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More thoughts on prosecuting Scargill

In his letter of 17 August 1984 Mr Michael Gordon rightly says that for the authorities to allow the law to be flouted is in the long term 'costly and corrosive'. He mentions the failure to prosecute the organisers of the intimidatory picketing at Saltley coke works, which brought down Mr Heath's government. Since the prosecuting authorities continue to be inactive, may I spell out just what they ought to be doing? The strike operates by preventing miners who wish to work from doing so. This is achieved by planning and carrying out innumerable acts of mass intimidation by thousands of violent men, using the method known as picketing out. You today (18 August 1984) report a National Coal Board spokesman as describing this activity as 'a kind of terrorism'. In themselves, these intimidatory acts are undoubtedly criminal. Section 7 of the Conspiracy and Protection of Property Act 1875 makes them so.

Despite frequent changes in trade union law over the past century no government, whether Labour or Conservative, has asked Parliament to repeal section 7. It remains good law and renders it an indictable offence, punishable with a fine or imprisonment, for pickets to intimidate would-be workers with a view to preventing them from working. However what makes the intimidatory picketing effective is the *planning* that goes into it. Each day, thousands of men receive orders from union officials telling them when and where they are to picket out on that day. Secrecy is maintained, so that the police can be caught unawares. The union pays the pickets, and arranges food and transport.

Such organising is made criminal by another Act of Parliament passed recently under a Labour Government. Part I of the Criminal Law Act 1977 renders it an indictable offence, again punishable with fine or imprisonment, for trade union officials to plan intimidatory mass picketing. These two provisions, one outlawing intimidatory picketing and the other outlawing the organising of such picketing, are each undoubted law. Unlike some laws, they are supported by the vast majority of our citizens. Why then have they not achieved their intended purpose, and brought this mischief to an end?

The answer is that they are ignored by the prosecuting authorities. It is not difficult to obtain the evidence needed to bring such prosecutions under them. If the authorities are doing their job, such evidence in overflowing abundance must already be in their possession. So why are Mr Scargill and his fellow organisers not indicted? It can only be because the prosecuting authorities have decided as a matter of policy that such prosecutions are undesirable. Although Parliament has not itself made the distinction, *they* are distinguishing between the punishing of ordinary crime and the punishing of trade union offences. Unless partaking of the nature of ordinary crime (as with the burning of buses or assaulting of police officers), offences by trade unionists are to go unpunished. This distinction is foreign to our legal system. By making it, the authorities give a licence to intimidatory picketing that Parliament itself never conferred, and never would confer. What right have they to do this? If they insist on doing it, is not the nation entitled to an explanation?

Mr Scargill is accused of being undemocratic. It could be said that prosecuting authorities who take it upon themselves to ignore clear and widespread breaches of the criminal law are themselves behaving in an undemocratic manner. With them it is less excusable, for they are no more than officials well paid by the state to enforce the laws laid down by Parliament. While continuing to draw their salaries, they neglect their duty without explanation or account. If the organisers of Saltley had been prosecuted in 1972 we would not have had Orgreave and the rest in 1984. What future troubles is this 'costly and corrosive' prosecution policy storing up for us?¹

¹ *The Times*, 22 August 1984 (with Professor Glanville Williams). This letter was included in *The Third Cuckoo: More classic letters to The Times* (Allen & Unwin, 1985), pp 233-4.