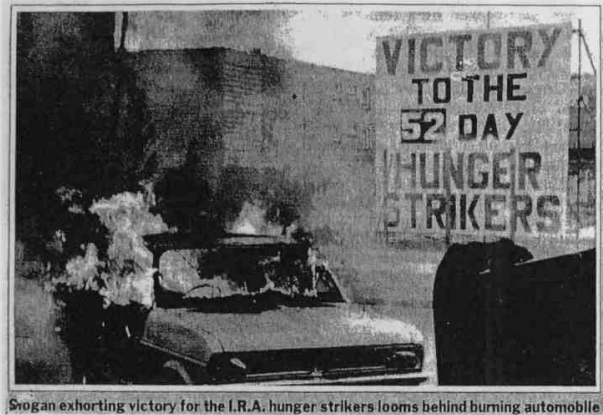


LAW 律呂 MEDIA

LAW ASSOCIATION UNIVERSITY OF HONG KONG September issue 1981



Slogan exhorting victory for the I.R.A. hunger strikers looms behind burning automobile

EDITORIAL

The issue of hunger strikes at the Maze Prison in Northern Ireland has been the centre of attention for some time. Its beginning was marked by Bobby Sands' strike commencing on 1st March, 1981, in an effort to force the British Government to grant what amounts to political prisoner status to terrorists jailed in Northern Ireland. He was finally elected on 9th April, 1981 to fill a seat in the British Parliament among others who came from the border district of Fermanagh and South Tyrone; but unfortunately he met his death nearly a month later on 5th May, 1981, in the 66th day of his fast — the first of the Maze hunger strikers to die.

No one has any idea as to when the strike will come to an end, but the day will definitely come when the IRA (Irish Republican Army) achieves its goal, that is, for the almost exclusively Catholic IRA to terminate British rule in Northern Ireland and to reunite the Protestant-dominated province with the Irish Republic, which is 97% Catholic. On 21st August, 1981, with the death of Michael Devine, a 27 year-old Irish nationalist and the most senior member of the Irish National Liberation Army, in the 60th day of his strike, the number of hunger strikers who had died rose to ten. Judging from the attitudes and determination of the hunger-strikers, there will be more to come!

Very often things go by unnoticed until they gain momentum and reach a climax, but by then the underlying causes have very often already been lost sight of. What makes so many IRA members pledge themselves to such slow and torturing deaths? Is it for the simple reason mentioned earlier, or are there other political and historical factors which spur them on?

The almost exclusively Catholic IRA is striving, inter alia, for a reunion of the Protestant-dominated province with the Irish Republic, but are they trying to achieve their ends by the wrong means, both in the ethical and religious sense? Would it be against morality and their own Catholic beliefs to put their own lives at stake in order to achieve reunion? How do hunger strikes compare with the usual tactics and methods adopted by terrorists? What laws are there to combat terrorism?

Is it lawful for prison authorities to force feed prisoners under certain circumstances in order to avoid deaths? Is it always true that force-feeding can avoid death, or rather will such hasten death?

Faced with so many questions, our present issue aims at providing, inter alia, an all round review of the political, historical, ethical, religious, physiological and legal aspects of the issue of hunger strikes and forced-feeding. Hope you will find it informative and inspiring!

TERRORISM

It has become a global plague. The Irish Republican Army swears to turn the British out of Ireland by all means. The Baader-Meinhoff Gang vowed to rip open the entire German society and build it to their own design. The Japanese Red Army and the Palestinian Liberation Army all have their own visions to justify their activities of terror.

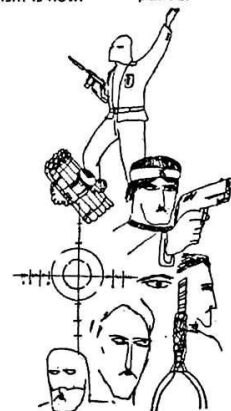
In the name of freedom these organisations launched countless cold-blooded operations that chilled the world. Their main aim is to gain publicity and attention. The Pope

who is the symbol of love and peace and the spiritual leader of millions of Catholics was victim to a terrorist bullet and only narrowly escaped death. Lord Mountbatten, a World War II hero who had survived so many a sea battle, finally met death on his launch which was cruising peacefully in an English bay when it was destroyed by explosives planted by terrorists. Aldo Moro who was once the strongman on the Italian political scene was found riddled with bullets in the boot of a car. An officer on duty in troubled Ireland may be By section 3, the Secretary of State can expel or prevent entry of a person engaged in terrorism. This and other legislation such as those against possession of firearms are measures against terrorist activities.

However, law is a functionable mechanism only in a stable and law-abiding community. Terrorism is not-

England, terrorism is the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear. Indeed, the terrorists did succeed in the past decade to put the world in fear. Every flight may carry a hijacker, every lobby may have a bomb planted somewhere. . .

Whatever their cause or self-devised justification, terrorist activities do draw the world's attention and at the same time stir worldwide disgust and defiance. In 1972, the world watched in horror the massacre of nine Israeli athletes by Black September terrorists. The lives of these nine young men not to mention the spirit of the Olympic games meant nothing to the terrorists. Blinded by their burning version of freedom, the terrorists did not see that the nine souls were deprived of their freedom to live when the triggers were pulled.



ing but a blunt protest to such peaceful human community; a diehard group of radicals who vow to annihilate the existent system in order to build one of their own envisioned design. Mere legislation in thick statute books cannot solve the problem. Terrorists are cunning enough not to engage in all out confrontations with the authorities. They usually employ guerilla warfare tactics: sharpshooting from unlikely cracks, kidnapping when one is most unprepared and bomb-planting in crowded lobbies etc. Conventional police tactics are no match for these terrorist strategies. Worse still, there is growing evidence that such terrorist operations are sponsored by powerful nations. Such blood-thirsty radicals cannot survive long without constant arms supply and military training. This delirious lunch one instant and the next he may be lying lifeless with a bullet blasted into his brain.

The Oxford Dictionary defines terrorism as a systematic intimidation for governing or securing political or other ends. In Halsbury's Laws of

The world did not remain silent witness to the madness of terrorism. Anti-terrorism legislation was passed and revised with the approval of vast majority in the Western Governments. In England, the Prevention of Terrorism (Temporary Provisions) Act 1974 was passed to further define the police powers of arrest, detention and search in order to deter terrorist activities.

A police officer may arrest without warrant a person whom he reasonably suspects to be:

- 1) guilty of an offence under the Prevention of Terrorism Act 1974;
- 2) concerned in the commission, preparation or instigation of acts of terrorism;
- 3) a person subject to an exclusion order.

A suspect may not be detained for more than forty-eight hours but the Secretary of State may extend it to any period not longer than five days.

Under section 1 of the above-mentioned Act, it is an offence to wear clothes that can arouse reasonable apprehension that the wearer is a supporter of a proscribed organisation.

berate and unified network of terrorism is suspected to extend from Havana to Moscow to Palestine.

The very fear of reprisals too can be a serious hindrance to the curbing of terrorism. Furthermore many Western nations may yield to the demands of terrorists because their industries rely entirely on oil from Arab countries, some being sponsors, to the worst terrorist organisations. The mastermind behind the Munich massacre in the 1972 Olympics, Abu Daoud was arrested in France but the French authorities turned down extradition requests from Israel and West Germany. Instead, Abu was given a free ticket to Algeria where terrorists on the run may take refuge.

Both the Common Market and the European Economic Community have agreed to adopt tougher action against terrorism. Countries that support terrorism will soon lose American aid and trade benefits. Western intelligence services are joining force to exchange information and to track down wanted terrorists. Tighter security with modern electronic devices at airports will make would-be hijackers think twice before taking the risk.

Many Western nations also train special anti-terrorism squads and equip them with the latest weapons and strategies. Their duty is to protect the world from terrorism even if it means violent deaths to these terrorists. The West German anti-terrorism forces won the world's acclaim when they successfully stormed a hijacked plane and freed all the hostages. All eyes too were on the Special Air Service (SAS) when their members clad in black and armed with light automatics blasted into an embassy held up by terrorists. The ferocity of the attack left the terrorists a bullet-riddled mess.

The SAS is a group of tough military elites and they undergo regular and intensive anti-terrorist tactical training including the use of lethal apparatus, sharpshooting and hand combat. The SAS never confirm nor deny the participation of their members in overseas operations against terrorism.

The latest drama and publicity stirred by terrorists is in the shadows of the MAZE in Northern Ireland. Captured terrorists make their last and most determined efforts to reach their goal by starving themselves to death. Perhaps the slow horrible death by starvation they have chosen in order to attain their political dream is a nobler act than levelling an airport lobby with a bomb and hence killing countless innocent people en masse. Perhaps this self-selected way of dying of these terrorists and their arch-enemies who remain spectators on the scene are a shame to human civilisation. We do not know the outcome of this horrifying way of protest nor when it will end. We know for certain that human beings inevitably have conflicting ideas and values and blood will flow until they learn to accept one another and to make compromises when the time comes.

"I appeal to you, in language of passionate pleading. On my knees I beg you to turn from the paths of violence and to turn to the ways of peace. You may claim to seek justice. I too believe in justice and seek justice. But violence only delays the Days of Justice. Violence destroys the work of Justice." — Pope John Paul II.

— Tommy Lo —



The masked face of Northern Irish violence: a rioter in front of a pyre of destruction in Londonderry street

THE IRISH QUESTION

"I have the spirit of freedom that cannot be quenched."

— Bobby Sands

The unquenchable spirit Sands wrote about has driven 100 volunteers in the Maze Prison to pledge themselves to the torturing process of hunger strike. This is done as a demand for the special status accorded to political prisoners. These IRA men refuse to be treated as ordinary criminals for they believe in themselves as fighters for a cause far above sordid criminal impulses. Bobby Sands was the first to go on strike and soon he was hailed as a hero for his courage and dedication. By now, ten have died but many still follow. Clangs from garbage cans sound the death toll of a hunger striker and street violence is the immediate answer. While the British army seeks to control the mobs, the Thatcher Government remains adamant in its refusal to give in.

Hunger Strike is not new. As early as 1917, Irish prisoners were using it as a last resort in pushing forth their demands. Many had tried it and died, as did Thomas Ashe who died as a result of forcible feeding in 1917. However, the present public is still shocked by the the stubborn determination of those Irishmen inside the Maze. It seems to be a desperate situation but it is only one of the more publicized events in the pattern of violence and suppression which characterizes the restlessness in Northern Ireland. In short, this is another symptom of the complex Irish question. Why should such a problem evolve yet remain unresolved?

Due to geographical proximity, Ireland has always been tangled up in British affairs. Despite such proximity, Ireland has remained largely different. The Irish culture was initially brought over by the Gaels from Europe and a Celtic culture of tribalism was established. The failure of the Romans to reach Ireland after England further widened the rift between England and Ireland. Thus, to start with, these two islands were in fact two nations unfortunately caught in a struggle against each other.

The Irish struggle against England possibly started with Henry II's attempt to bring Ireland under English rule. Such attempts fully flowered in the reign of the Tudors. A coercionist policy of confiscation and plantation was very successful in transferring land ownership to the English while arousing opposition from the locals. This is not surprising since their land policy differed entirely. While the English thought of land-holding as an inviolable right to which tenants owed duty, the Irish thought of their land as belonging to the tribe and the landlord as having a paternal duty to the tenants. This basic difference laid the seed of Anglo-Irish antagonism, which, fed by different factors, grew into an almost instinctive hatred.

Confiscation became instituted during Stuart time, and by Cromwell's time, almost three-quarters of the land was given over. When William of Orange defeated James II, 85% of Irish land was in English hands. The early 18th Century was the period of the penal laws which deprived the Irish Catholics of most of their rights. The peasants became extremely poor so hatred of the alien landlords mounted. This period also saw the beginning of reprisals and armed attacks against landlords by secret societies, traditional to Irish tribalism. These violent activities initiated the repeal of the penal laws and the passing of the Catholic Relief Act.

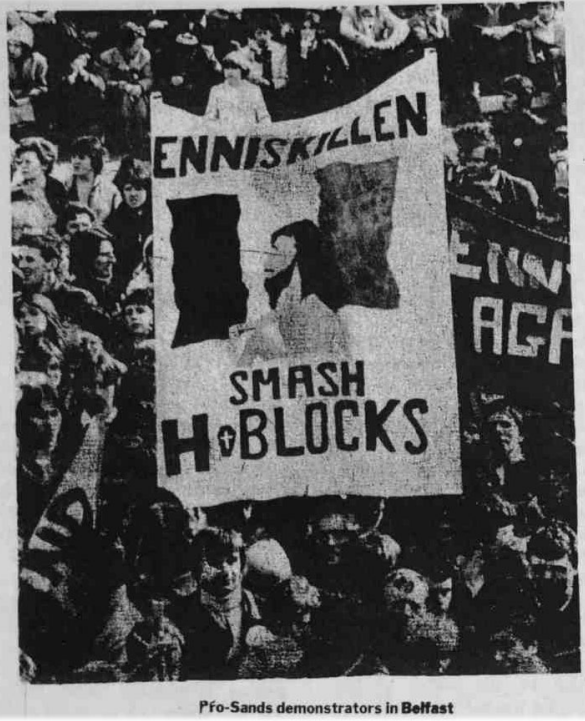
In 1789, the French Revolution inspired the republican movement called 'United Irishmen', the first outright expression of Irish nationalism. In addition, the strife between landlords and peasants continued. The conflict centred around the Irish Defenders and the Orange Society which upheld English rights. A rebellion finally broke out in 1798, revealing openly the sectarian overtone of the Irish struggle. The majority of the Defenders were Catholic while Orangemen were almost invariably Protestants. Thus the conflict over economic deprivation now turned upon the religious differences as well.

The British government tried to solve the problem by the 1800 Union of Ireland with Britain. But sectarian difference was heightened instead of resolved. Union was seen as an imperialistic tightening of control and an

undeniable support for the Protestants. The fervour of Irish nationalism increased and numerous societies with different aims rose — these aims including Catholic emancipation or Home Rule. Of these the most popular was the Fenian Brotherhood established in 1859. It agitated for self-determination and won widespread support. This period also saw the Gladstonian reforms, an attempt to solve the problem by supplying redress. But mutual distrust and hatred was too deep. Even the strenuous Irish politician Parnell, the 'uncrowned king of Ireland', failed to settle such differences. Instead, the late 19th Century witnessed an intensification of nationalist fervour in the 'Irish Ireland Movement' or the 'Gaelic League'. Intellectuals voiced their patriotism in eloquent literary works whilst the organization of nationalistic societies improved immensely. The new organization to emerge was much more sophisticated in enlisting support and political agitation. This was the Sinn Fein Movement.

Their labours in agitating for Home Rule were not wasted and the Home Rule Bill was tabled in 1912. But with an amendment to exclude Ulster from Home Rule, opposition again mounted. Sinn Fenians became suspicious of Home Rule as a traditional British device of 'divide and rule'. Some swung away from the movement to form the Sinn Fein Volunteers commonly called the IRA, which demanded nothing short of total self-determination for the whole of Ireland. The moderate Sinn Fenians were very popular and their efforts were answered in 1921 by the signing of the Anglo-Irish Treaty. The price was great, for two years of civil war had been fought and Ulster was excluded. This partition became an unalterable fact when the Free State abandoned its claims in exchange for a release from financial obligations to Britain. The consequence of this sudden conclusion to centuries of struggle is the localization of sectarian conflict in the Northern provinces. The Protestants are fearful of the loss of their control over land and business but the Catholics are intent upon union with the south. Their struggle is constantly being fought out.

There are many factors contributing to the sectarian struggle now a



Pro-Sands demonstrators in Belfast

current feature of Northern Ireland. Many concentrate upon the basic religious difference between Catholics and Protestants, but it is the interplay of a number of factors which leads to this antagonism.

The fact that Irish culture differs much from the English, provides ground for a clash when they meet. Cultural clash is believed to be one of the major driving forces behind nationalism. From their earliest encounter the Irish were branded primitive and inferior. This was because England was the richer and more centralized partner whereas Ireland lagged behind due to its tribal nature and the heavy dependence upon agriculture as the source of livelihood. It is not surprising that the English saw them as barbaric so that they glorified the mission of saving the Irish from primitivism. In the face of such a derogatory image, the Irish responded by concentrating on ancient glory and heroism to the extent that they considered themselves a blessed race. Both people built up such a sense of superiority that conflict was inevitable when one tried to subjugate the other. Added to this clash of self-images was the basic difference between Irish and English ways, such as land policy. But little attempt was made to bridge this gap so that Anglo-Irish dialogue was seldom held on a basis of mutual comprehension. Ignorance deepened differences and feelings of anguish grew when acts were wrongly interpreted and inappropriately responded to.

In this clash of cultures, religion plays a vital role. Since James I's time, English planters assumed massive control over Irish land, the most powerful ones around Ulster. These immigrants were mostly Protestants, so that a Protestant ascendancy with control of land was formed. A split between two sections of the Irish population was permanently established. Protestants viewed the Catholics as extreme conservatives and ultimately as papists, loyal to an external authority. Thus, their attitude was

often tinted with scorn and distrust. In the 18th Century, Catholics were deprived of their rights by reason of their religion. In response to oppression, they resorted to violence in the name of self-preservation. But sectarian struggle soon degenerated into needless and often purposeless bloodshed involving innocent civilians, as is happening in Northern Ireland now.

Added to the cultural differences is the excessive deprivation of the Irish by English Protestant Landholders. The confiscation of land and the rupture of the traditional society had profound effects upon the Irish psychology, causing antagonism. Under English rule, the peasants had to cope with increasing rents but they viewed modernization with suspicion. Thus the whole population was dragged down in extreme poverty. The Great Famine of 1845-8 bears witness to the misery of the common folk. Peasants and intellectuals alike blamed the English, regarding them as the source of all their sufferings. Therefore, the Irish wished fervently for relief from English rule. Nationalistic movements thus aimed for the goal of independence so that Ireland could return to its glorified tradition, with the English influence driven away.

All these factors amount to an intense feeling of separation from England. The past is constantly relived and antagonism perpetuated. An Irish nationalist talked of recent confiscations as affecting the land situation in 1865, meaning confiscation taken in Cromwell's time. Violence was increasingly employed as a means towards the nationalist end. This is an inevitable result for the centuries of clannish warfare, peasant guerilla activities and the lack of a professional military unit till 1921 made ample room for the development of terrorist activities. Often the British government was too complacent to heed the restless strivings in Ireland so that the fighters had to use 'shock tactics'. Violence seemed to them the most expedient way.

Besieged British army troops turn riot guns on attackers



The Irish question is a complex one with its long tradition of mutual suspicion and Irish opposition to English ways. With partition, the problem was further complicated in the six Northern provinces, where sectarian struggles became more concentrated. An example can be seen when Sands' family was driven out of their neighbourhood by constant harassment from Protestant youths. This event drove Sands to join the IRA at the age of 17. But now, the IRA has developed a tough hardline attitude — non-compromising and stubborn. They consider themselves martyrs for the national cause, and the public seems to go for this. The level of their military organization is high, yet the lack of intellectual leadership weakens

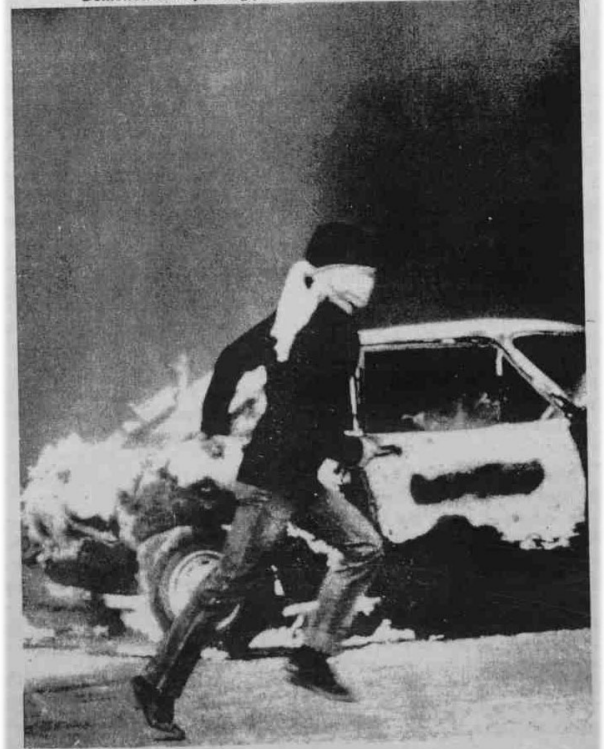
the grip of nationalist appeal. On the other hand, IRA violence is also prompted by sectarian attacks by the Ulster Protestants and the determination of the British government to resist their demands. This problem seems to have reached a deadlock for which a solution in the near future is still too vague to be grasped.

"Ireland is a small country where the greatest questions of politics, morality and humanity are fought out."

— Gustave de Beaumont —

— Yolanda Fan —

Demonstrator sprinting past burning hulk of automobile



HUNGER STRIKES AND THE LEGALITY OF FORCIBLE FEEDING

INTRODUCTION

The hunger strike by the IRA prisoners and the death of ten of the hunger strikers brings to the fore once again the legal problems surrounding hunger strikes and the forcible-feeding of prisoners on hunger strike. Three main questions come to mind: can a hunger striker sue for damages under the civil law if prison officials forcibly feed him or seek an injunction to restrain the authorities from so doing? Would the prison authorities incur liability under the criminal law if they forcibly fed a prisoner? Or would the authorities be guilty of a crime if they failed to force-feed and allowed a prisoner to die as they have done in Northern Ireland?

The Basic Proposition

Before we go into a detailed discussion of the issues involved, it would be well and proper to bear in mind the basic proposition in the English law of Tort that "the direct application of any physical force to the person of another may amount to a battery" (Clerk and Lindell on Torts (14th Ed. 1975) Para. 672). This would mean of course that prima facie, forcible feeding would be a battery since the forcible feeding of a prisoner would involve the direct application of force. The question then is whether there is any justification in the law for such application of force.

Leigh v. Gladstone (1909) 26 T.L.R. 139

There is a dearth of authorities in this area of the law. The only recorded decision is Leigh v. Gladstone, a decision at first instance of the then Chief Justice, Lord Alverstone. In this case the medical officer of a prison forcibly fed a woman prisoner who was undergoing a hunger strike. She brought an action for damages in assault and sought an injunction to restrain its repetition. Counsel argued that unless there was something in the prison system which permitted this treatment, it was obvious that it could not be justified. He argued that the forcible feeding was a means of prison discipline and further noted that no Act of Parliament or rule governing the management of prisons authorized such treatment of a prisoner. Medical evidence was called as to the effects and medical propriety of forced-feeding and the general feeling was that at some stage, when the life of the prisoner was threatened, it was justifiable to force-feed. There was however no argument on the legality of forced feeding per se or discussion of the relevant principles of law nor were authorities cited. In summing up, the Lord Chief Justice directed the jury that:

"It was the duty, both under the rules and apart from the rules, of the officials to preserve the health and lives of the prisoners, who were in the custody of the Crown."

(1909) 26 T.L.R. 139, 142
He then left it to the jury to decide if the proper means had been used in forced-feeding and whether in the circumstances, it was necessary. The jury found for the defendants.

The case therefore seems to be authority for the proposition that not only is forcible-feeding justifiable, it is imperative in some circumstances, there being a duty to do so.

Although it is the only authority on the point and has not been overruled by a higher court, Leigh v. Gladstone is, it is submitted, far from conclusive. It has variously been criticised as being a departure from basic principles and as merely being a first instance unreasoned direction to the jury without adequate legal argument heard. It has been pointed out that it was assumed, but not argued, that forcible-feeding was justifiable to save a prisoner's life. Finally, it has been noted that Leigh v. Gladstone was decided at a time when suicide and attempted suicide were crimes and hence to force-feed was merely preventing the commission of a crime and therefore justifiable. It therefore follows, some argue, that suicide no longer being a crime, Leigh v. Gladstone loses much of its force. It must, however be pointed out that there was no mention of prevention of suicide being the basis of the judge's ruling in the report of the case itself.

Leigh v. Gladstone being thus inconclusive, we must look to general principles for answers to our questions.

FORCED-FEEDING AND THE CIVIL LAW

Prison Rules

It will be remembered that Lord Alverstone based his judgment upon a duty "under the rules and apart from the rules". The rules referred to are of course the Prison Rules then in force. A close study of the Rules then and now in force will however reveal that they did not and do not confer a power or impose a duty to feed prisoners by force (See [1974] Crim. L.R. 205,207) ... nor do the local Prison Rules (Cap 234, Laws of Hong Kong) which contain very similar provisions as under the English Prison Rules. Three rules which are common to both local and English Prison Rules merit discussion. Rule 161 imposes a duty on the Medical Officer to draw attention to a prisoner whom he believes to have suicidal tendencies in order that special observation may be kept on such a prisoner; Rule 67 provides that mechanical restraints may be used to prevent a prisoner from injuring himself; and Rule 23 provides that a prisoner may not have in his possession unauthorised articles which may be confiscated. These are the only Rules which are relevant to the question of prevention of suicide but it is submitted that though such may be the rationale behind them, they do not in any way provide a general justification for forced-feeding in order to prevent suicide.

Common Law

We have just seen that in fact there is no duty "under the rules" to force-feed. What about a duty "apart from the rules"? Under this heading, two issues must be examined — the prevention of suicide and forcible-feeding as medical treatment.

The question of prevention of suicide as a basis of Leigh v. Gladstone has already been discussed above so

we need not go into the question again. What must, however, be noted is that there is doubt as to whether death by self-starvation is suicide as some argue that suicide may not be committed by omission (See Glanville Williams, *The Sanctity of Life and The Criminal Law* (1958) p. 245 note 2)

As to the question of medical treatment, the fundamental principle is well expressed in a dictum of the famous American jurist, Cardozo J.:

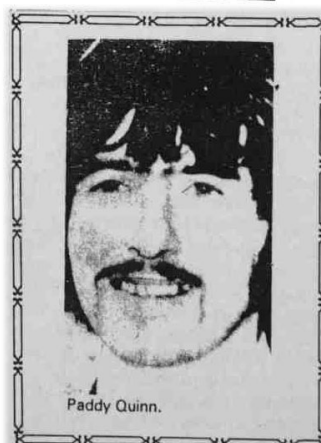
"Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages. This is true except in cases of emergency where a patient is unconscious and where it is necessary to operate before consent can be obtained."

(Schloendorff v. Society of the New York Hospital 211 N.Y.R. 125, 129-130)

It is trite law that in the normal course of events, a patient's consent must be freely and fully given, based on a clear explanation by the doctor of the nature of the treatment and risks involved. The only well recognised exception is in the case of an emergency where the consent of the patient cannot be obtained due to his own condition. Otherwise, it matters not that the treatment is for the patient's benefits: without consent, the doctor's actions are still batteries. Further, the overwhelming view is that the ordinary principles apply even where a patient's life is in danger and a patient has an absolute right of self-determination in the matter of medical treatment. The point has, however, not been litigated in either Hong Kong or England.

A further exception to this is that where a patient is not competent to give or refuse consent, it may be given on his behalf by his close relatives. In Leigh v. Gladstone, one of the doctors giving evidence said that any one who refused his food was not of sound mind. This however is a fiction which has long since been rejected.

In the recent spate of hunger strikes by prisoners in the Maze Prison, there was only one example of this. After 47 days, the family of Paddy Quinn signed



authorization to save his life on grounds that he was not capable of making a rational decision.

The position at common law seems to be therefore that there is no basis for the decision in Leigh v. Gladstone save the slender argument of pre-

vention of suicide which, as has already been pointed out, was not mentioned in the report of the case itself. The position is best expressed in the words of Lord Devlin who said extra-judicially that "the common law does not consider that an act done without a person's consent but for his benefit is deserving of reward or even of immunity from the action of trespass The good samaritan is a character unesteemed by the English Law." (Samples of Law-making (1962) p. 90).

Prison Authority

Under this heading, we will consider whether the fact of imprisonment modifies the common law applicable as discussed above. The basic question is whether a prisoner forfeits that right of sovereignty over his body which we have seen to be true of the ordinary citizen.

Some argue that as prisoners fall into the same category as children and the insane, their consent to medical treatment may be similarly dispensed with. This, however, is a fallacious analogy as prisoners, unlike children and the insane, are perfectly capable of understanding what is happening. Another fallacious argument which has been rejected is that forcible feeding is a form of chastisement and therefore the prison authorities may use such.

Policy considerations may, however, alter the usual common law rules. One is that prison authorities may be embarrassed by the death of a prisoner. The contrary argument is of course that prison authorities must not give in to such moral blackmail. Another argument is the threat of reprisals—an argument most relevant in the IRA context but it is submitted that this is not a strong enough argument to merit the changing of such basic common law rules. It is also argued that prison is meant to rehabilitate a prisoner so how can he be re-habilitated if he dies? A final argument is that a prisoner must serve the full sentence so that

"it is (the prison authorities') duty to see that a prison sentence is completed, and force may obviously be necessary to prevent a prisoner escaping, either to the outside world or to the next, this obligation."

(David Wilson, *The Sunday Times*, June 16, 1974)

It is however felt that none of these arguments bear sufficient weight.

FORCED-FEEDING AND THE CRIMINAL LAW

Now we may move on to survey the issue of forced-feeding in the criminal law. As mentioned above, there are two possible alternatives. First, if there is a duty to force-feed, it may be an offence not to do so. Secondly, if there is no power to force-feed, it may be a crime to do so.

Can it be a crime not to force-feed?

If we accept that Leigh v. Gladstone imposed a duty to preserve a prisoner's life even to the point of forcible-feeding him, then it must be manslaughter to let him die without forced-feeding.

It has been accepted that it is possible to commit manslaughter by omission, but in *R. v. Lowe* ([1973] 1 All E.R. 803) it was held that only manslaughter by gross negligence (as opposed to constructive manslaughter) can be committed in this fashion.

The mens rea for this offence is to be grossly negligent as to whether the victim should die or at least be seriously injured. This is easily satisfied since any reasonable prison medical officer will know perfectly well that death is likely to ensue if he fails to force-feed.

But when does an omission constitute the actus reus of the offence? There must be an omission of some sort of duty, be it moral, contractual, statutory, common law or even gratuitously-assumed or arising from a special relationship. The duty of care usually arises in situations where there is total dependence on the part of the victim on the defendant, so that the former has to rely on the latter for survival. But where an alternative is available to the victim of which the victim chooses not to avail himself then the status of the dependence is destroyed and the neglect would not be regarded as manslaughter. Thus even if the prisoner is dependant on the prison authorities, their duty is discharged by the provision of adequate food, shelter, medical care and so forth. It would be going a little too far to say that the duty imposed by Lord Alverstone in *Leigh v. Gladstone* was to preserve the life and health of a prisoner by positive means against his wishes. Such preservation requires no doubt a prison doctor to override a prisoner's objections to all manner of medical treatment, but forced-feeding is something of quite a different nature, it is not intrinsically therapeutic or clinical; merely its administration requires some medical supervision.

There are many more doubts to the proposition that failure to force-feed is to commit gross negligence manslaughter. First, can it be said to be a duty to force feed if, as mentioned earlier, it is likely to cause pain and danger to the prisoner's life? Secondly, is it logical to say that the notoriously elusive notion of 'gross negligence' on the part of the medical officer is satisfied by failure to force feed? Lastly, is it not the act of self-starvation which caused the death, rather than the act of failure to force-feed. It is therefore unlikely that gross negligence manslaughter is committed by failure to force feed.

Another consideration is whether the doctor is guilty of complicity in the suicide or attempted suicide of the hunger-strikes under s. 33B of the Offences Against the Person Ordinance (Cap. 212)

Aiding, abetting, counselling and procuring normally requires some positive act of assistance or encouragement. The exception to this is where the aider or abettor is in a position to control the other person and does nothing to stop him. The fact that the prisoners are under some sort of control by imposition of power under the Prison Rules, and the very fact of imprisonment do not suffice in saying that the prison authorities have the required power of control.

The authorities will be guilty of aiding and abetting a suicide or an attempted suicide if they fail to confiscate the lethal instrument which a prisoner intends using to kill himself since under the Prison Rule 67, the

prison authorities have the right to do so. But as regards a hunger-strike, there can be no complicity based on failure to control, where the type of control required is not sanctioned by law and would accordingly involve an unlawful act. The argument therefore goes circular, because we are back to the point where the legality of force-feeding is in issue.

Can forced-feeding itself be a crime?

If such is a crime, this obviously assumes that there is no power to force-feed.

Although the elements of the acts constituting batteries in tort are principally the same as those constituting criminal assaults, it is not surprising that the courts would be more reluctant to hold doctors amenable to penal sanctions and stigmatise them as criminals than to hold them liable in damages for tortious action. This is normally done under the disguise of invoking defences available to criminal charges but not to torts.

With respect to more serious aggravated assaults, no offence is committed under s.17 of Cap 212, since unlawful and malicious wounding or causing any grievous bodily harm requires intent to do some grievous bodily harm under this section. This ulterior intent will definitely not be satisfied by at most recklessness on the part of the doctors.

Though under s. 19 of Cap. 212, no ulterior intent is required, no offence is likely to have been committed because a conviction of unlawful or malicious wounding or inflicting any grievous bodily harm requires "really serious harm" or a wound to be inflicted. The former is unlikely. A wound requires the continuity of the whole skin, epidermis and dermis, to be broken, but the rupture of an internal membrane may also suffice (*R. v. Waltham* (1849) 3 Cox C.C. 342). Forced-feeding thus involves wounding. It is no defence for the doctor to say that he does not wound the prisoner maliciously rather he intends to promote health and save life. This is because the objects of his actions only go to a question of motive and not mens rea. The courts can however interfere by holding that the wound inflicted is lawful and thus defeating the main requirement under this offence.

Offences under s. 40 of Cap. 212, however, are less easy to circumvent. Assault occasioning actual bodily harm "includes any hurt or injury calculated to interfere with the health or comfort of the prosecutor" (*R. v. Miller* [1954] 2 Q.B. 282, 292 per Lynsken J.). Unless defences of a more fundamental

character can be raised eg. a medical procedure for a victim's benefit cannot be said to interfere with his health or comfort, the slightest degree of personal contact constitutes an offence.

Another avenue of escape is afforded by s. 37 of Cap 212. If the justices "find the assault or battery to have been justified, or so trifling as not to merit any punishment and so dismiss a complainant, they must provide the accused with a certificate to that effect, in which case he shall be released from all further or other proceedings, civil or criminal, for the same cause." The reference to trifling, being a matter of degree and discretion, may well be apt to cover at least some batteries inflicted therapeutically i.e. forced-feeding. Reference to "justification" obviously refers to legal justification. Justification can rest on two grounds. First, there is a special defence of absence of hostility, if it can be accepted that a criminal assault must be actuated by anger or hostility. The court is usually less reluctant to invoke such a defence when the conduct in question is one that is socially acceptable. Secondly, the defence of necessity may be invoked. The English courts usually hold a hostile attitude to this defence, and it has also been suggested that such defence is only available to lesser crimes than homicide. (G.H. Gordon, *The Criminal Law of Scotland* (1967), p. 373; *American Law Institute, Model Penal Code, Prop. Off. Draft 1962*, 3.02 (1).) Lord Devlin in *Samples of Lawmaking* came to our relief and formulated a workable solution though not phrased as defence of necessity in so many words. He says, "An assault would not be treated as criminal if it is done for the purpose of averting danger to life or grave and immediate injury to health." Taking into account the aforesaid reason, namely the imposition of criminal liability gives rise to much graver consequences in criminal law than in civil law, it is understandable that such defences will be allowed in most cases.

Even if the defences are not allowed, it is still possible for the courts to hold the doctors criminally liable for forced-feeding in the unlikely event of their being minded to do so

on the one hand, and grant an absolute or conditional discharge on the other. But that can never be an "adequate argument where even a formal conviction without further penalty seems unjust in principle." (Law Commission Working Paper No. 55: *Codification of the Common Law Defences of General Application* CONCLUSION

As can be seen from the above discussion, the law governing forced-feeding and hunger strikers is in a very confused state. How then can we account for the very hard and unyielding attitude adopted by the present Thatcher Government? It is felt that it is at bottom a question of policy to be decided by the Government then in rule. This can be seen from the sudden change in practice adopted in 1973-1974 when again, the IRA prisoners were on hunger strike. Hunger strikers, Dolours and Marian Price, were forced and the then Home Secretary, Mr. Robert Carr, spoke defending the practice saying,

"Of course, artificial feeding, particularly when accompanied by force, against the wish of a prisoner, is horrible and terrible. It is resorted to only as a last resort and as an alternative to endangering the life of the prisoner — an alternative we have never regarded as being acceptable in this country." He further pointed out that forced feeding had been the policy under successive governments. (See 868 H.C. Debs., col. 442; January 30, 1974). Six months later however, a new Home Secretary, Mr. Roy Jenkins, made it plain that he did not approve of forced-feeding and would like to see it abandoned unless the prisoner's capacity for rational judgment was impaired by illness. (See 877 H.C. Debs., col 451; July 17, 1974)

As the law stands therefore, much will depend on decisions of the Executive. This situation, in which decisions of the Executive in a way take precedence over the law, is far from satisfactory under a system where the Judicial and Executive functions ought in theory to be separated. The law ought then to be reformed and made clear but the path of reform will not be an easy one. (See [1974] Crim L.R. 205, 207-8 and Graham Zellick, *The Forcible Feeding of Prisoners: An Examination of The Legality of Enforced Therapy*, [1976] PL 153, 185-7)

— Bernardine Lam —
John Yan —



WHAT HAPPENS IN STARVATION?

The human body has a special ability to survive for a limited period of time without food. Apart from the recent fasting frenzy in Northern Ireland spearheaded by the death of Bobby Sands, one well-authenticated example was the case of Terence MacSwiney, the Irish revolutionist and mayor of Cork, who survived for 74 days in his famous hunger strike in a British prison in 1920 before dying of starvation.

The ultimate question is the means whereby the body accommodates itself to prolonged starvation. Of equal importance is the study of psychological development and behavioral changes experienced by the hunger striker, particularly during the pre-terminal phases.

Hunger is a dull ache or gnawing sensation referred to the lower mid-chest region. It is the body's first strong demand for nutriment, and, not satisfied, is likely to grow into a highly uncomfortable pang, less definitely localized as it becomes more intense. Besides the dull ache, lassitude and drowsiness may appear, or faintness, or headache, or irritability and restlessness such that continuous effort in ordinary affairs becomes increasingly difficult. These states differ with individuals such as headache in one or faintness in another.

To understand the body's capability to utilize its resources for survival in food deprivation for long periods, we must examine its basic needs. The primary need is fuel to supply energy for body processes. Usually the principal fuel is glucose, and its most critical user is the brain which is estimated to consume as much as 66% of the total daily supply of glucose. A sudden shortage of glucose may bring about behavioral changes, confusion, coma and, if prolonged, structural damage to the brain resulting in death.

The body's main store of glucose is in the liver but it can only supply the brain's need for only a few hours. Once the supply of easily available glucose is exhausted, body proteins will undergo breakdown. The mobilization of body proteins as fuel may impair some biological functions dependent on proteins. Because the metabolic demands of the brain are superior, body proteins normally performing important biological functions are sacrificed to maintain blood sugar level.

During the early period of starvation, the loss of protein, glucose, body minerals and water results in the initial loss of weight. A general example can serve to illustrate this loss. After fasting for two days, a person loses about 1.5 Kg. The next two days he eats a little and gains back more than 1 Kg. This large weight shift is attributable to the changes in body water. When a person is fasting, the lack of salt consumption is directly proportional to the loss of body water. On any given day, approximately 99% of the 45 gallons of fluids that pass through the kidneys undergoes reabsorption by osmotic pressure through the presence of salt in the body. As starvation continues, a larger proportion of the weight loss is due to the consumption of body fat. As fat is richer in energy than other nutrients, the weight loss is much slower as starvation is prolonged.

Apart from such apparent signs of

starvation as weight loss and fall in body temperature, other symptoms will also appear as starvation continues. The person will suffer from chronic vomiting. Due to a severe deficiency of vitamins, he may lose control over his muscles — an illness technically termed as nystagmus. The eyes will lose focus and move in an uncontrollable fashion — first horizontal, then vertical. As food deprivation becomes more severe, the

stunted immediately. The child develops the emaciated condition called marasmus. In situations where protein deficiency is more severe than just calories deficiency, the child will have the symptoms of the disease called kwashiorkor (an African word meaning displaced child in the sense of having been weaned). The typical signs of kwashiorkor are apathy, loss of appetite, edema and changes in the skin and hair.

and which can often be fatal. Likewise, intravenous feeding is not a practicable device since it is time-consuming and dependent on the prisoner's co-operation. It may be useful if the patient is too weak to resist or unconscious. But the dangers return as soon as strength is regained.

An understanding of the mental state of the hunger strikers will provide a clearer picture of their conditions, especially for those participating in the suicidal frenzy in Northern Ireland. The launching of any hunger strike has always been accompanied by some ulterior motive, whether political or not. Biologically, the starving person will undergo a series of physical and mental changes, culminating in eventual death. The body becomes emaciated, the senses become weaker and weaker until falling into coma.

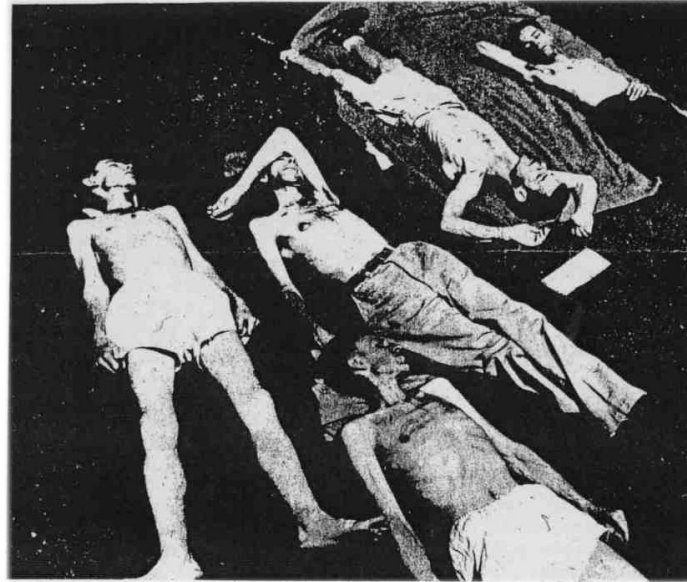
The significant period of psychological turmoil is during the 'event' of dying — the protracted period before dying. There is the constant dilemma within oneself between apprehension about prolonged suffering and self-sacrifice for the greater cause. By using the intellectual process of logical deduction, the person forces himself to think and believe that death and pain is a certainty, a necessity. Yet, the inner fearful tension can never be truly suppressed, especially when there is time available for the hunger striker to review upon his predicament. This is particularly true of those who are prisoners.

Fear of pain and death exerts immense pressure on the stamina of the person. The event of death is certain; the timing is uncertain. Fear of one's own process of dying includes the unwelcome prospect of suffering and fear that one's will will 'crack' during the ordeal. One may prove weak and come apart so as to succumb to the animal drive for food and warmth.

However, towards the last stages of starvation, the bodily and mental strength continues to wane till the person verges on the threshold of life and death. This stage varies with individuals according to the energy reserve and the body composition. These altered states of consciousness determine the extent to which the person is deprived of the ability to perceive, interpret and express his own condition. Nevertheless, some are capable of remaining rational and awake till they die, thereby resisting any attempt by medical officers to save their lives through forcible feeding.

Self-imposed starvation thus is an unnatural undertaking which triggers a chain of physiological as well as psychological changes in the human body. No doubt, those who join in this movement believe in a positive motivation towards dying — as a means to an end rather than an end in itself. Successful or not, this means only leads to human waste, to foreshorten one of the most precious things on earth — life.

— Mabel Ng —



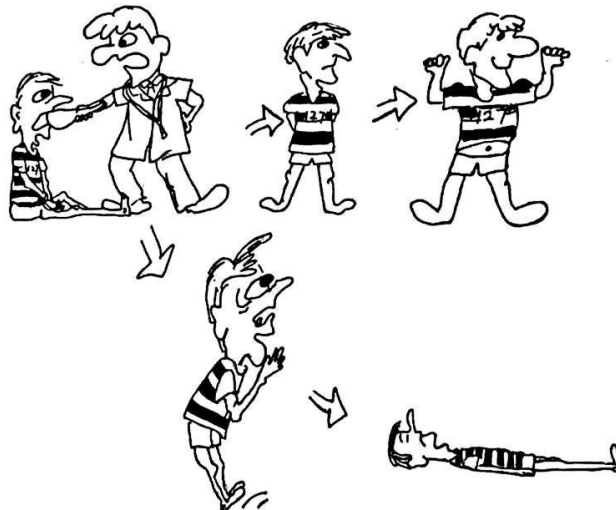
SEMISTARVED VOLUNTEER SUBJECTS test in sun during an experiment undertaken in 1944 by Ansel Keys and his colleagues at the University of Minnesota. Volunteers were conscientious ob-

jectors of World War II. Their fast was only partial; they received a ration of 1,600 calories per day for 168 days. This photograph was made by Wallace Kirkland of Life and is copyrighted by Time Inc.

person will slowly go blind. Similarly, the sensory organs will become less sharp in the sense that the powers of speech and hearing will slacken.

As starvation continues, several factors come to the aid of the body. The body metabolic rate slows down and the body's requirement for calories is further reduced. The fasting person consequently engages in less spontaneous activities and becomes more sparing in the use of energy. His chances to survive hinge on individual circum-

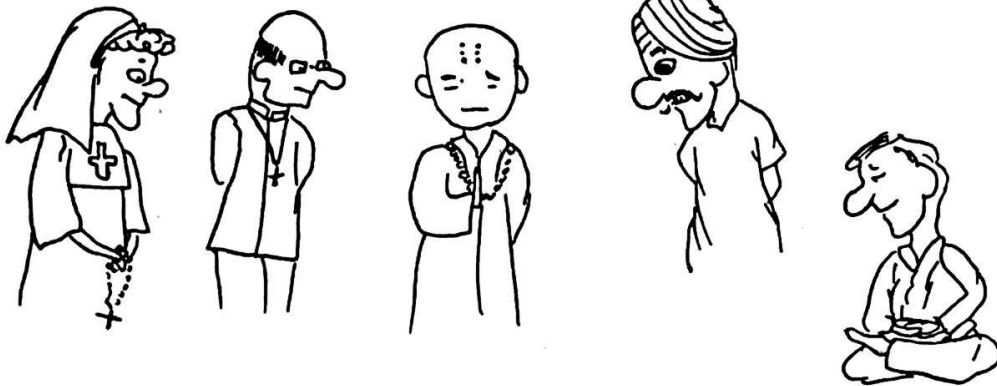
Thus, is there any medical means to deal with this mania of self-imposed starvation? Forcible-feeding seems to be a possible panacea to the problem of hunger strike in prisons. But, biologically speaking, its adoption has been questioned in the sense that such a method may lead to hazardous results. Forced-feeding may assume various forms. It ranges from a hand on the shoulder of the prisoner whilst eating to feeding with the aid of tubes and other devices.



stances such as, for instance, body size, his reserve of fat and other environmental factors such as temperature and humidity.

The power of an adult to survive prolonged food deprivation is different from that of a child, especially very young children — because children have not built up the large masses of fat and muscles that allow adults to survive longer. In a child who is suffering from starvation, body growth is

If forced-feeding is resorted to, danger is likely to flow even when the person submits to the process, not to speak of the risks involved when the prisoner refuses to take in the food. Where the prisoner does not resist, the tube itself may choke the patient and its removal often results in vomiting. The vomit may then enter the lung. The most serious danger is the introduction of food into the lungs, which is a common result of forcible-feeding



ing on the weak sentiments of mankind — humanitarian feelings. Besides, life is precious and after-life is an unproven belief. If there is a possibility that we are to become nothing when we die, that is a powerful reason for living our lives as well as we can.

— Sonia Ng —



THE RELIGIOUS ASPECT OF HUNGER STRIKES

Although these hunger strikers in the limelight were manifestly Catholics, most Christians (Catholics and Protestants) onlookers would frown at such a suicidal act. The rationale behind the whole matter is almost every way contradictory to biblical teachings. Christians believe that they are not the lord of their own lives, for they have been bought at a great price, namely, the death of Jesus on the Cross. Their lives having been redeemed through this wondrous Salvation plan, God becomes the Lord of their lives. Nobody in his new life is at liberty to forsake or to misuse his new life not according to the Lord's will. Moreover, the Holy Spirit will be sent to guard the saved lives, the bodies, being His temple. Therefore, Christians are to keep their bodies clean and healthy and free from vile. Should they have to endanger or forsake their lives, it can only be done for the sake of God. Most of all, one of the Ten Commandments — "Thou Shalt not Kill" — is extended to the commitment of suicide. Even if one does not intend to go on hunger strike to its full extent, i.e. to reach the final stage of 'Death', it should still be used only as the last means to fight for rights which one legally possesses.

In Christianity, fasting is an analogous act to hunger strike, but their respective purposes are very different. Fasting is to abstain from all or certain food. It is a form of self-dedication, sanctification and an act of repentance, a plea for mercy. Fasting is not an act to be shown before others, whereas hunger striking is mainly an act to rally mob support. In the gospels, Jesus actually taught us not to let others notice that we were fasting.

Islamic beliefs are generally against the commitment of suicide. In Islamic history, never was there recorded a fervent believer who had endangered

his own life to attain his purpose in desperation. Islam would advocate a much more positive means to fight for such rights.

— Winnie Tam —

CONCLUSION

The inevitable result of less than 100 days' persistent hunger strike is DEATH which is the anticlimax of the series of events leading to it. These hunger strikers have to be motivated by strong sentiments in order to face the most horrifying ordeal of mankind — the unknown DEATH.

These people believe that they are dying for a valuable cause. Even in the midst of dying, they still insist on listening to the hourly news on the radio hoping that the British have succumbed to them.

It is controversial why these IRA members choose hunger strike as the means to publicize their cause. Some of them, perhaps, are influenced or comforted by the idea that death is only a transition to eternal afterlife. They are also affected by the notion of suffering. "It is not those who inflict but those who can suffer the most who will conquer," said Terence MacSwiney, a famous IRA hunger striker who died in 1920 after 74 days' fasting. Besides, the pressure from fellow prisoners is heavy. To volunteers to go on strike and then quit would be an overwhelming disgrace, akin to the basic Irish horror of becoming an informer.

Apart from all political and legal issues, does the moral implication of the means of hunger strike justify the end which is to publicize a fruitless demand for treatment as political prisoners instead of ordinary prisoners?

On the whole, public opinion can

be divided into two kinds. Some seem to sympathize with these 'patriotic heroes' who become far more civil and amiable as death approaches. Poems are written to them and special songs are played for them by sympathetic local stations. On the other hand, some view their hunger strike as the silliest act — 'an astounding kind of sacrifice — a brutal, lingering death, full of hatred and martyrdom, so fanatical and Irish.'

Historically, ancient Greeks and Romans apparently cared less about how long one lived than how well one lived, and they did not condemn suicide. In the 18th century, there were two different views championed by Jean Jacques Rousseau, a French philosopher and David Hume, a Scottish philosopher, respectively. Rousseau transferred the locus of sin in suicide from the individual to society. Hume advocated the idea that suicide was neither a crime nor a transgression of our basic duties to God, fellow citizens or ourselves.

It is questionable whether one should endanger one's life to threaten the Government to succumb to one's wishes. Western culture, influenced by religious beliefs, regards suicide as a moral wrong. In Chinese culture, suicide is also a moral sin as it is the traditional belief that we should preserve our physique, which is given by our parents, in the best condition.

If one looks at hunger strike from another angle, one may find the hunger strikers both selfish and self-centered in this 'Me' century instead of being heroic dying for a noble cause. They disregard the sentiments of their families and friends who are usually helpless, sitting beside the beds, haunted by doubts about whether or not to interfere.

In fact, we should avoid this kind of tactics to achieve our end by play-



GOOD NEWS FOR ASPIRING BARRISTERS

The Attorney General, Mr. John Griffiths, Q.C., recently announced that pursuant to negotiations with the English Bar Council, the Bar of England and Wales has decided to give recognition to the University of Hong Kong PCLL qualification and to practice at the Bar of Hong Kong.

To give effect to this, the Senate of the Inns of Court and the Bar approved, on 30th July, 1981, new Consolidated Regulation 37C. This provides that any member of the Bar of Hong Kong of not less than 3 years' standing will be entitled as of right to be called at the Bar of England and Wales, subject to fulfilling the conditions of that Regulation. In essence, a local barrister who wishes to avail himself of this privilege will have to:

- a) be of not less than 3 years' standing at the Bar of Hong Kong;
- b) join one of the Inns of Court and eat not less than 4 terms of dinners (the usual requirement is 12 terms);
- c) produce a certificate of his call to the Hong Kong Bar and also a certificate from the Attorney General of Hong Kong that he is a fit and proper person to be called at the English Bar; and
- d) serve pupillage according to the normal pupillage rules for English barristers. This however may be waived at the discretion of the Senate under Regulation 42.

Further, a local barrister will be exempted from taking part in the Practical Exercises run by the Inns of Court School of Law on production of a certificate that he has passed the PCLL course at the University of Hong Kong or that he has been in active practice at the Bar of Hong Kong for the immediately preceding 3 years. Special conditions apply to those who have received exemptions from any part of the PCLL course.

Those who wish to know more about this new development may contact the Bar Association who, it is believed, has in its possession the full text of Regulation 37C.

— John Yan —

SIGN LANGUAGE

Instructions:

Insert a familiar sign or symbol in the spaces below so that the symbol represents complete words with the same meaning as those in the opposite column. These are the signs to fill in:

- | | | | | | |
|---|---------|---|----------|---|---------|
| + | (plus) | " | (inch) | , | (comma) |
| π | (pi) | . | (period) | * | (star) |
| & | (and) | ✓ | (check) | ♥ | (heart) |
| ¢ | (cent) | — | (dash) | → | (arrow) |
| : | (colon) | x | (times) | | |

Example:	ical	Magazine
1) s		Fragrance
2) s	al	Footwear
3) s	nder	Chief
4) tch		Hole
5) n		Limited
6) tle		Surprise
7) sur		Excess
8) ist		Settler
9) ing		Bold
10) pas		Pleasures
11) en		Encourage
12) p		Hurt
13) mate		Defeat

JOKES

A man ran up to the ticket window just as the commuter train pulled out. "That's my train," he panted to the clerk. "If I run, can I catch it?" "Mister," said the clerk, "If you run, you can beat it."

A mother was trying to teach her four year old elementary arithmetics. "If mom and dad and granny go on a picnic, how many cokes would you bring?"

"Three," said the toddler. "No, it should be four," said the mom. The child blurted, "But I want only a root beer."

Amoeba: "Not tonight, dear, I've a splitting headache."

During a flood in California, a fella whose house was washed away discovered he had musical ability. He told a friend, "My wife held on to a bed and floated down the canyon."

"How did that prove your musical talents?"

"I followed her on a piano."

An Indain was sending smoke signals when he suddenly threw away the large blanket and took a small one. He said, "Now is the small talk."

Tom said, "I have been feeding the dog garlic and now his bark is worse than his bite."

The professor said sternly before the exam and repeated the warning twice during the exam, "I shall collect the papers at once after the exam and will in no case accept any handed in late." After three hours, the professor cried, "Stop!" All stopped and handed in their papers but one kept writing furiously. About half an hour later, he approached the professor who refused to accept the paper. The student drew himself up in full stature and said,

"Professor, do you know my name?" The professor looked up and said angrily, "No!" The student said, "Terrific!" and then swiftly pushed his papers into the middle of the pile of exam papers.

"I've been coming with your daughter for fifteen years now," said the bashful bachelor to the girl's father. "Would you object to our marriage?" "No," said the father, greatly relieved, "I thought you would ask for a pension."

A beautiful woman asked a famous artist to paint her in the nude and offered him \$3,000. He blushed and said it was against his principles and refused. The next day she offered to pay \$5,000 but he still refused. When she offered \$7,000, he thought it over for a long time and requested earnestly, "But please may I just put on a pair of socks for putting my brushes?"

The boss of the firm bought several sign-boards with "DO IT NOW" on them to boost work drive. The next day, the accountant absconded, the secretary asked for a raise and the office boy put poison in his coffee.

A secret agent walked into a wedding and asked, "Is this the wedding of Mr. Smith?" The usher replied, "Yes."

"Well, he is a lousy criminal, a liar, and a swine. I have come to arrest him but I'll sit here till the wedding is over." The usher then said, "Friends of the groom at the right please."

A wife complained, "It's a shame the way we live. My father pays our rent, my sister pays our food, my sister-in-law pays our clothes." The husband nodded and said, "Indeed, you should be ashamed, your two uncles never give us a dime."

— Collected by Tommy Lo —

LETTER TO THE EDITOR

Dear Editors,

In our June issue 1981, Winnie Tam writes about the success of Law School students in various musical events in the Union Festival. I was adjudicator for the English solo and group entries and I was indeed most impressed by many of the performers both from the School of Law and from other faculties.

However, there is no doubt that Linda Li and Winnie Tam were outstanding vocally and musically. In fact I was so impressed by them that I have invited them both to perform the solo parts in a performance of Haydn's "Theresa" Mass, with the Hong Kong Oratorio Society Choir and the Hong Kong Chamber Orchestra in the City Hall Concert Hall on Sunday October

4th at 8 pm. I will be conducting the performance. I hope therefore that the Law School will turn out in full to support this concert, where (if you count me) there will be three members of the School taking principal parts.

Yours sincerely,

Leonard Pegg

Presenter: Hong Kong Oratorio Society.

Date: 4th October, 1981.

Place: City Hall, Concert Hall.

Time: 8 p.m.

Programme: Haydn's Theresa Mass. (accompanied by Hong Kong Chamber Orchestra. Individual performances by outstanding members of the Society.

Major Participants from our school: Mr. Leonard Pegg (Conductor) Miss Linda Li (soloist) Miss Winnie Tam (soloist)

Tickets: available at City Hall Box Office at reasonable prices to be announced.

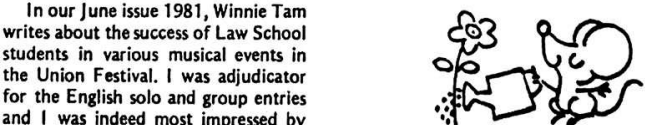
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ENJOY TODAY!



SEPTEMBER'S BIG EVENT

Attention! The Law School will be holding an Annual Ball on 18th September, 1981 (Friday) at 7:00 p.m. in the Connaught Room, Mandarin Hotel. The Hon. Mr. Justice McMullin will be the guest of honour that evening. There will be a list of very handsome raffle prizes too. Tickets are \$160.00 per couple or \$80.00 per head. Please do give us your support by honouring us with your presence that evening.

The Annual Ball Organizing Committee 1981

八零初夏，偕三數友人，遠赴四川雲南、過長江三峽、北至內蒙，三十多天的旅程，感觸良多，留下不少遊戲文字，謹輯其中一二，獻與當日共患難的團友。

昆明：經過三十多小時的火車旅程，終於抵達昆明了。這個位於雲貴高原的大城市，給人的第一個感覺就是有點與眾不同，憧憧大樓，高約三四層，路面寬闊，在陣陣乾風中，總洋溢著一種回夷民族的風味。

午飯後前赴龍門、背倚西山、面臨滇池，前有一石道，依天然山勢修築而成，一登龍門，「笑仰似離天尺五，憑欄恰在水中央」。從龍門俯瞰滇池，但見明鏡五百映西山，孤帆半葉破滇池，五百里滇池，「數千年往事，把酒凌虛，嘆滾滾英雄誰在？」

義勇軍進行曲的作曲人聶耳就葬在西山山腰，墓前一塊黑碑，一面墓誌，加上一欄籬籬，簡單清秀，山脚尚有一張天虛墓，為義勇軍進行曲的填詞者，聶耳天虛，金壁爭輝，可惜天妒英才，二人皆廿歲而逝，默立一回，聶耳墓前借鮮花，一葉離前贈紅顏。

長江：由重慶沿長江東行，三天

才抵達武漢，坐在船頭，清風徐來，倒相當寫意！兩岸猿聲不復啼，輕舟又過萬重山。長江夜景，但見點點燐光，夜航江上，聽那浪聲徐徐，遠處明燈數顆，近處岩巖掩映，加上星幕低垂，佇立船旁，一陣清風過處，不期然有種「寄蜉於天地，渺蒼海之一粟」的感慨。忽然四週一片漆黑，只有靠夜明燈導航，人生於世，又有多少人能確定自己的目標，一心不二，勇往直前？

未見岡巒起伏，也沒有洶湧波濤，亦未見甚麼別緻景色，兩岸斷岩片片，有種錯落感，紛亂中帶點寧靜，故國河山，多少英雄長垂淚，就祇怕，這種寧靜能維持多久？

凌晨五時抵白帝城，白帝城已今非昔比，只剩幾許樓台，灑灑堆早已炸沉，水八陣再不復見，大有「舞榭歌臺，風流總被雨打風吹去」之感。過了白帝城，就是三峽的第一峽——瞿塘峽了。

三峽勝在雄偉險急，剛進入三峽，但見兩岸峭壁萬仞，河道迂迴，只是當年那份險惡已不復見，道寬流慢，就以水急難淺著名的西陵峽亦是平坦無阻，神女十二峰不外如是，有點失望，或許，景物始終是幻象憧憬

佳，一朝得見，對長江的幻影也隨之一一破滅，忽然想起陳若曦在「歸」裏描寫長江：「當年在長江嬉水，夢幻他朝散髮弄扁舟，如今一朝江上，感情卻是那般錯綜複雜……」

夜瀾人靜，漫天星幕，與昨晚又是迥然不同，昨晚河道狹窄，小丘起伏，星雲交織，今晚卻是平原沃野伴兩岸，繁星閃耀，不帶一點雲彩，視野遼闊，天河交合，嘆窮蒼之奇妙，笑人世之逐鹿，想起前程，似定非定，學業、感情、人生終不能擺脫這林林總總……現在是否滿意將來，又是否甘心於既定的將來？

在內在被問及國籍時，總帶著幾分驕傲地答：「我們是中國人。」然而，這份驕傲，這份自豪的民族感情又能維持多久？他朝回港，這份「衝動」又會奔息間煙沒於中環的簇簇叢生中……

過了洞庭湖，武漢三鎮已遙遙在望，辛亥革命的發源地，其實這只不過是七十多年前的事，對一個民族來說，七十年並不是一段怎樣長的日子，可是，這七十年卻是頁頁皆淚，革命成功，隨之單閼割據，國共之爭，八年抗戰，紅白之

戰，二萬五千里長征，帶來三反五反，百花齊放，紅旗未定，卻牽起扣人心弦的文化大革命，或許，今天該是她喘息的時侯了！在武漢長江橋畔，看滔滔黃水奔流，嘆千古江山依舊，一幕幕歷史陳跡不斷浮現眼前……

草原：以藍天為瓦樑，以大地為四壁，極目四盼，遠處藍天碧草，天地相連，近處綠茵青蔥，點上幾片白雲，這樣浩瀚的草原還是第一次看到，置身草原中，視野遼闊，油然想起古人那種與萬化冥合，天我為一的氣度。

六小時的旅程，有一半在草原中渡過，第二個感覺是荒涼孤寂，大地長躺，惟有藍天相伴，就這樣靜悄悄的渡過數千年，雖然偶爾有一兩牛羊，但津渡過客，來亦匆時去更匆……

千乘萬騎，銀盔鐵甲，當年又曾經幾許撕殺，多少無名冤魂長埋地下，多少人肝腸寸斷，血淚洒沙場；「為我謂鳥：『且為客說，野死諒不葬，腐肉安能去子逃？』」

霞光萬道，柔中帶烈，一輪紅日，向地平線徐徐下墜，一間石屋，幾處丘壘，前面曉

霞片片，後面藍天白雲，親上一幅破爛石牆，是那樣蕭條，想起父母，想起李商隱的詩：「向晚意不適，驅車登古原，夕陽無限好，只是近黃昏。」

草原的日出光芒四射，耀眼奪目，不帶半分矜持，去年在泰山及黃山看日出，今年先在峨嵋、長江及草原看日出；泰山的日出清淡怡人，黃山日出披着雲海奔騰之勢，秀麗而帶奔放，峨嵋日出從雲裏鑽出來，有點小家兒的味道，有一天早上偶爾在火車上看到日出，日懸長江，半葉孤帆，幾片峭壁，是那般寧靜柔順，大草原的日出，光華耀目，絳茫畢露，令人有種喧將跋踣的感覺。

北京：

似無言，卻是千言萬語，似平靜，卻是波瀾起伏，感情錯綜交雜，窗外長明的是北平的夜景……

回國之遊已近尾聲，今晚會是最後一個在北平的晚上，第二次到北京，感情是那般平淡，沒有去年的雀躍，有點思家，身在北塞念南方，轉眸間又煙滅於那茫茫人海，也不知何日方能再臨故土？

深夜三時仍無睡意，把朦朧的北平夜景攝下，披上一層薄紗的北京，更顯得迷人柔順……

懷

大芽

和母親逛街市，看到隨巷都是一籬籬的荔枝，媽媽略有所思的對我說：「你大姊小時，每逢這個時節，都會食荔枝食到滿面是瘡。」她頓了一頓，眼神更顯遙遠地，說：「我們在鄉下的大屋，一進前園，便可看到一棵棵的荔枝樹，因我們的鄉下（東莞）是盛產糯米糍的。阿爺和父親在小路兩旁種了兩排菊花，和荔枝樹相輝映呢！步入前棟，便看見大廳和東西兩廂，再進去的便是天井和四間房了。」我知道由於老人家人丁不多，故母親便利用那些房子作課室，收了村中的兒童，教他們四書五經，作其「卜卜齋」，學堂是也，而父親也成為校長了。

住在大陸作農婦的姐姐，去信給母親叫她今夏回去吃荔枝，因適逢荔枝大造，有廿擔之多。母親不禁歎息道：「如果你父親還在，又怎會料到我竟能再可以重返家鄉呢！」當年父親從軍，效忠國民黨，國民黨倒台，父親惟有逃落香港，但祖父母及現居大陸的姊姊卻沒有走，因老人家的思想是寧死不離故鄉。結果祖父因屬地主之級，又因兒子效忠國民黨，更罪加一等，被共產黨政權趕離家園，屈居柴間，臨終連臉盆也缺如。我的疏唐叔

公，卻因兒子效忠共產黨，所以便得以入住我們的祖屋，並在門前釘上了一個寫着「光榮之家」的牌匾。自此，祖居不屬於我們，父親亦只有踏上「重建家園在香港」的艱苦旅程。

父親為人正直老實、重義氣。在社會上謀生，這種性格自然不是最有利，但是在家里，我們都是由衷的尊敬他、愛他。我在家裏排最小，父親也特別寵我。我小時，他喜歡飲早茶，但在他七個兒女中，就只有我願意，而且興緻勃勃的跟他去，無他，其餘的哥哥姊姊，都已是成年或青年，都有自己的班朋友，當然不會像我那般喜歡接近父親。況且飲茶後，父親定必買一包朱古力給我，我那會不喜歡跟他去！那時的每個禮拜六，是我的「渡假天」，渡假節目就是晚上睡在父親、母親的中間，享受着他們的大床和被他們包圍着的那一種溫馨感、安全感。

爸爸在我小小的心靈中，是一個博學者，無所不曉。但有一次，我要求父親告訴我煤氣生產及儲藏的長細過程，父親的解釋有些地方不能滿足我的求知慾，我臉上便現出困惑之色，父親便說：「在這世上，沒有一個人，包括你父親在內，能夠洞悉和瞭解所有的事，物，一個人永遠生在許多個謎中，知識原是無涯，人所能做到的，惟有是永遠追尋。」

我當時那能明白個中哲理，原來父親不是萬事曉，小小心靈第一次遭受打擊，失望之餘，對父親的形象有些微的改變。

我十二歲那年，父親病了。我還記得有一天，我和姊姊在早上上學前到醫院去探望他，他告訴我們他看見兩匹白馬拖着一輛白馬車在他的窗前經過（在現實世界，那是沒有可能發生的事）。到我放學回家，家中空無一人，頓時我感到一種異樣的恐懼。不久，刺耳的電話鈴聲劃破長空，但我遲疑、害怕，害怕那電話會道出我心中的恐懼。去接聽吧！我告訴自己，現實畢竟還是要面對的。拿起電話筒，大姊的聲音傳過來：「父親死了……」以後的說話都變成了夢囈……

父親的死，在我心坎中劃下了不可磨滅，但可褪色一個標點、標點着一個新的成長，新的心態。父親逝去眨眼也差不多十年，喪父的創痛也平復了，但每當新相識的朋友問起我父親，我那守舊的母親總是說：「我的丈夫在遠洋經商，很少回來的。」這句話總掀起我內心深處那無緒的寂寞和絕望，畢竟父親是不會再回到我們的身邊了。

荔枝，滿街的荔枝，為何你竟會挑起我思念故鄉和父親的情懷。母親，我不如還是陪你回鄉下走一轉吧！

故鄉的泥土，我又怎忍心與你緣慳一面呢！