

T047

An accused's right to silence

The proposal to change the law so that the trial court can draw an inference from the accused's silence, whether maintained during police questioning or when on trial, is vitiated by a simple logical defect. Under our system of criminal justice such silence is not probative of any one fact, but may be accounted for by a variety of facts. It is therefore not possible to say which is the correct inference. The Government does not propose to alter the basic rules of our system, namely that the prosecution must prove its case, that a person must not be required to incriminate himself, and that it is not an offence to remain silent. Accordingly the silence of an accused person ('A') may continue to be due to any one of the following reasons. Only the first reason is probative of guilt, but it would be illogical for the court to assume the first was necessarily the true reason in the case before it.

A is guilty of the offence charged, but does not wish to incriminate himself.

A is innocent of the offence charged, but guilty of some lesser offence. He does not wish to incriminate himself with regard to the lesser offence.

A suspects that his friend B is guilty of the offence charged. He does not wish to incriminate B.

A has some private, non-criminal reason for not wishing to admit certain facts relevant to the charge against him, for example that he was present at the scene of the crime.

A, though innocent, fears to make matters worse for himself if he says anything.

The sociologist Christopher G A Bryant wrote this about the last reason, the innocent person's fear of police interrogation-

'It is partly that we have done things which we are not ashamed of but which are open to misinterpretation. It is partly that we have blundered, suffered grief or ridicule, changed our minds. It is partly that we fear that mistakes [will be] made in drawing up our file or that information given maliciously [will be] added . . . We fear that the dossier or printout will be used against us, perhaps wilfully, perhaps not. We are daunted by the time and energy it would take to explain even the things we are not ashamed of and do not consider to have been mistaken'.¹

¹ *The Times*, 26 October 1988.