

A RE-EXAMINATION OF THE CASE FOR A LOCUS STANDI RULE IN PUBLIC LAW

The doctrine of *locus standi*, or standing, determines the competence of a plaintiff to assert the matter of their complaint before the court. Since an individual lacking *locus standi* is an incompetent plaintiff, it follows that, in public law, government can exceed or abuse its powers with impunity provided no such "qualified" litigant seeks the intervention of the court. This appears directly in conflict with the constitutional requirement of legality. Public law is about imposing legal controls on governmental powers. The standing principle, which is probably feudal in origin, (1) poses important questions about the meaning of the rule of law since the courts appear untroubled by excess or abuse of legal powers unless invited to intervene by an individual having a cognisable interest in the matter. (2)

The doctrine of standing limits the access of the citizen to the court. This right of access is a key principle which has been embedded in the idea and ethic of constitutional government since at least the Magna Carta. (3) It is a value which the courts are prepared implicitly to recognise and employ even if to do so effectively entails disobedience to a statute. (4) But the weight attached to this principle appears to be contingent upon context: the general rule that a citizen cannot approach the court to argue that government should observe its own laws remains largely unquestioned. (5)

Moreover, judicial review is only available where leave is obtained, and remedies remain discretionary. Thus *locus standi* rules in public law are a component of a system which does not see the purpose of judicial review as the control of administrative action *per se*: proof of illegality is by itself insufficient and legality is subordinate to considerations of good administration, the perceived need to ration judicial resources and to exclude busybodies. Yet the requirement that government observe the law must be a constitutional priority which the courts should recognise unless principled reasons exist to justify not doing so. This suggests that arguments used to justify *locus standi* should be subjected to the closest scrutiny. In this article my purpose is to explore these arguments and I will suggest that in so far as standing continues to serve a useful role this may be fulfilled by the application of other, more precisely focused, rules already in existence which eliminate the need for a further layer of exclusionary principles. This discussion will also expose some concerns

about the present constitutional role of judicial review. Before addressing these issues it is important to note the constitutional context in which this debate must take place.

Constitutional Fundamentals

Since the courts will refuse relief to an incompetent plaintiff even if unlawful administrative action has occurred there appears to be a significant tension between the doctrine of standing and the principle which ordains that government should be subject to the rule of law. Along with the supremacy of Parliament, which requires courts to enforce all law duly enacted, the rule of law may be described as one of the twin bulwarks of the constitution. (6) However, it is not always clear what is meant by this fundamental principle which enshrines both a political as well as a legal doctrine. It is proposed to venture two possible interpretations of the latter (i.e. legal doctrine) and then to suggest that neither fundamental demands a doctrine of standing. (7)

According to orthodox constitutional theory, in the absence of a written constitution, the validity of law is a question of form and not substance. An enacted law is enforced as such and is recognised as having an authority which requires neither the approval or disapproval of any governmental agency obliged to act in accordance with its terms. The English system is a positivist system. Subject only to binding laws of the European Union, (8) Parliament is at liberty to enact any law.

A venerable and respected line of authority from *Entick v. Carrington* (9) to such recent decisions as *R v. Secretary of State for the Home Department ex p Fire Brigades Union and ors* (10) and *R v. Coventry City Council ex p Phoenix Aviation* (11) demonstrate that neither the administration nor the courts can refuse to apply a law simply because the rule at issue is perceived to be inconvenient or undesirable. These principles mandate the courts to uphold enacted law. Embedded within this orthodoxy is a particular vision of the rule of law which requires that judges respect legislation which is the outcome of a democratic process. This also recognises and, indeed, may require the principle of Parliamentary sovereignty. As will be seen below, the doctrine of standing exposes a fundamental difficulty that standing permits judges to

disapply enacted law in apparent defiance of Parliament. It also appears to violate an important mandate of the rule of law embracing the idea of universality of law- that all are equally subject to legal rules.

An alternative interpretation of the rule of law recognises that the rule of law demands more than the enforcement of particular rules. A non-democratic legal system founded upon a denial of fundamental human rights could actually conform to the requirement of the rule of law in so far as the administration could conduct itself properly in accordance with enacted law. But this is only so if the rule of law is reduced to mere formalism. It fails to recognise that the rule of law conveys qualitative ideas about the rules themselves and may demand that only just law prevails. Under our present system, however, an enacted law need answer neither the demands of justice nor fairness. The judges may wish to avoid enforcing such an instrument by invoking the idea of the rule of law which could permit the courts to identify fundamental constitutional values as more worthy of protection than the Diceyan idea that Parliament should be at liberty to make or unmake any law. (12) This more radical interpretation of the rule of law would therefore seek to place limits on Parliamentary Sovereignty.

The role and purpose of the standing doctrine is unaffected by this debate because at the root of the dispute is one of institutional demarcation (whether Parliament or the common law is supreme). The resolution of this institutional conflict simply identifies which laws are capable of enforcement; the circumstances in which enforcement is possible (the standing question) is a separate issue.

What is significant is that *locus standi* undermines two essential elements of the rule of law: the ideas of universality of law and equality before the law. The logic of the standing doctrine is that if there is no competent plaintiff governmental bodies may violate the legal limits of their powers and the courts are powerless to intervene. It is thus inappropriate to describe the constitution as furnishing limits preventing the abuse of governmental power since such limits are contingent and may ultimately prove to be delusory. Amongst other rules, (13) standing thus places government in a uniquely privileged constitutional position posing questions about the extent to which the British Constitution conforms to the requirement of universality of law and thus the rule of law itself.

(i) **Is the standing doctrine truly consistent with the doctrine of Parliamentary sovereignty?**

Whilst Parliamentary approval for standing in judicial review may now have been obtained following the enactment of s.31 of the Supreme Court Act 1981 the origin of the doctrine lay in the common law. Thus the courts are open to the charge of having applied a common law rule in preference to statutory ones. For example, if a local planning authority failed properly to apply statutory limitations on the development of land, it could only be compelled to do so by a person aggrieved. (14) In the absence of such a person stepping forward, the development might take place which Parliament had intended to be controlled. This raises acutely the question of judicial loyalty to Parliament.

Moreover, the enactment of s.31 of the 1981 Act has not entirely addressed this question. Common law *locus standi* rules still control the circumstances in which the citizen may seek a civil remedy to prevent the commission of a statutory criminal offence or otherwise to enforce a statutory duty. (15)

But this does not conclude the issue. Whilst the courts may have statutory authority for applying *locus standi* rules in judicial review, Parliament may well be concerned that the rules are so *construed* as to make some statutory regimes effectively unenforceable in particular factual contexts. As Sir Konrad Schiemann observed, (16) rules which are enforceable are mere "delusions". It is this rather than the form in which the rules operate that raises questions about Parliamentary supremacy. It surely cannot be presumed that Parliament intended to have acted in vain. Yet the *Rose Theatre* case suggests that there might be cases in which no competent plaintiff might be found because the Attorney-General would take no action where the decision impugned is that of a minister and it is unlikely that a local authority could effect a challenge unless the subject matter concerned the traditional jurisdiction of local government bodies. (17) Concerned members of the public would presumably share the same fate as the Trust Company in *Rose Theatre*. (18)

(ii) **Standing is capable of producing arbitrary results lacking any coherence in public law adjudication.**

The following hypothetical examples illustrate the point made above concerning the questionable legitimacy of giving priority to the doctrine of standing rather than legislative regimes designed for the common good. They also indicate that this produces arbitrary decisions which by themselves demonstrate a lack of coherence in public law adjudication.

Example 1 A local planning authority unlawfully disregards the development plan for the area (19) and grants planning permission for industrial development in a residential area. The purpose of planning law is defeated. The resulting development was not what Parliament intended should happen, neither was it in the public interest. (20)

If the court were asked to enforce the Town and Country Planning Act 1990 and quash the planning permission, it seems unsatisfactory if they should refuse to do so because the only citizen willing and financially able to invoke the courts assistance is, let it be supposed, a resident of a neighbouring town who lacks *locus standi* (21)

Example 2. The facts are as in *example 1* but with the difference that the same public spirited individual was sufficiently affluent to have an interest two properties, one of which was, by chance, sited in the neighbourhood affected. This coincidence would confer on him the necessary standing and planning law would be enforced. (22)

These examples illustrate how the standing doctrine seems arbitrary in its effects. It is not truly linked to any coherent theory of public law adjudication. In public law terms the issues in each of these hypothetical cases would be identical. The central question in each would be the enforcement of planning control, intended by Parliament to protect the community at large from undesirable development. If the planning authority exceeded its powers it seems odd that the court could restrain it in one example but not the other. Yet this is precisely the outcome.

Moreover, by virtue of the standing doctrine the important public interest would depend entirely on the fortuity of having the "right" individual willing to take proceedings. This did not occur in example 1 and so the public is forced to endure development precisely of a kind which Parliament enacted law to

prevent. It is this which raises questions about judicial loyalty to legislative policy.

The reality is that the distinction between those two hypothetical cases is only sustainable if public law is explained as a species of private law. Public law is enforced only to redress harm suffered by individuals; within its compass there are more than faint echoes of corrective justice. This reflects a particular model of adjudication which is considered further below. (23) Yet this model of adjudication lays a misleading trail because it places the individual and not the public at the heart of the system. Public law provides a system of controls on governmental power the beneficiaries of which are the community at large and not one individual even if that individual suffers more serious harm when abuse of power occurs. Public duties were not constructed for his or her benefit and he or she is not to have a veto over their enforcement as if they were private law rules. It is undesirable that the court should be paralysed from doing justice for the community on whose behalf the law is enacted.

(iii) *Standing, Democratic Principles and the Separation of Powers*

Two arguments can be employed to suggest that standing is a consequence of the separation of powers. The first asserts that standing ensures that the courts adjudicate individualised disputes; political questions affecting the common good are properly a matter for the administration. A similar argument focuses on the question of the enforcement of the laws. This asserts that the community should be able to decide whether to enforce its own laws and that this decision should reside with democratically accountable public bodies rather than private individuals who are ill-equipped either to identify or to advocate the public interest. These two issues will be considered in turn.

Political Issues

The argument broadly stated is that standing doctrine is required to prevent the court becoming lured into making political decisions. If the doctrine were absent, the courts might find themselves constrained to make policy decisions which are properly a matter for elected government as opposed to an unelected judiciary. The standing doctrine is thus considered to reflect the court's understanding of their role within a tripartite system of government. (24)

The courts are confined to determining disputes about the scope and content of individual rights as opposed to policy questions affecting the common good or public interest. The idea of standing underpins this separation because it ensures the presence of a disputed right or interest necessary to ensure that the courts are determining an appropriately "narrow" individualised issue. *Gillick v. West Norfolk and Wisbech Area Health Authority* (25) is an oft cited example of court falling into this trap. The objection is that because the plaintiff's standing was not self-evident the court found itself adjudicating the public policy question of whether under age teenagers should receive contraceptives. (26)

The perceived threat of political involvement can also be seen in the *Gouriet* case. As the Secretary of a right wing organisation which probably had as one of its preferences the curtailment of trade union power, Mr Gouriet was not merely an ordinary citizen. The legal argument disguised what was in effect a political confrontation concerning the role of unions, the law and government in industrial policy. This policy was based on abstentionism (27) These matters were within a short space of time to become part of the agenda of Conservative governments in the 1980's. (28) It is not too difficult to understand why courts might legitimately hesitate to become involved in an issue which might appear to begin implementing the agenda of a particular political party then in opposition to that of existing Government policy and contemporary labour law philosophy.

However, it may be possible to counter these arguments whilst recognising the need for judicial restraint. A number of points can be made:

Law and Policy

The essence of the orthodox view based on the separation of powers is that it assumes a division between law and policy when these are in reality intertwined. It ignores many decisions in which the courts, whilst determining questions of law, have not shied from judgments which have *in effect* substituted judicial policy for that preferred by the policy maker without transgressing their function of adjudication. Some might argue that it is undesirable for the courts to go as far as they do, but it is possible to argue that it is not an excess of jurisdiction when they do.

Although, of course, it is controversial, this judicial interventionism seems to be possible even where the decision-maker is loyally implementing an electoral mandate. This shows that the court is not deprived of its jurisdiction in a case where the legal dispute involves a politically sensitive conflict touching upon the mandate of an elected authority. No clearer example of a "political" decision could be found, yet the courts still intervene. The doctrine of *locus standi* is not the ultimate shield against this happening, for political consequences may still be far-reaching even if the standing rules are satisfied. *Bromley LBC v. GLC* (29) is a pertinent example of this because local government policies on transport were declared unlawful even though they were supported by the local electorate following an election in which the commitment at issue was a manifesto pledge. (30)

In *Roberts v. Hopwood* (31) the House of Lords intervened to declare unlawful a scheme for paying similar wage rates at levels above the market average to male and female workers alike notwithstanding that the local authority had a statutory power to pay such wages as it thought fit. (32) This decision unashamedly determined public sector wage rates, in particular those for female workers. This is a surprising decision because the local administration had won local support for its policies in improving wages for workers precisely to address the inadequacy of paying market rates. In *Roberts* the House of Lords unhesitatingly intervened to condemn an electorally supported programme of social reform.

The effect of the decisions in these cases was to overturn the political choices of democratically elected institutions acting in accordance with their election promises. They are undoubtedly controversial decisions. Questions may well be asked as to whether the judges *ought* to have gone so far. However, these decisions did not take the courts beyond their jurisdiction. They unequivocally demonstrate that disputes about the legal limits of the powers of a public authority do not become non-justiciable because of the possible impact on either central or local government policy. Where a dispute arises about the application of legal rules it is a justiciable matter regardless of the political consequences which flow from the court's decision. Law and policy are thus both at stake in such cases. Thus it is important to distinguish between the *content* of a determination (whether there is a serious legal issue to be tried)

and its *consequences* (whether or not involving issues of public choice). Provided there is the requisite legal *content* in a dispute it is justiciable regardless of its political consequences. That requirement is satisfied by evidence that the public body has abused its legal powers. (33)

The *Gouriet* case plainly illustrates the point that the justiciability of a dispute does not depend upon its political consequences. Had Mr Gouriet posted a letter to a South African destination the case would have proceeded without any question being raised about his competence as plaintiff. Yet the political consequences of the dispute would have been precisely the same as they were absent the posting of a letter. This surely demonstrates the essential fiction of the standing doctrine; the presence or absence of standing (in this case, the expenditure of a few pence on a stamp) ought not by some magical process convert a non-justiciable, political matter, into a justiciable "legal" one or *vice versa*. It is the legal content of the claim -in *Gouriet* the question whether anticipatory action could be taken to prevent a breach of the criminal law-which prevents courts straying into the forbidden political arena. It is this rather than standing which preserves the idea of the separation of powers.

Should the Community have an exclusive power to enforce its own Laws?

The second argument was that the standing doctrine is necessary in order that individuals can properly be excluded from enforcing the law unless a right or interest of their own is at stake. This is because the community should be responsible for choosing when and whether to enforce its own laws, and that choice is to be made by publicly accountable officials. This is said partly to explain the principle that not all breaches of the law need to be punished. To allow individuals to seek to do so prevents a public choice about the desirability of enforcing a law in a particular factual context in which punishment or other redress might be inappropriate. (34) This somewhat paternalistic argument ignores the undesirability of allowing the executive the power to veto the enforcement of laws by which it is itself bound. It also places the responsibility for enforcing public duties in the hands of financially constrained public authorities which may be forced to prioritise enforcement action according to political choices (e.g., Sunday trading) The limited effectiveness of institutional mechanisms deserves separate notice beyond the

scope of the present article. Suffice it to state for present purposes that, apart from problems caused by under-resourcing, the system lacks comprehensive scope so that important areas of administrative action may escape the net altogether.

The principal responsibility for enforcing a public duty lies with the Attorney-General. As a matter of practice, he never takes *ex officio* proceedings. This means the process remains reactive to individual complaint. Fundamentally, no proceedings have ever been taken against central government which places central government action beyond the scrutiny of the courts. This is a serious weakness in the institutional enforcement structure. Whilst theoretically accountable to Parliament, the Attorney-General's decisions, from which there is no appeal, are beyond the scrutiny of the courts. (35)

Local authorities also have a power to enforce public duties but, despite the ostensibly open textured nature of the statutory language designed to confer the power, (36) this competence has been judicially confined to matters within local authority's traditional jurisdiction. Matters of general law enforcement would be *ultra vires* (37) Equally, local authorities are often prevented by budgetary, or political constraints from taking proceedings which are within their jurisdiction. This weakness can be seen in the matter of illegal Sunday trading. Financial constraints rather than jurisdictional limitations prevented local authorities taking action against persistent and flagrant law-breakers even though it was a matter which undoubtedly fell within their legal competence. (38)

In summary, the system is inadequate first because it is not comprehensive, and secondly because its effectiveness where public bodies have a jurisdiction is eroded by under-resourcing. These difficulties should themselves provide a powerful argument for an *actio popularis*.

However, this does not conclude the issue because the concern is often expressed that to permit an *actio popularis* is to allow a private individual to decide which laws should be enforced. The individual is not in a position to decide whether justice is served by proceedings in a given factual context. However, this argument is also flawed because it fails to appreciate that access

to court merely permits that individual the opportunity to *argue* that the law should be enforced. It is for a court to decide the question.

The courts are adequately protected against over-zealous litigants in so far as all public law remedies are discretionary; and s.31 of the Supreme Court Act 1981 permits the court to refuse either leave or relief where the application is detrimental to good administration. This means that so the court could be relied upon in an appropriate case to deny relief (or leave) where injustice might result. Standing is not a necessary protection in such cases.

(iv) **Does standing create a hierarchy of rights/ values?**

There is a danger that standing treats legal regimes differently. A violation of some types of legal rights is more likely to result in an individual having standing than others. This is particularly so in relation to "new values" (39) These are new social, cultural, environmental architectural values which do not exist within the traditional conceptions of property rights. They are "shared" by the community at large and belong to no-one in particular. As the *Rose Theatre* case demonstrates, standing rules make these new rights (or claims) highly vulnerable despite their importance in modern society.

For example, administrative action which unlawfully interferes with private property rights will invariably allow the affected right-holder to challenge the action concerned. However, if the administrative action impugned has the wider significance that it threatens the future of a species, it is much less certain whether a concerned environmentalist will have standing to challenge the decision. (40)

That this remains so seems surprising when the preservation of the richness and variety of the natural environment, its flora and fauna, for future generations seems a fundamental issue for humankind transcending the importance of property rights of particular individuals; indeed it may not be over dramatic to suggest that the future of our species is itself inextricably linked to the effectiveness of enacted laws designed for environmental protection. Excluding concerned individuals in these matters implies that the courts are placing undue faith in institutional mechanisms to enforce these new regulations. This is a breach of principle 10 of the Rio Declaration 1992

which states that environmental issues are best handled with the participation of all concerned citizens. It further ordains that "effective access to judicial and administrative proceedings, including redress and remedy, shall be provided". (41) Given the importance of the issues at stake, any failure to harness the commitment and zeal of environmentally aware individuals seems unpardonably cautious.

(v) **Busybodies/vexatious challenges**

The books are replete with references to the need for standing to exclude "busybodies". (42) The rationale appears to be to exclude individuals who seek to raise questions with which they are not properly concerned. A closely related argument emphasises the need to protect public bodies from litigation which is perceived as wasteful: public administration is not to be impeded or delayed by wasteful challenges (43) These two related issues will be considered in turn.

(1) ***Busybodies***

The exclusion of so called "busybodies" creates three principle difficulties: (i) the indeterminacy of the busybody test; (ii) the manner in which it disguises value judgements about the claim rather than about the individual applicant; and (iii) the manner in which it confuses public law with private law adjudication.

(a) *Indeterminacy*

It is quite impossible to identify a busybody with any clarity. It would be a straightforward matter if the label could simply be applied to any self appointed representative of a wider group of individuals, or any advocate of the public interest; but the judicial approach is more sophisticated. Self-appointed representatives of the public have been held to have legitimately nominated themselves to challenge the administration in matters which are not their exclusive concern. Mrs Whitehouse was a competent plaintiff to challenge the IBA on broadcasting standards (44) as were Greenpeace and the World Development Movement in respect of the environment (45) and overseas aid respectively (46) ; Mrs Gillick was also qualified to question the

propriety of prescribing contraceptives to under-age children; (47) and whilst the National Federation of Self-employed and Small Businesses did not have standing in the *Fleet St Casuals* case, (48) it was held not to be a busybody despite interfering in the tax affairs of third parties- an essentially private and confidential matter which many would have regarded as so much the exclusive province of the taxpayer concerned that any third party interference would *ex hypothesi* have been the interference of a "busybody".

(b) *Value judgments*

In none of the above cases were the applicants more properly concerned about the issues than other citizens but, as a matter of law, they were not busybodies. This suggests that the "busybody" formula camouflages judicial distaste of the merits rather than describing the sufficiency of interest of the applicant.

If the court is prepared to recognise the application as raising issues which deserve judicial resolution (49) it may be tempted not to probe too assiduously the question whether the applicant satisfies traditional standing rules. The busybody question is effectively marginalised or simply overlooked. (50)

(c) *The Problem of the Busybody Test and Public Law Adjudication*

The doctrinal objection to the "busybody" approach is that it entails a search for some legitimate "concern" in the applicant and this implies that the reason for the court's intervention is the protection of that interest of the applicant qualifies the applicant as a competent plaintiff. The resulting emphasis upon cognisable harm represents little more than a version of corrective justice in which the court prevents abuse of governmental power merely to address the harm it causes to an identifiable individual. A fully-fledged system of public law is thus precluded by the busybody test. The issue for public lawyers is simply: has the body whose actions are impugned breached its public duty? In public law terms the "busybody" test is simply a distraction.

The guiding criteria should simply be (i) the legal merits of the claim asserted; and (ii) whether the applicant is capable of effectively advocating the

issued raised (51) The court has an inherent jurisdiction to strike out abusive vexatious or frivolous claims, so a *bona fide* litigant with an arguable case which is not vexatious, frivolous nor an abuse of the process ought not to be denied standing if they can mount an effective challenge. (52) Thus if the function of standing is to exclude "busybodies" it can be seen as redundant; the court has an inherent power to do so and does not require a separate exclusionary test.

(2) Standing as means of Protecting the Administration from Wasteful Challenges

There is often a conflict between two strands of the public interest. In tension with the need to ensure that public bodies observe the legal limits of their power is the separate public interest in the speedy implementation of policies designed for the common good. This is resolved by restricting access to court to individuals with a cognisable interest. Thus cognisable harm caused to one individual is seen as a sufficient reason to justify delay in administration; but the question raised by a concerned citizen as to whether administrative action is actually lawful is not because leave will normally be refused for want of standing. Thus judicially cognisable individual right/interests trump the majoritarian interest in being governed according to the law.

It is arguable that any delay or impediment to the implementation of policy ought only to be tolerable for the sake of an overriding public interest. Whilst it is true that the public has an interest in respecting private rights or interests, it would be constitutionally more satisfying if the rationale of judicial intervention were the vindication of the rule of law, rather than the benefit of a particular individual. In other words, delayed implementation of policy would be tolerable because of a *public interest* in requiring government to observe its own laws.

But this is not the end of the matter because at least one member of the judiciary has seen the rationale of standing as a means of preventing the "administrative chaos" which might arise if an *actio popularis* were permitted. (53) This, he suggested, was the reason why the law is prepared to treat admittedly unlawful administrative action as lawful. (54) This explanation of the purpose of standing is, however, unsatisfying because s.31 of the Supreme

Court Act 1981 provides rigorous procedural protection against wasteful, delayed or otherwise harmful claims. The court has a power to refuse either leave or a remedy if the claim which is, for example, detrimental to good administration, or which would cause substantial hardship. These procedural rules remove any similar purported justification for the standing doctrine. (55)

(vi) **Inundation**

A further argument often made for standing rules is ancient in origin. It sees the purpose of standing either as a means of permitting the judges to manage the business of the courts or, alternatively, as a different expression of the previously mentioned judicial perception of a demarcation of responsibility between the courts, the executive and Parliament.

The argument asserts that if any individual can bring proceedings to enforce a public duty it is literally open to everyone to do so. As was observed in *Iveson v. Moore* (56) "if one man may have an action, for the same reason a hundred thousand may" and the courts would be flooded with claims. The restriction of standing to those with an interest over and above that of the community at large restricts the flow of potential claims.

It is possible to dismiss this argument quite briefly:

(i) multiple claims over one issue can be joined as a single claim and heard together ; (57)

(ii) If the above is inappropriate, the hearing of the first case concerning the legality of administrative action is normally sufficient to offer redress to all. If the policy or decision is upheld the doubt about its legality is resolved for all those affected by it. To permit no-one to claim is simply to allow possible illegality to continue .

(iii) There is little likelihood in modern times that the courts will be swamped. The cost of proceedings effectively prohibits the private citizen from enforcing the public interest. As Rabelais wrote: "Misery is the companion of the law suit". (58) It was judicially recognised as long ago as *Smith v. Wilson* (59) that risk of inundation had long ceased to be a credible reason for the application of standing rules.

The concern of the judges in modern times is to assert some managerial control over access to the court to conserve precious judicial resources. (60) However, the abolition of the standing rules would not create a right of access to court since the consequence of the leave stage is that access to court would still be a matter of judicial discretion. It is the leave stage which (along with other provisions already mentioned) already provides the necessary filter against inundation and wasteful claims or those which would be detrimental to the administration or cause substantial hardship. *Locus standi* is redundant in these terms. (61)

(vii) *The Citizens' Action*

A Novelty?

Precedents suggest that the introduction of an *actio popularis* would not be the radical reform which it may otherwise appear. These precedents reveal that the judges have long been prepared either to stretch the standing rules to allow access to a particular applicant whom it is thought ought to be granted a remedy, or even to depart from the standing requirement altogether. This is a surprisingly well-rooted line of authority, not confined to judicial review cases, suggesting that *locus standi* is sometimes more deeply coloured by the perceived importance of the issue raised than sufficiency of the interest of the applicant. The applicant is more likely to succeed, of course, if a sufficient interest can be established, but it does not follow that where the absence of an interest will mean that dismissal of the application. Public interest considerations may readily tip the scales in the applicant's favour. The problem is to identify when this will be so. There is an *ad hoc* approach to this issue and the case law reveals some bewildering indeterminacy. (62) It is not possible here to provide an exhaustive analysis of the relevant decisions but the following non-exhaustive list is offered. (63) The form in which the proceedings are brought can also be influential to the standing question. An experiment in varying *locus standi* requirements where representative proceedings are concerned may sometimes permit class representatives to sustain a claim in which they are not personally interested. In *Ellis v. Duke of Bedford* (64) five named plaintiffs (market traders) representing market traders and others were allowed to plead that the market owner had breached certain

duties in operating the market, but the statement of claim included matters in which none of the representatives had an interest. Lord Macnaghten said:

"If the persons named as plaintiffs are members of a class having a common interest, and if the alleged rights of the class are being denied or ignored, it does not matter in the least that the nominal plaintiffs have been wronged or inconvenienced in their individual capacity. They are none the better for that and none the worse. They would be competent representatives if they had never been near the Duke (the market owner)."

According to one possible interpretation of the decision, the sharing of a common interest in the market with those whom they represented justified the court in waiving the requirement that they assert a private right of their own. (65) But Lord Macnaghten appears to have gone further than this by suggesting that the representatives would have been competent representatives if they had never been near the Duke, in other words if they were not even traders in the market. This implies that a public spirited litigant might be a competent plaintiff in representative proceedings. The implications for standing are self-evident.

However, before any further conclusion can be drawn about the abandonment of the standing doctrine there remains to consider some cogent objections to the *actio popularis*.

Surrogate claims

An important argument is raised by Craig (66) citing the work of the US writer Jaffe who argues that an *actio popularis* would be detrimental because it would permit one citizen to assert rights belonging to another. This is the most cogent of all arguments for a doctrine of standing. Craig asserts that standing should be awarded, in the discretion of the court, to any citizen unless it was evident from the statutory framework that the range of persons having standing is restricted, in which case only those falling in the protected class would have been able to seek judicial review. (67) The Law Commission in its report on *Judicial Review and Statutory Appeals* (68) favoured a test which would allow those adversely affected to have standing to seek judicial review whilst others would be allowed to do so where it is in the public interest for the

application to proceed. (69) The reason for this latter kind of twin track test, according to Jaffe, is that there may be cases in which the interests which the law seeks to protect are narrowly defined and the individuals enjoying those interests are content with the unlawful administrative action that has taken place. He gives the example of a restaurant sited in a place in which it ought not to be. He doubts whether, if neighbours and local residents are content with this, a stranger, perhaps from a different area of town, should be able to complain (70)

Craig agrees with this reasoning but offers a more powerful example of the problem. (71) He asks if the Chief Constable dismissed for poor leadership in *Ridge v. Baldwin* (72) had decided not to challenge his *ultra-vires* dismissal, and thus to forgo his pension, why should any one else have been able to interfere? It was a matter exclusively for the Chief Constable and could not properly have been the concern of any other individual.

Because an *actio popularis* would appear to permit claims by third parties in such cases, Craig seems to regard the *Ridge v. Baldwin* problem as sufficient to justify some form of standing doctrine, however it may be formulated. This means that a case for the abolition of standing must meet the kind of problem posed by such cases as *Ridge v. Baldwin*.

The Ridge v. Baldwin problem

First it will be argued that there are circumstances in which claims by third parties are already permissible. This will demonstrate that *Ridge v. Baldwin* is not of such a general application as to suggest an absolute bar on all claims by third parties.

Secondly, *Ridge v. Baldwin* can be seen as a "hybrid" case in involving elements of both public and private law in which private law issues predominated. The decision is not one upon which general conclusions about standing in public law matters ought to be drawn.

Exceptions to the general locus standi rule where third party claims are possible

Although the orthodox position is that third parties should not be allowed to advocate the rights of others, (73) both English and United States jurisdictions have been prepared not to apply the general rule where its underlying rationale is absent.

(i) *Associational Standing* (74)

There are circumstances in which an association is entitled to bring proceedings on behalf of its members. This is so in the United States where (i) its members would otherwise themselves have standing to sue; (ii) the interests it seeks to protect are germane to the organisation's purpose; (iii) neither the claim asserted nor the relief requested requires the participation of individual members in the law suit. (75)

A similar rule applies in English Law. In *R v. Chief Adjudication Officer ex p Bland* (76) where advice given by Chief Adjudication Officer to his officials that they should deduct a specified sum from the amount of supplementary benefit payable to a married couple where one of them was on strike was successfully challenged in an application brought by three plaintiffs: the Trades Union Congress, the National Union of Mineworkers and a striking miner claiming benefit. The Court held that the miner had *locus standi* since his entitlement to benefit might be prejudiced by the change; the NUM had standing because it stood in a relationship of proximity with the miners. Acting under its rules it had called the strike which had led to the changes; but TUC lacked *locus standi* because it was too remote from the issue. (77)

(ii) *Non-Associational Standing*

In both United States and English law there are circumstances in which individuals without a cognisable interest of their own are permitted to assert claims which might otherwise be brought by others. In the United States a line of authority begun in *Singleton v. Wulff* (78) permits third party to litigate the rights of others where the third party is fully as effective an advocate of the right as the right holder himself, provided also there is some impediment which might inhibit the case being brought by the individual/s affected. (83)

In this case it was accepted that there were problems for the women in reconciling the publicity of litigation in asserting the right to abortion with concerns for their individual privacy. (79)

The possibility of third party claims is not restricted to the United States. *In re S* (81) the Court of Appeal held that a woman was able to prevent a wife and son removing her incapacitated co-habitee (a Norwegian) from the jurisdiction for treatment in Norway against his presumed wishes notwithstanding that at first instance the judge had held that in order to seek a declaration the plaintiff's own legal position should be resolved by the intervention of the court. (82)

Sir Thomas Bingham with whom all agreed stated

"It cannot of course be suggested that any stranger or officious busybody, however remotely connected with a patient or with the subject matter of proceedings, can properly seek or obtain declaratory or any other relief (in private law any more than public law proceedings). But it can be suggested that where a serious justiciable issue is brought before the court by a party with a genuine and legitimate interest in obtaining a decision against an adverse party the court will not impose nice tests to determine the precise legal standing of that claimant." (83)

The decision may perhaps be explained by virtue of the close relationship which existed between the plaintiff and the incapacitated patient which gave her an interest in having the location of his care determined.

A very different and important case was that reported in the Times (84) in which the intervention of strangers was legitimate. Here anti-abortion campaigners won an injunction to restrain abortion of one of a healthy pair of twins. This decision throws into doubt the point made by Craig about the *Ridge v. Baldwin* problem. (85) In the abortion case, just as in *Ridge v. Baldwin*, it could be argued that the matter at issue was a private one which could not be the legitimate concern of third parties or strangers. Alternatively, it

might have been objected that the only third party qualified to intervene for the sake of the unborn child would be the Official Solicitor. (86) Neither of these possible objections seems to have prevailed. Third parties were thus permitted to intervene in a matter which might be regarded as a confidential one between doctor and patient in which only the State should interfere in its *parens patriae* role. This suggests that the courts are not particularly impeded by the *Ridge v. Baldwin* problem from intervening in an issue of privacy where the public interest requires such considerations to be overridden. It is interesting that the court permitted a pressure group, rather than the Official Solicitor, to argue that this was so.

It is likely that the courts are still evolving the circumstances in which a third party claim is possible. At present the only limitation appears to be that the plaintiff should not be a "busybody", (87) although the scope and effect of this limitation must be uncertain after the abortion case.

The public/private law divide

But this does not conclude the issue. It would be inappropriate to draw general conclusions about standing from *Ridge v. Baldwin* - a case in which private law issues, namely the alleged wrongful dismissal, predominated. After *McLaren v. Home Office* (88) judicial review is normally not available to employees seeking to assert a personal claim against their employer for damages for breach of contract or wrongful dismissal, or even a declaration or injunction. The facts of *Ridge v. Baldwin* would have made the case inappropriate for judicial review. As this case could not now be a matter falling within the purview of the judicial review procedure, the future of standing in public law claims should not be resolved by drawing general conclusions from this decision.

Conclusion

The constitutional priority that government observe the law should require courts to enforce the law whenever the court is properly seised of proceedings which establish that the administration has disregarded the law, because all citizens have an interest in being governed according to the law. There should be no departure from this principle unless there is a rational and overriding public interest to be served by withholding access to court. There may, of

course, be instances in which allowing a case to proceed is detrimental to the administration, but the court already enjoys the extensive protection of procedural rules either to deny leave altogether or refuse a remedy. Thus it has been argued that the reasons for the standing doctrine which supply a sufficient justification for refusing to enforce the law can adequately be satisfied by resort to procedural rules which have a function which makes standing redundant. No other reason advanced for the standing doctrine in public law is ultimately convincing. The courts should recognise that in public law a *bona fide* litigant with an arguable case which is not vexatious, frivolous nor an abuse of the process of the court ought not to be denied standing if they are sufficiently informed to mount an effective challenge within an adversarial system.

FOOTNOTES

(1) Under the feudal system all that was not privately owned vested in the Crown. Public duties are enforced by the Attorney-General, as representative of the Crown in its *parens patriae* role

(2) *R v. Secretary of State for the environment ex p Rose Theatre Trust Company* [1990] 1 All ER 754; *Gouriet v. Union of Post Office Workers* [1977] AC 435.

(3) The issue is discussed by Maurice Sunkin in *The Problematical State of Access to Judicial Review in Judicial Review: A Thematic Approach*, Brigid Hadfield (ed) Gill & McMillan 1995.

(4) *Anisminic v. Foreign Compensation Commission* [1969] 2 AC 147 and see Sunkin, *id.*

(5) Decisions which seem, in effect to permit any concerned individual to seek judicial review are sometimes explained as exceptions which apply in a particular factual context: see P. Cane [1995] *Public Law* 276.

(6) See, e.g., Wade & Forsythe *Administrative Law* 9th edit. Clarendon Press, Oxford, 1994 ch. 2.

(7) Although its political consequences should not be ignored. According to Raz law should not simply command obedience but should be such as to make obedience possible. Raz argues that if governmental action should be in conformity with the law there must be effective remedies and easy access to justice: *The Rule of Law and its Virtue* (1977) 93 LQR 195. Both are matters of importance in the present context.

(8) *R v. Secretary of State for Transport ex p Factortame Ltd* [1990] 3 WLR 818.

(9) (1765) 19 St Tr 1030.

(10) [1995] 2 WLR 1.

(11) [1995] 3 All ER 37.

(12) Woolf *Droit Public English style* [1995] PL 57.

(13) Leave must also be sought to bring judicial review proceedings; they are not available as a matter of right: s.31(3) of the Supreme Court Act 1981.

(14) *Gregory v., Camden LBC* [1966] 1 WLR 899.

(15) *Gouriet v. Union of Post Office Workers* [1978] AC 435. Standing to complain of a public nuisance is also informed by common law rules, but this does not, of course, involve any conflict with Parliament.

(16) [1990] PL 342, at p. 343.

(17) *Stoke-on-Trent City Council v. B & Q (Retail) Ltd.* [1984] 1 AC 1 (CA) and 754 (HL). The issue is discussed by Hough, [1992] *Public Law* 130.

(18) The existence of special bodies such as English Heritage, or the Historic Building and Monuments Commission which presumably might have had standing in the *Rose Theatre* case, could not be guaranteed.

(19) For the obligations of a planning authority in respect of the development plan see s.54A Town and Country Planning Act 1990.

(20) See Professor Wade's comments on the decision of the Court of Appeal in *Lever Finance Ltd. Westminster LBC* [1971] 1 QB 222, *op. cit.* at p. 374.

(21) *Rose Theatre* case (*supra* n.2); cf *R v. Hammersmith & Fulham LBC ex p People Before Profit Ltd.* (1981) 80 LGR 322 at p. 331.

(22) *R v. Inspectorate of Pollution ex p Greenpeace No 2* [1994] 4 All ER 329 where Greenpeace was awarded standing in part because it had members living in the neighbourhood of the THORP re-processing plant.

(23) The issue of the separation of powers is discussed below.

(24) T R S Allan, *Law, Liberty, and Justice*, Clarendon Press, Oxford, 1993, esp pp 223 *et seq.*

(25) [1986] AC 112.

(26) T R S Allan *loc cit* at pp 229-232.

(27) A government policy prescribing a minimal role for law in industrial relations and industrial disputes. See generally Davies and Freedland *Labour Legislation and Public Policy* Oxford 1993. The policy of collective laissez-faire had, however, begun to break down by 1977.

(28) Davies and Freedland, *loc cit.*

(29) [1983] 1 AC 768.

(30) The London Transport Act 1969 required the LTE to promote a integrated efficient and economic transport facilities. s.3 allowed the GLC to make a grant to the LTE for any purpose, but the decision to offer the subsidy was unlawful because the GLC failed to take into account its fiduciary duty to ratepayers.

(31) [1925] AC 578.

(32) s. 62 of the Metropolis Management Act 1855.

(33) This has been recognised by Sir John Laws in *Law and Democracy* [1995] *Public Law* 72, at p. 76.

(34) The wisdom of entrusting the enforcement of public duties to governmental enforcement agencies was emphasised by Lord Westbury L.C. in *Stockport District Waterworks Co. v. Manchester Corporation* (1862) 9 Jur. N.S. 266, 267. However, agencies cannot decide never to enforce the law: *R v. Metropolitan Police Commr ex p Blackburn* [1968] 2 QB 118. In the context of the criminal law the argument is, of course, weakened by the possibility of bringing a private prosecution.

(35) *R v. A-G ex p Ferrante* [1995] COD 18, and *R v. A-G ex p Taylor*, *The Independent*, August 3rd 1995.

(36) Local Government Act, 1972, s.222.

(37) *Stoke-on-Trent City Council v. B & Q (Retail) Ltd.* [1984] AC 1, (CA), and 754 HL; also Hough [1992] *Public Law* 130.

(38) *Stoke-on-Trent City Council v. B & Q (Retail) Ltd.* [1984] AC 754. For a useful survey see Catherine Barnard, "*Sunday Trading: A Drama in Five Acts*" (1994) 57 MLR 449.

(39) Craig, *Administrative Law* Sweet & Maxwell, 3rd edition, 1994. See also Jonathan Riley, *Locus standi and Cultural Interests*, (1997) *Journal of Planning and Environmental Law* 20.

(40) See cases listed at (63). For the US position see *Lujan v. Defenders of Wildlife* 504 US 555 (1992) which denies standing to pressure groups concerned about the protection of endangered species.

(41) Principle 11 also requires states to enact effective environmental legislation. Arguably, standing rules prevent United Kingdom legislation from fully achieving that requirement.

(42) Recent examples include *In re S* [1995] 3 WLR 78; *R v. Tower Hamlets LBC ex p Ferdous Begum* [1993] 2 WLR 9; *Cook v. Southend BC* [1990] 2

WLR 61; *R v. Felixstowe JJ ex p Leigh* [1987] 2 WLR 380. The applicant in *R v. Legal Aid Board ex p Bateman* [1992] 1 WLR 711 was held not to be a busybody, but "quixotic".

(43) Schiemann J. [1990] *Public Law* 342, esp p. 348.

(44) *R v. IBA ex p Whitehouse* [1984] *The Times*, 14th April.

(45) *R v. Inspectorate of Pollution ex p Greenpeace No 2* [1994] 4 All ER 329.

(46) *R v. Secretary of State for Foreign Affairs ex p The World Development Movement* (1994) 144 NLJ 1708.

(47) *Gillick v. West Norfolk and Wisbech Area Health Authority* [1986] AC 112.

(48) *R v. Inland Revenue Commissioners ex p National Federation of Self-Employed and Small Businesses Ltd.* [1982] AC 617; discussed by P. Cane [1981] PL 322.

(49) There may be a number of reasons why this is so. It may be that the disputed point is one of significant public interest, or that ruling on the matter serves the public interest by resolving a point hitherto in doubt, or that the court is simply more responsive to the ethic of the rule of law.

(50) This may have occurred in *R v. Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* [1994] 1 All ER 457.

(51) Considerable weight was attached to this consideration in *R v. Inspectorate of Pollution ex p Greenpeace (No 2)* [1994] 4 All ER 329. It is also a significant factor in allowing US courts to depart from orthodox *locus standi* principles: *US Parole Commissioner v. Geraghty* 63 L Ed 479 (1980).

(52) The inherent jurisdiction to strike out would permit the courts to strike out any application which raised a non-justiciable issue or a claim brought by a vexatious litigant (a busybody?): see *Ashmore v. British Coal Corp*n [1990] 2 WLR 1437. The power also exists under R.S.C., Ord. 18, r. 19(1). See generally, *Hunter v. Chief Constable of the West Midlands Police* [1982] AC

529; *Lonrho plc v. Fayed* [1992] 1 WLR 1. There is emerging authority that, at the leave stage, the doctrine of standing performs the almost identical function of preventing an abuse of the judicial process and nothing more: *R v. Somerset DC and ARC Southern Ltd., ex p Dixon* [1997] JPL 1030.

(53) Schiemann J in *Rose Theatre, supra*, n (2) at p. 765.

(54) *Id.*

(55) see P Cane, "Statutes Standing and Representation", [1990] PL 307??

(56) 1 Ld Raym 486, 492 (1699).

(57) See Cane [1995] *Public Law* 276 who asserts that associational standing provides precisely this opportunity of the effective use of judicial resources.

(58) *Gargantua*, Bk. 1 Ch 20 (1534).

(59) [1903] IR 45.

(60) *Sunkin op cit.*

(61) s.31 of the Supreme Court Act 1981; R.S.C., Ord. 18, r. 19(1)

(62) This issue troubled the Law Commission (Law Com No 226 HC 669 (1994)) at para. 5.16 where it noted that it was not possible to identify what precisely is required to obtain *locus standi*.

(63) *Chichester v. Lethbridge* (1738) Willies 71- relaxed interpretation of the particular damage rule; *London Association of Shipowners & Brokers v. London & India Joint Docks Committee* [1892] Ch 342 - particular damage rule effectively waived on grounds of expediency; *Gravesham BC v. BRB* [1978] 1 Ch 3 and *Smith v. Wilson* [1903] IR 45- requirement to have suffered particular damage in public nuisance interpreted broadly to avoid need to establish uniqueness of harm suffered; *R v. Metropolitan Police Commr ex p Blackburn* [1968] 2 QB 118; *Blackburn v. A-G* [1971] 1 WLR 1037; *R v. Metropolitan Police Commr ex p Blackburn No 3* [1973] 1 QB 241; *R v. GLC ex p Blackburn* [1976] 1 WLR 550 (citizen held to be able to challenge police policy of non-

enforcement of gambling laws; to contest legality of concluding treaty of accession to European Communities; to challenge lax enforcement of obscenity laws; and to vindicate the public interest in enforcing an appropriate test for obscenity; *R v. Paddington Valuation Officer ex p Peachey Property Corpn Ltd.* [1966] 1 QB 380, 401 standing linked to invalidity of administrative action which "concerned" a company without causing them financial loss; *R v. Stroud ex p Goodenough* (1980) 43 P & CR 59 (affmd *Amber Valley v. Jackson* (1983) 50 P & CR 136 -local civic society given standing to argue local authority had not taken sufficient steps to protect listed buildings (another interesting comparison with *Rose Theatre*); *R v. HM Treasury ex p Smedley* [1985] QB 657- taxpayer and elector allowed to assert allegation that Order in Council allowing payments to EC *ultra vires*; *R v. Felixstowe JJ ex p Leigh* [1987] QB 582 -journalist had standing to assert public interest in open justice and thereby seek a declaration that magistrates were not entitled to conceal their identities; *R v. Swale BC ex p the Royal Society for the Protection of Birds* [1991] JPL 39- in an interesting comparison with *Rose Theatre*, a conservation society had standing to challenge the decision to grant planning permission for the development of an environmentally sensitive area; *R v. Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* [1994] 1 All ER 457 - a "sincere concern" for constitutional issues sufficient to create a sufficient interest; *R v. Inspectorate of Pollution ex p Greenpeace No 2* [1994] 4 All ER 329 Greenpeace awarded standing in part on grounds that it could provide more effective advocacy of the issues than other potential challengers rather than its own "sufficiency of interest"; *R v. Secretary of State for Foreign Affairs ex p The World Development Movement* (1994) 144 NLJ 1708 -responsible pressure group with a long history of promoting aid to third world allowed to seek judicial review since if they could not there would be no other responsible challenger in relation to a serious matter in which the vindication of the rule of law was an important consideration; *R v. Sheffield CC ex p Russell* (1994) 68 P & CR 331: a local residents' association had standing to challenge a decision to issue an established use certificate for clay pidgeon shooting on the grounds that the judicial review proceedings were the only means by which a challenge to the decision was possible; *R v. Somerset DC and ARC Southern Ltd., ex p Dixon* [1997] JPL 1030 where a local resident not considered to have greater interest than any other member of the public had standing to challenge a conditional grant of planning permission to extend commercial operations in a nearby quarry. Sedley J. declined to follow the *Rose Theatre* case.

(64) [1901] AC 1.

(65) RSC Ord 15 r.12 states "Where numerous persons have the same interest in any proceedings..the proceedings may be begun by or against any one of them representing all or representing all except one or more of them"

(66) *Loc. cit.* at p. 510.

(67) *Loc. cit.* at p. 514.

(68) *Supra* n. (62).

(69) Taking into account, the importance of the legal point, the possibility the issue might be raised in other proceedings, the allocation of scarce judicial resources, the concern that in settling disputes the court should hear the conflicting views of those most directly affected by the decision, para 5.20.

(70) This begs the question, of course, of how such consent is to be determined. Would a majority view suffice?

(71) *Loc. cit.* at p. 510.

(72) [1964] AC 40.

(73) The court has a rarely used discretionary power to allow third parties to make representations to it although this is a different matter from the present case where he or she initiates or defends the proceedings: RSC Ord 53 5 (7).

(74) In "Standing up for the Public" [1995] PL 276, P Cane contrasts associational standing with public interest standing. The former occurs where an unincorporated association or corporation makes a claim on behalf of identifiable individuals who are its members.

(75) *United Food and Commercial Workers Union Local 7511 v. Brown Group Inc*, United States Supreme Court (May 13th 1996) no. 95-340 U.S.L.W. 4330; see also USC 2000e-5(f) (1) pp10-15.

(76) [1985] The Times, 6th February.

(77) See also *Royal College of Nursing of the UK v. DHSS* [1981] AC 800. Further, one ground on which *Greenpeace* succeeded was the potential harm suffered by its members living near the THORP re-processing plant.

(78) 49 L Ed 826.

(79) An interesting recent example of the *Singleton* approach is *Powers v. Ohio* (1991) 499 US 400.

(80) However, some doubt is cast on this effectiveness of this second requirement in restricting claims by the Supreme Court's own admission that privacy problems could be overcome by litigation under a pseudonym, as in *Roe v. Wade* 410 US 113 (1973).

(81) [1995] 3 WLR 78 .

(82) The matter was later considered by Hale J. in the High Court, Family Division, Manchester, reported as *In re S (Hospital Patient: Foreign Curator)* [1995] 3 WLR 596. Here although the Court of Appeal's decision on the fate of the patient was reversed, the standing of S's mistress was not questioned.

(83) [1995] 3 WLR 78 at p.91.

(84) August 7th 1996.

(85) it is possible to venture a similar argument about *R v. IBA ex p Whitehouse* [1984] *The Times*, 14th April. where Mrs Whitehouse, effectively representing all those members of the public who viewed television, was permitted to raise questions about possible breaches of broadcasting standards about which others might have been content or even expressed a contrary view.

(86) For the powers and duties of the Official Solicitor see ss 88-90 and Sched 2, Supreme Court Act 1981 (as amended).

(87) *Quaere* that there should be a proximity of relationship after *ex p Bland*, *supra* n.(76)?

(88) [1990] ICR 861.

10,458 words