Legal Aid special...

Green Form

...which way ahead?

Legal Aid debate: Kate Markus/Jane Hickman/Bob Nightingale/Benedict Birnberg/Austin Mitchell

plus: Editorial: The Stephen Lawrence Inquiry Cyprus
Professor Griffith: A Bill of Rights? Northern Ireland
The Socialist Lawyers

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Editorial
Stephen Lawrence, police racism and corruption

The legal aid proposals and the way ahead

Giving aid a hearing

In whose interest?

Building on what we've got

People's law – People's lawyers

More than a roof over your head?

A national legal service?

‘Access to Justice with Conditional Fees’

A Bill of Rights

Professor John Griffiths argues that the government's Human Rights Bill will transfer even more power to the courts

Inside the dirty war

Cyprus – at a critical stage

Book review

Editorial Collective: Adrian Berry, Carolyn Lewis, Nathaniel Mathena

Maxine Piets, Nick Wood

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The Stephen Lawrence Inquiry– Raising the lid on open

FORE 55 days the first part of the Lawrence Inquiry has ended. In a way that could not have been anticipated at the outset, questioning by lawyers representing the Lawrence family and Duwayne Brooks, Stephen Lawrence's friend and witness to his brutal murder, has helped to prise open the lid a little more on police racism and corruption. The Inquiry has blasted away the white-washing "review" by a senior London Detective Chief Superintendent Barker, which concluded that the investigation into Stephen's racist murder was almost faultless. That was described by the Inquiry chair Sir William Macpherson as "indiscrete" while he denounced Barker's evidence as "not credible". The Inquiry has also revealed much more than the highly critical report by Kent Police. That pointed to a combination of mistakes and incompetence by the Lawrence investigation officers but ruled out either racism or corruption.

What has emerged at the Inquiry is more than a simple catalogue of errors, though they abound, and evidence which points not only to the racism of a few individual police officers but to the institutionalised racism within the Metropolitan Police Force as a whole. Further, the revelations of links between some police officers involved in the investigation and serious criminals open up wider questions about the depth of corruption within the Met. Unfortunately, those in charge of the Inquiry have chosen not to pursue these issues and, so, despite the best endeavours of the Lawrence family lawyers, many questions remain unanswered.

It is clear that the police investigation team chose to sit on information which was given in the 48 hours following the murder of Stephen Lawrence allowing vital evidence to be destroyed. A failure to share information and a woeful lack of resources also hindered the investigation. But where does incompetence end and racism begin? Perhaps the fact that 70 black people died in police or prison custody between 1987 and 1995 helps to reveal the racism endemic within the police. From the very beginning racism poisoned the investigation. The attitude of the police was one of suspicion about Stephen and his friend Duwayne, a product of racial stereotyping of young black men. Neville and Doreen Lawrence were regarded as troublemakers rather than as grieving parents outraged at the lack of progress with the investigation. The Deputy Assistant Commissioner in south-east London at the time of Stephen's death was David Oxlade, now a Tory councillor in Croydon, south London. He wrote to Metropolitan Commissioner Sir Norman Bettison in 1993: "Our patience is wearing thin with the Lawrence family. Last December he criticised Neville Lawrence for his allegations of police racism and wrote in a local newspaper: 'My advice to the officers concerned would be to consider legal action'.

In the light of such statements, and the fact that Stephen's killers are still free, the belated apology made to the Lawrence family at the Inquiry on behalf of Condon is next to meaningless. The five racists forced to attend the Inquiry mocked it with their perjured answers and tarnished the campaigners outside. Incredibly the police responded by using CS gas on the protesters and protecting the racists - hardly evidence of a change of heart or learning lessons. And in blaming the Lawrence family solicitors, Imran Khan, for hampering the investigation the police demonstrate that they refuse, even after all that has been revealed, to accept responsibility for their failure to bring Stephen's killers to justice.

The successes achieved through the Inquiry would not have been won without the persistence of Stephen's parents and the campaign built around his death. Those running the Inquiry undoubtedly felt pressure from a large section of the public inimical to police inaction. Without the presence of the public in the gallery and the wider dissatisfaction outside it is unlikely that the lawyers would have got as far as they did. And without the continuation of the campaigning the successes to date can be lost. If any changes are to be made it will be down to massive pressure from those determined to defeat racism in all its forms, whether openly racist knife-wielding thugs or dressed up in official clothing.

A recent survey for BBC Newsroom South East revealed that as many as 48% of Londoners have lost confidence in the police because of this case. One in seven people surveyed had no trust in the police at all, with the figure doubling among Black Londoners. There is an incredible awareness of the case, with 9.1% of those surveyed knowing about it. There is widespread support for those asked that believed that the Inquiry had exposed deficiencies in Metropolitan Police procedures. These results in themselves are rewarding. The success of the Lawrence Inquiry and the fact that lawyers have the privilege of participating in something as important as the Lawrence Inquiry but not as vital as building the wider campaign. There is talk of a national demonstration being called for the Autumn. Such a step is welcome and everybody concerned about defeating racism should attend.

In September the second part of the Inquiry begins in which submissions will be taken from other interested persons. The catalogue of complaints, distrust, and yet more evidence of police racism will continue. If Jack Straw and the government want to show that the reputation of the Metropolitan Police for racism and corruption they can begin by sacking Condon and all those officers responsible for the outrageously inadequate Stephen Lawrence murder investigation. They can also change the ludicrous way in which complaints against the police are handled by the police themselves. An open and democratically accountable procedure for hearing allegations of police misconduct is an essential first step.
The Legal Aid Proposals and the Way Ahead

KATE MARKUS, Chair of the Haldane Society, sets the scene and outlines the scope of the debate

SINCE Lord Irvine made his first announcement about legal aid reform in October last year, we have been inundated with rumour and speculation. There is real cause to doubt that legal aid has much of a future as a welfare service. These legal aid reforms favour the rich at the expense of the poor.

Conditional fees

The big proposal that came out of that was that civil claims should not have legal aid available at all any more. The only ones that could have legal aid were some of the children's cases or the serious fraud cases or cases where the government says there is a chance of winning but it will lose the case if they are not eligible for legal aid.

Lawyers will not take on cases unless they have a high chance of winning. They would only offer conditional fees to the courts where people who are not eligible for legal aid.

The Lord Chancellor's proposals needed to be defeated but also addressed the wider issue of what a genuine Community Legal Service would look like, how it should work, and, indeed, whether that was the right way forward at all. The first four articles in this issue of Socialist Lawyer are abridged versions of speeches delivered to the conference. The following four articles continue the debate. We welcome your views.

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I fear that much of the highest quality work that lawyers do will be lost - researching, digging and delving, taking on authority against the odds, sometimes winning and sometimes losing.

Another problem is that if you lose a case and don't have legal aid, you end up paying the other sides costs. For most people this is a sufficient deterrent in itself to prevent them from litigating. They would insulate themselves to cover this, but how is a person on income support supposed to pay an insurance premium that could be hundreds or thousands of pounds? These are all arguments that the government has failed to answer. Lawyers have been accused of whining. The government has suggested that lawyers should bear the costs of insurance premiums and the costs of investigation, as well as not being paid for losing cases. This is a burden that most legal aid firms simply could not bear.

They would go under within months. It is like saying that GPs should sign the surgeons' fees for exploratory surgery!

The government has said that these proposals are designed to create a level playing field for all litigants regardless of their means. If the middle classes cannot get legal aid, why should the poor? But this ignores the political reality. There can be no level playing field in society as it is presently structured. Many of the types of cases for which legal aid is granted are the least exclusive preserve of the poor. Middle income people do not generally live in rented housing in poor repair, do not get unfairly evicted by their landlords, do not get stopped and searched randomly by police or beaten up in police stations, nor are they wholly dependent on social security benefits. All these situations arise out of the political and economic disparities in our society.

This comes to the political heart of this debate. It must be the proper role of the law and lawyers to help to redress these

imbalance between rich and poor, and if this means providing legal resources disproportionately to the benefit of the poor then this does not seem out of place from a government that, even if it does not claim to be socialist, was elected on a manifesto of social justice.

Merits test

The next big proposal for legal aid by the Lord Chancellor was that no cases would be supported unless they had at least a 75% chance of success. And lawyers who get it wrong will be stopped from doing legal aid work. He said that too many poor cases are fought, though he has produced no evidence in support of this. He said that no private litigant would go ahead with a less than 75% chance of success but, if that were true, you would have contested litigation - both sides cannot have a 75% chance. The truth is that even with the best efforts of lawyers to predict the outcome, law, like life, is inherently unpredictable. It is true that some cases are so startlingly clear that you can give pretty accurate predictions. But many cases depend on the evidence of witnesses, who will be cross-examined. You just don't know how the evidence will turn out at the trial. And in judicial review cases, the challenge is often based on law that is itself uncertain or on judgments about the exercise of a public discretion. In the very nature of the case, you cannot be certain as to prospects of success and rarely can you predict a chance as high as 75%.

Any lawyer will tell you that you are in the hands of judges whose abilities, politics and preferences vary enormously. You can expect wholly different outcomes depending on which judge you get. The only result of imposing a 75% success requirement is that lawyers will take only the easiest and most obvious cases of.
Working for the poor will now involve cherry-picking for the winners and rejecting everyone else, taking huge financial risks and investing large amounts of money up front. It's hard to see how any solicitors' firm that is committed to legal aid can survive. The only ones which can take these risks are those that do not actually rely on legal aid, that have a massive commercial engine, and whose whole business culture is to take on those cases that will maximise their profits. So, whereas the Lord Chancellor has said that he wants to put an end to fat cat lawyers making the public purse, his proposals are likely to drive out of business all but the fat cat lawyers.

Government rhetoric
Whatever is intended for the future, it is my view that the government has launched an attack on a major plank of the welfare state using false and cheap rhetoric. The Lord Chancellor said that the civil legal aid bill is spiralling out of control. In fact the bill has spent at or under target in the last 3 years, and other changes in administration of legal aid are set to reduce the bill even further.

Both Lord Irvine and his department's Parliamentary spokesperson Geoff Hoare have stated as one of the rationales of their proposals that 90% of the civil legal aid bill is spent on lawyers. When you think about it, this is an extraordinary statement which exploits perceptions of lawyers' wealth, but which in fact contains no possible justification for reducing the budget. What should the civil legal aid fund be spent on if not on those that provide the services? I would have thought that the concentration of the expenditure on those who provide the service was a sign of a lean system.

The background against which these proposals have been set by Irvine is that of the "fat cat" lawyers who abuse the legal aid scheme. Again, this is a cheap attack on the least fat cats of the legal profession, who have given up the much larger salaries of commercial legal practice in order to devote themselves to legal aid. Moreover, many legal aid lawyers devote significant energies to providing free services (such as county court duty solicitor schemes). It is the privately paid lawyers who are the true "fat cats".

Legal Aid Contracts
The third big reform planned by the government is that legal aid (both civil and criminal) should be delivered entirely by firms which have contracts with the Legal Aid Board. This is actually the Tory programme for legal aid, virtually unchanged. It was surprising that Lord Irvine went for this, since only one year previously he had expressed grave reservations about contracts for legal aid. It is not yet clear how this proposal will be developed, except that it is clear that the government wants to do it quickly. This is an issue that requires detailed consideration. Not everything about contracting is necessarily bad, but it clearly leaves the door open to various risks: that contracts would go to the cheapest rather than the best lawyers (Irvine's particular concern the previous year); that extreme price controls could drive the legal aid to a ghetto service; and, in particular, that it could give the government enormous control over who does legal aid work, what they do and how they do it, thus posing a potentially devastating and highly dangerous threat to lawyers' independence.

Community legal service
The final piece of the legal aid reform jigsaw was the idea of a community legal service. The idea was then, and is still (as far as I can tell), unfounded. Lord Irvine said: "This principle aim will be to help people decide if their problem is not really a legal one and, if it is not, to point them in the right direction for appropriate help". There was precious little then or since about what people do if they decide that their problem is a legal one. You can't cut out of legal aid many tens of thousands of cases and pretend to replace it with a few hundred low and advice centres. Even if you had a law centre in every town centre, it could not possibly be enough. The community legal service could be a marvellous and long-awaited development, but I am yet to be convinced that what the government presently has in mind will be little more than populist window dressing to conceal real and hefty cuts in legal aid.

Where now
They have talked about keeping legal aid for "public interest" cases. But what are those cases? How much money will be available? Will it just be a few test cases per year? And if the government has pulled back on some of its original proposals, how are they going to achieve the savings that they want to achieve. I understand at least £120 million must be saved in the next three years in order to comply with Treasury structures, and some reliable reports say more like £300 million. Even if the government does pull back, cuts will bite hard sooner rather than later - and the government is going to have to find some means of doing it.

In approaching this issue and deciding how to respond it is vital that all those who can contribute to debates about the future of legal aid do so from an informed basis. What is at stake is too important to trivialised with cheap rhetoric about greedy lawyers. We are talking about justice, and the difference between power going unchecked or not. This debate involves everyone, not just lawyers - it involves MPs, constituency organisations, community groups, trade unions and the public at large.

Everyone agrees that there is a lot wrong with the legal aid system: there is waste, but also under-funding; there is incompetence and inadequate quality control; and there are many fundamental flaws in a system of public service that is conspired to operate entirely through small businesses. Many of those small businesses have worked wonder to use the system to best effect, but it is not how you would design it if starting from scratch.

It is vital to put together thought-out proposals for the reform of legal aid. The discussion about the community legal service may form the heart of that. "Community legal service" can mean many different things, and that is why the concept could be highly dangerous if misconstrued. To my mind, a community legal service means a legal service that is for the community, i.e. is appropriate and responsive to the needs of the community. That means that it will differ from one area to the next and that it must be close to the community and accountable to it. The agencies delivering legal services must be accessible - not just physically, but offering the sorts of skills and resources that enable people to use the law to greatest advantage.

A CLS must be committed to redressing the imbalances in power mentioned already. Therefore, it must work on issues that go to the roots of power relations - not just individual cases but also strategic work aimed at changing unfair policies or practices, or preventing institutional injustice and oppression, or helping ordinary people to participate in and influence decisions that affect them. It must also provide people with education and information so that they are better equipped to manage their own affairs and are less likely to be taken advantage of. It must be capable of providing the full range of skills that people need - high calibre lawyers and advisers, negotiators, community workers, specialists and experts, and representation in court or tribunals wherever that is needed.

A place for private practice?
In the long run there is no benefit in legal aid services being run through private practice. If those providing community legal services are to be able to make sensitive judgments about needs and priorities, it is better that they should be free to do so without regard to the imperatives of a small business to make profit. Lawyers and others providing legal services should be able to co-ordinate with those skills and responsibilities, the legal service must be properly and securely resourced. There should be a proper career structure so that skilled and experienced people are retained in public service.

Whatever the future holds, there should be no cuts to legal aid unless and until a real and wholly adequate alternative exists. This means that all those interested in a community legal service must be real astute to detect what lies behind any developments at present. No-one must allow themselves to be used as a stalking horse.

Many of the issues about the future are controversial, and there may be many different views. However, there will be unanimity about the vital need for good public funded legal services in a democratic society, and about the political nature of the current attack on legal aid. We share a horror of a society where the most exploited and most oppressed and vulnerable are left powerless in the face of government, the police, big business, and all those that benefit from keeping people down. We must build on that unanimity, and the Halewood Society proposes to co-ordinate discussions about the future, involving legal aid practitioners, law centres, advice agencies, specialist rights groups, trade unions, etc, working towards a united strategy for the future of legal services based on fundamental principles of justice and democracy.

Kate Markus is a barrister at Doughty Street Chambers.
Giving aid a hearing

Legal Aid solicitor JANE HICKMAN outlines the development of legal aid and argues that there is no need for a National Legal Service but that the existing 11,000 private legal aid firms constitute the infrastructure for any new legal service.

I was privileged to train as a solicitor in a law centre from 1974 to 1976. I was joining a great debate on legal services, conducted with passion and commitment. Those taking part were consumers, tenants, trade unionists as well as lawyers. We were sharing a vision for the first time in this country of how everyone, rich or poor, might enforce their rights. It was a defining moment - when the discourse on legal services shifted away from being about lawyers and for the first time was about what happened in the community.

The 1949 Legal Aid Act, born in the post-war Labour Parliament, embodied the first real vision. "People of small or moderate means" would be granted a legal aid certificate, with which they might instruct a private solicitor to take up a civil case on their behalf.

The scheme lives on today, almost unchanged. The intention in 1949 was excellent. The Government could not see any problems in the Act achieving its desired aims. The Attorney General did note a severe shortage of both solicitors and barristers, but obviously assumed that the market would provide.

Litigation would not be undertaken lightly, because Area Committees would be established, consisting of the worthy gentlemen who would apply a merits test on the grant of legal aid. The Act was therefore non-contentious. A Tory called it, "a cornerstone to the security of the little man". The Labour member for Merthyr Tydfil called it, "a sound foundation for a structure which will be built upon it as occasion calls". Even the communist Gallacher said grudgingly, "I am certain that lawyers, with all their limitations - which are manifold - will try to do a good job for those who have to seek their assistance". (Lawyers were more popular then, slightly.)

Twenty years later, the need for further building was all too clear. For instance, it was not unusual for tenants to come home on a Friday afternoon and find their belongings on the pavement and the locks changed. The problem with the 1949 Act was access. The common man and woman could not actually find a lawyer to take a case. There was still a shortage of lawyers, and low paid legal aid work did not tempt them into public service.

In 1968 the Fabian Society pamphlet "Justice for All", started the revolution in legal services which continues today. It criticised the 1949 Act for over-estimating the ability of the market to respond, saying: "It assumed that the traditional private structure of the profession was adequate in composition, training, attitudes and customs to provide legal services to the poorest and worst educated sections of the community". The pamphlet called for a national network of law centres, which would lift poor communities while invigorating and training the legal profession. It estimated that the network would cost about £600,000 per annum.

In 1970 the first law centre was set up in North Kensington, justly famed and much studied. It was a creature of charitable funding not of central government. Legal services then exploded outwards. Advice agencies were set up all over the country.

Many communities simply demanded that they too have a law centre. In 1972 the Legal Action Group, embracing lawyers, advice workers and consumers, started to spread a mass of information about rights and welfare law to the private as well as the public sector. The demand for access to legal rights was coming from the left, from the trade unions, and from the very heart of poor communities. At the same time the huge expansion of higher education began to cure the shortage of legal aid lawyers. Many more people from backgrounds of small and moderate means were now themselves becoming lawyers, and they did not all want to work in the city or in conveyancing. Over the next 20 years there was a vast growth in firms which did only legal aid work. The problem of access that had dogged the first 20 years of legal aid was conclusively solved. Price and quality were rarely mentioned.

Then the Conservatives took over and for 18 years we held our breath. They cut eligibility until legal aid became the exclusive property of the seriously poor. The one big idea of the 1980s was to set up the Legal Aid Board. Eventually, the Legal Aid Board took the first faltering steps towards reform with its franchising scheme. The scheme at present cannot measure quality of legal work. The Conservatives had got stuck on franchising because they had no vision of what excellence might be. The issue of price has never been seriously addressed.

But meaningful government debate about legal services was put on hold. And while the vision slept gently through the 1980s, the market ran wild and the flaws in the market are obvious. Although there are many excellent firms with a commitment to legal service, there are too many legal aid firms in a purely com-

“The senior law officer in a Labour government has no idea of how people survive in poor communities”
Labour’s legal spokesperson Geoff Moon says he dislikes the use of public funds to sue the NHS. But why is it better to sue the NHS with an insurance premium than with legal aid? And on that basis, how can anyone be allowed to sue the police or any housing authority? They are talking here about a renewed form of Crown immunity. There is more than a whiff of authoritarianism in this bit of left-wing idealism. Not only do they want the LAB has achieved with franchising.

Quality measures must include a new system of peer review for publicly funded legal work. It is not acceptable that we waste money on hopeless cases, or lose good cases because of shoddy work. It is right to look at monitoring the merits test and paying for work on a basis that reflects appropriate success rates in different areas of work, say 95% for housing disrepair, 60% for police actions and 35% for Judicial Review. Firms and agencies which achieve lower rates should be subject to progressive reductions in fees and payment for lost cases. It is time for the legal profession to join the rest of the business world and accept the importance of good training and management.

We must demand that the private sector is subject to detailed specifications for quality assurance that will begin to make a real impact on success rates, efficiency and value for money. The government need not go back doing any of this. The civil legal aid budget is stabilising very fast. The reforms in 1994 which cut the rates for cases that were lost are still working their way through the system. They gave firms a perfectly clear stake in achieving success. Contracting has been clearly signalled for crime and family work. There are savings to be made here if the work can be concentrated in the hands of the larger and more efficient firms.

It would involve a degree of exclusivity, to guarantee firms enough work to make real impacts with economies of scale. You do not need, and should not seek competition on price. Set a price and make us compete on quality. There may well be enough money saved from the swollen budgets of crime and family work to look at some extensions of legal aid, still within budget. Inquests would be the very first such priority. The ordinary man and woman have been enforcing their rights with increasing vigour over the last 25 years. Police conduct has improved, the illegal eviction of tenants has been halted, and patient care transformed. These gains are not once and for all. If the effort is not sustained, we would very easily revert to our position 20 years ago.

The European Convention was born from the catastrophe of state power that went unchecked. A strong and independent legal profession is absolutely part of what holds state power within bounds. EP Thompson, in “Writing by Candlelight” said: “One way of reading our history is as an immensely protracted contest to subject the nation’s rulers to the rule of law”. Let us not end that struggle in surrender. Clients need lawyers who are flexible, available, who can choose to give time and resources, at low fee or no fee. Let there be permanent, guaranteed legal aid for all legal disputes with the state, so that independent lawyers remain this vital resource for those in struggle.

Jane Hickman is a partner at Hickman-Rose solicitors.
It will not be the lawyers who will suffer, it will be ordinary people. Individuals who have allegations of misconduct including racial abuse, assault, fabrication of evidence, wrongful arrest against police officers; individuals who have complaints against negligence against railway operators. These clients will be left without any means of obtaining redress, accountability or compensation.

In whose interest

by SADIQ KHAN

INCLUDED in the latest announcement is that a "public interest" fund will be created which will fund test cases and other actions with a potential to affect a number of people. One of the main problems about public interest litigation is its failure to do with definition. Personal injury cases caused by, for example, a railway company would not necessarily fit into any of the current public interest definitions. Such cases raise extremely difficult issues of liability as they involve challenging the company's Health and Safety Policy. This includes employing an expert and very substantial discovery running to thousands and thousands of pages of documents. Establishing liability depends on attacking the Health and Safety Policy and is not a straightforward issue of negligence. It may well be that these cases do not satisfy the public interest definition nor would be funded by insurance companies under a conditional fee arrangement.

Civil actions against the police is another area which to most of us clearly is public interest litigation but on the "public interest" definition may not qualify for legal aid. One of the problems is that with most cases it is difficult to predict at the outset whether they will serve as a precedent. Our firm acted for a man of Chinese origin called Kenneth Hu. Mr Hu had a civil dispute with his ex-partner. Four police officers from Streatham police station decided to wrongfully arrest Mr. Hu, racially abuse him, assault him, put him in a neck hold, throw him in a police van and take him to Streatham police station before deciding to release him without charging him.

Mr Hu came to our firm seeking help. Like many other clients his primary aim was not to obtain compensation but to obtain accountability and redress. He did not like the thought of a police officer or public authority answering to the public of the community. He wanted, as he put it, "a public hearing". Our firm took on the case and investigated the claim. The police officers had been accused of negligence and violent conduct. They had made no attempt to try to speak to Mr Hu whilst he was in custody and not told him that he had been arrested.

The idea is that it will be a finite sum of money per year for public interest cases. If the sum of all the cases will be delegated to different geographical areas or whether this sum of money will change year on year. It could mean that whether or not you qualify for public interest funding will depend upon whether you are given a "yes" or a "no" on the point of whether you have "public interest" status.

It will be very difficult to predict or assess what view a jury might take of witnesses as this is a very subjective matter. This will need to be left to the court. It seems sensible that the first cases as it would be necessary for the plaintiff's solicitor and Counsel to meet all the plaintiff's witnesses at an early stage. However, it is only at the discovery stage of a case that the plaintiff and his/her advisers get to see the various documents from the defendent. In police actions this would include notebooks of police officers, statements made in the criminal case. It is only at the exchange of witness statements stage of a civil action that the plaintiff becomes aware of the witnesses that the defendent seeks to rely upon. It is extremely difficult to predict that a case has a 75% chance of success without discovery and exchange of witness statements.

It will not be the lawyers who will suffer, it will be ordinary people. Individuals who have allegations of misconduct including racial abuse, assault, fabrication of evidence, wrongful arrest against police officers; individuals who have complaints against negligence against railway operators may not be able to get legal aid as they are unable to satisfy the rigorous merits test and will not be able to get solicitors to take on these cases under the conditional fee arrangement. These clients will be left without any means of obtaining redress, accountability or compensation.

It is not clear how the Public Interest Fund will work. I understand that the Lord Chancellor, in one of his speeches, said that he would expect 10-11 "test cases" to be funded per year. Quite clearly, his definition of "public interest" is different to the one that the rest of us apply. The Public Interest Fund will be an extremely good thing if it opens up new forms of funding for cases that currently do not exist. For example, if this meant the available representation at inquests and at Industrial Tribunals then this quite clearly is something to be welcomed. However, if this is supposed to be a way of replacing the current funding system for cases for public interest proceedings then this is clearly not happening.

The idea is that it will be a finite sum of money per year for public interest cases. If the sum of all the cases will be delegated to different geographical areas or whether this sum of money will change year on year. It could mean that whether or not you qualify for public interest funding will depend upon whether you are given a "yes" or a "no" on the point of whether you have "public interest" status.
FOR 25 years, Law Centres have fought for access to justice. The Law Centres movement pioneered tribunals and fought hard to get the Government to pay for representation at tribunals to make the system work. Law Centres have been at the forefront of Public Law, using both the legal system and quasi-legal methods to challenge Local Authorities and the State on behalf of individuals and groups.

Labour leaders for the past twenty years have supported the Law Centre ideal of accessible justice. So when the Government came in proposing to change the Legal Aid system Law Centres were at least hopeful that here would be a change for the better. But all we have heard about has been conditioned fees, fast track, increased small claims thresholds — all proposals which we can categorically state will have detrimental effects for our clients, the opposite to access to justice for the poor and disadvantaged.

It is not, therefore, such a surprise that the Labour government found itself at loggerheads with the very people in the legal profession who had been their greatest supporters.

What is a Community Legal Service? That is, what is a system to provide access to legal assistance in welfare and public interest law to people on low income? We already have one in Wandsworth. It’s a combination of front line advice agencies, private practice and the Law Centre plugging the gaps between the two. The real problem with our Community Legal Service is that it is underfunded in a number of ways.

Other than through our efforts to obtain charity support, the service is not funded to help people who are on low income but whose net income is over the insanely low Green Form threshold. It is not funded for representation at tribunals or inquests. It is not funded to provide law in any other way than individual case-work. It has ceased to be funded for an increasing number of cases which are forced through the small claims court even though the cash element is secondary to the social policy issue of the case, such as disrepair.

There are probably only 30 or 40 areas in the whole of England and Wales which benefit from an existing, albeit underfunded, Community Legal Service. These areas have a better service than others simply because they have grown up in an ad hoc way in response to need, without coordination or standardised principles on which to base the services provided.

To take these existing 30 or 40 areas where there is already decent provision of legal services to standardise best practice and to ensure similar provision throughout the country is the quickest, most practical and most attainable way to produce a Community Legal Service. The service will have to evolve rather than be created overnight. So we need to ensure that its evolution is based on principles which enable it to provide good quality legal assistance, directed at those who most need its help and accountable to the community which it serves.

A CLS should be a proper service for social welfare law and public interest law rather than attempt to deal with all areas currently covered by the Legal Aid scheme — other areas of law such as the law dealing with the elderly, of which the state should deal with separately although the CLS should not be excluded from dealing with matters in these and other areas of law if the matter is pertinent to the CLS brief.

There must be a guaranteed level of service available to anyone who is eligible for assistance available at this diagnostic stage. In the Health Service everyone is at least guaranteed to be seen by a doctor and have their problem assessed with further services available where necessary.

The service must be able to provide legal education, community work, groups, advice and campaigning/supporting campaigns. Preventative work and acting for groups of people such as Tenants’ Associations are good examples of legal work which is not funded under current arrangements but which provides good value for money in the overall provision of welfare law services.

The service should aim to correct any imbalance in power and aim to promote social justice. The aim of the service should be to act for people who most need help, particularly where the client is facing an individual or a body which has far greater resources available for legal help.

The CLS needs a diverse choice of service providers wherever possible, both to be able to offer a broad range of services and to be able to stop funding bad services. Private practice, advice agencies and Law Centres should work together.

A CLS must allow service providers to retain all reasonable independence on how and to whom they provide the funded service within the defined region. If the Service is to be available to the greatest number of people the decisions on who to help and why must be the responsibility of the service providers although they will have to justify these decisions at renewal of agreement stage.

The CLS must be accountable to people from the community which it serves. A local tier of decision-making at which local issues will be better understood is needed and it is at this level that we would expect funds to be allocated to service providers.

The funding must be sufficient to provide a quality service and reasonable staff conditions and should not be based on unit costs. In assessing grant/contract terms the current Legal Aid bases of payment for hours worked should be maintained. Local Authority grants tend to be based on the number of people seen which undermines the quality of service provided.

Access should not be wholly through means-tested provision. Whereas a person’s income will form part of the assessment of whether they need help from the service it should be included in a more sophisticated assessment which will include the nature of the case, the benefit to the community etc.

Clients represented by a CLS must be protected against opposition costs in the way that Legal Aid clients are currently protected. Lack of such protection would undermine the whole basis of a CLS which acts on the whole for the poor against people and bodies with vastly greater resources.

Pilots should be started as soon as possible, but the Government should ensure that existing service providers are not cut during the period of change. As the CLS will need a range of service providers it is illegal to allow current service providers that meet franchise criteria to be closed through lack of funding just because they are needed to implement the provision of a CLS. Obviously it is going to cost money to increase welfare and public interest law provision. In reality we are not going to see any real increase in the current budget. The Government’s position is that there is no new money and that savings have to be made in the existing budget to pay for increased welfare and public interest law provision.

"No new money" is an odd concept in an uncapped budget. If there is no new money the budget is capped, and if it is capped we are better off with a fixed amount because an unfixed budget which is capped can only be underspent.

Law Centres are used to Local Authority funding and we are therefore used to capped budgets and fixed grants. We are also used to finding "savings" in those grants to fund new work and to be fair, over the past ten years, in and amongst savage local authority cuts, some real savings have been found and some new work has been started.

There are two problems which we see as outstanding in the Lord Chancellor’s proposal. Firstly, the savings identified cut access to justice for poor people. Secondly, the uncapped budget is due to be reduced in 1999/2000 by a considerable amount. So it’s quite possible that all the changes so far proposed would simply go towards cutting services.

We reluctantly accept that in order to obtain a desperately needed CLS it may have to mean a redirection of funds. But we oppose those measures to redirect funds which will lessen access to justice for the groups of people we represent. We have to struggle against the cut proposed for 1999/2000. If the Government really wants a partnership where we work together to create a better system, there is the expertise and the resources among all those of us who fight for better access to justice to create a better blueprint for the future of legal services than any Lord Chancellor has ever managed. I suggest that the deal for our partnership will be “OK, no new money, but no cuts either. We’d help you make it better, but not less”.

BOB NIGHTINGALE, from Wandsworth Law Centre, argues that a Community Legal Service should be based on the principles and methods evolved by local law centres over the past 25 years.

"To take these existing 30 or 40 areas where there is already decent provision of legal services to standardise best practice and to ensure similar provision throughout the country is the quickest, most practical and most attainable way to produce a Community Legal Service."
In any economic test of supply and demand the law is in a mess. The people need the law more and more to advance their cause, protect their interests, and defend themselves. The fees for this purpose are not fixed, and the fees; and hence the poor, who have to pay the fees, are not protected. The poor, Legal Aid, has done so without an idea in its head about developing an alternative to the service people more effectively and efficiently than the cheaper shop law which is viewed, even by socialist lawyers, as a bulwark against the state and superiors to any form of public provision.

The question facing anyone who believes in bringing the law to the support of the people is not how to make the service cheap, shoddy and production line that they can afford it. Nor is it how can we change the system so that the poor get droppings from the growing table. It is how do we provide the people with a direct service which the present structures of cumbersome courts, greedy private practices, and the cost multiplification of a split profession clearly cannot?

This is the question Lord Irvine’s legal reforms fail to answer because he has had to devote too much time to interior decoration and is hardly the natural people’s champion good Blairites need to be. The rhetoric is beautiful: fat cat lawyers (which means earning over £500,000 per annum as the Lord Chancellor did) attacking other fat cat lawyers; fat fee earners attempting to force down fees; and legal elitists pretending to care about a Community Legal Service. We might think about, with all the New Labour policy — never mind the rhetoric, feel the effect. On the practice of the proper provision of solicitor law. For this is not a well thought out series of changes based on a careful assessment of what works best and what could work better, but a Treasury-driven programme motivated by an anxiety to end the demand-driven expansion of Legal Aid.

Yet the main problem is as radical and as deep as the poor face more problems, and the lawyers linger longer on their cases to exploit their public/provided voucher system to the maximum. The consequence of these problems is a rising of fees, a growing dissatisfaction of the people, without offering them any alternative provision. It needs it and shouldn’t have been this way. An effective opposition would have developed its own legal strategies. It should have thought through the problem of whether we can ever provide for the legal needs of the people, which are already and must be met, via a profession based on private practice where costs are higher, the need for high value added throughout provides no inclination to bother with matters little, and overheads are excessive. A court system which lends itself better to delay than to justice multiplies all that and the result is the huge Legal Aid bill.

Perhaps we would have thought through how if Labour’s lawyers weren’t so conservative. They have been frightened of competitive, with the old, bringing benefits to both sides. It gives the people a choice. The expenditure, once setting-up costs are absorbed, would be no higher that of the existing Legal Aid which costs around £1.4 billion a year, so the new structure can Legal Aid, which has developed a system which lends itself to the provision of solicitor law. For this is not a well thought out series of changes based on a careful assessment of what works best and what could work better, but a Treasury-driven programme motivated by an anxiety to end the demand-driven expansion of Legal Aid.

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Perhaps we would have thought through how if Labour’s lawyers weren’t so conservative. They have been frightened of
Liz Davies explains why legal aid should remain available for housing actions — and not only in the short term

The Lord Chancellor’s Consultation Paper “Access to Justice with Conditional Fees” issued in March 1998 is something of a climbdown from his announcement last October that civil legal aid as a whole was to be abolished and replaced with contingency fees. However, before housing practitioners and tenants breathe a sigh of relief, the theme running through the Consultation Paper is that in the longer term the Government seeks to “refocus” legal aid.

One paragraph of the paper deals with housing claims and the view in the paper is unsympathetic. “Claims that arise from people’s maintenance, possession, use or enjoyment of their home, whether or not they include ancillary claims for money or damages, must be subject to the scope of legal aid.” In the longer term “it would remain the Government’s objective to provide a means by which those eligible could obtain help in meeting legal costs to deal with housing problems (whether bringing or defending proceedings).”

The problems that the needy face in ensuring a decent standard of accommodation are not generally shared by those who are better-off and are of a kind that obtain assistance from the taxpayer to obtain the necessary remedies or redress.

This is the argument that has been put by housing practitioners and tenants’ representatives. The types of cases described represent the bulk of any housing practitioner’s work. The vast majority of litigation brought or defended by tenants is funded by legal aid. Many of the damages claims are successful and the landlords pay the tenant’s costs, thus refunding the Legal Aid Board. Net expenditure by the Legal Aid Board on actions brought by tenants for damages for disrepair, or for specific performance of the landlord’s repairing covenant, must be very low. Tenants bringing actions for damages for disrepair have usually suffered in disrepair premises for years. To obtain legal aid, the tenant must not only be financially eligible but also must have a claim worth more than the arbitration limit (£3,000) and must pass the 50% merits test set by the Legal Aid Board. Similarly, many claims for damages for an unlawful eviction and/or injunction requiring the tenant’s reinstatement to the premises end up compromised with damages and costs being paid to the tenant.

Possession actions, where the tenant is defending and arguing that s/he should remain in their home, are less likely to result in the landlord paying the Legal Aid Board’s costs.

All of these actions are brought or defended by the tenant to enforce a human right fundamental to a decent civilised society: the right to an effective roof over one’s head. The effect on the health of a tenant or his/her family of living in disrepair premises for years can be enormous, yet alone the effect that it has on the quality of life. Being unlawfully evicted, sometimes by violent methods and sometimes by means of a landlord just insisting and the tenant being unsure of his/her rights, is a profoundly shocking experience which leaves a tenant immediately homeless. Similarly, the right to defend a possession action and argue for the right to remain in your home must be fundamental.

Although homelessness is not specifically mentioned in the Consultation Paper, the comments on housing claims would apply with even more force to the availability of legal aid for homeless persons seeking to challenge a local authority’s decision. Homeless people, whether actually sleeping on the streets or facing eviction from temporary accommodation, are among the most vulnerable and have the least resources of anyone in our society. By definition, if resources were available to them, they would be unlikely to be homeless and in need of local authority assistance.

The implication from the Consultation Paper is that legal aid will continue for homelessness applications. However, the Consultation Paper suggests an increase in the merits test for legal aid in the long run. “The Government does not believe that weak cases should be brought using legal aid which would not be brought privately.” This statement ignores the current legal aid merits test, which requires both solicitors and barristers to consider whether the merits of any case on a broad test of whether, had the client been the means to pay and modest means, s/he would take or defend the proceedings. Most legal aid practitioners take their duty to the Legal Aid Board seriously and enforce the test. To increase the percentage risk of the test to 75% (a figure not specifically mentioned in the Consultation Paper but previously floated) would put litigants who were financially eligible for legal aid at a disadvantage in comparison with the privately-financed litigant of moderate means.

Finally, the question of the possible increase in the arbitration limit to £5,000 is still up in the air. Many housing disrepair claims will fall short of the new limit. Housing disrepair claims are not appropriate for the arbitration procedure. They require expert evidence and deal with reasonably complex law. Tenants must know what type of tenancy they have and what terms are implied into the tenancy. In the private sector, repairing obligations are not always set out as an express term of the tenancy. They must also point to previous decisions when it comes to the quantum of damages. In addition, litigation between tenant and landlord is particularly difficult since the two usually have a continuing relationship and have to continue as tenant and landlord after the case has finished. The landlord is in a much more powerful position than the tenant and is likely to have more resources to pay for his/her own legal representation.

Since January 1998, when the arbitration limit was increased from £3,000 to £5,000, tenants have not noticeably used the arbitration procedure to bring claims for disrepair and the tenants no longer receive compensation. The logic of that position is that tenants are simply having to endure disrepair conditions for longer than previously, so that the damages claim mounts up to above £5,000 before proceedings can be launched. This fits in with the face of a common-sense approach which would require the landlord to remedy the disrepair at the earliest possible opportunity, too, in order to save money and ensure that the premises do not deteriorate further. The Housing Law Practitioners’ Association have been making representations to the Lord Chancellor that housing claims should be excluded from the increase to £5,000 and instead that the limit for housing claims should return to £3,000.

Liz Davies is a barrister at 2 Garden Court Chambers, specialising in housing cases.
EW Labour’s election manifesto promised, in relation to the law, “a wide ranging review both of the reform of the civil justice system and Legal Aid” and “a community legal service... for the development of Legal Aid according to the needs and priorities” promising “a partnership between the voluntary sector, the legal profession and the Legal Aid Authority” and, for the first time, the NHS as a public service working cooperatively for patients, not a commercial business driven by competition”.

In the 50th Anniversary of the NHS, that beacon of Old Labour’s Welfare State I advocate a salaried community legal service which is not simply marginalised to fill the lacuna created by the steady erosion of legal aid, but on the analogous basis of the private service, to replace the competitive high street solicitor and the corset of the Bar and see this as the way ahead for the legal profession in the not too distant future.

A socially responsible legal services system should aim to deliver quality services to people experiencing legal adversities for all who need it. The overall objective of any such system should be to “tackle funds are locked to a small number of society and to ensure that any dispute is settled on the basis of the intrinsic merit of the arguments of the different parties, uninfluenced by any pecuniary, wealth or power” to adopt the definition of the Legal Action Group in “A Strategy for Justice” (1992).

Not only does an entitlement, social justice and democratic solidarity demand that people have equal access to justice but increasingly our international obligations require this. The Government is in the process of enacting the Human Rights Bill incorporating the European Convention on Human Rights into our domestic law. Article 6 of which guarantees that in determining civil or criminal rights or obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal unless the party to that proceeding has an equal opportunity to present his case and that neither should enjoy an unfair advantage over his opponent (in common parlance the “level playing field”).

In a nutshell what I propose is that the Legal Aid Scheme (which the Government clearly intends to whittle down) should be replaced in its entirety by a genuine nation-wide National Legal Service (NLS) with offices throughout the country providing a network of services across the board at present provided by private practitioners, law centres and CABs in both wings of the profession—staffed by salaried personnel, not only lawyers but others with associated skills in a multi-disciplinary scenario - accountants, surveyors, forensic scientists, conveyancers, mediators, interpreters, welfare benefit specialists etc. The lawyers would comprise both solicitors and barristers and I envisage the ultimate fusion of the two branches of the profession.

The NLS would consist of a network of offices and resources centres providing a geographical spread and distribution of expertise so that everyone in the community has easy access to legal advice and representation. An NLS office would be expected to undertake due diligence solicitor schemes at local courts and police stations and to provide a facility to local community organisations and, if the resources are available, to provide legal education and training. An NLS office would be free to reject a client for good reason. Whilst each NLS office would have its own defined catchment area and members of the public would normally be expected to use their local office they would be free to use other offices e.g. if there was an actual or potential conflict of interest or another office offered a particular specialisation which the local office lacked or for a second opinion. The modus operandi of NLS offices would be set out in publicly advertised guidelines.

How would the NLS be funded? When the Attlee Government put through the welfare state reforms of 1945-50 the country was impoverished after a world war and not surprisingly a key ingredient of reforms was their public funding. But whereas health was almost entirely depersonalised (Geoff Hoop MP, in criticising my proposals, has used the needful word “nationalisation” against me) legal aid was channelled through private practitioners with the attendant inefficiencies, insufficiencies and abuses inherent in any such scheme. The concept of the legal Aid Scheme, great advance as it was in 1949, is now more and more out of tune with a society where GDP and real personal wealth for the majority is now three-fold what it was then, although at least 20% of the population would remain dependent on a subsidy from central funds which would be paid to the NLS.

Certain classes of work e.g. commercial and conveyancing, would be entirely fee paying but for most others there would be means-testing with a reasonably high threshold so as not to deter clients, and the client would be expected, if so assessed, to pay or contribute to payment privately. Other methods of funding might be considered; with proper safeguards I see no objection to conditional fee litigation and consequently the NLS NLS would have the muscle to effect legal insurance for its clients. So that, unlike the NHS, I see the NLS being paid largely by the private client with a reduced State subsidy for those who cannot afford to pay. In effect I am proposing that we reverse the subsidisation process; instead of the State subsidising private practitioners to give legal services, the private fees-paying client in future subsidises the pro bono, socially valuable work of lawyers.

I envisage that when the NLS is up and running legal aid will be available free of charge from and all public funding will be channelled into the NLS. The offices of the NLS would initially compete with solicitors’ practices and barristers in private practice. It would not be possible for the NLS to absorb most of the private legal practices - solicitors’ firms with less than 25 partners whose legal aid work constitutes 5% or less of their total 1995 revenues between 17% and 40% deprived of public money and in competition with NLS offices would cease to practice and their staffs be absorbed in the NLS. I realise that the solicitors would call to bar for the corporate and private client, usually the very large firms represent- ing them, would be most reluctant to be absorbed into the NLS although there would remain a residual independent Bar of specialists to service the firms of solicitors that would remain as well as to provide specialist advice not readily available to the NLS. However I would expect the independent Bar to be cut down to size since legal aid would not be available and much of its work would be undertaken by specialist solicitors within the NLS.

Social provision is neither fair nor efficient if it does not deliver equality before the law... transforming a system of private enterprise divided in the manner in which it both delivers services to the rich and poorer towards its members into a genuine singular community-based service providing advice and representation on an equal footing to everyone seeking access to justice

Although the basic administration of an NLS office would be done within the office which would have its own practice manager the NLS nationally would be administered by a small Legal Services Commission whose main role would be to “monitor” as Mr Hoop derides it (which would have overall responsibility for all offices and staff with a quality control inspectorate and machinery for dealing with both client complaints and allegations of negligence and staff discipline/grievances. There would be an appeals system both in respect of assessment by the NLS office and the NLS office to the NLS Board. The NLS would be required to effect professional indemnity insurance and at the discretion of the NLS Board to run the NLS offices within a reasonably strict budget and would be publicly accountable through an appropriate Minister to Parliament and any public body or bodies proposed by the NLS would equally be subject to budgetary control.

Whilst I regard the objection raised by the Royal Commission on Legal Services (the Benson Commission) in 1979 to the concept of a national legal aid that would be a risk that “an individual’s case must be conducted not in a way which best served his interests or complied with his wishes but in a way which avoided causing difficulties and gave least offence to those in authority” as worthy of serious consideration the NLS is of absolute fundamental and major importance.

I wish to emphasise that my concept of an NLS is radically different from the old stereotype of publicly-administered services either of central or local government, I would expect as much flexibly and dynamism of NLS as there is now in the local government and indeed everything should be done by the LSC to encourage imaginative and evolving ideas. As the law is always in a state of flux and development so should legal services and the way in which they are made available to the client be responsive to change and development and be in line with the agenda for social justice.

Any proposals for changes in the delivery of legal services, let alone one as radical as this one into forward, would be a non-starter without the acceptance of the legal profession. I would expect acceptance to depend on remuneration, job prospects and job satisfaction. Clearly unless the rewards offered by salaried employment in an NLS are judged to be competitive my proposal would be unlikely to find favour in the professions.

However in assessing acceptability the whole job scene needs to be taken into perspective. The legal profession is at present going through a period where the changes in the welfare state and the welfare state reforms of 1945-50 has been most radical. As to what salaried staff in the NLS would earn I would draw on the analogy of the NHS. Like the NLS there would be a salary structure allowing for progress increases depending on length of service since qualification and expertise. Currently as I understand it the average net income for a General Medical Practitioner is £40,000 with provision for indirectly reimbursing expenses of about £23,000 make the average income of £63,000. As to what salaried staff in the NLS would earn I would draw on the analogy of the NHS. Like the NLS there would be a salary structure allowing for progress increases depending on length of service since qualification and expertise. Currently as I understand it the average net income for a General Medical Practitioner is £40,000 with provision for indirectly reimbursing expenses of about £23,000 make the average income of £63,000.

It might be unrealistic to suggest that the existing remuneration and benefits of solicitors or barristers would be anything like the NLS lawyers in the NLS be paid comparable salaries and those to compete with the remuneration enjoyed by salaried solicitors both equity and salaries required in private practice today.

What I argue for is in tune with New Labour thinking. In his speech to the TUC last year the Prime Minister said that “in a modern welfare state the role of Government is not necessarily to provide all social provision but to organise and regulate it most efficiently and fairly.” I believe that social provision is neither fair nor efficient if it does not deliver equality before the law and that the way ahead is for the profession, with Government policy acting as a lead, to take the system of private enterprise divided in the manner in which it both delivers too services to the rich and poor and rewards its members into a genuine singular community-based service providing advice and representation on an equal footing to everyone seeking access to justice.

(Article based on a memorandum submitted to Sir Peter Middleton’s Review of Civil Justice and Legal Aid).

**BENEDICT BIRNBERG is a partner at B.M. Birnberg & Co., Solicitors, London**
1. Introduction

1.1. We represent a broad alliance of people involved with the law. This meeting of the Haldane Society of Socialist Lawyers includes many solicitors, barristers, trade unionists, worker cooperatives, students, and legal academics and law students. The Society has a long history of serving the needs of the working class both within the UK and internationally. We are respected members of the International Association of Democratic Lawyers, the European Association of Socialist Lawyers, and many other domestic and international legal organisations. All have similar activities and policies, and as our tradition shows, our views on legal services are informed by principle and not professional self-interest.

1.2. In this short paper we start with a summary of the main fundamental principles about the role of law in society and then the need for publicly-funded legal services. We believe that all legal services policy must take these principles to heart and respond to them. We then briefly explain how these principles can be reflected in a legal services programme. Finally, we summarise the proposals on the consultation paper on conditional fees.

2. Fundamental principles

2.1. The law provides the framework for democratic rights in society. These are the basic social, political and economic rights for individuals and groups of individuals, such as rights to housing, social security, health care, family, life, non-discrimination, a fair trial, freedom from torture and many more. Democracy cannot exist without adequate means of defending and exercising such rights. It is the role of publicly-funded legal services to provide this for those who cannot obtain it by their own or other means.

2.2. The equal defence and enforcement of democratic rights is a myth in the UK where poverty contains huge disparities between rich and poor and the legal system which is law which serves the interests of the capitalist society such as ours, therefore, it is a major function of the law to redress these inequalities and so that people equally achieve their fundamental rights regardless of their wealth or poverty. Legislation and regulation can help to achieve this. Legal services provided to the least powerful are among the most important part of helping these people to achieve their democratic rights.

2.3. It is also in the public interest that there should be equal access to the arms of justice and poor in the courts, so that legal services are not distorted to favour the interests of those whose cases are more effective defended and so that issues of public interest are covered according to the law, the interests of the legislature and natural justice rather than the outcome of a commercial consideration or to the nature of the service provider.

2.4. Decisions about the funding and conduct of legal services should be made independently of those who have a direct political or financial interest in the outcome, whether that is the government, or insurance companies whose own profits depend upon limiting access to justice. The independence of lawyers and other legal advisors must be maintained.

2.5. Who gets legal services is a question of public policy and should be set in an open market but should be planned according to rational and public-service orientated objectives.

2.6. Litigation is not a right and should not be the sole focus of publicly-funded legal services. What matters is the best solution, not the solution to a particular forum or the priority of the underlying conflict.

2.7. Accept that there are inevitable cost constraints upon the provision of publicly-funded legal services. However, cost cannot be the main determining factor. The cost to the public purse must be set in response to realistic assessment of the need for legal services. These assessments must be built upon experience, evidence and knowledge of people in every area of society and the needs to understand the local needs for legal services. There already exist in some areas models of cooperation between private practice, law and advice centres, community organisations, local authorities, and others, to assess need and plan to meet it.

3. Our proposals

3.1. We must be able to get legal services and cost control need not be incompatible. The following table shows high street firms in some offices to handle all of this.

3.2. The local plan that would fund legal services in each area must be formulated by those lawyers who are close to the issues and can respond to the needs of the local area and must be subject to scrutiny by independent experts. These proposals are simply and broadly formulated. However, there is much detail that can be added. We would like to meet with government to discuss this further.

4. The Government's proposals

There are some objectives of the government that we accept and call for qualification. We accept that weak cases should not be funded by the public purse. However, the merits test should be able to balance the strength of the case on the one hand and the importance of the case to the individual or weaker power to the wider public.

5.1. There are other aspects of the government proposals that we cannot accept and fall short of the underlying need for legal aid. We support the criticisms of these proposals made by Legal Aid Action Group and Solicitors' Regulation Authority.

5.2. Legal aid fee proposals are deeply flawed, though they may be of assistance in some cases. Their aim is to cut costs and in doing so they are cutting against the interests of new entrants in the legal market.

5.3. The Bar and other specialist interests have concerns as to the field of personal injury.

5.4. There is a myth where society is a myth where there is a public interest in the outcome of much of the litigation that would be funded by conditional fee arrangements.

5.5. The proposed funding of public interest litigation in is far too limited. It is not clear whether this funding would exist when the "transitional period" or would be established permanently by statutory legislation. It makes no sense to provide this funding only in the interim. Moreover, "public interest" is ill-defined and there is therefore a danger that it could be interpreted too restrictively. Cases involving challenging the behaviour of public bodies, or others that affects the public in a significant way, very often have a strong public interest element even where the direct beneficiary of the claim is only one individual. It is by the accumulation of individual challenges relating to, for instance, death in police custody or prison, or breach of statutory duty or contract by housing authorities, social services or other public bodies, that those bodies are made to be more open and accountable for their conduct. Although some of the issues are discussed at para 3.13 of the paper, the proposals are unclear and we are not clear what is intended.

5.7. We welcome the proposal that legal aid for judicial review should remain.

5.8. However, the paper is quiet about any proposals that there may be to change criteria for eligibility or grant of legal aid in such cases. Given the talk, in the past, about a public interest fund, etc. in the context of judicial review, we are confused about what is intended.

6. Finally, no proposals or method put forward in the consultation paper as to the development of the community legal service. Previous government statements as to its intention in this respect have clearly revealed an alarming vacuum as to what is proposed. So far we have seen nothing that indicates that the service will be able to handle the large number and range of needs of people in social welfare law and other required subjects. We draw the government's attention to the need to a full review of these principles, above, for the development of a community legal service. We would welcome the opportunity to discuss this further. Federation - an end to partition.
A Bill of Rights, like any constitutional settlement, is a statement of relationships between individuals and groups in a society. Such was Magna Carta of which Malland wrote: "It is in fact a declaration of the rights of the subject. It is not a declaration of the general rights of men: it goes through the grievances of the time one by one and promises redress. It is a definite statement of law upon a great number of miscellaneous points. Henceforward matters are not to be left to vague promises; the king's rights and their limits are to be set down in black and white."

The same is true of the Bill of Rights 1689, first listing the illegitimate practices by James II "by the assistance of diverse evil counsellors, judges and ministers employed by him," and then one by one, with some change of language, restoring the legal rights.

In 1215 and 1689, those who promoted the reforms knew they were fighting wrongs. And they knew that general propositions could not be made to stick or to achieve the purposes they had in mind.

The contrast with the European Convention of Human Rights now about to be incorporated into UK domestic law is stark. The Bill of Rights of the USA, contained in the first eight amendments to the Constitution of the United States, followed the adoption by most individual States of their own Bills. The pattern of the constitutional rights was to lay down principles baldly and without reservations as, most famously, "Congress shall make no law abridging the freedom of speech, or of the press." It was left to the Supreme Court of the USA to interpret the unqualified words of the amendments; and, if the Justices saw fit, to declare invalid Acts of Congress which contravened the Bill of Rights. This was one way of deciding what were the limits of each amendment; it being understood that no rights could be absolute. Freedom of speech did not, it was recognised, extend to shouting "Fire" in the crowded theatre for the pleasure of seeing what kind of chaos might ensue. In practice the Bill of Rights of the USA had very little practical effect on civil liberties for more than a century. None of the amendments was successfully invoked 1857 and this occasion was hardly auspicious as the decision of the Supreme Court upheld the rights of slave owners.

The enlarged power of judicial review was mostly used to support the laissez-faire doctrine of economic theory, with the Supreme Court defending rights of corporate private property and freedom of contract. The first date for the vindication of the freedom of speech by the Supreme Court was 1937, of freedom of the press 1931, of freedom of assembly 1857, the right to counsel 1932. For most of the remaining amendments the starting date was post 1945.

All this is relevant because it reflects on the particular method and style adopted by the European Convention. These prefer the general propositions to the perceived wrong (unlike 1215 and 1689) but to seek to spell out (unlike the USA in 1791) the exceptions to and qualifications of the general principles.

Whatever the form of a statement of rights, interpretation will follow (words never being sufficiently precise on their own) and...
Those who fear Government action today are not the rich and powerful but the poor and the deprived. A Bill of Rights does very little for them. Enforcement is for the courts and the less well off are the least likely to start legal proceedings.

For there are several reasons. The first is that the Bill of Rights says nothing about their primary concerns. It is silent on the right to a living wage or the right to work or the right to further or higher education. The second is that the legal aid reforms will restrict the access to litigation for the poor and poorest. The third is that the Bill before Parliament deobars bodies, like the Child Poverty Action Group and those who seek remedies to provide equal opportunities or to prevent gender and racial discrimination, from bringing actions in the courts. The police will not be supervised more closely, because of the Bill of Rights, than is presently the case under the provisions of the Police and Criminal Evidence Act 1984 and more recent legislation.

Much of the current argument centres around the relationship between Article 10 set out above and Article 8 on privacy which provides: "Everyone has the right to respect for his private and family life, his home and his correspondence." This Article has similar escape provisions as in paragraph 2 of Article 10 with one remarkable addition to the "interests" to be protected. This is "the economic wellbeing of the country", a form of words which Government lawyers may, if need arises and the courts are so disposed, turn into a coach and horses to drive through paragraph 1.

This is not to deny the reality of the conflict between these two Articles, nor to deny that the conflict is a reflection of a genuine tension in society. Press freedom is essential for the disclosure of corruption or inefficiency in high places - far more competent than Parliamentary institutions and practices. The last few years have demonstrated this abundantly. Attempts to curtail press freedom include the seeking of injunctions to prevent publication. Such prior restraint or censorship can be effective because of the judicial power to hold in contempt of court (with the threat of large fines or imprisonment for breach) of editors, journalists, even owners. All this is well known, as are the defects in libel law which make difficult the defence of justification.

In the Spycatcher case, the UK courts upheld the injunction issued against The Guardian and The Observer preventing them from publishing material in Peter Wright's book, both before and after the book had been published in the USA, and was available in the United Kingdom. Article 10 of the European Convention was upheld on their Lordships as a principle or policy they should adopt. Lord Templeman quoted paragraph 2 of Article 10 and said that the continuance of the injunctions appeared to him to be necessary for all the purposes listed in that paragraph. So, even if the Convention had at that time been incorporated into UK domestic law, its provisions would not have prevailed.

When those judgments were reviewed by the European Court on Human Rights the prior restraint imposed by the Government 12 months before the publication in the USA, was upheld. This was a serious setback to press freedom and showed how easily the limitations imposed by paragraph 2 of Article 10 can be used to deny the statement of principle in paragraph 1.

Article 8 on privacy is often said to be "balanced" by Article 10 (and vice-versa). The use of that word has a comforting sound but does not avoid the conflict between the two Articles.

In terms of press freedom, it is undeniable that some reporting is unfairly intrusive on privacy. This is true when public interest in disclosure is minimal or prurient. And there's the rub. For what it may call prurient you may call healthy curiosity. And it is not satisfactory to leave the definitions to judges.

Out of this comes the voluntary press code supervised by the non-statutory Press Complaints Commission. Self-regulation, it works to the general satisfaction, is the best kind of resolution of the conflict between the two Articles, though I once again opinions may differ significantly on the level of satisfaction required or desirable.

Once it was accepted that judicial review would be available to examine the findings of the PCC in a particular case, the voluntary self-regulation solution seemed to be in danger of disappearing altogether. Similar problems arose under the provisions of the Data Protection Bill. Both Bills gave rise to anxieties expressed by the media on three counts: whether they would interfere with freedom of expression; whether they would lead to much greater use of injunctions and prior restraint; whether the Human Rights Bill would encourage the development of a pri
cacy law by the judiciary.

To seek a solution, Home Office Ministers after discussion with the chairman of the PCC (Lord Wakeham) came up with a framework of amendment announced during the second reading debate on 16 February 1998. Opposition MPs were to be brought into further consultation.

The components of the framework would be, first, an explicit provision that no relief or remedy was to be granted under Article 8 unless the respondent was either present or represented, or the applicant had taken all practicable steps to alert the newspaper against whom the application was brought. This, it was expected, would virtually rule out pre-publication injunctions being granted ex parte.

Secondly, an explicit proviso that in any case in which a person sought relief or remedy under Article 8 and the granting of a remedy would raise issues concerning an Article 10 right, the court must have particular regard to freedom of expression.

Thirdly, a requirement for the court - in the case of an application involving journalistic, literary or artistic material - also to take into account the extent of the public interest in the publication in question, whether the newspaper had acted fairly and responsiully, and whether it had complied with the PCC's code. This means the code will be partly tied into statutory law, and it will be for the courts to interpret all these familiar words and also to determine compliance, or otherwise, with the Code.

These amendments have been hailed as indicating that Article 10 has triumphed over Article 8. We had better wait until we see what the courts make of them. The fear was that there might be a new judicial privacy law "by the back door" at judges gave detailed meaning to Article 8 and developed the rules of confi

dentiality. But it may be that a new privacy law will be brought in through the front door as the courts apply the new amendments to Article 10.

What is clear is that we shall have not one but two Bills of Rights: the European Convention; and the Convention as amended by the Human Rights Bill. Both will involve substantial transferece of power from the legislative to the judicial process. At the same time they will make specific improvements in the law relating to equal opportunities and discrimination more difficult to achieve as reformers are told to pursue their causes not in Parliament but in the courts.

"What I may call prurient you may call healthy curiosity. And it is not satisfactory to leave the definitions to judges."  
Professor John Griffiths
In mid-January 1989, Douglas Hogg, a junior Home Office minister, rose to speak in The House of Commons. Under the cloak of parliamentary privilege, he made a peculiar statement which would acquire sinister significance through subsequent events. "There are in Northern Ireland," he said, "a number of solicitors who are unduly sympathetic to the cause of the IRA."

Challenged to justify this, Hogg was evasive: "I state this on the basis of advice I have received...and I shall not expand on it further."

Seamus Mallon, deputy leader of the SDLP, immediately protested that "following this statement, people's lives are in grave danger." Less than four weeks later, Pat Finucane, a Belfast human rights lawyer, was enjoying Sunday dinner with his wife and three children. At 7.25pm, a loyalist gunman burst in and shot Finucane 14 times. He died instantly.

Pat Finucane's death, however, was not destined to pass barely noticed into the annals of the Northern Ireland conflict, as so many others have done. The issues surrounding his murder are so controversial that even within the last few months they have been raised by the United Nations and the US Congress.

The reason is simple: there are continuing suspicions that the British Establishment colluded in Finucane's assassination. Even if it had not ended violently, Pat Finucane's life was interwoven with the fabric of the Troubles. He was the eldest of a Catholic family of eight who in 1968 lived in Percy Street, not far from the loyalist Shankill Road. When rioting broke out the following year, the family were given a choice: move out or be burned out. They moved. By then Pat was a law student at Trinity College, Dublin, where he met Geraldine, his future wife.

Back in West Belfast, however, three of Pat's brothers joined the IRA. One, John, was killed on "active service" in 1972; Dermot and Seamus were subsequently imprisoned for their activities. Years later, loyalist paramilitaries would claim that Pat was an intelligence officer in the IRA. They were wrong. Pat Finucane was never a member of either the IRA or Sinn Fein, nor did he ever advocate violence.

Finucane fought his battles in the legal world. In 1979 he formed Madden & Finucane with another solicitor, Peter Madden. The firm's specialty was criminal law, and they quickly earned a reputation as one of the most progressive partnerships around. They fought many cases for clients who were mistreated or wrongfully imprisoned by the security forces, costing the British government hundreds of thousands of pounds in compensation.

Finucane was also involved in a number of high profile cases. In 1981, he represented Bobby Sands during the Hunger strike, and later acted as a defence lawyer for many of those accused of paramilitary activity at the controversial "supergrass" trials.

These cases, and his family connections, may have fixed Pat Finucane in some minds as a Republican lawyer. In fact, Madden...
Finucane made no distinction on the basis of political beliefs when it came to taking on clients. To some people, however, this hardly mattered. As Kevin Tools puts it in his 1995 book Rebel Hearts: "In loyalist eyes, Patrick Finucane was guilty of being the brother of two well-known IRA volunteers...and guilty of being the brother of a dead IRA volunteer; guilty of defending too many IRA volunteers successfully in the courts; guilty of having too high a profile; and guilty of being a smart Fenian."

It was for these supposed "crimes" that Pat Finucane was killed on a winter evening in 1989. No one has ever been charged with his murder, or for conspiring in that murder. One person, however, has in effect admitted his involvement. His name is Brian Nelson. Ominously, during the period when he is thought to have helped murder Pat Finucane he was in the pay of the British Army.

Even by Northern Ireland's standards, Brian Nelson is an enigma. Born in 1951 on the Shankill Road, he is reputed to have joined the UDA in 1972. In 1974 he was convicted in relation to the kidnapping of a blind Catholic man, and sentenced to seven years' imprisonment. He was released three years later.

In 1987, British Intelligence pursued Nelson to Germany, whence he was working, and he returned to Belfast. He was then infiltrated into the UDA, where he reached the rank of Chief Intelligence Officer.

For the next two years, Nelson is said to have told his "handlers" from British Intelligence about UDA plans for assassinations, arms shipments and other activities. Whether or not he told them about his own illegal actions is hotly disputed. In 1992 the then Defence Secretary Tom King described Nelson as a "useful agent." His comments formed part of a plea of mitigation in the case of Geraldine Finucane, who had just pleaded guilty to five counts of conspiracy to murder.

Nelson had been arrested in 1990, as a result of the Stevens Inquiry into collusion between the security forces and loyalist paramilitaries. On 15th June 1991 he was charged with 34 offences, including two counts of murder. His trial, six months later, was bizarre, to say the least.

On the first day it was announced that the charges had been substantially reduced. The two counts of murder had been dropped, as had 13 other charges. The official line was that this decision had been taken "after a rigorous examination of the interests of justice." Many suspected that a deal had been done to buy Nelson's silence.

Nelson pleaded guilty to all remaining charges, and only one witness was called. The former agent was sentenced to a suspended total of 112 years in prison. The fact that the individual sentences were to run concurrently, however, meant that Nelson actually served only six years. He has been released, and now lives in England.

The full report of the Stevens Inquiry has never been made public. Neither has the 800-page statement which Brian Nelson made to the inquiry team. However, six months after Nelson was sentenced, the BBC's Panorama made a programme about his activities, which was broadcast in June 1992.

The programme-makers claimed to have seen a journal Nelson had written while in prison, in it he said that he had been asked by the UDA to gather information about Pat Finucane in preparation for an assassination attempt. Nelson said he told his army handler about this. He also said that he passed a photo of Finucane to a UDA man three days prior to the murder. If Nelson's testimony as broadcast on Panorama is true, the security forces knew in advance of the plan to murder Pat Finucane, but did nothing to prevent it. Perhaps such reluctance is not surprising. One former client of Finucane's has claimed that during his interrogation at Belfast's infamous Castlereagh Holding Centre an RUC man told him: "Fucking Finucane's getting taken out."

One of the groups which investigated the case was the International Human Rights Working Party of the Law Society of England and Wales. Their report contained two particularly damming accusations. They found that: "The Government told the UN Special Rapporteur that the DPP [director of public prosecutions] 'directed that there should be no action in connection with Patrick Finucane's death.' Significantly, the Government did not deny that there was collusion by the Government or the security forces in relation to the murder.

The report also stated: "We asked the DPP, his deputy and John Stevens about the Panorama allegations. If Panorama was right, Nelson had, with an admission of conspiracy to murder Patrick Finucane. How then could there not be sufficient evidence to prosecute him? They said that they could not comment on individual cases."

In loyalist eyes, Patrick Finucane was guilty of being the brother of two well-known IRA volunteers...and guilty of being the brother of a dead IRA volunteer; guilty of defending too many IRA volunteers successfully in the courts; guilty of having too high a profile; and guilty of being a smart Fenian." Kevin Tools "Rebel Hearts"

argue that these events have already been investigated fully by the Stevens Inquiry. Raising her voice for the only time during the interview she says: "Stevens never spoke to me. The police have never spoken to me. After the murder, I made a statement through my solicitor about what I had witnessed. That's it. That's the only contact I had with the police since Pat's murder. They never asked to speak to me, nor did John Stevens. And then they say that there has been a full inquiry? "I have always said I wanted an independent judicial inquiry, because I felt that was the only way I felt that I was going to find anything out. The British Government refused to have an inquiry because it has been fully investigated. Well, fine, if it has been fully investigated, then publish Stevens. They have never done it."

It's an issue which raises questions which go to the heart of British policy in Northern Ireland. At Brian Nelson's 'trial' his army handler, 'Colonel J', testified that, "there is absolutely no doubt in my mind that Brian Nelson was not loyal to the UDA, but loyal to the army." Brian Nelson's own journal suggests he conspired to murder Pat Finucane. Loyalist sources say that Nelson pointed out Finucane's house to his assassins. If Brian Nelson assisted in the chain of events which led to Pat Finucane lying dead on his kitchen floor with 14 bullets in his body, was Nelson being "loyal" to his British Army superiors in doing so?

The final words, for now, go to Geraldine Finucane: "People like Brian Nelson and whoever came in here and pulled the trigger...OK, they did wrong and they should be punished. But it is really the people behind the lies of Nelson who should be taken to task. Those people are probably sitting behind desks now, and they will never surface. And it was them who played God. They decided that my husband should be killed."

This article first appeared in Hot Press magazine, Dublin.
Nicos Trimbikiniotis considers the case of Cyprus, a small country that has suffered from ethnic conflict, foreign interventions and to this date is semi-occupied by Turkey. He asks how socialists, and all those who want lasting peace in the region, should respond to the current international proposals.

The future of the Cypriots people the kind of solution that may be imposed may not necessarily be such that serves the interests of the Cypriot people. After all, outside powers are primarily interested in some form of stability and a mere 'folding' of the problem, rather than a genuine solution.

With the US initiative the Left is now faced with the challenge of fighting for friendship and co-operation against nationalising while at the same time fighting for the unification of Cyprus and its people. There is now the danger of cementing division, if a partition solution is imposed.

The official position of all Cypriot parties and the position of the Turkish Cypriot Left opposition is that only via a peace settlement the Cypriot problem can be resolved. The need for peaceful means of struggle in the search for a solution derives from the nature of the Cypriot problem: it is both an international and a national problem (the partition and occupation) and one that relates to the relations between the two communities. These two aspects together impose the kind of struggle to be undertaken. Mass popular mobilisations and common initiatives through trade unions, organisations and other peace groups are the main means for putting pressure for a solution. So far, all such initiatives show the deep rooted desire for peace between the communities. However, national-chauvinists are agitating and these protests bring about the opposite result.

Mass action does not mean ignoring diplomatic efforts for a breakthrough, but supporting the UN-sponsored negotiations that could lead to a settlement. This settlement involves the finding of a federal Cyprus, as it is, at least at this stage, the only viable solution that genuinely guarantees the communal and individual rights of citizens. But 'federation' should not be a camouflage partition, or lead to union with any other state. American plans to divide Cyprus have been historically supported by the British. The different types of partitionist devices, subdivide the Cypriot community, who are endowed with their own collective right to self-determination as a whole, to their own state, to the interests of their allies and NATO.

Britain historically promoted partition, but today may not benefit from any kind of divided Cyprus. The British rely on the 1959 Treble Treaty to keep their bases on the island and given that the status quo is potentially explosive, their interests are best served in the continuation of a "supervised" or "guaranteed" independence. Secondly, the system as it is, the immediate guarantors of NATO/EU interests in the region means that they are keen to retain the "shell" Republic, but under a NATO/British umbrella. This brings them into conflict with some USA interests, who want to appease Turkey, but never do their interests coincide with those of Cyprus. The need for a fully independent, sovereign and demilitarised Cyprus certainly does not include the British bases.

The EU is of increasing importance to Cyprus, as the formal start of the accession process of Cyprus is about to begin. Some politicians, the Cypriot Right in particular, are pinning all their hopes for "Europeanisation" as the solution to the problem. Cypriot European policy makers view accession as a catalyst to a solution. Matters ahead of us however are quite different.

On the one hand it is important to disintegrate the accession process from the hopes for a solution, so that Cyprus is not hostage to Turkey by its holding a virtual veto on Cyprus's accession prospects. Still, the attitudes of some member states, such as France and Italy, which view the existence of the Cyprus problem as a barrier to entry, cannot be ignored, as they are likely to resist face soon.

Turkey retaliated after the Luxembourg Summit, which included Cyprus amongst the 11 aspirant countries in the forthcoming enlargement not excluded Turkey, due to its human rights record and the Cyprus problem. It warned the EU to "evaluate its future steps very carefully," threatened war in Cyprus and began the process of removing the occupied territories. The Turkish Cypriot leadership is refusing to participate in the negotiations.

Arrows and the regimes in the occupied territories are becoming more and more intransigent. They are setting preconditions to negotiations, which are a barrier to the negotiations and want the TRNC to be recognised as a sovereign state and the accession application of the Republic of Cyprus to be put on hold. The EU, therefore, is in a dilemma of partition and wants a reunited Cyprus in the EU.

The EU accession process of Cyprus must not be seen as an alternative to searching for a solution in the island. The Cypriot Left has always insisted on a UN-based solution to the Cyprus problem. In spite of the fact that the USA and NATO seem to dominate and highjack the UN, even today it provides the only framework for a more principled approach to the resolution of the problem, for a number of reasons. Firstly, there is a different balance of forces than those in the NATO-based forums. Russia, particularly on Cyprus, has a different approach because of its specific interests in the region and a tradition that is difficult to change vis-à-vis NATO. China is part of the Security Council and there is some pressure from the General Council of the UN and a tradition of backing small, weak and small countries. Secondly, despite being subordinated, it is still an instrument, in the UN there exists a body of principles and norms and rights that needs to be referred to: international law, Human Rights and treaties are much more detailed and authoritative embodied in UN frameworks than in the NATO dominated forums. Thirdly, experience in Cyprus has shown that the UN can be a positive force in applying pressure. If properly supported by all the forces. The UN Resolutions are quite clear as to the solution of the Cyprus problem.

A recent meeting in Istanbul by the Left wing parties in Cyprus (AKEL, Turkish Communist Party, New Cyprus Party), the Turkish Freedom and Solidarity Party, the Communist Party of Greece and the Coalition of the Left (from Greece) can only give hope for the future. They pledged to work together to realise the reunification of Cyprus and peace in the region.

In Britain, the Labour Party has pledged to work for a solution in its manifesto, in the Queen's Speech and repeatedly since. Yet it has retained Sir David Hannay as the British envoy and former Foreign Secretary, and latterly to the UN General Assembly, that this is in our absence of any reference to a single sovereignty, are still on the table. The Labour Party appears more committed to a solution than the Tories were. But they are not going to radically transform their policies and proposals. Both are pro-American and pro-NATO like any other Tory or Labour leader, except the exception of Foot. Blair will not go against NATO or US interests over Cyprus but will play a more "constructive" role in the EU.

The Left in Britain must apply pressure on the Labour administration to carry through their pledges. Labour may be more sensitive to pressure for Cyprus due to the large number of Gypsies and due to interests in Cyprus. The position of the Cypriot Left must be supported. But the process of an open process in searching for a solution, rather than secretive talks and rallying behind or tailing the Americans. It involves a return to the UN process to negotiate a solution that is fair and just for all, united but federal Cyprus for all its people irrespective of
THE POLITICS OF THE JUDICIARY
by J. A. G. Griffith, Fontana, 376pp., £4.99. Here, as elsewhere in the book, he isolates with precision the tortured logic of a reasoning that out of all known shape to produce a particular result. The speech of Lord Scarman in utilizing the judge-made case of a fiduciary obligation owned by the GLC to its rate payers is singled out for special criticisms. Griffith notes this was gross interference by the judiciary in the exercise of political responsibility of an elected local authority. As a consequence of the welter of examples he provides, this book is a rich source of material for anyone seeking to understand how law and social power interact. It raises as many questions as it answers and in doing so provides a good grounding in thinking critically about the legal system.

There are two minor criticisms worth making. Throughout the book Griffith mingle examples which show evidence of class bias with those that show evidence of sympathy (occasionally antagonism) to the government of the day. A chapter which highlights the differences as well as points of congruence between the two types of examples would strengthen the political analysis. Secondly, it would be enlightening to have a chapter which considered the interaction between the Court of Appeal and the House of Lords. If they produce differing judgments on a controversial matter, does the lower court's judgment function to help neutralise dissent against a more conservative final judgment of the higher court by holding out the prospect of change years to come? The introduction of the Human Rights Act will produce a great deal of case law concerned with the exercise of judicial discretion in interpreting rights. The judiciary will be giving effect to rights which they have previously ignored in applying common law before the incorporation of the European Convention On Human Rights by this Act. This book allows us to trace the impact of the politics of the judiciary before and after these changes has been felt. Anyone who seeks to follow what happens next should read Professor Griffith's book about what has happened in the past. The case for transforming the social base of the judiciary has been made widespread and in a compelling fashion.

Adrian Berry

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5. Paedophiles and mob rule

The Editorial Collective apologise for the delay in bringing out this issue of Socialist Lawyer. The next issue will be out on 1st November. Articles are welcome. The deadline for all articles for the next issue is 15th September. Please submit all articles on disk to: Socialist Lawyer, c/o 20-21 Tooves Court, London EC4A 1LB.
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