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## Still more thoughts on prosecuting Scargill

Sir William Clark asked in the House of Commons: 'In view of the fact the National Union of Miners is paying its pickets out of union funds if it can get its hands on them, is not that tacit evidence that the leadership is condoning if not encouraging this violence on the picket lines?' Sir Patrick Mayhew replied: 'There has to be evidence of an offence, including a conspiracy, before there is any reasonable prospect of a conviction' (report, 4 December 1984). Whatever the position may be with regard to proof of an offence of violence, no doubt can reasonably be felt that mass picketing is at least a summary offence of 'watching and besetting' under the Conspiracy and Protection of Property Act 1875.

Mass picketing, the avowed object and effect of which is to block entrances to workplaces and to intimidate workers, cannot by any stretch of the imagination be described as peaceful picketing. It follows that the organisers can be charged either with watching and besetting or with conspiring to do so. Moreover, they are pretty obviously guilty of unlawful assembly or riot. One suspects that the real reason why they are not prosecuted is the fear that this will prolong the strike. But the policy is highly questionable, because it can easily bring about a climate of opinion in which disorder and violence become regarded as a normal accompaniment of such disputes. The most effective way of stopping the disorder may well be to demonstrate that the leaders are not above the ordinary law.

The point should always be clearly made, when prosecuting unlawful picketing, that the law is not being used to end the strike, but only to punish illegalities committed by any persons in the course of the strike. Another difficulty is that if it should happen that those responsible for organising the disorder are none other than the executive committee of the union, and if in consequence all these persons find themselves in prison, it may be inconvenient to arrange a meeting of the two sides in the prison to negotiate an end to the strike. No doubt judges would bear this consideration in mind when sentencing. A substantial fine might be regarded as meeting the case, which would at least be a public vindication of the law and end the anomaly of prosecuting the rank and file while ignoring their leaders. Further, for the purpose of obtaining a judicial clarification of the law, the trade union should itself be charged in such circumstances.

We also need an amendment of the peaceful picketing provision to put a firm limit on the number of pickets permissible. Contrary to general belief, there is no 'right' to picket in the sense that people are obliged to stop and listen to the pickets. They cannot assemble in such a way as to make the highway impassable. They cannot stand to obstruct people or vehicles entering the workplace, even though this means that in practice they are unable to communicate with the people they want to reach.<sup>1</sup>

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<sup>1</sup> *The Times*, 29 December 1984.