

LIVING MARXISM LM106 | UK £2.50 DECEMBER 1997/JANUARY 1998 | US\$6 DM9 FF27 IR£2.50

# LM106

The mag ITN wants to gag



## Year of the victim



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# LM106

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# LAW WARS



## POWER TO THE JURY

Using cases like the Louise Woodward trial as an excuse to undermine the jury system would lead to the biggest injustice of all, suggests John Fitzpatrick

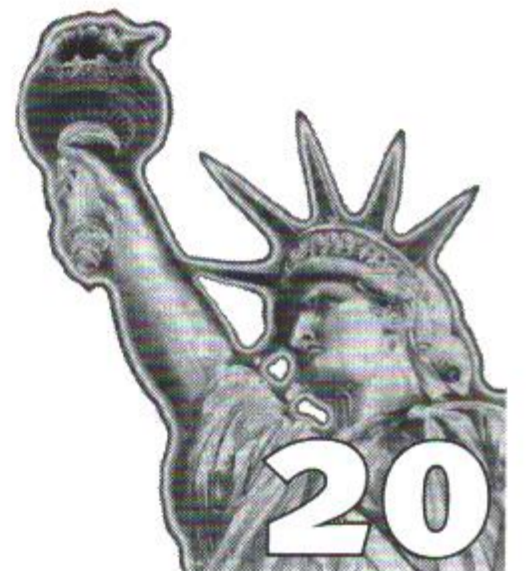
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The New Labour government's incorporation of the European Convention on Human Rights into British law is nothing for civil libertarians to celebrate, says James Heartfield



## MO MOWLAM'S MARCHING ORDERS

Brendan O'Neill has never worn a bowler hat and sash, but he thinks that the Orange Order have got a point about New Labour's 'authoritarian' Parades Commission for Northern Ireland

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As the law is extended into ever-more areas of everyday life, James Heartfield challenges some recent attempts to rationalise legal activism

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# MICK HUME

Editor



# YEAR OF THE

IN THE COURT OF PUBLIC OPINION, THE Louise Woodward case quickly became a battle to see whether the British nanny or the American parents of baby Matthew Eappen could successfully lay claim to that most prized title of our age, 'the Real Victim'. In this contest hard facts and evidence count for little, while feelings and emotions are all that matter.

The prosecution side was supported by the American child abuse establishment: a collection of social workers, doctors, legal experts and journalists with the mindset of the inquisition and a predisposition to see every child as the victim of abuse. For them, Lousie Woodward was a witch.

Meanwhile, from the editorial offices of the national media to the Rigger pub in Elton, Cheshire, the defence side was championed by the moral crusaders of the New Britain AD (After Diana). For these people victim support is now a national sport, with Louise Woodward allotted the role of first martyr of the post-Diana era.

As the two equally unsavoury, quasi-religious cults competed to show which side had suffered the most, the row surrounding the Woodward case came to symbolise the mood that has made 1997 the Year of the Victim.

The defining events of the year were of course the death and funeral of Diana, Princess of Wales. Diana was the patron saint of victims. Her credentials for being 'Queen in people's hearts' rested upon her own public proclamations of how terribly she had suffered, and the ability this supposedly gave her to empathise with other unfortunates. The huge emotional reaction to Diana's death reflected the maudlin state of the nation.

If 1997 has been the Year of the Victim, however, it has only been the culmination of a longer term trend. The national trauma which followed Diana's death brought to the surface what had been bubbling away below for well over a decade.

For many of us associated with *LM* magazine, it was the defeat of the miners' strike way back

in 1984-85 that marked the first turning point, signalling a sea-change in the nature of society's struggles and solidarities. From then on the big issues were no longer to be about people standing up and fighting for their demands together, but about poor, put-upon victims queuing one at a time to plead for charity, compassion, counselling and compensation. The pathetic *Big Issue* seller became the 'street fighter' of the new age.

The victim culture has advanced fast on both sides of the Atlantic in recent years. In Britain, the mileposts have been a series of personal tragedies which became the excuse for national outpourings of mourning and emotion: most notably the killing of two-year old Jamie Bulger by two 10-year-old boys

All sides have learned that the most acceptable way to put your case is to couch it in the language of victimhood. Typically, the much-hyped 'gender war' in the USA often seems like a childish squabble about who can make themselves look the most put-upon—those who claim that women are the helpless victims of male violence versus those who claim that men are the emasculated victims of feminism. This year in Britain, meanwhile, we have seen the debate about a tragedy like the Hillsborough disaster degenerate into a squalid row over whether the police who were present or the families of those who died are the most deserving of compensation.

The victim has been put on a pedestal, apparently replacing the traditional hero as the

## HAVE YOU NOTICED HOW ALMOST THE MOTIVATED TO FIGHT FOR WHO CLAIM VICTIMHOOD AND THEIR

on Merseyside in 1993, the massacre of 16 schoolchildren and their teacher at Dunblane in Scotland by a crazed gunman in 1996, and the death of Diana in a Paris car crash in August. Although she herself is a convicted killer, Louise Woodward has now been given honorary membership of the Great British victims' club where, by definition, what you have or have not done is much less important than what you claim has been done to you.

WHEN IT COMES TO CLAIMING VICTIM status, there is no longer any political divide. It is not merely a case of lefties supporting the underdog. All shades of opinion now buy into the cult of the victim. 'Who are the real victims?' is not only the key question in the debate about the Woodward case. It is the question posed on just about every issue these days.

focus of society's ambitions and admiration. The feeling today is that the loser takes it all, and everybody appears keen to cash in on the victim culture.

Have you noticed how almost the only people who seem motivated to fight for anything these days are those who claim victimhood and their supporters? What campaigning energy there is in society tends to be expressed not on militant protests but in candlelit vigils. At a time when most have lost faith in our ability to change things for the better, the suffering of victims has been turned into the one great cause worthy of a crusade.

Victimhood is now the most powerful claim on moral authority anybody can make. Those who took the lead in the Woodward campaign were jettied off to America to stand outside the courtroom, where the fact that they came

# THE VICTIM

from the same little village as a teenage au pair was apparently enough to elevate them overnight into commentators on the US legal system who had to be taken seriously by the world media. In much the same way, an association by proxy with suffering has enabled a Dunblane woman (not even one of the bereaved parents) to become widely accepted as Britain's leading authority on the need for gun control.

Now there is talk of turning the Louise Woodward defence fund into a permanent Di-style charity for victims, while the bidding war for the newspaper and film rights to Woodward's own story gets under way. Others who got caught up in recent tragedies have already found that victimhood can be a ticket to

But what does it really say about our society, when the only way in which people seem able to relate to one another is through a media-orchestrated circus of mawkish sentimentality? What kind of communities have publicly to convince themselves of their togetherness by inventing new ribbon-wearing candle-holding flower-laying record-buying rituals?

Worse, it is a short step from proclaiming a moral consensus to witch-hunting those who remain outside of it. The new 'communal' codes of conduct are authoritarian and brook no dissent. One woman in Elton was reportedly beaten up for refusing to wear the obligatory yellow ribbon. Anybody who has dared publicly to question the canonisation of Diana or the innocence of Louise Woodward risked

the everyday news agenda of the British media. And that means preaching what is deemed the morally correct line before reporting the facts.

The issue that should concern us here is much bigger than the rights and wrongs of Lousie Woodward's conviction or release. The cult of the victim clearly has far wider implications. It represents a statement about all of us. It says that we should not expect much, that simply to suffer with dignity is about the most admirable thing we can hope to achieve in life.

PERHAPS MOST DANGEROUSLY, THE dominant mood of our times says in one way or another that we cannot trust ourselves or each other: not to look after a baby without harming it, not to sit on a jury without wrongly convicting or acquitting somebody, not to own a gun without running amuck in a classroom. The flipside of elevating the victim is to degrade us all—and so to pave the way for the introduction of yet more restrictive laws, rules and regulations, all for our own good.

The cult of the victim can be seen growing more powerful as the gaps between the national carnivals of irrationality and emotionalism grow shorter. *LM* has made a point of plotting the advance of this grim current. After Dunblane, we noted that 'British society has an insatiable appetite for victims and horrific crimes...Bring on the next moral spectacle' (May 1996). When that spectacle arrived a year later, with the reaction to Princess Diana's death, we argued that she 'may well be "irreplaceable" to those who worship her; but rest assured there will be another tragic victim along shortly' (October 1997).

After Diana, Louise. And she will not be the last, so long as the Maudlin Tendency holds our anxious society in thrall.

Merry Christmas and a Happy New Year.

## ONLY PEOPLE WHO SEEM ANYTHING THESE DAYS ARE THOSE SUPPORTERS?

a whole new career; the teenage nursery teacher made famous when her class was attacked by a machete-wielding maniac last year has since gone on to become a radio disc-jockey, a writer...and a part-time TV pundit commenting on the Woodward case.

THERE ARE THOSE WHO SEE SOMETHING positive in the emergence of the victim culture and the new politics of emotionalism. People from the village of Elton were only too happy to tell the media how weeping and screaming together over 'our Louise' in the bar of the Rigger (in front of the big satellite screen especially rigged up by Sky TV) had been a wonderful way of forging a renewed spirit of community. Similar claims of moral renewal were made on a wider scale after the national grief-fest which followed Diana's death.

being treated like a drunk driver or a child killer themselves.

Instead of taking a critical distance from all of this, too many in the media have themselves become caught up in the cult of the victim, seeming to abandon their role as reporters or analysts in order to take up the sword as moral crusaders. So primetime TV news broadcasts were turned into platforms for the 'Louise is Innocent' campaign, complete with staged champagne celebrations of the judge's decision that she was guilty of Matthew Eappen's manslaughter. Even venerable broadsheet newspapers felt obliged to print the address to which campaign donations should be sent at the end of purportedly straight reports of the trial proceedings.

In the Year of the Victim it seems that the Journalism of Attachment now influences

This is a double issue, back in February

## HUNTING IS NO CRIME

I am a left-wing, feminist vegetarian. I am also a staunch defender of the right to hunt. Hunting is not an issue for the law. To kill an animal is not a crime. To say otherwise is both hypocritical and unrealistic.

There is more cruelty involved in the rearing and killing of livestock than in the life and death of a wild animal. Yet it is fox hunting and other field sports that sentimental urban dwellers wish to ban. Nature is not cute, cuddly and benign: these are human concepts. Those that live and work in the countryside see nature for what it is. As a non-hunting urbanite I believe that for hundreds of years they have done a grand job in caring for the countryside, and will, if we leave them alone, continue to do so.

I find it deeply worrying that so much money and political consideration is given over to the rights of animals when there is so much work to be done in the area of human rights and welfare.

**AMANDA BAREFOOT** *London N7*

## THE CASE FOR KIDS

In the preamble to her criticism of Ann Bradley's article ('The case for kids', October), Liz Malone writes that 'low expectations and self-doubt are, however, not the defining features of why women are postponing having children' (LM-mail, November). But Bradley's piece was not primarily concerned with 'postponing having children'; it was about the fact that more women are deciding not to have children. Period.

Cressida Coulson's letter also fails to identify the topic under discussion. She talks about the day to day business of childrearing, which is undoubtedly messy and time-consuming—exactly as it always has been. Why then is there an unprecedented aversion to having children today? This is the question which Bradley set out to investigate.

In a society which cannot stop thinking about kids, one might have thought that being a parent would become an increasingly attractive proposition. In fact, as Bradley

shows, the opposite is the case. This is because today's obsession with children is an expression of current uncertainties about what adults can expect of themselves and of each other. Jarvis Cocker, for example, is so confused about what it means to be an adult that in the hope of finding an answer he has started tuning to Radio 2.

Nowadays many adults identify with images of children (just look at all the adverts in which children appear), partly because the vulnerability associated with minors is in keeping with their own sense of insecurity. On the other hand, taking the decision to rear a child indicates a degree of self-confidence; it suggests that the adults concerned feel sure enough of themselves to undertake the responsibilities involved. As I understood it, Bradley's article pointed out that even this minimal level of self-assurance is a welcome exception to the numerous trends which reflect the loss of nerve in contemporary society.

**ANDREW CALCUTT** *London E17*

## GENES AND INTELLIGENCE

I agree with Suke Wolton (LM-mail, September) and James Heartfield ('A fool's errand', July/August) that there is an important difference between the broad concept of intelligence and what can be measured in written tests of school learning. However, IQ test scores, taken up to the age of 18, are a good indication of employment prospects and income. They are nationally comparable and include abstract thinking skills—two important qualities supported in LM articles on education.

I agree with Dr Derbyshire ('The sense we were born with?', July/August) that variations in IQ can and should be investigated. I expect research to continue to fail to find genetic explanations and for the social origins of the differences to be confirmed, but it is important to support scientific research and then to look at the results critically. I do not agree that there is evidence of the genetic inheritance of IQ, as suggested by Dr Derbyshire. A more rewarding search for the ways in which thinking develops and

improves is to be found in the psychological studies following the methods originated by the Russian Lev Vygotsky.

**ROGER CLAGUE**

I wish to point out the 'historical' dimension to intelligence. I remember reading that Karl Marx became 'fairly fluent' in Russian in one year. I spent five years at Leeds University studying for a degree in Chinese and Russian, for which I received a first, and I still only reached a kind of intermediate level in both languages. I found myself wondering how Marx could read Russian after only one year, and I am sure that in the excitement of the times, what with the 1848 revolutions and everything, there was every reason for him to push himself. I doubt that he could do it in 1997. The Soviet psychologist Vygotsky said that when children play 'the child is always higher than his average age, higher than in his usual everyday behaviour; he is in play as if a head above himself'. There is also a 'zone of proximal development' in revolutionary ages too, when people are pulled up nearer to their intellectual potential.

When I went for my year abroad in China, I remember great debates among the foreigners there on 'why are Chinese people so stupid?'. Students in the dormitory announced they had become 'racists' after meeting the Chinese. We would discuss why if two people were waiting for an empty bus, one would always push the other out of the way to get on. Was this 'a conditioned reflex', or are the Chinese people just animals? Why did the Chinese not respond emotionally to the sufferings of other people? And why could so many shopkeepers not add five and five without an abacus? These, by the way, are all true examples.

I came home from China fairly convinced that Chinese students getting PhDs in the West were just copying out of books. After all, English teachers in China often receive a dozen essays word for word the same. Yet, apparently, some of the best work in US universities is being done by Chinese graduate students, and there are a few examples of Chinese who gained bachelor's and master's

degrees and PhDs within four to five years of touching US soil.

We are faced with a world where the performance of individuals intellectually varies greatly. But as James Heartfield correctly points out, perceived intelligence levels are used as an explanation of social inequality when they should be seen as a product of it. I notice that CLR James had no problem in his history of the Haitian revolution in admitting that the black slaves were wild and uncontrollable, on a lower level of culture. But those black slaves, derided for not knowing two words of French, surprised the world by organising themselves into an army capable of defeating the French, Spanish and British.

**DAVID WEBB** *djwebb@easynet.co.uk*

## SUB-STANDARD BRAND?

Jennie Bristow misses the point when she defends Chris Brand ('Free speech branded', September). With his crass arguments in favour of child sex, Brand encourages the worst kind of publicity. He is endorsing shock tactics that gain attention from simpletons. I imagine that Brand's Internet indiscretion was a good excuse for his employers to remove someone whom they had employed before realising that he is intellectually sub-standard. Of course the former student of Brand, Helene Guldberg ('Why ban racist Brand?', June 1996), was able to defeat him in supposedly intellectual debate. Sorry, Helene, but all you did was deny a baby his rattle.

**FRANK WAINWRIGHT**

*London*

## WHOSE NEWS IS IT ANYWAY?

I have just attended a discussion in Leeds entitled *Whose News Is It Anyway?*, organised by various groups/individuals concerned with the freedom of the press. What was relevant about what Thomas Deichmann said related to the moral judgements now being made by Western journalists, especially when dealing with issues which are emotional minefields (no pun intended). The previous

Saturday I had watched BBC2's *Correspondent*—yet another sorry tale of child labour, this time among sugar cane cutters in Latin America. By the end of the report I fully expected the journalist to make the Sponsor a Child appeal. This did not happen, but neither did any kind of analysis of the root cause of such poverty. Hey, just another grim tale from the far side of the world.

When I asked why this dumbed-down kind of journalism is now rife, Duncan Campbell brought it down to the niche marketing of programmes and explained that this was the legacy of Thatcherism. He may have a point, but I did not feel it was the crucial point. The legacy of Thatcherism is a catch-all kind of phrase. Let's face it, the woman has been a political dinosaur for about a decade now. Martin Wainwright did not quite hit the nerve either. His take was that at least such programmes still alert people to world poverty and the evils of child labour. Respect to the man, but we have been journalistically aware of the evils of poverty since the days of Henry Mayhew and his *Chronicles of the London Poor*.

The bottom line is that the journalism of attachment cannot be valid on any issue, be it football hooliganism or Third World poverty.

**KAREN CHIVERALL** Leeds

### COME CLEAN ON FOOTBALL FANS

Jackie Smith (LM-mail, November) raises a quandary that seems to perplex many of today's football-goers. 'I want to be able to express my passion for the game, but we cannot let the hooligans return', has become a standard

response to the creeping regulation and criminalisation of supporters' behaviour. Unfortunately, Jackie also articulates a prejudice shared by New Labour and the 'fan-friendly' Task Force, namely, 'I know how to enjoy myself at the footie, it's those horrid, uncultured, tattooed, beer drinking scum that spoil it for the respectable fans'.

Instead of rabbiting on about how much they love the game, and how much they have in common with the ordinary fan, I wish people would just come clean. Be honest, you just do not like ordinary football fans—the ones that like a pint before and after the game, and enjoy taking the rise out of the opposition. Perfectly normal footballing behaviour to me, yet the very sort of behaviour which is said by the likes of David Mellor to justify confiscating the passports of England fans.

There is a simple solution to the problem Jackie identifies. If you find certain aspects of watching football offensive and unpleasant, don't go! You are spoiling it for the rest of us.

**CARLTON BRICK**

Libero! the football supporters' network *London N22*

### BLAIR GRANTS US NOTHING

Attracting the youth vote was a key strategy in the New Labour general election campaign. The enhancement of educational opportunities was a prime component of the Blairite 'vision of a better Britain'. Yet within weeks the new government announces that the maintenance grant for higher education students is to be abolished, and that universities are to charge for courses.

The opportunities for upward mobility that do exist have been hard won, due in no small measure to the (old) labour movement. The New Labour administration seems only too willing to reverse this process. As the NUS point out, when the likes of Blair and Straw were enjoying a university education, grants were equivalent to £10 000 per annum at today's prices. The grant, meagre as it has become, still embodies an important principle: that of enablement.

A large part of Thatcher's appeal to the working class vote was that she tapped a seam of aspiration. If we are now to pay for our higher education, it looks as if we were better off under the Tories.

If the Labour Party still believe in equality of opportunity, they have a peculiar way of putting their principles into practice. Who can blame young people for being sceptical about politics?

**PHIL HADFIELD** Macclesfield

## The what's NOT on guide

**KIDS' STUFF:** The National Society for the Prevention of Cruelty to Children (NSPCC) called for *The End of Alice*, a novel written from the point of a view of a convicted paedophile murderer, to be banned. WH Smith agreed not to stock it. The NSPCC also called on publishers to 'exercise their judgement by refusing to publish it and similar material'. The judgement of the censor, of course, prevents other people from exercising theirs. Meanwhile former bad boy Chris Evans described the Myra Hindley painting in the Royal Academy's Sensation exhibition as 'disgusting, abusive, insulting'. Was this the same Chris Evans who in 1996 was reprimanded by the Broadcasting Standards Council for an 'offensive, tasteless pun' about Ann Frank, the 'diarrhoeaist'? Also heading for middle-aged respectability is *ex-enfant terrible* Julie Burchill. 'Exploitative images of children should be censored', she declares (*The Modern Review*, November). And what about writers who exploit the fears of the public by calling for censorship? **NO PISS-ARTISTS:** Returning from the British Art Show in Athens, the Sensation-al Tracey Emin was told by an airline steward that she could not order any alcohol apart from the mini-bottle of red wine with her meal. The airline which seems to have been concerned that Emin might be an outrageous piss-artist is the same as the one which sponsored Emin, the outrageous Brit-artist: British Airways. **MEN ARE VICTIMS TOO:** The Advertising Standards Authority has warned against ads eg, 'Put the boot in' for Lee Jeans, which show women being violent to men. Ad agencies are advised to submit such images for vetting by the ASA. **SELF-CENSORSHIP:** At a meeting with public health minister Tessa Jowell, 17 magazine editors and publishers discussed ways in which they could cooperate with New Labour's anti-smoking drive. A spokesman for the Periodical Publishers Association reported that 'everyone wanted to have a role in the campaign'. Local agency INS News Group boasted that it was the first in Europe to exercise self-censorship on a story about Diana's kids, when it gave up a great scoop by refusing to cover Prince Harry's belated birthday party at a restaurant in Reading. Meanwhile the *News of the World* is asking agencies and freelances to sign a declaration that they will not offer pictures to the paper which have been obtained as a result of 'stalking'. **INOFFENSIVE:** Rodney Baker-Bates, IT director at the BBC, sent an e-mail to staff instructing them not to download or transmit pornographic or offensive material. Radio 1 DJ Andy Kershaw reportedly replied to Baker-Bates with an e-mail telling him to 'fuck off'. Kershaw must have known he could not be disciplined for this, as downloading such a message would surely be in breach of the Baker-Bates instructions.

### KATE ADIE: A CORRECTION

Kate Adie has asked us to make clear that a false allegation about her has been unintentionally reprinted in the *LM* special, *Whose War is It Anyway? The Dangers of the Journalism of Attachment*.

Mick Hume's pamphlet cites a March 1994 *Spectator* article which claimed that Ms Adie had wrongly reported an attack on a Bosnian Croat village by Bosnian Muslim forces as if it was a Croat attack on Muslims. In fact the *Spectator* correspondent appears to be the one who got it wrong; Kate Adie's report for the BBC News on 15 September 1993 made it clear that Bosnian [Muslim] Army soldiers had carried out the massacre at the Bosnian Croat village of Uzdol.

We are grateful to Kate Adie for pointing this out, and happy to set the record straight.

## WE WELCOME READERS' VIEWS AND CRITICISMS

Write to The Editor, LM, BM InformInc, London WC1N 3XX  
fax (0171) 278 9844.

Letters may be edited for clarity and length

# TABOOS

*Forget the non-sexist books and toys this Christmas, says Wendy Earle; gender stereotypes play an important part in early child development*

## WHY TRY TO MAKE BOYS MORE LIKE GIRLS?

**W**orking in an educational publishing company I am constantly under pressure to ensure that our publications do not reflect or reinforce sexist stereotypes. One result of this is a maths poster for primary schools that shows a building site where almost every builder, carpenter, architect and engineer is a woman. A survey of modern children's fiction and non-fiction books would reveal a similarly distorted representation of the world. Yet all the evidence of child development research suggests that we are wasting our time trying to blur gender differences as they are perceived by young children.

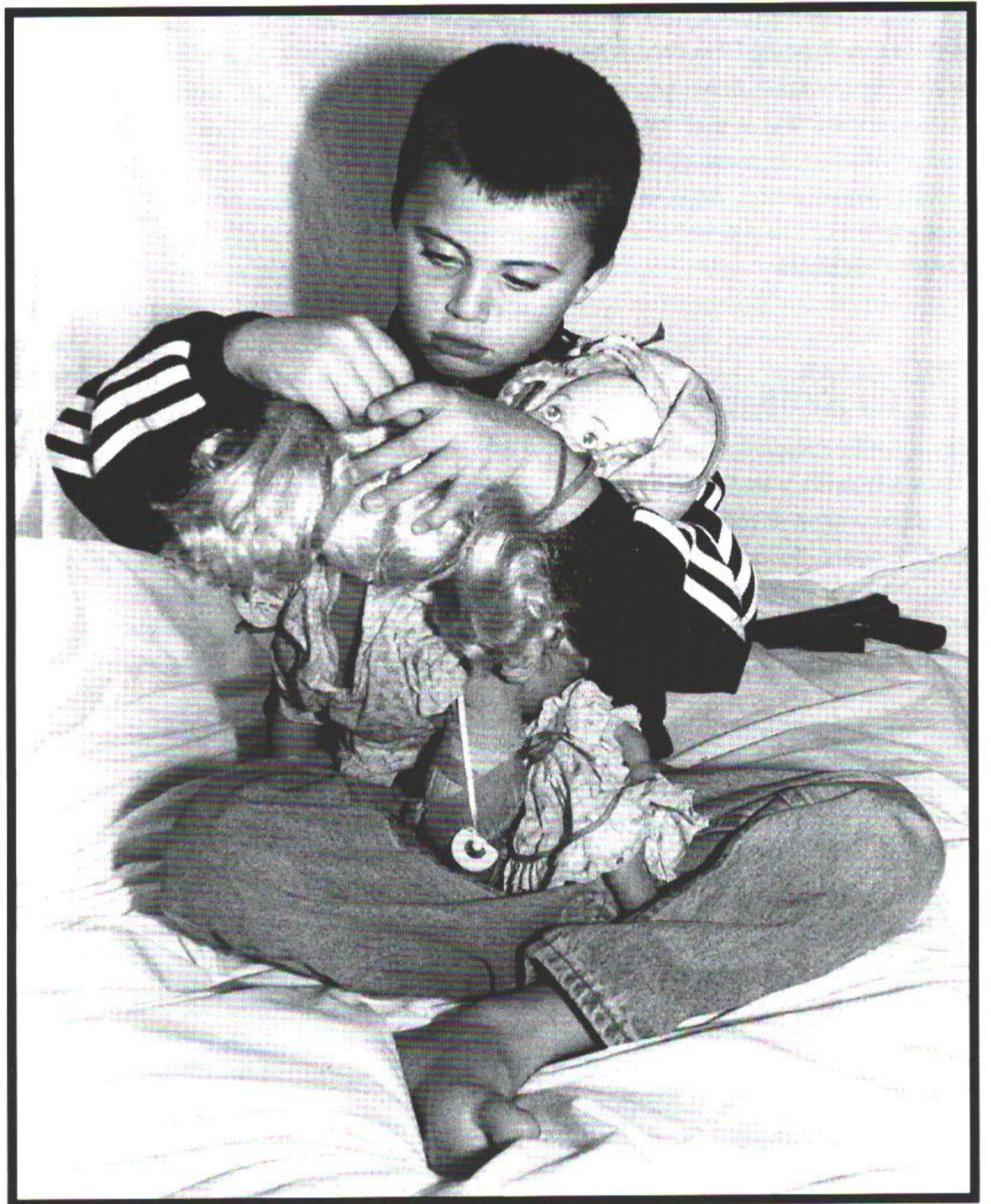
Anybody who has watched young children grow up must have noticed that, as they emerge out of babyhood, they begin to acquire more defined personalities which clearly reflect their gender, despite any attempts by their parents to offer non-gendered toys. At around the age of three my niece left her androgynous infancy and began to mark herself out very much as a little girl. She insisted on wearing pink clothes and was desperate for a fairy outfit for her fourth birthday. My nephew was equally eager to prove his male credentials from about the same age as he charged around being a little tough guy.

In the past the way children took on male and female characteristics and roles according to their biological sex was seen as natural and desirable, but in the last few years there has been a growing body of opinion which suggests that the influence of sex stereotypes on children may be profoundly harmful,

particularly for boys. Angela Phillips, in her book *The Trouble with Boys* (1993), concludes: 'The trouble with boys is that they must become men, and if the only picture of men available is that of a brute, then to become male they must be brutish.' Some writers would have us believe that the influence of masculine stereotypes on growing boys means that they never learn how to express themselves emotionally. This apparently

makes them aggressive, susceptible to criminal tendencies and inadequate in relationships with other people (particularly women).

These fears reflect more about the preoccupations of adults than about the real processes of child development. In fact gender stereotypes do appear to play an important role in children's development, but it is far from being a negative one. Research in child development



PHOTOS: DAVE CHAPMAN



indicates that children use gender differences to help them learn about the world and establish themselves within it.

There is no doubt that we live in a sex-typed world. From the moment of birth children are identified as male or female and the expectations parents and others have for them are inevitably conditioned by this fact. As children grow up in society they are likely to see for themselves that men and women play different roles: mum is likely to look after them more than dad, the majority of their teachers are female and their dads still tend to be the main family breadwinners. They are also likely to notice that girls are usually prettier than boys, but that boys tend to be stronger and run faster—and that all the best footballers are male.

Men and women usually look and sound different; they move differently, dress in different ways and have different mannerisms. Children pick up on these distinctions at a very early age. Some research has shown that babies as young as four or five months can match a male voice to a man's face and a female voice to a woman's face. Between 24 and 36 months they are able to categorise and label men and women



correctly, and a bit later they know the difference between boys and girls. By the age of 4 or 5 they know for sure whether they are a girl or a boy.

Labelling and self-labelling appear to be milestones in a child's cognitive development. Children are highly motivated to find out about their surroundings and work out how everything fits together in relation to themselves. By perceiving similarities and differences, becoming familiar with groupings, patterns and routines, and naming things, they are able, in their minds, to impose order on the world around them. They begin to recognise stereotypes from as young as 18 months or two years.

A friend of mine tells the story of a two year old in her care who refused to recognise that the woman driving the bus they were on was the driver. In his young mind he had connected driving a bus with being a man and this was the way the world was ordered as far as he was concerned. Another friend, the only male teacher in an infant school, once confessed that he was persistently referred to as 'Miss' despite strenuous efforts to direct the children to a more appropriate form of address.

### Slugs and snails

When they know what sex they are, children identify themselves as a member of one main social group as distinct from the other. Their gender identity becomes very important to them and they get upset if somebody mistakes them for the other sex. They rate highly everything that they identify as relating to themselves. Once a boy knows that he is a boy he tends to identify with and value 'boy' things, such as football, cars and construction toys. He is more interested in activities and stories about boys and men because he wants to find out



what it means to be male. Similarly a girl tends to identify with 'girl' things such as dolls, fairies, princesses and, just now, the Spice Girls. While playing with her pushchairs, baby dolls and Barbie she explores what it means to be female.

Knowledge of their gender also influences children's behaviour. It provides them with a kind of organising principle that helps to give shape to the complex pattern of interactions and events in their social environment. It also helps them to make decisions and choices about their own actions and what behaviour is appropriate to the kind of person they are. In their play children act out gender stereotyped roles, such as 'mummies and daddies', the Spice Girls or Power Rangers, and they practise the mannerisms and styles of movement associated with their gender.

Some people put this identification with stereotypes down to reinforcement by parents, and it is true that the sex of a baby is an important part of how parents relate to it. However, the research into how this affects their treatment of their babies is far from conclusive. Furthermore, studies have shown that even when parents make strenuous efforts to counteract gender stereotypes at home, it only affects the process of gender identification by delaying it slightly (if at all).

The influences on young children are broad and varied. The view that parents and teachers can counteract the ►



## Children sympathised with the Prince who did not want to be rescued by a messy girl

◀ messages children are exposed to about the social characteristics of their sex by feeding them a diet of non-sexist books and videos is misguided. It is based on an underestimation of the range of stimuli children are subject to and, more importantly, the extent to which children actively integrate these stimuli into their thinking. Family members, friends, carers, and people in public places, on television and in books and videos, all serve to demonstrate to children, one way or another, that men and women appear different and play different roles in society. There is no way that all the subtle variations in sex-differentiated behaviour can be taught or untaught.

Children's tendency to interpret stories and events according to the way they perceive gender patterns and moral order has been well-demonstrated in a fascinating study of pre-school children's attitudes to their gender by the Australian feminist, Bronwyn Davies (*Frogs and Snails and Feminist Tales*, 1989). She read a selection of non-sexist and feminist children's stories to several pre-schoolers and then discussed the stories with each of them. In one story, 'The princess and the dragon', the princess swapped roles with the dragon because she wanted to be naughty and the dragon wanted to be good. Though the author's intention was to show children that, like the princess, they did not have to fit into designated roles, children preferred the good dragon to the naughty princess.

In another story—'The paperbag princess'—the princess rescued the prince from the dragon but got messy while she was doing it and ended up wearing only a paper bag. As a result she was rejected by the prince who did not want to be rescued by such a messy girl. Davies found that the children sympathised with the prince, and did not like the disruption of the traditional happy ending brought about by the princess' refusal to fit into role.

The way children think is very different from the way adults think. The complex, abstract concepts that characterise adult thinking are way beyond children's capacities. In their drive to

impose order on the world children tend to pick up on the most obvious and consistent differences between the sexes and to simplify information in order to understand and apply it. They perceive and recognise dominant patterns, make rules and ignore the exceptions to these rules.

Pre-school children are apt to disregard aspects of events or stories which do not conform to their expectations, or (at a slightly later stage of development) to transform unpredicted elements so that they conform to their expectations. Even if a child's father does the cooking at home, he is unlikely to identify cooking with maleness. In one recent experiment some children were shown a video featuring only women doctors, but when they retold the story afterwards the doctors were male.

The way children understand what it means to be male or female does not correspond to an adult understanding of these concepts. The stereotypes which 4-7 year olds tend to pick up on are quite crude, larger than life caricatures of maleness and femaleness—princesses

and soldiers, Spice Girls and Power Rangers. A four-year-old boy may really think that being male means being like a Power Ranger—but no sane man would seriously entertain this idea for a moment.

A child's concept of what it means to be male and female changes as the child develops and gains more experience of the social world. Primary school age children tend to have very rigid ideas about gender roles, and tend to see them as natural and immutable. As they grow up they become increasingly able to integrate more complex information into their thinking and the influence of sex stereotypes declines.

I have childhood memories of my brothers' passion for guns. They used to charge around playing fierce, noisy and aggressive games shooting each other dead or wrestling each other to the ground. It is hard to believe those little monsters have grown into the thoughtful gentle men they are today. The misconception that a child's behaviour somehow presages an adult personality, implicit in attempts to challenge gender stereotypes in children, blurs the distinction between adults and children.

Children are susceptible to a whole range of influences which they struggle to make sense of. To begin with gender stereotypes play a relatively important role in their thinking, but they are also exposed to numerous other influences and experiences which make boys and girls, in general terms, more similar than different. In developing the ability to think about the world, to assimilate and analyse their experiences of it in all their complexities, children are gradually transformed into adults with the capacity to make conscious choices about their actions and behaviour. The misplaced desire to try to make sure children are conditioned now to make the 'right' choices in the future reflects a view of adults who have hardly developed beyond the level of eight year olds. ●



ANN BRADLEY

# Who cares who killed Baby Matty?



I am still trying to work out at what point, in the trial of Louise Woodward, everybody lost interest in what really happened to eight-month-old Matthew Eappen. It is extraordinary how quickly the death of an infant can be pushed aside in the clamour to cast judgement on the way adults live.

One of the most notable things in the trial was the battle for image and respectability, first in relation to the British au pair, next in respect of her employers.

The case for the prosecution started it. Woodward, if you remember, was first cast as some kind of cold-hearted exploitative delinquent. She was castigated for doing all the things that are typical of any 19 year old. We were told how she stayed out late and found it

relations skills at their disposal to ensure that the media took up her vindictive message: that Woodward should be locked away for good.

The case was a trial of lifestyles and inevitably many people lined up according to which of the actors they sympathised with the most. Life in contemporary Britain and America is infected with this approach to issues. All too often opinions are shaped by whether they justify the lives of those who hold them. So middle class professional women columnists in the broadsheet papers with nannies, au pairs and a sense of 'there but for the grace of God...' railed against unscrupulous agencies which recruit unskilled naive teenagers. An implicit identification with the Eappens emerged from their confessions

to insist that the girl they know could never have committed any such atrocity. Woodward we were told time and time again, being cut from the cloth of these other young Britons, was not capable of mistreating a child.

Personality profiles and lifestyle critiques were everything to this case—and, paradoxically, nothing to the action from which it resulted. Women with young children in their care sometimes snap—whether they are good mothers or bad, trained and experienced, or young and clueless. The small number of young children admitted to hospitals with life-threatening injuries is more of a testimony to the resilience of children than to the restraint of those who look after them. There is no personality-type, or nationality, or social class, or age of woman that is not capable of injuring a child in a moment of frustrated despair. In the occasional injury—as distinct from systematic abuse—of children previous good character means nothing.

Career women can care for children lovingly and well—as can 19-year-old normal rebellious teenage girls. Career women can also inflict serious injuries on children, as can rebellious teenage girls.

The jury were able to convict on the evidence; the rest of us have only conjecture fuelled by spurious subjective inclinations. Louise Woodward startlingly missed the point when, after the jury had convicted her, she cried out in court: 'Why did they do this to me? Why? I'm only 19.' Presumably they did this to her because they thought, after hearing all the evidence the court could muster, that she killed Matthew Eappen. Being 19, British and nice provides no mitigation.

Or does it? The subsequent decision of Judge Zobel to reduce the charge to manslaughter and to release her is without doubt humane. It's hard to see what could be served by decades of imprisonment. But, whether you line up behind the Eappens or Woodward, you have to admit that Deborah Eappen has a point in her claim that such a move would have been unlikely if Woodward had been a poor black or Hispanic.

## The case was a trial of lifestyles and inevitably many people lined up according to which of the actors they sympathised with the most

hard to get up in the morning. She spent time on the phone gossiping with her friends. She lied about her age to buy alcohol and went to unsuitable gigs. She even—horror of horrors—referred to her charge as a 'brat'.

The case for the defence continued it. The Eappens were pilloried for their middle class lifestyle and expectations. They were criticised for engaging an au pair when they could easily have afforded a qualified nanny. It was suggested that Deborah Eappen 'in her eagerness to get back to the controllable, ordered and relatively respectful adult world of work' was cavalier about the qualities required of a childcarer. She was then castigated for her attempts to use all the public

of 'me too' working-mother-guilt. The ordinary people of Elton lined up behind 'their Louise' whom, it was said, was 'incapable of cruelly treating a child she loved'. The *Evening Standard* reported the views of a British nanny who had previously turned down a job with the Eappen family because 'she felt things weren't quite right there' as though it had a direct bearing on the guilt or otherwise of 'our Louise'.

Elton residents—none of whom presumably has any more idea of what really happened to Matty Eappen than you or I—felt able confidently to brandish yellow ribbons while protesting Woodward's innocence. Former school-friends tripped over each other, in their hurry

*As students start suing their parents for pocket money, Jennie Bristow argues that they should grow up*

# THE UNIVERSITY OF NEVERNEVERLAND

**P**atrick MacDonald, a 20-year-old law student at Aberdeen University, has been granted Legal Aid to sue his mother Margaret for £400 a month. The reason? That his grant, worth £1739 a year, was not enough for him to live on.

The case is being brought under the Family Law Act (Scotland), which allows students up to the age of 25 to sue their parents for the cost of their education, a law that does not apply in the rest of Britain. Patrick MacDonald has lived apart from his mother, a solicitor with the Scottish office, for five years, living instead with his unemployed father. The peculiarities of the case suggest that most sons will not be going around suing their mums in the near future. But you do not have to go into the legal details to see that the case symbolises a new and worrying trend in the attitudes of young people growing up—or not growing up, as the case may be.

The assumption behind suing your mother for alimony is that you have a right to that money. Although you may be over 18, and so well over the age at which your parents legally have to provide for your welfare, you still see yourself as dependent upon them for your upkeep. In other words, you may legally be an adult, but financially, emotionally and actually you are still a child while in higher education.

Where does this widespread assumption come from? The way in which the existing method of student funding relies on a parental contribution, making students of middle-income parents automatically financially dependent, is the most common explanation given for the phenomenon of students-as-children. Under the grant system, which is soon to be abolished, a student's grant is linked to their parents' income, and on that basis they can receive a full grant or part grant or no grant at all. Parents are supposed (but not legally obliged) to pay the rest, up to the level of a full grant.

On this basis Richard Baker, deputy president of NUS Scotland, came out in support of Patrick MacDonald's action against his mother. He told the *Guardian* on 14 October, 'It is unfortunate that students have to rely on their parents but that is the state of the law....If parents do not pay up they can expect such cases to come their way'. Baker's view is backed by some students. Hannah Lynes, a student at St Catherine's College, Oxford, relies on a contribution from her parents and argues 'the law says parents have to pay up to grant so that's fair enough'.

Paul McQuillan, a second year ecology student at Edinburgh University and the same age as Patrick MacDonald, has no grant or loan but relies on parental support and a part-time job. As he says, 'Who else is going to pay for me? I don't like taking money off my parents, that's why I work, but it's not wrong to be doing it'. Fair enough.

and the world around them, as independent adults.

In fact, the introduction of loans is likely to mean more dependence not less, as students baulk at the responsibility of taking on big debts themselves. This is because the tendency for students to be viewed, and to view themselves, as children is not a product of the education funding system. It is a reflection of a broader trend in society: that kids just do not seem to want to grow up.

Any study of social trends which looks at the lifestyle activities of my generation and younger, suggests that young people today do many things later than their parents. Marriage and child-bearing is happening at a later age: even having a partner seems to happen later, as the number of single people and single households is on the up. One survey last year found that over half of 16-24 year olds now choose still to live

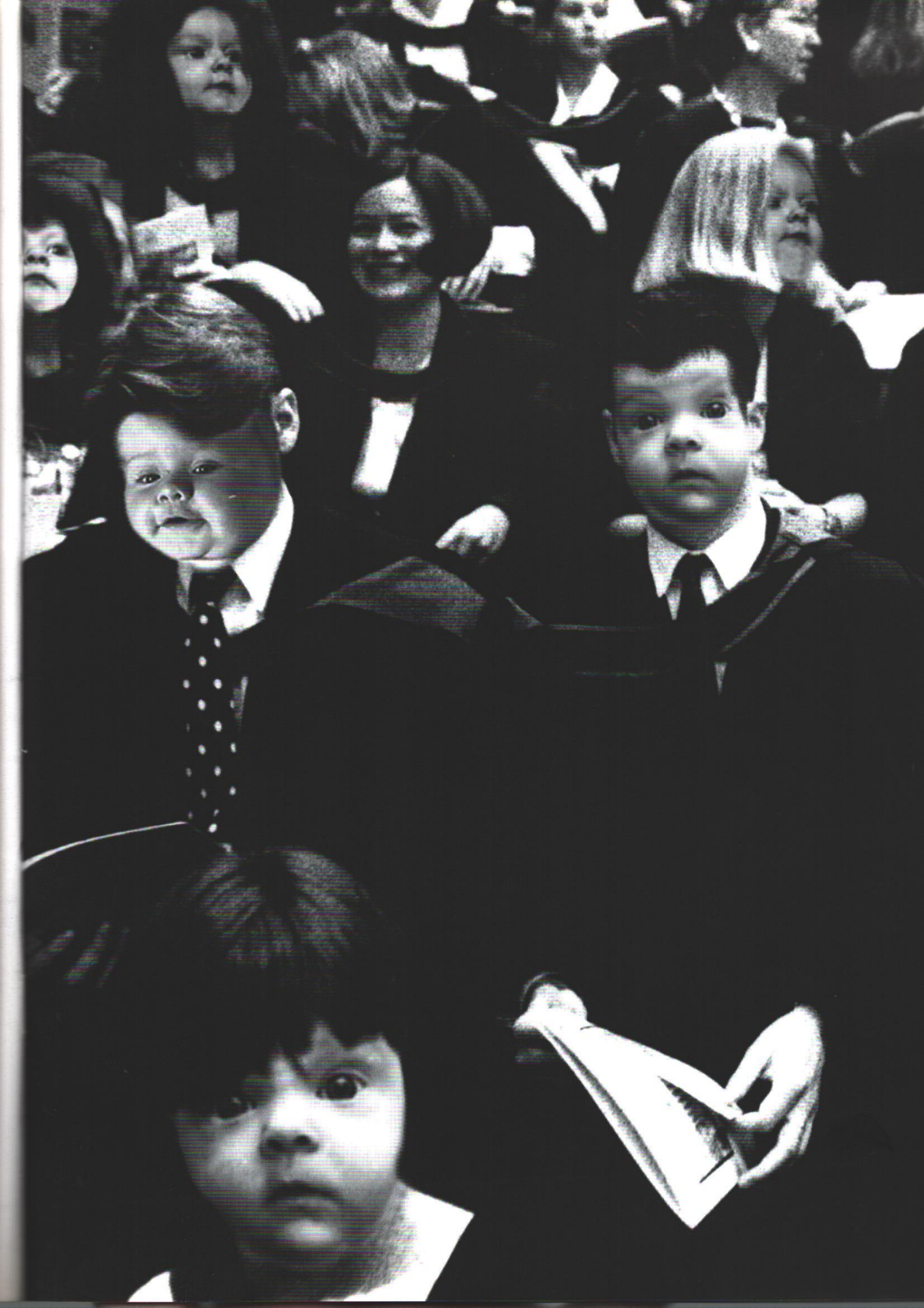
**The real  
AGE OF ADULTHOOD  
has been raised  
to at least 21**

It would be an exceptionally proud, independent and some might say foolhardy student who would refuse an offer of money from his or her middle-income parents.

But if the structure of the grant system were the only thing that made students into dependent children, present government policy would surely put an end to that. When grants are replaced by loans—a move which formally puts the onus on students to fund themselves through a loan that they pay back when they have graduated—it could be argued that students will relate to their parents,

at home with their parents. In line with this, more students now choose to study at their home-town college, and if they do study away from home they go back to mum and dad during the holiday—even when they are paying half rent on college accommodation. Instead of graduation marking passage into independent adulthood, more graduates now scuttle back to the parental home after their finals, and do not seem in too much of a hurry to move on.

If there is a caricature of what has been dubbed 'Generation Y', it is the pathetic no-hoper Mike Dixon in *Brookside*. Well into his mid-twenties, ►



# PAST THEIR BEDTIME

By Craig O'Malley

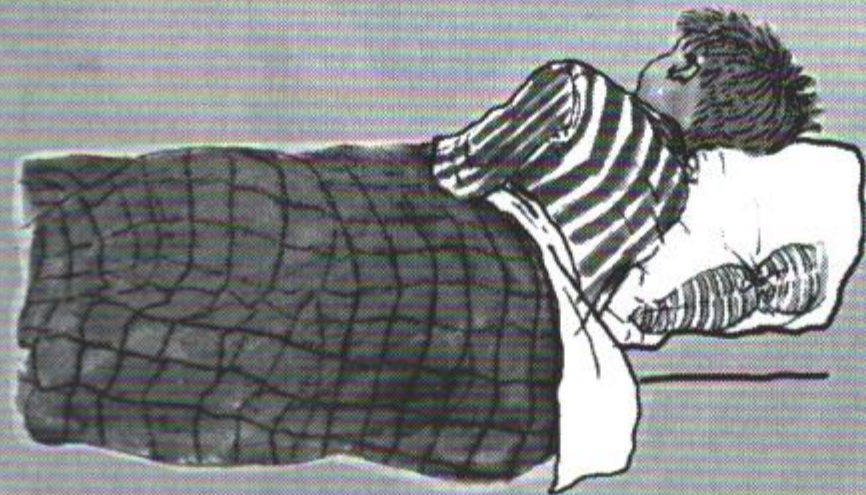
**P** 'yjamajump', the annual charity event held by Sheffield's universities in November, is a typically student kind of thing. Female students dress in thin cotton pyjamas while their male counterparts wear nighties or basques and suspenders. Promiscuous drinking and sex usually follow as the revellers take over pubs, bars and clubs throughout the city centre.

Over the years, the popularity of Pyjamajump has increased dramatically, with students travelling from all over to take part. Usually this might be seen as the hallmark of a successful charity event: here it is seen as a mega-problem. Pyjamajump has become too popular, apparently, putting some revellers' lives at risk. So in the name of safety, this year the university authorities ganged up with the local emergency services to put an end to this dangerous fun.

The student unions agree with the ban, but in the college bars many students are pissed off about being patronised. 'Students are fully aware of the hazards involved in a night out', said Dave over a pint, while Nick thinks 'it's the one night of the year when people should be able to do what they want'. For many students, the unmanageable and raucous nature of Pyjamajump is what makes it the great event that it is. Bethan is 'disgusted' with the ban. During her 'A' levels, friends had told her that Sheffield students exhausted the city's entire stock of the morning after pill, and she had been planning to bring her mates up from Stoke-on-Trent to test the claim. 'They're not going to bother now', she grumbled.

Some students, like Helen, suggest that the sacrifice is worth it: 'I'd rather have a boring night in front of the telly than have someone dying on the night.' But Gary points out that any night out can be hazardous, and that 'you can get killed walking across the street'. In any case, says Ian, 'risk is good'—who has ever heard of a 'safe' good laugh?

It seems that even the most infantile of student fun is now seen as too much for 18 year olds to handle. To most of us the idea of being caught semi-naked in a busy city centre belongs in the category of bad dreams rather than good nights out. But for those who want to enjoy their teenage years without the authorities wrapping them in cotton wool, the risky risqué Pyjamajump will be sorely missed. Lullabies will be no substitute.



◀ Mike lives at home with his dad, Ron—or did, until Ron was forced to rent out his house and move in with a neighbour to save his daughter's business. Mike's reaction to this is not to take the opportunity to fly the nest and save his dad some worry. After about a day of whingeing and half-hearted flat-hunting, he pitches a tent in the neighbour's back garden as a protest stunt to make Ron let him share his bedroom. The only aspect of this storyline that does not accurately mirror the dominant social trend is Ron's reaction, as he tells his son to get a life and get a flat. If the statistics are anything to go by, most parents would probably be more indulgent.

The tendency for young people to stay childlike longer is, not surprisingly, strongly reflected among the growing body of students in Britain's expanding higher education system. Indeed the way in which higher education has been reformed is playing an active role in encouraging students not to grow up.

One side-effect of the expansion of higher education, set to go on in the post-Dearing era, has been to transform a large section of the young adult population into children. Dependent on their parents, spending three more years socialising, going to lessons, doing homework and finding menial jobs to top-up their pocket money, the institutionalisation of the first degree has proved to be another route to raising the real age of adulthood to at least 21.

For their part, the universities have embraced the trend to treat students more like children. The university authorities have made tutors adopt a more overtly 'pastoral' or pseudo-parental role towards their students, offering moral guidance and counselling as well as (or sometimes instead of) education. They have encouraged student unions to do more to protect the youngsters in their care (formerly known as union members) from such hazards of the adult world as drink, drugs and sex. And perhaps most significantly of all, universities have lowered their academic horizons so as to spoon-feed their wards an 'A' level style education, complete with easy assessments that make sure just about everybody gets a sweetie at the end of the course (see Claire Fox, 'The dumbing down of higher education', *LM*, October 1997).

Whether they are funded by their parents or not, students are in emotional terms considered as children. They may have loans and overdrafts, but they do not have to take responsibility for paying them back until well after they graduate. They may support themselves through a part-time job, but these have more in common with what a teenager does on

Saturday to earn some extra pocket money than with the work of the young professional.

Students are exempt from tax, most jobs they do require little or no skill, they work in their leisure time. Apart from rent and food, their income is disposable income: the complaints of 'poor students' are by and large indistinguishable from the whinings of kids on meagre pocket money. It is quite conceivable that a student can be entirely responsible for his or her own maintenance, yet still be living like an adolescent.

No wonder students feel that they have some kind of a right to be supported by their parents, even though most draw the line at suing them. This was summed up by a second year English student at Hertford College, Oxford, who was unequivocal that it was 'ridiculous' for students to sue their parents. 'Parents should be responsible for making sure you don't starve to death and give you food and clothing. Anything beyond that you should be grateful for', she said. This sounds like a hardline approach to spoilt students, but something quite different is really being said. The bottom line of her case is that parents should be responsible for their (adult) student kids in exactly the same way as they should be responsible for their under-16 dependants.

Legally, 18 remains the age of adulthood. But once the majority of these 18 year olds are ensconced in some university somewhere, spending half the year in a college term time and the other half back at home, dependent on their parents for money and their own childhood bedroom, the legal split between adult and child becomes increasingly meaningless.

No doubt the Mike Dixons of this world, who want nothing more from life than to avoid responsibility, would think this a good thing. But for those of us who would rather 'choose life' with the independence and responsibility that involves, the extension of childhood is a real drag. Whatever our legal status, it means that those under 25 today are de facto children and are treated as such. As for our parents, who presumably went into the business of child-rearing thinking that they could move on when we reached 18, life has dealt them a raw deal. Who wants to approach retirement still wiping your son's bottom?

When students themselves are choosing nappies over the great unknown, anybody who wants a bit more from their young lives than spoon-feeding is faced with a very real problem. Maybe it is time we put away our tatty copies of *Peter Pan* and started demanding some grown-up books and a bit of respect, for the adults we should be rather than the children we are. ●

The new health education crusade aims to put drinking in the dock with smoking as an evil of our age, reports Ed Barrett

## LAST ORDERS?

**D**isturbing evidence about the extent of under-age drinking in Britain has been uncovered.' So begins a recent news report in the *Daily Telegraph*. Nostalgic images sprang to mind of young lads barely out of short trousers, draining their fifth vodka and pint of lager and saying, 'Might as well go back, I suppose, it's double PE this afternoon'. As it turns out, I could not have been wider of the mark.

Gone are the days of my youth, when the pub opposite my school relied almost exclusively on the pupils for its lunchtime business, and as long as you could reach over the bar and hand over the cash, you were welcome. Even the sweet shop sold individual fags for those whose dinner money didn't stretch to a packet of 10.

Today, you hardly ever see teenagers in pubs, or smoking in public, come to that. Yet the papers are stuffed full of stories about it. The *Telegraph's* report is headed '13 year olds drink until they are sick'—the implication clearly being that they are putting away prodigious quantities of the hard stuff. Yet a closer inspection reveals a less sensational situation. The second paragraph reveals that 'A survey of 1300 teenagers found that half of the 13 year olds had drunk enough to make them physically sick at some stage during the past year'. Far from being hardened drinkers, it sounds as though these queasy pubescents are merely following a familiar rite of passage and throwing up after their first experiment with the demon drink.

### Boozers beware

This is borne out by the fact that they are 'price sensitive' and their drink of choice is often cider or fortified wine—youth club classics that are rarely persisted with beyond adolescence. You would think the fact that young teenagers are still getting sick on cider should be a comfort to the health fanatics. After all, when was the last time you saw empty Woodpecker bottles strewn around a crack den, or a smack-raddled junky stumbling to the off-license for a bottle of ginger wine? Despite this, the Portman Group, on behalf of the drinks industry, is supporting ID cards for adults and initiating 'test purchasing' to crack down on retailers selling alcohol to minors.

Health campaigns these days are really just thinly-veiled moral crusades. This is clearly demonstrated by the Health Education Authority's latest bizarre initiative, aimed at encouraging responsible drinking habits. The press release is headed: 'Fancy taking the Friday Night Challenge?' and it continues:



'The Friday Night Challenge is simple and straightforward. It is to go out on a Friday and have THE NIGHT OF YOUR LIFE. So what's the catch? It is that you have to stick to drinking within the safe daily benchmark of 2-3 units of alcohol if you're a woman and 3-4 units of alcohol if you're a man. (A unit is half a pint of ordinary strength beer, lager or cider, a pub shot of spirits or a small glass of wine.) And it goes without saying that no other substances should be contemplated!'

The leaflet goes on to warn of all the unpleasant social consequences of drinking: 'sleeping with someone you really shouldn't' or having unsafe sex; getting into danger on the way home; having to endure the ramblings of drunken friends; watching them stumble and throw up. How the latter ordeal is made more bearable by remaining sober is not explained. As a final carrot, it is pointed out that you can save money by drinking less ('What could you buy with £20 instead of getting drunk?').

Given these options, one might conclude that the best way to stay away from drunks, avoid dangerous sex and save money is to stay in and have an early night. But this would be to miss the point of the Friday Night Challenge, which is to openly display your moral superiority. The Friday Night Challenge takes its lead from the patronising campus campaigns against over-indulgence that are a feature of university life today. British students are issued with Drinkline's *Big Blue Book of Booze*, containing cartoons warning of the social dangers of over-indulgence. In America, the famous *Animal House*-style frat house toga parties are under attack. 'I think the problem of alcohol in fraternities is really getting out of hand', said Frederico Ardile, president of the Sigma Nu



chapter at the Massachusetts Institute of Technology. 'It's about time we had a new policy.' In Japan, the National Citizens Association on Alcohol Problems is campaigning against the student initiation custom *ikki nomi* ('chugging alcohol') after a student died of alcohol poisoning. 'Would you like to be a murderer?', asks the campaign's poster, aimed at students who pressure their peers to 'chug'. Similar moves are afoot in France.

### Sick as a dog

Drinking is set to follow smoking as a top-ranking social taboo. Alcohol was recently added to the familiar topic of drugs at a meeting on clubbing culture attended by senior government ministers. Even the new Professional Darts Council is trying to stop veteran arrowsmen like Eric Bristow from appearing pint in hand at public events. In an ironic twist, Beer Blok, a new health product made with 'natural ingredients', which is claimed to stop carbohydrates converting to fat stores, has been criticised for encouraging excessive drinking.

The drink police are everywhere. McDonald's staff were recently commended for phoning the police when they smelt alcohol on the breath of a customer whom they believed to be driving. Worse still, a blind man was prosecuted for biting his guide dog on the evidence of video footage from a street surveillance camera. The dog had refused to obey his master, because he had been drinking.

In New Britain, there is just one body that remains resolutely out of step with the mood of the time—the parliamentary Conservative Party, not one member of which has signed up for MP Teddy Taylor's Conservative Teetotal Club. When the Tory Party stands united behind something, you know it is a lost cause. ●

*Using cases like the Louise Woodward trial as an excuse to undermine the jury system would lead to the biggest injustice of all, suggests John Fitzpatrick*

# POWER TO THE JURY

**T**he jury got it wrong in acquitting OJ Simpson and wrong in convicting Louise Woodward of murder. Most people seem to think that is obvious. Some do not. Good. Everybody is entitled to hold and express such views, and it is very healthy that criminal trials are subject to exacting public scrutiny. Even better when it is informed by the televising of the trials themselves.

We should sit up however when people call for changes which, whatever their intent, will make it easier to convict defendants. Many people are now using these American cases as examples to justify nobbling the jury for good. Loss of faith in the jury is particularly worrying, not only in the context of the criminal trial, but also because it signifies a loss of faith in ourselves.

It is not the formal objective of a criminal trial in this country to establish the truth of what happened in a particular situation. That might seem shocking. If a trial is not about establishing the truth, what is it about? The formal purpose of a trial is to establish whether or not the prosecution can, while sticking to set rules, satisfy certain tests in order to secure the conviction of a person charged with a crime. The question is 'guilty' or 'not guilty', not 'guilty' or

'innocent'. The meaning, strictly, is guilty or may be innocent.

The purpose of these rules and tests is to ensure that the trial remains fair to the accused. It is also believed that they allow the best approximation of the truth, often a tricky little concept, to emerge. Given the consequences for the defendant of conviction, and given the profound imbalance of power as between the individual and the state, these procedures are vital. They exist not just to protect any particular defendant, but to protect every individual in society. Of course every individual also deserves protection from crime, but the idea that this will be achieved by making it easier to lock up every person the police arrest is fallacious at every level.

## Perverse verdicts?

One of the bastions of current fairness is the jury. Why? First, simply because of the numbers. Twelve (or in majority verdicts, 10) heads are better than the one, two or three heads of the professionals who would judge in their place. How much safer for the defendant that a large group of people have to be satisfied of their guilt. One person could easily have a bad hair day, or, heaven forbid, even nod off.

Second, because the jury is not case-hardened, has not sat in court for

day after day, week after week, dealing with more criminals in a year than the rest of us meet in our lifetimes. The jury comes fresh from everyday life. Jurors bring their experience and their common sense but not a jaundiced view of humanity.

Third, the jury is truly independent. Jurors are not employed by the state, they are not part of the very institution which is conducting the trial. They are not subject to the peer pressures of professional lawyers and their career structures. The jurors appear but once or twice on this stage and can act without fear or favour with respect to the imperatives of the system itself.

The jury is important for other reasons too. Justice is seen to be done by the people themselves, not by an elite set of professionals. It is also the one place in the criminal justice system, in fact in public life, where people can themselves make very important decisions.

Jurors can deliver a verdict according to their consciences, whatever the law says, and cannot be sued or prosecuted for doing so. The civil servant Clive Ponting patently breached the Official Secrets Act to reveal that parliament had been misled about the sinking of the Belgrano in the Falklands War but the jury refused to convict. When the government prosecuted the two men





who sprung the spy George Blake from prison, they admitted it freely but argued that the prosecution, over 20 years later, was an act of spite by a state which had known all along, but was embarrassed when they wrote a book about it. The higher judges allowed the case to proceed, but the jury acquitted the men.

It is said that this power is an affront to the rule of law which provides that people be treated equally and consistently, and to the democratic principle which provides that it is up to parliament to decide what the law is, and that jurors should stick to applying it. Not a bit of it. Only a pitifully formal understanding of the rule of law would require the literal application of fixed rules in all circumstances. Neither does democratic principle require that law can only be challenged, especially with respect to individual cases, in parliament. It is of constitutional importance that jurors are able to refuse blatant injustice or blatant abuse of power by the state.

You may disagree with a particular decision, but I think we can trust people, trust each other, to understand that this power is for exceptional cases and that normally the jury's role is to apply the law as directed by the judge. Lawyers in particular incline to the view that ordinary people are too stupid to understand and operate such ideas. In practice 'perverse' verdicts of this kind seem quite rare. The term is more commonly used to refer to cases where the jury, purporting to follow the directions of the judge, takes a different view from the lawyers or other observers on the facts.

The jury itself and access to it have been under siege for years. In 1988 there was a reclassification of several offences, so that charges of common assault, taking a vehicle without consent and certain criminal damage charges are

now tried by magistrates. There have been several attempts to do the same for 'small thefts'. The Crown Prosecution Service now simply wants to remove the right of the defendant to elect for jury trial and to give the final choice to the courts. No doubt the jury-less Diplock Courts in Northern Ireland for 'terrorist' offences will continue to be pushed for use in other cases. Despite a lack of convincing evidence it is repeatedly said that juries are out of their depth in complex fraud trials.

### Too stupid?

The composition of the jury is also under attack. Guidelines were published in 1978 and amended in 1986, disclosing the hitherto secret practice by which the Crown, in cases concerning terrorist or national security matters, vets potential jurors using state files and records. It can then exclude those who, in the breathtaking formulation, have 'political beliefs which are so biased that they might interfere with the juror's fair assessment of the facts'. The vetting procedure, which was upheld by the judges, is an insult to us all.

The Royal Commission of Criminal Justice proposed in 1993 that in certain offences with a racial dimension there should be a quota of jurors from the same ethnic group as the defendant. This proposal is based upon three very dangerous ideas. First, that people are incapable of putting aside their prejudices and acting responsibly in their role as jurors. Second, that our peers are not anybody and everybody in our society, but just those with whom we share specific characteristics and experiences. A truly divisive concept. Third, that it is acceptable to address the divisions and inequalities in society by institutionalising them and by adjusting the formal equality of the law to match them. The fact that our

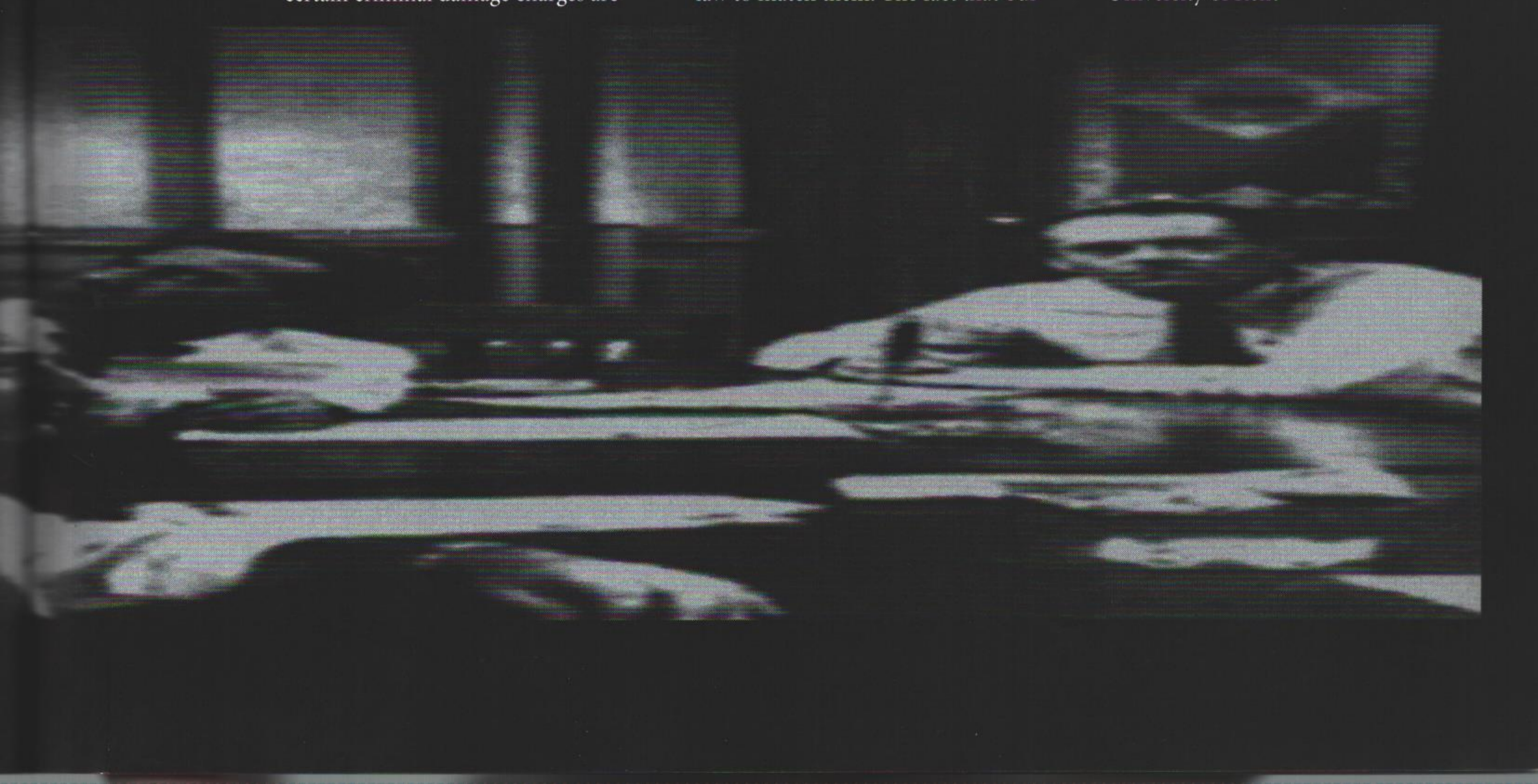
law accepts in principle that people should be treated equally is a potent weapon in our struggle to make equal treatment real in society, and we would be ill-advised to blunt it.

The quotas proposal illustrates very well the growing approach to the jury today. You just can't trust them. They, we, are just too stupid to understand the technical and mysterious matters of the law—it is best left to the experts. They, we, are too prejudiced because of our politics, because of our education (or lack of it), because of our race, because we don't like foreign childminders, to sit down and make a fair assessment of the facts put before us—it is best left to our moral betters.

There may or may not be lessons from the Woodward trial for how the system should develop. I certainly saw nothing to suggest that the jury system should be undermined even further. I have every confidence in the nous of ordinary people, and in their ability to see through the wiles of lawyers and witnesses alike, and when required to see through the law as well.

Consider the staggering list of miscarriages of justice that have emerged in recent years in this country. With the benefit of hindsight who should we blame? The answer is incompetent (or worse) forensic scientists; policemen who forced confessions out of prisoners, forged documents and lied; prosecuting officials and lawyers who withheld evidence; and judges who again and again failed to do the right thing. Overwhelmingly, it was not the fault of 12 angry men and women.

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*Sara Hinchliffe explains why defendants in rape cases should have the right to represent themselves in court*

## SELF DEFENCE IS NO OFFENCE

**I** am as appalled as anyone else to read of rape victims being questioned in this way and I am determined they should not have to go through this traumatising experience.' Jack Straw, 6 November 1997

A rape case tried at Knightsbridge Crown Court in early November hit the headlines because the defendant represented himself. The man, convicted of rape and sexual assault, was also accused of enjoying his victims' pain. According to the *Mirror*, he 'revelled in his power as his victims faced his piercing stare from across the courtroom. For hour after hour he continued his relentless questioning—at times prolonging their agony by long silences'.

Such an emotive case brought howls of protest from the public, the police, feminist groups and the government. Scotland Yard argued that allowing the defendant to conduct an in-person defence 'adds to the already considerable trauma and can make the victim feel victimised by the system'. Julie Bindel of Justice for Women said that 'defendants are allowed to emotionally rape their victims again from the dock'. Steve Ewart, foreman of a jury which suffered 'mental torment' in such a case, demanded changes in the legal process so that 'nobody in a civilised society should have to go through what those women experienced'. In his own *Mirror* article on the case, Home Secretary Jack Straw agreed that 'we must protect women in court'.

Changes in the law are currently being debated by a government review body, and may be proposed and implemented as early as next year. The removal of the right to an in-person defence sounds entirely sensible. Surely nobody could object to the removal of a rapist's right to cross-examine his victim? As Jack Straw commented 'greater protection for witnesses will ensure that we put the interests of the victims, not the criminals, first'.

The home secretary is plain wrong. There is no rapist, nor is there a victim, until the conclusion of the trial and the

jury's verdict. Until the defendant is found guilty, he is an innocent man. Moreover, he is an innocent man who has to prove nothing. The prosecution must prove the case against him, beyond a reasonable doubt. The woman who claims to have been raped is a complainant, not a victim. There is no victim until the defendant is proven to have committed the offence. Only then is he a criminal.

These principles are important because they are the basis of English common law, which is based on the possibility that somebody may be falsely accused of a crime, and must be protected from being falsely convicted. Jack Straw has forgotten them in his haste to put victims' rights first.

Anybody accused of a serious criminal offence must have the right to the best defence possible. It is certainly true that most defendants' interests would be best served by being professionally represented. However, as lawyers become more sensitive to complainants' interests, men accused of rape may have difficulty finding a sympathetic lawyer in the first place. They may not believe that their barrister is mounting the best possible case. They may simply come to mistrust their counsel. A man, presumed innocent, must have the right to dismiss his barrister and conduct his own defence. He should not be forced to remain silent if he thinks that evidence which will acquit him is not being brought.

### Malicious charge

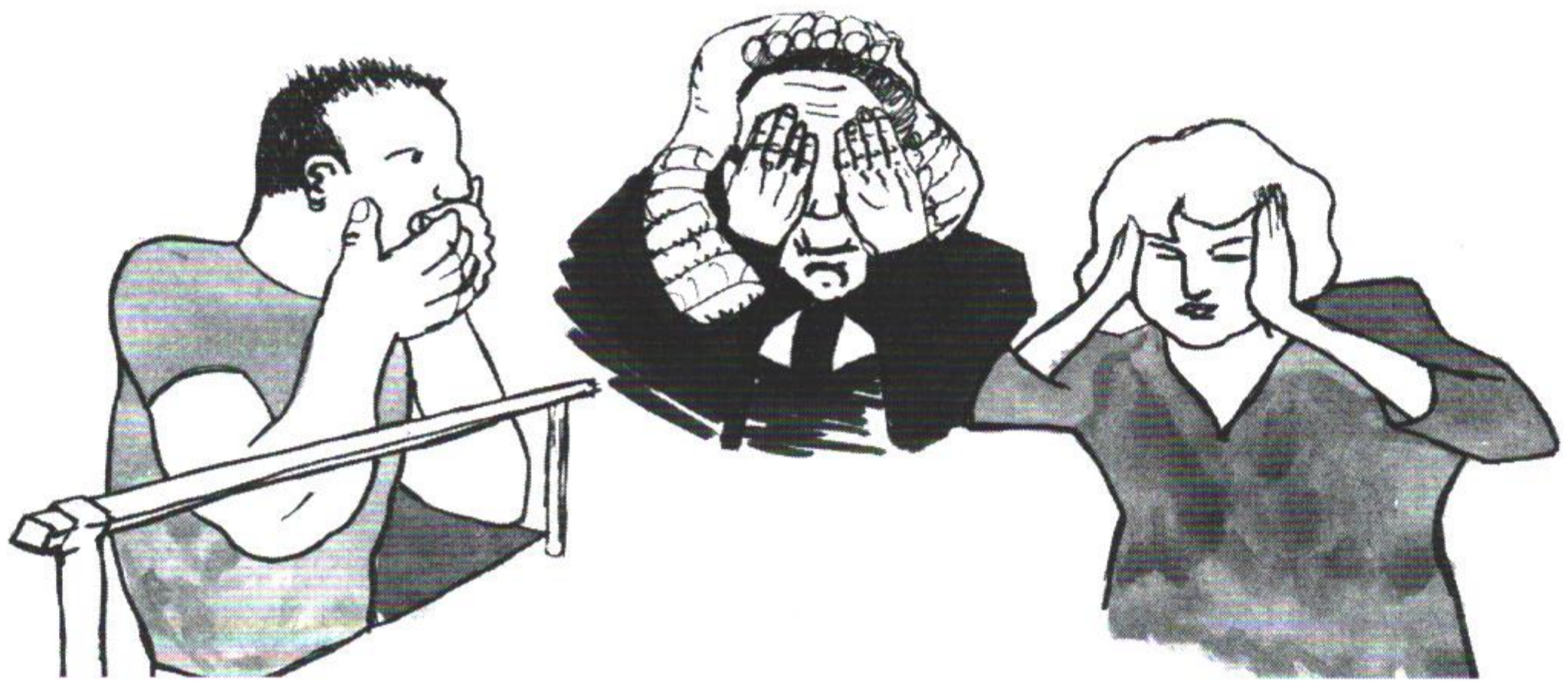
However, the debate around rape trials is not simply about the rights of the handful of defendants who choose to conduct their own defence. Commentators and policy makers now argue that the very idea of an aggressive cross-examination of the complainant—whether by the defendant or his barrister—is a second violent assault on a vulnerable woman. According to the *Independent on Sunday*, 'rape victims in this country are betrayed every day by the legal system and most, regardless of their cross-examiner—whether trained

barrister or untrained psychopath—will say they feel violated again by the end of their trial'.

Jack Straw notes that 'victims often find themselves in court, forced to relive the trauma of their experiences'. Of course they do. They are accusing somebody of a violent criminal assault which carries a long prison sentence. To suggest that they need not give evidence about the alleged assault is very dangerous. It implies that we should uncritically accept every complaint of rape, forget the process of considering the evidence, and move straight to the sentence.

The process of cross-examination of the witnesses against the defendant is central. Most rape cases rest on the question of consent. The prosecution argues that the woman did not consent; the defence that she did. The jury must weigh these conflicting accounts to arrive at the truth. It is the job of the defence barristers to test and question the complainant's evidence, especially in cases where consent is disputed. It is also vital that the defence is able to explore fully the relationship between the defendant and the complainant—including their sexual relationship; the details of the encounter between them; and the character of the prosecution witnesses. This sort of questioning has come under fire in the debate about traumatised witnesses. In fact it is entirely necessary if a disputed allegation is to be proved or disproved. If this sort of cross-examination is disallowed, the cards will be stacked against the defendant, and complainants may have an easier time in court. But we should not fool ourselves that this is justice.

Take the example of John Ellison, who recently won his claim for damages for malicious prosecution after being convicted of rape and given a five-year sentence, two years of which he served. His 'victim', it turns out, maliciously brought the complaint of rape against him because he refused to marry her. Such miscarriages of justice show the importance of full cross-examination of complainants of rape.



If proposed changes to the law are dangerous for hard-won civil liberties, they are also highly problematic for women. The idea that women are 'vulnerable witnesses' who need screening from questioning and wrapping in cotton wool, before being delivered to court by a sympathetic policeman, is patronising. It is now quite possible to hear legal experts suggest that women in rape trials should be treated just like little children in abuse cases, and allowed to give evidence on video.

ILLUSTRATION: HUGHES

In fact, many women find the experience of confronting the man

they say attacked them a cathartic one. One of the victims in the Knightsbridge case told the *Sunday Telegraph* that 'the cross-examination [by the defendant] wasn't that bad'. The reports of the case indicate that the two women stood up for themselves well during the trial, 'remaining calm and strong', with one of them telling the defendant that he was not funny and that she did not give a damn what he thought.

Women are more than capable of giving evidence. Feminists who have based their anti-rape campaigns on the idea that when women say No they mean No, would do well to heed

their own advice. Women are fully capable of knowing and speaking their own minds, of refusing to be intimidated, and of facing up to traumatic situations bravely. Presenting women as helpless victims who cannot stand up to being contradicted does women no favours. If women who have been raped are to get justice, they need to be able to stand up in court and tell the truth about what happened to them. Nobody can do that for them. ●

Sara Hinchliffe is chair of Feminists for Justice, and a researcher into women and the law

# Free Speech Wars

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*The New Labour government's incorporation of the European Convention on Human Rights into British law is nothing for civil libertarians to celebrate, says James Heartfield*

## GETTING IT WRONG ON HUMAN RIGHTS

A 14-year-old boy has been placed on the register of sex offenders following a conviction. He will be obliged to notify police of his whereabouts and potential employers of his conviction into his late twenties. Young people on an estate in Glasgow are being rounded up by police in the evenings—a curfew in all but name. Those accused in rape trials are to have their right to defend themselves curtailed. Under new laws on stalking and harassment you can be convicted of an offence even when you had no intention to cause harm. So far the law seems to have been used mainly to imprison those who were evicted from mental hospitals under the 'care in the community' reforms.

The public debate about law and order has settled into a vicious circle where inflated fears of crime and violence justify ever greater regulation, and more regulations mean more convictions, supporting the belief that there is more crime. It is hard to remember that there was a time when the bar-room bigotry of authoritarian Tory home secretaries like Michael Howard and David Waddington provoked criticism instead of praise. Under New Labour home secretary Jack Straw, all that has changed. Now the only criticisms made of the home secretary are that he has not moved quickly enough or far enough in introducing new restrictions.

In such a climate, the question of civil liberties does not seem very high on the agenda. Indeed, New Labour has previously scorned the issue of civil liberties as secondary to the question of community safety. But now Jack Straw seems to have thought again, by incorporating the European convention of Human Rights into British law. Straw said it was a 'historic day', and civil liberties campaigners agreed. John Wadham of Liberty said 'We've been campaigning for it for years. We're absolutely delighted'.

Incorporation of the Convention means that British judges will be able to rule on cases brought before them under its terms. People who feel that their rights under the Convention have been breached will no longer have to spend thousands of pounds bringing cases to the European Court in Strasbourg, nor wait the many years that judgements there usually take. Government ministers anticipate the creation of a 'human rights culture', and the possibility of a permanent Commission on Human Rights.

This new thinking might seem to be a welcome reversal of what appears to be a low-life contempt for civil liberties in the government's law and order rhetoric. Yet since the announcement there has been no let up in the general drive towards greater police and court powers.

In fact New Labour's new-found concern for human rights is a largely rhetorical matter. It does not contradict the government's overriding instinct towards authoritarian solutions to social problems. Rather, the 'human rights culture' is little more than the official gloss on a profoundly illiberal culture of restraint and regulation. The human rights culture will be reserved for Sunday sermons, while

the weekday business of regulation continues unabashed. Incorporating the European Convention is the government's way of distancing itself from the consequences of its own prejudice towards repression.

In principle a bill of rights could be a good idea. The American Bill of Rights is rightly celebrated as a humane and democratic document. It encapsulates the spirit of freedom that informed the American War of Independence. Revolutionary France's Declaration of the Rights of Man similarly distils the libertarian spirit of its day. The fact that subsequent governments of France and America have often failed to live up to those ideals is not an argument against them.

In the dark days of Cold War America, the Bill of Rights was trampled underfoot by congress' House Un-American Activities Committee in the pursuit of a largely imaginary threat of communist subversion. In the 1950s civil liberties campaigners tested American commitment to the Bill of Rights by presenting its clauses in the form of a petition to the electorate. They found that many Americans, ignorant of their own constitution, refused to sign what they thought was a communistically inspired document (H Kallen, *Cultural Pluralism and the American Idea*, 1956). That reaction might reflect badly on the culture of repression in Cold War America, but it reflects well on a document that continues to be a focus for civil liberties campaigners to this day. Pornographer Larry Flynt, whose magazine *Hustler* was banned in several US states, fought for his own freedom to publish before the Supreme Court on the basis of the Bill of Rights. The irony that it fell to a pornography mogul to defend freedom of speech does not take away from the fact that the right was enshrined in the US constitution, for anybody to lay hold of.

Britain's constitutional tradition differs from that of France and America in that the law does not stipulate rights in positive terms, but negatively, on the principle that what is not forbidden is allowed. According to a *Telegraph* editorial against the European Convention on Human Rights, the English law tradition is superior to the Continental model of a bill of rights (26 October). That might seem plausible were it not for the fact that the statute book is now so crammed with new laws and regulations that what is allowed is heavily circumscribed by what is forbidden. There is nothing inherently superior to the English law tradition, but nothing inherently deficient about it either. What is really at issue is less the kind of legal framework adopted, than the underlying spirit it expresses.

Whatever the virtues of the principle of a bill of rights, the European Convention on Human Rights is not a document that embodies a spirit of liberty. The American Bill of Rights and the French Declaration of the Rights of Man were the founding documents of revolutionary governments determined to sweep aside the outmoded privileges of

colonial rulers and aristocratic elites. Their pages resonate with the independent spirit of the men and women that made those times. The ECHR is a document of a very different order, reflecting very different times, and less generous aspirations.

In 1948 when the ECHR was formulated, Europe was staggering to recover from the most ignominious chapter of its history. Two of the most civilised European nations, Germany and Italy had recently descended into the depravity of fascism, tearing up such liberties as did exist all over Europe. Nor were the Allies—Britain, Soviet Russia and the United States—who defeated them exempt from the trend towards authoritarianism. The Allied powers laid claim to the rhetoric of liberty, but used the means of repression and martial law. In the defence of Britain's colonial possessions there was little pretence of extending liberty. In Europe, the Allies hung back from an engagement with the Axis powers until after popular resistance by the partisans in eastern and central Europe had been crushed by the Nazis.

The European Convention on Human Rights embodies all the contradictory sentiments of a ruling order that paid lip-service to democracy while inheriting jurisdiction over a Europe that was steeped in repression. The purpose of the Convention is to provide a framework for ruling post-war Europe, while at the same time lending some shred of legitimacy to those European elites that had been heavily compromised by their support for fascism. Those conflicting needs shine through the document to this day.

The ECHR borrows its rhetorical style from those earlier documents, the Declaration of the Rights of Man and the American Bill of Rights. Words like 'rights' and 'freedom' stand out, while slavery, forced labour and torture are condemned. But the devil is in the detail, or in this case the second, qualifying clauses to the main articles. Like a huckster's contract, if you want to understand the ECHR, you have to get past the generous opening terms and read the clauses in fine print.

Article two enshrines the right to life, a much debated clause, that has been deployed in arguments against abortion, but was written to distance European governments from the record of the Holocaust. The exceptions to the clause indicate the concerns of Europe's post-war ruling classes. They include taking lives in the course of detentions, prison escapes and 'for the purpose of quelling a riot or insurrection'. Not only ►



## In substance the Convention is a document that **DOES NOT EXTEND RIGHTS** but restricts them

◀ would this suggest a defence for Britain's many black deaths in police custody, but also for the killings of 'rioters' in Derry on Bloody Sunday, 1972, of hundreds of Algerians in Paris in clashes with the police in the fifties, and even the East German suppression of the workers uprising of 1949. Under the ECHR, some lives are more protected than others.

Article eight enshrines the 'right to respect for...private and family life'—written to distance European police forces from the dreadful memory of the SS night-time raids on 'subversives'. But the two line rule carries eight lines of exceptions, including national security, public safety, economic well-being of the country, the prevention of disorder or crime and the protection of health and morals. That last exception, the protection of morals was the basis on which the consenting sadomasochists of the Spanner case lost their case against arrest and conviction by the British state.

Article 10 enshrines freedom of expression, but its qualifying sub-clauses are, if anything, even more extensive than those to article eight, adding, on top of that previous list, exceptions in the case of a threat to territorial integrity, the protection of others' reputations, keeping confidences, and maintaining the authority of the judiciary. In other words the broadcasting ban on Sinn Fein imposed in 1988 could have been defended on the grounds of defending the territorial integrity of the United Kingdom, the suppression of *Spycatcher* could have been defended on the basis that Peter Wright had betrayed a confidence with his employers, judges could suppress criticism of their judgements, and Britain's peculiarly strict libel laws would remain intact.

Need one add that article 15 allows government to suspend almost every other article in time of war or public emergency, while article 16 sets out extensive escape clauses in the case of 'imposing restrictions on the political activity of aliens' (no comfort for political refugees here)?

In substance the ECHR is a document that does not extend rights but restricts them. In fact its clauses are in most cases more restrictive, not less, than the current state of British law. Its incorporation does not imply an extension of rights in Britain. In fact, in providing a lower benchmark than the British courts have done until now, it is likely over time to lead to an actual restriction of rights in Britain. As the courts rule on cases brought under the ECHR, the Convention's more restricted provisions will become the norm.

Many of those who have campaigned for the incorporation of the ECHR recognise that it is a far from ideal document. Spokesmen for Charter 88 and Liberty have often conceded that the document is a product of its authoritarian times. However, they argue, it is a start in the process of getting a written bill of rights entrenched in British law, and should be seen as something that can be a focus for the further extension of rights in the form of a constitutional guarantee.

Unfortunately, the argument that the incorporation of the ECHR reflects a growing 'human rights culture' is wrong. The most obvious sign of that is the government's own actions. It is not just that the legal intrusions into private and family life continued unabated. The government also made a point of exempting the Draconian provisions of the Prevention of Terrorism Act, with its seven days of detention and interrogation, without access to a lawyer or any other

kind of outside contact. Thousands of Irish men and women have been arbitrarily detained under the act, the overwhelming majority of whom are released without charge (see P Hillyard, *Suspect Community*, 1993).

But quite apart from the government's actions, the proposition that the pressure for incorporation stems from a growing human rights culture in wider society is wrong too. In recent times there has been some genteel agitation around civil liberties, but only in the context of a much broader loss of public interest in questions of political and civil freedom. The public mood is much more influenced in the other direction by a mood of retribution against criminals especially paedophiles. There might be some discussion in more radical law chambers about justice, but on the streets the talk is of punishment.

In fact the move towards incorporation is an adaptation on the part of civil liberties campaigners to that public mood. Fearing that they will lose the argument for freedom if it is put before the public, they have sought to take that argument out of the public sphere altogether. The case for a bill of rights made today is not that it will put liberty in the hands of the people, but, on the contrary, that it will save liberty from the mob. The left's growing enchantment with such unlikely champions of liberty as the British judiciary or the European Courts is in direct proportion to its disillusionment with the British public. Consequently its strategy has been to remove the defence of liberty from the one to the other.

It must be said that this is a thoroughly disastrous strategy in all respects. It is a disaster for freedom, because the courts have no interest in or predisposition to the defence of freedom. The entire character of an appeal to the good grace of the courts is subservient, entrenching not liberty but the patrician authority of m'learned judges. Throwing yourself at the mercy of the courts is an act of last-ditch desperation, that makes our freedom a plaything of the powerful. Instead of increasing our liberty, it only serves to increase their authority over us.

Equally the strategy of turning to the courts is a disaster because it reinforces the popular indifference to questions of rights and justice. Instead of tackling the current repressive climate, these campaigners are trying to avoid meeting it. They reinforce the prejudice that 'the mob' is inherently hostile to questions of rights. Among the public, such sneaky tactics only reinforce contempt for 'liberal do-gooding'. Every time they see the arbitrary authority of a judge pass over their heads to protect a defendant's rights, the view that rights are a concern of elite power is reinforced. In refusing to take the case for freedom to the public, campaigners abandon the public to the most reactionary influences.

Not surprisingly this resolution is the one favoured by the government. It has succeeded in washing its hands of any responsibility for defending freedom. That leaves it free to appeal to the most backward-looking popular sentiments in framing its new laws. At the same time the government retains its links with those who balk at such sentiments, at a distance, by redirecting their efforts towards legalistic lobbying.

The incorporation of the ECHR is a recipe for sidelining the case for rights, while the New Labour government gets on with the job of undermining them in practice. ●

What is the *Guardian* newspaper up to, asks Helen Searls

# OUR NEW MORAL GUARDIAN

The *Guardian* privacy debate, organised by the newspaper in October, was a strange affair. An audience of journalists, lawyers, minor celebrities and media students filled the National Film Theatre to listen to other lawyers and journalists talk about the need for a new privacy law. Why was the *Guardian* organising this event, I asked myself? Surely they ought to be on the other side of the debate. Journalists have traditionally been among the keenest defenders of press freedom. Why had so many of them apparently switched sides?

Roy Greenslade, former *Mirror* editor and now *Guardian* columnist, shed some light on things when he said that we all had to ask ourselves 'what is a newspaper for?' when thinking about privacy. In answering that question, Greenslade assured us, it would become clear why serious journalists had nothing to fear from a carefully framed privacy law.

Asking the question did not make me less fearful of a privacy law, but it did give me a hint as to why the *Guardian* has gone so badly wrong in this debate. The *Guardian* no longer fears a privacy law because it is redefining what it means to be a newspaper. In undergoing this transformation the need to defend traditional free-press values has been sidelined.

During the general election in May, the *Guardian* propelled itself into the electoral arena with its active promotion of the 'anti-sleaze' candidate Martin Bell. It is now clear that this was not just a one off. Today the *Guardian* is aiming to step into the breach on other matters.

Look for example at the *Guardian's* attitude to privacy laws. We are told in the wake of the death of Diana that the new concern about privacy is the result of a public demand for a more responsible press. Yet polls around the *Sunday Mirror's* revelations about Tory MP Piers Merchant's love life, coupled with sales figures of 'tell-all' Diana books, show that there is still a big demand from many to know more about the rich and famous.

Rather than merely following public opinion, the press in general, and the *Guardian* in particular, are leading the campaign for a different kind of news. There is now a genuine desire among many newspaper editors for the press to be seen to become more ethically responsible. This change in heart is not simply a response to public pressure. It is a yearning for respectability reflecting these newspapers' aspirations to play a role as society's moral guardians, the arbitrators over what is right and what is wrong. It is this sentiment that explains why so many editors have fallen over themselves in a rush to adopt new codes of conduct.



*Guardian* editor Alan Rusbridger has not only led the call for a privacy law. While other newspapers still occasionally expose the sordid affairs of the rich and powerful, the *Guardian* deplores such antics. Investigative reporting for the *Guardian* has been reduced to little more than probing the rather minor financial improprieties of failed Tory politicians. The newspaper often seems more concerned with exposing the despicable acts of tabloid journalists and paparazzi.

In October, Rusbridger announced that he intend to make the *Guardian* the most honest and open British newspaper. To this end he has appointed two ombudsmen to deal with readers' complaints. Rusbridger has also promised that he will each day set aside space to publish corrections. On the surface this all seems laudable. And as somebody who has taken the *Guardian* to the Press Complaints Commission,

and failed, you might think that I would welcome these changes. But there is something about the tone and context of these innovations that makes me think the *Guardian* is losing sight of what it is meant to be in the business of doing.

The over-concern with matters of privacy and apparently exceptional emphasis on readers' complaints seem to herald a new spirit in the newspaper's offices. Behind both initiatives lies the worrying assumption that the behaviour of the press is one of the most serious problems facing society. The 'unethical' journalist is now portrayed as a public enemy.

A free press is meant to expose matters to the public that would otherwise go unnoticed. The emphasis on ethics seems to imply that the *Guardian* is putting this old and distasteful business of poking noses into the affairs of the powerful behind it.

I heard recently at a meeting in Leeds that Alan Rusbridger is now keen to adopt some of the principles of American 'civic journalism'. To this end, he apparently had some notion that the *Guardian* could play a role in resolving the West Ridings School crisis in Halifax. Needless to say this attempt by journalists to 'sort things out' did not get very far, but the very fact that the *Guardian* thought it could play any kind of useful role in the midst of a complex crisis is worrying. Has the time come that the *Guardian* is more concerned about being seen to be a moral player than a newspaper?

I have no interest in journalists behaving badly and I am sympathetic to the complaint that newspapers can make individuals' lives a misery. But once the press becomes unduly pre-occupied with these problems it seems to me it loses sight of what it is in business for. Rather than getting on with the job of 'telling it like it is', the *Guardian* today appears more concerned about making sure that we get the right moral messages.

Good journalists are rarely respected as upstanding moral citizens. By definition they offend many in public life and even a few private individuals in the course of their work. And if they are doing their job correctly, they will make enemies—and not just of ex-Tory MPs. This is how it should be. As Ann Leslie of the *Mail*, one of the few outspoken opponents of privacy legislation, said at the *Guardian* debate, there is something deeply worrying about a press that 'cosies up' to those in authority and agrees to keep their secrets from the rest of us. Society benefits from the fact that some are prepared to poke their noses into things that others would rather they left alone. Such activity lies at the heart of a free press. ●

# LM v ITN

Throughout 1997, *LM* magazine has been fighting to defend itself and the right to free speech against libel writs and gagging orders issued by ITN. As the year ends, the stakes in this battle are rising—as is the level of support for *LM*'s stand against Britain's censorship-for-hire libel laws.

The libel case centres on the article 'The Picture that Fooled the World' by German journalist Thomas Deichmann, published in our February 1997 issue, which raised embarrassing questions about ITN's award-winning reports from a Bosnian Serb-run camp.

At the end of January ITN demanded that we pulp every copy of the offending magazine, apologise and pay damages. When we declined to do so, they issued writs for libel against *LM* editor Mick Hume and publisher

Helene Guldberg. For the rest of the year, the magazine has been embroiled in a costly legal battle that puts the future existence of *LM* at risk. But the consequences do not stop there.

In July ITN levelled a new charge against *LM*, accusing the magazine of being 'actuated by malice'. By introducing this charge ITN is trying to claim that the magazine had an 'improper motive' for publishing Thomas Deichmann's article. According to ITN and their lawyers, *LM*'s improper motive was politics. In the lengthy legal document issued in July, ITN sets out what it believes to be *LM*'s political outlook, and argues that such a political approach must necessarily mean that *LM* was motivated by malice when it published the article.

The fact that ITN's charge is based on a risible caricature of *LM*'s political outlook is not the real issue here. Regardless of that, the charge of 'express malice' has serious implications both for *LM*'s case and for the broader right to freedom of speech in Britain.

As far as the case is concerned, if ITN can prove that *LM* had an improper motive for publishing the article they can defeat any defence of 'fair comment'. The law deems that comments from a 'maliciously' motivated individual can no longer be considered 'fair' or reasonable, regardless of the facts. If accepted in court, the charge of malice also attracts aggravated (ie, huge) damages. So if *LM*'s editor and publisher do not go bust trying get the case to court, they surely will if this charge is successful.

This unusual use of malice in a libel case could also set a dangerous precedent for further restricting free speech. ITN makes the extraordinary claim that the political views expressed in *LM* themselves constitute malice. As a result they are saying that *LM* should no longer have the right to

pass comment on a matter of great public interest. If ITN are successful in this it will be a very serious attack upon free speech. It could mean that only people who hold 'respectable' political views can comment freely. Any dissenting view could be branded as an outlaw opinion under the extended libel law. The right to free speech would become meaningless.

This is why our small magazine, with its shoestring resources, has been prepared to risk ruin by standing up to a mega-corporation like ITN. There are important principles involved which symbolise what *LM* is all about, and on which we are not willing to compromise.

Most importantly, *LM* stands for freedom of speech and a free press. We insist upon our right—and indeed anybody else's right—to report the truth as we understand it without fear of offending public opinion or upsetting powerful interests. It is not for ITN, the government, the courts or any other body to dictate what facts and arguments we can and cannot make available to our readers.

You will find the LM v ITN website



Those who dislike what *LM* says have the right to ignore it or to argue against it. They should not have the right to silence it, or to buy immunity from criticism through the courts.

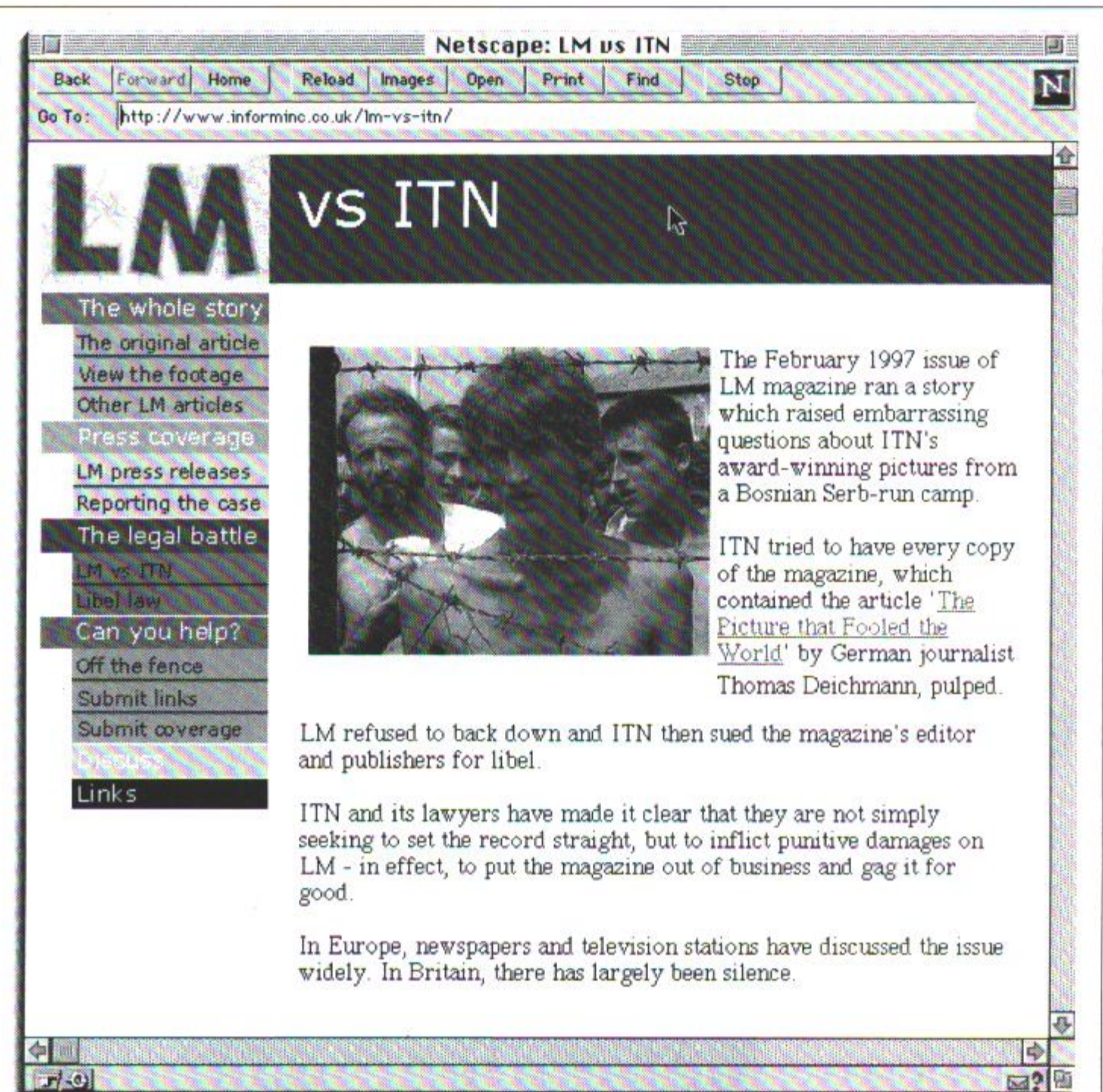
There is now a more pressing need than ever to make a stand for the right to free speech. We live in an age when the New Labour government punishes its own MPs and MEPs for expressing an 'off-message' opinion on anything, and when hardly a week passes without a call for some pictures, books, films or political opinions to be banned.

A repressive code of moral correctness dominates much of public discussion today, dictating that those views deemed 'extreme' or 'offensive' by the self-appointed guardians of the nation's ethics should not be heard at all. Such

a not-in-front-of-the-children attitude to public discussion should be an anathema to anybody interested in freedom and democratic debate. That is why *LM* is jointly hosting, with the Institute of Contemporary Arts in London, a conference on Free Speech Wars in February (see p19 for details).

*LM* magazine now finds itself facing a life-and-death legal case because it spoke out on a taboo subject and offended the new etiquette of you-cannot-say-that-here. So long as *LM* survives, it will continue to raise a critical voice, to say what others will not, and to stand up for the freedom to think for ourselves and to speak our minds. To do that, we need all of the help we can get.

As the year has gone on, *LM* has gathered more support from all sorts of quarters for its battle with ITN's libel writs. The campaign will continue into 1998, and for however long it takes us to get a result. If you want to take a stand for free speech, get in touch with the *LM* libel appeal, The Off the Fence Fund—see inside back cover for details.



## NOW OUR FIGHT FOR FREE SPEECH GOES ONLINE WITH THE LAUNCH OF THE NEW *LM* v ITN WEBSITE

*This campaign website contains everything you want to know about the libel case, including:*

- The offending *LM* article, Thomas Deichmann's 'The Picture that Fooled the World', and all subsequent *LM* coverage of the issues
- All of the unpublished legal documents and correspondence that set out the case for the plaintiffs and the defendants
- Every example of the heated public debate around the case and the broader issues, taken from the British and foreign media
- Plus a chance for you to join in the debate and get involved with the campaign

at [www.informinc.co.uk/LM-vs-ITN/](http://www.informinc.co.uk/LM-vs-ITN/)



PHOTO: FRANKIE QUINN

*Brendan O'Neill has never worn a bowler hat and sash, but he thinks that the Orange Order has got a point about New Labour's 'authoritarian' Parades Commission*

## MO MOWLAM'S MARCHING ORDERS

**T**he Parades Commission is an authoritarian and draconian body: it is contrary to the principles of civil liberty and it will undermine democracy. There is nothing for us in this legislation and we reject this kind of thinking, which allows our faith, tradition and culture to be treated with such contempt.

George Patton, executive officer of the Orange Order, was more purple than orange when I spoke to him just after the Secretary of State for Northern Ireland, Mo Mowlam, unveiled plans for the new and improved Parades Commission to take responsibility for resolving disputes over contentious marches. 'Great', says a furious Patton, 'yet another unelected quango to tell us how to behave'.

The Parades Commission was born out of a review set up by the Tory government in August 1996, following disturbances during Northern Ireland's marching season. But the Tories procrastinated over implementing the review's recommendations, published in January 1997. Under New Labour's Mo Mowlam, however, the Northern Ireland Office has gone all out to empower the Parades Commission and force through its recommendations.

'If only New Labour would procrastinate as well', dreams Patton. 'But with them it's been a case of "how quickly can we force through this legislation, how quickly can we undermine civil liberties, how quickly can we regulate the people of Northern Ireland?". With New Labour there is no

compunction to do the right thing, no concern about freedom and liberty.' So what are the recommendations which have got even the Orange Order sounding off about civil rights and democracy?

Recommendation number eight says that 'the period for the submission to the police of notice of a parade should be extended from not less than seven days to not less than 21 days'. Patton points out how such a ruling will have serious consequences for the right to protest:

'If we have to give three weeks notice every time we want to protest about something there will be no point. The Parades Commission is supposed to be looking at the problem of traditional

parades where they clash with other communities, but this ruling will have no effect on traditional parades at all. Everyone knows when the Orange Order will be marching because our parades are on set dates each year and have been for over a century. The three weeks ruling will not affect us one iota, but it does represent an infringement of people's civil liberties and maybe even the end of the right to protest.'

Not content with telling people where and when they can march, the Parades Commission also wants to tell them how to behave when they are marching. Recommendation number 25 says that 'a code of conduct should be introduced covering the behaviour both of participants in a parade and of protesters', and recommendation number 27 advises that the code 'should have an appropriate statutory basis'. The code would cover marchers' general behaviour ('be polite and courteous at all times'); dress ('no paramilitary-style clothing'); refreshments ('alcohol should not be consumed prior to, or during, a parade'); music ('hymn tunes only, no party tunes'); and flags and banners ('should not depict any scene which could reasonably be perceived as threatening, abusive or insulting').

Patton describes the code of conduct as 'absolutely farcical'. 'I believe in peaceful protest, but I also recognise that parades can provoke passion. One minute you might be marching peacefully through a rural setting and the next you are on somebody's street and somebody is shouting abuse at you. But how will a code of conduct with statutory powers help? Are we going to be approaching policemen and saying, "Excuse me officer, that gentleman over there was rude to me and I think you should arrest him"? This is crazy.'

The Parades Commission will also outlaw dissent. If you do not like having to give the police three weeks notice about a march, or being told what to wear and what language to use, there is little you can do about it. Recommendation number 21 says that 'a new offence should be created to penalise the conduct of individuals who set out deliberately through force of numbers or threat of disorder to contravene the legal determination of the Parades Commission, in defiance of its authority'. So if you do not like what the Parades Commission says, tough.

'This is really the stuff of George Orwell's nightmares', says Patton. 'I would have difficulty accepting rules and regulations of this kind if they were being proposed by a politician. But at least you can vote against a politician and send them packing. With the Parades Commission there is no comeback: you either do as they say or you are in trouble.'

As you read this article I know what you are thinking: yes, the Parades Commission is authoritarian, but what right does the Orange Order have to talk about civil liberties? After all this is the organisation which was founded in 1795 with the sole purpose of intimidating Catholics and Irish nationalists. For the past 70 years the Orange Order has played an important role in defending the sectarian set-up in Northern Ireland and in ensuring that

## THE ONLY FLAG you will be allowed to fly IS A WHITE ONE

Catholics were denied their basic civil rights. As one who has always opposed the anti-democratic and sectarian nature of political life in Northern Ireland, I too think it is a bit rich for the Orange Order to come out in defence of civil liberties now that its parades are being curtailed. But I still won't support the Parades Commission.

It is not the case, as some would have us believe, that the boot is now on the other foot: that the Parades Commission will provide Catholics and nationalists with the opportunity to right the wrongs of the past and lord it over the Orange Order for a change. The target of the Parades Commission is not contentious Orange parades per se, but contention itself and anything which smacks of a controversial political viewpoint. This becomes clear when you look at the issue of flags and emblems.

In a statelet like Northern Ireland, where there has been a conflict over sovereignty, a flag can be a powerful political symbol. Under the Flags and Emblems Act (1954) the old Unionist regime made it an offence to fly the Irish tricolour. The draconian law was enforced with vigour, as on the infamous occasion in 1964 when, prompted by the Reverend Ian Paisley, 50 RUC officers trashed a Sinn Fein election office in West Belfast to remove a tiny Irish flag, provoking the worst riots seen in Northern Ireland since the 1930s.

The aim of the Flags and Emblems Act was clear: to suppress a particular political tradition, Irish nationalism, seen as an unacceptable threat to the Unionist establishment. The new Parades Commission, on the other hand, wants to outlaw all flags and emblems which are 'likely to cause offence'. Where the bigots of the past wanted to outlaw one particular brand of politics, the Parades Commission wants to do away with conflict,

controversy and contention: the very lifeblood of the political process.

You can be sure that the more controversial the political viewpoint, and the more passionately it is held, the more likely it is to be deemed 'threatening, abusive or insulting' by the Commission. This is why the Orange Order can appear as the major victim of the Commission's recommendations: it is the Order's unabashed display of its political beliefs

that the Parades Commission finds objectionable. But the Orangemen will not be the only victims. If even an organisation as historic and formidable as the Orange Order can find itself on the receiving end of such stringent measures, what chance for anybody who wants to stand up for themselves and express an independent point of view?

So welcome to New Labour's New Northern Ireland, where the only flag you can fly is a white one; where the only march you can go on is one which does not demand anything; where you can only hold political views which have been okayed by the authorities; where even the language you use and the clothes you wear will be vetted by the Northern Ireland Office. It looks like Mo Mowlam wants to transform Northern Ireland's political landscape into something resembling an inter-denominational church service, where everybody puts their political differences and interests to one side, sings ecumenical hymns and genuflects to the greater authority of bodies like the Parades Commission.

'Some people say that if both communities in Northern Ireland do not like something, then it must be good', says George Patton. 'This is the thinking behind the Parades Commission: both communities have complained about it so it must be on the right track. But think about how undemocratic and insulting that is.'

The Parades Commission does indeed see both communities in Northern Ireland as a problem, and is ready and willing to force all sides to accept its recommendations. You do not have to be a has-been supremacist in a bowler hat and a sash to be concerned about this drift in events. Anybody who values democracy and free thought should give the Parades Commission its marching orders. ●

Some claim that the election as president of Mary McAleese, a northern nationalist, represents a return to civil war politics, where people voted according to which side candidates took in the Anglo-Irish conflict. Others say it proves that southern voters still want a united Ireland. And still others claim that the victory of McAleese, well-known for her anti-abortion views, coupled with the high vote for Dana, the former Eurovision song contest winner and family values candidate, points to a revival of Ireland's famously conservative Catholicism.

But the attempts to fit the results of the presidential poll into the framework of old-style Irish politics give a wholly misleading impression of what the election was all about. McAleese does not represent a return to traditional nationalism and Catholicism. She personifies the remarkable transformation of Irish politics, and shows how redundant the old terms are.

Nobody suffered more from the collapse of old-style politics than those who relied on them to undermine Mary McAleese. In past elections in the Irish republic, politicians on all sides have used the national question to polarise debates and discredit candidates. In this election, however, the tried and tested tactics of civil war politics backfired.

As McAleese took a strong lead in the polls, leaked documents showed that she had Sinn Fein sympathies and had even expressed pleasure at the increased republican vote in the last general election. These revelations were grasped by veteran anti-republican politicians like Eoghan Harris and John Bruton to paint McAleese as a dangerous candidate who would wreck the peace process by pushing a nationalist agenda.

### Tribal Mary?

When Gerry Adams intervened to pledge his support for McAleese, it was seen by many media commentators as the death-knell for her campaign. In fact the affair probably sealed McAleese's success, by allowing her to project herself as, in effect, the peace process candidate.

Mary McAleese is a nationalist. But being an Irish nationalist today means something entirely different from the past. The defeat of the republican struggle to get Britain out of Ireland means that the national question no longer exists in the old way. In the vacuum left by the national question, a new form of nationalism has emerged.

Nationalism no longer describes the political goal of an end to British rule and a united Ireland. It now sees itself as one tradition among others. While people calling themselves nationalists may have a deep-seated desire for

*The new Irish president is no hardline nationalist says Kevin Rooney*

# A NEW MCALEESE OF LIFE?



PHOTO: OWEN HUMPHREYS/PA

a united Ireland, they will not fight to achieve that goal. Instead they will work in support of an 'agreed Ireland' in which nationalism and Unionism can thrive as two traditions commanding equal respect. Emptied of its political goals, nationalism is now primarily a cultural affair, expressed in demands for parity of esteem, respect for cultural identity and so on.

Gone is the old nationalist language of victories, defeats or historic conflicts. In its place, McAleese used the row over her alleged Sinn Fein sympathies to talk the new language of modern day nationalism—of inclusivity, of diversity, of consensus, of respect for all traditions. Those attempting to portray modern day nationalists like McAleese as violent and ideologically driven only ended up looking like extremists and intransigents themselves.

### Gerry Blair

In response to the attacks on her, McAleese described her honourable role in securing an IRA ceasefire. Her campaign slogan 'Building Bridges' was aimed at reaching out to the Unionist community. She talked of her 'love' for Unionists and boasted of having many Unionist friends. Far from finishing her off, Gerry Adams' support for McAleese may well have strengthened her campaign. Adams, who once had the kind of pariah status now reserved for Saddam Hussein, is slowly but surely becoming the principal spokesman for modernised Irish nationalism. Not only has Adams persuaded the republican movement to stop trying to force an end to British rule, but he has constantly stressed the need to devise a new and inclusive vision of Ireland.

In the interview in which he pledged his support for McAleese, Adams showed his contempt for old-style politics which had made Ireland a 'narrow partitionist, factionalised and dysfunctional society', and embraced a new concept of nationalism, 'an all-Ireland view which tries to embrace all the people of this island as equals'. Adams often resembles Tony Blair in his feel for the language of the times. Unlike the Unionists he comes over as willing to compromise, forgive and break with the old doctrines. While Adams continues to support a united Ireland, he now admits that his political vision is no more nor less valid than any other and that all views must be accommodated in a new 'agreed' Ireland.

The language of the peace process goes down well in southern Ireland today, where identity politics and the victim culture are in the ascendant. The previous president Mary Robinson epitomised the new-style politics in which Ireland is defined by its concern for the oppressed and victims

worldwide. Robinson's new job as UN human rights ambassador was a natural promotion for a woman who had drawn on the history of the Irish famine to claim Ireland had a unique ability to reach out to the wretched of the Earth.

The Robinson-style emphasis on Ireland as a healer reached ridiculous levels during the presidential election, with all five candidates promoting their credentials as friends of victims. Adi Roche was nominated by the Green Party, Labour and the Democratic Left because she had set up a charity to help children of Chernobyl. Cashing in on her Princess Diana looks, she campaigned on the issue of landmines and offered to turn the presidential residence into a Disney wonderland for deprived children.

Mary Banotti, the runner-up, reminded voters that she had set up the first refuge for abused women and a centre for the treatment of alcoholism. Derek Nally, whose sex mitigated against his chances of winning, modestly declared himself the 'Martin Bell' of Irish politics and emphasised his role as Chair of Victim Support Ireland. He announced that in the event of becoming president, he would appoint advisers from Rape Crisis centres and

be seen as the most caring and compassionate. In an echo of Lady Diana's *Panorama* interview, Mary McAleese talked of wanting to embrace everybody.

While the presidential election reflected the new face of Ireland's political elite, it was greeted with little enthusiasm from the voting public. The turnout was the lowest ever as less than half the electorate bothered to vote. Many commentators complained about the bland nature of a campaign where candidates avoided politics and denied ever having taken a firm stand on anything. This abandonment of principle sent the candidates running for cover when confronted with any real political issues.

Mary Banotti, when first challenged on her past support for limited abortion and for adoption rights for gay couples, ran away from reporters. Later in the campaign she developed more sophisticated techniques for avoiding the question, rejecting 'labels' and stating that her views were personal. Her refusal to engage with anything political prompted one journalist to compare her with natural gas, 'odourless and colourless'. Even Dana, the only candidate who stood on a

## Foreign observers COULD BE FORGIVEN for thinking that half the Irish population WAS DISABLED

Women's Aid groups. Dana set out her stall in support of those from broken homes and 'victims of abortion'.

Mary McAleese expressly stated that she would create a presidency, 'that holds out a hand to victims'. In a mawkish address to 2500 disabled people in Dublin, she went to great lengths to show her empathy by recounting tales of her deaf brother and autistic cousin. McAleese's campaign managers squeezed a wheelchair into every photocall until foreign observers could be forgiven for thinking that half the Irish population was disabled.

Many pundits commented on the predominance of female candidates. But the 'feminisation' of Irish politics is about much more than the prominence of women. It is about the celebration of frailty, the worship of the victim and the rejection of confrontational politics. Nobody observing this election could fail to notice the Princess Diana factor as candidates vied with each other to

principled platform—for family values—could not keep it up. She was soon backtracking and trying to show a more liberal side to her nature.

Are the 'modernising' changes in Irish politics to be welcomed?

The country that was known for its strong sense of national identity, for producing heroes like James Connolly and Michael Collins and for resisting British rule, now presents itself as a land of victims where all identities can thrive as long as nobody challenges anybody else or stands for anything. The turnout for the election suggests that it is not immediately obvious to the Irish people how they can benefit from the new politics.

Mind you, one tangible benefit was the banning of Dana's songs from the airwaves for the duration of the campaign. Although, come to think of it, her Eurovision winner 'All kinds of everything' would make a fitting anthem for the diverse nation that is Ireland today.

The way that share prices bounced back after October's falls showed that modern business has got more money than balls, argues Phil Mullan

# WHAT GOES DOWN, GOES BACK UP AGAIN

**W**hat surprised the experts in late October was not the nose-dive in share prices, but how quickly the markets recovered. Almost everybody had been predicting a fall on the New York and London exchanges for months; share prices were 'overvalued', inviting at least a 'correction', a 10 per cent fall in prices, if not a full blown crash—a loss of 20 per cent plus. Also it was coming around to October again, as tends to happen about once a year. And October is the time for stock market collapses: 1929, 1987, 1989, 1997?

Yet no sooner had the long expected share price falls happened, than equally rapid gains followed. The largest ever one day index fall on Wall Street on Monday 27 October was succeeded the next day by the largest ever daily rise. Since then most Western stock markets have regained the upward trend.

So why didn't the roof fall in on the financial world? Many claimed that, contrary to earlier doubts, it must mean that the American and British economies really were in good shape after all. The 'fundamentals', by which is meant favourable conditions of steady, sustainable economic growth, rising productivity and low inflation, were declared sound. The Bank of England even put up interest rates again to prove its anti-inflationary zeal in the face of a supposedly overheating British economy.

Investors' faith in shares, ownership of which provides a claim on future profits, was interpreted as a sign of confidence in the real economy. And since bull (rising) markets are often seen to be driven by a healthy 'appetite for risk', explained Peter Martin in the *Financial Times*, the conclusion should be that the entrepreneurial spirit is also alive and kicking.

Not quite. The real forces which have sustained steadily rising share prices for 15 years derive not from the underlying strengths of the US and British economies, but from their long-term weakness. And far from being a sign of risk-taking entrepreneurship, today's high stock markets reveal a safety-first spirit of risk aversion and taking precautions.

So what happened to reverse the price falls of 27 October? The mechanics of stock market movements are driven by supply and demand. When demand is consistently in excess of the supply of new shares, share prices will tend to rise. When demand exceeds supply by a fair margin, prices will rise fast. The demand side comes from the mass of money buying shares.

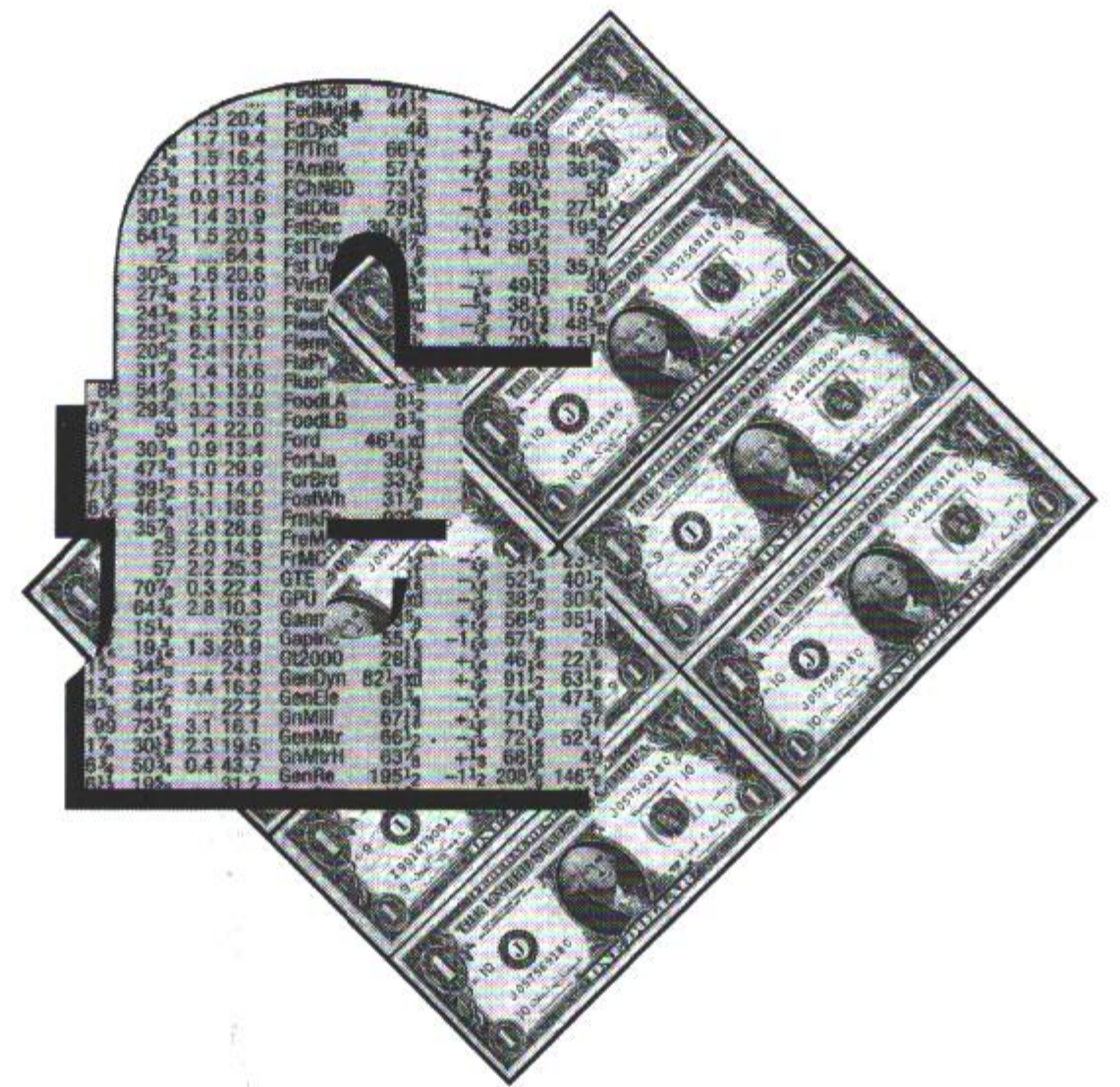
On Tuesday 28 October, a 'wall of cash' came in to push the markets back up again. Small investors came into the market, both directly and indirectly through investment funds: pension funds, investment trusts and unit trusts, or mutual funds as they are known in the USA. At the same time IBM, one of America's largest public companies, announced a \$3.5 billion buyback of its own shares, starting rumours of other big buybacks to come.

These were dramatic and unexpected developments, yet they were also in line with recent trends. The key upward

influence on share prices in the 1990s is the high level of liquidity—the technical term for the weight of money washing around the economy. This spare cash is going into buying shares and pushing up prices.

Much of the cash comes from the explosive growth of personal savings in equity funds. In America the net inflow into these funds has risen from \$10 billion a year in the mid-1980s, to \$50 billion in 1991, to well over \$200 billion in the past couple of years. People are putting more and more money into pensions and other forms of savings for retirement; 84 per cent of the 40 million American baby boomers investing in the mutual funds say that retirement saving is their main goal. Widespread concern about old age is fuelling this flow of funds into the markets.

British pension fund assets have also grown rapidly, from about \$600 billion in 1990 to nearly \$800 billion in 1995 with



forecasts of over \$1200 billion by the Millennium. Globally, total pension fund assets are projected to grow from \$5 trillion in 1990 to over \$12 trillion in 2000. All the evidence suggests that this trend looks set to accelerate.

Far from rising stockmarkets providing evidence of a risk-taking culture, then, from the demand side it is the culture of fear of the future that is driving markets up.

The same risk aversion is evident on the part of business, as reflected in the big IBM buyback. The corporate world creates the supply side influence upon stock prices, as companies issue shares to raise capital. Yet companies are today issuing fewer shares than 10 years ago in the heady days

# Capitalism USED TO BE about making profits

of the late 1980s. Few seem keen to go out to raise new share capital for expansion. This limits the supply of shares and ensures that the huge amounts of money available go into bidding up the price of previously issued shares. Hence the bull markets.

The business world's reluctance to raise new share capital for investment seems strange, given the apparently strong growth in profits. Corporate America has reported double digit increases in quarterly earnings for the past six years. Britain PLC has not been far behind. Tax cuts, lower interest rates, cost cutting, downsizing, the intensification of work, have all contributed to rising profits. When profitability is high, why is the money not being raised to fund productive investment in the real economy? If the fundamentals of Western economies were as sound as is supposed, why are companies not investing heavily in the future?

The fact is that investment is at historically low levels across most of the industrialised world. Snapshot pictures of the advanced economies might show above average rates of growth, double digit rises in investment levels, and accelerating productivity growth. But the longer term picture tells a different story. International Monetary Fund figures show investment in the advanced industrialised economies has fallen from 25 per cent of Gross Domestic Product in 1973, to 21 per cent in 1985, to about 20 per cent in the mid-1990s. In Britain the position is worse, falling from about 20 per cent in the 1970s to just over 16 percent in the 1990s.

Since productive investment is an economy's dynamo, it is not surprising that all the major economies are experiencing long-term slowdowns. OECD figures reveal that in each of the USA, Japan, Britain and the European Union, the average annual growth in national output and productivity has been lower in the 1990s than in the 1980s. The eighties rates were already considerably lower than in the boom years of the 1950s and 1960s.

## Filthy lucre

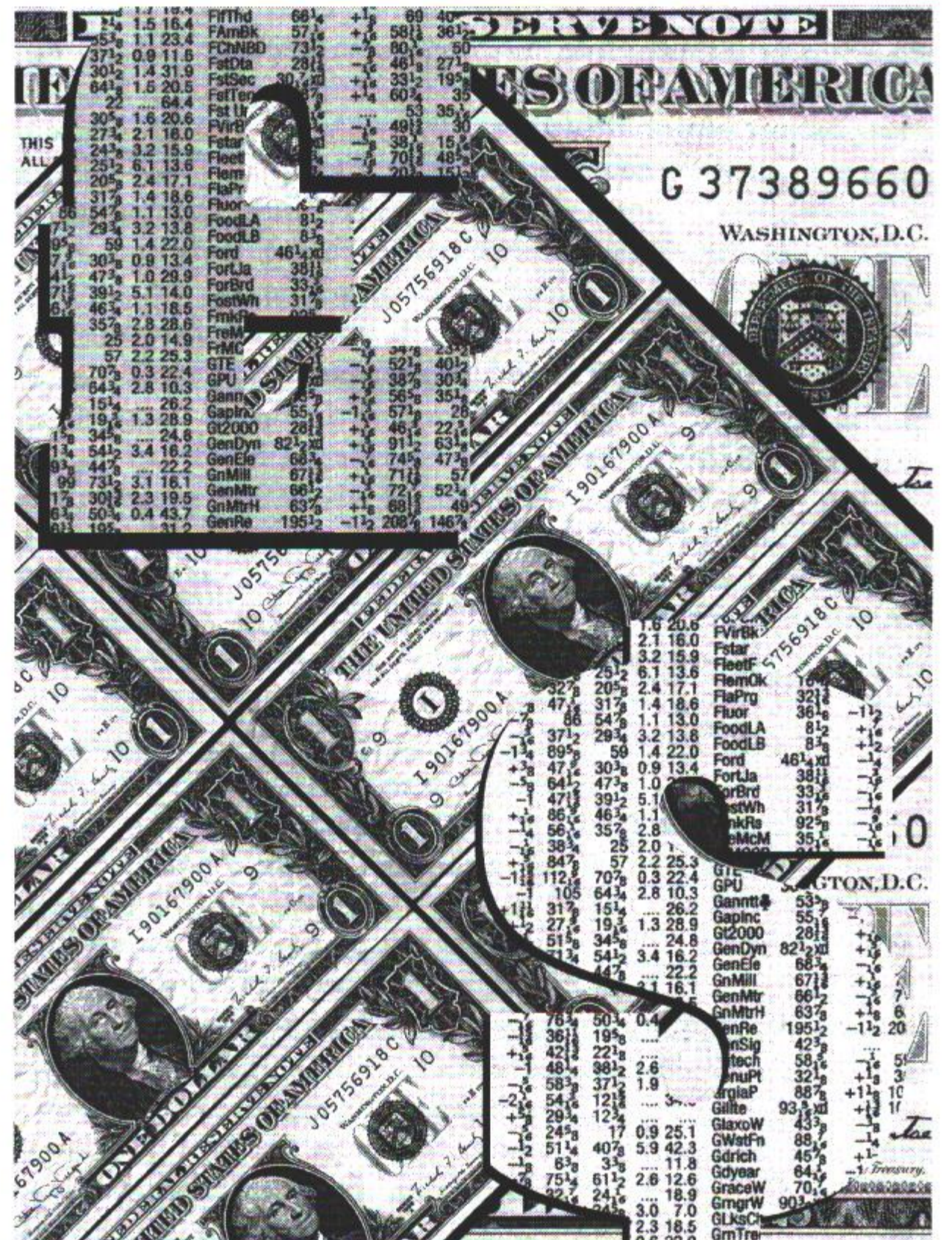
If the fundamentals are not as healthy as we have been led to believe, then why are companies not taking advantage of rising profit rates to make the productive investments that could reverse the trend? What is holding business back from putting its cash, and other people's money, back into industry?

Two of the more critical economic commentators—Doug Henwood from the American *Left Business Observer* and John Kay from Oxford University's new Business School—have both pointed out that, over the past 20 years, stockmarkets have no longer been approached by business as a source of funds. Far from turning to the markets for finance, companies have been pouring money into the markets—buying back their own shares and taking over other businesses through mergers and acquisitions. The consequence is that in the main Western stockmarkets more stock has

been 'retired' than issued. Henwood estimates the level of payback at over \$800 billion in the USA since the early 1980s. 'Surreally', as he notes, the stock market has become a negative source of funds. Some risk-taking!

Rising profits in Britain and America have not modified the trend. All that has changed is that, instead of borrowing money to fund stock buybacks and takeovers, companies are using their own profits to finance even more buybacks and record levels of takeovers. Huge corporate cash balances are also financing record dividend pay-outs to shareholders.

Capitalism used to be about making profit in order to accumulate and so make more profit. Today when they have profits the instinct of modern capitalists seems to be to get rid of them. The well-publicised philanthropic gestures by CNN's Ted Turner (\$1 billion donation to the UN) and the global



speculator George Soros can be seen as part of a broader trend. Profits are no longer being used to invest and accumulate but to fund handouts. Instead of seeking funds from the money markets, capitalists are more keen to shovel money into their shareholders' pockets.

The problem is that, if capitalism has lost its nerve in investing for the future, we will all suffer the consequences. The productive forces will go on stagnating, as stricter limits are imposed on investment, experimentation and development.

A hundred years ago, robber barons like Rockefeller, Carnegie and J P Morgan personified risk-taking to make money for themselves. In the process they financed technological breakthroughs in the use of telegraphy, telephony, transportation and electricity which benefited all of humanity. Being confronted with today's gutless breed of capitalist almost makes me nostalgic.

ILLUSTRATIONS: DASTCO



*Routine screening for cancer of the prostate could do more harm than good, suggests David Nolan*

# HANDS OFF OUR GLANDS

**C**ancer of the prostate—a chestnut sized gland above the bladder—is a nasty business. It affects one in 12 men, and killed 8782 of us in 1996. Thanks to a screening test developed in the 1980s, it is now possible to stop the cancer in its tracks. Prominent doctors, politicians and charities are pressing the Department of Health to advocate routine screening for the disease.

But would routine screening necessarily be a good thing for men?

PSA (prostate-specific antigen) screening is currently available in the UK but not routinely used. These blood tests give an indication of whether some symptoms, such as tiredness, indigestion and urinary problems, are caused by cancer of the prostate. And unlike its predecessor, a digital rectal examination which was accurate in only about 20-30 per cent of cases, PSA works. Before testing was introduced in the USA, 60 per cent of prostate cancer cases had spread so far by the time they were detected as to become essentially incurable. Patients faced a choice between hormone therapy and removal of the testes. Now the same percentage of detected cancers are confined to the gland and can be eradicated by surgery or radiation.

Not surprisingly, the success of this new test compared with the old has attracted many fans. But there are also many problems associated with PSA screening tests, and in some cases it is better to let the disease run its course.

The PSA test provides many false positive readings due to the more common problem of non-cancerous benign prostatic hyperplasia (BPH). PSA is produced by all types of prostate tissue: normal, hyperplastic,

and malignant. BPH—enlargement of the prostate—affects one in three men in their fifties and up to 90 per cent of men in their eighties and nineties, and can have the same symptoms as malignant tumours. BPH is uncomfortable but not life threatening, and false positive readings cause unnecessary worry among many men and their families.

Studies have shown that most growths of cancer in the prostate do not lead to serious illness or death. A third of men over age 50 experience some form of the cancer, but only about 4 per cent will develop clinical cancer and only about 1.2 per cent eventually die of it. In many cases among older men it will be a matter of chance as to which disease gets you first, and often the disease is only diagnosed after death.

Over-treatment is a potential minefield when the treatment proves to be worse than the disease itself. Some hormone treatments result in menopause-type symptoms and breast swelling. Removal of the source of the testosterone which feeds the cancer—the testes—is often unacceptable to men and can result in impotence and penile dysfunction. Other side-effects

may be unbearable, such as several months of urinary stress incontinence (permanent in 3-5 per cent of cases) and six months to a year of impotence (permanent in 30-50 per cent of cases). Treatment can involve the insertion of a catheter into the penis for a year, which causes immense discomfort. A father of a friend of mine swore he would have preferred not to have had the treatment—before he died of something else a couple of years afterwards.

As Dr Gerald Chodak of the University of Chicago explained in a pre-screening handout, 'many more men will have small, slow-growing prostate cancers than deadly ones'. There is no benefit in treating 'harmless' cancers, but there is no sure way of telling these cancers from the harmful ones before surgery. So, he argues, 'we would cause more harm in treating 10 men, whose cancer would never have hurt them, than we would prevent, in curing one of those whose would have'.

Given all the problems associated with PSA tests, why have campaigners made such a big deal of calling for routine screening? Not so much because men feel that their health is under threat from prostate cancer as that

they feel their healthcare is under threat—from women.

It was perhaps no coincidence that in the UK the calls for screening peaked in October which was also national 'Breast Awareness Month'. In the USA Bob Dole, a leading proponent of screening is honorary co-chairman of US TOO, a national support group for prostate-cancer survivors which demands that men's health issues be given as much attention as women's. The Canadian Prostate Cancer Foundation issued an angrily-worded press release earlier this year making a comparison between the 'less than \$500 000' dedicated to prostate cancer research in 1996, 'while over \$17 million was spent on breast cancer research'.

In the UK, *Maxim* magazine carried out a survey of 'men near the Millennium' which showed that almost 90 per cent wanted men's health issues to be given the same priority as women's. It also pointed out that the Cancer Research Campaign spent over £10 million on breast cancer research and awareness and only £1.5 million on prostate cancer. The government-sponsored Medical Research Council spends about a tenth as much on prostate research as it does on breast cancer.

There is no harm in advocating research. But when there are clear suggestions that routine screening might cause more harm than good, there is something rather sad about campaigns to make the government advocate it just because the government advocates screening for breast cancer. It seems to have more to do with men whinging about their own vulnerability than about doing something to increase their chances of detecting cancer.

In a recent article in the *European Journal of Urology* Professor Reg Hall, from the Freeman Hospital in Newcastle, said of the widespread use of PSA tests in the USA that 'European men deserve the benefit of scientifically based information before being exposed to another North American fashion' (1996, Vol29, pp24-36). Unfortunately, European men are already exposed to the 'North American fashion' of being obsessed with their health. When this means volunteering to walk around with a catheter in your penis just so you can have the same claim on medical resources as the girls, we should start worrying.

<b>Total UK deaths all causes</b>	Men	269 825	Women	293 182				
<b>Total deaths cancer</b>	Men	71 855	Women	66 237				
of which	<b>Breast cancer</b>			12 231				
	<b>Prostate cancer</b>			8 782				
<b>Age breakdown of deaths from prostate cancer</b>								
	under 25	25-34	35-44	45-54	55-64	65-74	75-84	85+
	0	1	4	74	539	2375	3853	1936
All figures from 1996. Source: Office of National Statistics, 1997								



Adam Burgess looks behind the recent 'gypsy invasion' from Eastern Europe

## GO WEST

'Ah, strawberry fields forever!' exclaimed a Bulgarian I met in Belgrade recently when I told him I lived in Kent. The hundreds of Eastern European students who spend their summers on the gruelling fruit picking jobs Kentish locals avoid have evidently spread the word about the 'garden of England'. Certainly in my small town, a summer visit to the supermarket or video shop guarantees the sound of numerous Slavonic languages as much as estuary English. But if young casual labour from the East has gone largely unnoticed, the latest arrivals have been made rather less welcome—at least by the authorities and the press.

Some 600 gypsies from the Czech and Slovak republics have come off the ferries at Dover since August, and the arrival of a further 180 in late October hit the national headlines. Predictably the *Daily Mail*, mouthpiece of middle class alarmism, devoted several pages to these 'unwelcome visitors in shellsuits'. Not just guilty of bad dress sense, they were apparently only the advance guard of an army of exotic loafers intent on fleecing our 'generous' benefits system. Even more predictably, New Labour got in on the hysteria. The government minister in charge promised a 'review' of procedures—a barely disguised reassurance that 'caring, tolerant' Britain would be making sure that these undesirables don't even disembark in future.

But what prompted the mini-exodus of Eastern European gypsies, or 'Roma', in the first place? The immediate reason, widely cited in the press, was a Czech TV programme specifically aimed at gypsies that extolled the virtues of

British life. The effectiveness of the programme, however, can only be understood in the context of the success of the West in politically reshaping Eastern Europe and promoting the ideal of 'our culture' throughout the region.

Dislocation of gypsies within the Czech and Slovak republics is the result of wider geopolitical developments, not least the fragmentation of the former Czechoslovakia. A key dynamic behind the old federation's split in late 1993 was the desire of the Czech leadership to join the West: specifically, to consolidate their growing relationship with the region's new master, Germany. Because of the entry requirements understood to be required of aspirant 'westerners', this necessitated ditching the allegedly more 'eastern' Slovaks. To complete the process of joining civilisation the Czechs then re-classified their gypsy population, which according to some accounts numbered about 250 000, as Slovaks.

In a European discourse shaped by the notion that everything associated with the West is desirable, the number of gypsies in Eastern European societies is treated as one measure of 'eastern-ness'. This is why every country is keen to hide the real numbers and it is consequently difficult to establish accurate statistics. With Czech citizenship being made deliberately difficult for Slovaks, the result was the displacement of many gypsies to Slovakia. They were greeted with hostility even by the resident gypsy populations who saw them as disturbing delicate relations with local authorities.

At the same time as this domestic upheaval, gypsies wanting to escape from their new situation found previous exit doors barred. In particular the tightening of German asylum

rules and methods, including the use of radar to locate potential migrants, exacerbated fears among the Czechs that their country would become the new waiting room for anybody in the East seeking a better life in the West. An elaborate new security arrangement exists between Germany and its 'central' European neighbours, Poland, the Czech Republic and Hungary, whereby they keep out potential immigrants from further east in return for the promise of entry to European institutions. Gypsies wishing to escape have had to try their luck further west, claiming political persecution back home.

Even with strict immigration controls, some gypsies do manage to slip through the net and start new lives in countries such as Britain. However, the fragile status of refugees in these countries means that their marginalisation only increases. The problem is not so much that they cannot get into Western countries, but that once in there the quasi-criminal status given to those seeking asylum means that they are denied the opportunity to start a new life. Full integration into Western society is made impossible, and the gypsies' wandering status is confirmed.

Under these circumstances, even those who profess to have a sympathetic view of the gypsies of Eastern Europe tend merely to compound their problems. There are now hundreds of initiatives sponsored by Western charities and non governmental organisations aimed at both the improvement of the Roma's position within society, and the education of the population at large in treating the Roma more respectfully. Indeed, for anybody trying to gain access to the various funds for charity and educational work in Eastern Europe, reference to helping the Roma, or preaching their acceptance among the 'uncivil' masses, remains as good a guarantee of success as any. But by arguing the need to accept, indeed respect, the gypsies' status as a marginal cultural group rather than the need to challenge it, these initiatives are actually compounding the sense of separateness from society which underlies their second class status.

In romanticising the cultural exclusion of the gypsies or talking up political persecution that has driven them from their home country, those who engage in projects to give the gypsies more 'respect' fudge the real concern about the gypsies' immigration to the West. A desire for better living standards, to live in a country that does not simply aspire to be Western but is Western and where the chances of survival are not perfect but better, is generally considered to be an invalid reason for migrating. Political persecution is held up as the only acceptable excuse for leaving one's home country, while the more day-to-day reality of economic hardship is perceived as something those in the non-Western world simply have to put up with.

Shellsuits or not, what the Roma need is a chance to start a new life where they choose. But from East to West, all they are offered is the opportunity to become even more marginal from society than they were before. ●

Adam Burgess' new book, *Divided Europe: The New Domination of the East* is published by Pluto Press



# FUTURES

*As world leaders gather in Japan to discuss what many now see as the biggest problem facing the planet, geophysicist Peter Sammonds sifts through the myths and realities of global warming*

## WOULDN'T A BIT OF GLOBAL WARMING BE A GOOD THING?

In the run-up to December's global warming conference in Kyoto, Japan, Bill Clinton admitted that the USA would not after all meet the promise made at the Earth Summit in Rio five years ago, to stabilise greenhouse gas emissions by the end of the century. The outraged European Union warned that 'environmental disaster' would result from America's backsliding, while the World Wide Fund for Nature accused the USA of being 'morally in the Dark Ages' and of 'holding the whole world to ransom'. The orthodoxy on climate change is that global warming poses a terrible threat to the planet, and upholding that view is clearly now a measure by which the morality of nations will be judged.

Global warming is considered different from local, more manageable environmental issues like deforestation, land degradation or pollution of the sea. It is seen as a global manifestation of our pollution of the planet, stoking fears of an unknown, invisible danger all around us. The solutions proposed range from dramatic changes in lifestyle to deindustrialisation and population control. Even then, many fear that any action we take might already be too little too late.

What are the facts? There is much anecdotal evidence that global warming is occurring—hurricanes in the

Caribbean, the break-up of Antarctic ice shelves and warm summers in England. But what are the likely implications of warming, and is the science of climate change really now beyond dispute?

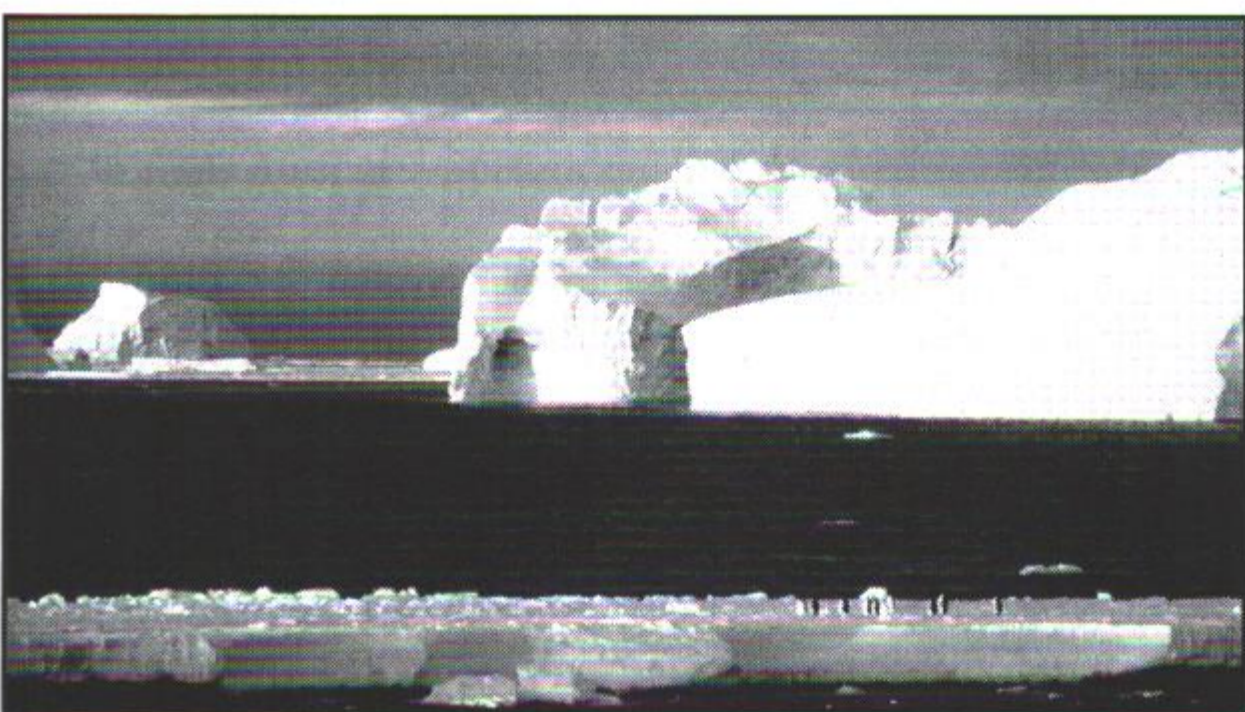
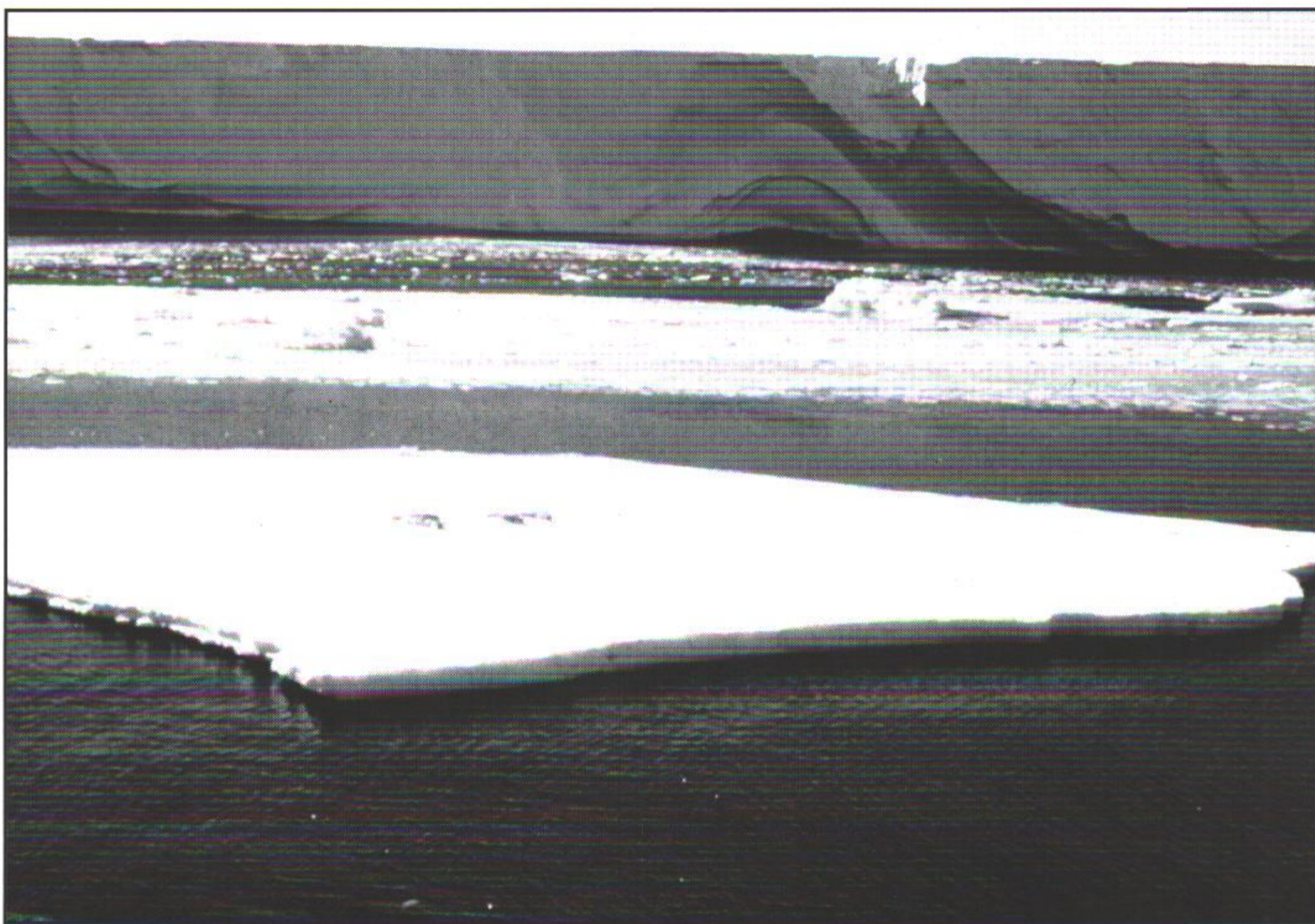
Global warming theory became scientific orthodoxy with the publication of the first report of the Intergovernmental Panel on Climate Change (IPCC) in 1990. In its 1992 report the IPCC predicted a best estimate of a global mean temperature rise of 0.5°C by 2010, and 2.5°C in the next 100 years. Assuming this to be the case, does it really matter?

The Earth's climate is forever changing. We currently live in what geographers call the Holocene, a warm period that has lasted for about 10 000 years. Prior to the Holocene was the Pleistocene, when the climate alternated between ice ages, lasting about 100 000 years, and short inter-glacials, lasting about 10-20 000 years. In fact most Earth scientists regard the Holocene as an inter-glacial, with the onset of a new ice age not too far distant.

The record of past temperatures—the palaeo-climate—is preserved in the ice sheets of Greenland and Antarctica. In the last few years much effort has gone into extracting continuous ice cores of 3 to 4 km depth which hold high resolution records of the palaeo-climate of the last 100-250 000 years. These tell us that compared to the more distant past, we have had remarkably stable temperatures during the Holocene. However, even in the Holocene temperature change is not unusual.

Change is the norm, and nature has no preferred state—but should we, from a human-centred perspective, have an ideal climate in mind? Reconstruction of palaeo-climates and palaeo-environments shows that the ice-age Earth was a truly dreadful place. As well as mean global temperatures more than 4°C colder than today, ice-age climates were more arid, there was no Indian monsoon, vegetation survived in isolated refuges and there was higher atmospheric circulation. The Amazon forest was almost wiped out.

By contrast, 6-7000 years ago was what geographers term the mid-Holocene thermal optimum, when global mean temperatures were some 2 to 3°C warmer than present. With warmer climates comes higher rainfall; in the Holocene optimum, global net precipitation was 9 per cent higher. The Sahara desert, which was considerably



PHOTOS: HANS OELTER

more extensive during the Pleistocene ice ages, effectively did not exist during this period. The Savanna which replaced it was hospitable to human life, and it was only with the general cooling after the Holocene optimum that the Sahara grew to its present extent. There were some areas of increased aridity, such as Turkey and the Rockies, but in general the warmer climate of the Holocene optimum meant a more fertile and productive Earth.

So why should we have anything to fear from global warming? Some areas of productive farmland would be lost, but they would be more than replaced by new areas for agriculture. A flourishing Sahara would surely be a good thing

on a global scale. Just as 'scare' stories about Britain acquiring a Mediterranean climate make me say 'roll on global warming', so everything history has to tell us seems to point to the potential benefits of a warmer world.

However, even if the general outlook is bright, what about the local extremes of climate that the environmental disaster lobby predict will be caused by global warming? Will a warmer or a warming world be more unstable, even if it is overall more hospitable to human life?

Research into extreme geological events is certainly some of the most exciting work being undertaken presently: the idea that huge tsunamis would have battered the eastern seaboard of America triggered by submarine slumping in the Canary Islands; the possibility of widespread volcanic dust in the western USA and the implications for large-scale volcanism; and of course the realisation that a comet impact probably caused the extinction of the dinosaurs. Grappling with these ideas drives Earth scientists, and it sure beats working on improving seismic data processing techniques for the oil industry.

The notion that global warming will bring fast, extreme and damaging changes to parts of the world has recently been argued by the Chief Scientific Adviser to the British government, Sir Robert May FRS. One of the problems he raised is the increased likelihood of tropical hurricanes in a warmer world. However, the general case for more violent atmospheric circulation globally is not borne out by the historical evidence, again taken from deep ice cores.

The Chief Scientific Adviser also raised the possibility that the Gulf Stream, responsible for bringing warmth to north-west Europe, could be shut off. This is of course scary stuff, for while the world warms Britain would turn into a sub-Arctic wasteland. The argument is based on the idea that increased precipitation in the North Atlantic region, and increased fresh water runoff, would reduce the salinity of surface water. Water will therefore be less dense and would not sink so readily, thereby reducing the circulation of warm water from equatorial regions. However the geologic records suggest that the opposite happened in the past—warmer climates meant stronger deep water formation (see M E Raymo, 'The initiation of northern hemisphere glaciation', *Annual Review of Earth Planetary Science*, 1994). ►

# CO<sub>2</sub> AND HOT AIR

**T**here is an easy assumption in the current debate that it is an increase in the amount of carbon dioxide in the atmosphere which causes a climate to change in extreme ways. But in fact, during the Pleistocene, the last two million years, climate records show that this has never been the case. Other factors have been instrumental in bringing about changes to the climate—and those climate changes have tended to precede, rather than follow, concentrations of carbon dioxide.

Once it had been established in the mid-nineteenth century that the Earth had experienced periodic and extensive glaciations, covering much of northern Europe and North America, the search was on for the mechanism responsible. After several false starts the Milankovitch-Croll astronomical theory of ice ages finally triumphed in the 1970s (see J Imbrie and K P Imbrie, *Ice Ages: Solving the Mystery*, 1979). This astronomical theory says that ice ages start when the amount of sunlight on high latitudes in summer is low. Less summer sunlight means more unmelted ice, and expanding ice sheets. The intensity of sunlight can be calculated from astronomical observations of the eccentricity of the Earth's orbit, the variation in axial tilt and the precession of the equinoxes. The Milankovitch theory predicts periodic ice ages—a prediction found to agree with temperature cyclicality recorded in sea-bottom cores and ice-sheet cores. These drastic climate changes are not driven by the concentration of carbon dioxide.

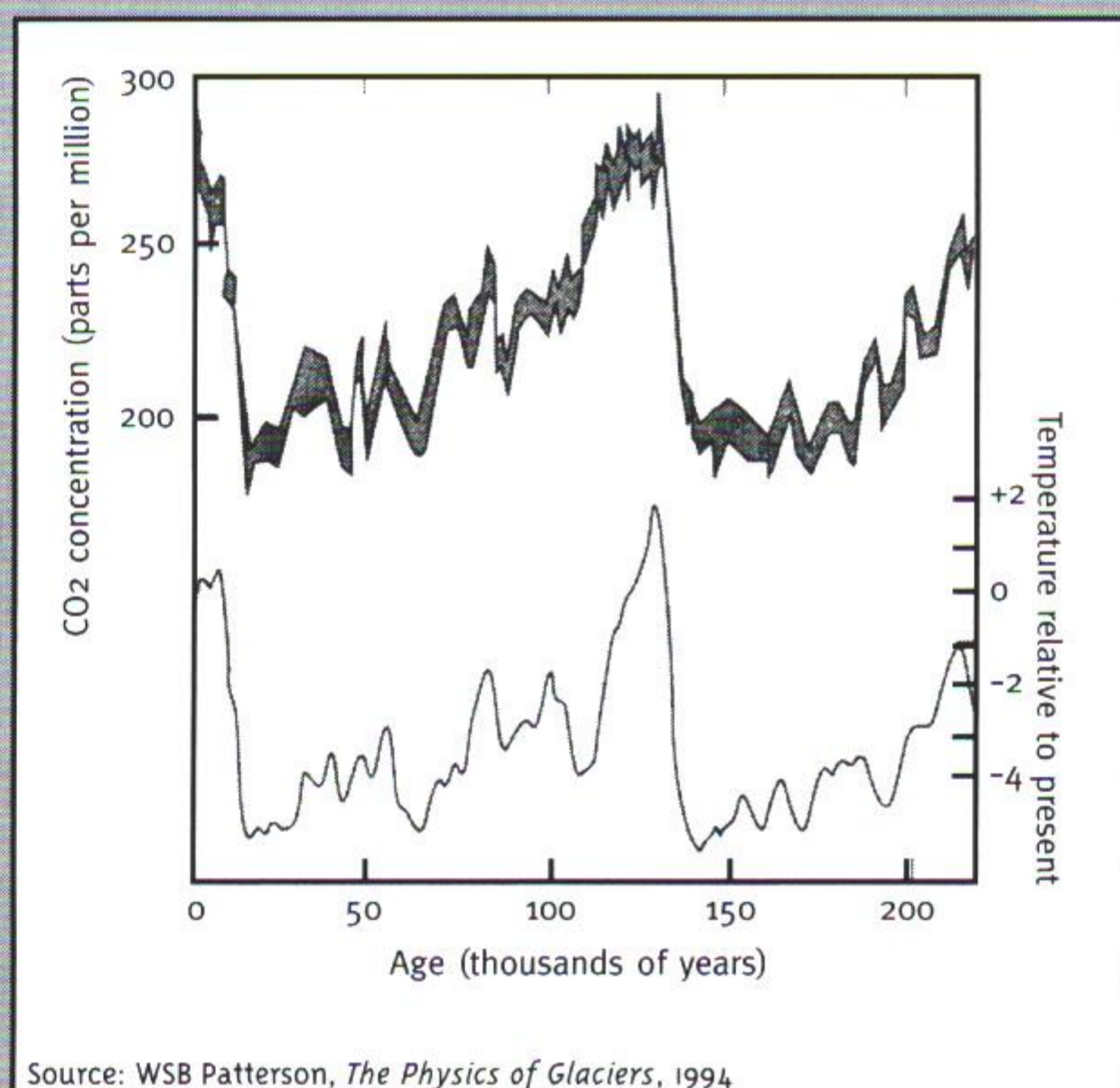
CARBON DIOXIDE DOES, of course, play a role in determining the temperature of the planet, as has been known since the late nineteenth century. Clearly the

Earth does experience a greenhouse effect; surface temperatures would be 33°C colder without our atmosphere. The physical mechanism is straightforward (see R Buckley (ed), *Climate Change*, 1997, for a readable review). The Earth's surface temperature depends on the balance between incoming short-wave energy from the sun and outgoing long-wave energy emitted from the Earth's surface. Some gases in the atmosphere, the greenhouse gases such as carbon dioxide, allow short-wave solar radiation to pass through and warm the Earth's surface, but at the same time these gases trap some of the long-wave infra-red radiation re-emitted from the ground.

It is possible to map the historical relationship between concentrations of carbon dioxide and climate change, by studying ice sheets. As well as recording the past temperature, these also contain a high resolution record of past atmospheres, thanks to trapped pockets of air. For instance the Vostock ice core drilled in Antarctica shows a strong Milankovitch temperature cyclicality (see chart). However, the carbon dioxide content of the trapped air-bubbles also follows this cyclicality over a long time-scale.

In other words, for palaeo-climates, the carbon dioxide content of the atmosphere broadly responds to global temperature change. Note the chain of causality: historically, carbon dioxide concentrations have *followed* climate change, rather than *forcing* change. This is borne out by studying the big picture on the scale of tens of thousands of years. But it is also important to note that, over shorter intervals of a few thousand years, the temperature record and carbon dioxide record can be moving in opposite directions. This needs to be kept in mind when today's meteorologists are making their observations about global warming over decades, and at best hundreds of years.

All in all, scientists who reject the notion of anthropogenic induced global warming have plenty to get their teeth into. We should be sceptical of any assertion that extreme weather events experienced today are linked to rising carbon dioxide levels.



Source: WSB Patterson, *The Physics of Glaciers*, 1994

◀ So Chelsea could play Tromsø in northern Norway with no more than a chill in the air.

Given that the evidence does not seem to support many of the dire warnings, why is global warming always seen as such a problem?

The fatalistic tone of the discussion is partly a product of the broader climate of the times, when people tend to be seen as the passive victims of change, unable to adapt, never mind thrive in or modify a changing natural world. This is most evident in the discussion of the Third World.

For instance: 85 per cent of Bangladesh's population depends on the land to survive; the coastal regions of Bangladesh are the most fertile agricultural areas; and those regions could be flooded if warming causes sea levels to rise appreciably. The argument that global warming will be a disaster for Bangladesh is easily made. Yet this argument rests upon the static view that, in say 100 years time, Bangladesh will not have moved beyond the impoverished economy it has today. The solution lies in addressing the root causes of the problems which global warming could bring to the surface—not only by applying the most advanced science and technology to protect agriculture, but by promoting the industrialisation of countries like Bangladesh.

Such development, however, is now seen as a problem, with global warming widely taken as a metaphor for the way we are supposedly messing up the planet. As the American writer Gregg Easterbrook has argued: 'the idea that clumsy tinkering with the environment has done something useful—that we benefit from pollution!—is almost too peculiar for polite discourse.' That phrase—pollution—is indicative of the negative way in which the issue is always discussed: in reality carbon dioxide is no more a pollutant than is fresh water or sunlight.

A futuristic thought to finish: what happens if dumping carbon dioxide into the atmosphere threatens a run-away greenhouse effect, a warming without limits? The obvious answer, according to Professor Andrew Palmer FRS in a recent article in *Science and Public Affairs*, is to dump it in the oceans instead. Palmer argues that large producers such as power stations should dump their unwanted by-products in carbon dioxide lakes formed in the deep ocean, held there by the huge pressure of the water above. The technology for this already exists. Such a measure would be a step towards the ultimate goal of human control of the climate. ●

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DR MIKE FITZPATRICK

# Shadow syndromes



● Patients often come in these days with newspaper cuttings promoting some new wonder drug or after a television feature about the lethal side-effects of the medication they have been taking for years. This man brought a book recently published in the USA—*Shadow Syndromes*, by John Ratey and Catherine Johnson—in which he had discovered the true cause of his longstanding problems as the hitherto little recognised adult form of Attention Deficit Disorder. Following the recommendation of these authors, he requested a prescription for Ritalin, the drug now used on a wide scale in the USA (and increasingly in Britain) to treat this disorder in children.

Anticipating a wave of similar sufferers, I hastened to read *Shadow Syndromes*. Though the authors point out that the number of categories of abnormal behaviour recognised by the *Diagnostic and Statistical Manual of American psychiatry* has expanded from 60 in 1952 to 384 (plus 28 'floating' diagnoses) in 1994, they are concerned about the much wider prevalence of 'subsyndromal behaviour'. They reckon that many, if not most, people in society are suffering from mild or partial forms of familiar psychiatric conditions, such as depression and anxiety, obsessional compulsive disorder and autism. Unrecognised and untreated, these syndromes cast a shadow over the lives of sufferers, their families and society in general.

By way of introduction, Ratey describes his personal odyssey from radical intern influenced by the works of anti-psychiatrist R D Laing to his current position as assistant professor and practising psychiatrist. Clinical experience and researches into neurotransmitters and brain imaging techniques have convinced him that many of the problems of the 'worried well' as well as those of the mentally ill can be attributed to defective brain biology and treated with drugs and other treatments.

An older and a wiser man, Ratey now reinterprets his enthusiasms of the sixties: 'Many of the men and women we saw as heroes were essentially crazy

people. Abbie Hoffman, Grace Slick, the SDS: whatever you thought or think of their politics, today they would have to be seen as suffering from disorders of mood and impulse. These were certainly not "normal" people.' (p12)

One of the striking changes in popular attitudes to mental illness over the past 30 years is how notions which were once peculiar to marginal intellectuals have now—in a more extreme form—taken over the mainstream. For example, Laing and other psychiatric radicals were fiercely criticised for depicting schizophrenia as a form of enlightenment that emerged in response to disturbed family and other social relationships. Today, the film *Shine* promotes similar ideas to mass audiences, celebrating the genius of the schizophrenic pianist David Helfgott, whose anguished and critically disparaged public performances receive popular acclaim. In films such as *Rain Man* and *Forrest Gump*, characters suffering from severe deficits in social and intellectual functioning are assumed to be morally superior.

While the mad are held up as repositories of genius and virtue, the normal are redefined as mentally ill. Ratey recalls how he once shared the radical conviction that 'normal' people were 'dull and conventional'. Yet today this familiar prejudice of adolescence has become amplified and codified in the diagnostic categories of his 'shadow syndromes'. Whereas in the past, 'normal' people had merely to endure being patronised by long-haired Ratey junior, they now face more intrusive intervention from his grown up white-coated alter ego.

The key feature in the changed perception of mental illness is the shift from distinct diagnostic categories to the notion of a continuum linking the pathological and the normal. The universal character of human experience and forms of expression and behaviour gives a certain plausibility to this exercise. It is true, for example, that it is possible to discover a rational kernel in the most florid delusions of a paranoid schizophrenic. The links between familiar experiences and common psychopathological states—

sadness/depression, elation/mania, apprehension/anxiety—are even easier to identify. But why has the concept of a continuum become so fashionable today, when in the past society was more inclined to emphasise the discontinuity between the normal and the abnormal?

For Ratey and Johnson, the justification for the idea of a continuum—and for their concept of shadow syndromes—lies in the advances of neuropsychiatry: 'a great deal of what we thought was due to (poor) upbringing is fact is heavily influenced by the genetics, structure and neurochemistry of the brain.' (p26) This does not, they are keen to emphasise, mean the end of individual responsibility, but its redefinition: 'our responsibility in this new era is to acknowledge our biology, understand our biology and take whatever steps we need to take in order to prevent that biology from harming our lives or the lives of the ones we love.' (p36)

Having established a direct link of determination that runs from the biology of the brain through the individual personality to the structure of society, they insist that it is the ultimate responsibility of the individual 'to do something about the way his brain works' (emphasis in original). In this profoundly conservative vision, human individuality is reduced to neurobiology and social responsibility is redefined in terms of accepting its constraints. When the authors claim that 'this is a book about living well' they really mean that it is a book promoting the morality of low expectations legitimised in terms of neuroscience (though it is some relief to discover their doubts over whether it is ever 'going to resolve the question of the human soul').

'Feed your head' sang Grace Slick in the Jefferson Airplane's most famous anthem; 'Care and feeding of the brain' is the not even slightly ironic final chapter of *Shadow Syndromes*. One of the positive features of the much-disparaged sixties was the enhanced sense of individual subjectivity expressed in popular defiance of established constraints in all areas of social life—including those long ordained by biology in matters of sex. No doubt there was much naivety, but it seems doubtful whether there was then a deeper disorder of mood and impulse than prevails in today's climate of despair. Better to have a few crazy heroes than to live as slaves to our neurotransmitters.

# a l t - c u l t u r e - p o p

## Signs of the times

**'No drink or drugs'**  
Message on the printed invitation to the seventeenth birthday party of William Shaw, son of fun-loving Home Secretary Jack.

**The Royal British Legion is to launch its own record label, which will release both classical and heavy metal music.**  
William Straw, take note.

**'Pubs should not have anything to do with Nazis. Pubs have been smashed up and these people do nothing for the standing of the pub in the local community'**  
Anti-Nazi league spokesman telling it like it is, in the *Publican* magazine

**'There are cases where we lose in court, yet have still uncovered a wealth of evidence of people living above their means. It seems silly that this evidence should then be wasted and never acted on. The people we are after are the Mr Bigs who drive**

*Laetitia Sadier took a break from Stereolab's sell-out world tour to tell Theresa Clifford how they became this year's model pop group*

## A YEAR IN THE 'LAB

**W**ith *Dots and Loops*, their ninth album in the six years since vocalist, keyboardist and lyricist Laetitia Sadier met tunesmith Tim Gane at a gig in Paris, Stereolab finally hit pay dirt. Sales are up, concerts sold out, as album reviewers rave about 'the most addictive music of the moment'. But don't suggest to Laetitia that Stereolab are an overnight sensation.

'Some people have asked whether Stereolab are like Pulp, in the sense that we have been around for ages and then we suddenly take off. But our experience is much more gradual. The life of Stereolab is a slowly evolving process. Never any massive change, steady and slow in the charts and in the press. But this year has been really good, in that we are finally getting to do what we set out to do.'

'At the beginning of the year we wrote the new album in about four weeks—written on a four-track in a very basic fashion. We just threw the songs together in snatches of 20, 30 seconds. Then everyone learnt their parts and we took the thing to Chicago where we began recording with John McEntire from Tortoise and Sean O'Hagan from the High Llamas. Chicago is a very inspiring place, and you try to live up to the musical standard of the city. Making *Dots and Loops* was really fun, because we didn't practise anything. We went into the studio and put it down, and then embellished it.'

'Contrary to some cynical assumptions, *Dots and Loops* is more complex than our last album, *Emperor Tomato Ketchup*. This album is very detailed, like lace. It's not an easily accessible record. However, more people have come to understand what we are trying to do with our music. At first listening to our music is weird, but then you get used to it. You treat it as yours. When people say we are more accessible, it's largely to do with the fact that they are more familiar with our music. They have done the work, not so much us.'

'But at the same time we have done our work better than before. The music is now less angular, violent or angst-ridden. In the past there was always a sort of angst feel to our music, but that was more because we weren't meeting the sort of standard that we aspired to, so we were a little insecure. Now we are more confident that we can express

ourselves better. Therefore the album has got a smoother quality on the surface. But on another level, it is still full of contradictions, or a better word might be juxtapositions. The whole of Stereolab's musical history is based on the juxtaposition of opposites. They have to work together and most of the time they do.'

'I totally disagree with the notion that there is nothing new coming out of music. Nineteen ninety-seven saw some great things happening. Within the music produced today, people are mixing around some old kitsch with some new drum'n'bass beats, or even jazz with drum'n'bass. There is a lot of new stuff going on—Tortoise, Mouse on Mars, Pram, the High Llamas, Broadcast, Air and Kid Loco. New tech and their own ideas, juxtaposing things that have not been juxtaposed before.'



a l t - c u l t u r e . b u s i n e s s

## A YEAR IN CORPORATE CULTURE

**T**his was the year when management gurus made even more money, but for the first time met serious dissent. Two journals from the *Economist* wrote a critical attack on the whole genre, titled *The Witch Doctors*, and American ace Tom Peters had a whole tome published against him. At Eastbourne the Tories found out from the media that the venerable institution of the senior management retreat is now seen as *infra dig*. Meanwhile, as the multi-billion dollar accounting firms felt an urge to merge (Coopers & Lybrand with Price Waterhouse, Ernst & Young with KPMG), their clients worried. Would the fees they had to pay for number-crunching rise even further, only for them to face an even more subsidised and aggressive sales assault from youthful flipcharters pretending to be thinking management consultants?

Mergers of every sort, worth an unprecedented \$100 billion on one October Monday morning alone, were also surrounded by a sense of doubt. The shenanigans around BT, MCI, GTE and WorldCom confirmed this. No firm admitted wanting to marry another to cut costs; that, like our old friend 'synergy', was passé. No, mergers boomed because growth by normal means looked slow compared with staying focused in one's sector, but acquiring in order to go global. Shareholders—pension funds with portfolios organised into nice little sectoral boxes—demanded nothing less. But what was a 'sector' any more, when branded billionaires like Bill Gates and Richard Branson were deeper into everything? With sleepy WH Smith under pressure to dispose of

we are after are the  
Mr. Bies who drives  
with his secretary  
and don't appear to  
have a job or be  
claiming benefits'  
Supt Bob Pattison of  
Northumbria Police —  
and he's not talking  
about former cabinet  
ministers. The Home  
Office Working Group  
is considering a  
recommendation  
that courts should be  
allowed to confiscate  
the assets of people  
police simply suspect  
of criminal activity.

**'He was quite excited. Two asked him to leave—there was a kerfuffle. He stayed and did moves from Flashdance'**

A bouncer recalls Peter Mandelson's off-message antics at Labour's celebrity bash in Brighton, where he rushed the stage and grabbed the mic

**'As we approach the Millennium, it is uplifting music such as this that aids us in our doubts, speeds us to our hopes and dreams. The family remains the cornerstone of our nation, and Tipper and I feel that music can be a binding force that keeps our families together'**

US vice-president Al Gore's moving tribute to those pillars of moral rectitude, Fleetwood Mac



PHOTO: JEAN CLAUDE DHEN

## a l t . c u l t u r e - f a s h i o n

### THE YEAR OF ETHICAL CHIC

In 1997 fashion tried to bring glamour back into our lives, but found itself entangled in sordid debates about anorexic models, heroin chic and the exploitation of Third World garment workers. After New Labour ministers complained about 'the scourge of smoking' on the catwalk, the fashion milieu was so desperate to clean up its image that it almost merged with the world of charity. Now we are told that, backstage, models are more likely to bring out their needlework (the legal kind) than their cigarettes. The new ethical chic was summed up by the response to the tragic murder of Gianni Versace: Elton John cried

on Princess Diana's shoulder and arch-rival Giorgio Armani declared that 'we need less competition and more respect'.

Versace's work was admired for its upbeat use of colour and pattern, but Armani's safe and sombre approach was more in keeping with the contemporary mood. The Tories may have lost the election, but the colour of the year was blue. Fashion lacked confidence, either shyly sheering away into flimsiness and floatiness, or hiding its embarrassment behind fake splendours: feathers, florals, frills and flounces, sequins, beading, embroidery, sparkle and bright colours; preferably all jumbled up together. This was glamour as a caricature of itself, in the manner of Barbara Cartland (she probably wore the big knickers).

We also saw the return of the come-back. Fashion news these days is about what is

back: the miniskirt, the trouser suit, the shoulder pad, stiletto heels, black. Even fur came back. None of these could be described as exciting, though we all know a black trouser suit is always practical.

After British designers were invited to head French couture houses, London was hailed as the capital city of fashion. A few sceptics noted that couture houses now make their money out of selling perfume and tights; and what they really want from a chief designer is someone who can create controversy and get the name of the house in the papers. Column inches rather than design quality are what is expected from Brits like Alexander McQueen.

Appropriately enough, the year ended with that most British and boring of fashion staples: grey tweed. **Paola Martos**

Waterstone's bookshops, demergers were touted as the Next Big Thing. After all, as London Business School guru Gary Hamel argued in *Fortune* (23 June 1997), the name of the game now is to change the rules of the game (even if, as he has, you've been arguing this same story for years now).

In Waterstone's as elsewhere, shelves groaned from the weight of conflicting theories, and also from an increasing overlap with the burgeoning literature of self-help and personal growth (at work and play). Indeed, merger failures themselves were blamed, more than ever, on conflicts of ego, leadership style and...culture. While many a newly-acquired merger target flouted a suitor chairman's 'value system', his employees were sternly urged to adopt it. So it wasn't 'people are our greatest asset' any more. Rather, the *right* people were our greatest asset.

Right meant believing that business is the best kind of leisure (the magazine *Fast Company*, launched in 1997, is dedicated to this proposition). It meant job interviews where you don't ask about the pay, just about when you can start. It meant changing your behaviour through a course on Neuro-linguistic Programming: thinking about

positive outcomes, anchoring those thoughts by touching an earlobe, mobilising the five senses — smell included — to get results.

In this kind of climate, technology takes a back seat. Indeed, the *Harvard Business Review* proclaimed that the trick was not the development of new technologies, but the 'choice' of existing ones. Clearly management thinking is now in deep doo-doo. As Hamel says, speaking of the whole genre, 'the dirty little secret of the strategy industry is that it doesn't have any theory of strategy creation'.

Nineteen ninety-seven was the year in which that secret came out.

**Gemma Forest** is a management consultant who doesn't believe in it. She has no shares in any of the companies mentioned above; she has no shares, period.

# Ultimate computer games

## Signs of the times

*'The cult of the body is narcissistic and self-defeating. I have lead a shallow and egotistical life.'*

*'My eyes have been opened and I'm turning over a new leaf'*

Sylvester Stallone, turning over a new leaf while opening a new Planet Hollywood burger restaurant in Rome

*'We come from a democratic country and believe people should have the right to defend themselves first'*

Spokesman from the South African High Commission commenting on their recent football match against the Irish Embassy. The match was abandoned when a South African spat at an opponent after being sent off—all 22 players then joined in the punch-up. Police were called to break up the brawl in which one man was rendered unconscious and another suffered a broken nose and jaw. The peace process continues.

## ultimate .cooking

### XMAS OYSTERS

I have never been a fan of the traditional Christmas dinner. There is nothing wrong with turkey (free range, naturally) and all the trimmings, although Brussels sprouts have been known to make me violently ill. But to expect an overgrown chicken to provide sufficient distraction in the run-up to *EastEnders* is, I think, asking rather too much. As the ominous day approaches, what would I give to swap this prospect for a clam bake on a beach in Australia, complete with blazing sunshine, surf, salt, and ozone.



But there is no need to be too despondent. For less than the cost of the departure tax on a flight down under, you can imagine you are on that beach: all it takes is a dozen oysters and a glass or two of Champagne.

Once known as the food of the poor (in the days when they could be collected for free), oysters are less expensive than you might imagine—about 50p each from the fishmonger. With their salty tang and the most sensuous of textures, they are really seductive. A touch of Tabasco, or maybe some shallot vinegar or just a squeeze of lemon, is all they require. Do not swallow straight down; you must chew. What is the point, otherwise? I still remember my first one, harvested from the Ile d'Oléron

*The computer games industry told Brendan O'Neill what not to buy his little brother for Christmas*

Three new games designed for the Playstation console are in the running for the Christmas No 1 spot: Fighting Force, a back-to-basics beat 'em up, in which characters like Ben 'Smasher' Jackson and Hawk Manson kick the crap out of each other; bookies' favourite Tomb Raider 2, the follow-up to the hugely successful Tomb Raider, in which heroine Lara Croft shoots, bombs and punches her way towards the Dagger of Xian; and Croc, a cutesy platform game in which a comic book crocodile grapples with the evil Baron Dante. Unsure which one to buy as a Christmas present for my younger brother, I decided to seek advice.

The European Leisure Software Publishers Association (Elspa), the body which helps monitor computer games, told me to go for Croc. According to Elspa's 'voluntary age suitability recommendations', Fighting Force and Tomb Raider 2 are appropriate only for persons aged 15 and over, while Croc is suitable for any child old enough to pick up a joystick. But at eight years old, my little brother has moved up a couple of levels. In case he found Croc too easy I went in search of a second opinion.

'Fighting Force is a superb game', said Miles Guttery, editor of *Total Playstation* magazine. 'There is nothing else quite like it at the moment. Most beat 'em ups have just

Onwards to Fox Interactive, publishers of Croc. 'At Fox we considered Croc to be the best game we have published for some time', said spokesperson Andrea Griffiths. 'It is bright and colourful with a fully 3D world. A perfect Christmas present which would make a refreshing change from some of the more violent video games currently on the market.'

It seemed that everybody felt obliged to follow the 'voluntary' recommendations laid down by Elspa. But I was not totally convinced that my pugnacious sibling would be 'refreshed' by the bright and colourful 3D world of Croc. So in the end I asked him which game he would like. 'There is only one that you are allowed to have anyway', I prompted, thinking that the U-rated Croc might be right after all. 'I know I can only have one', my brother replied. 'I'm trying to make my mind up between Tomb Raider 2 and Fighting Force.'

Tomb Raider 2 and Fighting Force: developed by Core Design and published by Eidos, £44.99 each. Croc, developed by Argonaut and published by Fox Interactive, £44.99.





one-on-one fights, but Fighting Force has got luv-a-jub graphics, loads of moves and weapons and excellent playability.' A good Christmas present for my brother, then? 'Ern, not really. It's quite violent. Out of those three games, Croc would probably be most suitable for an eight year old. Yeah, buy Croc.'

Next I tried Core Design, the company behind both Fighting Force and the Tomb Raider series. 'Tomb Raider 2 is the most innovative and exciting game you can buy this Christmas', said PR manager Susie Hamilton. 'The levels are far more detailed, the character Lara is a lot smoother and she now has a fully-functioning ponytail that swishes around. Lara can operate a flare to light her way on dark levels, she can fight underwater with a harpoon. It is even more enthralling than the original game.' Presumably my brother would be enthralled by it? 'It's probably a bit vast for an eight year old', Hamilton replied. Without going so far as to recommend Croc, which is designed and published by her competitors, she warned me that Tomb Raider 2 is too complex and Fighting Force is too violent for children.

my first one, harvested from the Ile d'Oléron off the west coast of France and served in the half-shell on a mound of crushed ice (okay, so I was in Paris at the time). But perhaps the perfect setting for the consumption of these bivalves is the outdoor oyster stall.

Part of the pleasure for me is the prizing open of the shells, known as 'shucking' the oyster. You will need a knife with a short, strong blade. With a cloth protecting your hand, hold the oyster firmly, hinged end towards you and with the deeper shell underneath to collect the juice. Insert the point of the knife into the small gap in the hinge and twist the blade to separate the shells. Slide the blade along the inside of the upper shell to sever the muscle which holds the shells together. Remove the upper shell and clean out any shell fragments with the point of the knife. Finally, run the knife blade under the oyster to sever the muscle attaching it to the lower shell. Serve on crushed ice and consume quickly. Drink chilled Champagne (it is Christmas) or Sauvignon blanc.

Pacific oysters are available all the year round. But if you can get hold of the native oyster, which is the one you can eat when the months have an 'r' in them, so much the better. Order them for Christmas and store at the bottom of the fridge, wrapped in a damp cloth. As with all molluscs, discard any that gape open and do not close when tapped.

I should point out that if you are unfortunate enough to suffer a reaction to oysters, you will probably be very ill indeed. But at least you will then be spared the inevitable turkey curry, turkey bolognaise, turkey fritters....

© Neil Haidar BBC1's Masterchef 1996

Years ago, you wouldn't get a model they'll hang, have a Marlboro Light and seem quite proud to have little discussions. When Gordon Brown made his decision over Bank of England interest rate formulation, there was a lot of interest from the girls — everyone was talking about it.'

Paula Karaiscos of top model agency Storm

'This book provides a philosophical examination of the phenomenon of Aids. Influenced by Kant, Nietzsche, Kierkegaard and Heidegger and contemporary thought concerning gay activism and Aids research, the author attempts to find a philosophical language capable of doing justice to the experience of living with Aids'

Promotional blurb for At Odds With Aids by Alexander Garcia Duttmann (Stanford University Press)

alt.culture.fiction

## XMAS READING

'On Christmas Day, everyone's home at the same time. And it's a disaster...We call them "star or fairy" murders: people get to arguing about what goes on top of the tree. Here's another regular: fatal stabbings over how you carve the bird.'

According to Mike Hoolihan, heroine (for 'Mike' is a she) of Martin Amis's deliberately obtuse take on the hardboiled detective genre, Christmas is a good time for murder

rate among horror fiction readers, the *Millennium* anthology compiled by Douglas E Winter and featuring Clive Barker (*Hellraiser*) may well get the blame for it. This is a grim book that puts a smile on your face because the stories are so good (mostly). Avoid homicidal/suicidal situations this Christmas by gathering your family around your yule log, reading them a yarn from this collection, and scaring the crap out of them.

Incest is something else that apparently occurs more frequently at Christmas. Reading about incest will certainly be more popular, if Amis, Winter and Iain Banks have anything to do with it. In *A Song of Stone*, Banks takes us

somewhere dark, brutal, and futile; a not-too-distant future, during a war. To be read in a moody, broody kind of way — maybe after you have had the row about the turkey and you need time to sulk. Scribble cryptic notes in the margin and later everybody will understand.

I have now read all three of them, so a pair of socks will be fine, thanks.

**William W Mayes**

*Night Train*, Martin Amis, Jonathan Cape, £10.99

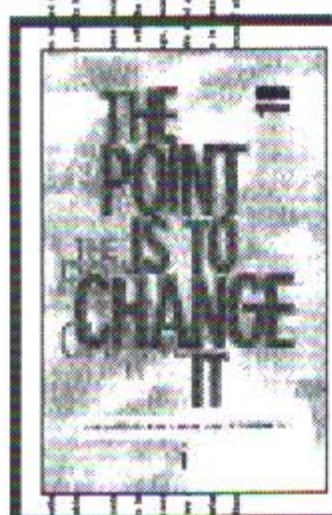
*Millennium*, Douglas E Winter (ed), Voyager, £16.99

*A Song of Stone*, Iain Banks, Little Brown, £16.99



# THE POINT IS TO CHANGE IT

'Our reply to all of the pleas for caution and restraint is that until now humanity has only learned to crawl. We still live in a world that is not fit for people. Our problem is not that we are too ambitious, but that we continually hesitate about experimenting with new solutions. We need a revolution in outlook, so that we can continue to advance and give new scope to human creativity.'



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# READING

## BETWEEN THE LINES

As the law is extended into more and more areas of everyday life, JAMES HEARTFIELD challenges some recent attempts to rationalise legal activism

## LAW WITHOUT RIGHT

### BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY

Jürgen Habermas, Polity Press, £14.95 pbk

NEW LAWS ARE BEING DRAFTED EVERY DAY. TAKE A look at the book of British statutes, and you will be surprised to see that the legislation drafted since 1979 takes up as many volumes as that drafted in the entire history of English law up to then. Passing laws seems to be the only thing that governments do. If there is seen to be a problem, the first instinct will be to pass a law, or institute a new regulation about it.

It is not only governments that are keen on passing laws. Legal activism is a growing arena of political life. All kinds of campaigning groups and public institutions are lobbying for new restrictive laws to be passed. Women's groups have lobbied for new laws on harassment and for changes to the law on rape. Black activist groups have campaigned for the new law of racially motivated assault. Environmental groups lobby for new restrictions on pollution. So what is really driving the increasing juridification of everyday life?

Two people who have thought about the law as a radical resource are Roberto Unger and Jürgen Habermas. The Brazilian Unger is Professor of Law at Harvard University, whom Perry Anderson called 'a philosophical mind out of the Third World turning tables to become a synoptist and seer of the First'. Jürgen Habermas is Germany's foremost sociologist and a lifelong champion of 'communication ethics' a theory of human cooperation on the basis of mutual respect. Both of

**POLITICS:  
THE CENTRAL TEXTS**  
Roberto Mangabeira Unger,  
Verso £15 pbk

these authors are concerned with state power, since both have come from the left of politics, and both were disillusioned by the traditional left's programmes of state-led reform. And yet despite being critics of the extension of state power as advocated by socialism in the past, both here seek more state intervention by way of legal activism.

Habermas in particular is aware that he is changing his view of the state. Worried that he is giving up too much to the law, he tries to work out some guarantees that new laws will not involve a loss of personal autonomy. The way he does that is to reconstruct the ideal theory of the law in his mind. Without getting too involved in particular laws, Habermas wants to work out what the general theory of law is, and the way that it relates to freedom. That way he has a measure against which he can test the new kinds of laws to see if they clash with the basic idea of freedom. Habermas' general theory of the law is very good, and well worth looking at here—especially because the points at which he gets it wrong are very revealing. Looking at traditional theories of law and the state, Habermas tidies them all up into one general theory, but when he puts his own ideas in they stick out like a sore thumb.

Habermas looks at two different sides of the law. The first is the civil rights that people have, their independence, and their right to strike deals with one another. As Habermas rightly ►

## RIGHTS ARE IMPRESSIVE GAINS THAT PUT A PREMIUM ON HUMAN DECISION-MAKING. AL SMITH'S APHORISM THAT THERE'S NOTHING WRONG WITH DEMOCRACY THAT MORE DEMOCRACY CAN'T FIX IS A GOOD ONE

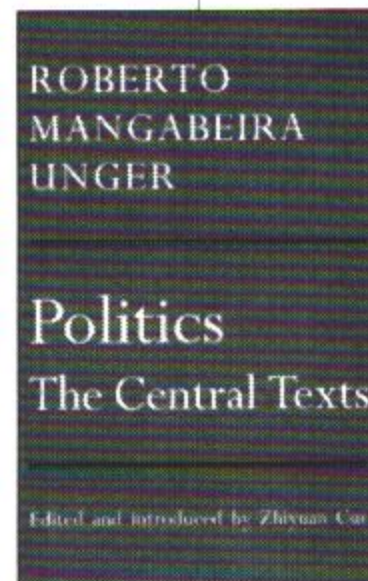
◀ sees it, these rights derive their authority from the individuals themselves. In the adjudication of contracts, the law does not seem to impose a decision from outside. It only enforces the decisions that you yourself have made. You might regret it now, but when you signed your soul to the Devil you embodied your will as an enforceable contract. Consequently, you have nobody but yourself to blame, when he comes to collect.

Things are different with the 'system of rights' that exists in any country, principally as its written laws and its political constitution. Unlike civil rights, the laws of the land are not meant to derive from self-interest. Instead they exist to ease the intercourse of society as a whole. More often than not, these laws have been understood in a very different way from the civil rights between people. Instead of being 'rights' they are seen as 'goods'. That means that they are not open-ended and they do not say you can do what you want to do, so long as you don't interfere with anybody else. Instead they have said 'this is the proper way to behave'.

THE PROPER WAY TO BEHAVE COULD MEAN ALL sorts of things, such as saluting the flag in school, or raising a good Christian family or caring for the poor and sick. In any event, these 'goods', or morals are not supposed to be selfish goals. They do not derive their authority from the will of individuals seeking their own benefit. Instead they are directed at the good of society as a whole.

Habermas argues that these moral justifications of the laws of the state have generally been based on tradition. Traditions like the British monarchy, or the American Flag, or the destiny of the German *volk*, underpinned the authority of the state. These traditional beliefs trumped individual rights. It is as if to say 'America—love it or leave it', or 'that's not Cricket', whenever somebody crosses the line by putting self-interest before the established order. But Habermas argues that these traditions have lost their authority today. We live, he says, in a post-traditional age. The days when Johnny Appleseed would tug his forelock to the American flag are long gone. For that reason Habermas rejects the attempts by communitarian thinkers to artificially reconstruct the idea of a good society as well-intentioned, but doomed.

Instead, says Habermas, we must found our ideas of the system of rights on a different liberal tradition, of popular sovereignty and the social contract. Habermas understands that the perennial conflict between those who emphasise individual rights, and those who emphasise collective responsibilities, is based on a confusion. As he says, the basis of civil rights and the political state are not as hostile as they seem. Underlying them is the same ruling principle of free choice. That seems silly to those who think that individuals choose, but states dictate. But the idea of a modern state is based on the principle that the state acts on the basis of the choices of the people. Just as under civil rights we all make our own choices, so in the idea of the modern democratic state, we choose as a collective individual, a 'people', 'the voters' or 'the nation' decides.



When you strip away all the traditional justifications of state authority, says Habermas, you are still left with this liberal proposition that the state is a social contract, that derives its authority from the sovereign will of the people, in a similar way to that in which a contract between two parties derives its authority from the decided will of those parties.

Anybody who is thinking that this is a load of hogwash, should think again. Of course it is reasonable to protest that the state purports to be acting on our behalf, but somehow ends up favouring the rich and powerful. Equally it is reasonable to point out that the contract between employee and employer is far from equitable, because employees have only enough money to live on, while employers have control over the wage fund. They may be formal equalities that fall short of substantial equality, but that in itself is not an objection to the rights enshrined in the law. On the contrary, these rights are impressive gains, that put a premium on human decision-making, and should not be rubbished lightly. The sentiment behind US politician Al Smith's aphorism that there's nothing wrong with democracy that more democracy can't fix is a good one. But more importantly, it would be a mistake to throw away civil or political rights when they are not the problem. If anything our problem today is the opposite, that freedom, even in the restricted form available in a market society, is seen as a dangerous thing.

However, good as Habermas' reconstruction of the classical theory of rights and the law is, it is impossible not to notice an underlying caution on his part. There is one word that sticks in his throat, which is a problem because it is the word for the thing that the entire theory of rights rests on—'the subject'.

The essence of the argument outlined above is that subjectivity is the principle which combines civil and political rights. The contract is made by an individual subject, the social contract by a collective subject. Because the state claims to derive its power from the will of the people it is an act of self-determination, just as the freedom to strike a bargain is a small act of self-determination. God knows there are enough qualifications placed upon the freedom of choice, both at the individual level and at that of political representation, but the principle itself is a great one.

HABERMAS, HOWEVER, SEES THINGS DIFFERENTLY. For him the idea of the sovereign subject is a dangerous one. He is thinking of his experiences as a young man in Hitler's Germany, when the politics of subjective choice appeared to be concentrated in one source of authority, the Führer. Habermas has often explained his hostility to the politics of subjectivity, and does so again here. 'To the extent that we become aware of the inter-subjective constitution of freedom, the possessive-individualist illusion of autonomy as self-ownership disintegrates', he writes cryptically. What he means is that we are only free individuals because we live in a society that can support our different ambitions and projects. The freedom to buy Coke or Pepsi rests on extensive social networks

## HABERMAS IS SAYING THAT THE THING WE SHOULD VALUE IS NOT OUR FREE WILL, BUT THE WAY THAT THE CLASH OF MANY WILLS PREVENTS ANY ONE WILL FROM TAKING PRECEDENCE

that produce and distribute the product, the money to buy it with, the laws that uphold the right of ownership and so on.

To that extent, Habermas' point is not different from one that was often made by the better theorists of rights, such as Rousseau, Hegel and T H Green—that individuals do not become individuals because nature makes them that way. Rather, they become individuals through society. Where Habermas goes further is in taking this to mean that individual subjectivity alone is a bad thing, and consequently misunderstands the claim of liberal societies. Not subjectivity, but inter-subjectivity is the basis of freedom, he says, where inter-subjectivity means the negotiation between subjects, rather than the will of subjects. It is a distinction that can appear to be a bit pedantic, but in the development of his ideas it makes more sense. Habermas is saying that the thing we should value is not our free will, but the way that the clash of many wills prevents any one will from taking precedence. He means that the rules we all observe to get along are more important than what any one of us wants. This is a theory that puts a premium not on subjectivity, but on the constraint of subjectivity, meaning more laws to govern our behaviour.

HABERMAS GOES EVEN FURTHER IN ARGUING FOR the restraint of the collective subject of a sovereign people. He considers the collective subject as a dangerous development of the principle of subjectivity. Like Unger, he thinks that the collective subject in power will tend towards dictatorship, and must be constrained by constitutional devices that frustrate majority rule. People's choices in Habermas' sociological theory, whether they are the individual choices of civil rights, or the collective choices of political rights, are something to be feared and constrained rather than welcomed. And with that distrust of subjectivity it is difficult to see what remains of the liberal theory of rights that Habermas purports to support.

Substantially, Habermas' overriding concern is not freedom, but order. Like the university professor he is, who once chided his radical students for occupying the college (only to change his mind when he saw that they were all pretty respectable people really), Habermas wants everything to proceed in an orderly fashion. He supports civil rights because he thinks these are the best guarantee of order. It is not that he values individual freedom in its own right, but that he thinks that we will not accept the social order without that concession. His view of political rights is similarly qualified. In proposing that the laws of the land must be derived from collective decision-making, he is not saying that he values collective decision-making. Rather he sees it as a price worth paying for people to grant the law legitimacy. It is the legitimacy of the social order, not its actual derivation from the popular will that he wants.

Habermas' overriding concern is to see people obey the law, not to see them make it. He is prepared to put up with them being formally consulted in the making of the law, if that is the best way to get them to obey it. His goal is not freedom, but consensus. In the end Habermas' conditional support for

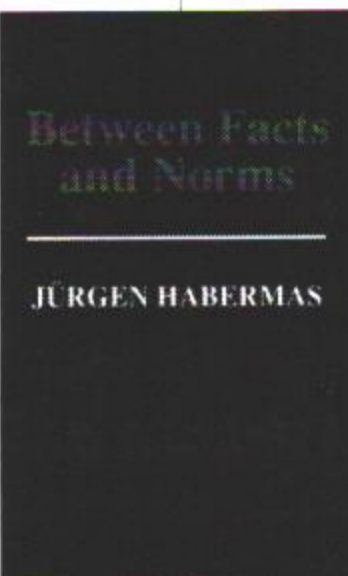
freedom of choice leads him away from the classical view of rights that he says he is defending, and towards a greater degree of legalistic regulation of everyday life.

In contrast to Habermas, and interestingly for a Harvard law professor, Roberto Unger is a bit of a wild man. His overarching view is that society is a human artefact, and that being made by men, it can be remade in whatever way we see fit. His activism leads him to the view that any consideration of the objective restraints upon action is just an excuse for hanging back or, worse still, a justification for entrenched power. In this at least, Unger is refreshingly free of the viewpoint that nothing can be done. However, when we look at what he thinks should be done, it is evident that the activism he has in mind is principally about putting legal constraints upon society. His iconoclasm is reserved for traditional ideas of freedom, but in his self-consciously utopian strategies, he is most concerned to restrain power rather than use it.

Unger spills a fair bit of ink attacking the traditional idea of the separation of powers—the distribution of power between different state bodies such as the legislature, executive and judiciary—as a trick by conservatives to keep radical hands off of the levers of power. However, his own proposals for 'empowering democracy' seem designed to go even further in the disaggregation of power. Unger looks forward to a multiplication of the 'number of branches in government' so as 'to prevent any section of society from gaining a lasting stranglehold over the material or human resources that can be used to generate the future of society'. Well, you know what he means—capitalist monopolies—but this is a strangely cautious view. For somebody who started out saying that we can change the world, his principal ambition seems to be to stop anybody changing it.

In particular, Unger wants to see the law intervene in new areas of social life, that traditional theories of the market are resistant to: 'The adjudication of localised disputes over the boundaries of rights may best be conducted by officials removed from the pressures of conflict over uses of governmental power and expert in the entire body of law.' From reshaping the world Unger has rapidly gone to handing power to bureaucrats and lawyers, to resolve the intractable problems that we mere folk are insufficiently expert in the law to resolve. At least that will ensure that his students will get jobs, though quite what it has to do with democracy is anybody's guess.

INTERESTINGLY, THIS IS THE DIRECTION THAT Habermas' conditional view of freedom leads him as well. Returning to his old problem that the welfare state tends to take away people's personal freedom and responsibility, he proposes a series of safeguards for that eventuality: 'class action suits or community complaints, as well as the creation of ombudspersons [sic], arbitration boards, and such, will counteract the disempowerment of overburdened clients only if collective legal protection...involves them in the organised perception, articulation and assertion of their own interests.' As well as the alarming growth of bureaucratic regulatory ►



◀ bodies, Habermas advocates a quite different model of popular sovereignty than the one he started with. This is not the people's choice, it is a consultation procedure, 'involving people' (involve: include, or entangle, according to my thesaurus), designed to give the appearance of legitimacy, rather than the fact of popular control.

Of course, Habermas has no loyalty to the principle of free subjectivity as such, only to the principle that we all should get along. With that outlook he is well placed to articulate the changing role of the law, from a discourse that derives its authority from the free will of subjects, to a system of social regulation that engages in consultation exercises to rubber-stamp its regulative system. A recent example is the imposition of the curfew upon young people on a Glasgow housing estate. The curfew was the 'proposal' of a people's jury of respectable citizens, who were of course, wholly uninfluenced by the fact that the Glasgow police have been lobbying for a curfew for years. But more to the point, what was in fact an incursion on the rights of young people could be dressed up as an exercise in freedom instead of an authoritarian extension of state power. The authority of this citizen's jury is entirely artificial, having no representative power or mandate from the local community, but it is 'consultation' all the same.

Habermas affects to worry that this kind of quasi-legal social regulation is an incursion upon rights, but his purpose is only to undermine the case against. He has defined rights in such a mealy-mouthed way that he can readily demonstrate the democratic case for immigration controls (p165) and the war against Iraq (p444). In particular he leans on the idea of the 'security state', quoting Erhard Denninger to say that 'a society produces so many security risks that it is able to protect threatened constitutional values only by considerably expanding the surveillance apparatus'.

In Germany where the traditional justification of the security forces has been undermined by the role of the secret police under the Nazis, there is a decidedly post-traditional renaming of the security forces as the Office for the Protection of the Constitution. But what exactly is it that makes the German state so insecure that it demands these special measures to defend its constitution? Successively, the constitution has been defended against East Germany's Romeo spies, a handful of skinheads who are laughably denounced as a return to the Third Reich, and Kurdish asylum-seekers. One could be forgiven for thinking that it wasn't a very robust constitution.

At the core of the legal activism that Habermas and Unger champion is not an extension of individual rights or popular sovereignty, but the extension of a kind of legalistic framework for regulating society. Interestingly, this is not a case for the extension of the law—at least not extension of a law based on freedom of choice or popular sovereignty—but for a quasi-legal system of public administration by lawyers and civil servants. Chillingly Habermas insists that the problem with these new forms of social regulation is not they are anti-democratic or unaccountable, but only that they are 'insufficiently institutionalised'.

READ ON READ ON READ ON READ ON READ ON READ ON

**THE PEOPLING OF AFRICA:  
A GEOGRAPHIC INTERPRETATION**

James L Newman, *Yale University Press*, £10 pbk

THIS FASCINATING BOOK SACRIFICES A LOT OF politically correct sacred cows, especially the one that sees African heritage as entirely separate from the rest of human culture. Starting from the very beginnings of mankind three million years ago, and using linguistic tracing techniques as well as the fossil record, Newman shows that there is no unique African culture to speak of. Foodstuffs like the banana and the cassava came from Asia and Latin America; the counterweighted lift-bucket, or *shaduf*, vital for the irrigation of the Nile valley also came from Asia, as did the camel; finally, the Phoenicians introduced iron-smelting during the first half of the last millennium.

Iron-making eventually trickled down from north Africa and enabled the Bantu, a small group originally from present-day Cameroon, to fan out and influence almost the whole of central and southern Africa. Newman makes the point that blacksmiths were 'frequently the featured actors in creation myths, and thus we can hypothesise that at least a few ethnolinguistic identities crystallised around them' (p109). Later on, slaving by the Arabs and then by the Europeans also helped to form ethnic groups among the then disparate primitive communities that populated the continent. The presence of slavers acted as a stimulus to tie people to definite areas either as a measure of defence, or to derive material benefit from slaves passing through those territories. Hence, in the Congo valley during the seventeenth century, the Likuba, the Likwala and the Bonga 'were formed of peoples banding together to secure tributary routes to slave sources' (p152). Yet, outside of Egypt, itself at the confluence of three continents, no African polity formed that made a significant impact on the world before the coming of colonialism. But there were precious few embryonic Romes and Athens in Africa because of the limited nature of external contacts with the continent, not because of any supposed African character as such.

Primitive communities, not ethnic communities, best describe pre-colonial Africa. This is because the concept ethnic erroneously puts the stress upon heritage as the defining feature of those societies. Newman's deduction that 'cultural identity is much more a function of lifestyle than genealogy' (p174) sounds like ancient Africans making modern lifestyle choices. The best point that can be drawn from *The Peopling of Africa*, though, is that 'ethnic heritage' is the product of external influence impacting upon primitive societies open to what the rest of humanity has to offer.

*Aidan Campbell*

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