Albie Sachs on a Bill of Rights for South Africa

The Housing Act 1988 by Edmund Jankowksi

Reminiscences of a Radical Lawyer – John Platts-Mills QC

Louise Christian on the Police Complaints Authority

Helena Kennedy on The Chilean Plebiscite

Book Reviews, Letters and News
Haldane Society of Socialist Lawyers

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CONTENTS

Haldane News

Haldane Heads East
Bill Bowring

Features

Why the IADL Bill Bowring

The D.N.Pritt Memorial Lecture: Albie Sachs – Towards a Bill of Rights in a Democratic South Africa

The Housing Act 1988: A Return to the Free Market

Ways of Making You Talk

Tony Metzer

John Platts-Mills QC: Reminiscences of a Radical Lawyer

John Platts-Mills QC

Police Complaints Authority – Worse Than Useless?

Louise Christian

O Death, Where Is Thy Sting?

Dave Leadbitter and Tony Ward

Unanswered Questions: the Gibraltar Inquest

June Tweedie

Ethical Disinvestment

Mary Stacey

The Chilean Election: A Testimony of Strength and Optimism

Helena Kennedy

Reviews

Book Reviews

Letters

Noticeboard

NEWS/REPORTS

CONFERENCE NEWS

IN a Democratc Society Where Than Useless?

Ethical Disinvestment

Police Complaints Authority – Worse Than Useless?

O Death, Where Is Thy Sting?

Unanswered Questions: the Gibraltar Inquest

Ethical Disinvestment

Mary Stacey

The Chilean Election: A Testimony of Strength and Optimism

Helena Kennedy

Reviews

Book Reviews

Letters

Noticeboard

In October we held a very successful conference for newer members entitled 'The Socialist Lawyer, From Theory to Practice'. The conference was opened by Helena Kennedy and attracted a record 130 people. Two conferences are planned for 1989. The first in February concerns human rights in the world context. Details have already been sent to members. The second is a potential joint conference with the Critical Lawyers' Group scheduled for September.

The Extravaganza

In December the Society renewed an old tradition of 'socials' with a fund raising 'extravaganza' in Smithfield. Although the venue was not the best, the last minute crib proved highly successful and the evening was enjoyed by all. In addition £800 was raised. Many thanks to all those who supported the event.

The D.N. Pritt Memorial Lecture

This year's lecture was given by ALBIE SACHS. His talk was excellent and the Society was honoured by the fact that this was Albie Sachs' first public lecture since the bomb attack on him last year. An edited version of the lecture appears in this issue of SL.

Seafarers

The Seafarers' Legal Advice Centre battles on in Dover every week. People are urgently required both to observe on the picket lines and to help with related and unrelated legal problems. Please contact Emily Thornberry at 14 Tooks Court, Curzon Street, London EC4 if you can help in any way. Meanwhile, thanks to all those who continue to carry out this aspect of the Society's work.

Attendance at Executive Committee Meetings

At its December meeting the executive committee adopted the following minute:

'The executive committee may invite any person whether a member or not of the Society to attend and/or participate in an executive committee meeting. Such participation shall be under the direction of the chair of the meeting but shall not in any event extend to voting. The executive committee reserves the right to withdraw an invitation by a majority vote of those present and entitled to vote. In the case of such an invitation being withdrawn from a member of the Society the reasons for such a withdrawal shall be recorded in the minutes of the meeting and that person shall be notified of the reasons by letter.'

If you wish to attend any meeting of the executive committee please contact Keir Starmer prior to the meeting. Dates of executive meetings in early 1989 are as follows: Tues 17 January, Thurs 16 February, Tues 14 March and Thurs 20 April.
AGM

The Annual General Meeting will be held on Saturday 6 May 1989 at 2.00pm in the Vera Steney room at the London School of Economics. Any member may submit a motion to the AGM. Indeed, all members are encouraged to do so. Such motions should be submitted in writing by a proposer and a seconder to Keir Starmer, 1 Dr Johnson's Buildings, Temple, London EC4 BEFORE 14 APRIL 1989.

Written nominations for the chair, secretary and treasurer and for the executive committee should be sent to Keir Starmer at the above address BEFORE 14 APRIL 1989. Each such nomination should be accompanied by a written consent to the nomination by the candidate. Candidates are invited to provide a biography (maximum 50 words).

... More News

The Northern Ireland subcommittee is being revived. For further details contact Keir Starmer. Pam Brightman resigned as joint secretary of the Society at the December executive committee meeting. Keir Starmer continues as the Society's sole secretary.

Tony Metzer and Lucy Anderson have taken over as caretaker membership secretaries – please bear with them while they reorganise the files. The discrimination working party is now in full swing. For further details please contact Fiona Freedland, 63c Leconfield Rd, London N5.

The next meeting of the Legal Services subcommittee will be on 20 February 1989 at 7.00pm at Tooks Court. Please telephone Kate Marcus for further details: 451 1125 (work) 452 5933 (home).

The Society's trip to Moscow was highly successful; a full report appears elsewhere in this issue. Heartily thanks to Bill Bowring for all his hard work in arranging the trip.

The Codes of Practice

The Crime subcommittee recently submitted a report to the Home Office Review of the Workings of the Codes of Practice issued under The Police and Criminal Evidence Act 1984. The report was based upon the views of over 40 criminal practitioners. On most issues there was wide consensus and striking similarities between the practitioners' experiences. The report proposed substantial amendments to each of the four Codes. It attracted considerable media attention, including an exclusive article in The Independent and features in The New Law Journal and The Lawyer. Lawyers, academics and even the deputy leader of the opposition have also expressed an interest. The submissions highlighted the way in which the police have devised techniques and procedures which, without contravening the strict letter of the Codes, enable them to avoid or bypass many of their important safeguards. A striking example of this is the widespread practice of asking suspects to sign 'here, here, and here' on the first page of their custody record. The written suspect subsequently discovers that she has effectively signed away the right to legal advice.

One of the main areas of concern was the number of people who are still interviewed about serious crimes without a solicitor being present and before they have received any legal advice. The proposed abolition of the right to silence makes the introduction of greater protection in this area all the more vital.

The absence of any Code covering the treatment of a suspect following arrest and prior to arrival at the police station was also stressed. Increasingly the police rely upon alleged admissions made at this stage, when no controls apply, in order to gain convictions.

Bill Bowring

Haldane Heads East

The first Haldane Society delegation to visit the USSR for several years landed in the middle of a stimulating and surprising period in the development of Soviet law. The delegation represented a good cross-section of the Society's members. We stayed in Moscow from 9 to 13 November 1988 and spent four days as tourists, during which we saw the celebrations for the Great October Revolution on 7 November. For three days we enjoyed an official programme efficiently organised by Konstantin Shakhmu- radov, General Secretary of the Association of Soviet Lawyers. We have already written to him inviting a similar delegation to come to Britain.

Our programme was full and varied: we met academics at the prestigious Institute of State and Law, the main powerhouse for legal research and reform proposals; we spoke to the woman President of the Krasnaya Presnaya People's Court; and we met advocates both at the Association of Soviet Lawyers and at the premises of the Moscow College of Advocates. What follows is a narrative, setting out as much as possible of what we heard. It is hoped that a deeper discussion will follow.

Institute of State and Law

On the morning of Wednesday 9 November we went to the Institute of State and Law in Frunze Street. There we met Professor Igor Kiselyov of the Sector of Labour Law and Social Services, Dr Shuguyev, a former trade union official, and a woman academic, Dr Chekhonova. They were all labour lawyers, and this sector of the law is one introduced by decree of the Supreme Soviet on 4 February 1987.

Professor Kiselyov was positive: he felt that the law represented a clear step towards the legal regulation of collective bargaining arrangements in the new conditions of perestroika. His colleagues disagreed. Dr Chekhonova in particular pointed out the contradiction between Articles 5 and 28 of the new Code. Article 5 prohibits any labour agreements or contracts that worsen the position of workers. Article 25 on the other hand provides that where changes in the organisation of production or structural alterations take place management could vary the terms of employment, within the limits of speciality and profession. These articles must give two months' notice of the impending changes; but if the worker refuses to change, he or she could be dismissed with no guarantee of reemployment and no unemployment benefit.

Dr Shuguyev said that Acts passed recently did not increase the rights of workers but decreased them. Previously there had been very strict stability of labour; now the manager was to be given the right to make changes, for instance regarding transfer to other work without the worker's consent. Further, although a worker could not be sacked without a reason (there were 16 permissible reasons), there was no remedy for wrongful dismissal because the right could not be enforced in the courts. It was therefore only a right on paper.

Dr Chekhonova also criticised Article 9, which deals with discrimination in employment. If a woman was refused employment, for instance because she was pregnant, then management had formal penal responsibility. But those rules too only existed on paper; there was no remedy in the court. A woman could complain to the trade union, but it would be very difficult to prove her case. She could go to the procurator, who had a supervisory function, but the procurator had a discretion whether to investigate her case.

We asked about elections at work. Part II of Article 6 provided that the majority of officers in an enterprise were to be elected. The problem was how to realise that in practice. Dr Shuguyev gave as an example the problem which had arisen at one of the Moscow enterprises, where the Council of Workers'Collectives voted to exclude the majority of officials, despite the fact that the law demanded the election of all the main officials. He believed that these laws needed clarifying. He was also in favour of formal provisions giving workers the right to take economic but not political strike action; although not in essential services.

Krasnaya Presnaya People's Court

That afternoon we travelled to the court building, where we were received by Irina Kiprianova, the President (Senior Judge) of the court.

The judge told us that she had been sitting at the court for many years: if anything, she would like to retire to her family! She was elected by the local (borough) Soviet of People's Deputies for a five year term, on a single candidate list. All judges received full legal training and served for a period of years in the procurator's office. Judicial service was a career, as in France or Germany: 47% of judges are women.

She sat with two People's Assessors, elected by workplaces, unions etc. They were not legally qualified, but brought practical experience to the bench. They could overrule the judge. Her court heard both criminal and civil cases. The maximum sentence the court could impose was 15 years' imprisonment. The most common crimes to come before her were auto-theft and burglary. Sexual offences, such as rape, and crimes against children were, she said, practically unknown at her court.

It was impossible for a person to be convicted simply on her or his uncorroborated confession; but such was the thoroughness of the pre-trial investigative procedure carried out by the Militia and Procuracy, that defendants were invariably convicted at the trial itself. The trial was mainly concerned with a detailed examination of why the crime was committed, and with mitigation. The court had a wide range of sentencing alternatives to prison, including fines, community service, licence into the supervision of colleagues at work, curfew conditions at home, and exile to the surrounding towns of Moscow. Criminal penalties coming before her court included labour questions, disputes about housing allocation, transfer, and permission for subdivision of rooms; inheritance and the consequences of divorce. The judge invited us to sit in on cases at her court; all cases are heard in public.

Association of Soviet Lawyers

This meeting took place on Thursday 10 November at the House of Friendship in Kalinin Prospect. We were greeted by Professor Vassily Vlasihi, of the Institute of USSR and Canadian Studies, a member of the President of the ASL. He had recently returned from a study tour of the US.

He spoke of the lack of independence of judges (of whom there were 16,000); they tended to be seen as simply another
Bill Bowring

Why the IALD?

The International Association of Democratic Lawyers was founded in 1946, the same year that the United Nations was created. It has always fought to defend the principles contained in the UN Charter. Its main contributions have been in the evolution of international law. In emphasising the principle of self-determination and the right of independence of ex-colonial peoples it has sustained their struggles. It has stressed the rights of sovereignty of peoples over their natural resources, their right to development, and the achievement of a new international order.

It now has more than 70 member organisations worldwide. The Helsinki Society is its British section. Participants from more than 90 countries attended recent major conferences in Athens and Paris.

The next major international conference, on the Biennency of the Declaration of Human and Citizens' Rights: Actuality, Universality, Perspectives will be held in Paris on 11 - 13 March 1989. Preliminary conferences were held in Rio de Janeiro, Dakar, Moscow, Brussels, New Delhi and Bahrelin on 9 and 10 January 1989. The Helsinki weekend conference on Human Rights, on 11 - 12 February 1989 will also lead into the Paris conference. The next full conference of the IALD will be held in Barcelona on 20 - 24 March 1990.

During the last year the IALD sent missions of inquiry to Chile, to investigate the case of political prisoner in Gibraltar, for the impression; to Japan, on the sale of children; to Palestine, in which the Helsinki Sunday-Vice-Chair participated, to Portugal, on the case of Carlos de Carvalho, to Western Sahara, for the 15th anniversary of Polisario; and four missions to Turkey, on the Kulp-Sari trial. There was also a major conference of Jurists of Asia and the Pacific on the Jurisprudence of Peace, Development and Human Rights in New Delhi in February 1989.

In 1987 the IALD created an International Standing Conference on the Protection of Palestine and Peace in the Middle East, with representation from Mali, Senegal, France, the USA, Belgium, Mexico, India, Greece, the GDR, Spain, Switzerland and the USSR. This Committee publishes a journal in English and in French, Palestine and Law.

The IALD is also represented at the UN, where it is a non-governmental organisation with consultative status, and at regional and international conferences. Bill Bowring, 4 Verulam Buildings, Gray’s Inn, WC1R 5LW 01-405 6114.

The D.N. Pritt Memorial Lecture - Albie Sachs

Towards a Bill of Rights in a Democratic South Africa

I am very happy that my first public lecture since the bomb attack should be the D.N. Pritt Memorial Lecture. We didn’t know Pritt in South Africa, we didn’t know where he stood on many questions, but he spoke with what is called a upper-class English accent. We didn’t know much about the details of his positions on world affairs but we knew what things about him, things which have become legendary. He was a name, a real name, to all of us; he was courageous, he had the backbone, we knew how he was, we knew the side of the oppressed and these were all characteristics that he manifested as a person and as a lawyer.

Alarm Bells

We are the only country in the world in which portions of the oppressed created an Anti-Bill of Rights Committee. Part of my brain sympathised with this movement. Many black lawyers a few years back established an Anti-Bill of Rights Committee. At that stage a Bill of Rights was being considered in a white dominated parliament. We entered into South African political debate in a way which caused alarm bells to ring. Basically, what the Anti-Bill of Rights Committee was arguing was that the Bill was a constitutional scheme which would be enshrined and sealed before the democratisation of South Africa; a means essential of preserving the existing privileges of the white population in the guise of an apparently neutral document called a Bill of Rights.

The real objective was to freeze the existing social, economic and cultural situation of the country in which the Bill was being argued and the rich developments which have belonged to the white) by the insertion of a simple clause saying that property rights are not to be disturbed. To freeze all the privileges that exist between the rich white suburbs and the poor black suburbs in any area of South Africa.

A Bill of Rights cast in that mould would have the effect of abolishing apartheid as a legalised system of constitutional law. A new country with a legally entrenched de facto system of inequality - accumulated inequality of generations of suppression, domination and apartheid. It is completely understandable that young lawyers active in the anti-apartheid movement should regard a Bill of Rights as a negation of the schemes that are black rather than enlarge human rights in South Africa.

Genuine Equality

At the same time, other bells were ringing. We can’t be against a Bill of Rights, and not just for tactical reasons, it’s obvious for tactical reasons, for reasons if you like of image, to oppose a Bill of Rights makes you appear as though you are in league with the Apartheid forces, but it is also a fundamental question. The reason is more profound. We are fighting for human rights in South Africa. That’s the centre of the struggle. If you don’t enlarge the rights of everybody, to create a society of genuine equality. We are for rights to freedom for everyone against the idea of a constitutional framework for rights.

What does this require, then? It requires looking at the question of the point of view of Rights from the point of view of the majority of the population. From the point of view of the people who presently are denied the most elementary fundamental rights. Saying, how can we use the constitution?

How can we establish a document that in fact will enlarge our rights, consolidate the rights that we won in struggle and open the way for the further extension of rights in the future? And the way to do that was in that way, then a whole flood of themes come out that require, to a certain extent, breaking with what I call the culture of opposition and starting to assume the culture of construction, of building up the new and seizing the initiative in this respect, advancing our own programmes as a society, mobilising our own people, giving sight and coherence to our struggles and seizing the central ground in the struggle.

A New Nation

The people belonging to the oppressor part of our nation by virtue of the lives they lead are incapable of assuming that dimension. They cut themselves off from their fellow citizens and they can never think outside of the group, they can never think in terms of the whole country as real patriots. And perhaps this is an inevitable part of the struggle for liberation and the people with the oppressed to then take on the dimension of the country as a whole and to have a vision that incorporates everybody in the country.

This is not just like, historic role and function of the ANC in South Africa, which is going beyond being simply the instrument of the people for the destruction of apartheid and is now becoming the instrument that is going to construct and build the new South Africa, democracy in South Africa and in South African nation. We have to get used to thinking in those terms.

It’s not just the pleasure and the fun of imagining that we are about to embark on a new apartheid South Africa. That could be disastrous because we are still a long way off. But it’s something like the new South Africa, the germs, the embryo, the beginnings of the new South Africa, planting those seeds, getting people to struggle now for that vision, going beyond simply the general programme of the freedom charter and beginning to assert and insist on the fundamental constitutional themes that are so far down. Right at the heart of this debate lies a Bill of Rights.

Ultimately, one looks towards a national convention with some kind of democratically elected assembly being the final arbiters of a Bill of Rights for a democratic South Africa.

The People’s Struggle

A real and true Bill of Rights arises out of struggle and involves the people, not just an abstraction, the people active, thinking, thinking about themselves, their right to their own struggles has already started in South Africa. For example, an Education Charter has been established in embryo as a result of hundreds of meetings and gatherings of not only workers and workers, but of all communities, of all races, of all people and others thinking about education in a democratic South Africa.

The churches are increasingly active in South Africa;
thinking about the whole question of the role and function of the churches in a deeply divided and unequal society. The churches and all the religious organisations and denominations get together and think about the rights and the responsibilities of believers as individuals, as organised communities in a democratic South Africa. They then seek to define the sections of the Bill of Rights dealing with the question of conscience and the right to believe or not believe, the question of freedom of religious belief and practice. Their function, however, extends beyond that to helping to build the new South African nation; to being an active agent for change not simply a beleaguered group fighting to protect this Bill of Rights, but an active participent in the process of overcoming the inequality of the past. The church can be involved now in constructing the Bill of Rights.

A charter of workers' rights; who better than the workers themselves to be involved in developing such a charter? Not handing it over to a few lawyers to study international documents, but allowing workers the experiences, the special kinds of exploitation which they feel to delineate, lay down the fundamentals of the rights they feel all workers should have in a democratic South Africa.

Women's organisations are active participants in the struggle for liberation in South Africa. Let them now start seeking out the outlines of the constitution, to find for themselves and for the whole country what they feel should be the fundamentals.

Not the Lawyers

The process of establishing a Bill of Rights starts now. It's not something left to some special day, it starts now. It involves literally millions of people, working on their areas of special interest, but not confined simply to them because we are all citizens, we are all interested in the rights of workers and we are all interested in the rights of the religious organisations. We are all interested in the rights of women and so on and so forth. It is a process, it is not something that happens, it is not an event. Lawyers come in, they come in at various stages. Lawyers might come in specifically at the final stage, in producing a document that is consistent with international standards and values and has a vocabulary, a kind of discourse that is immediately acceptable inside the country and throughout the world. But it is not the lawyers who establish the fundamental lifestyle. It is the people who do that.

Let's look at other Bill of Rights documents, for example, the famous one of the Amendments to the United States Constitution. It is a process. Those amendments emerged out of struggle. After victorious revolution the formerly oppressed got together and said we want certain themes of our life to be repeated. The colonialists used to torture us to get confession. A new constitution now calls for the right to be recognised the de facto inequality of the past continues. We don't want these things without the right to a South African nation, to control, to feel the feel the kind of data and resources belong to all of us. To have peace in our country should be such a fundamental right – the mass of our people have never known the right to tranquillity – the right to a kind of social, community happiness, the right to really love your neighbour.

Fundamental, we want them; the right to vote is at the heart of the whole debate and struggle in South Africa. We want people to feel free, to feel free to walk around in our own country. Not to have their privacy violated. Not to feel insecure. Not to say that we have exchanged one form of oppression for another form of domination. Basic individual rights and liberties, that is the first generation of human rights.

The second generation emerged towards the end of the last century. It is the political, social, cultural, economic rights, educational rights. They emerged from the Russian revolution, the rights the social democratic parties have contributed to the welfare states. Another agenda, not inconsistent with, not incompatible with the individual human rights, the more fundamental and as important, we want them all as well.

Now in the recent period, the third generation of human rights are focused on community rights, clean environement, the right to peace, the right to self-determination, to control our resources – also fundamental, also requiring construction of the text. All three generations have to be there, all have to be recognised, all have to be protected highly. The right to be de facto inequality of the past continues. We don't want these things without the right to a South African nation, to control, to feel the feel the kind of data and resources belong to all of us. To have peace in our country should be such a fundamental right – the mass of our people have never known the right to tranquillity – the right to a kind of social, community happiness, the right to really love your neighbour.

Due Process

Each generation of rights has its own mechanisms, its own procedures. With each generation of rights one looks to the courts to protect these individual rights. Courts and lawyers, due process of law. But, fundamentally the rights to education, health, housing are to be guaranteed by state mechanisms. Let's take as an example the right to health. What's important, the right to see your doctor or the right to have safety at work, good water and so on. Maybe or may not one should have the right to see one's doctor but that can't be the basic content of human rights in terms of the right to health. The content of the right to health means imposing legal duties on those who can affect the health of the citizens, to take certain steps to avoid damaging their health and to take positive steps to improve their health.

The third generation of rights are rights which are essentially political in character, but also involve institutional mechanisms on those who could damage the environment, those who can damage peace, those who want to restore apartheid.

Affirmative Action

This brings us to what many of us regard as the central theme of a Bill of Rights for a democratic South Africa and that is affirmative action. We should see a Bill of Rights not only as a negative blocking mechanism, that prevents change under the guise of protecting individual rights. We should see a Bill of Rights as a positive, affirmative document that promotes change and does so according to the general principles of affirmative action. What does this mean? It means all public and private bodies in South Africa (presupposing a multi-party democracy with general freedom of speech, organisation, movement and so on) committed to certain fundamental themes which are the basis of the constitution. The fundamental theme is to overcome the de facto apartheid in society, the massive inequalities that have been created by centuries of Labour domination, racial segregation and apartheid. It is about real equality. And to go beyond all South African society, to political and cultural life should mean the government,
The civil service is a major instrument of racial domination in South Africa. Without a total reconstruction of the civil service, it is impossible to have a human rights programme implemented.

The New Watchdogs

The judiciary – surely in a democratic South Africa the judiciary will become an important role to play but we cannot leave it to the present judiciary to be the ultimate watchdogs of democracy. And if we do the people at large will abandon it. We think of the judges who sentenced the Sharpeville Six to death, stretching existing law to its utmost, setting aside even the most extenuating circumstances and enlarge the concept of common purpose. One thinks of the judges who acquit or give a suspended sentence to a convicted spectacular terrorist against a labourer, letting him go virtually scotfree.

Are these the people who are going to be regarded as the watchdogs of a new constitutional dispensation? One thinks of the judiciary today judges are white, white, white, from the bottom to the top, from the to bottom. It’s not a racial thing, it’s a cultural thing, it’s a social thing. People who have grown up in a certain community with a built-in insensitiveness – one almost said congenital - built in by the very habits of life to the problems, the concerns, the agendas, the desires even the drudges of the mass of the population. This is not to say that whites are excluded because they are whites. They have a role in a democratic South Africa as full equal citizens. They cannot continue to monopolise, not the judiciary, nor the economy, nor the land, nor the educational system, nor the whole system. The whole society has to be opened up. It has to be made non-racist, it has to be reconstructed on non-racial principles. It has to be representative of the population as a whole, as the population as a whole will have to find it in it.

Group Rights

One consequence of the scheme that I have been outlining is that the foundation of human rights in a democratic South Africa would be a guarantee of individual human rights to everybody, without regard to race, to origin, ethnicity, sex or creed. That is the fundamental constitutional principle. It is a revolutionary principle in a frudal type society. It’s the sort of principle that should get universal acknowledgement and acceptance outside South Africa. One finds that’s not the case. Think of group rights, all sorts of people who call themselves liberal think that group rights of the white minority, when it comes to South Africa.

How can we preserve their rights? Sometimes this is put on a purely tactical basis. And when you want change you have to make compromises recognising power, the fact that they are dominating our society. In order to achieve gains in other areas you make concessions to them in this area. Unfortunately the argument is not simply couched in pragmatic terms, but in constitutional terms, as though somehow this concept of group rights is a virtue in itself.

Group rights are and should be relevant but not in the way they are projected. First of all there are negative group rights, the right not to be treated as a group. No one should be oppressed on the grounds of race, origin or language or religion. It is a constitutional principle completely consistent with the enjoyment of individual rights. The right to non-discrimination should give rise to a kind of class action. Anybody belonging to a minority or majority group could come along and say I am being discriminated against as a group. You are being harassed, you are being denied jobs, you are being denied equal opportunity you are being insulted – the appropriate redress is a constitutional response. But to have the kind of group rights where groups of particular form have voting power, where groups have veto's over legislation is simply to enshrine apartheid and could prevent South Africa from becoming a truly democratic and non-racial society. Those kind of ethically based political rights are totally at odds with the concept of creating a genuine Bill of Rights for a democratic South Africa.

There are group rights that can be constitutionally protected. Language rights not only can be, but indeed ought to be, must be protected. The equality of all languages, whether spoken by half a million people or by ten million people, you can say is a language is important because it’s spoken by more people. The principle of equality of all languages and the freedom to develop and promote languages and the literature in your language, the right for your languages to be used for public broadcasts, in television, in schools, these rights have to be and should be recognised. That would include Zulu and Afrikaans and all the languages.

Rights of religious groups and organisations can be protected as group rights. In some cases certain communities have developed complex institutions, they would say they are prohibited from organising themselves as a community. There would be, for example, Jews who are not simply religious believers but of a culture associated with the community. Groups who belong to the Greek Orthodox Church. All these rights would be guaranteed and recognised.

Workers

It is very interesting that the greatest proponents of group rights never come up with the question of workers' rights. A huge group, the majority of the population, they will have rights, as workers, trade union rights constitutionally recognised. Half or slightly over half the population will have rights as women because of past disabilities. Because of maternity and childbirth, because of the sexism in society they will have certain constitutional rights as a group that can be recognised, as will other groups. Children will have rights as children. The disabled and so on. Only the question of group rights in terms of affirmative action in the public sector.

It’s the sort of thing that has a direct copy of the Act which is an experience. It involves looking at groups and saying that: in certain spheres of our society there is massive inequity which has to be overcome and one cannot avoid to a certain extent the numbers game, the question of quotas. The fact is you have to deal with the real mass of inequities and to that extent the race theme and factor does come into the constitutional but, again, as a negative principle, to overcome the discrimination of apartheid.

Your Criticism

The debate is open, we need your friendship, we need your support but, more than that we need your debate, we need your scepticism, we need your criticism. You can engage with us, you’ve got to force us to sharpen our understanding, to challenge us, to give us extra information, new perspectives. It is a very exciting moment for South Africa. A moment that is involved in the struggle we are all involved in, with a different content, in Britain will be able to share. We are using our skills, our brains in November.

There can be nothing more intellectually and even emotionally joyous than to feel that you are helping to build a charter for your country, using your learning, your knowledge, your skills. Assisting in the general people's struggle for liberation, not just in a generalised way, not in a theoretical way but in a very material way. This is an edited version of the lecture, delivered on 16 November 1988 at the London School of Economics.

Edmund Jankowski

The Housing Act 1988: A Return to the Free Market

The Housing Act 1988 is a further application of familiar themes in government policy – privatisation, deregulation and the transfer of power from publicly accountable local government to non-accountable private sector. The Department of Housing and Community Development Act of 1986, which received Royal Assent in December 1986, was the basis for the 1988 Act, which became law on 15 November 1988. While Part IV (Tenants' Choice) will be brought into force later in 1989.

Deregulation

The government believes that the decline of the private rented sector (today it comprises a mere 7.7% of all dwellings) is due to the Rent Act, which are seen as driving landlords out of the market. This ignores both the experience of the 1967 Rent Act where deregulation led to Racial and an acceleration in the decline of the sector and the real cause of the decline which is the greater attraction to landlords of selling to owner-occupiers. The Act aims to revive the sector by reducing security of tenure and allowing "market rents" to be charged.

Grounds for Possession

New tenants who share accommodation with resident landlords or who have holiday lets will be particularly vulnerable. The Act allows landlords to evict such tenants without a court order and abolishes the tenant's right to a minimum of six months' notice to quit. Landlords will be free to evict on little or no notice.

Widely drafted grounds for possession are available to landlords against almost all tenants. Possession may be sought by:

- The landlord intends to demolish or do substantial work to the property. Rightly known as 'The Developers Charter', this ground will be abused by landlords who will put forward false pretence that they need to redevelop for the better fortune of the whole area.
- The tenant has sub-let the property without the landlord's consent, or has sub-let it to another person who in turn sub-lets or assigns it.
- There are at least three months' rent arrears at the date of application. However, no arrears for previous occupancy will be relevant. The court will have no power to follow current practice and suspend the possession order to allow the arrears to be paid off in instalments.
- Possession can also be ordered if one of the discretionary grounds below is established. This ground is established if "the tenant or someone in possession of the house is likely to cause serious damage to the property as a result of misuse of the property or the tenant's failure to pay rent". Tenants who object will be able to apply to the Rent Assessment Committee (RAC), which will fix a rent at which the property 'might reasonably be expected to be let in the open.

Upwardly Mobile

Assured tenants will have very little control over rents. Rents can be increased in line with a review clause in the tenancy agreement. Landlords will no doubt have model clauses prepared, allowing them to increase the rent as often as they like. If no review clause is available, landlords will be deftly able to serve an affirmation disclaiming its application.

Private tenant tenancies created on or after 15 January 1989 will fall into two main categories; assured tenancies and short hold tenancies. However, the recent decision in the case of Aswell v. Jankowski [1988] 1 WLR 575 may determine some landlords from using these devices. If leaving does not fall into one of these two categories (for example, if there is a tenant resident landlord) there will be no statutory protection for the tenant under the Act. Virtually all the devices currently used to evade the Rent Act (such as licence agreements) will still be available to landlords. They will, therefore, be able to avoid giving tenants even the minimal statutory rights they have under the Act.
A Licence to Evict?

Contrary to government claims, the Act affects the position of existing Rent Act tenants in two ways. First, the succession rights of relatives of existing tenants are being revoked. Although spouses or cohabitants of tenants will inherit as before, other members of the family must now be residing with the tenant for two years (as against the current period of six months) before the tenant's death. The family member can only succeed to an assured tenancy if they own more than half the property.

Second, the Act provides landlords with a direct incentive to harass and evict existing tenants to gain vacant possession and then let at market rent. To counter this, the Act contains a new right for tenants who are harassed or evicted, enabling them to obtain damages from their landlord. Compensation is to be calculated by reference to the gain to the landlord in obtaining possession. Although damages could be substantial, many landlords may choose to gamble on the evicted tenant not suing, as it is likely in most cases.

The Act toughens up the criminal law by creating an offence of harassment of the landlord's tenants. It will be an offence to act or remain in their tenancy for an unreasonable cause or in a manner likely to cause a tenant to give up occupation. There will be powers to take actions to prevent harassment, and the government has made clear that the Act will ensure the full benefits of the 1980 Housing Act are available against landlords.

Assured Shortholds

Assured shortholds are tenancies in section 20 of the Act as assured tenancies for a fixed term of at least six months preceded by service of a notice in prescribed form. In addition to the grounds for possession available against assured tenants, a landlord will be able to evict on expiry of the fixed term and giving two months' notice. It will not be necessary to prove any grounds for possession. Landlords are bound to make extensive use of shorthold tenancies. Although the shorthold tenant has a limited right to apply to the RAC to reduce the rent if it considers the rent is significantly higher than the rent for similar properties in the vicinity, few tenants are likely to exercise this right and risk eviction. Nor will they be in a position to take steps to have repairs done or harassment stopped.

Members of an assured tenant's family will have very limited rights to succeed to the tenancy when the tenant dies. There can be only one successor by the tenant's spouse or cohabitants. The landlord will be able to evict other members of the tenant's family on his or her death.

Smashing the Public Sector

The Act contains three mechanisms for the break up and sale of council housing. First, housing action trusts (HATs) will be set up to take over areas of rundown council housing, to improve the property and then to sell it off. Modelled on the London Docklands Development Corporation, HATs will be run by non-elected boards appointed and accountable only to the Secretary of State. HATs will have wide powers and responsibilities currently enjoyed by local authorities, such as planning, environmental health and improvement grants.

Following a defeat in the House of Lords and pressure from tenants' groups, the HAT cannot be set up if a majority of affected tenants voting in a ballot reject the proposal. The government has made it clear that tenants foolish enough to reject a HAT will not get funds to improve their areas. Tenants will have no right to veto landlords proposing to take over their houses as HATs. Social landlord tenants will be allowed to return to the local authority on the HAT having wound up, few councils will be able to afford to buy back the properties.

HATs have no obligation to tackle homelessness in their areas but merely have to provide the local authority with 'reasonable assistance' in meeting its statutory obligations.

HATs are based on the theory that an inner city area will be regenerated by bringing in managerial and professional people. Although HATs may well convert their areas from Labour to Tory, the evidence from the Docklands experiment shows that bringing in wealthy outsiders with no real commitment to the area reduces the level and rate of housing prospects of local people.

'A Landlord's Charter'

The government has made much of the 'social landlord's charter', which would require the new landlord to give tenants similar rights to those in the 'tenants' charter' in the Housing Act 1980. It is based on a right to fair exchange of mutual rights to information and to be consulted. In fact, the 'charter' will be no more than guidelines on good management practice and on the content of tenancy agreements. If the guidance is not followed then the sanctions available to the Housing Corporation are three mentioned previously. Whether it will be prepared to exercise them is open to question, particularly in the case of large, expansionist and increasingly commercially orientated associations.

The only real right that transferred tenants will retain will be the right to buy. Transferred tenants will have no right to return to the council if dissatisfied with the new landlord and will have no say if the landlord decides to sell out.

Voluntary Transfers

The Act 'clarifies' the existing power of the Secretary of State to consent to a council selling its stock (contained in the Housing and Planning Act 1986). Even prior to the Act becoming law, several councils started to plan disposals of their entire housing stock to housing associations, ostensibly to get their tenants from developers exploiting 'tenants' choice'. As in the case of 'tenants' choice', affected tenants can only stop the transfer if more than 50% of them vote against it. The injustice of this voting system has been demonstrated by the case of Torbay District Council, when a clear 'no' vote by tenants to a sale was ineffective because the necessary majority was not achieved.

The government sees HATs, 'tenants' choice' and voluntary transfers as providing the framework for a further programme of privatisation of council housing. The aim is to force authorities to dispose of their stock and to coerce tenants into 'choosing' new landlords. At the moment, most of the new landlords are likely to be housing associations which are seen as the government's new providers of 'social housing'. In the longer term the government's aim is to increase the involvement of private capital in what it calls 'social rented sector'. The requirement that housing associations raise more capital privately is the beginning of a process that could end with the privatisation of the housing associations themselves.

Onto the Streets

The Housing Act will force those in low incomes out of rented housing without providing any alternative. The privatisation of the private rented sector will accelerate the growing emphasis on short term housing for the affluent and mobile able to pay market rents. The notion of a private tenancy offering a long term home will be a thing of the past.

Those who manage to stay on will have insecure, poor quality homes, overcrowded, and the option of overcrowded is not followed.

Harrassment and illegal eviction will be rife. Those tenants forced into unsubsidised sector will find it difficult to gain a foothold in the housing association or local authority sector. The government has already indicated that it is considering dealing with the inevitable increase in homelessness by restricting councils' obligations to house the over 40% of council tenants who are already nonsubsidised.

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Ways of Making You Talk

On 9 November 1988 Tom King, the Secretary of State for Northern Ireland announced that the citizens of Northern Ireland would lose the right to silence, or more strictly, the right not to be questioned by the police. He explained their silence whether it be at their trial or a refusal to answer questions regarding any alleged forensics evidence or their presence at a particular place.

The right to silence is a constitutional right, yet it has been drawn away without parliamentary debate and national discussion, by an Order in Council. This procedure involves minimal parliamentary time and an opportunity for amendment. It is expected that these new provisions will be extended to England and Wales in the near future.

Police Agitation

The move has been prompted by considerable agitation in the last few years from the police and some members of the legal establishment. They believe that the exercise of the right has led to many guilty people being acquitted and are irked by what they perceive as an 'privilege' rather than an exercise of a right.

It is important to examine this view to see whether it is borne out by established facts and to consider whether the change is necessary or desirable.

What advice is a lawyer supposed to give under the new law?

Unquestionably, one of the consequences of the abolition of the right to silence is the burden of a basic tenet of an accusatorial system of criminal justice is that it is for the prosecution to prove its case and there is no obligation on a suspect to assist in that cause. Since it will now be possible for tribunals to draw inferences from a suspect's refusal to answer questions from police officers, the police will inevitably shift their strategy to try to give evidence of his or her movements to the police.

The point is well expressed in the leading American case of Miranda v. State of Arizona:

'Our accusatorial system of criminal justice demands that the Government must bear the burden of proving that an individual must produce the evidence against him by his own independent labor rather than by the cruel, simple expedient of compelling it from his own mouth.'

Spill the Beans

Should pressure be put on a suspect in an adversary model to make a reply? The police view is that if one is innocent, it is common sense to talk. However, it is only 'common sense' if the interrogator is entirely impartial and if the suspect knows precisely what he or she is supposed to have done. Understandably perhaps, police officers questioning a suspect presume guilt, so that added pressure may be brought to bear upon a frightened, disoriented, innocent suspect. Police questioning varies in fairness and competence, but these difficulties will arise even with genuine but zealous officers who believe sincerely that they have the right to all the information. There are great dangers in concentrating police attempts to collect evidence on confessions, without giving suspects full and adequate safeguards. Considerable practical difficulties in preventing police abuses are immediately foreseeable. How will the police employ the new (and no doubt long-winded) caution? What will be the exact wording? How will the emphasis of particular parts of the caution to lean on suspects to be minimised?

Confess and Be Convicted

Convictions obtained by confessions without corroborative evidence are liable to be unsafe. Murder cases which may well be in that category include Timothy Evans, whose innocence did not save him from the gallows; the Guildford Four; Derek Probyn, and Dangerous Casualty, who was charged and kept on remand until one Steven Gayle also confessed and was sentenced to life imprisonment.

Carole Johnson convicted in the Guildford Four case blamed her own weakness as much as her police interrogators. If what she contends is fair, she does not believe that they were out to frame her but simply that they believed she was guilty. She maintains they must have done so or they would not have kept going on and on.

The availability of tape recordings at all police interviews and the full implementation of all the procedural safeguards contained within the Codes of Practice of the Police and Criminal Evidence Act 1984 would decrease the risk of unfair questioning, at least at the police station, but arguably the most important safeguard is the presence of a defence legal adviser.

Access to Legal Advice

The great majority of suspects are unaware of their right to see a solicitor and do not request one. A recent Hardiman Society study indicates that only 20% use the duty solicitor scheme. Moreover, suspects are often denied access. The system is repeatedly flouted, by the officer informing the suspect that there is no solicitor available or tricking the suspect into signing away his/her rights on the custody record.

Even when a duty solicitor is available, the suspect has often made admissions before obtaining legal advice or will speak when advised to say nothing. Denial of access to legal advice is especially serious in Northern Ireland where more than half of those who request it are turned down. Those arrested under terrorism provisions can, in practice do, have access to a solicitor denied for up to 48 hours without being brought before a magistrate. Possible provisions for granting a further interview and the tape recording of interview views will not apply to those arrested under emergency powers. Deliberately not tapping the interviews of suspected terrorists looks like cynical encouragement to 'verbally' tip them.

The absence of immediate legal advice is often a reason why suspects remain silent. Moreover, the best advice from a lawyer has often been to say nothing because at an early stage of the exercise of his 'right to silence' they are making and the state of the evidence available to them. What advice is a lawyer supposed to give under the new law?

Reasons to Keep Silent

There are numerous reasons to remain silent which are wholly consistent with innocence, they include:

- nervousness or inability to talk
- fear or shame at revealing for example membership of an extreme political party, or an illicit affair which would provide an alibi, or an explanation of other suspects' whereabouts at the time of the offence;
- threats of custodial sentences, the risk of disclosing other (less serious) criminal activity;
- protecting someone else;
- unfair methods of questioning;
- not knowing exactly what is alleged, so that it could be contradicted.

Most Suspects Talk

Recent studies indicate that the right to silence is only exercised by a small minority. The Royal Commission on Criminal Procedure (1981) found that 60% of suspects made confessions or admissions in interview, 20% were released without charge, 8% refused to answer questions at all. The Royal Commission itself concluded that the right ought to be not only retained, but strengthened. This view was implicitly followed by the current government in the Police and Criminal Evidence Act 1984.

In a separate study, Michael Zander also found that only 4% exercise their right to silence.

The Metropolitan Police have asserted that the right to complete or partial silence is now exercised by a fifth of all suspects, but there is no hard facts to support this. Even if true, it hardly represents a large increase from the 12% found by the Royal Commission back in 1981. Moreover there is no evidence to support the case that more guilty people go free as a result of exercising the right.

Heavy Burden

Zander comments persuasively that the burden (of proving its desirability) on those advocating change is a heavy one and is not made out. Full research needs to be undertaken not only to establish the proportion of suspects remaining silent, but also how many of those are then acquitted and in whose cases the defence was able to use the right. It hardly represents a large increase from the 12% found by the Royal Commission back in 1981. Moreover there is no evidence to support the case that more guilty people go free as a result of exercising the right.

In recent times, significant inroads have already been made into the right to silence by means of forced disclosure before trial (alibi defence, expert evidence, outline defences in some fraud cases, certain compelling answers under the Companies Act 1985 and the Financial Services Act 1987).

The Criminal Bar Association in recommending the retention of the right to silence, makes an interesting and cautionary observation: 'The loss of the right to silence would furnish the police with strong additional power, connected with the power of arrest and the power to search, that they have never had before if they were achieved in haste, without due consideration.'

Future Uncertainty

It is not clear what difference the abolition of the right will make in practice. Suspects will probably be advised (if a law is passed) to talk only via prepared statements, or may still, in some cases, prefer to remain silent. In addition it is unclear how the judges in Northern Ireland will draw inferences. What, for example, would be the evidential status of the refusal to talk? What, in particular, would be its status at committal proceedings? Would it be admissible as corroborative evidence or could it also be regarded as tantamount to confession in particular circumstances? What is to be the relationship of the new law with the privilege against self-incrimination - can the subtle excuses of prosecution-minded judges be adequately countered?

Need for Safeguards

A rule must clearly cate for the inarticulate and inadequate as well as for the sophisticated, persons of good character and hardened criminals.

In my view the abolition of the right to silence tilts the balance of crime-solving against a suspect's presumption of innocence and in favour of the police without any proper safeguards. It is an ill-conceived plan covertly underwritten by without proper investigation and research, relying heavily on unproven assertion and on prejudices. Attempts to introduce it in England and Wales should be strongly resisted. Its implementation in Northern Ireland has further eroded civil liberties there. The principle of not putting pressure on a suspect to participate in his or her own conviction is ultimately more important than any more convictions, whether right or wrong.

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John Platts-Mills QC:

Reminiscences of a Radical Lawyer

John Platts-Mills QC (JPM) is an integral part of the Haldane Society. He is currently the president, a post he has held since 1979. Before that he was chairman of the Society from 1942-43 and again from 1961-67. A New Zealand born radical, he has experienced the changing political fortunes of British socialism over the last 50 years. JPM was a Labour MP between 1945 and 1950, when he became an independent. He was a member of the Labour Party's left faction. More recently, he has received high acclaim as a criminal advocate taking silk in 1964. Head of the 'Cohorts' chambers, he has always deserved the label of 'radical lawyer'. Here he talks to Keir Starmer (KS) about the Haldane Society.

KS: John Platts-Mills, you joined the Haldane Society in about 1937, what sort of organisation was it then?

JPM: It has been very active in a narrow circle. This was largely due to the work of Dudley Collard and Neil Lawson. They required everyone to join the Labour Party, a trade union and, if you knew Dudley, the Co-op. The membership of the Haldane Society wasn't very big—much smaller than today. Everyone wanted to interfere with everything in the world and with the ascendency of Hitler the Society quickly became very active internationally.

KS: We had hundreds of children knitting balacivas for the Red Army.

JPM: In the late 1940's problems with the Labour Party extended beyond you personally. In 1949 the Society split and the Society of Labour Lawyers broke away. Why was that?

JPM: That was Gerald Gardner wanting to get on. He had not been in Parliament and wanted to assure his position in the Labour Party. He was a Communist Party member. I even remember some very conservative people in the Haldane Society simply because they were progressive and wanted change in the law.

KS: I'm not sure whether you would classify Winston Churchill as a 'progressive' conservative, probably not, but in 1941 you carried out some very important 'requests' of his.

JPM: It was Cripps' daughter that went on. She remonstrated me from the Temple saying 'Daddy wants you'. So I had to go along to Whitehall. I knew Cripps anyway. Cripps said 'I've got a job for you. I'm taking you to see the old man.' So he took me along to the House of Commons where we met Churchill in his room. Churchill said that if people in this country believed what he had been teaching them since 1918 there would be no war effort. He had been teaching them that the Russians are one another and eat their children. He said it had to be. He told me that I could have all the money I wanted and could get a small team together to improve Anglo-Russian relations. We set up an office in St. George's Square. We had hundreds of children knitting balacivas for the Red Army. We must have had a hundred tons of knitted goods. All in fact destined to sink on the convoy on the way there. School children were all writing essays entitled 'What I say to Joseph Stalin when I see him again'.

John Platts-Mills on the Grunwick picket line

Haldane Society at the time. He tried to drive out everyone who wasn't a member of the Labour Party by a whole series of manoeuvres like votes and postal votes. There was tolerance within the Party as to whether we were allowed to have a postal vote. Then it was all decided at a mass meeting. When he didn't get the right result he marched off with the other ex-Labour Party members.

KS: Isn't it now time for the two societies to get back together?

JPM: I can't think of any reason in the world why they shouldn't. The Labour Party is a much more understanding and broad based party now. We ought to hold the Labour Party to its original principles. If you go along with them you can do a lot of good. I really don't see any reason why we should not be affiliated again.

KS: The Haldane Society has a proud history of involvement in industrial disputes and you involved yourself in the Grunwick dispute. In particular you marshalled the picket line dressed in your barrister suit, black bowler hat and umbrella, with 'The Times' rolled up under your arm.

JPM: It wasn't arranged like that. I was on my way to court and my chambers wanted to lend support. The only way to do that was to go very early in the morning. The Haldane Society had decided to join the picket line that day—there were already 30 or 30 Haldane members there. They were all isolated from the main pickets and hemmed in by the police. One of our oldest members had the megaphone and when I arrived he gave it to me and said 'Here you are. John, you have a go'. I remembered that during the 1919 riots to find anyone to help them picket. So I told them that the only people who would help them picket was the Haldane Society so they better let us picket here.

KS: In 1975 you delivered a lecture to the Society on the role of the radical lawyer and shocked some members by advo-
cating a fully integrated system of radical prosecutors, radical judges and even radical commercial lawyers. You disagreed with the idea of 'socialist out-
pats' in the profession. Do you still adhere to those views?

JPM: I don't think I ever put quite like that. I'm very keen on integrated working teams. We should unite ourselves like fists and hurl ourselves at the enemy. On the other hand every individual ought to be spread out and merged with the world groupings that one belongs to as much as can be. I've tried to do that. In chambers anyone can come just like a Neapolitan. It has worked quite well I think.

KS: Do you believe there is any sort of creeping take over of the profession?

JPM: No, of society itself? That's what we're after.

KS: The problem is that the forces of society will not allow such a process to take place. Indicative of that is that you yourselves have never been called to the bench.

JPM: I wouldn't expect to be. I've never thought of that—indeed I'm not sure that any barrister thinks of that.

KS: How have radicals coming into the profession changed over the period you have known?

JPM: Well the tradition of being a radical lawyer is well established now. Young people can come to the bar with confidence that the career won't be set back by being a radical. I can see no reason why we shouldn't have radical judges soon and radicals getting into every good position in the country. The only thing to be the concern is that lawyers personally could have done many things better. In my early days I rather plunged in and shed my allies. I was too eager to thrust forward too fast.

Louise Christian

Police Complaints Authority—Worse Than Useless?

In the last seven years the number of police complaints has steadily fallen while at the same time civil actions against the police have increased. In London there were 9,178 complaints in 1981 declining to 3,045 in 1986. In the same period damages recovered from civil actions have increased by some 40%. On a recent television series 'Police Powers' Deputy Assistant Commissioner Winship, Head of the Po-
lice Complaints Bureau at Scotland Yard, identified what he perceived as a whole legal industry based around pursuing civil actions against the police and advising complain-
ants not to cooperate with the police complaints system. All the evidence suggests that the credibility of the police complaints system is diminishing among both the public and lawyers.

The new PCA was established by the Police and Criminal Evidence Act 1984 and given greater powers than its prede-
cessor, the Police Complaints Board. This seems to have had little impact on public perceptions of the system. Like the Police Complaints Board the PCA is a small quango of 12 members appointed by the Home Office, with a national remit. The Authority is divided into two sections, one dealing with the supervision of the investigation of com-
plaints and the other dealing with recommendations aris-
ing out of completed investigations.

The House of Commons Select Committee on Police Complaints had recommended a comprehensive network of regional police complaints officers but this proposal was turned down by the government. The effect has been that the PCA has little contact with complainants and is only a limited amount of direct contact with the police who carry out the complaints investigation.

Adrian Franklin
Power to Intervene

The Chief Constable of the Force to which the complaint is submitted, or in cases of complaint against senior officers, to the Inspector of the Authority, decides whether to refer it to the PCA. Complaints involving an allegation of serious injury must be referred. Serious injury is defined in the Act as an act of serious violence, damage to an internal organ, impairment of bodily functions, a deep cut or a deep laceration. The authority, therefore, recommends that the Chief Constable, or his or her successor, notify the PCA if the complainant or the person against whom the complaint is made requires advice about any action they may be contemplating in an investigation of the complaint. The PCA may insist that if a complaint is submitted that involves conduct during a period of time which has already been or may be investigated by the Police Authority, it must be considered by the Authority in the first instance.

A Bland Report

Supervision of the investigation entails one of the members of the Authority being allocated to the particular complaint. When that happens is that, the supervising member will receive a stream of medical and forensic science reports, supporting statements, tapes of recorded interviews and video recordings, all of which need to be studied with care. That study sometimes results in the investigating officer being required to pursue a different line of enquiry.

Disciplinary Action

After the investigation is concluded a copy of the report can be sent to the Director of Public Prosecutions for consideration on how to bring formal charges. In the case of a complaint against a senior officer this must happen unless there is no question of a criminal offence being committed. In the case of a complaint against any other officer the Chief Constable/Commissioner can also decide whether the offence indicated is such that the officer ought to be charged with it. If criminal charges are not brought the Chief Constable/Commissioner, or in the case of complaints against senior officers outside London, the police authority, considers whether disciplinary action should be taken. If criminal charges are brought and the offender is acquitted he cannot face disciplinary charges concerning the same allegations. This is why no disciplinary action was taken against the police officers involved in the shooting of John Shorthouse and Cherry Groce, after their acquittal on criminal charges. The decision whether or not to take disciplinary action is recorded by the police in a memorandum to the PCA which, like its predecessor the Police Complaints Board, has power to oversee the police and direct that disciplinary charges be brought.

If such a direction is given (and also for other charges at the discretion of the Authority) the disciplinary charge will be determined by a tribunal consisting of a Chief Constable or person nominated by the Commissioner plus two members of the PCA supervising the investigation. In most cases disciplinary hearings are conducted by a single senior officer. The record of the PCA in recommending additional disciplinary action is a matter of the Authority of the PCA to which the complaint is submitted.

Defence Statements Withheld

For lawyers advising people with civil actions against the police, the police complaints system is usually viewed as offering little or no benefit to the plaintiff. It is important that a police complaint is recorded at the time the incident happens, so that the complaint has been officially registered, many lawyers will prefer to try and stop the police investigation outright. This is because it can significantly prejudice any pending criminal proceedings and under no circumstances should the police be allowed to take statements from defence witnesses while these are active. Even after criminal proceedings are over, it is not a comfortable situation to have the police taking statements from prospective defence witnesses in a civil trial. Experience shows that such statements are invariably supplied to the police defendants' lawyers in the civil action. However the complainant's solicitor cannot get access to those statements. In Neilson v Langham [Lord Denning MR held that public interest immunity attached to these. Despite this solicitors for the police still attempted to cross-examine plaintiffs' witnesses on the basis of statements collected in the course of investigating the police complaint.

In Hehir v MPC this manifestly unfair practice was checked by a ruling that public interest immunity could not be waived without the consent of the maker of the statement. That ruling has been upheld as the position of the police defendants has been either to allow the statement to be used or to bring a statute for the purposes of the police complaint and yet the complainant has no access to them.

Bitter Experience

When senior police officers criticise lawyers for advising their clients not to cooperate with the police complaints system they should remember that such advice tends to be based on bitter experience of the way in which the system is manipulated to the advantage of police defendants in a civil action. This is done without any apparent feeling of obligation to the complainant/plaintiff or to the public interest in that the truth emerges. Despite all this there may be situations where lawyers can make some use of the PCA for the benefit of their client. Firstly, lawyers should ask the Authority to intervene in the investigation of all serious complaints, whether or not involving injury. The Authority can be written to directly and asked to consider supervising the investigation. If there are civil proceedings contemplated it may well be that the letter will also request that no investigation be undertaken until their conclusion but it will at least bring the matter to the immediate attention of the Authority.
Tony Ward and Dave Leadbetter

‘O Death, Where is Thy Sting?’

The answer to St Paul’s (and Brendan Behan’s) question is, in all too often: in the coroner’s court. Inquests often have the atmosphere of a pharisaical trial by innuendo. A habit which many lawyers find hard to break is to refer to the deceased’s family as ‘the defence’. Even when criminal conduct by the police is alleged, it often seems to be the deceased who is on trial.

‘A Very Low Priority’

Despite their drawbacks inquests can also be a source of consolation. It can be a real comfort to discover the truth about how a loved one died. But there are many obstacles along the way, the most obvious being the lack of legal aid. The government admits that inquests are, in the current Lord Chancellor’s words, ‘a very low priority’. The rationale seems to be that an inquest cannot award damages or pass a prison sentence and the mere pursuit of truth is a waste of taxpayers’ money. This attitude contrasts sharply with the position of publicly funded bodies such as the police and the prison department, where presentation of the ‘truth’ in a particular light turns out to be ample justification for legal representation at public expense.

How, When and Where

The government’s tendency to belittle the importance of inquests belies the notion that an inquest is a sufficient substitute for a public inquiry. As Woolf J remarked in the case of Colin Roach, mysteriously shot in a police station foyer, an inquest is indeed a public inquiry in the sense that it is an inquiry and that it is held in public, but not in the kind the Home Secretary was being asked in that case to set up. It is a restricted inquiry concerned with establishing ‘how, when and where a person died. How restricted depends on the coroner’s interpretation of the word ‘how’.

The coroner’s discretionary powers also extend in the calling of witnesses. The coroner decides whom to call, on the basis of statements taken by the coroner’s officer (almost always a seconded police officer) or by the police, which the lawyers appearing at the inquest are not permitted to see. Not only is there no right to insist that potentially important witnesses be called; there is also very little advance information about the witnesses who are called, making cross-examination difficult.

Procedural Absurdities

A crucial difference between inquest and public inquiry procedures is that it is not permissible to address the coroner or inquest jury on the facts. Juries are only called in about 4% of all inquests, but these include most contentious cases such as death in custody. The only interpretation of the evidence which the jury hears is the coroner’s. Some coroners can sum up complex and controversial evidence clearly and fairly; others cannot. Often the coroner’s mind appears made up before the inquest starts, based on the statements, and the case is conducted so as to railroad the jury into returning the ‘right’ verdict as quickly as possible. The inquest on Blair Peach, killed in Sowbhali in 1979, best illustrates these defects. But the recent conclusion of the Peach family’s civil action against the police also shows how important inquests can be. The case had dragged on for nine years. Then after a crucial victory in the Court of Appeal the question of disclosure it began to look as if the truth would come out in court. The police avoided potential further embarrassment by making an offer the family effectively could not refuse. The inquest was the only legal tribunal before which the police could be publicly called to account – however inadequately – for clubbing an innocent man to death.

An Institution in Decline?

Blair Peach’s case also inspired E.F. Thompson’s spirited and perceptive analysis of more specifically the coroner’s jury, as one of the ‘institutions of this country’ which the police, and the law-and-order brigade were seeking to subvert. Thompson contrasted the Peach inquest coroner’s attitude with that of his great 19th century predecessor, Thomas Wakley, who denounced several sensational exposés of institutional cruelty. While Thompson was right to highlight the democratic anachronism, evidence may never come to light unless the inquest system itself has its early 19th century heyday and becomes a more authoritative conspiracy against the rights of the British people.

The jury often looks like a rubber stamp for conclusions which have already been reached

Wakley was partly responsible for sowing the seeds of decline by his encouragement of forensic medicine and the preliminary enquiries he instituted in advance of the inquest. Subsequent inquest developments, in the wake of the Hillsborough disaster, have contributed to the decline. Old-fashioned techniques have robbed the inquest of its central role in the investigation of deaths. Most inquests now serve merely to present in public forum evidence, already assembled by the coroner, his/her officers, the pathologist and the police. The jury often looks like a rubber stamp for conclusions which have already been reached.

Should we now follow most US jurisdictions and discard the inquest as an anachronism? Or, can it be improved? There is no law preventing the inquest statements made by the coroner and/or coroner’s officers and the police to, and the experts to write a report instead? The trouble is that experts and professional investigators are fallible. As a coroner, the investigation of deaths had been a dead-end. An inquest is, as a forum where the investigation of deaths can be challenged and scrutinised, it is potentially invaluable. But this potential will not be realised unless the right of interested parties to challenge the official version of events is recognised as legitimate.

June Tweedie

Unanswered Questions: The Gibraltar Inquest

On 6 March 1988 three Provisional IRA members crossed from Spain into Gibraltar. Within hours they had been shot dead by the SAS. The IRA accepted that they had been on ‘active service’ in Europe, and 140lbs of Semtex were later found in Malaga. But on 6 March they were unarmored. Their car contained no explosives.

In September Gibraltar’s Supreme Court was taken over by one of the longest and most dramatic inquests of recent years. In this article I explore some of the legal issues that arose from the hearing.

The Gibraltar Courtroom Entrance

The Jury

Ordinarily, a jury inquest inspires greater public confidence than one conducted by a coroner alone. However, at the outset of this inquest Mr. McGrory, for the deceased’s families, submitted that the coroner should sit without a jury. He argued that there would be prejudice amongst potential jurors; witnesses adverse to the government’s case and lawyers for the next of kin had been maligning in the media. The coroner agreed with the Crown representa- tive that a jury was legally necessary because the death was unascertained ‘... circumstances the ... possible recurrence of which is prejudicial to the health or safety of the public ...’. There was also concern over the coroner’s refusal to ques- tion potential jurors about their government or Crown connections. John Laws, for the government, correctly ar- gued that there is no right to challenge an inquest juror in the absence of direct contact with one of the parties, or evidence of bias. However, the Crown was an interested party to the proceedings, and there was arguably an analogy with an inquest on a prisoner dying in prison. The Gibraltar Coroner Ordinance would prohibit anyone work- ing at, or even trading with, the prison from serving as a juror.

There was no hard evidence that any of the individual jurors was in fact biased; indeed their questioning of wit- nesses indicated a degree of objectivity. However, in a case with such major political implications, the watching world may doubt a jury that contained two high grade civil servants.

The Police Investigation

Crucial to the inquiry was evidence collected after the shooting as for ‘Police Combat’. Commissioner George Koo said he had not thought about a possible unlawful killing, and the police investigation appeared to reflect that view. As the coroner remarked, scenes of crime procedures seemed to have been forgotten. No official photographs were taken; bodies and cartridge cases were removed without recording their position.

The subsequent collating of witness statements was carried out at an unburied scene. Jacqueline Bullock was not approached for two months to make a statement; the police said there was no immediate need to do so because she ‘only’ contributed her husband’s account. Another witness was told that the police were ‘too busy’ to take an immediate statement; one was eventually taken ten days later.

Curious Omissions

As there is no advance disclosure of witness statements at an inquest, critics of the coroner’s report may never obtain the letter and spirit of the evidence as a whole, in the full knowledge of any inconsis- tencies. These proceedings were, on the whole, fairly conducted. However, Mr. Pazzarello at times played an insufficiently interrogative role. He refused to clear up confusing testimony. He also omitted to ask witnesses some key questions.

A case in point was that of Inspector Revagliante. He said that prior to the shootings he was on general mobile patrol, caught up with the suspects at an unburied scene. He was called up by radio to the base. He turned on to his siren, and, apparently oblivious to the operation, drove past two of the suspects being followed by SAS soldiers and their surveillance police teams. According to some witnesses the sirens precipitated the shoot- ing. It was also stated that the siren was unpremeditated and was not a signal to start shooting; nor an excuse to do so when the suspects turned to see what was happening.

But the Inspector’s role in the Operation was never re- vealed. He was officer in charge of the police firearms teams which had been on the streets for a number of hours and were fully aware of the potential for arrest. Meanwhile, appa- rently, their superior officer was completely unaware of the impending events. Had the coroner pointed out this curious omission, the evidence of the ‘accidental’ siren might have been effectively challenged.
The Summing Up

The fundamental flaw in the coroner's summing up was his legal analysis of the verdicts available. Unlawful killing requires proof of reasonable doubt. This legal flaw is proof on the balance of probabilities. If the jury decides the killings were unlawful, they must give the verdict of unlawful killing. If the jury decides the killings were not unlawful, then the verdict must be 'not proven'. The coroner's decision was that, if they were not satisfied beyond reasonable doubt that the killings were unlawful, they should bring in a verdict of lawful killing.

Although the coroner did say that an open verdict would be the only alternative if the situation could not be resolved in any other way, he did not explain how this proposition fitted in with his earlier direction, which appears to contradict.

The Open Verdict

The combination of these misdirections left the jury with little choice. Unless they were satisfied to the very high standard necessary for an unlawful killing verdict, they had only one alternative — lawful killing. Two hours before reading out his summing-up at breakneck speed, unusually, they were then given a 45-page transcript. After reading and interpreting the coroner's directions, they had to apply the law to the mass of evidence heard over three and a half weeks. At 5.20pm the coroner told the jury that it was 'reaching the edge' of a reasonable time in which to consider its verdict. The coroner then gave them a majority direction, and what sounded like an ultimatum to return a verdict by 7pm. At 7.15pm the verdicts were announced, by a majority of 9-2. Whether or not an ultimatum was intended, the remarks may well have pressurised the jury.

A Challenge to the Verdict

It is therefore arguable that there were serious misdirections to the jury providing solid legal grounds for quashing the verdicts. Whether the families take such a step is another issue, given the financial implications of a new inquest and concerns about the impartiality and adequacy of the proceedings overall.

Misleading

What, then, do the verdicts establish? A majority of the jury was clearly not satisfied, on the evidence before them and in the time available, that the three killings were unlawful beyond reasonable doubt. Whether the authorities have proved that they were lawful, even on a balance of probabilities, is a more difficult question. The effect of pressure of time and the coroner's misdirection may well have produced a distorted picture. The lack of recommenda-

Mary Stacey

Ethical Disinvestment

Recent years have seen ethical or non-financial considerations playing an increasing role in investment decisions. This has involved the establishment of 'ethical investment funds' and advisory organisations such as the Ethical Investment Research and Information Service. A whole industry of consultants may influence investors; but the one most likely to arise is financial investment in South Africa. For most fund trustees, avoiding investments in South African-related companies involves actively disposing of existing holdings as well as an 'exclusion policy'.

Judicial Block

The 1984 case of Coon v. Scorgill (1) seemed to sound the death knoll for disinvestment action by trustees. The NUM trustees of the Coal Board's pension fund sought, in line with their union policy, to (a) prohibit any increase in existing overseas investment and (b) provide for the withdrawal of existing overseas investment and (c) prohibit any increase in investment in energy industries in direct competition with coal.

The NCB trustees would not accept these restrictions and would only consent to directions for 'other powers and duties concerning investment. The court found the NUM trustees to be acting in breach of trust by seeking to limit the scope of investments.

Best Possible Return

Sir Robert Megarry emphasised the duty of trustees to get the best possible return on investments for the beneficiaries and stated that 'in considering what investments to make trustees must put on one side their personal interests and view.' But the judge also conceded that where trustees failed to make a particular investment for social or political reasons and the alternative investment was equally beneficial to the beneficiaries, 'then criticism would be difficult to maintain in practice, whatever the position in theory.' Only in cases where the alternative is less beneficial that would trustees be seen to be wrong.

The court reiterated the duties of trustees to act with prudence and care and to have regard to the need for diversification. For medium-sized funds such a broad-ranging exclusion policy still leaves a sufficient choice of investments to go from a reasonable rate of return can be maintained while minimising risk.

In the case of the NCB pension fund, however, the range of investments considered by the NUM was much broader, covering those companies which were involved in South Africa and those that were not.

Exploiting the Risk Factor

Mary Stacey

Ethical Disinvestment

Emphasis on the duty to minimise risk and to employ prudence can help avoid problems. It is lawful for trustees to exclude speculative companies on grounds of risk. Given the deteriorating political and economic situation in South Africa, the risk argument can be powerfully deployed.

The decision that disinvestment should be implemented was both financially and legally feasible.

Boycotting Apartheid

In the context of South Africa, disinvestment strategies take several forms. Many funds including trade union and municipal funds now specifically ban investment in South African companies. This is the best way to ensure that the problems thrown up by the Megarry judgment do not arise. An express ban, in the terms of the trust deed itself, will of course only be available if the monies are provided by someone sympathetic to the liberation strategy.

The best way forward is to concentrate on companies with strategic involvement in key sectors of the apartheid economy. The Council of the Law Society recently decided by a majority vote to disinvest from Northern Engineering Industries plc and Courtaulds as part of a policy of disinvesting from any company deriving more than 5% of its profits from South Africa. This decision followed pressure from members and from Lawyers Against Apartheid which is demanding disinvestment on the basis of the annual accounts at the 1988 Law Society AGM requiring the Council to review the Society's investment portfolio with a view to disinvesting in any companies which are estimated to be如果说投资在南非的任何公司获得超过5%的利润。

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Reference

1. [1984] ZAll ER 750
The Chilean Election:
A Testimony of Strength and Optimism

The Chilean plebiscite of 5 October 1988 was seen by much of the world as a contest between dictatorship and democracy. In the weeks after General Augusto Pinochet was officially designated the government's 'candidate unico' for the presidential plebiscite hundreds of parliamentarians, journalists and representatives of organisations around the world travelled to Chile to witness what was regarded as a measure of the legitimacy of his administration.

Anticipating this interest and foreseeing the need to put the plebiscite into context the London-based Catholic Institute for International Relations (CIIR) and the Washington Office on Latin America (WOLA) sponsored a joint mission to Chile from September 3-10 1988. I had the good fortune to be invited to join the delegation along with George Foukles MP, the Labour party spokesman on Latin American affairs.

Conditions for Democracy

Our brief was to look at the conditions for democracy in the run up to the election. Our first premise was that a plebiscite could not be compared with open and competitive elections. However after a long debate about whether or not the process should be boycotted, a broad opposition coalition had emerged in Chile in the Command for the No. It accepted that in contesting this plebiscite on unequal terms there were obvious inherent risks but nevertheless decided to embrace the challenge. It seemed to us that it was imperative for outsiders to find out what was really going on.

So two international observers buy on planes and arrive to watch ballot papers being stuffed into locked boxes and feel content to provide corroborration for an electoral charade.

We spent some of our time meeting with officials: the Head of the Electoral Process, the leaders of different political organisations, staff of embassies, as well as lawyers and human rights workers. We also got out of Santiago and travelled into the country to visit poor places where working class people were able to provide at times an even clearer picture of the current situation.

Free Fair and Secret?

It soon became obvious that there was little opportunity for massive fraud at the polls. People had registered to vote in unprecedented numbers, but the possibilities for abuse by double registration could only be effected on a small scale and was not a major concern of the opposition. The real problem lay not in securing a clean election but a fair one.

Many of the electorate could not believe that the ballot would be secret. All sorts of quite fanciful rumours were repeated to us time and time again by poor people particularly in the country areas: the ballot paper would be photorecursive and take fingerprints, a secret camera would be hidden in the voting booth, an invisible number could be made visible afterwards by using ultra violet rays or some scanning device.

... we were given a shocking picture of the fear instilled in much of the local population. They were being told they would lose jobs and homes if they voted against the established order.

The fear of the consequences of such disclosure can only be understood in the context of 15 years of terror and repression.

The irony of this situation was that it became the job of the opposition to convince the electorate of the secrecy and soundness of the election process.

Risky Business

What they had greater difficulty in doing was countering the pressure and inducements which the other side could bring to bear, particularly outside of Santiago. George Gelber of CIIR and I went up to Copiapo, a desert mining town in the North, where we were given a shocking picture of the fear instilled in much of the local population.

They were being told they would lose jobs and homes if they voted against the established order. People in public service were most vulnerable. School teachers particularly had been subjected to pressure and had been sent forms to complete indicating their loyalty to the regime.

Other workers from outlying areas explained that they lived in company towns where the mine owners had spelt out their voting requirements and made it clear that voting the wrong way, if it became known, would mean the loss of home and livelihood. While this did not deter everyone it clearly affected any open organising, discussion, canvassing or public meeting. No one could afford to be identified as a dissident. Ricardo Lagos, the Socialist leader, described the problems of holding public meetings when he toured the North because no schools or public halls were available as meeting places.

Carrots and Sticks

So much of the pre-election trappings that we take for granted were rendered impossible because of fear. It was therefore extraordinarily that so many people were prepared to go out and leaflet the communities and knock on doors and it was often from this source that the most heartening reports of smiles and nods and secret determination came filtering back.

Pinochet's other strategy was to offer inducements in the form of housing benefits or the gift of a bicycle or foodstuffs. However the poor often seemed amused at the crudeness of this attempt at bribery.

Television had a powerful effect in the run-up to the election. Having been starved of any real sight of an opposition on television the people where overwhelmed by the election broadcasts which were allowed in the month preceding the plebiscite. Town squares which normally teem with people ambling and smoking in the evening would be totally evacuated during these television spots.

The regime relied heavily on a campaign of fear. Pinochet was pictured as the answer to anarchy and citizens were seen on screen wheeling empty baskets in bare-shelled supermarkets or shuddering defensively while masked hooded masked broke windows and beat their children.

By contrast the opposition broadcasts were sheer joy. They were not only optimistic and celebratory but were technically masterful. So many actors, directors, artists and creative people in television have been exiled or forced out of their jobs under the regime that this opportunity to put their talents to the services of the opposition was a wonderful challenge.

Shadow of Armed Forces

Some people were disappointed that not enough was made of the outrages against human rights, which have been Pinochet's hallmark. The organisers of the opposition campaign insisted that it was imperative not to alienate the armed forces at this time as they would be an important factor in any transition from junta to democracy. Yet amongst the families of those who have disappeared, been tortured or killed there was a creeping concern that as in Argentina the crimes of the regime could be forgotten in the deals which might be struck to oust Pinochet.

The experience of being in Chile at that particular time was a potent reminder that optimism and the human spirit can remain strong despite the most horrific odds. It was a lesson in hope and made me feel shame at the despondency we sometimes indulge in here.

El Pueblo Vencerá

I left Chile with a strange secret: knowledge that the people were going to win. My sense of that had become stronger the more I talked into the early hours with all our contacts. The results could never reflect the reality of how people feel about Pinochet; the fear factor had to diminish the size of any victory, but victory there would be. What was less certain was whether Pinochet would concede defeat. People speculated about all sorts of scenarios involving a denial of the people's wishes. Many of the projections involved the provocation of such civil unrest that the regime would insist on the need to remain in control.

When BBC radio 4 announced the results of the plebiscite I laughed and wept simultaneously. I wanted to be there dancing and hugging all the brave, good people I had met and I envied George Foukles his return visit. As the days and weeks have passed I have become angry that such a powerful vote of no confidence has had such little immediate effect. Repression continues, the death squads are still taking their victims. The hardship and poverty for the majority of the population is increasing. Laws have been entrenched which ban any political organisation advocating class struggle or which undermines the state or the family.

Constitutional Fraud

There are also statutes which greatly inhibit public demonstration and freedom of the press and which make an offence to criticise the head of the armed forces who just happens to be the President. The Constitution which Pinochet introduced is a travesty of justice which may possibly prevent any transition to democracy since it vests so much power in the security forces.

The plebiscite demonstrated the will of the Chilean people but the road ahead is no clearer. Now more than ever international pressure has to be applied to Pinochet himself and to our own government which lends credence to his regime. Anyone who has the opportunity to visit Chile should seize the chance, if only to have one's own political faith restored.
THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS
E.P. Evans
Faber and Faber. £4.95

In 1780 at Vanvres-Jaques Ferron was tried, convicted and sentenced to death for digging a grave. Happily, the man was acquitted of complicity in this indecency. The inhabitants of Vanvres had rallied round and given evidence against the alleged rapist, his behal Store. At the trial they stated they had known the man for four years and she had at all times shown herself to be a virtuous and well behavee beast. Upon hearing this persuasive testimony the court decided that she bad had an unwarrantable purpose to the offending act and declared her not guilty. Few other animal defendants have been as fortunate.

E.P. Evans' book provides documentary proof of the cliché that truth is often stranger than fiction. It records a long, and generally unknown, history of animal prosecutions. In each instance the helpless creature has been charged, tried and (usually) convicted strictly in accordance with the criminal or ecclesiastical laws of its time. This method of policing the behaviour of the animal kingdom has led to barbaric and senseless cruelty (in some cases convicted animals were burnt alive) and, often, it must be said, to comic absurdity.

Readers will probably have no difficulty guessing who has provided the introductions and the captions. Both the lawyers have been assigned nearly all cases. Generally the facts are said to be fortunate in their advocates. Most spec-

ifically, Batholmew Chasseneau — a distinguished French jurist of the 16th century — is said to have made his reputation at the bar as counsel for a group of recalcitrant rats, on trial before the ecclesiastical court of Astun for their wanton destruction of the local barley crop. He relates that due to 'the bad repete and notorious guilt of his clients' Chasseneau was forced to employ a barrage of legal chicanery. After many days of legal argument the rodents were acquitted on a technicality.

Chasseneau went on to write an incredibly pompous treatise on the subject of animal law. He included a whole chapter on the correct procedures and helpful precedents. Doubtless, therefore, he would have been interested in the article published in the Journal of American Folk-Lore (January-March 1892 edition) in which the author respectfully sug-


gested a legal procedure by which a group of rats should be addressed to 'Messes Rats and Co.'

The absurdity of convicting or acquitting an animal is summed up by the essay's authors in the following words: 'One thing that can be said in defence of the accused is that the trial was a 'nice dilemma'.

Regrettably, Evans' book did not.

The criminal prosecution and capital punishment of animals is a complex and difficult subject. There are many defendants, the造成的, the judicial system is far too often at fault. The animal's legal system is replete with absurdities and injustices. This is an important book that should be read by anyone interested in the subject of animal law.
DANGEROUS EMISSIONS?

Dear SL,

My Council was particularly interested in Tim Kerr’s article entitled Why Wait Till Someone Gets Hurt? Safety Injunctions. And specifically in the paragraph referring to public and private nuisance.

For some years the Trades Council and local tenants at a nearby council estate have been concerned that they feel are excess emissions from a local factory producing vinyl wallpapers. Local residents, a hospital for the elderly and schools have been affected. Some residents have experienced bouts of nausea and sickness.

Analysts’ reports have been undertaken by the local authority but only small extracts have been made public on the ground that the company’s commercial interests would be affected by more extensive publication.

Attempts to resolve the problem to the satisfaction of tenants have failed. Even the Factory Inspectorate appears to be on the defensive, and politicians, although Labour, take the view that jobs are at stake if too much aggravation develops. Both residents’ representatives and the Trades Council were interested in the possibility of an injunction.

We assume legal action would have to be taken by a resident suffering? And that we would require scientific evidence which could be costly. Could the requirement of interest in land be satisfied by a council tenant’s lease? However, much legal action cost? We would certainly need a good and sympathetic lawyer.

The local authority insist there is no breach of the nuisance laws. But sickness and effects on vegetation continue – thin films of plastic-like skin cover gardens and produce. The company claims to have introduced precipitators to reduce pollution but residents claim there has been little or no improvement.

Could you offer further advice? All of our efforts have so far been ignored.

Dare Ayre,

District Trades Council

We're wary but we can't give specific advice or recommend a lawyer because of the codes on professional conduct we have to work under.

LETTERS

ELECTORAL INJUSTICE

Dear SL,

I was very pleased to read Gavin Millar’s article The Quest for Justice at the Polls in the last issue. I would like briefly to add my own experiences which offer little cause for optimism. I have twice taken up issues relating to elections with the Press Council and the Advertising Standards Authority. In both cases it proved to be a waste of time.

In late May 1983 the Tories, via Saatchi and Saatchi, published an ad alleging that the policies of the Labour and Communist parties were identical on a whole range of issues. One of these was said to be the opposition of both parties to ‘accept union ballots. Then as now, the allegation was completely false in respect of both parties’ policies. However, the Press Council does not deal with ’advertisement and the ASA would not dream of interfering with the ‘essential democracy’ of party political advertising.

I was particularly incensed by this piece of mendacious advertising since in the case of my own union, the CPSA, the Communists had successfully campaigned with all sections of the left, except Militant, to secure workplace meetings and secret workplace ballots.

Elections were so conducted party political broadcasts on television and radio. It was noticeable at the last election that, whereas the NF and BNP each enjoyed a minimum five minute broadcast (from me, how ever, they were both prepared to lose 50 deposits each, no party to the left of Labour was ‘granted a right of audience’. The threshold was once 50 candidates until 1983 it was up 99 candidates and it was then raised to 60. This obviously hurts left parties campaigning externally on a wide range of issues, rather than concentrating on a single issue or a narrow range of issues.

There is a wider insidious encroachment into the already limited opportunities for political debate of the party manifestos. Opinion polls are used to engineer reluctant voters, full complacent voters or to write off voting options. In addition, of course, the main commissioners of such non-scientific efforts are the press whose ownership is concentrated in so very few capitalist hands.

D. Shepherd
INTERNATIONAL CONFERENCE ON THE BICENTENARY OF THE DECLARATION OF HUMAN RIGHTS

9, 10 and 11 MARCH 1989
PARIS, SALLE CLEMENCEAU, SENATE - PALACE OF LUXEMBOURG

The International Association of Democratic Lawyers, the international organization of progressive and socialist lawyers of which the Haldane Society is the British section, is organizing a conference on these themes.

The conference is to be held on the bicentenary of 1789, the French Revolution. There will be sessions on: the Declaration of Human Rights in 1789; the enforcement of Human Rights since 1789, including rights of peoples and rights of minorities, economic, social and cultural rights, male and female equality, new technology and new rights, and the right to peace and right to development; and the realization and guarantee of human rights. There will be many workshops and roundtable discussions.

The Haldane Society should be represented at this conference in order to strengthen the British contingent as far as possible. All comradues who are interested in participating please contact:

Bill Bowring, 4 Verulam Buildings, Gray's Inn, London WC1R 5LW. Tel: 01 405 6114

THE EMPLOYMENT LAW BULLETIN is a highly successful quarterly journal published by the Employment Law Committee of the Haldane Society. It has a wide circulation among Trade Union, Trades Councils and labour lawyers. If you wish to subscribe, the annual rates (four issues) are as follows:

- Individuals 1-5 copies: £5.00 per sub
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The Haldane Society of Socialist Lawyers

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

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

SUBCOMMITTEES

CRIME
- Anita Leaker, Dewk Wyman and Walters, 317 Kentish Town Road, London NW5

EMPLOYMENT
- Jo Delahunty, 14 Tooks Court, Cursitor Street, London EC4

GAY AND LESBIAN RIGHTS
- David Gere, 2 Plowden Buildings, Temple, London EC4

HOUSING
- Edmund Jankowski, 25 Keppel Road, London E6 2BD

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

LEGAL SERVICES
- Kate Marcus, 96 Chichele Road, London NW2
- Rhys Vaughan, 382 Dickenson Road, Longsight, Manchester M13 6WQ

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

RACE AND IMMIGRATION
- to be announced.

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

WOMEN
- Alison Lee, c/o 14 Tooks Court, Cursitor Street, London EC4

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