FILE

SCCL BULLETIN

May 1987

STUC

SCCL

MEETING, MARCHING, PICKETING AND PROTESTING

A Trade Unionist's Guide to the New Public Order Act

FACING REALITY:

THE SCOTTISH PRISONS CRISIS IN THE 1980s

THE SCOTTISH COUNCIL FOR CIVIL LIBERTIES

May 1987

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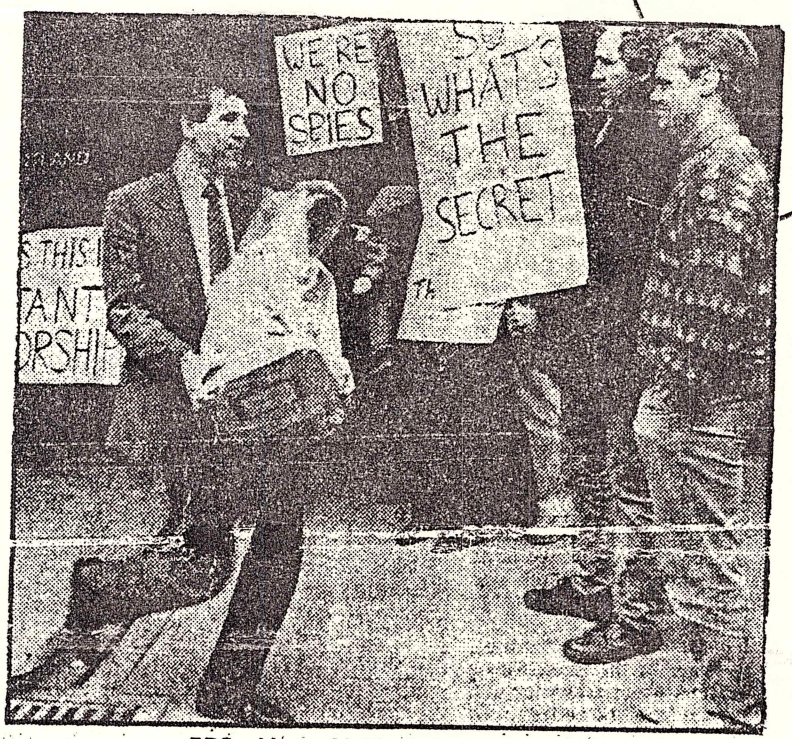

BBC raid: good faith of the search in question.

SCOTTISH COUNCIL FOR CIVIL LIBERTIES
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EDITORIAL

The police raids on the New Statesman and on BBC Scotland showed what lengths the government will go to when two of the obsessions which drive it to repressive actions happen to coincide - in this case it was their belief that the BBC falls short of the standards of journalistic objectivity set by the Sun, Star and Daily Mail; and their paranoia about the protection of GCHQ (which will be the customer for the data from the Zircon satellite). SCCL is concerned not only about the use of large scale police resources and incompetently executed legal procedures to intimidate the BBC, but fully endorses, as a defence of civil liberties in themselves, the efforts of Duncan Campbell to expose a project which, though national security may have dictated secrecy about technical aspects, has had its existence kept secret in order to avoid public controversy about its cost and desirability. We are therefore delighted that Duncan will be delivering our first James Cameron Memorial Lecture to coincide with our AGM.

One outcome of the affair and the prompt actions of the SCCL office bearers and others in putting the banned film on public display was, however briefly, to bring the name and significance of SCCL before a wider public than perhaps anything it has done before. In addition to generating comment and interest in the media SCCL has shown or had some involvement in the showing of the banned film to audiences in Glasgow, Edinburgh, Dundee, Aberdeen, Polmont, Dumfries, Kilmarnock, Faslane and Parth, allowing an estimated 3000 people to judge for themselves.

We hope that existing members will use this opportunity to interest more of their friends and contacts in joining and supporting our work. This is of course far more varied than simply responding to 'headline' issues, which the Zircon affair became, and this Bulletin as always can touch on only some of the areas of research and action which SCCL is involved in (and there are probably even more which it ought to be dealing with and can't).

Debate on many of these issues will be particularly intense during the General Election campaign. Whilst our concern at many actions of the present government has been profound, we take no sides as an organisation in the election itself. The office will do what it can to respond to enquiries about developments in civil liberties, and most probably SCCL will as in the past circulate to the Parties a common set of questions about their attitudes, and publicise the results.

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PUBLIC ORDER AND THE TRADE UNIONIST

At the beginning of April the Public Order Act came into force, giving police officers on the spot powers to ban or restrict parades and, for the first time, to place restrictions on open air rallies or pickets.

At the same time SCCL in co-operation with the STUC launched a leaflet which informs trade unionists of the changed position. It is being circulated to unions throughout Scotland (further copies can be obtained from the office at 30p each).

The two organisations are also combining to monitor the policing of processions, meetings and pickets. The STUC is issuing a standard form of questionnaire to trade union representatives. It will record when and how powers were used, in what circumstances and what reasons were given. SCCL will analyse the returns and report.

The Convention of Scottish Local Authorities has also recognised the seriousness of the issue, and has agreed to monitor in a similar way and report. Together these reports will provide for the first time a factual record of the state of our liberties.

S.C.C.L. NEWS

**** A long standing SCCL campaign took a step nearer to achieving its objectives on 6th. April. Secretary of State Malcolm Rifkind announced that **tape recording** of all CID interviews will now be introduced, following years of experiments and research. This will be done on a rolling programme starting 1st. April 1988. Unfortunately we have no information on how long it will carry on rolling after that before complete coverage is achieved - and even that would still leave large numbers of other police interviews being conducted without this safeguard.

**** In the last Bulletin we reported on an important increase in the level of **financial support** which SCCL was receiving from local authorities. Several councils had agreed to match the generous level of support (1p per head of population) which Strathclyde Regional Council has given for some years. As the end of local authorities' financial year approached, another highly significant fact has emerged: SCCL now gets financial support from over half of Scottish councils (all types), in fact from 34 out of 65. We hope that this will be taken note of by the Confedaration of Scottish Local Authorities (COSLA), and that we can perhaps obtain their authoritative backing for our financial appeal for 1987/88, which is already going out to every council.

**** Despite our criticisms of the Legal Aid regulations, which are reported elsewhere in this Bulletin, the new system at least takes the power to deny access to legal representation out of the hands of Glasgow's maverick **stipendiary magistrates**. They presided over an increase in the rate of refusal of legal aid from 2% of applications in 1984/85 to 29% in 1986/87 (first 6 months). One particular gentleman is alleged (Scotsman, 13th February) to have "suggested right after he arrived that we should abolish legal aid hearings altogether. He didn't see any point in them when he was going to refuse anyway."

But though this power has been taken away, the attitudes remain which led to a 50% increase in the average level of fine imposed by these particular magistrates in one year (from 1984 to 1985), and a consequent surge in the number of people imprisoned for defaulting on fines. To be fair, this increase is also partly due to Glasgow District Court's other big problem: the big increase in the number of serious cases which have been switched to the stipendiary magistrates from other courts. Though the Fiscal denies that this is being done to cut the costs of justice, no other explanation has been offered. The consequence is, as SCCL Executive member Alan Miller (who practices as a solicitor in these courts) told the Scotsman, that there is "widespread concern about the quality of justice at the District Court" and one of the buildings used is "squalid, cramped and lacking basic facilities such as interview rooms, forcing us to brief clients in public corridors."

**** SCCL is now an **"incorporated" body** at last. This does not refer to our selling out and becoming part of the system. All it means is that following the long overdue formal adoption of an Articles and Memorandum of Association SCCL is now technically a company (though it is not necessary to describe it as such for any normal purpose) and that Executive members are no longer personally liable for the organisation's debts.

THE PRICE OF JUSTICE

The new legal aid system has now been in operation since April 1st. Experience to date reveals many areas of serious concern. The new system was introduced allegedly to improve cost efficiency in its administration, but this has been shown to be questionable, to say the least, since there are more tiers of administration than before. In fact it is an open secret that the real objective of the government is to improve "cost efficiency" in the actual provision of legal aid i.e. to cut back on the granting of legal aid to accused persons.

Some of the many areas of concern are these. Firstly, an accused person, on first appearance in court from custody, no longer has freedom of choice of the solicitor who is to represent him. The scheme recognises only the duty solicitor for the day. However many duty solicitors are simply taking their place in a rota scheme and have little actual criminal court experience. They certainly cannot be expected to have the same knowledge of the personal history, family circumstances and background that the accused's own solicitor would have. A first appearance is an extremely important stage in criminal proceedings. Advice is given as to the plea to be tendered, arguments for bail are presented, pleas of mitigation are given etc..

Secondly, applications for legal aid must be submitted within 14 days of the pleading diet. This is a quite new and arbitrary regulation and devoid of any common sense. It will have the effect of barring a great many accused people from legal representation at a subsequent trial.

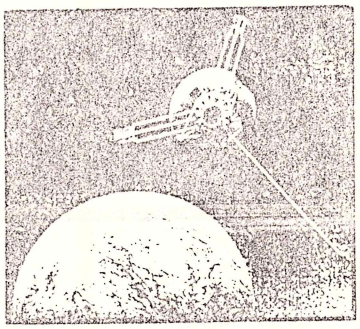
Thirdly, there will be no legal representation if the plea is one of guilty, unless the accused is likely to lose liberty or livelihood. But, again, the plea of mitigation after a guilty plea is a most important part of criminal proceedings, where all of the background, of the circumstances of the offence and of the accused are presented and a particular disposal of the case is thereafter decided. There are many disposals open to the court other than a custodial sentence and accused people will certainly suffer without legal representation.

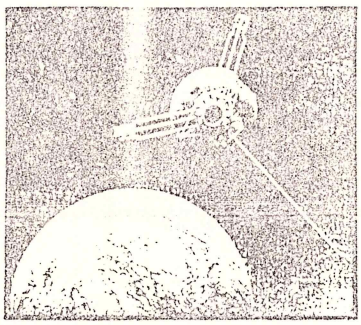
The general principle should be that where a matter is considered sufficiently serious to warrant prosecution, then there should be a corresponding entitlement to legal representation by a solicitor of the accused's own free choice. The Legal Aid (Scotland) Act 1986 is a further serious erosion of democratic rights. As with other recent anti- democratic legislation such as the Public Order Act, Trade Union and Employment Acts etc., the government's claims of concern to protect individual rights and for freedom of choice do not bear examination in the light of day.

Alan Miller

VIEW POINT

the lessons of "Zircon"





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The New QM Broadsheet

☐ David Godwin

The Secret Society episode on the Zircon Project - by now reaching quite respectable viewing figures without the benefit of a television showing - contained one genuine secret: the code-name Zircon. The word itself is of course valueless as a secret without the details of the project , which were available to intelligence services generally and to those of the U.S. and the USSR in particular.

Those who have seen the programme are aware that it's entire thrust has to do with concealment from Parliament and evasion of democratic accountability. As Duncan Campbell shows in the latest edition of the New Statesman, those who established the process of accountability - civil servants and MPs - believed that it was binding. The get-out clause subsequently produced by the auditor general was in fact a **proposal** made **before** the current system was established, and in any case makes a nonsense of that system.

Duncan Campbell

By a familiar twist of British anti-democratism, the one thing the programme has not achieved is a reinforcement of accountability. There is another programme to be made - will we ever see it? - about the way in which the affair was handled once the programme was made. The catalogue of disinformation is long, but the main points are as follows:

■ Neil Kinnock was persuaded, in a private interview which included the Prime Minister, that there had been a serious breach of security. This may have been true, but we now know that the cat was out of the bag long before the programme was conceived, and suppression of the broadcast could have concealed matters from Parliament and the public at large but not from the intellegence agencies or foreign governments.

■ *The Police raided the offices of the New Statesman after the legal branch of the civil service had advised that there were no legal grounds to obtain an injunction.*

■ Police then conducted a "fishing" raid on the BBC in Glasgow, ignoring the legal requirement of good faith - they removed articles which could not have been relevant - using a warrant which seems to have been obtained contrary to the rules of due process. This followed an earlier burglary by persons unknown who concentrated on the office of the programme's producer Brian Barr and who showed no sign of being motivated by profit.

■ When samizdat copies of the film began to circulate the police told the media that they were closing in on the mole and close to making an arrest. There was never any substance to this claim, and at no time was material available to the police which would have given a direction to their suspicions. Meanwhile the Crown Office who refused to advise SCCL as to whether it would be committing a criminal offence if it showed the film, did not take the opportunity to interdict the showing - and all this while the Government continued to claim that national security was under threat.

The level and quality of all this disinformation is pathetic. No one interested enough to examine it could reasonably believe a word of it. If the sense of democratic accountability was a live force in British politics heads would be rolling in the Palace of Westminster. But of course they are not. The only victim so far is the Attorney General, who by all accounts maintained a decent and straightforward stance throughout.

This is what the programme - and indeed the Secret Society series - is about. Enormous efforts have gone into an exercise in distraction, to keep it off the agenda , and the means of distraction used are themselves an offence against public standards of honesty and accountability. These are the things that They do not wish to discuss.

CRISIS IN SCOTTISH PRISONS

The series of riots, rooftop protests and hostage takings at Scottish prisons, and the action of the Barlinnie Prison Officers in banning admissions in protest at overcrowding in the jail have brought into the headlines the consequences of the boom in Scotland's prison population, already excessively high by international standards, and of the lack of attention given to means of reducing it and to means of decreasing the bitterness and despair experienced within prisons.

SCCL's response has been twofold. Firstly, we decided that though we could already find a good deal to say about what these means might be, the problems were so serious that a means of obtaining full evidence and new research was essential to producing coherent policies and a change in official thinking. We therefore decided to call for a Royal Commission to be established, in spite of this Government's well known antipathy to this method of operation. The call has now been endorsed by a broad selection of bodies and submitted to the Prime Minister in the letter reproduced below.

Secondly, we are publishing a major report Facing Reality: the Scottish Prisons Crisis. This aims both to analyse the problems and their origins and, crucially, to make detailed and positive recommendations for action. On page 6 we reproduce the summary of the recommendations for immediate and urgent action which the report contains, and on page 7 the recommendations for more far-reaching policy changes of the kind which would be investigated by a Royal commission if one were established. The Report will be available from the office shortly, priced £2.

The Letter to Mrs. Thatcher

Dear Mrs Thatcher

On behalf of the undernoted bodies and authorities we write to you on a most urgent and serious matter. In the prisons in Scotland we have suffered successive outbreaks of violent protest and dangerous disorder, and we have taken note of the responses of the Prison Department, its view of the problems and its intentions for the future.

We are not satisfied that the Department, with its present policies and obligations, will find a resolution of the crisis that we can accept in a civilised society. Neither do we think it right that the Prison Department should be left facing problems with which it clearly cannot cope.

We live in a country which has not only its own distinctive judicial and penal systems but also its own particular problems of imprisonment. In Scotland imprisonment has increased out of proportion to crime, to a level not found in England and Wales or in our Western European neighbours. We are told that this increase will continue and that further deterioration is expected by the departments of your Government.

We are deeply alarmed at the loss of hope of rehabilitation of prisoners, within the prison service, and at the social and spiritual as well as the physical conditions in which members of the Service have to work. As things stand now we believe that there must be alternatives. We consider that if there is none then that should be the conclusion of a public examination of the possibilities, so that the matter was understood.

We are disturbed about the lack of research and information available for public discussion, and at the absence of consultation in the past on the problems of our prisons. We are disappointed at the failure of alternatives, such as Community Service, to reduce the numbers of people going to prison.

We see that Scottish prisons have problems of an exceptionally serious kind and urge you to advise Her Majesty the Queen to establish a Royal Commission to examine the following:-

the conduct of the courts, and the effects of sentencing policy;

the availability of real alternatives;

the state of the prisons, and the nature and effect of regimes;

and the organisation, the operation and the goals of the Prison Department.

Yours faithfully

The call for a Royal Commission has been endorsed by: Clackmannan District Council, Edinburgh District Council, Glasgow District Council, Lothian Regional Council, Tayside Regional Council, the Scottish Prison Officers Association, the Scottish National Party, the Scottish Churches Council.

"Facing Reality" - extracts

Summary of Recommendations

1.1 the urgent practical measures:

1.Remove from the prison system those categories of people who need not h there by implementing the options put forward by the May Committee in 19 i.e.

(i) a general one off amnesty in respect of sentences below, for example, 2 years;

(ii) an increase in remission from one-third to one-half for a sentences or for sentences of, say, 3 years;

(iii) a conditional release scheme;

(iv) a system of flexible remission on a sliding scale, varyir according to the size of the prison population and therefor responsive to overcrowding;

2.Set up a maximum prison population so as not to exceed the capacities c prisons (these being assessed at least in part on European Minimu Standards;

3.Legislate to outlaw exceeding the capacities of prisons;

4.Establish & fund more detoxification centres in suitable locations;

5.Amend the Bail (Scotland) Act 1980 to create a presumption in favour o bail;

6.Establish Bail Hostels & Remand Centres as outlined by the 1987 SACR Report;

7.Fund the establishment of a fines supervision service in all social wor departments;

8.Upgrade training & selection procedures for prison staff at all levels Establish a training course for prison officers along the lines of othe professional courses with a 1 year minimum training;

9.Place a duty upon the courts to use fines, community service orders reparation, probation and suspended sentences for less serious offender who would otherwise go to prison. Intended as alternatives to custody these have so far been used mainly for offenders for whom there was n liklihood of imprisonment;

10.Promote the 'public interest' criterion for prosecution and exten social work diversion, whilst bearing in mind the public concer concerning the use of diversion for crimes of domestic violence;

11.Review security categorisation to reduce the number of prisoners hel in high security categories & create a small humane facility based on th model of the Barlinnie Special Unit to contain top security prisoner serving long sentences;

12.Set up an independent body to review regularly the effects o sentencing & penal measures.

13. Proper application of the existing prison rules

1.2 long term issues to be considered by a Royal Commission of Enquiry

Longer term changes are needed to tackle deep seated & worsening problems. The kind of thorough-going examination which is required - and the weight of recommendation needed - can only come from a high-powered, high prestige body such as a Royal Commission of Enquiry. This should address such issues as the following :

1. The Sending of People to Prison:

Prisons only deal with the people courts send them. Why it is that Scotland sends people to prison at a rate faster than the increase in crime?

*** A Royal Commission should examine how the prison population can be substantially reduced in the long term.**

2.Accountability within and outwith the prison system:

*** A Royal Commission should look at ways of making prisons publicly more accountable** both in terms of penal policy and its practice. This is the least that is required by the fact that the Prisons Department operates within a democratic society. An Enquiry should seek to to develop a structure of management whereby this will be achieved.

* It should examine ways of generating a duty to implement accountability in the prison system.

*** A Royal Commission should investigate the possibilities of bringing society into the prisons and prisons into society so that the prison system ceases to be the Cinderella of the social services, neglected and ignored by those not immediately affected by imprisonment.**

3. Discipline & Complaints Procedures:

* Royal Commission should look at whether there can not be a better balance between the need for discretion and the danger of arbitrary abuse of power i.e. **a means by which the arbitrary nature of punishment within prisons can be reduced.**

* It should examine by what improved means we can ensure that an equitable and effective system of justice operates within the prisons. It should look at means for redress for both prisoners and prison officers.

4. Training & Education of Staff:

A Royal Commission should look at ways of setting up **better education & training for prison staff and for Visiting Committees,** this possibly to be given over at least one year by professionals outwith the prison system (eg lawyers, social workers, psychologists etc) as well as those within.

5. More Information:

One task of a Royal Commission would be to **initiate research** so that we can find out more about who goes to prison, why they go there and what happens to them. This would include work on the Scottish system of criminal justice, of which the prison system is but a part;alternative regimes;the experience of other countries; the role & effect of punishment.

LEGAL RIGHTS - The wrong aim for women?

"It's problematic to see law as a tool of progressive change ... we give law a lot of power if we see it as a tool of our liberation".

A provocative speech by Carol Smart, of Warwick University, at a "Women and the Law" conference which I attended in Edinburgh last month on behalf of SCCL sparked keen debate among the packed audience. Carol, a leading feminist criminologist, argued that women were still locked into demanding legal equality and rights, without seeing that this strategy was extremely limited and could actually disadvantage women.

Last century, she said, women lacked the most basic legal rights, and campaigns to assert them were "correct" for the time. But law no longer formally denies rights to women, and it is increasingly difficult to know how to use law to gain feminist demands. Law can only accept women's experience if this can be fitted into legal forms of establishing "truth", she argued. Thus criminal statistics tell the "truth" about the frequency of rape. Rape Crisis Centres' statistics give a very different picture, but cannot be "proved". One truth is valued, the other is called irrational. Thus law disqualifies what feminism has to say.

The problem of pressing for "rights" is the ease of countering this with the same arguments. A woman's right to choose is met by the foetus' right to life; a woman's right to work by the child's right to be cared for. There is always someone more disadvantaged whose rights can be asserted against women!

Again "equality" has not even been successful in the straightforward case of pay, where more than 10 years after the Equal Pay Act, women's average pay is only three-quarters of men's. Demands for equality can be turned against women: "So you want 40,000 more females in prison?". Men's demand for joint custody after divorce is a demand for legal control over children. It is not a request to do some child care, nor to share low paid, part time work. The rhetoric of equality is increasingly used against women, by those who say: "The pendulum has swung too far." So many legal rights have achieved little because women lacked the power to avail themselves of them. We must realise the small amount that law can actually gain.

Carol Smart made clear that she was not simply being negative: women must develop other positive strategies, including self help, to achieve meaningful equality of power. But her views were challenged, particularly by groups like Women's Aid who have put much effort into legal change. Some people argued that women did still face many legal inequalities, especially in financial matters. Male dominance of the legal profession was discussed. Others felt strongly that it was vital to fight for convictions in, say, rape or battering cases, and that this had an impact on society's views even if convictions individually did little to reduce rape or domestic violence.

Unfortunately the speech and reaction left too little time for Carol or other participants to discuss what the positive alternatives might be. Perhaps SCCL members will start a debate on that in the Bulletin.

Sarah Nelson

*** Sarah also reports the announcement at the conference that a Women's Legal Defence Fund is being set up in Scotland after a similar move in England. This is to help women fight cases under the Sex Discrimination Act and the Equal Pay Act, where only about one in ten cases has been successful in the past, yet no legal aid is available. The office will try to get details for anyone who is interested.

KEEPING TRACK OF YOUR WHEREABOUTS
The new Community Charge Register

The Government's proposals for the abolition of rates in Scotland and their replacement by a "Community Charge" or flat rate poll tax on everyone over the age of 18 may well be law by the time you read this. A lot of the debate has quite rightly been centred on the overall unfairness of a new tax which will raise a larger share of its revenue from people on lower incomes than the rates did. A wide range of Scottish opinion, including an impressive coalition of voluntary organisations, have pressed this argument and others, though with little effect on the government.

But are civil liberties at stake in a change to the taxation system? The most fundamental threat which it creates may lie in the long term implications of the revival of the idea that full democratic citizenship depends upon financial contributions. That seems to be the sole justification for the charade of collecting 20% shares of the tax even from the poorest SB claimant or pensioner.

Less attention has been paid to the fact that in this supposedly simplified alternative to rates (which may in fact cost twice as much to administer, it has been estimated), there are new complications and dangers of falling into liability for excessive payments or for legal penalties, which all seem more likely than before to fall upon the people who are least able to afford the cost or obtain the help to sort out what they owe. Some of the reasons are quirks of the new system: for instance the danger that people who move in and out of institutions will end up paying both their personal tax and something towards the institution's "collective charge"; and the position of the separated wife who suddenly discovers that in spite of all the talk about every individual being liable for their own tax, the law is in fact going to make spouses "jointly and severally" liable for each others' bills.

But the key reason why it is not just the financial burden of the new tax which may fall most heavily on those least able to cope is that local authorities are going to have to set up and enforce a new system of registration of the population. The authorities will need to know who has been living with whom for how long, and who is "responsible" for them.

Especially if you are not a conventional owner-occupier with a "normal" family-type household you could very easily find yourself in the following positions:

- you are notified that the registration officer has decided that you are going to be designated as the "responsible person" who has to provide the list of people living in your premises; you can only get out of this by appealing to the sheriff;
- for one reason or another you haven't got around to providing this list (or you've tried to hide something); you now find that a "civil penalty" of £50 has been added automatically to your community charge bill;
- because you're used to the existing system of drawing up annual voters and valuation rolls, you haven't realised that this new register is a "rolling" one; in any case, because you know that somebody else has been made "responsible" for you and that canvassers from the council come round once a year, you haven't taken in the fact that (to quote the Bill) "Every person registered as being liable to pay ... shall notify the registration officer of any change which requires to be made to any entry relating to him in the register within one month after the event"; so you don't notify the council; several months later they find out that you're there; and you are presented with a bill for the full backdated amount, plus the interest on it, plus (if the delay has been three months or more) at least £50 on top as an automatic penalty, or 30% of the debt if that is more than £50.

It must surely be obvious to anyone with any social imagination who thinks through these scenarios that some people with no malicious intent, but simply a lifestyle scarcely more disorganised than the average are going to end up with some substantial debts; and that these will often be the people least able to meet them. We don't know yet if all these penalty charges will be excluded from the rebate system - but we can be sure that at least 20% of them will be.

So as it is described on paper the enforcement of the register will be draconian; payment of the tax itself can also be enforced by summary proceedings as soon as you are three months in arrears. It is likely that the effect of these powers will be mitigated in practice by the sheer impossibility of attempting to pursue all the arrears of:

- -claimants and pensioners who haven't paid the few pounds they owe under the "20%" rule
- -people who are homeless or move from place to place a good deal
- -young people with no independent income of their own
- -carers who are forced to take responsibility (as the Bill makes possible) for the financial affairs of their dependents.

Attempts to do so will surely bog down in vastly disproportionate administrative costs and public odium.

Any new government database causes civil libertarians to question what unofficial uses it can have and what other data might be combined and interchanged with it. The Bill provides little reassurance. Firstly the fact that registration of electors and registration for the new tax will be intimately bound up together is clearly confirmed. Just in case there should be any difficulty assessors are granted a specific right to see the information held by electoral registration officers (i.e. themselves). Though in theory an election register is only a slightly less comprehensive and up to date listing of the population than this one, the authorities have never in the past seen the need to pursue marginal and deviant groups who do not register. For the new register, they might; and also anyone who doesn't want to pay the tax had better make sure that they're not on the voters' roll either. That is why it is correct to call the new tax a "poll tax" not just in the medieval sense of a flat rate imposition on every "head" but in the new sense of a tax on the right to vote.

Secondly, if there is to be any protection against the interchange of data with other agencies, it has not been specified yet. The Bill says that Registration Officers must get access to whatever other council records he needs. The Secretary of State is allowed to bar him from using some sources - maybe Social Work and Police records, the Scottish Office says - but he hasn't decided which yet. Also, although the basic list of names and addresses of people who are liable to pay the tax will be a public document (quite rightly so, if we have to have it at all), quite a lot of other information will be collected. We know that the public won't be able to get access to that, because the Bill says so. But we don't know who else will, because the Bill gives the Secretary of State open-ended powers to draw up a list of permissions.

SCCL and others will have to keep track of these issues. Our fear is that the public will gradually come to accept the principle of constant state monitoring of their whereabouts. But then the administrative difficulty of sustaining this will lead to the need first for a supplementary national register to keep track of people who move around (as the Institute of Cost and Management Accountants has warned), then perhaps to a comprehensive national register and on to identity cards and beyond.

Peter Taylor

POLICING CIVIL LIBERTIES - COMING FROM ANOTHER DIRECTION

When we talk about accountability in the police we are usually thinking about the potential a police force has for infringing our liberties. Recent developments in public order law and policy have given topicality and importance to another aspect of the police function - their role as protectors of civil liberty, and the way that is affected by government policy.

In its response to the Public Order Bill (The Public Order Bill - The Scottish Case Against It, 1986) SCCL argued that official pessimism about crime was being used to excuse a new emphasis on public order, and public order powers. It remains important that - if we only take the European Convention of Human Rights - there are significant liberties including the right to life, to freedom from intrusion and physical abuse and even the freedom of assembly, for the protection of which we rely to a significant extent on the police.

Despite the fact that there are many - and some famous - occasions when the police have made an assault on democratic rights there is undoubtedly a strain of thought within police culture which attaches importance to the protection of civic rights; even if lack of accountability prevents much productivity in this field.

It may be that in numbers of forces in England and Wales matters have deteriorated beyond any foreseeable recall. In Scotland however there has been no real parallel. While there have, contrary to police statements, been inner city riots there has been nothing on a large scale. It was SCCL's observation that, during the miners' strike, the Scottish police set off down the same road as their English colleagues but then, in most respects, pulled back, avoiding the atrocities of Orgreave and Tuxford Junction. It seems clear - though not officially acknowledged - that the Scottish police offerred no support or encouragement for the Public Order Bill.

The Public Order Act presents us with an almost inevitable "ratchet" effect, unless we can find a route to real accountability. Most police officers will shrink from using powers they know to be unnecessary and potentially provocative, but the officer on the spot will be liable to criticism for not using them, in certain circumstances, and the officer is put under pressure to use the powers by the fact of having them. When they are used the public's expectation will change, people will attend demonstrations expecting more provocative policing, and low-key protection-orientated policing of public events will become that much harder - making use of the powers more likely. We are talking here about the effect of public order laws on the <u>quality</u> of policing and the ability of the police to protect the right of peaceful assembly. The harm is to good police work as well as to the right to dissent.

The time is ripe for local police authorities to look hard at this issue - protecting civil liberties not only from the police but from legislation which effectively disables the police in a key function. But this is not just a matter for police committees. The police themselves have an interest, if they will acknowledge it. It has never been more in their interest that their work should be accountable to the public they serve, and unless they can take this on board they are likely to find themselves on a slippery slope, in the wake of the Met. and other forces south of the border.

Legislation is required to <u>force</u> the police to be democratically accountable, but a great deal could be accomplished just by voluntary agreement if the police set themselves to identify their objectives with those of the public they are employed to protect.

David Godwin

Families Outside

ANNUAL REPORT 1986

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1 Foreword

If you sit in the waiting room of any prison, before visiting time, you will see a majority of women. There will be elderly, shabby, tired looking women visiting sons, giggly teenagers up to see their boyfriends but most will be tense, cheerful women in their twenties or thirties. They will be carefully dressed, hair newly washed, well made up and often accompanied by lively, nicely turned out, small children. See the same women coming out after the visit and the masks have dropped. Their shoulders have slumped, the make up is less convincing, their tempers are shorter, the children more fretful. For the next month they will again be on their own without the emotional or sexual comfort of their partner left behind in the prison.

In the last year we have seen riots and roof top protests in Peterhead, Saughton and Barlinnie prisons. Publicity has been given to the problems of the prisoners, the overcrowding, the degrading conditions in which they live but little or nothing has been said about their families. No cameras are turned on the women and children outside the walls who have to cope with what too often is a hostile and prejudiced world. No one asks them to talk about their loneliness and despair or about the bewilderment when, never before separated from a husband or partner, a woman is suddenly left to take sole responsibility for her family.

As the women see it they too are being asked to serve a sentence and often it's a more severe sentence than anyone realizes. The man in prison, horrible though the experience is, will be cushioned from the day to day hassle of coping with the DHSS, the housing department, school teachers, unhappy children and finding three meals a day. He is encouraged to retreat into a mindless passivity which will get him through his sentence in as short a time as possible. The women are left to cope with the front line of living.

Most of them had no idea that their partner was involved in any illegal activity; sometimes the offence was committed on the spur of the moment. They may be convinced he is innocent, they may think he deserves the sentence, but all of them feel abandoned. They feel they are being punished too and no matter how much they love their husbands, some anger against him is inevitable. Yet more than ever their husbands need their support. All he has left to look forward to is whatever visits he may be allowed, all he has to think about is what's happening to his family.

This intensity of feeling can place a great burden on wives and girlfriends because it is often accompanied by suspicion or jealousy that in their absence another might take their place. In prisons where telephone calls home are allowed, an unanswered call or even an engaged signal can arouse desperate anxiety about where the loved one is or who else is phoning her. The next contact often starts with a shouted angry question or accusation. It's hard for the woman to respond reasonably if she has in fact been sitting waiting in a DHSS office while trying to cope with three children under five. In the few prisons where the inmates are allowed to have personal radios or curtains or

to decorate their rooms, just as with patients in hospitals, a kind of rivalry can build up where visitors are expected to demonstrate their love with tangible, expensive presents. The DHSS will not allow for that in benefit payments. I hate to think of the pressures that would be placed on women if, under the present system of monthly visits, conjugal visiting was allowed.

The world around families of prisoners is unsympathetic. If the criminal case has been reported in the papers, neighbours may be hostile, children at school can be harassed by other children, teachers may be insensitive. Visits to the DHSS can be humiliating, application for financial aid to visit a prison which is some distance away is fraught with uncertainty (in one case it produced a grant for a one way ticket). These women have the disadvantages of widowhood without the respectability, and the disadvantages of being a single parent, without the freedom to seek a new partner.

The first stage is often bewilderment. A woman will stagger out of court after seeing her husband convicted without the slightest idea what this means for her. When can she see him again? How often do you get a prison visit? What is remission? Do you need to tell the housing department? Then comes the loneliness, the sense that there is no one who understands how you feel and this is often a critical point. Dave Hardwick, a former prisoner who has written a survival guide for wives and families of prisoners tells of one reaction, "I was so panicked, I was crying," said one wife who had just returned from court to her empty home. "I cried a lot and yelled at my son; I felt helpless and very lonely".

The seriously overburdened social services do what they can but more is needed. There are however, throughout Britain now, groups springing up, often working in isolation, which are trying to fill the gap. In Scotland we are fortunate to have FAMILIES OUTSIDE, a registered charity set up in 1983, which is preparing a list of organizations so that a network of support will be available in every area. The staff of FAMILIES OUTSIDE provides a Scottish survival guide for families about what to do and how to do it– information on housing, finance, prison routines, prison transport and any other problems that might arise. But increasingly they are finding that is not enough, that the pervading loneliness cannot be advised away and that the most helpful experience for women left outside the prison walls is to meet with other women who are facing the same problems and find ways of coping by sharing the pain and learning how to deal with it. The staff see the resourcing of self help groups as a priority.

This is a skilled service and a very important one for all of us. These women and their children are a prisoner's main link with a humane reality: if his family disintegrates a prisoner's chances of rehabilitation are poor. In an ideal world the statutory social services would be expected to provide it. In this imperfect world where Government cuts are savaging even the services which the public recognize as having high priority, the families of prisoners have in the main to rely on voluntary services for this specialized support. FAMILIES OUTSIDE runs on a shoestring, uncertain from year to year whether or not

they will be able to survive. This is how many of the most important ideas have to be launched before they become fully accepted.

Any work connected with women is given low priority. Women connected with men in prison have even less. Yet women who care for children who are at risk because their father is in prison, work at holding the family together while coping with their own pain should command not only our sympathy but our respect and support. More than most of us they live in a world they didn't make.

KAY CARMICHAEL

Copies of the Report are available from the office, price £1.50

CIVIL LIBERTIES IN THE WORKPLACE - REMEMBER WE'RE IN EUROPE NOW!

For many people "The European Court" means the Court of Human Rights. That court administers to a widely drawn group of states on the basis of a code drawn selectively from the United Nations Declaration of 1948. It has no connection with the European Parliament or the European Communities - not even the same membership (although there is a proposal that the European Parliament should adopt the Convention.)

For the Communities, however, the European Court is the Court of Justice, a different institution entirely. A clear account of what it is and does from the civil liberties point of view seems to be hard to come by. This article is a - no doubt stumbling - attempt to introduce the subject, particularly to trade unionists. (Members expert in the subject are invited to contribute

The Court of Justice exists to serve the legal (in the broadest sense) needs of a European Community which is still an infant in terms of political and economic co-operation. Such co-operation requires, amongst other things, that workers should be able to move freely from one member state to another. For such movement to be genuinely free, the conditions for workers have to be harmonised so that movement does not leave a worker worse off in terms of conditions in the workplace, security, industrial benefits, safety, health and welfare, sex equality, unemployment provision etc. Those "social" provisions of the Treaty of Rome are - to an increasing extent - administered by the Court of Justice alongside its work on fair competition, financial disputes and so on. The Court is serviced by the an associated bureaucracy, the European Commission.

The law of the Court is derived from the Council of Ministers, a periodic assembly of foreign ministers of the member states. Of course the infrequent meetings of such a group could not be expected to produce any large or detailed body of legislation, and this task is delegated to the Commission, which issues voluminous "directives", derived mainly from declarations of the Council. These directives have a binding effect on domestic courts, and in any case where a directive might apply a local court is required to refer for any necessary guidance to the Commission before reaching a decision. (In Scotland this is embodied in a Court of Session Act of Adjournal of 1973 and can be found in the Parliament House Book.)

What does all this mean for civil liberties? At present the range is limited. The most noticeable impact has been on sex equality at work, and in this field the Court has tended to go further than our domestic legislation. In one recent case the Court found against the Chief Constable for Northern Ireland for discriminating agai nst women by not including them in duties requiring riot gear and firearms. (The author, being of a mild disposition, does not wish to meet the applicant in this case.)

In other cases U.K. courts have found for female applicants who might not be protected by the Sex Discrimination Act, after referring to the European Court for its opinion.

The so-called European Parliament is not a law maker as domestic parliaments are. It is essentially a forum for developing policy and commenting on issues. Law is made by the Court and the Commission, acting for the Council of Ministers. Because the E.C. is a developing institution the way in which the Court reaches its judgements can seem strange to those of us accustomed to courts which exist essentially to serve the status quo - that mysterious thing the constitution. The European Court serves a project, an institution which does not yet exist in the terms envisaged. It sometimes seems to pluck principles out of the air for its own purposes. Nothing in its articles

attaches it, for example, to the Convention of Human Rights. Yet it has declared that because the Convention is an expression of the will of states in Europe it will take the terms of the Convention into account in all its judgements.

Until last year the Court drew its constitutional authority from the Treaty of Rome (1957), which is, in terms of current aspirations, a rudimentary instrument. 1986 saw the introduction of a new instrument, the Single European Act. ("Single" because it drew together the notion of economic and social harmonisation with that of co-operation in foreign policy.) This Act amended and enlarged on the terms of the Treaty of Rome. It will have the effect of expanding the scope of the European Court and Commission as well as strengthening it organisationally.

The potential of these institutions runs quite contrary to recessive developments in the UK over the 80's. "Harmonisation" is defined as an upward movement, not a lowest common denomiator (this is explicit in the Single Act). Social welfare and civil liberties in the workplace are to be improved to match the higher standards prevailing elsewhere, not revised down in the interest of spurious incentives. And unlike the unenforceable European Social Charter the Court and the Commission, wherever they have legislation, have also got teeth.

It is important that trade unionists and those promoting social welfare come to grips with this material. It took many years for Scottish people to realise the availability of the Court of Human Rights. We need the offices of the Court of Justice now, to oppose a trend.

Much of what we need from it is so far only potentially available. There are various instruments which exist as yet only in draft form, and since European democracy is not something the British have properly realised yet there is little pressure to proceed with them. A good example would be the draft Fifth Directive, or Vredeling Directive. This is an instrument which, if introduced, would make detailed requirements of employers to enter into consultation with their workers before initiating changes likely to affect the workers interests (what price Caterpillar?).

The material coming from Europe is voluminous, and seldom presented in a form that makes these issues very accessible. It will rest with the unions and the universities to make it so, because the Government will not hand it to us on a plate - see its record on the Convention of Human Rights - while Community law is able to exert a pressure which, apparently, the British electorate will not.

David Godwin

Note: there is a lengthy and skilful discussion of the Vredeling Directive in the Modern Law Review, May 1986, available in reference libraries. The European Single Act can be hard to find in libraries because the edition they are likely to hold is that published by the Council of Ministers, which appears as Supplement 2/86 to the Bulletin of the European Communities.

STRIP SEARCHES AND PERSONAL SEARCHES - The Questions

On 16th. September 1985, 9 women taken from a peace protest at the Clyde submarine base were subjected to humiliating personal searches at Clydebank police station, in public and in the presence of male officers and arrestees. The men arrested with them suffered no such intrusion and SCCL's report of the episode has aroused considerable public concern.

In July 1986 the Government acknowledged that 4,219 strip searches had taken place in Cornton Vale - the women's prison for Scotland - the previous year. The prison had an average population of 172 during the period.

As a result of these experiences and the knowledge that personal searches can too readily be used to intimidate and abuse, SCCL has tried to research into the incidence of strip searches in Scotland and the legality of them. This article summarises some of our findings.

Extent of searching A detailed breakdown of the strip searches carried out at Cornton Vale has been obtained from the Scottish Office and is, so far as we are aware, published here for the first time:

MONTH	ON ADMISSION/ DISCHARGE	ROUTINE ROOM SEARCH	SPECIAL ROOM SEARCH	AFTER 'OPEN' VISITS	TOTAL
1985					
January	193	29	NIL	146	368
February	173	45	NIL	192	410
March	174	43	NIL	154	371
April	159	38	NIL	123	320
May	110	41	1	112	264
June	276	31	NIL	93	400
July	180	60	3	124	367
August	161	60	3	159	383
September	168	72	NIL	121	361
October	143	47	22	112	324
November	145	50	41	165	401
December	111	29	-	110	250
	1993	545	70	1611	4219

Source: Scottish Home and Health Department. Figures are not gathered for male establishments

The figures available for 1986 show a slightly reduced total, but a broadly similar pattern. In a letter to SCCL in November 1986, the Director of Prisons said that "Such searches are crucial to the maintenance of prison security and are carried out to prevent prisoners having concealed weapons or contraband substances such as drugs", and went on to say that searches were only carried out to the extent necessary for this purpose.

At about the time that he was writing in this vein, the Northern Ireland Office was publishing a pamphlet about the practice in Armagh Prison. Until recently this was the women's prison for the province and it had been the target of heavy

criticism over its use of strip searching. The pamphlet records that strip searching, as an alternative to the "rub-down" search, was introduced at the prison in 1982, following a breach of security. It goes on to observe that:

The matter was kept under review, and in March 1983 the level of "reception" searches, or strip searches as they have come to be called, was scaled down. For example 807 searches took place during the first 6 months of 1983; 411 in the second 6 months; but during 1984 only 355 searches were carried out in a full year. Since March 1983 women prisoners have been routinely strip searched only on admission to and discharge from the prison, when going on and returning from home leave, making inter-prison visits and when engaged on a working out programme. Prisoners attending court for remand hearings or for trial are strip searched on a random basis only.

It is often suggested that strip searching is carried out a good deal more frequently in Armagh than in women's prisons in other parts of the United Kingdom. However the figures available indicate quite clearly that in fact the reverse is the case. For example despite the fact that Armagh prison holds a higher proportion of inmates imprisoned for very serious offences than any women's prison elsewhere in the United Kingdom, **the incidence of searches for 1984 is less than a quarter, pro rata, of what it is in Scotland.**

The Scottish Prison Rules provide for every prisoner to be searched "on admission and at such times subsequently as may be directed". If the Northern Ireland Office is correct in its assertions, then it appears to be getting by with a very different set of directions from the Scottish Prison Department. We are entitled to ask just what would remain "necessary" if notions of human rights and human dignity were taken seriously.

Remedies There are circumstances where searches can be challenged. There is little or nothing that can be done at the time, but a civil action for damages will in some cases be available to challenge the good faith of a search. In one case a prisoner complained about being searched on a rota basis. A search that is known of beforehand cannot be expected to find contraband, and he was advised to seek a declaration from the court of his right not to be subjected to such a procedure.

Most of the case law on the subject comes from criminal trials where the defence has challenged the legality of the means by which the police obtained evidence. However the large numbers of people who are detained under the 1980 Criminal Justice (Scotland) Act and then released without charge have no such means of challenge open to them. (The Thomson Committee, whose report led to that Act **did** recommend that searches which involve invasion of the body should not be carried out without either consent or obtaining a warrant.) It might still be that invasive searches carried out in some way which can be shown in court to have been unnecessary or oppressive, and without a warrant, could lead to a successful claim for damages. In the Clydebank cases, for instance, the clear evidence of the differential treatment of female prisoners may be significant to a court.

Nevertheless, as the law now stands, cases where a search is open to legal challenge are the exception rather than the rule. There are strong grounds for believing that intrusive searches may be significantly on the increase and that they can be used to humiliate and oppress and as a form of sexual bullying. Public awareness and pressure will be the most important element in the prevention of over-use and abuse.

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