Pressure Through Law (Routledge, 1992), pp. 202-203.

by Carol Harlow and Richard Rawlings

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Like the relator action, the private prosecution is outside the scope of the legal aid scheme. The principle that 'costs follow the event' means that the prosecutor stands in peril of paying twice, though the prosecutor of indictable (serious) offences can ask, win or lose, for an award of costs from public funds (Stafford 1989:275–9).

Any recovery of costs is retrospective and, as in civil cases, the calculation parsimonious. A good illustration is the successful prosecution for conspiracy of anti-apartheid campaigner Peter Hain after matches involving South African sportsmen were disrupted. The prosecutor, Francis Bennion, a barrister, calculated his costs at £40,000. He and his support group, the Society for Individual Freedom (a forerunner of NAF), had to make good the shortfall when on taxation the order was for half that amount (*Re Central Funds Costs Order* (1975)).

Groups campaigning to breathe life into laws which traditionally courts take less seriously stand to be hard hit, as in environmental crime. When the Anglers' Cooperative Association turned to the criminal law in 1987, Thames Water was fined £6,000; although this was the first prosecution of a water authority under the Control of Pollution Act

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1974 and a test case, the magistrates awarded only £800 of ACA's £2,400 expenditure (i/v Allen Edwards, Director ACA, 1989). In short, financial discipline is stricter than in civil matters. Much will depend on the subject-matter and complexity of a case, and the likelihood of an appeal, and on the campaign priorities of the group and resources. Some disadvantaged groups will find the going too rough. In the 1970s the Legal Action Group was singling-out legal aid in prosecution of councils for non-enforcement of public health laws as essential if access to court by tenants' associations was to become a reality (*LAG Bulletin*, January 1976:6). In the 1980s it was largely the work of law centres in support of local community groups which kept prosecution for low wages alive as the beleaguered wages inspectorate retreated (*The Independent*, 22 May 1990).

The need for adequate case-preparation is a major factor influencing the pattern of private prosecution. It must be remembered that the criminal standard of proof is 'beyond reasonable doubt'. Absent police powers of entry, search and seizure, to detain and question, administer samples and so on, it may be impossible to attain.

At one extreme, in a constitution with a predilection for official secrecy, concerned groups fail even to learn of wrongdoing which authority chooses to ignore. At the other extreme, campaigners are occasionally handed cases on a plate, as in the prosecution of Peter Hain, already mentioned. Francis Bennion originally had to give up for lack of evidence. Requests for information from the police met blank refusals and reporters at the scene refused to testify. Subpoena was possible but would have left Bennion with no proofs of evidence and his witnesses hostile. Prosecution only became possible with the publication of Hain's book *Don't Play with Apartheid* (1971). At trial Hain's exposition of the demonstrators' tactics lay at the heart of the charge of conspiracy (Humphry 1975).

Clearly it is impossible to speak of private prosecution today as an *actio popularis*. A formidable array of constraints suppresses and dampens down much action. None the less, and this is the trap into which the authors believe Philips fell, it is vital not to deduce too much from the constraints. Enough has been said already to show the importance of the particular context. Some groups more than others have reason to fear consent provisions and reserve powers, case-preparation and lack of finance (one reason, we suggest, why 'conservative' groups are well to the fore). And, as we shall see, the avoidance of constraint is one way in which campaigners exhibit their determination.