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Developments in British Environmental Law

> The coast of Cornwall is beautiful. Much of the inland is ugly. It is despoiled by china clay workings. Not far from them is open farmland with small villages dotted around. Pleasant enough but not outstanding. The Central Electricity Generating Board views this as a possible site for a nuclear power station. They wish to survey it so as to compare it with other possible sites. The farmer objected to the survey. So did the villagers. They took up a stand against it. But on being told by the courts that it was unlawful for them to obstruct the survey, they desisted. They moved off the site. They obeyed the law. But then groups of outsiders came in from far and wide. They had no local connection with the place. They came anonymously. . . . They flouted the law. They willfully obstructed the survey. Can these newcomers be moved off the site so that they obstruct no more? Can the board move them off? Or, if the board cannot do it, can the police be called in to help?"[1]

It was in those words that Lord Denning M.R., in a case decided in October 1981, described the issues confronting the Court of Appeal. In a wider sense, Lord Denning was describing the type of situation which has become more and more familiar in more and more countries during the last two or three decades. The circumstances of particular disputes vary enormously, but in essence they all touch upon the limits of tolerance and the problem of balancing the protection of the environment against other, competing demands. In the Cornwall case, for instance, the Master of the Rolls spoke of the demand for electricity as "the driving force of industry," and "the source of light of homes"—and, in particular, of its provision for southwest England;[2] though another member of the Court of Appeal was at pains to emphasize that it was not for the judges or the police to determine whether the construction of a nuclear power station on the farm "would represent progress or catastrophe."[3] Indeed there can be few subjects apparently less suited for decision in a court of law than that of deciding whether or not a nuclear power station should be built, but in one form or another the issues relating to peaceful use of nuclear

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1. R.v. Chief Constable Devon and Cornwall, *ex parte* Central Electricity Generating Board [1982] 1 Q.B. 458, 465.

2. *Id.* at 465.

3. *Id.* at 477 (Templeman, L. J.).

energy have to be faced and resolved. The events on a remote farm in Cornwall are merely a reminder of the inescapable nature of these issues.

The Royal Commission on Environmental Pollution, a standing body established in 1970, examined many of the complexities of nuclear power in its Sixth Report which appeared in September 1976.[4] While taking the view that "the emergence of nuclear power as an alternative energy source for mankind appears providential,"[5] the Commission identified the unique environmental risks and problems of nuclear power, including the problem of highly radioactive waste and the risk of dangerous releases of radioactivity from reactors or other nuclear installations. Subsequent events have reinforced the Commission's view that there "are few subjects in the field of environmental pollution to which people react so emotionally as they do to radioactivity."[6]

In the United Kingdom, a lengthy public inquiry was held in 1977 into proposals to build a plant at Windscale in Cumbria for reprocessing irradiated oxide nuclear fuels[7] and residents now await the outcome of an even more controversial inquiry into the building of a pressurized water reactor at Sizewell in Suffolk.[8] In the meantime, 12 percent of Britain's electricity is already generated by nuclear power, and the Secretary of State for Energy has recently spoken of "an increasingly important and necessary role for nuclear power in the years ahead."[9] Those opposed to nuclear power, whether on environmental or on broader moral grounds, are nevertheless unlikely to abandon their campaign. Yet, as the Royal Commission on Environmental Pollution pointed out in 1976, the "routine environmental effects of nuclear power may well be much less damaging than those of fossil fueled power stations,"[10] a statement which demonstrates the danger of over-simplifying environmental problems.[11] The demonstrators who sought to obstruct the Central Electricity Generating Board's plans in Cornwall were touching upon exceedingly complex issues.

The association between environmental protection and the maintenance of public order is neither new nor confined to nuclear power. Noise pollution has only recently achieved wide recognition in matters of environmental concern, but over many years the Home Office in England

4. *Nuclear Power and the Environment*, Cmnd. 6618 of 1976 (HMSO). The Government's response appeared in a White Paper, Cmnd. 6820 of 1977 (HMSO).

5. Cmnd. 6618, *supra* note 4, at para. 7.

6. *Id.* at para. 5.

7. *See infra* text accompanying notes 80–85.

8. *Id.*

9. 17 PARL. DEB., H.C. (6th ser.) 22 (1982).

10. Cmnd. 6618, *supra* note 4, at para. 191.

11. *See Tackling Pollution—Experience and Prospects*, 10th Report of RCEP, Cmnd. 9149 of 1984, at 5.139.

built up a body of model bylaws aimed, for example, at singing or playing musical or noisy instruments too close to dwelling houses or offices, at singing or playing musical instruments near hospitals or churches, at noisy animals, at noisy hawking, and at wanton and continuous noisy conduct at night.[12] The Salvation Army, at the center of many major disturbances in the last two decades of the nineteenth century, often ran foul of bylaws aimed at music and singing but must scarcely have expected to find a place in the early history of noise pollution.[13] More recently environmentalists have more deliberately infringed the law as a means of dramatizing their views about protection of the environment. During the 1970s public inquiries into motorway proposals were frequently disrupted by angry and persistent objectors, so much so that procedural changes had to be introduced to take account of at least some of their complaints.[14] At a different level of social and environmental concern, a group of people, wishing to protest against what they saw as the "gentrification" of Islington in London, demonstrated outside an estate agents' office.[15] The trial judge, who had to consider the legal consequences of their actions, readily acknowledged the "emotional and political overtones" in the case.[16]

Each case is different: the environmental issues differ, the methods of protest differ, and the volume of protest may differ. Yet underlying the tensions in so many of the instances is a mood of bewilderment; and the bewilderment of ordinary people is shared in varying degrees by lawyers, economists, politicians, doctors, and scientists. The emphases shift a great deal. In the 1950s there was pressure for smoke control, stemming from the devastating London "smog" of 1952. In the 1960s there was concern about pesticides, brought to life in the publication of Rachel Carson's *Silent Spring*. In the crowded 1970s we heard of juggernauts and motorways, of threats to the ozone layer in the upper atmosphere through the use of aerosols and other causes, of the oil crisis and the resurgence

12. *See Noise in Public Places* ch. 3 and Appendix A (Report by working group of the Noise Advisory Council, HMSO, 1974).

13. *See* R v. Powell, 51 L.T.R. (n.s.) 92 (1884); Johnson v. Mayor of Croydon, 16 Q.B.D. 708 (1886); Munro v. Watson, 57 L.T.R. (n.s.) 366 (1887); THE TIMES (London) 5 (25 August 1885), 10 (15 December 1885), and 9 (8 October 1886). *See also* Kruse v. Johnson [1898] 2 Q.B. 91 (a leading case on the validity of bylaws).

14. *See* Williams, *Public Local Inquiries—Formal Administrative Adjudication*, 29 I.C.L.Q. 701, 708–09 (1980); J. TYME, MOTORWAYS VERSUS DEMOCRACY (1978).

15. Some years ago Islington was run down in the world. Its houses were in a dilapidated condition. They were tenanted by many poor families. In recent years Islington has become a desirable area. Property men have stepped in. They have bought up the houses and persuaded the tenants to leave. They have done them up and sold them at a profit. Now they are occupied by families who are well-to-do.

Hubbard v. Pitt [1971] 1 Q.B. 142, 171 (Lord Denning M.R.).

16. Hubbard v. Pitt [1976] 1 Q.B. 142, 147 (Forbes J.).

of coal and the re-emergence of nuclear power and the search for alternative sources of energy. Now we move into the 1980s with oil pollution at sea, acid rain, and wildlife conservation high on the agenda. The changes in emphasis merely reflect the rapidity of change in the twentieth century, especially in the growth of population and the scale of industrial development. The effects of such change are acutely felt in the United Kingdom. In a White Paper of 1970 the problem was stated in these words:

> Profound changes in ecological systems have occurred in the hundreds of millions of years which make up geological time. But the changes were slow, and even after man's emergence about a million years ago, change continued to be very slow. Human beings were few in number and scattered, and they did not do much to their surroundings. With the explosive population growth and industrialisation of the last hundred years, all this has changed. Vastly increasing numbers of people, on a vastly increasing scale, now dig the earth to take and make what they want; they cut down forests, breed animals, grow crops, and fish the seas; and from everything that is made or eaten, pollution is generated.[17]

Even as one quotes that paragraph one is aware of the particular emphasis on pollution and ecological systems. Concern for the environment can be so much wider, taking account of planning, conservation, preservation, visual amenity, public health, and much else. Whatever may be argued about pollution and wider environmental issues has to be measured against demands for employment, for food and energy, and for industrial progress. Some people detect "an almost obsessive interest"[18] nowadays in the environment, and it is sometimes argued that environmentalists' arguments are carried to extremes. Others argue that environmental safeguards are too vulnerable, too easily circumvented when political and commercial pressures are brought to bear. The law itself scarcely has come to terms (and could not have been expected to come to terms) with the novelty and the complexity of many of the issues, though that is not inconsistent with a recent judicial comment in New Zealand that "environmental law now rightly occupies an important place in our legal system."[19]

The combination of importance and tentativeness in the legal approach towards environmental matters is evident in various contexts. Consider, for instance, the decision of the House of Lords in *Smedleys Ltd v. Breed,*[20]

17. *The Protection of the Environment,* Cmnd. 4373 of 1970, para. 2.
18. SIR DESMOND HEAP, THE LAND AND THE DEVELOPMENT 20 (Hamlyn Lectures for 1975).
19. CREEDNZ Inc. v. Governor-General, [1981] 1 N.Z.L.R. 172, 206 (McMullin J.).
20. [1974] A.C. 839.

the case of the caterpillar in the tin of peas. Under the Food and Drugs Act 1955,[21] section 2(1), it is an offense to sell "to the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser." A defense is allowed under section 3(3), namely that it shall be a defense "to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation"; but the scope of that defense has been described as "not extravagantly generous"[22] and as excluding, for instance, the plea that a defendant took all reasonable precautions. The severity of the law, incidentally, applies to processed food and vegetables rather than to unprepared food. Lawyers accustomed to traditional arguments about strict or near-strict liability (where defendants can be convicted even in the absence of negligence) would be inclined to applaud the decision of the House of Lords, even though (like their Lordships) they might doubt the wisdom of prosecuting in that particular case. In an earlier case more directly linked to pollution, *Alphacell Ltd. v. Woodward,*[23] the House of Lords held that the defendant company was guilty of causing polluted matter to enter a river[24] even though there was no evidence of knowledge or negligence. Lord Salmon said that the relevant section "encourages riparian factory owners not only to take reasonable steps to prevent pollution but to do everything possible to ensure that they do not cause it."[25] Otherwise, he felt, "a great deal of pollution would go unpunished and undeterred to the relief of many riparian factory owners." Presumably, the same argument should apply when a caterpillar is allowed to insinuate itself among the peas.

Or should it? The Royal Commission on Environmental Pollution, in its Seventh Report on the subject of *Agriculture and Pollution,*[26] took a different view of the balance of the public interest in cases such as *Smedleys Ltd v. Breed.* One of the central chapters of that Report was concerned with pesticides, for the Commission recognized that the "use of toxic chemicals by the farmer as the principal weapon against pest and disease attack and against weeds would commonly be regarded as the most worrying of the developments that characterize modern agriculture."[27] The use of pesticides, of course, is crucial to the high productivity of modern agriculture; but continuing anxiety about their use is reflected

21. 4 Eliz. 2, c. 15 (U.K. 1955).
22. SMITH & HOGAN, CRIMINAL LAW 107 (5th ed. 1983).
23. [1972] A.C. 824.
24. Contrary to s.2(1)(a) of the Rivers (Prevention of Pollution) Act 1951, 14 & 15 Geo. 6, c. 64 (U.K. 1951).
25. On this remark, *see* SMITH & HOGAN, *supra* note 22, at 104.
26. Cmnd. 7644 of 1979.
27. *Id.* at para. 3.1.

in current concern about the herbicide 2, 4, 5 - T.[28] Among the particular problems assessed by the Royal Commission was that of aerial spraying of pesticides,[29] the non-statutory scheme which has existed since 1957 to look generally at the safety of pesticides in use,[30] and an allied scheme to help users to select appropriate products.[31] In keeping with its view that pesticide usage should be reduced to "a minimum consistent with efficient food production"[32] the Commission noted "that the provisions of the Food and Drug Acts could lead food processors to require pesticide treatments in order to insure against the risk of prosecution."[33] The decision in *Smedleys Ltd v. Breed* was considered, and the Commission recommended that the defense allowed under section 3(3) should be amended "so that it shall be defense if it can be shown that the material is not hazardous to health; that it might be expected to occur naturally in the food at the time of harvest; and that reasonable diligence or care has been taken to remove it."[34] In other words, the consumer should put up with the occasional caterpillar in order not to encourage the unnecessary or excessive use of pesticides.[35] Whereas in the *Alphacell* case the need to avoid pollution was an express reason for imposing strict liability, in the case of processed foods it was a reason for modifying strict or effective "no negligence" liability.

One of the wider features of the criminal law relating to pollution has been the proliferation of statutory offenses and the especially difficult problem of whether and when to prosecute. It has never been the rule in the United Kingdom (or in Canada) "that suspected criminal offenses must automatically be the subject of prosecution"[36] and we have frequently been reminded that the "day-to-day business of prosecuting offenses up and down the country is . . . shot through with discretion."[37]

28. *Id.* at 3.18–20. At 3.18 it is pointed out that some of the concern about 2,4,5-T stems "from its military use in Vietnam," and the fact that it contains quantities of dioxin aroused echoes of the accident at Seveso.

29. *Id.* at 3.40ff. The Royal Commission examined present control arrangements and made several recommendations.

30. *Id.* at 3.59ff. This is the so-called PSPS (Pesticides Safety Precaution Scheme) designed to safeguard people . . . , domestic and farm animals, wildlife (including beneficial insects) and the environment generally. The essence of the scheme is that manufacturers, distributors, and importers who propose to introduce new pesticides or new uses for pesticides, undertake to seek prior official agreement and to submit test data relevant to the safety of their proposals to independent, expert scrutiny. (3.60).

31. *Id.* at 3.65ff. This is the so-called ACAS (the Agricultural Chemicals Approval Scheme).

32. *Id.* at 3.75.

33. *Id.* at 3.79.

34. *Id.* at 3.86. *But see* Agriculture and Pollution 14 (the Government's response to the 7th Report), Pollution Paper No. 21 (HMSO 1983).

35. The Commission with the same aim in view, also recommended the sampling of produce for pesticide residue analysis at wholesale markets. *See id.* at 3.85, 3.113–120.

36. 483 PARL. DEB. H.C. (5th ser.) 681 (1951) (Sir Hartley Shawcross, the Attorney-General).

37. G. MARSHALL, POLICE AND GOVERNMENT 116 (1965).

The discretionary element in prosecution is especially evident in many regulatory areas of health or safety or pollution. An outstanding example is provided in the area of domestic and industrial air pollution, which in the United Kingdom was considered by the Beaver Committee on Air Pollution which reported in 1954[38] and by the Royal Commission on Environmental Pollution whose Fifth Report on the subject appeared in 1976.[39] Enforcement of clean air law as to certain chemical and industrial processes is the responsibility of the Alkali and Clean Air Inspectorate; and the Royal Commission was satisfied that much of the advances in the reduction of emissions "may be attributed to the policy of persuasion and co-operation with industry. . . . An aggressive policy of confrontation, involving prosecution for every lapse, would destroy this basis of co-operation."[40] A valuable examination of sanctions and enforcement in "administrative" areas of control appears in the Report of 1972 of the Robens Committee on Safety and Health at Work.[41] For legislation relating to safety and health at work, the Robens Committee regarded "the traditional concepts of the criminal law" as inapplicable[42] and suggested that future policy should be to institute criminal proceedings only for offenses of a flagrant, willful or reckless nature.[43] Where such a philosophy prevails, the criminal courts offer at best a residual mechanism of control in pollution and similar legislation.

What, then, of the civil courts? Obviously the law of tort is adaptable and problems of pollution can be raised under traditional heads such as the Rule in *Rylands v. Fletcher,*[44] negligence and nuisance. The so-called Rule in *Rylands v. Fletcher,* that where an occupier of land "brings and keeps upon it anything likely to do damage if it escapes, he is bound at his peril to prevent its escape, and is liable for all the direct consequences of its escape, even if he has been guilty of no negligence,"[45] was referred to in respect of a disaster of almost 18 years ago. Lord Justice Edmund-Davies had been appointed to inquire into the circumstances on the morning of October 21st, 1966 when thousands of tons of colliery rubbish from a tip on the Merthyr Mountain suddenly swept down into the village of Aberfan, engulfing a school and eighteen houses. No less than 144 people died, 116 of them children of whom 109 were inside the Pantglas

38. REPORT OF THE COMMITTEE ON AIR POLLUTION, CMD. NO. 9322 (1954).

39. *Air Pollution Control: An Integrated Approach,* Cmnd. 6371 of 1976. *See generally,* RICHARDSON, OGUS, & BURROWS, POLICING POLLUTION, A STUDY OF REGULATION AND ENFORCEMENT (1983).

40. *Air Pollution Control: An Integrated Approach,* Cmnd. 6371 of 1976, para. 227.

41. Cmnd. 5034 of 1972, ch. 9.

42. *Id.* at para. 261.

43. *Id.* at para. 263.

44. L.R. 3 H.L. 330 (1868).

45. The Aberfan Report, *infra* note 46, at para. 74.

Junior School. Most of the children who perished were aged between 7 and 10. Because of the Rule in *Rylands v. Fletcher,* Edmund-Davies, L.J. saw the legal liability of the National Coal Board as "incontestable," adding that "those who conceivably have claims for compensation" are "not called upon to prove negligence for, negligent or not, the Board must in either case financially compensate those who have suffered as the result of the disaster."[46] One of the wider effects of the disaster, of course, was to direct attention to the problem of colliery spoil disposal, with the emphasis not only on safety and environmental considerations for new tips but also the inevitable problem of dereliction.[47] One of the immediate concerns was whether, outside the strict liability of *Rylands v. Fletcher,* the disaster occurred as a result of "blameworthy" conduct by some persons or organizations, and Edmund-Davies L.J. regarded blameworthiness as a wider concept than the legal elements of the tort of negligence.[48]

In many areas of pollution it would in practice be extremely difficult to build up a case of negligence with its requirements of a legal duty owed to the plaintiff, breach of that duty by the defendant, and damage sustained by the plaintiff as a result. An indication of the difficulties arose in the recent case of *Budden v. BP Oil Ltd* in the Court of Appeal,[49] which was sparked off by the considerable strength of feeling which has accumulated in the United Kingdom over lead in petrol. Problems of lead in the environment have been discussed over several years[50] and in several countries (including Canada). Attention to lead emissions from petrol became particularly associated with a motorway interchange in Birmingham known colloquially as "Spaghetti Junction,"[51] and subsequently a Working Party was set up by the Department of Health and Social Security

46. Report of the Tribunal appointed to inquire into the Disaster at Aberfan on October 21st, 1966, H.L. 316, H.C. 553, para. 74 (HMSO, July 1967). Edmund-Davies L.J. referred in the same paragraph to Attorney-General v. Cory Brothers and Co. Ltd., [1921] 1 A.C. 521 where a coal-tip had slipped in the Rhondda Valley and destroyed several buildings.

47. *See Coal and the Environment,* report of the Commission on Energy and the Environment, at ch. 9 "Spoil" and ch. 10 "Dereliction and Pit Closures" (HMSO 1981).

48. H.L. 316, H.C. 553 of 1967, para. 77.

49. Times L.R. for 8 May 1980, in THE TIMES (London) 10 (9 May 1980). *See* Macrory, *"Lead in Petrol—No Cause for Action?"* [1981] J. of PLAN. & ENVTL. L. 258.

50. *See Lead in the Environment and its Significance to Man,* a Report of an Inter-Departmental Working Group on Heavy Metals, Pollution Paper No. 1 (Central Unit on Environmental Pollution of the Department of the Environment) (HMSO 1974). The Report indicated (at viii) that there "are many hundreds of uses of lead at the present time and it is probably inevitable that fresh hazards will occasionally occur. Constant vigilance is, therefore, necessary to identify such hazards before they constitute a risk to any section of the community."

51. *Lead Pollution in Birmingham,* a Report of the Joint Working Party on Lead Pollution around Gravelly Hill, Pollution Paper No. 14 (Central Unit on Environmental Pollution of the Department of the Environment) (HMSO 1978). The Working Party concluded, according to the Minister of State at the Department (at v), "that airborne lead levels around the motorway interchange are not exceptional by urban standards."

to look broadly into lead and health.[52] The Working Party reported in 1980, the same year as the *Budden* decision on Appeal. In the case two infants (suing by their parents) sought to sue two oil companies on the ground that lead additives in petrol had injured and would continue to injure the plaintiffs. The Court of Appeal at the interlocutory stage upheld the decision at first instance to strike out a claim based on public nuisance and went on to overrule the lower court by striking out a claim in negligence as well. Central to the appellate ruling that the claim in negligence should not be allowed to proceed was the fact that the oil companies had complied with regulations (made under the Control of Pollution Act 1974) prescribing the maximum amount of lead per litre. In the Court of Appeal, Megaw L.J. suggested that Parliament had given "tacit consent" to the regulations and that the courts "could not properly be asked to make decisions, by way of litigation under the adversary procedure, the effect of which would, or might, be that the courts would lay down and require to be enforced with the authority of the courts" a different and inconsistent policy to that adopted by Parliament. The case perhaps underlines the essentially limited role of courts in the United Kingdom compared to courts in the United States,[53] and it also raises disturbing questions about the degree of publicity and consultation and scrutiny involved in the process of making delegated or subordinate legislation. It should be added, however, that the Government in 1981 announced that new limits on lead in petrol would be introduced by 1985;[54] and Government responded speedily to the proposals of the Royal Commission on Environmental Pollution in 1983.[55]

The law of nuisance would appear to offer wider possibilities in the area of pollution than the law of negligence. Two writers, who published an article in 1977 on private nuisance in the context of pollution control, came to the conclusion that at best its role would be subsidiary "in any system of pollution control having as its objective general social welfare."[56] Individual cases can be important, however, both in securing

52. *Lead and Health,* a Report of the D.H.S.S. Working Party on Lead in the Environment (HMSO 1980). The Working Party, which was chaired by Professor P. J. Lawther of St. Bartholomew's Hospital in London, dealt with several sources of lead in the environment and also "with the relative importance of each of these to the uptake of lead and with the neuropsychological effects of lead on children."

53. But consider the recent case where a Scottish lady won an action against Strathclyde Regional Council over fluoride in water. The hearing lasted 210 days. *See* THE TIMES (London) 3 (30 June 1983). *See generally,* Macrory, *supra* note 49.

54. 4 PARL. DEB. H.C. (6th ser.) 483–91 (1981) (statement by Mr. Tom King, Minister of Housing and Local Government).

55. *See Lead in the Environment* (9th Report of RCEP), Cmnd. 8852, and *Lead in the Environment* (the Government's response), Pollution Paper No. 19 (HMSO 1983).

56. Ogus and Richardson, *Economics and the Environment: A Study of Private Nuisance* 36 CAMBRIDGE L.J. 284, esp. at 324 where they give three main reasons for their conclusion (1977).

compensation (where appropriate) and in publicizing issues of public concern. In a case decided in 1961, for instance, a householder in Fulham succeeded in his action against the operators of an oil distributing depot which produced acid smuts, pungent and nauseating smells, and considerable noise; he relied on the Rule in *Rylands v. Fletcher* and public nuisance as well as the law of private nuisance.[57] Even so, a litigant may find that a statute authorizes what would otherwise be a tort. In the recent House of Lords case of *Allen v. Gulf Oil Refining Ltd.*[58] the oil company was authorized by a private statute of 1965 to construct certain works in connection with an oil refinery to be built at Milford Haven. The refinery was built in 1967, and in the mid-1970s a person living nearby brought an action for nuisance and negligence alleging noxious odors, vibration, offensive noise levels, excessive flames from burning waste gases, and fear of explosion. Fifty two other actions of a similar kind had been instituted against the company and stayed pending the outcome of these interlocutory proceedings. The House of Lords, overruling the Court of Appeal, was prepared to allow a fair measure of statutory immunity to Gulf Oil, despite the dissenting view of Lord Keith of Kinkel that it "is the duty of those promoting private Acts to make plain the precise extent to which they propose to derogate from the common law rights of those who may be affected by their proposals."[59] Lord Denning in the Court of Appeal had commented that the householders would undoubtedly have had a cause of action at common law.[60] The implications of the *Gulf Oil* case are obviously far-reaching, and the decision of the House of Lords underlines the difficulty of adapting the law of tort to modern environmental pressures.

Not surprisingly, the common law in some areas of environmental concern has been or is being largely supplanted by statute. Noise is a good example, bearing in mind that an English judge, appropriately in a case involving a juke-box, referred to "excessive noise" as "one of the curses of the modern age."[61] The Noise Abatement Act 1960[62] was passed as "a necessarily cautious venture into the field of general legislation on neighborhood noise;"[63] but, even as amended in 1969, that statute was

57. Halsey v. Esso Petroleum Co. Ltd., [1961] 2 All E.R. 145 (Veale J. in the Queen's Bench Division).

58. [1981] A.C. 1001, overruling the Court of Appeal at [1980] Q.B. 156. Other oil companies had also secured private acts of Parliament as to refineries at Milford Haven: Esso, in 1957, Regent Oil in 1962, Amoco in 1971 (*see* [1980] Q.B. at 163).

59. [1981] A.C. at 1020.

60. [1980] Q.B. at 163.

61. R. v. Fenny Stratford Justices, *Ex parte* Watney Mann (Midlands) Ltd., [1976] 2 All E.R. 888, 889 (Watkins J.).

62. 8 & 9 Eliz. 2, c. 68 (U.K. 1960).

63. Report on *Neighbourhood Noise*, *infra* note 64, at para. 4.

found to be unsatisfactory. A working group of the Noise Advisory Council which reported in 1971 on neighborhood noise[64] (a term which excludes the particular areas of industrial noise as it affects workers, aircraft noise and traffic noise) made a number of recommendations which were later to form the basis of the Control of Pollution Act 1974,[65] Part III. Part III is directed towards procedures enabling local authorities and occupiers of premises to seek the abatement of noise nuisances and then, more specifically, to noise on construction sites, noise in streets, noise abatement zones, and noise from plant or machinery. The courts are beginning to come to terms with the new provisions on noise, as in a case of 1977 on a 24-hour "taxi care center" in a previously quiet street[66] and a case of 1981 concerning the noise caused by a lift in a block of flats.[67] In view of the continuing difficulty of measuring and assessing noise, however, administrative practice itself is necessarily cautious as well; and in December, 1981, the Department of the Environment announced (under section 71 of the 1974 Act) codes of practice for minimizing noise in three special areas, namely, burglar alarms, ice-cream van chimes, and model aircraft.[68] Such codes of practice carry no sanctions, but they are a recognition of the growing importance attached to problems of noise in a variety of contexts. Moreover they are far removed from ordinary rules of common law.

The Control of Pollution Act 1974[69] is only one of the many statutes concerned with pollution, but it is unquestionably the most wide-ranging. It extends over aspects of waste disposal, the pollution of rivers and coastal waters, noise, and pollution of the atmosphere. The complexity of such subject-matter has ensured that even now, eight years later, several crucial provisions in the statute have not been brought into operation. In dealing with hazardous waste, for instance, there had from the start been a reluctance to legislate, and it was only as a result of the discovery of cyanide waste dumped near Nuneaton that the Deposit of Poisonous Waste

64. *Neighbourhood Noise,* a Report by the Working Group (of the Noise Advisory Council) on the Noise Abatement Act (HMSO 1971). *See also,* Report of the (Wilson) Committee on Noise, Cmnd. 2056 of 1963 and the Report of the Noise Advisory Council on *Noise in the Next Ten Years* (HMSO 1974).

65. 1974 ch. 40.

66. London Borough of Hammersmith v. Magnum Automated Forecourts Ltd., [1978] 1 All E.R. 401, C.A.

67. A Lambert Flat Management Ltd. v. Lomas, [1981] 2 All E.R. 280. Consider, as an indication of the range of the new law, the case of Patrick in 1979. Bradford magistrates dismissed an appeal against an order by the council to abate a nuisance (under s.58(1) of the 1974 Act). Patrick was a pedigree bantam cockerel and a family pet; but an environmental health officer kept a dawn watch as a result of neighbors' complaints and he reported that the crowing was "a piercing noise, strident and shrill." The order had specified that Patrick should leave within 7 days and it was argued that this was unreasonable. *See* Daily Telegraph (London) 3 (31 March 1979).

68. 15 PARL. DEB. H.C. (6th ser.) 320–21 (1981) (written).

69. 1974, ch. 40.

Act of 1972[70] was rushed through as an emergency measure, to be replaced in the Control of Pollution Act of 1974, Part I. Most but not all of Part I has now been implemented, but there is still considerable anxiety that the public should "feel confident that real control is taking place and that disposal is geared to the best practicable, not the cheapest tolerable, means."[71] Considerably longer delays have occurred over Part II on pollution of water, and only recently has it been announced that it will be "phased in" over a period of four years,[72] which means that the substantial implementation of legislation of 1974 may eventually take at least twelve years.

These problems faced in the law, either in the adaptation of criminal law and of the law of tort or in responding to new statutory controls, are only part of the difficulty created by environmental pressures in recent years. In the huge and expanding area of administrative law some account has had to be taken of environmental matters both in the ordinary courts and in processes of formal or semi-formal administrative adjudication; and once again there are numerous unresolved problems of procedure and policy.

In the United Kingdom, many of the outstanding problems of law and the environment have arisen in circumstances where a public inquiry (or "public local inquiry" or "statutory inquiry") has been held into a major proposal for development. The public inquiry has been a distinctive device in the British planning system since before the First World War and it has taken on a renewed significance in the environmentally conscious climate of the last fifteen years or so.[73]

Motorway inquiries and the contentious issues associated with all motorway proposals were greatly publicized during the 1970s; and the central government recognized "the increasing concern about the effects of road schemes on communities and their environment."[74] In any proposal for a stretch of motorway the inquiry is "only one part of a protracted and

70. 1972, ch. 21.

71. *Hazardous Waste Disposal,* 1st Report of the Select Committee on Science and Technology, House of Lords, Session 1980–81, H.L. 273-1, para. 186 (HMSO of 28 July 1981). The Committee also said that it "is important that the country comes to terms with the hazards of waste disposal and that considerable effort is devoted to controlling and minimizing these hazards." *See* report of a debate on the Report in 425 PARL. DEB. H.L. (5th ser.) 425–71) (1981) (especially the speech of Lord Ashby at 439ff). Lord Ashby explained how prior to 1970 there was no effective statutory restraint on the dumping of hazardous and toxic waste on land.

72. 18 PARL. DEB. H.C. (6th ser.) 36–37 (1982) (written); *see* 10th Report of RCEP, *supra* note 11, at 4.32ff.

73. *See generally,* R. WRAITH and G. LAMB, PUBLIC INQUIRIES AS AN INSTRUMENT OF GOVERNMENT (1971); *The Big Public Inquiry,* a Report of the Council for Science and Society, Justice, and the Outer Circle Policy Unit (1979).

74. Report of the Review of Highway Inquiry Procedures, Departments of Transport and the Environment, Cmnd. 7133 of 1978, para. 1.

complex process" but it "undoubtedly forms the focus of interest not only for those likely to be directly affected by the particular proposal under consideration but also for those who are totally opposed to any major new road construction."[75] The difficulty of adapting inquiry procedures to satisfy all parties and objectors was vividly illustrated in the House of Lords decision of *Bushell v. Secretary of State for the Environment*[76] in 1980. A public inquiry, extending over a hundred working days between June, 1973 and January, 1974, was held to consider two proposed schemes made by the Secretary of State for the Environment for two 15 mile stretches of motorway near Birmingham. The inspector who conducted the inquiry reported to the Minister in June, 1975 and the Minister for his part made his decision confirming the schemes in August, 1976. The protracted proceedings, which were preceded by the technical and consultative work on the motorway proposals, were still not at an end: the objectors challenged the Minister's decisions in the courts, and not until early 1980 did the House of Lords finally resolve the dispute in favor of the Minister. Procedural arguments of natural justice or fairness had been urged in the courts—principally related to the inspector's refusal to allow departmental officials to be cross-examined on their traffic forecasting methods and to the manner in which the Minister had reached his decision—and the objectors' arguments had in fact succeeded in the Court of Appeal. The majority of the House of Lords may well have been influenced by a reluctance to allow too much to be canvassed at public inquiries into major projects: Viscount Dilhorne, a former Law Officer, commented near the end of his speech that "the history of this lengthy and expensive litigation shows in my opinion the desirability of ministers having power, for the exercise of which they would be responsible to Parliament, to limit the matters which may be discussed at a local inquiry.[77]

For better or for worse, however, the public inquiry has in the United Kingdom become the focus of environmental contentions and contentiousness. The new style larger inquiries can be traced to the extensive extra-judicial inquiry conducted by the Roskill Commission between 1968 and 1971 into proposals for a Third London Airport intended to supplement Heathrow and Gatwick.[78] Behind the setting-up of the Roskill Com-

75. *Id.* at para. 12.

76. [1981] A.C. 75.

77. Bushell v. Secretary of State for the Environment, [1981] A.C. 75, 110. *See How to Judge Motorways*, THE TIMES (London) 7 (30 August 1976).

78. *See generally* on the Roskill Commission (the Report was published by HMSO in 1971) and the Stansted controversy: O. COOK, THE STANSTED AFFAIR (1967), where John Betjeman in an introduction spoke of the area around Stansted as "a quiet, prosperous agricultural area of old stone and flint churches, pargetted cottages with red tiled roofs, spreading farms and gabled manor houses, little hills, elms, oaks, willowy streams and twisty lanes leading to towns of such renowned beauty as Thaxted and Saffron Walden." D. McKIE, A SADLY MISMANAGED AFFAIR 238–41

mission had been an earlier decision to establish the third airport at Stansted in Essex; the effect of the Roskill Commission's inquiry and deliberations was effectively to reprieve Stansted, though without, as it emerged in due course, a politically acceptable alternative; and, more recently, the British Airports Authority has revived Stansted as the chosen location. In the autumn of 1981 the Stansted controversy became channelled in yet another public inquiry, which finally closed in 1983 after 258 working days.[79]

The Windscale inquiry, to which reference has already been made, was held at Whitehaven in Cumbria in 1977.[80] In the inevitable succession of controversies over the peaceful use of nuclear power, the Windscale inquiry followed the Sixth Report of the Royal Commission on Environmental Pollution and was ahead of the accident at Three Mile Island on 28 March, 1979. All public inquiries are presided over by inspectors (known as "reporters" in Scotland), and some of these are appointed on an ad hoc basis from distinguished Queen's Counsel: the inquiry into the building of a nuclear reactor at Sizewell, for instance, has been conducted by Sir Frank Layfield Q.C. It was a measure of the unique importance attached at the time to the Windscale inquiry that it was conducted by a High Court judge (stepping aside temporarily from his judicial role) assisted by two highly-qualified assessors. It was a measure also of official surprise at the strength of opposition. As the Report itself indicated, until the 1970s "it was generally assumed that spent fuel would be reprocessed and the uranium and plutonium extracted" and "opposition to reprocessing, even amongst those most wary of the implications of nuclear power, is of recent origin."[81] The scope allowed for discussion at the inquiry was unusually large and the proceedings lasted 100 working days. In the last substantive chapter of the Report, Sir Roger Parker looked at procedural and other issues relating to the inquiry.[82] One of the comments related to the disparity between the resources available to the applicants and to the objectors, and Sir Roger agreed that there can "be no doubt that the costs of presenting a fully developed case at the Inquiry and, equally important, investigating the validity of the applicant's case, are very considerable. . . . That a fully developed case should be presented

(1973), usefully sets out a chronology of events concerning the third London airport from 1952 to 1971).

79. THE TIMES (London) 3 (6 July 1983).

80. *The Windscale Inquiry,* report by the Hon. Mr. Justice Parker, presented to the Secretary of State for the Environment on 26 January (HMSO 1978).

81. *Id.* at 3.1.

82. *Id.* at ch. 15.

is plainly in the public interest. . . ."[83] The applicants (British Nuclear Fuels Ltd) won Sir Roger Parker's support in his Report, and by effectively converting the grant of planning permission into the form of a special development order the Secretary of State ensured that Parliamentary agreement was speedily obtained.[84] Whether the procedure adopted was appropriate for such a momentous decision on nuclear reprocessing remains a matter of dispute.[85]

The inquiry into the National Coal Board's proposals for a new coalfield in the Vale of Belvoir was held between October, 1979 and April, 1980. Presided over by Michael Mann Q.C. as the inspector, the inquiry "ran for 84 days and unofficial estimates put its cost at 5 million pounds. The participants employed over a dozen Q.C.'s and generated in excess of 700 documents, calling for more than 100 expert witnesses. The cost was such that one major interest group, the Town and Country Planning Association, was forced to withdraw from the proceedings."[86] The National Coal Board was seeking to develop a new coalfield in the Vale of Belvoir, and the economic and energy and employment arguments in favor of the proposal were not enough to prevent strong opposition.[87] So sensitive were the political and industrial implications that the Secretary of State delayed his decision for a surprisingly long time.[88] On the perhaps narrower environmental and energy implications, the recent report of the Commission on Energy and the Environment gives a good indication of some of the problems, but the inquiry itself allegedly raised issues which ranged "from the mating cycle of the May fly to the possibility of a revolution in Saudi Arabia."[89] Without directly concerning itself with the Belvoir inquiry, the Commission studied the planning process as a whole, pointing out that the "increasing length and complexity of public local

83. *Id.* at 15.9. On the question of possibly financing objectors at such inquiries, *see* 17 PARL. DEB. H.C. (6th ser.) 21ff (1982) (especially at c.25 with reference to the forthcoming inquiry concerning Sizewell).

84. *See generally,* D. PEARCE, L. EDWARDS & G. BEURET, DECISION MAKING FOR ENERGY FUTURES (1979) (especially at ch. 7). The timetable of events is set out at 134–36.

85. *See* THE TIMES (London) 13 (8 January 1977) editorial on "Windscale, Belvoir and Such" which, while questioning the suitability of planning inquiries, stated that it "should be axiomatic that large energy developments which have important implications for future policy as well as a sharp impact on the locality in which they are situated are exposed to public challenge and put under a necessity for public justification before they go ahead." *See* THE TIMES 3 (24 July 1978), reporting a speech by Sir Roger Parker which touched on the appropriateness of big public inquiries.

86. *Coal and the Environment, supra* note 47, at 21.57. *See* Government's Response, *Coal and the Environment,* Cmnd. 8877 of 1983.

87. *See, e.g.,* THE TIMES (London) 5 (28 March 1980). The tenth Duke of Rutland, whose castle lay within the area, warned during his testimony that, if the landscape were radically worsened, a new ghost of Belvoir would forever haunt the philistines of the National Coal Board.

88. *See* THE TIMES 1 (26 March 1982).

89. Quoted in Coal and the Environment, *supra* note 47, at 21.57.

inquiries may well be symptomatic of shortcomings in the earlier preparatory stages"[90] and urging amendment of inquiry procedures to ensure that as many delays as possible are avoided.[91]

Does the Commission's emphasis on the earlier preparatory stages indicate a need for a radical change? If so, the United Kingdom might be moving closer to the formal adoption of the idea of an environmental impact analysis (EIA) ahead of major developments. The EIA idea originated in the United States and has been adopted in one form or another in several other countries. It has been studied in the United Kingdom, notably in the Catlow-Thirlwall Report of 1976,[92] and more recently it has been considered by the Select Committee of the House of Lords on the European Communities in relation to a draft European Economic Community directive.[93] The need for some sort of impact assessment has often been urged,[94] but Sir Roger Parker in the Windscale Report was "satisfied that all matters which might or would have been included in an EIA were properly investigated at the Inquiry"[95] and the Commission on Energy and the Environment in its Report on *Coal and the Environment* expressed a preference for a "wider deployment" of the EIA technique within a flexible United Kingdom approach "to the enshrinement in legislation of mandatory requirements for detailed environmental impact statements as is current practice in the United States."[96] The Select Committee of the House of Lords, however, saw the E.E.C. draft directive as broadly acceptable, believing that it "could be implemented in the United Kingdom in a way which would not lead to undue additional delays and costs in planning procedures, and which need not therefore result in the economic and other disadvantages which the Government and certain other witnesses fear."[97] In a debate on the Select Committee's Report, Lord Ashby urged his colleagues to take heart from experience

90. *Id.* at 21.14.

91. *Id.* at 21.62.

92. *Environmental Impact Analysis,* a Study prepared for the Secretaries of State for the Environment, Scotland and Wales by J. Catlow and C. G. Thirlwall (Department of the Environment, 1976). Note especially the background chapter (at pp. 5–8) on the National Environmental Policy Act of 1969 in the United States and, as an example of an environmental impact statement, the statement on proposed oil and gas platforms in the Santa Barbara Channel. *See also* a Report prepared by B. D. Clark, K. Chapman, R. Bisset, P. Wathern (Department of the Environment, 1978). This Report looks at environmental impact statements at federal, state and local level; and there is an extensive bibliography.

93. *Environmental Assessment of Projects,* 11th Report of Select Committee on the European Communities, Session 1980–81, H.L. 69 of February 1981.

94. *See Air Pollution Control: An Integrated Approach,* 5th Report of Royal Commission on Environmental Pollution, Cmnd. 6371 of 1976, paras. 351–354.

95. *The Windscale Inquiry, supra* note 80, at 14.9.

96. *Coal and the Environment, supra* note 47, at 21–54.

97. *Environmental Assessment of Projects,* H.L. 69 of 1981, para. 84. The Committee added that the directive would apply only to "major projects and modifications."

in Canada, not least as to proposals for a pipeline along the Mackenzie River as to which hearings were held "all the way up the Mackenzie River in school halls, Indian villages, hunting camps and outposts."[98] The Government's response was not encouraging, with a reminder both that "environmental assessment is not some new miraculous diagnostic instrument" and that there is concern on the Secretary of State's part "to speed up the planning systems and remove gratuitous sources of delay. In our present economic condition we cannot lightly add to the burdens on industry by introducing new requirements. . . . We want to avoid legislation which could be difficult to enact, hard to implement and—by virtue of its uncertainties—be a source of litigation and dispute."[99]

Underlying the debate on environmental impact assessments are some of the factors which underlie many of the arguments about the approach to environmental policy in the United Kingdom. Time and again, in differing contexts, one observes complex struggles over the desirability of legislation to meet a particular problem, over the advantages and disadvantages of a pragmatic as opposed to a rigid response in environmental control, over the extent to which public participation should be welcomed and public knowledge enhanced, and over the urgency with which we seek international or regional cooperation. These are overlapping issues and doubtless they are crucial in devising the framework of environmental and pollution laws in any country.

Reluctance to legislate is often understandable, especially where informal controls have operated successfully in the past or where the subject-matter for possible legislative formulation is imprecise or uncertain. In the area of agriculture, for example, the Royal Commission on Environmental Pollution in its Seventh Report considered the non-statutory Pesticides Safety Precautions Scheme (PSPS) and accepted "that the scheme has been effective in assessing the safety of pesticides and in specifying safeguards for their use."[100] The Commission was impressed by the strong case urged against the statutory scheme, but at the same time they recommended limited statutory recognition of the Advisory Committee on Pesticides (which provides the focus of the scheme) and statutory provision for reserve powers for the Minister.[101] Reluctance to legislate can also take the form of failure to revise and consolidate older and often unsatisfactory legislation as in the area of air pollution, or, as we have

98. 419 PARL. DEB. H.L. (5th ser.) 1324 (1981). In referring to Mr. Justice Berger's Commission, Lord Ashby also referred to the financing of objectors. At c.1327 Lord Llewelyn-Davies also supported the E.E.C. directive, despite an initial feeling "that the last thing we want is to add to a possibly already over-elaborate planning framework."

99. 419 PARL. DEB. H.L. (5th ser.) 1342 & 1340 (1981) (Lord Bellwin, Parliamentary Under-Secretary of State, Department of the Environment).

100. *Agriculture and Pollution*, Cmnd. 7644 of 1979, 3.101.

101. *Id.* at 3.106.

seen in relation to the Control of Pollution Act 1974, delay in bringing statutory provisions into effect. In periods of economic and financial stringency there is an obvious temptation to relegate environmental legislation in the order of priority preferred by government, and it is hence important that there should be a political corrective wherever feasible. The experience in the United Kingdom suggests that an impetus can be maintained through the efforts of specialist committees of the House of Lords, a remarkably effective second chamber, and through the efforts of advisory committees or commissions designed to exercise either a continuous oversight in particular areas or a power to investigate a succession of particular problems. Unfortunately the specialist committees may fall by the wayside—the Clean Air Council effectively ended in 1979 and 1981 saw the demise of the Noise Advisory Council and the putting into "abeyance" of the Commission on Energy and the Environment—or else, as has been the recent experience of the Royal Commission on Environmental Pollution, find long delays before there is a firm response to their recommendations.[102] Advisory bodies, through their independence and accumulation of expertise, have a particularly valuable role to play in areas such as environmental protection, especially when public anxiety is often lost sight of in a mist of technical argument, and it would be a pity if their initiative in the legislative process were to be lost.[103]

The arguments about pragmatism and rigidity are common in areas of environmental protection. In its Fifth Report, for instance, the Royal Commission on Environmental Pollution favored the concept of "best practicable means" in the control of industrial emissions, regarding it as "consistent with the realities of pollution control" and as providing "a flexible and sensitive means of achieving the balance of costs and benefits which should be the aim of control."[104] The Commission was opposed to the imposition of uniform emission standards through E.E.C. initiative, on the ground that it "would be a wasteful use of resources to insist that, say, smoke from a cluster of cottages or a remote industrial plant in the Scottish Highlands or the French Alps should be as stringently controlled as in Birmingham or Cologne."[105] In 1977, an inter-departmental working party reinforced the preference in several areas for "a pragmatic approach to environmental control and standard setting," and it explained that the United Kingdom "adopts a complete range of control mechanisms from absolute bans, through statutory standards, negotiated agreements and voluntarily adopted schemes, to guidelines and recommendations, choos-

102. *See generally,* D. PEARCE, L. EDWARDS & G. BEURET, *supra* note 84, at ch. 9.
103. *See* 10th Report of RCEP, *supra* note 11, at 3.41 and 5.140–5.144.
104. Cmnd. 6371 of 1976, para. 166.
105. *Id.* at para. 182.

ing carefully the instrument most appropriate to the need."[106] With a pronounced leaning towards what is termed the "gradualist" approach,[107] the effect is that a considerable element of discretion is entrusted to control authorities and recourse to the courts is extremely difficult: indeed, fear of litigation lies behind some of the opposition to more precision.[108]

Public participation and the public's "right to know" have been discussed widely in recent years, not least in areas of environmental concern. In 1979, the Skeffington Report[109] emphasized the need for public participation in the orthodox sphere of planning, adding that the process of participation "is dependent upon an adequate supply of information to the public."[110] Time and again the theme of provision of information has been returned to in studies and surveys of the environment. In its Second Report, for instance, the Royal Commission on Environmental Pollution was skeptical about the need for confidentiality over industrial wastes and their discharge into the environment,[111] and in 1973 a working party of the Clean Air Council reported on *Information about Industrial Emissions to the Atmosphere*.[112] In making a number of recommendations, which inspired some of the provisions of the Control of Pollution Act 1974,[113] the working party suggested that the general public, increasingly anxious about pollution, "are no longer content to be told by experts what is and is not tolerable, but wish to have access to the evidence and to have the opportunity to judge for themselves."[114] Arguments about disclosure of information may raise issues of trade secrets, of fear of litigation, of governmental secrecy, and more generally, of the publics wider concern about environmental protection. On the latter and perhaps principal issue, the reports of various independent bodies again serve a useful public purpose in bringing together much of the information and seeking to present it in a dispassionate manner. Members of the public tend to become active as they themselves are threatened by a new industrial development or other incursion in their neighborhood, and it is

106. *Environmental Standards*, a Description of United Kingdom Practice, Pollution Paper No. 11, Department of the Environment, at paras. 49–51 (1977).

107. *Id.* in Foreword by the Secretary of State for the Environment (Mr. Peter Shore).

108. H.L. 69 of Session 1980–81, paras. 37 and 83. The Select Committee recognized (at para. 83) that "it would be unfortunate if the directive as drafted were to encourage unnecessary litigation about interpretation of particular articles."

109. *People and Planning*, a report of the Committee on Public Participation in planning (HMSO 1969).

110. *Id.* at para. 100.

111. *Three Issues in Industrial Pollution*, Cmnd. 4894 of 1972, paras. 3 to 10. This theme has been referred to in later Reports, e.g. the Fifth Report, Cmnd. 6371, para. 185.

112. HMSO (1973).

113. Control of Pollution Act (1974 Chapter 40), Part IV.

114. HMSO para. 6 (1973).

then that the active processes of participation (including the use of public local inquiries) are so important.

Two examples, of a very different kind, illustrate how an issue can be looked at broadly in an independent inquiry and also raised with respect to a proposed development. The Royal Commission on Environmental Pollution, in its Sixth Report,[115] devoted one chapter to the subject of "security and the safeguarding of plutonium." If such matters are to be publicly discussed, the Commission urged, "then the sooner the better,"[116] and it spoke of the threat of sabotage, the theft of plutonium, and the general effect on civil liberties (through the scrutiny of employees, secret surveillance of members of the public, and widescale powers of search and detection in emergencies).[117] A gradual strengthening of security as to nuclear installations has become more and more evident, from the arming of the United Kingdom Atomic Energy Constabulary (UKAEAC)[118] to the creation of a new home service force, announced in Parliament on 3 March, 1982, to guard vital United Kingdom installations in time of tension and war.[119] Problems of terrorism and civil liberties were raised in the Windscale inquiry,[120] though Sir Roger Parker imposed restrictions early on as to the nature of the evidence which could be tendered.[121] Full reference was made to the Sixth Report of the Royal Commission, but the conclusion on the available evidence was that the overall risks as to Windscale were not significant and that outline planning permission should not be refused either on security or on civil liberties grounds. Sir Roger Parker declined to speculate on the security measures which might be necessary in the event of "a large scale commitment to plutonium fueled reactors,"[122] and doubtless arguments on such measures will be raised at length in the future.

A second example of a very different kind concerns intensive livestock units, especially for chickens and pigs, which tend to become concentrated in particular geographical areas. The Royal Commission on Environ-

115. *Nuclear Power and the Environment,* Cmnd. 6618 of 1976.

116. *Id.* at ch. VII, para. 308.

117. The Commission concluded (at para. 336) that "these issues are real and important and of a kind which, in our view, require wide appreciation and discussion. Public debate will not resolve them but it may form a climate of opinion which would assist Government in assessing the weight that should be given to these matters in decisions on nuclear development." *See generally,* debate on the 6th Report in 378 PARL. DEB. H.L. (5th ser.) 1308ff.

118. *See* Cmnd. 6618, *supra* note 115, at para. 334.

119. THE TIMES (London) 1 (4 March 1982) and 19 PARL. DEB. H.C. (6th ser.) 273ff (1982). The Royal Commission in its Sixth Report, Cmnd. 6618 at para. 314, had indicated that nuclear installations would be "prime targets" in war and that "an attack with conventional weapons leading to the release of radioactivity would produce some of the effects of nuclear weapons."

120. *The Windscale Inquiry.* Report by the Hon. Mr. Justice Parker, ch. 7 (HMSO 1978).

121. *Id.* at 7.1.

122. *Id.* at para. 7.19.

mental Pollution, in its Seventh Report,[123] noted the moral objections to intensive livestock units[124] and looked in some detail at the special problems of pollution,[125] not least the fact that the smell can be "very objectionable."[126] It was expressly indicated that the smell of pig slurry is "highly offensive and penetrating" to those living in the neighborhood. Shortly afterwards, with the Seventh Report much in evidence, a public inquiry was held concerning planning arrangements for intensive livestock units in Humberside, one of the main areas for pig units, and the strength of feeling was evident.[127] This was an excellent illustration of problems of pollution being handled in the broader context of planning, with the added combination of independent survey (through the Royal Commission) and local response (through the subject plan and the public inquiry). It reminds one also of the local emphasis in many areas of pollution and of the need to seek public participation where people are directly affected or about to be affected by pollution.

Individual members of the public or groups representing their views are, of course, often at their most articulate on the wide-ranging area of conservation, in the form of conserving the countryside, safeguarding historic buildings or protecting flora and fauna. Concern about preserving the countryside has grown rapidly during this century, and passions often run high.[128] The concern is reflected in specific studies of such activities as opencast coal mining[129] and in the work of many organizations both voluntary (such as the Council for the Protection of Rural England, which was founded in 1926) and statutory (such as the Countryside Commission, whose role is set out in several acts of Parliament). The Countryside Commission has described itself as "a promotional body charged to promote throughout England and Wales the conservation of natural beauty

123. *Agriculture and Pollution*, Cmnd. 7644 of 1979.

124. *Id.* at para. 1.16.

125. *Id.* at para. 5.17ff.

126. *Id.* at para. 5.23. Smells can be a source of annoyance in other areas of pollution, and the Royal Commission in its Fourth Report, Cmnd. 5780 of 1974, spoke of the "growing sensitivity of the public proboscis" in recent years (para. 47)—many of the complaints relating to the animal by-products industry (including "such useful trades" as gut-scraping and fellmongering).

127. The inquiry was held in early September 1980 into the Humberside County Council Intensive Livestock Units Subject Plan, and the Inspector reported in late October 1980. In its Seventh Report, the Royal Commission had (in ch. VII) made several suggestions for pollution control in relation to intensive livestock units.

128. *See generally*, BRITAIN AND THE BEAST (Clough Williams-Ellis, ed., 1938); J. SHEAIL, RURAL CONSERVATION IN INTER-WAR BRITAIN (1981); M. SHOARD, THE THEFT OF THE COUNTRYSIDE (1980).

129. *Coal and the Environment*, Report of the Commission on Energy and the Environment (HMSO 1981) (esp. at ch. 11, "Opencast mining"). The Commission points out (at 11.34) that opencast mining "has a major impact on the land taken for the site and ancillary workings and on the surrounding neighborhood," and many of the new sites are on good agricultural land or in areas of high landscape quality.

and amenity in the countryside, access to the countryside and the provision of facilities for the enjoyment of the countryside."[130] The entire field of conservation is huge and there is frequent legislation including the recent Wildlife and Countryside Act of 1981;[131] and, in addition, planning processes are often influenced by the pressure exerted or objections made by relevant statutory and voluntary bodies at public inquiries and elsewhere.

The fourth matter arising out of the discussion of environmental impact statements relates to international cooperation. This can take the form of United Nations initiatives, of regional action, and of bilateral or multilateral treaties. The United Kingdom was influenced broadly by the United Nations Conference on the Human Environment (held in Stockholm in 1972) and there is no doubt that many forms of pollution cannot be confined within particular countries. The United Kingdom is also subject to considerable E.E.C. pressures, a European program of action on the environment having been initially adopted in 1973,[132] and the proposal for environmental impact statements is but one reflection of these pressures. Rarely nowadays is legislation undertaken or administrative policy adopted without regard to the international dimensions of what is intended; and some legislation and some policies can only be understood in an international context. The complexities in individual areas of the environment which we attribute in part to the proliferation of legislation (both primary and secondary) are all the greater when we consider the international angles and implications.

Nowhere are such complexities more vividly demonstrated than in respect of oil pollution at sea, which was considered in the Eighth Report of the Royal Commission on Environmental Pollution.[133] The problems of oil pollution range from highly publicized tanker disasters (such as those involving the *Torrey Canyon* in 1967 to the *Amoco Cadiz* in 1978) to irritating spills of oil on holiday beaches. The Commissioners had to take account of numerous facets of oil pollution (including the biological effects, damage and compensation, land-based sources, offshore oil operations, tanker accidents, deliberate and accidental discharges from vessels and the procedures for dealing with oil spills) together with numerous international agreements and bodies associated with such acronyms as CONCAWE (International Study Group for Conservation of Clean Air

130. Eleventh Report of the Countryside Commission 1977–78 at 1 (House of Commons 111 of Session 1978–79).

131. 1981 Chapter 69.

132. *See E.E.C. Environmental Policy,* 5th Report of Select Committee on the European Communities, H.L. 40 of Session 1980–81, December 1981. *See* debate in 417 PARL. DEB. H.L. (5th ser.) 1270ff.

133. *Oil Pollution at Sea,* Cmnd. 8358 of 1981, and the Government's Response, *Oil Pollution at Sea,* Pollution Paper No. 20 (1983).

and Water—Europe), CRISTAL (Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution), MARPOL (International Convention for the Prevention of Pollution from Ships), OILPOL (International Convention Pollution of the Sea by Oil), OPOL (Offshore Pollution Liability Agreement), and TOVALOP (Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution).[134] The ramifications of oil pollution are obviously huge, but international agreements on compensation are of relatively recent origin, partly because supertankers themselves are relatively recent.[135] We are yet again in an area of rapid change where the law, especially through legislation and international agreement, needs to change rapidly to keep pace. Governmental and official response to problems of oil pollution is also, according to the Royal Commission, in need of change, and one of its strongest recommendations was that the United Kingdom should take immediate steps to extend our territorial limits to 12 miles.[136]

The Royal Commission's study on oil pollution is, apart from its international aspects, important in showing the need for balance in matters of environmental concern. One of the reasons for seeking greater public awareness is to avoid unnecessary stress on the perils of pollution. The Royal Commission, for instance, concluded "that oil pollution entails no permanent threat to the marine environment; to the surprise of some of us, we have found that the marine environment eventually recovers from even the most serious oil pollution incidents."[137] To make a statement of that nature is not to underestimate public concern at the visible effects of oil pollution nor is it intended to lessen public vigilance. Indeed, to adopt too self-conscious an attitude of balance and moderation may defuse or dilute public pressure with unfortunate results: bewilderment at the changing emphases, different scientific interpretations, and political and economic variables are already considerable, and those concerned with environmental pollution should beware of deflecting public challenge with the bland reply or inadequate supply of information. Nevertheless the Royal Commission has warned us of the perils of waging campaigns on inadequate grounds. What we need to do is harness the vitality of individuals through the identification of issues on the basis of considered information, through efforts to secure suitable and internationally effective laws, and through the adoption of fair procedures for people to state their views when they themselves are threatened. Pollution may be peculiarly a problem of the twentieth century, but the debates on environmental

134. Some 98 percent of the world's tanker fleet is now covered by TOVALOP, and CRISTAL is supplementary to TOVALOP, Cmnd. 8358, *supra* note 133, at 4.24–25.

135. *Id.* at 4.20.

136. *Id.* at 7.82.

137. *Id.* at 11.2.

impact statements remind us perhaps that the concerns are not altogether new. In the House of Lords debate in 1981, Lord Ashby, the first chairman of the Royal Commission on Environmental Pollution, reminded us that as early as 1602 Queen Elizabeth I asked the sheriffs of Hertfordshire and Middlesex to inquire whether a proposed aquaduct "would injure the inhabitants of the two counties, and whether it would diminish the flow of any navigable river."[138] This reference back was capped by Lord Llewelyn-Davies who said that in the United States he had heard of the time when Moses approached the Red Sea and, pursued by the Pharoah and his forces, appealed for the help of the Deity. After an appropriate pause, the reply came back:

> Moses, I have both good news and bad news for you. The good news is that I can dam up the Red Sea and give you a dry-shod passage across. The bad news is that before I can start the project you will of course have to file an environmental impact assessment.[139]

This takes us a long way from the proposals of the Central Electricity Generating Board in the interior of Cornwall; but doubtless there is a message.

138. 419 PARL. DEB. H.L. (5th ser.) 1320 (1981).
139. *Id.* at c. 1328.