

Miliband Keynote Speaker

Fall Conference Report

By RICHARD FIDLER

The new conservatism of contemporary capitalism places radical lawyers on the "cutting edge" of the struggle to maintain and extend democratic rights, Ralph Miliband told a large audience at the Friday evening opening session of the 11th annual Law Union Fall Conference at Hart House Oct. 26 and 27. His theme was "The State and Democratic Rights."

Miliband, a leading British socialist theoretician and editor of The Socialist Register, said the current long-term crisis of capitalist economy has put a definitive end to the post-second world war advances in social reforms and exhausted the hopes of traditional social democrats for a gradual lessening of class inequality within "the pyramid of power and privilege" upheld by the state.

The new, increasingly semi-authoritarian features of capitalist rule are epitomized, he said, in the British miners' strike, in which battalions of police are being deployed in open conflict with mining communities in a way not seen since the beginnings of the industrial



revolution. The "soft bonapartism" of Thatcher and Reagan, which Miliband emphasized is not equivalent of fascism, is setting the stage for further massive attacks on working people that will inevitably be accompanied by the undermining of existing democratic rights. Anti-communism and anti-sovietism are major weapons in this strategy, and are being used to legitimize the repressive role of the "democratic" state, and to counter the increasing "illegitimacy" of state institutions in the eyes of many working people.

In these conditions, the struggle for democratic rights is more difficult, and more of a challenge to the system itself, he said. Legal battles on democratic issues, while not decisive, can be a vital means of helping working people combat the conservative trend and challenge the repressive ideology.

In a commentary on Miliband's remarks,
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will have a great deal to complain about

Bad news for anonymous letter-writers and the Workers' Compensation Board paid-peepers. Section 49 of the current Act, which permits the Board to discontinue benefits to a widow

or common law wife when she is found to be a "common prostitute," is to be repealed! Believe it or not, the Board in 1984 still applies this section!!

More to follow next issue.

Charter chatter

By Charlie Campbell

BATTLE JOINED ON RIGHT-TO-STRIKE ISSUE

Charter champs armed to the teeth have joined battle on the right to strike issue. In the Broadway Manor case, 44 O.R.(2d) 392, the Ontario Divisional Court says the provincial Anti-Inflation Act offends the Charter by restricting civil servants' right to collective bargaining.

But in the equivalent case in Federal Court (yet to be reported) attacking parallel legislation, the Court said the Charter was not infringed. The latter case specifically disapproved of the former. Broadway Manor has been argued in the Ontario Court of Appeal, but at this point, no decision had been announced. The Big Red Nine will certainly be heard from on this one! Both Acts concerned civil servants only and imposed wage restraints in the public sector.

The core issue seems to be: Does freedom of association include the right to strike? Madame Justice Reed in the Federal Court said in effect, freedom of association existed only where it did not affect the rights of others. The Ontario Divisional Court said freedom of association included collective bargaining, which would be meaningless without the right to strike.

The issues raised here have great, long-run significance. The assertion of a right of

IS THERE ANY MEAT ON DEM BONES?

association with a little meat on its bones would give Charter chompers something to make into a constitutional stew. A substantive free association interpretation opens many possibilities to the left (and the right) to challenge restrictions on their activities.

The importance of establishing a prima facie infringement of rights is well-illustrated by these cases. If a prima facie violation of fundamental rights is established, the government is hard-pressed to show "demonstrable justification" for its attack on

one sector of the labour force - the civil service, although the government did succeed in doing just that in the Ontario case.

Watch this one. It's a biggie!

CENSOR GOES TO THE TOP

Charter checkers were titilated to see that the Ontario Board of Censors has been given leave to pitch to the full bench to try to save its powers, which were successfully attacked in the Divisional Court and Court of Appeal by the Ontario Film and Video Appreciation Society (OFAVAS, to its friends). But leave was granted on the condition that party and party costs be paid to OFAVAS lawyers in any event in the cause.

"At last, some money," said Charter Chatterbox Charlie C., always one to come to the point.

Meanwhile, back in Toryland, government heavies promise new legislation to cure the defects complained of. Watch for the debate in the Legislature on what should be included in the Theatres Act as the "Seven Dirties" we should never see. Taboos being what they are, smart money is betting that sex will remain invisible on the silver screen. It is interesting that graphic sex, not graphic violence, is the horrible of horrors to the ruling elite.

JAIL CROWDING

Charter chargers are intrigued by Charter arguments in the works at Gowling Henderson, the Ottawa Establishment firm which recently gobbled up time-honoured progressive boutique Cameron Brewin and Scott.

Jail guards and prisoners say crowded jails infringe their Charter rights and the Gowling go-getters are out to prove it. Numerous cases like this in the U.S. lead the Courts deep into problems of jail administration.

Our Court too will be confronted soon with compelling arguments that may require direct orders to the government to spend more

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money, and/or direct orders to jail administrators to, for example, serve real butter. Right now our judges are loath to do is.

I predict, not without regret, that the Gowling Gang's noble gesture will fail. But what will happen a few years down the road to a different plaintiff group - brokers and the Ontario Securities Commission, for example? Will the courts be so bashful? Will this be fun, or what?

CHAOS REIGNS - YEA!

James Morrison, RCMP double agent, faces charges for incidents 25 years ago. On June 28, the Ontario Court of Appeal ruled six-year-old charges are "too late" against a Thunder Bay lawyer - an "unreasonable delay."

Everything you learned is wrong unless you can reconcile these decisions. The best answer in 25 words or less received before Sept. 1 wins something nobody would ever want.

Go for it!

STRANGE BEDFELLOWS

Charter cherubs were heard wringing their hands and gnashing their pearly-white molars over Mr. Justice Medhurst's Alberta decision to strike down the amendments to the Canada Elections Act which restricted third party spending during election campaigns. Was it right in theory and wrong in effect, or perhaps altogether healthy for the democratic market place but unfortunate timing?

The National Citizens' Coalition is pleased that they are free to continue their attack on rampant socialism in the heart of the Liberal Party by their one-issue election campaigns. Are the pro-lifers just as happy? What about the CPC-M/L? And the Rhinoceros Party?

Come to think of it, maybe the NDP will soon be grateful that fringe groups without Parliamentary representation can still spend their precious dollars promoting cherished

causes during the election blitz.

STAY WHERE YOU WERE, YOUNG MAN

Joel Skapinker is toiling away in the corridors of power (Goodman and Goodman), now a citizen and a certified member of the Law Society, but not entirely oblivious to the battle waged in his name. The Red Nine have proclaimed in their first Charter decision that the Law Society's rule that Skapinker, and others like him, can't practice law unless they are Canadian citizens, does not offend the Charter. A bad omen for the dreamers of a new epoch of justice rooted in Charter-fueled, Judge-made, non-nuclear socialism.

HOT FLASHES

The Security Bill passed despite the valiant battle of NDP member and Law Union fellow-traveller Svend Robinson. Get ready for the Charter challenges, Charter Champs!

SCIENTOLOGY UP-DATE

"Freedom of religion" didn't help Clay Ruby, Marlys Edwardh, and Michael Code as they bashed away at the Attorney-General and the OPP. The Scientology PC files ("confessional files" to the faithful) are fair game for government searchers. Smart priests don't make notes, dumb ones better watch out.

SUMMER FUN

Need some summer fun? Send your most reliable clients to Legal Aid for a certificate to compel Legal Aid to give them a certificate to sue Legal Aid for refusing them a certificate to sue Legal Aid for denying them a certificate to sue Legal Aid for denying them a lawyer on a parking ticket case. Take a long holiday while you wait for an answer. Enjoy. You deserve it!

Police

BIG CHANGES IN TOP BRASS

COULD BRING POSITIVE CHANGES

By Andrew King

Since we wrote last, there have been a number of significant changes in the upper echelons of the Metro Police Force. Jack

Ackroyd started the ball rolling quickly when he retired earlier this year and was very quickly replaced by his right-hand man, Joe Marks. Since then, a number of high-level officers have retired and been replaced. These appointments have all been covered in the regular press, but this writer is curious about

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