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The Marginalisation of Gypsies

by

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Summary

Despite the recognition that Gypsies constitute a racial group for the purposes of the Race Relations Act 1976, they have persistently suffered discrimination and prejudice from the rest of society. The Criminal Justice and Public Order Act 1994 (hereinafter CJPOA) contains provisions which will reduce the number of authorised Gypsy sites available in an attempt to discourage the nomadic way of life which has been central to the lives of many Gypsies for over five-hundred years. The effect of this legislation will be to worsen the hostility shown towards the Gypsy community. It is also likely to have severe implications for the welfare of the Gypsy family unit. Ultimately however, a comparison with other European jurisdictions will illustrate that this legislation will not succeed in persuading Gypsies to abandon their traditions because it is founded on a myth, namely that Gypsies are simply a social bonding of nomads with no distinctive culture or group identity.

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Introduction

Gypsies have been recognised by the judiciary as constituting a racial group for the purposes of the Race Relations Act 1976 since the 1989 case of *CRE v Dutton* [1989] 1 All ER 306. In practice however, the Gypsy community has been increasingly marginalised. The common perception that they are merely a 'social group of nomads' with no bona fide cultural values distinct from the host society (Leigeios, 1987) has threatened to undermine the Gypsy identity. Whilst the Council of Europe and the European Commission of Human Rights (*Buckley v UK* App 20348/92 11.1.95) have been actively defending and promoting the Gypsy culture, the United Kingdom has pursued a policy of integration and assimilation culminating in the CJPOA 1994. This article examines the rationale behind this 'anti-gypsy' legislation and explores why attempts to assimilate are destined to fail, as they have done in numerous other countries, because the foundations upon which they are laid are misconceived.

There are estimated to be around 12,600 Gypsy families in England and Wales (D/E 1994) who regularly find themselves subjected to a unique amount of abuse and hostility from the dominant society:

"The history of the Romani people is a story of relentless persecution. From the Middle Ages to the present day, they have been the target of racial discrimination and outright genocide"(Puxon 1987, p12).

Since their arrival in the United Kingdom, estimated to be around the turn of the sixteenth century (Kendrick & Puxon 1972, ch 1), the Gypsy lifestyle has been resented and much of this resentment has found expression through the legal system. In 1530, Henry VIII ordered their departure within forty days unless they chose to abandon their 'naughty, idle and ungodly life'. Similarly, in 1959, s27 of the Highways Act directly discriminated against Gypsies by prohibiting camping on highways, an offence which could not be committed by 'Gorgios'.¹

Contempt has also been expressed by regional media who have been quick to yield to the temptation of sensationalism:

¹ Gorgios or Gadjes- the Gypsy word to describe those not of the Gypsy race (see Okely 1983, Fraser 1992 et al)

"It is a tragedy that our society continues to tolerate and even subsidise these ragbag vagabonds who sponge off the state and steal it blind....Set up a Gypsy site next to Sellafield where they can pinch as much radiation as they like" (*High Wycombe Midweek*, Editorial, 6 July 1993; see generally National Gypsy Council, (1981)².

Allegations of Gypsy misbehaviour are regularly reported as fact. The following is a typical example: Gypsy spokesperson John Nash told a Buckingham reporter "all his people wanted was a bit or peace and quiet", the paper responded "try telling that to the owner of the £55,000 barn which was set alight by what police **believe** were Gypsies" [emphasis added]. (*High Wycombe Midweek*, 6 July 1993, in National Gypsy Council 1992.)

With the help of the media, local opposition to Gypsy encampments is intensified and anti-Gypsy pressure groups emerge with frightening frequency. In the Somerset village of Middlezoy, local residents went all the way to the High Court in a vain attempt to frustrate the Council's statutory duty of site provision. When accused, by a reporter, of racism, one female villager retorted:

"A bullet in the head is what they need....If I were dying of cancer I'd buy a shotgun and take out six of them." (*The Independent*, 16 June 1993.)

For local Councillors, there are few votes to be won in accommodating Gypsies. Sir John Cripps found that hostile public opinion was the major force preventing Local Authorities from honouring their Caravan Sites Act 1968 S6 duty to provide sites:

"it is not possible, however, to overstate the intensity of feeling, bordering on the frenetic, aroused by a proposal to establish a site for Gypsies in almost any reasonable location." (D/E 1977 para 3.19)

An analysis of the inaccuracy of the assumptions underlying this entrenched intolerance is of paramount importance to the question of how and why Gypsies should maintain their own culture and traditions, free from persecution.

Romanticism and Myth

The modern view of Gypsies can be presented as a dichotomy. On the one hand there is the romanticised image of the Gypsy as a primitive rural character often depicted with a horse and painted wagon; on the other hand there is the more sinister, 'pariah syndrome', image of the 'dirty, social parasite' who personifies the decadence of modern society.

² Other recent headlines include 'A threat to tourism', *Grimsby Evening Telegraph* 26 April 1993, 'Ban the Gypsies demand', *Bournemouth Evening Echo* 4 June 1993.

Both of these aspects combine to present Gypsies as a social group of nomads without genuine cultural identity who signify lawlessness and rebellion.

The 'Traditional Romany'

The romantic image of the 'traditional Romany' has been used to distinguish those not conforming to this image as being mere 'tinkers' or 'didikois', undeserving of protection:

"We believe that good old-fashioned Gypsies and their descendants do need some consideration but that their numbers are small and could be accommodated in existing private and public sites." (Letter from Bayley Hill Residents Association to D/E 1992)

In fact, after five-hundred years of co-existence with the dominant population, such categories are meaningless. They serve only to provide an excuse for Local Authorities who have failed to comply with their Caravan Sites Act duty to provide adequate accommodation for Gypsies, enabling them to argue that there are no 'true-gypsies' only 'tinkers' in the locality.

The alternative image in the dichotomy is particularly damaging, focusing on the alleged criminality and laziness supposedly inherent to the Gypsy nature. The propensity of such stereo-types to inform public policy will become all too apparent in an analysis of the legislation. These prejudices must be addressed in order that the legislation can be properly criticised.

The 'work-shy' Gypsy

Whilst it is largely true that Gypsies are rarely seen to be engaged in full-time wage labour, it would be a mistake to conclude that Gypsies are by their very nature, work-shy. In fact, they resent the restrictions imposed by the wage-labour system preferring to find loopholes in the Gorgio economy. Women and children contribute to the finances of the family unit, the latter acquiring skills considered to be more valuable by many Gypsies than academic excellence (Okely 1983, p 33). Okely also found that reliance on social security payments was frowned upon as it diminishes Gypsy independence from the rest of society (Okely 1983, ch 4). Traditional travelling fairs such as Appleby and Stow (established for over five-hundred years) which generate income for many Gypsies, are constantly under threat. This in itself may inevitably lead to Gypsies being forced to turn to social security, as has happened with 'New Age Travellers' who have faced heavy police presence and eviction orders when they congregated on common land for annual events such as Stonehenge for the solstice and the White Goddess festival in Cornwall.

The Criminal Gypsy

As regards Gypsy criminality, many allegations remain unsubstantiated:

"Excrement was smeared in a bus shelter earlier in the week. Many blamed the gypsies, but when ...a parish councillor and staunch supporter of the fair investigated, the man who cleans the toilets revealed he had seen the culprits at work - two local girls. Even so, the council had set up a hotline for people to report any similar incidents." ('Fair or foul, gypsies go to town' *The Observer*, 15 May 1994).

Accusations of theft are rife when Gypsies reside in a new area, although again, they tend to be unsubstantiated. A survey in the West Riding of Yorkshire in 1968 found that recorded incidents of theft by the Gypsy community were only 0.46% higher than that for the house dwelling community; although many more crimes were alleged, including cannibalism and murder! (Adams et al 1975, p 163). The Association of Chief Police Officers have also recently confirmed in a recent letter to the Department of Environment that the Gypsy community cause no major policing problems (ACPO Letter to the D/E 1992).

The Gypsy as 'Social-parasite'.

The perception of Gypsies as 'social parasites' is particularly disturbing. There are statistics which clearly demonstrate that public site provision costs substantially less than council housing (National Gypsy Council 1992) and Gypsy organisations have insisted that it is their wish to provide their own accommodation without relying on state funds (National Gypsy Council 1992). Facilities that the house-dwelling community take for granted, such as good health care and sanitation, are often denied to those on the road. Gypsies have a specific difficulty in gaining access to education; in 1985 Lord Swann found that the Gypsy community "illustrates to an extreme degree" the difficulties experienced by many other ethnic minority groups in gaining adequate education (D/Ed 1985). Europe-wide studies have shown that this problem is repeated elsewhere and UNESCO is presently conducting a pilot project, in conjunction with Greece and Spain, to improve the literacy problem (see generally *Interface* 1991-95).

Gypsies have been so incensed by these contemptuous labels that they have directed their anger towards the newer forms of travelling people, notably the 'New Age Travellers':

"Gypsies are being blamed by the Government for the hippies. Hippies are not travellers-they don't work, they don't do anything. They just roam around and we are getting the blame." (Thomas & Campbell 1992).

In fact, the lifestyle of most Gypsies is very different from that of the newer travelling groups and the popular conceptions fail to appreciate the importance the community attaches to customs and traditions, many of which have been inherited from the original Gypsy settlers.

Gypsy Adaptability

One of the main reasons for the survival of the Gypsy community in adverse circumstances has been their adaptability. Hawes and Perez have commented that somehow Gypsies: "accommodate each new threat be it extermination or assimilation, with a degree of equanimity to be envied" (Hawes and Perez 1995, p 126). This versatility has often led to criticism from those trying to identify the elusive concept of the 'true-gypsy'. Traditional modes of transport are now largely obsolete as the Gypsy unit often has to travel much further to find employment and unfortunately many people still believe that 'true gypsies' live in painted trailers and indulge in fortune telling as did their ancestors (see Fitzgerald 1973).

Nevertheless, patterns of descent and ancestry are still extremely important to the Gypsy. Thomas and Campbell in their survey of housing attitudes among Cardiff Gypsies quote several sources who stress their ancestral heritage; for example:

"I'm a proper Gypsy. I can go back three generations and I've got photos to prove it...."(Thomas & Campbell 1992).

Okely also notes that the status of Gypsy is ascribed at birth and is the one fundamental requirement for belonging to the community (Okely 1983, ch 5). Even those Gorgios who have married a Gypsy and live with other Gypsies have found that they are required to 'Gypsify' themselves before being accepted by the community in which they live (Adams et al 1975, p 61). The importance of the extended family group is also stressed by many Gypsies who prefer to reside in large family groups, a fact which is often forgotten by Gypsy site planners.

Whilst nomadism is still central to the lives of many Gypsies in Britain, equally important to all Gypsies is their travelling tradition. Those who have now adopted settled residence are still keen to stress the ancestral pattern of nomadism, and many say that one day they may return to the road (see Thomas & Campbell 1992 and Leigeois 1987). The National Gypsy Council emphasise the importance of the nomadic tradition in their definition of Gypsies as opposed to the definition in the Caravan Sites Act 1968, s 16 which concentrated on the nomadic habit of life (National Gypsy Council 1992).

Indeed, there are many things about the Gypsy lifestyle which are misunderstood, such as their personal hygiene codes and pollution taboos, which are discussed at length by Okely (see generally Okely 1983). Their reliance on the family group and their preference for self-employment have been interpreted as anti-social behavioural traits and the importance of tradition has been constantly ignored. Alec Samuels consolidates the reasons why Gypsies, despite there being many sectional ethnic groups within the population³, comprise a racial group:

³ For example the Irish Gypsies or 'tinkers', Scottish Kale, Welsh Gypsies and the Sinti and Rom in Germany.

"A long shared history. A conscious sense of distinctiveness or difference. Distinctive customs. Their own folklore. A tightly knit community. Birth into the community. Intermarriage. A minority group. A distinctive dialect. Nomadic" (Samuels 1992).

It is indisputable that all too often these factors are ignored by legislators and planners. A report by the Council of Europe sums up:

"The fact that the Gypsy way of life is different from that of the total society has, unfortunately, caused many biased judgements on the Gypsies, and in many instances discrimination. Discrimination has often occurred in Europe and because of their prejudice many people cannot yet accept that Gypsies should occupy sites or houses in their neighbourhood" (Wiklund, 1969).

Legislative Provision: A Reflection of Prejudice

The Previous Position

The Caravan Sites Act 1968 was introduced primarily to provide a remedy for the large number of gypsy families living in extremely poor conditions. A national census commissioned in 1967 had revealed the surprising extent of traveller poverty; more than half of those surveyed occupying sites with no amenities and only one-third having access to rubbish disposal and mains water supplies (Ministry of Housing and Local Government, 1967). The stringent planning controls introduced by the 1960 caravan Sites and Control of Development Act had forced families to move off agricultural land onto lay-bys and car-parks. It became clear that a discretion to provide sites if appropriate, contained in s 24, was failing to tackle the depth of the deprivation.

Section 6(1) of the Caravan Sites Act 1968 introduced a mandatory duty on Local Authorities to provide 'adequate accommodation for gypsies residing or resorting to their area'. In return for supplying a sufficient number of pitches, the Local Authority could apply to the Secretary of State to become a 'designated' area. Section 10 of the Caravan Sites Act 1968 gave designated Authorities additional powers to remove Gypsies from unauthorised land within their region. Eric Lubbock MP explained the rationale of this dual element to the House of Commons:

"The stick is the Minister's direction and the carrot is the much stronger powers, once sites have been made available, for Local Authorities to move Gypsies from land they are occupying without permission" (HC Deb 1968).

Hailed by the press as the 'Gypsies Charter' and welcomed in the most part by Gypsy groups, it seemed an almost perfect solution to an intractable problem. For a while at least, all parties were contented; today, twenty-seven years on, approximately one-third of caravan-dwelling Gypsies still have no legal right of abode (D/E 1994) and public pressure is evidently as hostile as ever. The problems with the operation of the Caravan

Sites Act are fundamental to the origins of the new legislative framework and therefore deserve some attention.

Inadequate and Insufficient Site Provision

In 1977, Sir John Cripps reviewed the implementation of the legislation and reported:

"Whatever the difficulties, the figures demonstrate a failure, and a growing failure, to perform a statutory duty" (D/E 1977).

Despite the availability of central Government funding following the recommendations of Sir John Cripps, contained in the Local Government and Planning Act 1980 s 70, many Local Authorities persistently failed to comply with their statutory duty.

The remedy of judicial review has been invoked successfully in some cases to prevent eviction by non-compliant Local Authorities, but in practice its use was limited as it could apply only where there had been a failure to provide even the most minimal accommodation (*West Glamorgan County Council v Rafferty* [1987] 1 All ER 1005). There are also numerous examples of Local Authorities achieving designation on the premise that they had either adequate accommodation or that it was not expedient/necessary to provide such accommodation (Caravan Sites Act 1968 s 12) when in fact there were several unauthorised encampments in the region. For example: Plymouth City Council was designated in 1973 but the site has since been closed and never replaced, in 1993/4 they failed to submit a return to the Department of Environment on the number of unauthorised encampments in the vicinity. Similarly, Leeds achieved designation in the early stages of the legislation with a fifteen pitch site but now have over one-hundred Gypsy families residing locally (D/E 1994).

The problems for families occupying these unauthorised sites are notorious: no running water, rubbish disposal or sanitation and inadequate access to education, health care and social services, to name but a few. However, many of the residents accommodated on authorised sites fair no better. A survey of sixty-five sites in 1974 revealed that while 12% were adjacent to rubbish dumping grounds, 28% were situated in close proximity to industrial development (Sibely, 1974). Sir John Cripps commented that:

"No non-Gypsy family would be expected to live in such places" (D/E 1977 para 3.17).

Definitional Difficulties

The importance of this travelling tradition, which clearly distinguishes Gypsies from modern travelling groups, was unfortunately overlooked in the Caravan Sites Act 1968. Section 16 refers to "persons of nomadic habit of life whatever their race or origin", this definition is clearly unsatisfactory and has created many problems in the courts. The judiciary have made several attempts to avoid its logical consequences by ruling that

'New Age Travellers' are not Gypsies within the Act. In *R v South Hams DC ex p Gibb* [1993] 26 HLR, the Divisional Court determined that in order to show a nomadic habit, a person would have to show some sort of purpose to their travelling. One of the respondents had been travelling for thirteen years, another for eight years, the court held that they did not satisfy the criteria of a nomadic habit of life and therefore were not entitled to be accommodated by the Local Authority in question.

Following on from this decision it appears that many Councils will not be calculating 'new age travellers' in their twice yearly count of Gypsy caravans to the Department of the Environment. It therefore makes it impossible precisely to calculate the need for site accommodation and further marginalises those travellers who do not fit neatly into judicial categories. Effectively, there will be no record of many of these people, their identity will be obscured and their existence can then be denied.

The New Legislation.

Section 80 CJPOA repeals the duty laid down in the Caravan Sites Act to provide Gypsy sites and also removes the central Government funding introduced in 1980.

Introducing the new proposals, Sir George Young somewhat ominously declared:

"The 1968 Act is too loosely defined. It has become an open-ended commitment to provide sites, which inevitably leads to a drain on tax payer's money and undermines gypsies' responsibility to provide for themselves" (D/E News Release 1992).

It is not disputed that the 1968 Act is ill-drafted in that the lack of time limit for site provision has allowed Local Authorities to continuously evade their duty. However, it is difficult to support this concern for the tax-payer in the light of persistent attempts to persuade Gypsies to adopt settled housing which would ultimately be more costly⁴.

The new Act not only abolishes the site provision duty, it also makes the stationing of caravans on any highway, unoccupied ground, common land or land without the owners consent, a criminal offence (CJPOA s 77). The undoubted aim of this legislation is to force Gypsies into settled accommodation⁵.

Removal of the Statutory Duty and Central Government Funding

⁴ National Gypsy Council 1992 compares the cost of an average council house, estimated @ £50,000 to a typical gypsy pitch @ £25,000.

⁵ The consultation paper proposed that Gypsies should be given advice to help them settle into accommodation and the seizure of caravans was also considered to be a possible option. (para 26 and para 21)

At present 32% of nomadic Gypsies do not have an authorised caravan site (D/E Count 1994), so clearly, even with the statutory duty and the designation provisions, some Authorities were intent on not accommodating Gypsies. It is difficult to support the contention that an abolition of the duty will lead to councils providing more Gypsy accommodation.

Although the House of Lords attempted to grant a five year reprieve for the removal of the site provision duty, this was rejected in the House of Commons (HL Deb 1994b and 1994c and HC Deb 1994b). Since November 3rd 1994 Councillors have no longer been able to wield the statutory duty sword in the face of strong local opposition and the money for site provision will compete against more appealing projects. During the House of Lords debate, Lord Avebury reported on the decision of Hertfordshire Council to construct one site instead of three as originally intended due to the possibility of grant withdrawal (HL Deb 1994a) .

Even some of the most unlikely Gypsy allies condemned the decision to abolish the site provision duty. The legal representative of the Country Landowners Association exhibited concern at the social implications of criminalising Gypsies. She expressed the view of her members that their grievance was with the 'New Age Travellers' rather than Gypsies (Letter to D/E 6. November 1992). Similarly, Tony Burton, a senior planning officer with the Council for the Protection of Rural England stated:

"CPRE believes the overriding objective of gypsy site policy should be to secure sufficient sites for the accommodation of travellers in the most environmentally acceptable locations" (Letter to D/E 4 November 1993).

It was not simply a humanitarian concern for Gypsies that prompted these responses; there is a recognition that the new legislation will exacerbate the volatile situation between landowners and travellers and confrontation may become a frequent occurrence.

The legislation must also be viewed in the light of the recent decision of the European Commission in *Buckley v UK* (App 20348/92 11.1.95). The Commission heard the evidence of June Buckley, a Gypsy, who had been residing on privately owned land without planning permission and who had subsequently been evicted by the Local Authority. Despite the existence of an authorised site nearby, the Commission found that there had been no respect for the applicant's private and home life contrary to Article 8 of the European Convention on Human Rights. In reaching this decision they further commented that the concept of home:

"is not limited to those which are lawfully occupied or which have been lawfully established." (para 63)

It is not inconceivable therefore that new challenges may be brought under Article 8 with respect to evictions taking place under the new legislation. It is clear that the members of the Commission are prepared to recognise the need for Gypsy site provision as fundamental for the maintenance of their culture. They accepted:

“that living in a caravan home is an integral and deeply-felt part of her gypsy life-style.” (para 64)

Reducing the Social and Financial Implications of Eviction.

Section 77 CJPOA makes it a criminal offence to occupy an unauthorised site. Effectively, those Local Authorities who have shirked their responsibility to provide adequate sites in the past are being rewarded for their behaviour by being granted new powers to control Gypsies without having to supply any Gypsy accommodation.

The Caravan Sites Act has already proved that the cost of eviction, both socially and financially, is great. Leicester City Council alone estimate spending of around £375,000 on evictions in one financial year ('Call to Fight Gypsy Camp' Leicester Herald & Post, 3.5.95). The initial Government response, to propose the seizure of caravans until alternative accommodation was obtained has fortunately been rejected (D/E 1992, para 21) but the fact that it was once considered as a possible option indicates the extent of the Government's disrespect for travelling people and their lifestyle.

In the House of Lords, Lord Irvine of Lairg moved an amendment stating that an eviction order should not be made unless the Gypsies could be accommodated on an authorised site in the region, the location of which should be specified in the court order (HL Deb 1994c col 1516). He described this principle as a : "simple matter of common humanity", the amendment, however, was defeated.

The fact that unlawful camping is potentially a criminal offence in every instance implies that the police will be involved in enforcing evictions. They are only too aware that they will be placed in the 'firing line' and are understandably reluctant to get involved (Police Review 1992). The spectre of security firms specialising in the speedy eviction of Gypsy families looms large.

The Government Solution : Private Provision

"[T]he Exchequer should no longer have an open-ended commitment to meet gypsies' accommodation needs; more gypsies should be encouraged to find their own sites" (D/E News Release 1 March 1993).

There are already some 3169 private sites in England and Wales (around 35% of total provision) (D/E Count 1994). Providing their own sites is something Gypsies have wanted to do on a larger scale for some time; it would reduce the cost of maintenance and sites would reflect Gypsy tradition which is often neglected by Council developers (National Gypsy Council 1992).

When Gypsies make a planning application however, they come across a blanket refusal in 90% of cases from the Local Authority (Sir David Mitchell, HC Deb 1994a). In

Waverley, Surrey there have already been five planning inquiries to decide whether a group of Gypsies can remain on the land they have owned and illegally occupied for twelve years. The Council recently decided in favour of granting lawful residence but the Environment Minister has intervened, on behalf of local residents, to establish a sixth inquiry ('Gummer Blocks Gypsy Site Permit' *The Times*, 6 February 1995). In 1985, Bill Forrester described the UK planning system as:

"The single biggest obstacle to the proper provision of adequate traveller caravan sites...."(Forrester 1985 p 8)

In 1991, the Planning and Compensation Act strengthened the power of Local Authorities so that Gypsies occupying a caravan on land without planning permission could be fined up to £20,000 for failing to comply with a stop-notice (Town and Country Planning Act 1991 s 183, as amended). This situation is likely to worsen as previously planners could consider green-belt and other normally exempted land as suitable for Gypsy sites, which was largely a recognition of the difficulty of finding suitable sites in suburbia.

Department of Environment Circular 00/93 removes this special consideration, the justification being that "Gypsies enjoy a privileged position in the planning system" (D/E 1992 para 29). This move must be seen in the light of government guidance giving increased powers to Councils who wish to develop green-belt land for building and for redevelopment ('Building on green belt sites to be encouraged' *The Independent*, 18 August 1994).

The only Local Authority duty that may now be challenged by way of judicial review is simply a requirement that Local Authorities make a development plan outlining their policy for accommodating Gypsies (D/E Circular 1/94). The County Planning Officers Society believe that the policy of promoting self-help yet removing the special consideration is wholly inconsistent and:

"...could result in Gypsies' becoming more hostile in their attitudes, possibly resulting in more frequent confrontation" (Letter to the D/E 1993).

Discrimination and the Inherent Control Policy

An examination of the Consultation Paper 'Proposals for the Constructive Reform of the Caravan Sites Act 1968' will reveal at once a desire to persuade Gypsies to adopt a settled lifestyle:

"...the Government believes that it may be necessary to provide advice on education, health and housing which encourages gypsies and other travellers to settle and, in time, to transfer into traditional housing" (D/E 1993 paras 27 & 28).

The Department of Environment have suggested some form of financial assistance to aid Gypsies in their transition (ibid, para 28). Regulations made under s 67(3) CJPOA which deals with the confiscation of vehicles failing to leave the scene of a public order offence state that:

“If the authority are satisfied that the person on whom they have served or attempted to serve the removal notice is the owner of the vehicle, they may dispose of or destroy the vehicle at any time..”(SI 1995 No 723 The Police Retention and Disposal of Vehicles Regulations 1995 10.3.95 para 6(2)).

This provision is subject to para 6(5) which exempts vehicles which have not been held by the authority for three months. Although s 67 of the legislation is intended to cover situations of mass trespass, the reduction of vehicles from twelve (under Public Order Act 1986 s 39) to six, including caravans, means that it is possible for Gypsies to find the provision being used against them and their homes being confiscated, possibly destroyed.

Whilst it is clear that some Gypsies, particularly the elderly and those with young children, do show a desire to adopt settled housing, this is not suitable for the large majority of Gypsies (Thomas & Campbell 1992 and see below)

Earlier legislation also can be perceived as attempting to assimilate Gypsies. The Environmental Protection Act 1990, which expressly prohibits the occupation of scrap-metal collection (Schedule 1, part b), strikes at the heart of Gypsy employment traditions (see generally Okely 1983).

There is no recognition that such a conscious pressure to assimilate is inherently discriminatory. It is accepted as axiomatic that all racism is wrong; the Race Relations Act 1976 and the British signature on the European Convention on Human Rights set out the Government's commitment to equality of opportunity. They also have clearly accepted that treating all persons equally does not mean treating them identically; speaking to the Muslim community in February 1989 Douglas Hurd MP stated:

"In no case has the majority living here sought to eradicate minority customs or beliefs" (Reported in Liberty 1993b).

Different groups within society require different types of support from the state; everyone demands security and shelter - for British Gypsies generally, this manifests itself in a desire to live legally in trailers on their own land.

The Government clearly believes that by condemning the travelling lifestyle they will force Gypsies and other travellers to move off the road. They believe that Gypsy people will simply surrender their travelling instincts and move into council housing. In the words of Lord Irvine, this is "unjustifiable discrimination against those residing in vehicles" (HL Deb 1994b col 1527).

There appears to be no research or other evidence to suggest that Gypsies as a group wish to adopt conventional housing. On the contrary there is great opposition to this notion, as one Gypsy comments:

"I've spent all my life living in a caravan - this is all I've been used to....You feel closed in in a house when you're not used to walls around you" (Thomas 1992).

The National Gypsy Council also reject "enforced assimilation":

"We Gypsies do not want to and will not move into houses, since this form of lifestyle is alien to us, and in any case...insufficient housing stock is available to meet the needs of the settled community, let alone Gypsies...."(National Gypsy Council 1992).

The Government may well hope that in attempting to make the travelling lifestyle impossible and encouraging Gypsies to adopt settled accommodation, they will be able to prevent the growth of the modern traveller movement and substantially reduce the number of existing travellers. Whilst this may have some success in relation to socially constructed groups such as 'New Age travellers', against Gypsies the exercise is likely to be futile.

The Futility of Assimilation

In the rest of Europe, as in Britain, there have often been measures aimed at diminishing the number of Gypsy people. It would be unwise to generalise as to the reasons for these initiatives; they vary from being one element in an ethnic cleansing programme (as in Nazi Germany) to resentment at their success in times of economic depression (as in Romania) (Fraser 1992). However, an examination of the assimilation strategy is a useful indicator for the future of British policy.

Attempts to assimilate adopt a variety of forms. In France since 1969, Gypsies have had to carry the 'carnet de circulation', an identity card which is regularly checked by officials who can decide which commune nomads should be assigned. Some states, for example Switzerland and later Italy, apparently concerned for the welfare of Gypsy children, have sanctioned their forcible adoption (Puxon 1987 p 4-8).

The effects of Gypsy housing programmes on the settled community has also been underestimated: in Socialist Spain there have been many incidents of violence and rioting provoked by the Government's benevolent housing initiatives. Francisco Hernandez, a member of the Secretariado, explains the plight of his people:

"many of our people live in misery in huts made up from scraps. When it rains they are flooded. Then flat-building begins on the site and our people are thrown out. We want a dignified life - not paternalism but tolerance and understanding." (Puxon 1987, p 4)

In Italy, the problems for the Gypsy community have been created by the states hostility towards nomadism:

"Problem with nomadism. Need to settle to obtain work and schooling. Major problem with discrimination, violence from police in encampments during the night, petitions raised to remove Gypsies...." (Gypsy Council for Education, Culture, Welfare and Civil Rights 1994).

In the Eastern European countries where the Gypsy population is greater, forcible coercion was adopted as voluntary integration failed. Even when Gypsies were required to adopt new identities (as in Bulgaria) assimilation has never been successful in the long term, merely leading to worse incidents of violence and hostility. In Germany, Gypsies are used by right-wing antagonists to support a restriction on liberal asylum laws ('New Gypsies give Germans old ideas' *The Guardian*, 1 September 1990). Gypsies fleeing the conflict in the former Yugoslavia have added to the tension, with violent clashes occurring all over Eastern Europe. In Mława, Poland, violence against the Gypsy community has intensified. This has been attributed, ironically, to their comparative prosperity:

"In June, a group of 150 drunken hooligans, mostly young people, tore through the Paczkowskas' home and eight other luxurious Gypsy homes, breaking windows and looting goods, setting six cars on fire and beating two men."
(Poland's well-off Gypsies pay violent price for their riches' *The Guardian*, 27 July 1991)

Policies of assimilation are not successful because Gypsy people, whether they live in houses, settlements, trailers or tents, are not simply a social group but a racial group. The Gypsy community has only survived through their adaptability in various situations and this has enabled people to claim that they are not 'true-gypsies' as they no longer have a common language, religion and independently mobile lifestyle. In short, there is no one single factor which identifies a Gypsy to a Gorgio. However, it would be foolish to conclude that they have no common identity as a racial group. As Nicholls LJ stated in *CRE v Dutton* [1989] 1 All ER 306:

"The fact that some have been absorbed and are indistinguishable from any ordinary member of the public, is not sufficient in itself to establish loss of...an historically determined social identity in [the group's] own eyes and in the eyes of those outside the group...despite their long presence in England, gypsies have not merged wholly in the population as have the Saxons and the Danes....They, or many of them, have retained a separateness, a self-awareness, of still being gypsies." (paras 313(j)-314(a)).

It is this self-awareness which has enabled Gypsies to maintain their own culture, whilst resisting full integration, in the most adverse of circumstances; which have included forced settlement, assimilation, sterilisation and even mass extermination. There is no evidence to suggest that the provisions in the CJPOA will succeed in their objective of assimilating the Gypsy community.

Conclusion

The depth of anti-Gypsy prejudice, despite the inaccuracy of its' foundations, cannot be over-estimated. Although draconian, an analysis of similar policies throughout Europe has indicated that the measures contained in the CJPOA are unlikely to succeed in their objective of forcing the Gypsy community to abandon their culture and traditions. Nevertheless, there is still a very apparent need to monitor the consequences of the legislation. The relationship between the sedentary population and travelling people has always been problematic and 'anti-nomadic' legislation can only serve to exacerbate an already volatile situation. There are likely to be severe consequences for the welfare of the Gypsy family unit, as those families unwilling or simply unable to find an authorised site will find it impossible to obtain adequate schooling for children and to access social services; it may also prove extremely difficult to obtain essential basic human necessities such as clean water and secure shelter. In short, despite persistent, expensive attempts to administer the new legislation, ultimately, it will prove ineffective. It is most unfortunate that in the meantime it is bound to present severe detrimental effects on the welfare of several thousand citizens who wish to maintain their ethnic identity.

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