

Editorial

In 1975 *Justice*, the British Section of the International Commission of Jurists, appointed a committee to study the problem of the increasing number of regulations imposed by Parliament. In that year, 1,900,000 people, one in twenty three of all men, women and children in the population, were convicted of criminal offences in the courts of England and Wales. Eighty per cent of the convictions were for motoring and other non-indictable offences.

Five years later the *Justice* committee has reported, in a pamphlet entitled *Breaking the Rules*.

Parliament, says *Justice*, has found it necessary to regulate so many everyday activities that it has become well nigh impossible for even the honest and law-abiding citizen to get through the average year without infringing some regulation or other.

In keeping with its non-controversialist tradition *Justice* has refrained from examining the question whether or not many of these regulations should exist. Instead the *Justice* committee set itself the task of counting and partially classifying the regulations and making recommendations designed to remove from the category of crimes a large number of offences "which are no more than breaches of some regulation ... the infringement of which carries no real moral blame in the public mind".

The committee discovered 7,208 different criminal offences. Over half of these require no criminal intent of any kind for their commission.

"Those who fail to renew a whole variety of licences (whose object is often only to collect revenue from the State), or have made a minor nuisance of themselves by failing to furnish some information to a government department, find themselves classed with robbers, rapists and murderers -

prosecuted by the same procedure, coming before criminal courts, punished by the same methods, and ending up with a 'criminal record'. For a number of reasons, we think that this is an undesirable state of affairs.

"However complex and enlightened our modern society, it is still just as important as it ever was that people should not kill or injure each other, exploit each other by force or fraud, or steal or destroy things which it has taken valuable time and effort to make and acquire. Respect for the criminal law is at least one way, and a very important one, of maintaining the minimum civilised standards which make a peaceful society possible and workable.

". . . but people simply do not regard many of the modern statutory offences as 'crimes' in the same way as murder, robbery, rape and arson. They agree that there have to be rules and regulations - indeed there is often strong pressure for the government to 'ban' something or other - but they do not see the man who sells bananas off an unlicensed street barrow, or the motorist who forgets to sign his driving licence, or the firm that fails to make its statutory return to some public authority until after the due date, as 'criminals'. To that extent, for far too many people, the law seems to have become an ass.

"... moreover, as more and more people every year acquire a 'criminal record' for some breach of a regulation, public condemnation of real crime must necessarily diminish".

The truth of this assertion is illustrated by some of the regulations cited by *Justice*.

A soft drink manufacturer discovered that to label his packaged soft drink '6¼fl oz/178 ml' would be entirely within the law. But to label it '6¼ Fl Ozs - 178 Mllts' would make him guilty of certainly four and probably five different criminal offences under one of at least three sets of regulations affecting labels, all amended by later regulations. Moreover it cost him £150 in solicitor's fees to ascertain his legal position.

It is even a criminal offence, punishable by the full rigour of the law, to drive your car with the licence disc on the near-side upper (and not the lower) corner of your windscreen.

The *Justice* report contains its fair share of nonsense, as when, straying somewhat from its initial pledge of non-controversiality, it claims that the bulk of rules and regulations need to be kept and that without them society could rapidly become chaotic.

Certainly without government regulations society would cease to be straitjacketed into the ill-fitting devices of scheming planners. But the spurious order of state planning would be replaced, not by chaos, but by the spontaneous order of the free market-place.

The report's major conclusions and recommendations are based on the useful distinction which *Justice* draws between crimes and breaches of regulations.

Justice recommends that the criminal statute book should be divided into two categories, crimes and contraventions. The category of crimes would include only those offences "about which reasonable people could creditably hold the view that the conduct concerned involves some real and deliberate moral turpitude". The category of contraventions would not include any conduct requiring an intent of deliberate dishonesty, deliberate physical injury to others, or sexual gratification (about 750 known examples). It would include many of the 3,750 present offences which require no criminal intent of any kind, and some of the 2,700 which require only carelessness, omission or failure.

The *Justice* committee has already run into quicksands. Its definition of crimes and contraventions would probably mean that offences such as trading in drugs or displaying pornographic material, which are in reality breaches of regulations, would be classified as crimes. The definition would lead to endless argument over the reasonable man's view of real and deliberate moral turpitude. There might have to be, admits *Justice*, a large grey area of 'criminal contraventions' consisting of contraventions which seem particularly blameworthy.

At this point the quicksands close over the heads of the distinguished men from *Justice*. Their definition is meaningless. In practice it would translate into the prevailing morality of the statist establishment. The reasonable man, on the rare occasions when he has been run to ground, has proved in the eyes of judges to be middle-aged, middle-class and middle-minded. There is no reason to believe that members of the Executive, charged with the task of separating out crimes and contraventions, would take a different view.

The committee could have adopted a different but clear dividing line between crimes and contraventions. This distinction depends on whether the activity involves the initiation of force or fraud against another person or his property. If it does, it is a crime. If not, it is a contravention.

Thus all victimless crimes would be classified as contraventions, in recognition of the fact that in these cases the State itself is initiating force or fraud against its citizens by forcibly preventing them from engaging in non-coercive activities.

Perhaps it is too much to expect *Justice* to have adopted that distinction if they wanted to stand some chance of persuading the government to take their recommendations seriously. Parliament might, for instance, be unwilling to agree that treason is not really a crime but only a contravention of a duty invented by the State.

The fact that *Justice* have proposed any sort of halfway sensible distinction between crimes and contraventions is welcome. If the *Justice* report results in a greater awareness of the difference between crimes and contraventions, then that is a useful step towards the abolition of victimless crimes.

Regulations which prevent the free and voluntary application of life and property should be completely abolished. Meanwhile, introduction of a properly drawn dividing line between crimes and contraventions would be a useful step towards that end.

Free Life