democracy and individual rights

Anthony Lester

fabian tract 390

3s
# Fabian Tract 390

**Democracy and Individual Rights**

<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
</tr>
<tr>
<td>2</td>
<td>Abuse by Government</td>
</tr>
<tr>
<td>3</td>
<td>Bill of Rights</td>
</tr>
<tr>
<td>4</td>
<td>Remedies for Maladministration</td>
</tr>
<tr>
<td>5</td>
<td>Protection Against Private Institutions</td>
</tr>
<tr>
<td>6</td>
<td>Rights in Action</td>
</tr>
</tbody>
</table>

This pamphlet is based on a lecture given before a Fabian audience in London in November 1968.

This pamphlet, like all publications of the Fabian Society, represents not the collective view of the Society but only the view of the individual who prepared it. The responsibility of the Society is limited to approving the publications which it issues as worthy of consideration within the Labour movement. Fabian Society, 11 Dartmouth Street, London SW1 February 1969

SBN 7163 0390
I feel sure that the editors of the Young Fabian essays were being ironical in choosing the title *More power to the people* (Longmans, 1968). Superficially it sounds harmlessly progressive, if utopian; but on reflection it is sentimental, ambiguous, and perhaps even reactionary. Happily this criticism applies only to its title, not its contents.

To the extent that it attacks the power of bureaucracy, *More power to the people* is a slogan which unites anarchists and conservatives against us, for Mr. Anthony Crosland has rightly reminded democratic Socialists, it is an obvious and basic truth that: "There is no substitute for institutions with their bureaucracy, rules, clerks, and computers ... they are the only instruments of social reform." The problems of urban, industrialised, technological societies "call for an increasing degree of social and institutional control" which demands more, not less, power for bureaucracy ("Socialists in a dangerous world", supplement to Socialist Commentary, November 1968).

To the extent that it draws attention to the need for more effective democratic control of the increasing power of bureaucracy, *More power to the people* is a platitude. But it is a poor platitude or it suggests a profoundly mistaken notion of democracy: the fallacy of that Professor H. L. A. Hart describes as "moral populism", namely: "that the majority have a moral right to dictate how all should live. This is a misunderstanding of democracy which still endangers individual liberty ... The central mistake is a failure to distinguish the acceptable principle that political power is best entrusted to the majority from the unacceptable claim that what the majority do with that power is beyond criticism and must never be resisted (Law, liberty and morality, p79, CP, 1963). It is characteristic of the populist flavour of the slogan that it does not refer to people, whether as individuals or groups, with interests, rights or liberties, but to The People, that impersonal, homogeneous mass in whose name Governments have committed so many crimes.

**tyranny of the majority**

I begin with this criticism because it is relevant to one theme of my argument: the limitations of the democratic process in protecting individual and minority interests. When democracy degenerates into populism it becomes a weapon of arbitrary power against individuals and minorities, the "tyranny of the majority" about which John Stuart Mill gave this celebrated warning: "the will of the people ... practically means the will of the most numerous or active part of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently may desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power. The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein." (*On liberty*, pp67-68, Everyman).

I realise, of course, that much social and economic legislation which we most cherish would have been regarded by Mill (at least when he wrote *On liberty*) as a tyrannical invasion by Government, in the name of a majority, of the liberty of the individual. To that extent Mill's warning lacks force today; to that extent and no further; for democratic Socialists are especially vulnerable to the populist fallacy in an age of mass communications and opinion polls.
Fortunately, political democracy has only occasionally been corrupted into the tyranny of the majority in modern Britain. But the danger is sufficient to justify serious consideration of possible safeguards.

**individual rights**

It is also important at this time, when major reforms to our representative institutions appear to be imminent, to recognize a further limitation of the democratic process: it is certainly necessary that an institution of Government should be representative in the sense that its governors are freely elected by a majority of their citizens; and it is desirable that citizens should feel that they participate in the process of Government. But neither representation nor participation will prevent the abuse of power or secure redress to the citizen who is harmed by such abuse. The democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.” (J. A. Schumpeter, *Capitalism, socialism and democracy* p269, Unwin). It decides who will govern, but it does not automatically guarantee that the governors will respect individual rights and interests.

After this introduction I hope that I shall not be misinterpreted as being either undemocratic or opposed to strong Government and collective power. My intention is to emphasize that there is no reason why a Government which is accountable to the popular will, or expeditious in despatching its business, should inevitably also be fair to the individual citizen.

In what follows, I shall therefore discuss the sources of collective power in this society not by the standards of political democracy or administrative efficiency, but from the standpoint of the individual citizen whose interests are adversely affected by the abuse of power — whether by Parliament, the Civil Service, Local Government, or those clusters of private, oligarchical power which compete with Government, in significance and scale; I shall show that many of the basic values which have optimistically come to be known as “human rights” are not adequately protected, and cannot indeed properly be regarded as rights; I shall suggest that traditional myths, inherited from the Victorians, about the character of our great public and private institutions and the nature of democracy hinder the attainment of effective individual redress against the abuse of power.

I should add that by selecting examples of abuse from the recent past, it may be thought that I regard the present Government as unusually contemptuous of individual rights and interests. This would be entirely wrong. The Labour Government has a better record in this field than any previous administration. It has also been more passively criticised by its supporters because their dedication to human rights is greater, and their expectations higher than that of the Government’s conservative opponents. But the Government still has a long distance to travel before it can claim, as the Prime Minister has suggested, a close identity with human rights.
2. abuse by government

CENTRAL GOVERNMENT
shall begin with the most powerful institution in Britain: Government in Parliament, which enjoys absolute sovereignty. The principle of Parliamentary sovereignty, as expounded by D. V. Dicey, its great Victorian protagonist, means that Parliament has: under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.” (The law of the constitution, 6th edn, pp39-40, Macmillan). It is a principle in which successive generations of Parliamentarians have, understandably, rejoiced, perhaps with greater enthusiasm when in Government than when in Opposition. As the old Whitehall daze has it, power is delightful, and absolute power is absolutely delightful.

surrender to populism

The obvious example is provided by Parliament's reaction to popular prejudice against religious or racial minorities, not in the Middle Ages, but in this century, and within the last year. At the start of the century, an undisguised antisemitic campaign against refugees from the pogroms of Eastern Europe drove a timid Government to pass the Aliens Act 1905. Then, further xenophobia and war hysteria led to the Aliens Act 1914, which was hurried through all its Parliamentary stages in a single August day. The provisions of the 1914 Act were further extended in 1919. And although both statutes were passed as temporary, emergency measures, both are still in force today, and it is only now after fifty-four years, that their procedures are being brought within the rule of law, under the new immigration appeals machinery. They permit aliens to enter this country only with the leave of an immigration officer. At present, no reason for the refusal of permission need be given, and there is no appeal against refusal to any tribunal. If an alien is allowed to enter Britain, conditions may be imposed on his entry; the conditions are undefined and entirely within the discretion of the immigration authorities. Aliens have no right to become naturalized no matter how long they live here. No reason need be given for the refusal of naturalization, and there is no right of appeal. The Home Secretary has power to deport any alien if he “deems it to be conducive to the public good”; again, the power is unlimited; it cannot be challenged in the Courts.

In 1962, after a blatantly racist cam-
paign against the migration to this country of coloured citizens from the Commonwealth. Parliament passed the first Commonwealth Immigrants Act. Its provisions were modelled on this body of emergency alien legislation; sweeping discretionary powers were conferred on the immigration authorities, affecting the future of tens of thousands of migrant workers and their families, without any opportunity of a proper hearing or appeal for the would-be immigrant. But the campaigners were not appeased, and in 1965 the present Government, bowing to their demands, imposed an inflexible limit upon immigration from the Commonwealth, though not from Ireland or non-Commonwealth countries. Still the campaigners were unappeased, and early in 1968 the Government whipped another Bill through all its Parliamentary stages, within one week, stripping a group of United Kingdom citizens who were not born in this country, and whose parents and grandparents were not born here, of their previously unfettered right to enter and live in Britain. This most recent measure was designed to restrict the migration of a community of Kenyan Asians who, secure in their United Kingdom citizenship, had not sought or obtained citizenship in Kenya while it was possible for them to do so. In enacting this Bill, to paraphrase an American jurist, a group of citizens temporarily in office deprived another group of citizens of a fundamental right of citizenship: the right to enter and live in their land of citizenship.

In the face of such events, the hallmarked safeguards of our Parliamentary system were swiftly swept aside. Constitutional conventions, the sense of fair play of our legislators, the consciences of individual Members of Parliament, the Opposition, the independent judiciary, the Press, and public opinion were of no avail. Parliament surrendered to the wishes of the majority, or rather to wishes vociferously articulated by an extreme minority in the name of the majority.

And still the extremists were not satisfied; each new turn of the screw seemed only to aggravate popular fears and to legitimise the public expression of private prejudice. Within a few weeks of the passing of the 1968 Act, Mr. Enoch Powell made his river-of-blood speech and London dockers marched on Parliament in his support. Within months, still unsated, he renewed his demands for the "repatriation" of Britain's coloured minority and a ban on the future entry into this country of the families of coloured resident workers, now blatantly declaring that "The West Indian or Asian does not, by being born in England, become an Englishman." (The Times, 18 November 1968).

Opponents of the unsightly 1968 Act were accused of lack of realism, of betraying the interests of working people or of being undemocratic. The hopeless resistance to mass hysteria was in turn derided as "the hysteria of the intellectuals". (Plebs, April 1968).

Democracy had been ousted by moral populism. As Harold Laski once recalled: "Mankind has suffered much from the assumption that once the people had become master of its own house, there was no limit to its power. You have only to remember the history of racial minorities like the Negroes, of religious and national minorities, like Jews and Czechs, to realise that democracy, of itself, is no guarantee of freedom." (Liberty and the modern state, 3rd ed., pp55-56, Allen and Unwin, 1948).

The safeguards of individual freedom have failed in Britain at the moment when they were most needed. And they
will fail again whenever it appears more prudent to our Parliamentarians to defer to than to resist powerful, popular prejudices. Mass media and the continual polling of public opinion have reinforced the pressures of social conformity and collective intolerance. During some future period of social tension the sacrifice by Parliament to populism might be the freedom of speech of an unpopular political group; perhaps instead an increase in violent crimes might stimulate widespread support for the removal of restraints on police powers, or a relaxation of the procedural guarantees for the fair trial of the accused, or more primitive punishments for the convicted. It is in such periods of crisis that Parliament is insufficiently protected from the people, and the people from Parliament.

careless delegation of power

The more typical denial of individual freedom by Parliament does not, however, result from a dramatic constitutional crisis, but from the careless delegation to the Executive of absolute and arbitrary powers, as in the case of the delegation of sweeping powers to the immigration officer in the Aliens Acts. A different example will illustrate this misuse of the legislative process; in the delicate field of national security:

The Official Secrets Act 1889 made it a crime for a person wrongfully to communicate information which he had obtained owing to his position as a civil servant. Subsequently, Parliament passed the Official Secrets Act 1911 to prevent German spying. Professor Harry Street, in his masterly book on civil liberties describes what happened in his way:

“This Act was a very different kettle of fish from its predecessor. In it were many provisions weighted strongly against the accused, and of a kind most rare in English criminal law, especially at that time. Yet the astounding fact is that this extremely important Bill was given its second reading in late August . . . the Attorney General giving no proper explanation of its provisions and resisting successfully any discussion, and that in less than twenty-four hours from its introduction it passed through all its stages in the House. This Act made it a felony if any person for any purpose prejudicial to the State approached any military or naval installation or other prohibited place, or obtained or communicated to others information which would help an enemy . . . The onus was no longer on the prosecution to prove that the accused had a purpose prejudicial to the State. Moreover, if the accused denied that he had such a purpose, the prosecution was free to lead evidence of his bad character, including previous convictions, a course which is ordinarily prohibited in criminal cases. The Act also made it a misdemeanour for a person who has . . . information which has been entrusted in confidence to him by an officer of the Crown or which he obtained as a Crown servant or while employed in connexion with contracts with the Crown, to communicate that information to an unauthorised person.” (Freedom, the individual and the law, 2nd ed. pp219 et seq. Penguin, 1967).

Professor Street comments: “It may be argued that where the safety of the country is involved it is proper for the criminal law to be much harsher than usual . . . However, . . . the Official Secrets Acts are deliberately framed in terms so wide as to go far beyond the protection of national safety and to cover all kinds of official information unrelated to security; in that extended area such extraordinary rules have no place.”
The Official Secrets Acts have, as Professor Street shows, been used to threaten citizens for matters unconnected with espionage. But the misuse of Executive power goes further. This is his description of the present system of security tests for both Government employees and those of private firms doing secret Government work. The accused employee “is not allowed to be represented . . . He is not entitled to know of the evidence against him, and he is denied any opportunity to cross-examine witnesses. He is not allowed to bring witnesses to contradict whatever he might guess the evidence against him to be . . . He has no facilities by way of subpoena for ensuring the presence of witnesses. There is no machinery for having the evidence against him given on oath. No members of the public are allowed to be present . . . These procedures are a travesty of justice as Englishmen are accustomed to it . . . That civil servants and privately employed citizens should have their careers ruined by procedures like these is inexcusable.” (op cit, pp236 et seq).

The tale has a sequel. By passing Section 10 of the Race Relations Act 1968, Parliament has now expressly permitted a Government Department, or a private concern employed on a Government contract, to refuse “for the purpose of safeguarding national security” to employ or promote someone on the ground of his race or colour; and a Minister’s certificate is conclusive evidence, under the Section, that an act has been done for the purpose of safeguarding national security. It may well be justifiable to maintain nationality rules for employment on confidential work in the Government service, where matters of national security are involved, but it is incredible that a person should be able to be barred from such work, without any means of redress, solely because his race or colour is regarded as making him a security risk.

The national security issue dramatizes the tensions between State power, democracy, and individual freedom, and the consequences of the careless delegation of power to the Executive. The resulting system threatens freedom of speech, freedom of belief, and employment opportunities, while lacking any of the traditional procedural safeguards of the legal process.

freedom of movement and belief

Sometimes, however, the Executive exercises complete and arbitrary power outside even a feeble legislative framework like the Official Secrets Acts. For example, a passport is a practical necessity if a person is to travel freely abroad. In May 1968, as part of the Government’s sanctions policy against the rebel Rhodesian regime, the passport of Sir Frederick Crawford was withdrawn when he entered Britain from Rhodesia. The Commonwealth Secretary said, in reply to a question in the Commons: “On the reasons for impounding the passport, the House will realise that it is not in the public interest to disclose the information on which decisions in these cases are taken.”

But as The Times rightly observed: “Freedom to travel abroad is regarded as a civil liberty of some importance. Civil liberties are secured by law and removable only by due process of law. But not this one. Refusal to issue a passport, or the withdrawal or impounding of one, is a prerogative act. It is in the strict sense of the word, arbitrary.” (The Times, 14 May 1968).

Fourteen years before the Crawford case, Sir Anthony Eden instructed the British Consul in Peking to refuse to
renew the passport of Mr. Alan Winnington, foreign correspondent of the Daily Worker. The complaint which originally led to the refusal of his passport concerned allegations that Mr. Winnington had participated in the interrogation of British prisoners of war in Korea. The passport was refused even though the then Attorney General had stated in a written reply to Parliament that he had no evidence that Mr. Winnington had taken part in such interrogations. Mr. Winnington was unable to enter Britain until his passport was last restored in July 1968. (The Times, 9 July 1968). It may have been right in both cases to withdraw the passport, but it cannot have been right to deny the individual concerned any chance to state his case or challenge the decision.

Another, more controversial example of the arbitrary exercise of Executive power involves freedom of belief as well as freedom of movement. Professor Street optimistically stated in his book that the Home Secretary would not “in the exercise of his discretionary power to admit aliens apply religious tests.” (op cit, p198). However, on 25 July 1968, the Minister of Health told the Commons that foreign nationals intending to proceed to Scientology establishments would not be eligible for admission to this country as students, and during the following month, eight hundred overseas Scientology delegates, planning to attend an “Horizons Unlimited” international congress, were banned by the Home Office from entering Britain, although the organization's spokesman stated that they were not coming to study or to take courses, but to attend a congress. (The Times, 15 August 1968). Apparently, Government employment exchanges were also instructed not to fill job vacancies notified by Scientology groups (Sunday Times, 1 December 1968). It was not suggested by the Government that devotees of the cult of Scientology had been guilty of any criminal offence in practising their beliefs. An attempt to challenge the Home Secretary’s policy in the Courts inevitably failed, for immigration decisions are treated in English law as administrative acts, and, as Mr. Justice Ungoed-Thomas explained, it is firmly established that the rules of natural justice do not apply to administrative acts. (Schmidt v Home Office, The Times, 23 October 1968). This decision was later affirmed by the Court of Appeal. (The Times, 20 December 1968). Granted that the beliefs and practices of Scientology are repellent to most people, and granted that the Government is entitled to refuse entry to this country of undesirable people, it is again unjust that the scientologists had no right to a proper hearing or appeal when their freedom of movement and belief was cut down.

freedom of expression

The utterances of political extremists are also, by definition, abhorrent to most people, yet the freedom to express unpopular opinions is the touchstone of democratic Government. Parliament has rightly imposed limits on threatening speech likely to lead to public disorder by passing the Public Order Act 1936. In 1963 that Act was interpreted by the Divisional Court, in Colin Jordan's case, as being contravened if words are used at the public meeting which are likely to provoke a breach of the peace among the particular audience, even though that audience is an unreasonable one and made up of hooligans whose aim is to prevent the speaker from making his address. (Jordan v Burgoyne [1963] 2 QB 744). Presumably one would therefore be liable to imprisonment for using robust language at a public meeting to criticize Adolph Hitler to
an audience containing Fascist rowdies intent on breaking up the meeting.

In 1965, Parliament made it an offence to use threatening, abusive or insulting words at a public meeting with the deliberate intention of stirring up racial hatred. The 1965 Act goes beyond the Public Order Act by penalising the content of speech even though no disorder results or is likely to result from its expression. In November, 1967, Michael Malik was convicted and sentenced to one year's imprisonment under this provision for an anti-white speech which he made at a public meeting in Reading, though there was no evidence of any likelihood of violence among his audience.

The Jordan and Malik cases raise difficult questions of principle, they are on the line dividing speech which should legitimately be protected from conduct which should rightly be penalised. But in neither case was the question of principle perceived at the time, beyond the particular partisans of each of the accused. In the other examples to which I have referred, there was no official institution or influential body of opinion which was able effectively to defend the civil liberty of the group or individual on grounds of general principle. The left supported Mr. Winnington; the right supported Sir Frederick Crawford. The National Council for Civil Liberties supported the principle, but lacked the influence which it deserves.

**criminal justice**

Now it would be wholly mistaken to suppose that these fundamental freedoms of movement, belief, and speech, are matters of less concern to working-class interests than to those of the well-to-do; their infringement threatens the entire community. But there are other individual liberties whose infringement can cause particular hardship to the least privileged members of the community. For example, the British system of criminal justice is a source of justifiable national pride, but the safeguards against injustice are insufficient, especially for poor and ignorant people who fall foul of the law. Some maverick members of the police force will inevitably abuse their powers of arrest, search, seizure of evidence, interception of telephone calls, and interrogation of suspects. The citizen who is brutally treated, or wrongly arrested or maliciously prosecuted, has his remedy in the Courts, but he will rarely be able to prove his case, and, unless he is either well-educated, or an experienced criminal, he is most unlikely, whether through ignorance, fatalism or fear, to seek such a remedy. If he complains of misconduct to the authorities, the case will be investigated by a senior police officer, admittedly from an independent police force; but the absence of any complaints machinery which is completely independent of the police force produces a common and avoidable sense of injustice.

Again, almost everyone who is accused of a major crime is legally represented, if necessary at the expense of the State. However, in the magistrates' courts only a tiny proportion of accused persons receive legal assistance. Although the vast majority of trials before magistrates are for minor traffic offences for which legal representation is unnecessary, there is a large residue of more serious cases in which conviction might carry with it the likelihood of imprisonment or the loss of livelihood. In 1966, there were more than a quarter of a million trials for indictable offences in these courts, and legal aid was granted in less than 8 per cent of these cases; it is improbable that so few needed legal aid.
Criminal statistics, 1966 cmd 3332, p327, table XVII). There are no published statistics which show the exact proportion. Legal aid was granted in some 21,000 cases by magistrates' courts for all offences (indictable and non-indictable). Expressed as a proportion of the 250,000 indictable offences, this represents 8 per cent, which must be more than the actual percentage. A study conducted in 1967 in five London magistrates' courts revealed that only 30 per cent of defendants pleading not guilty to criminal charges, other than minor traffic offences, were legally represented; this proportion also seems too low. (M. Zander and C. Glasser, "A study in representation", New law journal, 27 April 1967).

Yet in this case, the Ministry's representative had conceded at the tribunal hearing that there was nothing exceptional about the facts of the case. Again in the words of The Times: "It is ridiculous . . . to state that payment for a monthly visit by one wife creates no precedent. If this means that she will not get this treatment again it is unfair to her: if it means that others will not get the same treatment, it is unfair to them." (The Times, 10 August 1968).

The other case involved a complaint of rough treatment shown to a claimant by a local office of the Ministry of Social Security, reported in July 1968. (The Guardian, 8 July 1968). A woman received a third of the benefit to which she was entitled, and recovered the remainder only after taking protest action at the local office. As a result of her experience, she and some friends launched a campaign to ensure that those entitled to social security really received their full benefits. They printed leaflets to remind claimants of their rights and distributed them at the Ministry's local office, and succeeding in obtaining extra payments for several people. A Ministry spokesman, commented critically that "people are not supposed to ask claimants if they want help once they're inside the offices", but did not explain why the Ministry's officials themselves had not apparently given sufficient help inside their own office, nor why the A-code issued to guide officials in awarding benefits has never been made public.

In a recent interview, Mr. Stephen Swingler, Minister of State in charge of social security, was reported as stating that he "did not think that publishing the A-code, the regulations governing supplementary benefits, would be the simplest way of informing people of their rights. The discretionary powers vested in the 1966 Act inevitably meant
that not everybody was dealt with in the same way. The judgment of the individual officer took into account not only things you could put down on paper but things like the psychological circumstance of the family. If the A-code was published, this discretion would become meaningless.” *(The Times, 12 December 1968).*

But it is difficult to understand how publication of the regulations would destroy the discretionary element in the award of supplementary benefits; it would only ensure that such discretion was exercised in accordance with the regulations. The would-be recipient of social security is surely entitled, as a matter of elementary fairness, to know the official criteria which have been, or should have been, taken into account in dealing with his case, so that he can have a proper opportunity of challenging the way in which those criteria have been applied to his case in any subsequent appeal to the social security tribunal. Although, since 1966, there is an entitlement to social security, the Ministry seems reluctant to treat it as a legal right, rather than a privilege to be awarded in a spirit of benevolent paternalism to the deserving poor.

**LOCAL GOVERNMENT**

These examples all involve central Government, but some of the most far-reaching decisions affecting low income groups are taken not by central Government departments or their local branches, but by local authority officials. And it is generally in Local Government that the quality of administration if difficult to maintain, that democratic controls are weak, and that the abuse of bureaucratic power is most likely.

Paradoxically, although local authorities do not enjoy absolute sovereignty, but are subject to Parliament and the Courts, they are in many ways less accountable in their exercise of power than central Government itself. The explanation lies partly in the fact that local authorities are treated both by Parliament and the Courts as though they are truly representative legislatures responsive to the particular needs of the local electorate, whereas their real character is more oligarchical and bureaucratic. The classic view of the nature of Local Government was expressed by Lord Russell of Killowen C.J., in 1898, in what is still one of the leading cases on the judicial control of local authorities. He declared:

“Parliament has thought fit to delegate to representative public bodies in towns and cities, and also in counties, the power of exercising their own judgment as to what are the by-laws which to them seem proper for good rule and government in their own localities. . . . The power is to make by-laws from time to time as to the authority shall seem meet, and if experience shows that in any respect existing by-laws work hardly or inconveniently, the local authority, acted upon by the public opinion, as it must necessarily be, of those concerned, has full power to repeal or alter them. . . . Should experience warrant that course, the legislature which has given may modify or take away the powers they have delegated. . . . When the Court is called upon to consider the by-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned . . . they ought to be . . . ‘benevolently’ interpreted and credit ought to be given to those who have to administer them that they will be reasonably administered.” *(Kruse v Johnson [1898] 2 QB 91 at pp98-100).*

It is the very embodiment of nineteenth
century liberalism, expressing democratic ideals as though they accurately described the actual stuff of Local Government. But it is as mythical a description of the real character of Local Government, as the nineteenth century liberal economists' version of capitalism. Unfortunately, it is a persistent myth which still obscures the need for proper individual redress against bad decisions by local authorities.

Lord Russell assumed that the local authority would "necessarily" be acted upon by public opinion in deciding policy. In practice only a small proportion of the people participate in elections to choose their local representatives, and it would be rare indeed for a local authority's general policy, let alone its particular application, to influence the outcome of those elections. Many local authorities are overwhelmingly composed of members of one political party; all are more vulnerable to sectional, undemocratic pressures than central Government. The control and scrutiny of local officials rests with part time, unpaid, overworked councillors. The influence of public opinion is seriously weakened by the fact that crucial decisions are taken in private by council committees, and that the press and the general public can be excluded from council meetings. Central Government control is confined to ensuring that local authority expenditure complies with the broad requirements of national policies.

The significance of Local Government has declined in recent years, but its activities are still of considerable importance to the ordinary citizen. It makes the detailed, local decisions about education, housing, health and welfare, and exercises important powers of occupational licensing, censorship, and the control of public meetings. Despite their significance, these decisions are frequently taken on the basis of unpublished criteria, without any hearing or appeal by individuals affected by them, or real control by the local legislature.

**housing allocation**

For example, the rules about eligibility for local authority housing vary considerably throughout the country, and it is rare for a housing department to publish its points scheme. The key figure in the process of allocation is the housing visitor, who assesses the suitability of would-be tenants by applying categories like "good", "fair", "poor", or "undesirable". The visitor is rarely a trained social worker, but his judgment, based perhaps on ignorance or prejudice, may decide the future welfare of an entire family. There is growing evidence that fear of local sectional pressure, or administrative inefficiency, sometimes results in the unfair exclusion of particular groups of needy citizens from public housing, and aggravates the process of urban decay. The ordinary citizen who is aggrieved by the application of local housing policy to his case is in practice without legal or political redress, as indeed he is in most other fields which are under local authority control. (See generally, Elizabeth Burney Housing on trial, OUP 1967 and Rex and Moore Race, community and conflict, OUP 1967).

**need for new approach**

None of the reforms now being officially considered will deal with this problem. The Seebohm Committee has made important proposals for the co-ordination by a single social service department of the various existing local authority services. *(Report of the com-
mittee on local authority and allied personal social services, July 1968, cmd 3703). These proposals would improve the quality of local administration, but they would not, and indeed were not intended, to secure greater individual redress for abuse of local Governmental power. The increase in power which would result from the coordination of services by a single new department might even make it harder for the citizen to challenge a local authority decision affecting him—for he could no longer play one department against another. Similarly, reform of the structure of Local Government, now being considered by the Redcliffe-Maud Commission, is necessary for efficient and democratic Government, but such change, by creating larger and more powerful regional authorities, may further weaken the position of the individual citizen. Once again one is reminded that administrative efficiency and political democracy do not of themselves ensure individual justice.

Naturally no institutional device could eliminate abuses of central or local Governmental power at the expense of the citizen. Abuse is inherent in any system of Government; it can be resisted only if the spirit of liberty and the instinct for justice are strong in society. But the danger in contemporary Britain is not that we shall naively trust in false institutional panaceas, but rather that we shall completely discount the value of new institutions to protect individual rights, while naively trusting our spirit of liberty and instinct for justice to serve as sufficient protection.
3. a bill of rights

The institutional device which is strikingly absent from Britain, and as strikingly present in most other countries, is the Bill of Rights. In the words of a former member of the United States Supreme Court the purpose of such a Bill is: "to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." (Justice Jackson in West Virginia Board of Education v Barnette, 319 US 624 (1943), p638). The fact that the Bill of Rights exists in its strongest form in the US, and yet has not prevented alarming epidemics of populist intolerance from sweeping across that country indicates the limited value of such an instrument. It was the same Justice Robert Jackson, just quoted, who later wrote: "I know of no modern instance in which any judiciary has saved a whole people from the great currents of intolerance, passion, usurpation, and tyranny which have threatened liberty and free institutions." (The Supreme Court in the American system of government, p80, 1955).

No-one, of course, would expect that a whole people could be so saved. Perhaps the fairest and most realistic statement of the case in British terms was made by Harold Laski, when he wrote of the real value in Bills of Rights which it is "both easy, and mistaken to underestimate. Granted that the people are educated to the appreciation of their purpose, they serve to draw attention to the fact that vigilance is essential in the realm of what Cromwell calls fundamentals. Bills of Rights, are, quite undoubtedly, a check upon possible excess in the Government of the day. They warn us that certain popular powers have had to be fought for, and may have to be fought for again. The solemnity they embody serves to set the people on their guard. It acts as a rallying-point in the State for all who care deeply for the ideals of freedom." (op cit, pp64-5).

Again and again since Laski's day, English lawyers have drafted Orders-in-Council, marking the attainment of independence of new Commonwealth countries, which have contained written guarantees of the fundamental rights and freedoms of the individual. These guarantees, which are legally enforceable as the supreme law of the land, are modelled on the European Convention for the Protection of Human Rights and Fundamental Freedoms to which Britain is party, and which in turn follows the UN Universal Declaration of Human Rights 1948.

However, despite the enthusiasm with which we have pressed these guarantees upon the Governments of new Commonwealth States, and despite Britain's commitment to these international conventions, we have refrained from enshrining them in our own system of Government. And the consequence is sometimes ironical. Thanks to its British-made constitution, the Government of Barbados, like many new Commonwealth Governments, cannot legislate to do to a class of Barbadian citizens what the British Parliament did to one class of United Kingdom citizens in the Commonwealth Immigrants Act 1968, namely to deprive them of their right to enter and live in their country of citizenship.

A Bill of Rights could make an important contribution to the protection of individual rights in Britain (including Northern Ireland) against abuse by the
Legislature, the Executive, and Local Government. It would direct attention more insistently and systematically than at present to issues of principle involving the individual and the State. Those who would reject such a proposal out-of-hand might reflect that in few of the examples of abuse to which I have referred were the issues of principle widely understood at the time, and in no case could the abuse be challenged as a matter of right.

Parliament is, of course, capable of curing all these abuses by specific legislative reforms. To its credit, the present Government has a better record than its predecessors in increasing individual liberty, for example, by creating the Law Commission to promote law reform, by outlawing racial discrimination by Government and public bodies, by supporting the abolition of the Lord Chamberlain’s functions of theatre censorship, by liberalising the grant of bail to persons accused of minor crimes, by introducing immigration appeals machinery and by permitting individuals to complain to the European Commission for Human Rights of alleged violations of the European Human Rights Convention by the British Government. But the process is slow and haphazard; it depends on a rare combination of liberalism, courage and political ingenuity in an individual Minister; and, if it eventually produces reforming legislation, it does nothing for the citizen who has already suffered from past abuse; nor does it provide any safeguard against the consequences of a fit of legislative panic or folly on some future August afternoon.

A Bill of Rights would put a fence about the traditional liberties of the individual. In the absence of a fundamental change in the British Constitution, it would still be only a statute, and, like any other statute, could be repealed by a future Parliament. That would be a risk worth taking, for the Government of the day would surely feel the same inhibition about emasculating a Bill of Rights based on the European Human Rights Convention as it would about creating ten-year Parliaments, at any rate in peacetime.

**European convention**

It would be a considerable advance even if the Bill did no more than incorporate the provisions of the European Human Rights Convention directly into English law, as they are already incorporated into the internal laws of other Contracting States, such as Austria, Belgium, the Federal Republic of Germany, and the Netherlands. In those countries the Convention can be invoked before the ordinary domestic Courts as well as before the European Commission for Human Rights; for example, a German Court has decided that a person should not be deported by the Executive, because to do so would be to separate him from his family, contrary to Article 8 of the Convention, which guarantees the right to respect for family life and home. The same possibility of invoking the Convention as part of the ordinary law of the land ought surely to be available in Britain, for the present situation means that the Convention is unequally applied in the different Contracting States.

**no written constitution**

A new Bill of Rights, of the type which I advocate, would not be a written constitution, nor would it deprive Parliament of its absolute sovereignty, any more than Britain’s ratification of the European Convention has meant a loss of Parliamentary sovereignty. Parliament could always amend or repeal
such a Bill, just as it could now pronounce the Convention. But the Bill would be binding, like any other statute, unless and until it was amended or repealed. Like the Convention, it would broadly define the rights and liberties of the individual, subject to specific exceptions, and it would expressly state that all other statutes and Common Law decisions would be interpreted so as to give effect to the provisions of the Bill of Rights. Gradually, as we became used to such a Bill, its provisions could be extended to include the more extensive United Nations Conventions on Human Rights which have still to be ratified by the British Government, but there is no reason why a beginning should not now be made with the European Convention to which Britain is already committed.

enforcement

The difficult problem is to decide exactly how such a Bill would be enforced. The English legal tradition is ill-suited here as it has proved to be in other parts of the Commonwealth, to the doctrine of judicial review, by which the United States Supreme Court overrules Acts of Congress which violate the American Constitution. It might take years to get the English Bench to interpret a Bill of Rights as a living document rather than an Income Tax Act. There is also a risk that some might use such a Bill to undermine radical social or economic legislation.

The simple way of avoiding these risks would be to enact a Bill which could not be enforced in the Courts. Instead, there could be a Constitutional Council with the power (like the Parliamentary Commissioner) only to make recommendations to Parliament about the compatibility of legislation or Executive action with the provisions of the Bill of Rights. Such a compromise might be necessary in order to obtain immediate political support for the Bill, but the ultimate objective ought to be a Bill which is enforceable by the individual before a proper Court. That objective will not be reached until the Judiciary can be trusted by Parliament to perform the major task of applying the Bill of Rights in a progressive and liberal spirit; it is a challenge to the Bench and the legal profession to win that trust.
4. remedies for maladministration

A Bill of Rights would protect the fundamental values associated with belief, speech, movement, assembly, and due process of law, against abuse by Parliament, the Executive, and Local Government, and would create individual rights where there are now only liberal sentiments. But a Bill would not provide a sufficient means of redress for the more mundane abuses of Central and Local Government which more commonly do harm to the ordinary citizen.

I have already referred to problems connected with the allocation of State welfare benefits, and with Local Government services. But the possibility of maladministration exists wherever there is bureaucratic power. The citizen may, for example, be given inaccurate or misleading advice by a public official on which he acts to his misfortune. His file may be lost in a Department and found too late. His case may not be properly considered because of negligence or even bias on the part of an official. He may be denied the chance to present his point of view, either orally or even in writing; when the Department has made its decision, he may be refused any reason for the decision. Such abuses may be as serious in their consequences to the citizen as the violation of the great principles contained in the Universal Declaration of Human Rights.

existing remedies

There are already remedies for many administrative wrongs. The citizen may, for example, obtain a Court order requiring a Government Department or public body to do its statutory duty. And recently the Courts have increasingly required administrative bodies to give the citizen an opportunity to state his case. The law entitles the citizen to recover compensation in those relatively rare cases where it treats a public official as owing a duty to the citizen and where there has been a breach of duty.

ministerial responsibility

However, there are several types of maladministration for which there is, at present, no remedy; and for some wrongs there is only a partially effective remedy. The unsatisfactory condition of English administrative law is notorious, and it creates considerable hardship, yet once again one finds that traditional constitutional dogmas impede reforms which could readily secure greater individual justice. A main obstacle in this case, is the theory of Ministerial responsibility, namely that “it is the Minister in charge of the Department who is answerable to Parliament for the workings of the Department. The individual civil servant is, of course, not so responsible. The action of the Department is action for which the Department is collectively responsible and for which the Minister in charge is alone answerable to Parliament.” (Second report of the Select Committee on the Parliamentary Commissioner for Administration, p72, HMSO, 1968).

Now the citizen would undoubtedly benefit from any extension of Parliamentary control and corresponding increase in Ministerial responsibility which reduces the incidence of maladministration. But Parliament should not have the sole responsibility for redressing individual wrongs caused by maladministration. Occasional particular injustices may be effectively exposed in the debating chamber, especially if they raise matters of principle; the skilful question or a probing adjournment debate may secure a remedy for an individual wrong. But Parliament cannot regularly dispense individual justice in thousands of cases of alleged malad-
ministration; it is not a court of law. And a Minister’s responsibility to Parliament for the wrong-doing of his civil servants should not prevent his civil servants from being answerable to the citizen in the ordinary courts.

It seems obvious, yet too often Parliamentarians have argued as though the doctrine of Ministerial responsibility provided a sufficient deterrent against executive abuse, and an adequate remedy for the wronged individual. For example, Mr. James Callaghan, the Home Secretary used the argument during the Race Relations Bill debates justifying the omission from the Bill of a legal remedy for racial discrimination practised by Government Departments. He said that the accountability of the responsible Minister to Parliament could suffice, coupled where appropriate by an ex gratia payment to the victim by the guilty Department. (Hansard, 25 June 1968, cols 797-8). What the citizen wants is not an apologetic ministial answer to a Parliamentary question, nor even an ex gratia payment in compensation, but a legal remedy which he is entitled as of right. In the case of the Race Relations Bill, the argument was especially untenable because the Bill provided for legal proceedings to be brought against private employers for acts of racial discrimination committed by their employees, and it gave immunity to Government employees. Fortunately a backbench revolt eventually removed this immunity.

The parliamentary commissioner

I was the doctrine of Ministerial responsibility which inspired the creation by the office of Parliamentary Commissioner, not only as a useful adjunct to the Parliamentary process, but apparently as a substitute for more effective legal remedies against maladministration. The Parliamentary Commissioner is empowered to investigate alleged injustices resulting from maladministration, which “may be assumed to include cases of corruption, bias and unfair discrimination, misleading a member of the public, failure to notify him of his rights, losing documents, sitting on a decision or an answer to a request for information for an inordinate length of time.” (S. A. De Smith, Judicial review of Administrative Action, 2nd ed, p42, see also Harry Street, Justice in the Welfare State, pp115-24, Stevens, 1968).

The most recent report of the Parliamentary Commissioner, contains several cases of maladministration which have inflicted individual hardship. Now it is a considerable advantage that a public official, with unrestricted access to the relevant files, should be able to investigate complaints of maladministration thoroughly and make his recommendations to Parliament. The office of Parliamentary Commissioner constitutes a valuable strengthening of Parliament’s scrutiny of the Executive, and it will encourage improved standards of public administration. But it is difficult to understand why in the cases of maladministration which have been described, cases of corruption, bias and unfair discrimination, misleading a member of the public, failing to notify him of his rights, losing documents, and so on, the citizen must persuade a Member of Parliament to refer his complaint to the Parliamentary Commissioner in the ultimate hope of obtaining a favourable report and an ex gratia from the offending Ministry, instead of being entitled as of right to an effective remedy. Unlike the “bad rule” and the “bad decision”, which the Parliamentary Commissioner will also investigate in future (The Times, 13 November 1968), these cases do not involve broad questions of adminis-
trative policy and discretion. They are classic examples of the type of wrongdoing upon which the Courts are well suited to adjudicate, of what the lawyers call justiciable issues.

It is true, as Professor de Smith has stressed, that: The administrative process is not, and cannot be, a succession of justiciable controversies. Public authorities are set up to govern and administer, and if their every act or decision were to be reviewable on unrestricted grounds by an independent judicial tribunal the business of administration would be brought to a standstill. The prospect of judicial relief cannot be held out to every person whose interest may be adversely affected by administrative action. (op cit, p3).

a code of administrative procedure

The grounds for the judicial review of administrative action are already properly and necessarily restricted, but they could be extended and made more explicit, without impairing the strength and efficiency of public administration.

The principles which are inherent in the Parliamentary Commissioner's case law could be reduced to a general Code of Administrative Procedure: for example, the principle that administrative decisions should be taken within a reasonable time; that there should be due care in ascertaining the facts which are relevant to a decision; that before reaching a decision, the administrator should take care to ensure that all persons prejudicially affected by the decision have been given a reasonable opportunity of making representations; that, upon request, a written statement of the reason for the decision should be supplied; that the administrator should take care to ensure that his decisions are made known to those likely to be affected; that there should be no unfair discrimination.

The citizen, harmed by violations of the Code, should be entitled as of right to obtain effective redress in the Courts, either by having the decision annulled, or by obtaining compensation, or both. These grounds for reviewing administrative abuse would not bring the business of administration to a standstill; in general they would apply to relationships between the State and the citizen similar principles to those already applied by the law to relationships between one citizen and another, and which have already been applied by Parliament to certain administrative proceedings.

The control of administrative action by the Judiciary could be improved in several other respects. The citizen should be entitled to recover monetary compensation in a far wider range of situations than at present for damage caused by maladministration. One vital reform, to which I shall return, would be the extension of the legal aid scheme to proceedings before administrative tribunals. And, perhaps one day we shall create a proper system of administrative Courts; recalling meanwhile that the Courts, in their present form, like Parliament, the Executive and Local Government, were not created by the Divinity but by the Victorians.

relevance for democratic socialism

There is nothing uniquely socialist about proposals for restraining arbitrary or unfair State power and promoting individual justice: concern with these issues derives from a humanitarian tradition many centuries older than socialism and indeed, there are some who described themselves as socialists, even if
his country, who would regard such
restraints as contrary to their fantasies
of State power limited only by its
mystical identity with the general will.

Their brand of authoritarianism is
propagated by conservative enemies as
essential to socialism. It is therefore
important for democratic socialists to
firm their commitment to individual
rights and liberties, without ambiguity.

Democratic socialism can contribute to
the humanitarian tradition through the
effective use of State power to curb abuses
of collective power and strengthen indi-
gual rights, and by defining those
rights in socialist terms—not only the
additional right to freedom of speech,
belief, assembly, personal liberty and
the process of law, but also the right
civilized standards of employment,
housing, and education, social security,
privacy, and leisure.
5. protection against private institutions

However, it is not, of course, sufficient only to seek to curb abuses by public institutions, for there remains the far more formidable problem of protecting the citizen against the despotism of private bureaucracies. The democratic process provides at least some restraint against misconduct by Central and Local Government, and the public corporation, but it barely touches those private institutions in our society which exercise comparable power in their own domain to that of Government itself. They are private because they are privately owned, self-elected, and self-operated; they are analogous to Government because they exercise similar power, often with consequences to the citizen extending far beyond their immediate commercial or professional activities. To the extent that Government defers to these private bodies—the great industrial or commercial concern, the professional association, the trade union—to that extent they enjoy autonomy over their affairs and those subject to them.

abuse of private power

The danger of abuse of private power to the detriment of the individual is certainly no less than in the public sector—the power of the private employer to deny work to members of trade unions, or political or religious groups, to discriminate unfairly in providing training, to pay women less than men for the same work, to dismiss workers arbitrarily, to restrict the transfer of pension rights; the power of the insurance company to fix insurance rates on arbitrary grounds, or arbitrarily to deny insurance altogether to particular sections of the community, even where the State compels the citizen to obtain insurance; the power of banks, building societies, and hire purchase companies to discriminate unfairly in the grant or refusal of credit facilities; the power of the industrial or commercial concern, by exploiting electronic technology, to invade the privacy of its employees or customers; the power of the property developer or the commercial landlord to shape the character of our cities and to decide the terms on which people will live in particular neighbourhoods; the power of the manufacturer or retailer to legislate, in its standards contracts, so as to exclude liability for damage caused to the citizen by defective goods; the power of the trade union or professional association to enforce unfair rules about work or training.

doctrinal instructions

It should be a principle aim of democratic socialism not only to ensure the public accountability of these private institutions, but also to secure individual rights against the irresponsible exercise of their considerable power. Unfortunately, once again conventional doctrine obscures this aim. Controversy about the existence of private ownership and its coexistence with State ownership has diverted attention from the need to regulate private bureaucracies and prevent their violation of individual rights. One searches the May Day Manifesto 1968 (edited by Raymond Williams, Penguin, 1968), in vain for any hint in its critique of capitalism that the individual's rights should be more sharply defined or effectively guaranteed within the existing mixed system of ownership. Similarly, Mr. Crosland seemed at one time to suggest that it is easier to exercise State control over the private corporation than its public counterpart (C. A. R. Crosland, "The private and public corporation in Great Britain", in Edward S. Mason (ed), The corporation in modern society, Harvard University Press).
The citizen who is ruined by the arbitrary act of a private institution is unlikely to be comforted by the notion that redress must wait upon the death of capitalism; nor will his position be restored by the assurance that private bureaucracies are not necessarily worse than their public counterparts; nor, one might add, will he necessarily obtain justice because he or his fellow citizens are allowed greater participation in the process of decision-making. Whether the institution is private or public, democratic or oligarchical, there is no substitute for enforceable individual rights.

**new controls**

We must develop new systems of control over private institutions designed to protect the individual, whether as consumer, worker, or ordinary citizen. The Race Relations Act 1968 gives at least some redress to the person who is denied employment, housing, education, or commercial services on racial grounds by private or public bodies. Other types of arbitrary and unfair treatment should also be made unlawful—discrimination on grounds of sex, religion, age, political opinion, trade union membership, or social status; unjust procedures; abuses of monopoly power. A Bill of Rights or an Administrative Code could not be applied to private institutions as though they are exactly like public bodies, but the Government could use the vast range of existing legislative techniques—workers, tenants, and consumers' charters, regulatory agencies, compulsory licensing, model contracts and constitutions, disclosure requirements, inscriptions, and appeals tribunals—to the same end, to secure individual justice from private as well as public bodies. My purpose is not to elaborate a detailed programme of reforms, but to emphasize the need for more systematic and determined concern with the problems requiring reform in the relationships between powerful private bodies and the individual.
Finally, I turn to the actual enforcement in practice of the individual’s rights, whether against Government or private institutions. In each of the fields to which I have briefly referred, I have ended by advocating an extension of individual rights. This is not, of course, because I believe that the harsh inequalities in society can be removed merely by legal reforms, but because I am convinced that, even in this profoundly unequal society, such changes could secure greater justice for the individual. However, the weakness in this approach is that it depends upon people being able and willing to enforce their legal rights when they are threatened or infringed; yet if one examines situations in which individual rights are already guaranteed by law, one discovers a vast gap between the rights which are written in the statute book and what is in fact enjoyed.

unused tenants’ rights
The problems have been thoroughly diagnosed in the Society of Labour Lawyers’ report, *Justice for all* (Fabian research series 273), and so I shall here select only one example by way of illustration: the relationship between landlords and their tenants. The Rent Act, 1965 was designed to remove one of the most notorious injustices tolerated by successive Conservative Governments—the harassment and exploitation of private tenants. It made it a criminal offence for a landlord to harass his tenant or to evict him without due process of law, and it gave the Rent Officer the power to determine what is a fair rent.

Parliament boldly intervened in favour of the tenant as the weaker party. In practice, however, the number of tenants who have applied to the Rent Officer to fix a fair rent has been far below what was expected. A recent survey of eight London streets revealed that barely half of those theoretically protected by the Act had ever heard of it (Michael Zander, “The Unused Rent Act”, *New Society*, 12 September 1968). Almost two-thirds of those in unfurnished lettings knew nothing about Rent Officers. Only fourteen per cent associated the Act with security of tenure. This is how *New Society*’s legal correspondent has described the working of the Act: “It is now widely believed that if an unfurnished tenant applies to the Rent Officer ... for a fair rent to be fixed, the landlord has a right to evict him. This myth ... is wholly untrue ... If the tenant leaves obediently without going to Court the myth is strengthened ... There is a myth that a tenant can be thrown out straight away for being over-crowded when his family grows beyond the permitted number — yet there are special exceptions clauses in the Act to cover that situation. There is a myth that once you are overcrowded the Rent Acts do not apply at all, yet if the tenant stands his ground and refuses to go there must still be Court proceedings, and a tenant with a legal representative, can make things very difficult for a landlord”. (“Evans on law”, *New Society*, January 1967).

Many different factors are to blame for this dismal situation. The Rent Acts have been drafted with grotesque and avoidable technicality; they can be understood only by experienced lawyers. But many tenants cannot afford a lawyer, and, since the legal aid scheme does not cover proceedings before administrative tribunals, such as the Rent Assessment Committee, or the Rent Tribunal, they cannot retain a lawyer with the aid of public funds. However, even if legal aid were available in these tribunals, as it is for Court proceedings, many of those who most need professional advice or representation would
not seek it, perhaps because they would not know about either the Rent Acts or legal aid, or because they did not recognise that their problem could be solved with legal assistance, or because they were deterred by the intimidating public image of the legal profession from going to a solicitor, or because they could not go to a solicitor during his office hours without losing a day’s wages, or because they live in a poor urban neighbourhood like Poplar, which has one solicitors’ firm for its 68,000 inhabitants, in contrast with the national average of one solicitor per 2,275 of the population.

**Important reforms**

It is simple to state what is now needed to improve matters, but difficult to win recognition that the reforms justify a high political priority or an increase in public spending. Better drafting of welfare legislation is a significant and inexpensive benefit which may soon result from the Law Commission’s work, if Parliament will give the time to the Commission’s proposals. More vigorous publicity for such legislation is clearly required by Government agencies, including a more imaginative use of broadcasting services. The failure of successive Governments to extend legal aid to proceedings before rent and other welfare tribunals is, without question, the cause of major injustice to many thousands who are denied adequate presentation because of their poverty, even though their cases concern matters of great importance to them and their families. There is surely a lack of proportion when four-fifths of legal aid is spent on divorcing married couples, while not a penny is available for proceedings before tribunals dealing with rents, industrial injury and national insurance benefits, compensation for criminal injuries, unemployment benefits, and redundancy payments. The extension of legal aid to cover such matters would be an important advance towards greater equality in the enjoyment of their existing legal rights by the poorest and the least educated section of the community.

**Legal aid limitations**

But all this, though admirable, is not enough. The various factors which contribute to the failure of the urban poor to obtain legal aid where it is already available derive not only from the social pathology of poverty, but also from the fact that the legal aid scheme has been grafted upon the traditional structure of the legal profession. The legal aid scheme is therefore shaped and restricted by the limits of that structure. Those limits may, for example, mean that there is only one solicitors’ firm in a particular working-class neighbourhood, which is only open during working hours, which discourages unprofitable work in the County Court or Magistrates’ Court, and whose partners know much about conveyancing and little about social security. Within such limits the legal aid scheme works well, but the legal profession is not organised to provide a social service in areas of special need, and should not be criticised for failing to do so. However, it does mean that the Government could vastly increase the total amount spent on legal aid without reaching the roots of the problem.

**The local legal centre**

The alternative strategy advocated by the Society of Labour Lawyers’ report would be radical and relevant, and also comparatively inexpensive. It is that a series of legal centres should be established in the heart of urban areas of
special need, staffed by properly paid, full-time, qualified lawyers, open in the evenings as well as during the day, giving expert advice on the special legal problems of local residents, and, where necessary, referring cases to social workers or private lawyers. Such centres would be independent of Government, and would provide a means of protecting the weak against the abuse of Governmental or private power. They could have a profound impact on the teaching and future development of the law, and attract into a seriously undermanned profession many law students who now go elsewhere because of lawyers’ apparent lack of community involvement. These local legal centres would not, however, undermine the vital independence of the legal profession, nor would they erode its private structure. They would supplement the services already given by lawyers, in those areas where legal services are not now adequately provided. Of all the reforms which I have proposed, this is the one which would have the most immediate and practical effect, for it would enable many more people to enforce their existing rights.

A just and equal society

I believe that these difficult proposals to provide more effective individual remedies for the abuse of power by Central and Local Government, and private institutions, and to enable existing rights to be more effectively enjoyed, would obtain widespread support in the community, and would afford more effective protection of the rights and liberties of the citizen. I hope that some of them might be implemented before the end of this Parliament, and others included in the next Labour Manifesto. They have a common aim: to translate the ideals of a just and equal society into measures which can be enforced in practice and relied upon by the individual.

As John Milton wrote three centuries ago: this is not the liberty which we can hope, that no grievance ever should arise in the Commonwealth; that let no man in this World expect; but when complaints are freely heard, deeply considered, and speedily reformed, then is the utmost bound of civil liberty attained that wise men look for (John Milton, Areopagitica (1644) p1).
The Fabian Society exists to further socialist education and research. It is affiliated to the Labour Party, both nationally and locally, and embraces all shades of Socialist opinion within its ranks—left, right and centre.

Since 1884 the Fabian Society has enrolled thoughtful socialists who are prepared to discuss the essential questions of democratic socialism and relate them to practical plans for building socialism in a changing world.

Beyond this the Society has no collective policy. It puts forward no resolutions of a political character, but it is not an organisation of armchair socialists. Its members are active in their Labour Parties, Trade Unions and Co-operatives. They are representative of the labour movement, practical people concerned to study and discuss problems that matter.

The Society is organised nationally and locally. The national Society, directed by an elected Executive Committee, publishes pamphlets, and holds schools and conferences of many kinds. Local Societies—there are some 80 of them—are self-governing and are lively centres of discussion and also undertake research.

Enquiries about membership should be sent to the General Secretary, Fabian Society, 11 Dartmouth Street, London, W1; telephone 01-930 3077.

Anthony Lester is Honorary Treasurer of the Fabian Society and an executive member of the Society of Labour Lawyers. He contested Worthing in the 1966 general election and was joint editor of Policies for Racial Equality (Fabian Research Series 262) and joint author of the Society of Labour Lawyers report Justice for All (Fabian Research Series 273).

The author wishes to thank Geoffrey Bindman, Nicholas Deakin, Julia Galtrell, Dipak Nandy and Roger Warren Evans for their advice and example, and the last named for his proposals for a Code of Administrative Procedure.

Cover design and typography by Geoffrey Cannon. Printed by Civic Press Limited (TU), Civic Street, Glasgow, C4.

ISBN 7163 0390 6
### Recent Fabian Pamphlets

#### Research Series

<table>
<thead>
<tr>
<th>No.</th>
<th>Author(s)</th>
<th>Title</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>252</td>
<td>Peter Mittler</td>
<td>The mental health services</td>
<td>3s</td>
</tr>
<tr>
<td>257</td>
<td>K. Jones, J. Golding</td>
<td>Productivity bargaining</td>
<td>4s 6d</td>
</tr>
<tr>
<td>262</td>
<td>Anthony Lester and N. Deakin (eds)</td>
<td>Policies for racial equality</td>
<td>4s 6d</td>
</tr>
<tr>
<td>265</td>
<td>Arthur Blenkinsop</td>
<td>Enjoying the countryside</td>
<td>2s 6d</td>
</tr>
<tr>
<td>267</td>
<td>a Fabian group</td>
<td>Britain and the developing world</td>
<td>3s 6d</td>
</tr>
<tr>
<td>268</td>
<td>M. Rendel and others</td>
<td>Equality for women</td>
<td>5s</td>
</tr>
<tr>
<td>269</td>
<td>Andrew Boyd</td>
<td>The two Irelands</td>
<td>3s 6d</td>
</tr>
<tr>
<td>270</td>
<td>J. Edmonds, G. Radice</td>
<td>Low pay</td>
<td>2s 6d</td>
</tr>
<tr>
<td>271</td>
<td>Jonathan Boswell</td>
<td>Can Labour master the private sector?</td>
<td>4s</td>
</tr>
<tr>
<td>272</td>
<td>Ben Whitaker</td>
<td>Participation and poverty</td>
<td>2s 6d</td>
</tr>
<tr>
<td>273</td>
<td>Society of Labour Lawyers report</td>
<td>Justice for all</td>
<td>8s</td>
</tr>
<tr>
<td>274</td>
<td>Peter Archer</td>
<td>Human rights</td>
<td>3s</td>
</tr>
</tbody>
</table>

#### Tracts

<table>
<thead>
<tr>
<th>No.</th>
<th>Author(s)</th>
<th>Title</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>323</td>
<td>Richard M. Titmuss</td>
<td>The irresponsible society</td>
<td>2s 6d</td>
</tr>
<tr>
<td>353</td>
<td>Brian Abel-Smith</td>
<td>Freedom in the Welfare State</td>
<td>1s 6d</td>
</tr>
<tr>
<td>361</td>
<td>L. J. Sharpe</td>
<td>Why local democracy</td>
<td>3s 6d</td>
</tr>
<tr>
<td>363</td>
<td>K. W. Wedderburn</td>
<td>Company law reform</td>
<td>2s 6d</td>
</tr>
<tr>
<td>364</td>
<td>D. Downes, F. Flower</td>
<td>Educating for uncertainty</td>
<td>2s 6d</td>
</tr>
<tr>
<td>366</td>
<td>Norman Ross</td>
<td>Workshop bargaining: a new approach</td>
<td>3s 6d</td>
</tr>
<tr>
<td>373</td>
<td>a Fabian group</td>
<td>The trade unions: on to 1980</td>
<td>2s 6d</td>
</tr>
<tr>
<td>374</td>
<td>Brigid Brophy</td>
<td>Religious education in state schools</td>
<td>2s 6d</td>
</tr>
<tr>
<td>377</td>
<td>Rigas Doganis</td>
<td>A national airport plan</td>
<td>4s</td>
</tr>
<tr>
<td>379</td>
<td>Rex Winsbury</td>
<td>Government and the press</td>
<td>3s 6d</td>
</tr>
<tr>
<td>381</td>
<td>J. Bowers, H. Lind</td>
<td>Europe: the price is too high</td>
<td>3s 6d</td>
</tr>
<tr>
<td>386</td>
<td>N. Brown and others</td>
<td>Defence in a new setting</td>
<td>2s 6d</td>
</tr>
<tr>
<td>387</td>
<td>David Collard</td>
<td>The new right: a critique</td>
<td>4s</td>
</tr>
<tr>
<td>388</td>
<td>Oliver Stutchbury</td>
<td>The case for capital taxes</td>
<td>3s 6d</td>
</tr>
</tbody>
</table>

#### Young Fabian Pamphlets

<table>
<thead>
<tr>
<th>No.</th>
<th>Author(s)</th>
<th>Title</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Howard Glennerster and Richard Pryke</td>
<td>The public schools</td>
<td>3s 6d</td>
</tr>
<tr>
<td>14</td>
<td>a study group</td>
<td>The youth employment service</td>
<td>3s 6d</td>
</tr>
<tr>
<td>15</td>
<td>David Keene and others</td>
<td>The adult criminal</td>
<td>3s 6d</td>
</tr>
<tr>
<td>16</td>
<td>Bruce Lloyd</td>
<td>Energy policy</td>
<td>4s</td>
</tr>
<tr>
<td>17</td>
<td>D. Atkinson and others</td>
<td>Students today</td>
<td>5s</td>
</tr>
</tbody>
</table>

#### Books

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Title</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bernard Shaw and others</td>
<td>Fabian essays (sixth edition)</td>
<td>cased 30s</td>
</tr>
<tr>
<td>Brian Abel-Smith and others</td>
<td>Socialism and affluence</td>
<td>paper 10s</td>
</tr>
<tr>
<td>Brian Lapping and Giles Radice (eds)</td>
<td>More power to the people (Young Fabian essays on democracy in Britain)</td>
<td>paper 21s</td>
</tr>
<tr>
<td>Peter Townsend and others.</td>
<td>Social services for all?</td>
<td>cased 30s</td>
</tr>
<tr>
<td></td>
<td></td>
<td>paper 12s 6d</td>
</tr>
</tbody>
</table>