

PAGAN AND TRESPASS

Recent proposals' to make trespass on residential premises a criminal offence, following Michael Pagan's intrusions into Buckingham Palace in June and July 1982, can only properly be understood in their historical context. A number of key figures on the Tory Right have been attempting to involve the state more centrally in disputes concerning unlawful occupation of private property ever since the late 1960s, justifying any proposed criminalisation by reference to the 'threat' to private interests posed by squatters, demonstrators, and workers in industrial occupations.

After the election of the Heath government in 1970, Lord Hailsham in particular, as Lord Chancellor, was enthusiastically in favour of a criminal trespass law 'to combat the excess of demonstrators and squatters.' Undeterred by the lack of interest shown by mainstream Tory opinion, he was nevertheless instrumental in making trespass criminal 'by the back door' when, in 1973, sitting in his judicial capacity in the House of Lords, he led a decision upholding the charge of 'conspiracy to trespass' (then unrecognised by most legal commentators) following the prosecution of students who had been peacefully occupying the Sierra Leone Embassy in London. Then, under powers vested in him as Lord Chancellor, he instructed the Law Commission to consider in what circumstances entering and remaining on private property as a trespasser should constitute a criminal offence.

The Law Commission's proposal to create a general offence of 'entering or remaining on' private property was met by a barrage of unfavourable reaction from trade unions, tenants' associations and squatters' groups. Whilst the ostensible target of law reform had now become specifically the 'squatting menace', the broader implications of a criminal trespass law for industrial occupations, demonstrations and landlord/tenant disputes were well appreciated by the Left, and a campaign of vigorous opposition was begun. Even the police and local authorities were unenthusiastic, on grounds of the difficulties of interpretation, implementation and enforcement which any change in the law would present. As a result, the 'criminal trespass' provisions eventually embodied in the Criminal Law Act of 1977, whilst having implications for *all* trespassing occupiers and not merely squatters, were limited in scope by comparison with the breadth of the



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originally proposed general offence of entering or remaining on private premises as a trespasser.

Today trespass remains a matter primarily for the civil courts. Unless the act involves violence, burglary or criminal damage, or concerns embassies or premises where a residential occupier has been displaced by squatters, the state can intervene directly through its police force and impose sanctions only where there is a threat to public order. Thus the popular notice 'Trespassers will be Prosecuted' is at present in most circumstances merely a 'wooden falsehood'. However, the Pagan affair has provided the convenient pretext for the re-opening of the entire field to review. This time it is the Home Office, following consultation by the Home Secretary with the Attorney-General and the Lord Chancellor (Hailsham once again!), which has been called upon to investigate the possibility of legal change.

The most radical option considered in the report is the creation of a general criminal offence of entering or remaining on residential property as a trespasser. Should this

proposal become law, its effect will be a further weakening of the already deteriorating position of squatters, tenants and licensees, in situations where the police will be required to make on-the-spot decisions on complex issues regarding the occupier's precise legal status. The second and less drastic possibility considered is to accord certain royal and governmental premises special protection by making trespass upon them criminal, following the example of S9 of the Criminal Law Act of 1977 relating to trespass on Foreign Missions. It is difficult to see the justification or need for such a change, given the unlikelihood of any recurrence of a trespass upon 'special premises' in which other criminal sanctions are not amply available.

The pressure for the 'criminalisation' of trespass that emerged from private property interests during the 1970s was a reflection of the growing crisis in relations of possession — expressed in factory occupations, demonstrations, squatting and other conflicts over housing provision — that had been deepening since the late 1960s as a consequence of the economic recession. In the event, the law of trespass has not been as centrally involved in the containment of this crisis as some leading Conservative lawyers might have hoped, partly because of the strength of feeling on the Left against the creation of a general criminal offence, and partly because of technical problems — acknowledged in the Home Office report — of drafting, implementation and enforcement.

The Government has invited comments on matters discussed in the consultation paper by May 3. What should the response of the Left be? Lord Hailsham should be prevented from having another bite at this cherry by sustained opposition to the proposed changes informed by an understanding of their historical context and broader implications. Whether or not any of the proposals are implemented, the Pagan affair will have had a distinctive ideological impact in strengthening popular commitment to exclusive property right through the evocative imagery of the invasion of privacy of 'our' Queen's bedroom; this is particularly important at a time when the institution of private property is constantly being mobilised in calls for 'privatisation' and the dismantling of the welfare state. But in any case it should be made clear to this Government that there really is no justification in recent events for any further criminalisation of the law of trespass, and that the problem disclosed by the Pagan intrusions might better and more simply be resolved by tightening security at Buckingham Palace.

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Trespass on Residential Premises: A Consultation Paper, available from C4 Division, Home Office, Queen Anne's Gate, London SW1H 9AT.