

*Lord Halsbury requested that CDS
should circulate this to all
Shadow members.*

SECRET

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REPORT OF THE RAWLINSON COMMITTEE (LCC/78/191)

COMMENT BY LORD HALSBURY

A - General

(1) The Committee is to be commended for its work and for making such a valuable contribution to party thinking on these matters.

(2) We should certainly undertake to legislate on all three subjects. Of the three subjects Official Secrets and Contempt should be main programme Government Bills, since this is a matter affecting Government and the administration of Justice. The law of Defamation is in a somewhat different position. It is pure law reform, and while the Government would be justified in introducing the Bill and giving time, any attempt to make it Party policy in the sense of the other two Bills is likely to be counterproductive. In the 19th Century Lord Campbell wrote (perceptively) that Law Reform is either by consent or not at all. How true.

B - Official Secrets

The suggestion that a Lord of Appeal in Ordinary should be a permanent chairman of a Committee to vet classification is open to objection both in practice and principle. Lords of Appeal in Ordinary are only just sufficient in number with the Lord Chancellor or one retired member to man two panels of appeal (two for the House of Lords or one House of Lords and one Privy Council Judicial Committee). This makes no allowance for sickness or their use for major enquiries (e.g. Scarman, Wilberforce, Diplock, etc.). They are essentially part of the fulltime judiciary and it is objectionable in principle to give them permanent political or administrative functions. Also to make their fiat a condition of prosecution is to intermingle the judicial with law enforcement functions in an objectionable way.

C - Contempt

(1) The Committee does not seem to have considered the Phillimore recommendation (as I recollect it) that the distinction between civil and criminal contempt should be abolished. If, as I suppose from their silence, they do not agree with it, except perhaps as a matter of semantics, I agree with them. Otherwise I do not.

(2) I think the law relating to indecent evidence in divorce cases may be obsolete in the light of developments in divorce law. It is for consideration whether it should not be abolished rather than codified. The Act of 1926 was introduced to prevent a repetition of the evidence in the Russell case (1921 or 1922) which does not now happen much in practice. Criminal cases (e.g. Thorpe) and libel cases today often offer much more salacious detail.

D - Defamation

(1) Criminal Libel. I prefer the Faulks Committee. I do not understand the last sentence in para. 5. Was not Riv:Mylius (1911) a civil case? I have not looked it up, but that, in effect, was what it was. The Sovereign gave evidence in his own court. But Criminal Libel in minor poison pen cases still serves a useful purpose for comparatively humble people.

(2) I disagree with the Faulks Committee and with the Rawlinson paper on juries in civil cases. They are now a pure anomaly and the cost (£30,000 or more) effectually prevents all but a tiny minority (viz. poor and therefore potential plaintiffs in blackmailing actions or viz. Rich e.g. Sir J. Goldsmith) from pursuing their rights which are more generally abused than of value. The risks of disagreement and new trial add a new dimension to what is effectively no better than a form of litigational roulette. The actual proposal of the Rawlinson Group is anomalous, unprecedented, and, like all such proposals, open to serious objections of principle.

H. of St. A.

I apologise for any errors in this (I have not had access to the necessary books of reference or reports).

Conservative Research Department,
24 Old Queen Street, London, SW1.

H/GRH
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