the power to introduce interment without trial; and the introduction of codes of practice.

Only the last of these proposals has been incorporated into the Act. However, new codes (as yet undefined) are unlikely to help in excluding dubious admissions. There is no provision in the Act corresponding to PACE under which code books can be cited to exclude admissions. Indeed the EPA's far more restricted definition of inadmissible confessions (those obtained by torture, intimidation or threat of violence) precludes many safeguards associated with PACE codes in England.

Let's Stop and Chat

During the Bill's passage through Parliament the Government accepted a few minor amendments. 'They will have little impact on the overall effect of the Act. For instance section 23, under which the security forces may stop and question without grounds for suspicion, has been modified slightly so people can only be stopped for as long as is necessary to question them. For most, the problem has not been how long they are stopped, but how often. Dr Martin Doran, a medical practitioner, recently complained of being stopped over 200 times in the past year for no good reason. In any event, the security forces will still attempt to justify stopping people for up to an hour. Moreover, they run the further risk of prosecution if they refuse to answer certain questions and choose to remain silent.

Other minor reforms include: the establishment of an independent assessor of army complaints procedures and the exclusion of privileged legal material from wide new documentary investigation powers. The former has been dismissed as toothless, because of the lack of supervision of the actual investigation. The latter was inserted to avoid outright opposition from professional legal bodies.

Despite the climate of concern over criminal justice in England and Wales, the opportunity was not taken to abolish or re-define any of the main planks of the earlier legislation, all of which remain. As well as those already mentioned, the Act includes: juryless courts for scheduled offences; no presumption of a right to bail and no automatic right to a full communal hearing for these offences; the proscribing of organisations; the banning of hooded wearing in public places and showing public support for proscribed organisations; the creation of an offence of unlawfully collecting information 'likely to be of use to terrorists'; special powers to search houses and detain occupants for up to eight hours; powers to set up road blocks; the power to introduce interment; and the reversal of the burden of proof in specific offences of possession.'

Borderline Cases

'To this panoply new powers have been added. Under section 25 it is now an offence to interfere with road closures. This supplements existing powers under section 24 and makes it an offence, for example, to execute 'by-pass works' within 200 yards of any road closure, or possess materials or equipment for so doing. This is presumably aimed at the communities who have tried to resist constant closures of border roads. It will give soldiers open season against any nationalist seen near a closed road with a shovel, pick or tractor. It is also an offence to "permit" someone to execute a bypass on your land - thus effectively criminalising farming in the border areas. If farmers do not personally prevent such activity they face up to six months in prison or a fine of £2,000. As local people repeatedly point out, the closures have no effect on IRA movements.'

Seizure of Information

'Two new provisions greatly extend information gathering powers. Under section 22 soldiers and RUC officers may examine any document or record for information likely to be of use to terrorists. The definition of 'information' is loose enough, potentially, to encompass records kept by journalists, photographers, academics and political parties. Documents or records may be arbitrarily removed for examination. Grounds for suspension are unnecessary. Obstructing this procedure is an offence.

Secondly, section 57 and schedule 5 introduce investigatory powers similar to the anti-terror provisions in the Criminal Justice Act 1987 and designed to obtain information about the finances of paramilitary organisations. Individuals can be required to produce documents and answer questions.

There are new repressive powers purportedly aimed at countering 'battering'*. They provide for the confiscation of proceeds of terrorism and are similar to those under the Drug Trafficking Offences Act 1986. Section 53 makes it an offence to assist another in the retention or control of proceeds of terrorism-related activities knowing or having reasonable cause to suspect that such a person has engaged in or benefited from terrorist activities*. In areas such as West Belfast, where thousands vote Sinn Fein, people will become wary of most innocuous financial transactions. The maximum sentence is 14 years.

Careful with that Coffee-Grinder

'There is also a new offence of 'directing at any level, the activities of an organisation which is concerned in the commission of acts of terrorism' (section 27). 'Terrorism' is broadly defined as the use of violence for political ends or to put the public in fear. The 'organisation' need not be a proscribed one. Concepts such as 'controlled' and 'directing' are inherently ambiguous (and in the latter case, new). Senior members of many legal organisations could fall foul of this provision. The maximum sentence is life.

Finally, there is a new offence of possessing items 'in circumstances giving rise to a reasonable suspicion that the item is in his possession for a purpose connected with the commission, preparation or instigation of acts of terrorism' (section 50). The CAlJ (Northern Ireland Council for Civil Liberties) has described this as the most significant innovation in the Act. 'Items' is not defined, but Lord Colville suggested boilers, sub-bear gloves, adhesive tape, plastic drums, coffee grinders, kitchen knives and fishing lines as examples.

An intimation that the items need not be adapted for such use. Thus the provision is wider than an offence of 'giving equipped for terrorism. Given the broad definition of 'terrorism' and the difficulty in objectively defining what are reasonably suspicious circumstances, there will be an effective reversal of the burden of proof. The maximum sentence is ten years.'

The 1991 Act ensures the continuation of a 70 year 'emergency' which has involved the militarisation of civil society, the massive abrogation of the principles of the rule of law and the use of coercion to solve a political problem.

Notes
6. For a full critical analysis see: Be For and Abou of Emergency Legislation in Northern Ireland by Duncan Welsh (Colville Trust), Belfast: The Right to Die by NC Mratt & A White (Colville Trust), Belfast: The Rise of the Pro by Anthony Jennings (Plom).
7. See the CAlJ briefing Paper on the Bill at the drafting stage. Available from CAI, 40/41 Donegacl St, Belfast BT1 2FJ.
Behind the Veil
by Chris McCurley

The spirit of Black Mask lives on - as Black Veil, perhaps. I'm here in a probationary capacity, so to speak. I decided to volunteer my services.

I was hunting around for a theme for my maiden review, as it were, when, as in all good detective novels, an opportunity suddenly presented itself. March saw the first UK appearance of US Private Investigator Sharon McCone, a hardboiled private eye created by Marcia Muller, the woman they call the founding mother of the contemporary female hardboiled private eye. As Farber fancy himself in this role I thought I'd take a look at women in contemporary detective fiction.

Marcia Muller is a real find. She has some 17 books to her credit, the latter two, There's Something in a Sunday and The Shape of Dread, have just been published. Sharon McCone is hardboiled, yes, but with a social conscience. She works as a PI for the All Souls Legal Collective, which sounds like the San Franciscan equivalent of a legal aid firm. The Shape of Dread opens, rather tellingly, with her visiting a young black man in prison who was wrongly convicted of murder after a false confession made after hours in police custody. The book centres on her attempts to clear him. There's Something in a Sunday looks at the problem of homelessness in San Francisco, and touches on environmental issues. I loved both books. I thought the characters were well drawn and the plots were compelling. I particularly liked the glimpses of the Legal Collective and Stancil Francisco life. Most of all I liked Sharon McCone. She's tough, but sensitive, not afraid to use her skills in the situation demands.

A Very Proper Death by Alex Juniper is a very different kind of heroine. Marion Vostok is capable woman who finds herself caught up in events she doesn't understand, but which have terrifying consequences. Her character is recognisable and believable as she struggles to protect herself and her son from street gangs and drug dealers, never knowing who she can trust. The plot is very complicated and at times it went as confused as the heroine, but I liked it a lot. Alex Juniper is the pseudonym of a best-selling author and there's a price for anyone who can identify her.

Sometime ago, my illusory predecessor moaned whether a man can create convincing women heroes or whether only a woman can portray the soul of her own sex. I was reminded of this poor when reading Janet Neel's Cape Fear. Ms Neel sounded like an interesting, independent woman and I looked forward to reading her heroines. I was disappointed: she creates the fictional 'bimbo' just as well as any man. Sergeant Catherine Crane is an objectified woman of the first order. We're told that she is bright, but learn little about her detective talents; such serious stuff is left to the serious male character. Sgt Crane's real talent is the ability to render speechless any man who happens to go upon her (improbable) good looks. The reader is treated to page upon page of men in shock at the sight of her until it ceases to be boring and becomes ridiculous. Meanwhile, her (male) colleague solves the case. The other women in the book are also stereotypes, all desperately dependent on one man or another, usually looking for a father figure, and all emotionally vulnerable.

To get back to the original question: Black Mask was so impressed by the heroine in a book by Michael Z. Lewin that she began to wonder if the author was really a woman: I was so overwhelmed by the women in Ms Neel's book that I began to wonder the converse.

One last thing - a word about Cape Fear: You'll remember Fatal Attraction. The film, with a moral message for the public: 'Who? Well Scorese has a message for the lawyers of the 'Who? I enjoyed the film, but if you're not a lover of the 'Nightmare on Friday the 13th' genre then I don't think this is for you.

Robert Reiner's methodology is predominantly qualitative. He interviewed 40 of the Chief Constables (those refused to be interviewed) using a comprehensive questionnaire schedule as a basis for unstructured interviews. As a result, the bulk of the book comprises lengthy, revealing and often colourful quotations. The quotations are unattributed (clearly an important pre-condition for many of those interviewed) and consequently surprisingly honest.

The areas covered by the book include the history of the force, the origins of the Chief Constables themselves (predominantly working class), their career patterns, their philosophies of policing and society. Perhaps the most interesting chapter concerned their theories of crime. 83% of Chief Constables believed that crime was now a greater problem than when they had joined the police. They blamed the change on, amongst other things, working mothers, pornography and the failure to wear school uniforms. Judges were also blamed for the leniency of sentences, while PACe was widely resented as undermining police effectiveness, preventing the holding police those suspected but had insufficient evidence to charge. The main point about PACe is that it's affected the upper end of the criminal market, which was always my fear, the 4 or 5% that you really need to keep in the cells for a long time because you're struggling. You know what they've done, but you're struggling to get the evidence. Many, however, approved rules on tape recording as more efficient and a substantial minority saw PACe as potentially valuable.

Most Chief Constables see public order as an increasing problem. Most revealing were their comments on the miners' strike of 1984-5. Some rejected the way the police were forced to appear as 'agents of the state' against the members of the working classes from whom they themselves had come, fearing echoes of Tolpuddle and Tonypandy. But they rationalised these difficulties by blaming the violence on a hardcore of militant activists amongst the miners. Many elected the allegation that the National Reporting Centre operated by the Association of Chief Police Officers (ACPO) had acted in a national force controlled by the Government, instead stressing its 'ad hoc' role in allowing mutual aid between forces. However, they do not deal convincingly with the burgeoning role of ACPO and the threat of power without responsibility.

Surprisingly Reiner's question schedule made no direct mention of race, yet all 40 of the Chief Constables interviewed raised the issue themselves. Reiner points out that racism is part of the 'canteen culture' of the lower ranks, but finds that racism is also prevalent amongst Chief Constables, especially those from county forces. Some of the remarks are quite shocking: 'I have an incredible public here, it is sparse and populated. A stranger stuck out like a sore thumb. If a black man appeared it would be a source of fun, you know, excitement. So I am very lucky in that respect.' [A Rastafarian believes Ganja is right. It's part of his religion. He doesn't know where bloody Ethiopia is from these days, but you know.' Another jokes about cainism. Metropolitan chiefs are more sensitive, recognising that 'offending was the product of deprivation, not an intrinsic relationship between race and crime,' but the picture of entrenched racism remains.

Chief Constables is especially illuminating on the control and accountability of the police and the unequal relationship of the trimmings of Police Authorities, Chief Constables and the Home Office. It also highlights the importance of the 'advise' Home Office Circulars.

My only reservation is that by concentrating on recruiting the Chief Constables' own words, the author misses too few comments on the issues raised. But, all in all, it is an interesting and very readable book, which succeeds in shedding light on previously unresearched areas.

Sarah Goom
This article is the first in a new series. It may turn out to be a diary column, a polemical rant or simply an unwelcome interruption in your search for Noticeboard. In keeping with the general tone of the magazine, I had hoped to write something imbued with internationalism and gravitas. What has come out is nothing more than a tale of a rubber-clad Geordie whale-molester. Sad, that.

There are still some people who refuse to feel sorry for the Birmingham Six. I seem to attract more than my fair share of them. Rather too many have ‘HATE’ tattooed across their foreheads. They’re hard to ignore. They have the zealotry of crusaders, or those people with paint-on stubbies who insist that Elvis is alive, and working nights in a filling station near Morecambe. They seem oblivious to the utter dearth of any credible evidence to support them.

If these people ever come at you, play the emotional card. In any league table of legal miscarriage - you might say - the loss of the Six would certainly entitle them to their place at the top. Paddy Hill, Richard McIlkenny, Billy Power and the rest are right up there with Winston Silcott, Eamonn Baggish, Mark Bratbywishe, Gerry Conlon, Auntie Annie and her brood, and Stefan Kisuko. Don’t forget poor, hunching, unthreatening Stefan.

You will, of course, be wasting your time. No matter how thoroughly documented they might be, and no matter how grave the hardship they cause, miscarriages such as these have almost no effect upon the public’s view of justice. Each case is picked over in lurid detail. It appears in all the papers, given directed by Killjoy and other intellectuals, and is the subject ofushed ‘special enquiries’on BB2. In short, these cases are abstract things, and their only warning is a faint one. If they are to be persuaded, the mobbons will require examples more firmly rooted in their own experience.

In December, the Newcastle Crown Court had to sit at the city’s Meest Hall to accommodate the huge public interest in the case of Alan Cooper. He was charged with ‘committing a lewd, obscene and disgusting act and outraging public decency’... with a bottleminded dolphin called Freddie. It was alleged that, in full view of a beehive of dolphin enthusiasts, he had stimulated Freddie’s genital organs with his bare, rubber flippers and hands. The defendant, had, of course, been wasting many months for his day in court. The jury took less than an hour to acquit him, after hearing expert evidence that a dolphin might use its penis, not just for reproduction, but also to explore its environment, and even to ‘extend its finger of friendship’.

When Jack Lamunni sailed out of Whitby harbour last year in his two-masted schooner, the Helga Mia, he was bound for Jan Mayen Island in the Arctic. It is an account of his voyage to commemorate William Scoresby, the eighteenth-century philosopher-mariner, son of Whitby, and inventor of the cow’s nest. But in doing so, Jack sagged the men from the ministry. A Department of Transport official inspecting the vessel had found that the diameter of its bell was only two-thirds of the statutory minimum in inches, that in itself did not conform with the British Standard, and that its fire buckets were a bit low on sand. Jack’s 3,000 mile round-trip breached an order dictating the vessel in port. For this, and as many other offences under various Merchant Shipping Acts the prosecution could dredge up, Jack was fined £400, and ordered to pay £600 costs. He had, however, completed his adventure, and had returned to the archipel of many hundreds of cheeky well-wishers.

If any of these people ever come at you, play the emotional card. In any league table of legal miscarriage - you might say - the loss of the Six would certainly entitle them to their place at the top. Paddy Hill, Richard McIlkenny, Billy Power and the rest are right up there with Winston Silcott, Eamonn Baggish, Mark Bratbywishe, Gerry Conlon, Auntie Annie and her brood, and Stefan Kisuko. Don’t forget poor, hunching, unthreatening Stefan.

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