counting the cost. The Justice Committee in its report suggested that compensation should be computed under four heads:

- Expense reasonably incurred in securing the quashing of the imprisoned person's conviction.
- Loss of earnings by the imprisoned person or any dependent where such loss is a direct consequence of the imprisonment.
- Any other expenses or loss which are reasonably incurred upon imprisonment by the imprisoned person or any dependent.
- Pain, suffering and loss of reputation suffered by the imprisoned person or by the imprisoned person's dependants.

It is noteworthy that the award to Mr Splatt included $30 000 to his wife. In Germany and Holland the estate of the imprisoned person may claim where the imprisoned person dies between the decision to grant compensation and its receipt. Supplementary remedies to monetary compensation are available in other jurisdictions. In Eastern bloc countries, for instance, where in these circumstances a job has been lost through imprisonment, reinstatement may be demanded. In Japan and France a person may have the award published in several journals and newspapers. In the words of Mr Keith Mason, QC 'ultimately a political decision will have to be made- and it's one of cost ... Someone has to pay – the question is whether it's the individual or society'.

sexual offences

> If the law is to reinstate itself as in any way relevant to the true needs, abilities and responsibilities of women, it must be redrawn from the perspective of woman as person.
>
> J Scutt, *Women and Crime,* 1981

Meanwhile in the United States a convicted rapist has been released after his alleged victim recanted. The case involved Gary Dotson who was convicted of raping Catherine Webb in 1977. She was then sixteen. Catherine Webb had given evidence against Dotson at the trial. But now she claims that she had been lying: she had had sex with her boyfriend and had feigned rape to cover that up. She claimed in the mean time to have been 'born again' as a Christian. When she made this new disclosure the matter went back before the trial judge. The judge did not believe her recantation and Dotson went back to prison. However there was further public outcry and the Governor commuted Dotson's sentence to the six years he had already served, while proclaiming he still believed in Gary Dotson's guilt. Jenni Hewett reviewed the case in the *Sydney Morning Herald* (22 May 1985):

> If Catherine Webb had been merely changing her mind about a mugging or a car accident, it would not have aroused much interest. Rape is different. It involves the darkest side of violence and sex. And it has traditionally been infused with a suspicion that the woman may be lying.

Ms Hewett said that only in the past few years had beliefs about women 'asking for it' or 'crying rape' become less common. She noted that it had taken a long time to change laws that made rape allegation much tougher to prove than other assaults, and that juries used to receive special instructions reminding them that rape charges were easy to make but hard to disprove. She quoted Susan Brownmiller, author of 'Against our Will', as saying that the case was going to be fresh in the minds of rape victims and people who are going to sit on juries: 'You have to wonder what kind of effect it will have' said Ms Brownmiller. But Ms Hewitt noted that others are less pessimistic:

> It may temporarily provide a verbal weapon for those who are already suspicious of rape charges, and may make some women more nervous about reporting rape. But the changes in general attitudes [to rape over the last decade] have been profound.

'last chance' for fairfax?

> Cock up your beaver, and cock it fu' sprush;
> We'll over the Border and gi'e them a brush;
> There's somebody there we'll teach better behaviour.
> Hey, Johnnie lad, cock up your beaver!
>
> J Hogg, 'Jacobite Relics', ii, 127

proposed punishment for contempt. In the latest round of the battle between the Senate and the *National Times*, the Senate Committee of Privileges, has recommended that the forces of the Senate should cross the borders of the Australian Capital Territory and teach the Fairfax organisation 'better behaviour' by putting it on a bond. As outlined in an earlier edition of this journal ([1985] *Reform* 15), the Senate Committee ruled in October 1984 that John Fairfax & Sons, Mr Brian Toohey and Ms Wendy Bacon were guilty of contempt of Parliament by virtue of their conduct in procuring the publication in the *National Times* of evidence taken *in camera* during the inquiry into material relating to JusticeLionel Murphy on the 'Age tapes'. In its Report dealing with the question of penalty for the contempt, the Senate Committee of Privileges suggested that, where large media organisations were involved, contempt of this nature might be punishable by a fine up to a maximum of $100 000. But it cautioned that there was doubt as to whether the Senate, under existing law, had legal power to impose a fine for contempt and it recommended that, whatever decision was ultimately made regarding the contempt by the *National Times*, legislation should be introduced to put the power to fine beyond doubt. The central recommendation regarding the *National Times* was in the following terms:

> The Senate [should] not proceed to the imposition of a penalty at this time, but ... if the same or a similar offence be committed by any of the media for which John Fairfax & Sons Ltd is responsible, the Senate should, unless at that time there are extenuating circumstances, impose an appropriate penalty for the present offence. In effect, the Committee, in this recommendation, is suggesting that the Senate place John Fairfax & Sons Ltd on a 'good behaviour bond' (Senate Privileges Committee Report, para 5.19).

'tyranny' and 'absurdity'. Not surprisingly, the media made common cause in attacking the Committee's proposal. An editorial in the *Age* (25 May 1985) – in which the Fairfax organisation has a controlling interest – began with the following observation:

> Politicians armed with coercive powers and seized with righteous indignation are apt to resort to either of two reactions – the tyrannical or the absurd. This week's decision of the Senate privileges committee has elements of both.

Biblical imagery was invoked by the editor of the *Age*, MrCreighton Burns, in pointing out that the 'good behaviour bond' would affect not merely the *National Times* but a whole range of other Fairfax-owned newspapers and broadcasting stations, which had their own independent editorial policies and had not been implicated in any way in the original contempt:

> I know that we are warned in the Old Testament that a jealous God will visit the iniquity of fathers upon their children unto the third and fourth generations. However, the Senate Committee has chosen to raise itself above the Almighty by visiting the alleged sin of a sibling upon his brothers and sisters (*Age*, 24 May 1985).

Professor Colin Howard, Professor of Law at Melbourne University, claimed that the Committee proposal was not only absurd but 'bordering on hypocritical', because information such as that published by the *National Times* was often leaked by Parliamentarians themselves (*Age*, 25 May 1985).

rank-and-file disarray. Senators themselves were reported as taking divergent views on the merit of the proposal. Alternative suggestions included the immediate imposition of a fine and the issue of a reprimand to the parties found in contempt. Several leading Liberal senators, including Senator Chaney, the Senate Opposition Leader, made it clear that they disagreed with the concept of a good behaviour bond (Fairfax's *Sydney Morning Herald* 28 May 1985). However, Senator Macklin, the Australian Democrat member of the Committee, defended the proposal, arguing that it was hypocritical for journalists to claim the right to protect their sources absolutely while denying the Senate a similar power (*Age*, 25 May 1985). It has been

deemed inappropriate to discuss such a contentious matter in Senate during the dying days of the Autumn session, so the matter has been postponed to the Budget session, when there will be time for a thorough debate. In the meantime, presumably, the Fairfax organisation is 'free' to behave as well or as badly as it chooses.

occupiers' liability

Forgive us our trespasses
As we forgive those who trespass against us.
Matthew 6, 12

a flaw in the floor. A recent advertisement inserted in *The Age* by the Legal Aid Commission of Victoria shows a burglar meeting with a horrible accident caused by a faulty floor board. Victoria is the only State in Australia to reform occupiers' liability law, and the reform no doubt proved the advertisement. It was to inform the public of what the law is and what precautions occupiers ought to take. In doing so, the advertisement pointed out, 'It is possible that even a trespasser or a thief could successfully claim compensation'.

a shot in the dark. In fact, the common law is also rapidly softening its draconian appearance. Occupiers' liability law defines the rights and liabilities of the *occupiers* of land to people who are on the property in one capacity or another. The subject does not generally arouse the passions of the lay public, though it has been the subject of much debate amongst lawyers. Recently however, some members of the public have been aroused by the High Court's decision in *Hackshaw v Shaw* in which a farmer was ordered to pay compensation to a trespasser. The case was determined according to the common law as it applied in Victoria prior to the statutory overhaul. A young man had trespassed on the farmer's land and was stealing the farmer's petrol. Unbeknown to the farmer he was accompanied by a young woman who, in the dark, was crouching on the front passenger seat. The young woman was injured when the farmer shot at the car in attempting to immobilise it. The High Court held that the farmer had acted negligently and should pay compensation.

One person from Victoria wrote to the Commission following the decision:

> Reasonable people have no wish to import into this country the 'right to bear arms' mentality of the US National Rifle Association, but surely the decision in this case points to the urgent need to amend, and amend radically, the law of negligence in relation to trespass, especially trespassers with criminal intent.

reform by the high court. The editorial writers of *The Canberra Times* (8 January 1985) were also moved to write about the case. They did not express disagreement with the decision. But rather they highlighted the High Court's decision to determine the case by using the ordinary rules of negligence rather than the complicated and (some would say) archaic rules applying to occupiers' liability. The traditional multi-level analysis involves categorising people entering on land either as invitees, licensees or trespassers with the liability of the occupier depending not only on the circumstances of the injury but also on this categorisation. The editorial, under the banner 'Legislation in Court', claimed that the High Court has achieved in this case what many parliaments had taken very much longer to achieve in a single stroke, namely, the reform of the law of occupiers' liability.

The editor's view of the case was commented on in a joint letter by Professor David Hambly and Mr Nicholas Seddon, both of the Australian Law Reform Commission. They did not agree that the case had achieved what was claimed for it. They said that the 'simplification has not been achieved by the High Court's decision. Only one of the judges (Mr Justice Deane) was in favour of taking that bold step. The other judges who decided for the injured plaintiff did so, not on the basis that the special rules affecting occupiers were no longer the law, but that they were not applicable in that case (*Canberra Times*, 18