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- Will the Conservative Party stand up for freedom, or submit to political correctness?
- The not-so-gentle touch of the British nanny-State.
- The machinations of 'our' public servants.

EDITORIAL: A NEWISH FACE

Another year, another issue of *The Individual*, another editor, and another layout!

Having been the SIF's membership secretary since 1999, and latterly helping to create the new website, I have been asked to take over the editorship of *The Individual*.

Often when there is a rapid change or movement of personnel, it indicates a behind the scenes coup or personal falling out. In this case, however, nothing could be further from the truth.

The two people who in recent years have worked so hard at editing and publishing *The Individual*, Paul Anderton and Martin Ball, have found themselves with family, personal, and work commitments which have meant that they have been obliged to withdraw from some of their other activities.

Both Paul and Martin will continue to provide material for *The Individual*, and I shall value their advice on publishing matters.

(For those who are interested in the technical details, this issue of *The Individual* has been created using Microsoft's *Publisher* software. I know that Microsoft is often criticised by the technical cognoscenti, however, as a more

humble type of key-basher, I have used their products for many years and have nearly always found them easy to use.)

Nevertheless, these changes *are* indicative of the extent to which voluntary organisations such as the SIF rely on the commitment, effort, and often money of a very small number of people, and how vulnerable they are to other calls on their time.

For every 'activist', many more have neither the time nor inclination to get personally involved. However, the importance of such 'lay' members cannot be overstated. Without regular subscriptions and occasional, but very welcome, donations, the SIF cannot continue to exist.

We are planning to return *The Individual* to a more consistent, biannual publication schedule, with the core articles of each issue uploaded onto our website directly afterwards. For this issue, we are staying with the recent 16-page format. However, both to ensure regularity of publication and to minimise postage costs, we may move back to a more manageable 12-page format.

However we proceed, we can only do this with your continued support.

DISCLAIMER & PUBLISHING DETAILS

Views expressed in *The Individual* are not necessarily those of the Editor or the SIF and its members, but are presented as a contribution to debate.

Only policies or opinions that have been approved by the SIF Management Committee, and are noted as such, can be taken as having formal SIF approval. This also applies to editorial comments in this journal.

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SUBMISSION TO THE CONSERVATIVE PARTY'S POLICY REVIEW

Dr Barry Bracewell-Milnes

[Editor's Note: This submission was originally prepared by Dr Bracewell-Milnes in July 1998. However, following the result of the 2001 General Election and the need for the cause of freedom to be heard at a parliamentary level, we have decided to edit and reissue it as a discussion document.]

Introduction

1. The Society for Individual Freedom is a non-party organisation that seeks to defend and extend the freedom of individuals. In this submission, we have not tried to be comprehensive but rather to concentrate on a number of freedom topics that others may underemphasise or ignore.

2. During the period since 1979 the United Kingdom has become more prosperous but (with a few exceptions such as the loosening of restrictions on liquor sales, shop opening hours and the sale of reading glasses, the abolition of exchange control and the relaxation of planning controls over minor alterations to domestic property) individual freedom has been substantially eroded. Most of the erosion took place under Conservative governments. The Conservatives were once the party most sympathetic to individual freedom, but in the last years of their period in office, individual freedom seems to have had a lowly place in the Conservative order of priorities. New criminal offences of varying gravity were created at an astonishing average rate of six per month. Some had their genesis in Brussels, others were the fruit of home-grown health fascism and Political Correctness, and others stemmed from knee-jerk reaction to tabloid hysteria.

3. Part of the trouble seemed to be that most Conservative ministers went native and followed the (generally hostile) line towards individual freedom instinctively recommended by their officials. Any concessions were grudgingly granted and generally based, not on libertarian principles, but on utilitarian considerations such as the interests of the tourist trade.

4. A period of Opposition removes these temptations and offers the chance to return to principles. It also offers the chance to rediscover the convictions that in 1979 and the years following were an essential component of success.

Regulation

5. Perhaps the most serious single threat to indi-

vidual freedom is the ever-growing mountain of regulation. Although Old Nationalisation is out of fashion, it has been replaced by New Nationalisation in the form of the regulatory economy and concepts such as 'Corporate Social Responsibility'. The New is in some ways worse than the Old. Large companies have the lobbying power and other resources to cope with the regulatory economy or even turn it to their advantage, whereas its full weight is felt by small and medium-sized enterprises.

6. Much of the damage comes from the European Union; but even more originates here, in the initiatives of British officials or the unnecessary gold plating of outline regulations from the European Union.

7. There is much material in the public domain concerning abusive, damaging and unnecessary regulation, both in the mass media such as the Sunday Telegraph, and think-tanks and research organisations such as the Institute of Economic Affairs.

8. The Conservative Government was defensive rather than positive about deregulation. Those ministers who seriously tried to do something about it were often not long enough in the job to make an impact.

9. Bad cases of over-regulation are good terrain for Opposition. We should like to see constituency MPs and Shadow Ministers take up this cause with the enthusiasm and commitment that they once brought to bear on privatisation.

Government expenditure

10. Government should spend money only on goods and services that would not be provided by the private sector. Redistributive spending should be confined to the very worst off. As the standard of living rises and absolute poverty falls, the government sector should represent a declining share of national income.

11. What has happened is the opposite. Institutional pressures for the growth of government spending have been too strong for this desirable development to take place. Even as a proportion of national income, government spending has tended to rise rather than fall over a long period under governments of both parties. We concentrate here on three areas where this tendency

"As the standard of living rises and absolute poverty falls, the government sector should represent a declining share of national income."

should be reversed.

12. First, there are a large number of jobs in the government sector whose occupants do work for which no one in his right mind would pay with his own money. For example, mothers of recently born children can be legally compelled to admit Health Visitors to their homes, even if they resent this intrusion. Children are kidnapped from their parents in dawn raids by social workers (as in the Cleveland case) for reasons subsequently rejected in court. Much of this parasitic growth occurred under the last Conservative Government. The growth of these non-jobs is closely related to the growth of regulation.

13. Second, few would now argue for the old-style renationalisation of industry; but at least the nationalised industries did not provide goods and services free at the point of consumption, which is what is done by the National Health Service, a near-monopoly and the largest employer in Europe. Reform of the NHS under both parties has been peripheral and has not approached this central problem. That is why the NHS is in a permanent crisis of underfunding, even though there have been large increases in real terms in NHS spending year after year. The present method of funding and running the NHS has also had wider disadvantages: it has made society less compassionate, less self-reliant and poorer. The NHS should handle catastrophic cases that are beyond the resources of individuals and families. Routine cases should be gradually moved to the private sector, just as pension provision has become less and less a matter for government. The best way of achieving this voluntarily is through tax relief (for health insurance), as with pensions. Tax relief worked smoothly under the last Government: it should be reintroduced and extended. The continental system of charging the patient a proportion of the cost of treatment also deserves consideration.

14. Similarly for education. Education, like health, has a small and largely trouble-free private sector co-existing with a large government sector in perpetual turmoil or contention. The role of government should be to ensure that an education compatible with an individual's abilities is available to anyone who will make use of it. This does not imply universal provision free at the point of consumption but securing access to education for those who would otherwise go without. The purchase of education is a natural function for the family, and the suppression of this function makes society less compassionate, less self-reliant and poorer. As with health services and for the same reason, tax relief is the best way forward: all the participants are volunteers. Another reform requiring serious consideration is a reduction in the school-leaving age, so that children who do not wish to attend school above the age of fifteen are enabled to do something useful. It might be

an incentive to hard work if children were allowed to leave school at any age provided they had attained a minimum standard.

15. Not the least of the disadvantages of compulsory state education is the scope it offers for indoctrination and the inculcation of Political Correctness, processes from which the Conservative Party has more to lose than its rivals.

Taxation

16. As a result of many large tax increases since 1990 under Governments of both parties, taxation is at record levels and rising fast. As a proportion of national income, the tax burden is near record levels for peacetime and still rising.

17. The two main reasons for the high level of taxation are the insatiable requirements of the welfare state and an apparent suspicion of tax cuts by Governments of both parties since 1990. Scope for tax cuts can be provided by privatising the welfare state (health and education, as above; similar arguments apply to large areas of social security). However, this will not help unless the will to reduce taxes is there: officials will always find ways to spend additional resources.

18. This is not the place for a Budget submission. We mention here four forms of tax reduction that we regard as particularly important for individual freedom.

19. First, inheritance tax restricts or obstructs an individual's freedom to give or bequeath his money instead of spending. The arguments against inheritance tax and the case for its abolition have been rehearsed many times by ourselves and others. The last Conservative Government often spoke about abolishing inheritance tax; but little action followed.

20. Second, capital gains tax restricts or obstructs the freedom of an individual (though not an investment trust or pension fund) to rearrange a portfolio of assets. Gordon Brown deserves credit for not allowing Inland Revenue resistance to tapering to frustrate reform. Long-term gains that are not predictable or pre-ordained should not be taxed, and even the present shallow taper makes useful progress in this direction - provided inflation stays well below three per cent.

21. Third, the present ban on tax-effective inter-personal covenants restricts the individual's freedom to transfer income independently of capital. The abolition of the existing tax-effective regime was one of Nigel Lawson's worst mistakes and one of the many blows the Conservative Government dealt its own supporters. The previous tax-effective regime should be restored and should include the higher rate.

“Education, like health, has a small and largely trouble-free private sector co-existing with a large government sector in perpetual turmoil...”

“Each local authority should send out its own bills. Then local elections might mean something more than a vote for or against the national government of the day.”

22. Fourth, the abolition of tax credits for pension funds restricts the individual's freedom or even ability to provide for himself at a time when with bipartisan agreement government provision is being allowed to wither away. Refundable tax credits should be restored.

23. Finally, on a matter of democratic principle, the mischievous and confusing system of precepting should be abolished. Typically, some three-quarters of the Council Tax levied by the local authority for whom a voter votes is precepted by another or higher authority. Each authority should send out its own bills. Then local elections might mean something more than a vote for or against the national government of the day.

Taxation and spending

24. We wish to minimise both government spending and taxation. In this perspective, the worst policy is to tax government handouts like taxing child benefit, a policy option that is apparently under consideration at present. The best policy is to replace government spending with a tax allowance.

25. Child benefit was created in the mid- 1970s and replaced the child tax allowance (a tax deduction) and family allowance (a cash benefit). The Conservative Government did not restore the child tax allowance after 1979 despite proposals to this effect by the Institute of Directors, the Institute of Economic Affairs and others. (The IEA published Child Tax Allowances : the Solution to the Problem of Child Benefit in February 1991 as Number 22 in their Inquiry Series. This recommended a return to child tax allowances in a form compatible with the no-loser principle: anyone who wished to keep to the present system would be permitted to do so).

26. There were Press reports during the last Parliament that William Hague supports a return of child tax allowances. We urge that the matter be considered actively and sympathetically.

Europe

27. We draw attention to four trends or dangers more serious than those currently receiving most public attention.

28 First, the suppression of tax competition is high on the agenda of the European Union. This could mean an increase of between a quarter and a half in the United Kingdom tax burden.

29. Second, United Kingdom private pension provision exceeds that of all the other Member States combined. Claims that the other states could lay their hands on this money and distribute it throughout the community in the interest of harmonisation and the elimination of unfair competi-

tion are fiercely denied by the Government. Even if the denials are accurate, the crippling interest rates that will eventually be needed to fund Continental pensions will seriously harm British industry, commerce and mortgagors.

30. Third, the European Commission is dividing EU territory into regions which intentionally cross national boundaries. For the United Kingdom, this is the international dimension of the campaign to dismember the country, of which the domestic dimensions include a united Ireland, independent Scotland and Wales, the regionalisation of England and the introduction of proportional representation for the election of MPs.

31 Fourth, Economic and Monetary Union and the political imperative that underlies it would (among other disadvantages) transform or destroy our legal system. The United Kingdom is in a small minority within the European Union in having a system of common law rather than civil law or Napoleonic Code. Our system is likely to be subjugated to that of the majority.

Property rights

32. Property rights have been substantially restricted over the last generation by governments of both parties. Examples include leasehold reform, extension of the right of eminent domain and expropriation without compensation. During the last Parliament, the present Government sought to legalise trespass by ramblers.

33. The erosion of rights has extended beyond real property. The restrictions and outright bans on firearms introduced by government (with cross-party consensus and in response to hysteria in the tabloid Press) mean that, by contrast with our historical traditions, we now have a largely disarmed population (except for criminals and the increasingly powerful security forces). British governments of whatever hue appear to fear and distrust their fellow citizens more than the governments of continental Europe. The idea of a disarmed citizenry would be repugnant or even unintelligible to the Swiss.

Human Rights Bill

34. The Human Rights Bill threatens freedom of conscience, association and religion. For example, Church schools might be prevented from insisting that their staff must be of one affiliation or not be of another. Churches might be taken to court and fined if they refused to conduct ‘gay marriages’ on grounds of principle. The case for including this foreign legislation in British law was always weak and the case for removing it is strong.

Positive discrimination

35. We are utterly opposed to the Equal Opportu-

nities Commission's proposal to promote a positive 'right to equal treatment' (Equality in the 21st Century, para. 3). Positive discrimination in any field - including race - is as bad as negative discrimination.

House of Lords

36. Hereditary peers have been a force for independent thinking and freedom of thought in Parliament. The whole country has benefited from their contribution. We regret their exclusion, which should not be accepted by the Opposition as a permanent reality.

Freedom issues

37. Among the topics that the Society has recently

discussed, we mention compulsory metrication, identity cards and freedom of information.

Conclusion

38. We urge the Conservative Party to rediscover its lost commitment to individual freedom. Churchill used set the people free as an electioneering slogan. The people are much less free now than they were in Churchill's time; and the situation is deteriorating year by year. If the Conservatives exploited this area of policy, the promotion of personal and individual freedom and liberation from the nanny state could again become a popular cause.

SECRECY, DISINFORMATION, AND PROPAGANDA

Mary Hayward

Secrecy

Here I should declare an interest. I grew up in a seaport town, in an area scattered with naval bases. My notion of a genuine official secret is surrounded by a fence topped with barbed wire and has a sentry on the gate with a gun. Everything else is only intended to stop politicians being embarrassed. The number of official secrets that really need to be secret is very small indeed.

In wartime, the number of genuine official secrets does increase a little. By war, I mean a conflict in which there are two sides actually fighting each other. I do not mean what happened to former Yugoslavia, which was not a war but a NATO exercise with live ammunition and real targets, nor what has happened to Afghanistan, which is a great power intervening in somebody else's civil war in order to further its own ends. And I certainly don't mean 'the war on terrorism', which doesn't exist.

A World War Two veteran once explained to me what, in wartime, is the only important secret. It is not what you know; it is that you know it. To take the simplest example. The other side is sending coded messages and you break the code. You don't tell anybody, because if you do they will change the code and you will have to start the decoding process all over again. The secret is not what you've done; it's that you've done it.

The same applies to all weapons technology. The laws of physics and biology are not, and never can be, secrets. The secret is not that a chemical or atomic weapon can be made, it is that it has been.

Once it has been used, it isn't a secret any more and it's a waste of time to try and treat it as though it was.

It follows that the number of secrets that really affect national security is very small. All claims that releasing information will jeopardise it should be greeted with disbelief unless they meet the criterion: does it matter if the other side know what you know? If there is no other side, if nobody is actually fighting you, if the so-called other side is only individuals with a mindset different from yours, the answer is probably no.

Disinformation

It also follows that the information which governments allow to reach the public domain is often either unimportant or untrue.

Disinformation in wartime is another face of secrecy. If you can fool the other side into thinking that your attack will come on one area so that they rush troops to defend it, you have a better chance of success when you attack somewhere else, as you were planning to do all the time. There is no better way of doing that than to surround the feint with lots of secrecy and then leak it. It follows that, in and out of wartime, a leaked secret should be treated with scepticism. It may be unimportant. It may be a lie.

Wartime is very stressful and information acquired under stress tends to stick in the mind. The veteran referred to above still believed, and spoke of as portentous, things which later release of documents showed to be either unimportant or

"The number of official secrets that really need to be secret is very small indeed."

false. This does not matter when an old man is only trying to escape from old age by recreating the atmosphere of his youth. For a great many people of his generation, the years 1939 to 1945 were the only time in their lives when they knew exactly what they were doing and why they were doing it. It was also the only time in their lives when those lives were seriously at risk of coming suddenly to an end therefore the time when they felt most live. (There is nothing like not being killed to make you feel alive.) It does matter when a lie sticks and is still being believed and acted upon fifty or sixty years later. We in this country have an ageing population and should be on our guard not against letting old people live in the past – they will anyway – but against letting them persuade younger people to live in a past which is not even theirs. The key question, which all young people should be encouraged to ask, is: “How do you know?”

Propaganda

Propaganda is not the same as lies. A propaganda story may be entirely false, like the one about the Kuwaiti babies, but it is much more likely to be partly true. An outright lie will, sooner or later, be exposed as such and people who have been fooled once may be on their guard against being fooled again. Therefore successful propaganda will be truth, but truth touched up, doctored or spun.

We have to be careful here, because to a lot of people ‘propaganda’ does mean ‘lies’. Somebody got into frightful trouble for suggesting that the famous picture of a Serbian prisoner of war camp was a fake. It wasn’t a fake. But nobody is ever going to persuade me that the man with his shirt

off and his ribs showing had not been deliberately placed at the front and the shot of people behind barbed wire was not deliberately taken at such an angle as to recall images of the Nazi death camps. That is propaganda.

I believe that the role of organisations which oppose censorship and support freedom of speech should be to suggest to people, whenever we get the chance, that quite a lot of what appears in our media, and passes for news, has been spun. This may be inevitable. The mainstream media are almost entirely staffed by people who have acquired the mainstream mindset, or they would not be there. We are not accusing anybody of lying. We are saying to the reader and the viewer: “Careful! Are you being manipulated? And if so, why? What do the people manipulating you want you to think about this? What do they want you to do?” Probably nothing. That’s usually what governments want. Those in power want those they rule to remain passive and if they cannot do it by consent they will do it by fear. What ‘the war against terrorism’ actually means is ‘be afraid’. You can’t have a war against terrorism. Terrorism is not an ideology, it is a method. It is the method of fighting forced on people who are otherwise powerless. Worse, we are being told just to be afraid and presently somebody in Washington will decide, and tell their stooges in Westminster who we are to be afraid of next. The hell with that!

Although writing in a personal capacity, Mary Hayward in the Secretary of the non-party-aligned Campaign Against Censorship. The CAC can be contacted at 25 Middleton Close, Fareham, Hampshire, PO14 1QN. Membership is currently £5 per year.

“Those in power want those they rule to remain passive and of they cannot do it by consent they will do it by fear.”

THE NATURE OF CHRISTIAN DEMOCRACY: A REVIEW AND CRITIQUE OF DR MAURICE GLASMAN’S UNNECESSARY SUFFERING: MANAGING MARKET UTOPIA

Nigel Meek

Preface

The following essay, presented here with only minor revisions, was originally written in 2001 as an academic review of Dr Maurice Glasman’s (1996) *Unnecessary Suffering: Managing Market Utopia*. Its most important feature for Anglo-American readers is its description and analysis of that school of thought known as ‘Christian Democracy’, a largely continental European and Roman Catholic phenomenon little understood in the mainly Protestant English-speaking world.

Although this issue is not specifically explored in the following essay, it is demonstrably true that most of the founding fathers of what has become the European Union were devout Roman Catholics; that the Vatican, the Catholic church generally, and senior lay Catholics in EU member states have been and continue to be amongst the EU’s main proponents; and that throughout the EU Catholics are both more supportive of European integration than Protestants *and* do so for cultural rather than economic reasons. (See, for example, Nelson *et al* (2001).) This, of course, is not in itself an argument against the UK’s engagement in

the EU. However, it is another reason for more open and considered thought of the UK's membership of, and, no doubt, eventual dissolution in, something that is alien and ill-understood.

More specifically, looking at the European Parliament, it may also serve to illustrate the inherently highly ambiguous and often controversial membership of the British Conservative Party of the Christian Democrat-influenced European People's Party and European Democrats group of MEPs.

Those interested in the historical mirror image of this phenomenon may care to consult the earlier chapters of DeLeon's (1978) *The American as Anarchist* for a brief and clear description of the profound influence of Anglophone Protestantism on aspects of modern libertarian radicalism.

All page numbers in the following refer to Dr Glasman's book as referenced.

The Quest

Glasman's starting point is the belief that there are two ways that society actively distinguishes between necessary and unnecessary suffering: establishing a justice-based common status for all, and people's treatment at work. However, whereas in the former case - i.e. political liberalism - he optimistically contends that the idea of individual rights has substantially succeeded via the establishment of durable legal institutions, in the case of the economy this is not so (xi). Glasman sets out to remedy this defect.

Unnecessary Suffering is Glasman's attempt to identify and describe a - if not *the* - particular concept of the 'third way', that oft-sought road that combines the best of the two allegedly dominant ideologies since the 19th century: capitalism and socialism. Its purpose, however, is not to concur with much of modern politics that claims to abhor all ideology, but to describe the historical antecedents, theoretical arguments, and post-war operationalisation (or not) of something very specific: the siting of democracy within the workplace rather than the collectivist state or the individualist market (5).

Specifically, Glasman sets out a thesis, based in particular on Roman Catholic doctrine, that, whilst accepting the institution of private property and market competition (and hence is apparently anti-socialist), nonetheless rejects unlimited managerial prerogative (which Glasman finds in both capitalist (20-21) and communist (133) forms), the commodification of labour, and profit maximisation as the driving force of economic decision-making, demanding instead worker participation and workplace democracy (and hence is apparently anti-capitalist).

In a number of chapters, Glasman looks in some detail at the post-war history of West Germany and Poland, examining in particular the changing fortunes of Christian Democracy, communism, and the New Right, and both the external and internal pressures brought to bear on these countries. This aspect of the book is not fully explored here, but in any case much of it is an analysis of the implementation or not of the theories set out in the earlier part of the book.

The Theoretical Core

Glasman freely draws on the work of a number of 19th and 20th century thinkers, the first of these chronologically, and who Glasman cites as of key importance in the development of Christian Democracy in Germany, being the 19th century Roman Catholic bishop, Wilhelm Emmanuel von Ketteler.

One assertion of Ketteler's that goes to the heart of Glasman's view of the relation between the individual and the collective was that, in Glasman's words, "The dilemma of Christian Democracy was that the principle of private property had led to the removal of people's status as members of organisations" (37). However, the implications of this are obvious and alarming: that one can only have true status as a member of an organisation and that individuals have little or no inherent worth.

Glasman goes on to note Ketteler's claim that contracts between an employee and an employer who holds that latter's means of subsistence are not voluntary but really a form of compulsion (37). Aside from the Aristotelian objection to this definition of 'compulsion' (which I do not necessarily agree with anyway), there are certainly three rejoinders to this. First, they *are* voluntary: the employee can always starve. This may well sound a shocking assertion to those schooled in modern positive-rights welfare liberalism, but the freedom of voluntary exit is ultimately the most basic freedom of all.

Secondly, in practice, people do manage to find alternative employment after having reached the seeming bottom. In any case, it is a matter of empirical fact that the immiseration hypothesis was and is wrong and that this picture of the destitute individual prostrate before 'the boss' is a marginal and decreasing one and certainly not an image on which to base and operationalise any social theory.

Thirdly, the fate of the dismissed or otherwise unemployed worker under economic liberalism seems better than the same individual who for some reason is excommunicated from his Glasmanite guild when, as is quite clear from Glasman's overall thesis, the guild - ultimately through its relationship with and use of state coercion -

"... the implications of this are obvious and alarming: that one can only have true status as a member of an organisation and that individuals have little or no inherent worth."

really can make sure that he never works again. In the Ketteler/Glasman thesis, then, there seems little real place for the individual as an autonomous economic agent.

Ketteler also claimed that society was by then so complex that welfare needs could not be met by charity alone (37). However, it might be suggested that the reason that the whole raft of non-state welfare provision available through commercial, not-for-profit, or charitable organisations can no longer cope, certainly now at the beginning of the 21st century, is because of their ‘crowding out’ by the state from the 19th century onwards with the latter’s power to fund through coercively expropriated taxation.

For Ketteler, the role of unions and artisans’ organisations was a positive one and to quote Glasman was “to ensure high quality craftsmanship, honesty in relation to other workers and the preservation of values within the economy” (38). Some of this is no doubt often true, but when we examine, say, the medical profession, by maintaining unnecessarily high standards it limits supply thus raising prices and denying *appropriate* medical treatment in particular to the poor who cannot afford to pay twice for it (i.e. once through taxation and then again to the commercial medic). In any case, the supplier is here apparently sovereign. Also, in practice, it can be interpreted to mean that individual workers are not allowed *if they wish* to negotiate their own terms except via the union or similar organisation.

Ketteler also believed that the state should take steps to rectify the fact that “... the market violated the capacity of the person to live an autonomous life” (38). This is an odd assertion. If one is not ‘dependent’ upon the market – a polite fiction, of course, since it is not the impersonal market one is dependent upon but other real people – then one must be either dependent upon others simply giving one money, surely a condition even less conducive to an autonomous life, or, excluding those acts traditionally considered criminal, dependent upon others being coerced into giving it by and via the state, no less unconducive to an autonomous life, one would have thought, and certainly rather less moral.

Another key influence on Glasman is Karl Polanyi, and especially his book *The Great Transformation*. For Glasman, Polanyi’s two key propositions were that individuals are “... constitutively dependent upon a physical environment and other people for the satisfaction of needs” (5) (which is basically true) and that “the economy requires social institutions which disseminate skills, distribute knowledge and preserve the status of human beings and nature as something other than commodities” (5-6) (which is more questionable). From this follows what Polanyi calls the ‘three commodity fictions’: labour, land, and money.

These are not commodities at all since they are not produced for sale. Labour, for example, is “inseparable from the body and the life of a person and cannot, therefore, be stored up or reinvested.” Land is not a commodity since it is a “gift of geography and history” (6).

However, it would be a serious blow to Glasman if Polanyi’s commodity fictions were themselves fictitious: and I would argue that they are, and indeed self-evidentially so. First, one might argue that a commodity is anything upon which a subjective value can be put. Then Polanyi makes the attributive mistake of confusing labour with the person: when we sell our labour we do not sell *ourselves*. Next, *productive* land needs to be wrested from nature and by a ‘Lockean’ mixing in with it of our labour becomes property and hence a commodity.

Regarding the third of these, money, Glasman also discusses further on in his book subsequent Christian Democrat demands for the ‘constraint’ of capital (35). Polanyi, the Christian Democrats, and Glasman all seem to suffer from a straightforward misunderstanding of the nature of money in all its forms. Money is a good like any other, subject to subjective evaluation and the laws of supply and demand. To ‘constrain capital’ is nothing less than to constrain the most important form of non-constituted – i.e. not of the person’s body-private property of all, that which facilitates the voluntary transfer of goods and services, and hence an autonomous private sphere of activity, and therefore ultimately advanced liberal civilisation itself.

Anticipating his later discussion of Hayek, he sets out Polanyi’s argument that atomism - i.e. in practice market capitalism, I assume - and nationalism are linked in their mutual contempt for the range of intermediary institutions and traditions such as unions, churches, guilds, etc. which serve to sustain society (7). However, whilst there is real truth in this in the latter case, and Glasman’s theoretical rejection of the leviathan state does him credit, in the former case we begin to see Polanyi’s, and hence Glasman’s, primary error in their misunderstanding of the market, again seen more clearly when he turns to Hayek.

Whilst accepting both the state and the market, Polanyi claims that “a substantive economy ... requires a society based upon non-market institutions which plays a role in the provision of needs, the distribution of knowledge and the allocation of status” (17). (A cynic might say that this emphasis on status is to protect those that have ‘paid their dues’ from free-market parvenus.) As a result, rather like Ketteler, he goes on to say that “Unmediated dependency on either the state for welfare or the market for wages leads logically to an unmediated dependency on the state as the protector of community” (8). This is certainly

“... [he] makes the attributive mistake of confusing labour with the person: when we sell our labour we do not sell ourselves.”

true in the case of the state, but again, unfortunately for Polanyi, there really are only two ways of getting money: through theft, fraud, or coercion, whether ‘privately and illegitimately’ through crime or ‘publicly and legitimately’ through state-expropriated taxation; or voluntarily through wages, interest and rent received, inheritance, gift, or charity. To a true liberal, only the latter voluntary transfers are morally acceptable. Any other distinction or attempt to create a fictitious ‘third way’ in title transfer is illusory.

Glasman examines not entirely unfavourably, surprisingly perhaps for those expecting a thoroughgoing assault on the New Right, some of the work of Friedrich Hayek, and indeed this is possibly the most important section of *Unnecessary Suffering* (24-27). He notes Hayek’s critique – e.g. in *The Fatal Conceit* – of constructivist rationalism and instead his support for a spontaneous order, and thus his opposition to socialism on the grounds of its adherence to “hyper-rationalism in its administration and atavistic communitarianism in those matters concerning ethics and moral argument” (25). Glasman shares Hayek’s views about the role of tradition in the preservation of knowledge and his critique of the centrally planned state. However, whilst he agrees with Hayek’s identification of an intermediary between instinct and reason, he says that Hayek failed to understand that the same was true of the economy, i.e. that there is an intermediary between the market and the collectivist state, these being represented by institutions such as “vocational organisations, public libraries, universities, artisan institutions and municipal government” (26).

This is the core of Glasman’s theoretical argument, but I suggest that Glasman has fundamentally misunderstood the nature of the market: that rather than being the discrete entity that he assumes, it is but one species of a much larger type of social interaction characterised by voluntaristic relationships. In other words, that there *are* only two forms of societal relationships: coercive and voluntary, with the market being the directly wealth-creating *element* of the latter. Also, for all his acknowledgement of Hayekian criticisms of the limits of statism, it cannot but be noticed that many of the intermediary institutions that he so favours rely on the coercive half of societal relationships – i.e. the state – for either their funding and/or their special protection.

Glasman’s theory, then, is both flawed in its misunderstanding of the societal location of the market and also its conception of many of his favoured intermediary institutions which turn out to be deeply statist albeit of a second-hand, parasitic, and dishonest nature. His announcement of Hayek’s epistemological failure to account for the “institutional means through which substantive practices of practical knowledge have been protected from the rationality of the market as well as

the rationalism of the state” (27) is anyway doubtful given the inherently subjective nature of the market, but more importantly suffers from his failure to acknowledge that such practical knowledge – that is knowledge of subjective value to either the worker, entrepreneur, consumer, or hobbyist – can be and is protected and transmitted via the various elements – market and non-market – of the voluntary aspect of social relationships.

The New Right

Towards the end of the book, Glasman discusses the rise of the New Right in the 1970s and 1980s (98-120). He offers an interesting view into the nature of ‘crisis’, a period during which the existing arrangements come to be perceived as unstable, and either collapse due to this instability or survive thus proving there was no crisis in the first place. Crises thus resolve themselves either way: there can be no permanent crisis (98). However, there seems to be at least a third option missing from Glasman’s analysis: that crises can be detected and changes made towards a (sufficiently) new system before the old system actually collapses. Therefore, one analysis might argue that Britain *was* in crisis during the 1970s but did not actually collapse due to the Conservative Party’s victory in 1979 and the implementation of the necessary Thatcherite policies.

He claims that the major crisis during this period was that the Keynesian paradigm – *qua* system of historical interpretation rather than moral philosophy – was discredited by its failure to any more accurately predict and explain events (111-113). This caused a breakdown in trust for the paradigm and the answer to ‘what is to be done?’ could no longer be given since the ‘logically and conceptually prior’ consideration of ‘what’s going on?’ was no longer held to be reliably answered. The New Right, however, in a process which Glasman likens to a Kuhnian paradigm shift (99), appeared to offer a new and better explanation.

Looking at it from the inside to some degree, one might question Glasman’s apparent view that the New Right came out of nowhere in the 1970s (115). There had always been a classical liberal ‘underground opposition’ to the post-war settlement, but it had been ignored by the establishment and actively suppressed – as it still is – by the universities. Equally, however, Glasman is, for some at least, over-optimistic about the collapse in support for the post-war settlement (119): it is difficult to recall it being true either at the time or, providing one allows for rhetorical and tactical changes, now.

A Miscellany of Interest

Glasman highlights some interesting and illuminating aspects of post-war and post-Cold War

“... there are only two forms of societal relationship: coercive and voluntary, with the market being the directly wealth-creating element of the latter.”

history. It is certainly an eye-opener to learn of the massive foreign debt accumulated in the 1970s by the supposedly communist Poland and owed to Western governments and banks (89).

Staying with Poland, Glasman describes at some length the ideological roots of free union Solidarity and plausibly describes them as a mixture of John Rawls' *A Theory of Justice* and the Roman Catholic socio-economic thought that forms the core of *Unnecessary Suffering* (86-97). If so, it shows that the democratic Left in this country during the 1980s were, after all, more correct in saying that it was *their* model that Solidarity was pursuing, not the contemporary Thatcherite/Reaganite one. Some of us, as in certain other matters related to that era, must stand corrected.

Glasman is given to making dubious – and sometimes distasteful – historical comparisons. To take just one example amongst many, discussing the inter-war years, he writes that “Each country, whether it was New Deal America or the Soviet Union, Nazi Germany, or welfarist Britain, responded to the threat that market economies posed to the existence of society by releasing labour, land and money from the subordination to the price system alone.” (15). To talk within a ‘liberal’ thesis about labour – i.e. human beings – being in any sense ‘released’ by Stalin or Hitler, other than millions of them being ‘released’ from the burden of breathing, is unnerving.

Dr Glasman's Internal Struggle

Throughout the book, one is aware of the tension within Glasman's thinking, and implicitly within Christian Democracy. On the one hand he frequently rejects socialism and the centralised state, and indeed specifically says that his intermediary institutions facilitate life in a *capitalist* economy (78).

On the other hand, he is also critical of capitalism in terms that would make any socialist feel proud. For example, he argues against a straw man version of ‘market utopianism’ by describing a society in which self-interest is the only acceptable form of rationality (9). It certainly calls into question Glasman's familiarity with the world of ‘actually existing commerce’ and the way that many of those engaged in business in fact spend a surprisingly large amount of their time *not* acting as economic profit-maximisers.

He also openly calls for a “society [which] could democratically organise the satisfaction of needs” (142), but ‘happiness’, for example, is not an objectively verifiable ‘need’ and Glasman is, no doubt unconsciously, promoting despotic austerity. He also seems predisposed towards a rationalist interpretation of history, particularly when discussing the New Right (and especially paradoxically when considering his support for some

of Hayek's thinking), as though the key actors consciously envisaged all real-world political events and their outcomes.

If a crude judgement about Glasman's ideological homeland is to be made, it is that he is a liberal-minded man of the Left who recognises that socialism is no longer an intellectually respectable cause. Instead, he has cast around for something which seems to offer the political liberalism that he seeks, whilst still allowing him an emotionally pleasing denunciation of ‘capital’.

(I should note here at the last that I know the immensely likeable Maurice Glasman personally. He once told me that, because of his support for the anti-socialist elements of Christian Democracy and (in part) thinkers such as Hayek, some of his students regard him as being definitely ‘of the Right’.)

The Wrong Tools for the Job

However, this ‘psycho-political’ analysis is likely to do him a disservice, for if nothing else it is to try to interpret and make some sense of Christian Democracy using inappropriate and inadequate conceptual tools. Yet this same error is very widely made in Britain when analysing the EU, particularly by its opponents. Critics from the ‘Left’ regard the EU as a ‘capitalist club’, and can point to elements such as the free movement of goods and capital and the acceptance of material inequality to justify their belief. Critics from the ‘Right’ liken it to the old Soviet Union or Yugoslavia, and can point to elements such as the Common Fisheries and Agricultural Policies and worker participation in management decisions to justify their belief.

However, they are both wrong. The crucial point is that, as noted in the Preface above, the EU is substantially founded on and driven by a Christian Democrat ideology as described by Dr Glasman. Something that is not merely philosophically mistaken, but fundamentally alien to the liberal, Protestant, Anglophone political tradition.

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“The EU is substantially founded on and driven by a Christian Democrat ideology that is ... alien to the liberal, Protestant, Anglophone political tradition.”

DON'T MENTION THE 'Q' WORD

Martin Ball

It appears that the Conservative Party is set to introduce some form of 'positive action' to ensure that there are more women and ethnic faces amongst its candidates. Numerous so-called 'modernisers' have called for something to be done, and William Hague admitted he was wrong not to take action whilst he was Leader. Although the siren voices don't actually mention the quota word, there can be little doubt as to their position. No wonder a friend of mine jokes about male stockbrokers from Surrey like himself finding it difficult to get adopted as a prospective candidate.

Yet just as the Conservative Party abandons competition, Neil Kinnock proposes that merit must prevail as he seeks to end the system of national

quotas for appointment as an EU mandarin. For once, in respect of his support for merit over quotas Neil Kinnock deserves our backing for stamping on the nonsense that is positive discrimination.

Quotas run contrary to the principle of being selected solely on merit. They create resentment in those passed over, and they undermine the legitimacy of those who are favoured because of political decision and not because they are the best available.

Economist Milton Friedman said that when you placed equality of outcome before equality of opportunity you end up with neither. How true that is.

"Quotas run contrary to the principle of being selected solely on merit."

THE TELL-IT CAMPAIGN: AN INTERIM REPORT

Peter Jackson

This following is but a summary of the astonishing story of Epic, the company that has been collecting data from GPs for the General Practice Research Database (GPRD) with the view to providing data on medical treatment outcomes. Epic depersonalised this data and then deeded it to the Department of Health (DoH) with a contract to have it back from them for processing. This has gone on routinely for five years with Epic receiving back this data from the DoH under license. A truly odd set-up, but this is the way this licensing system works as the DoH owned the data collected on their behalf by Epic.

When the government, after lobbying by Tell-It, asked the Medicines Control Agency (MCA) to spend £3 million on beefing up the GPRD, it seemed that Epic had hit the jackpot. We thought that our goal, and that of Epic's Dr Dean, of making information on the long term effects of drugs and treatments available to the medical profession and the public was at long last in sight. Alas, no. The MCA, part of the DoH, spent the money with other intentions. They stopped giving back the data to Epic, created a competing database, and falsely accused Dr Dean of various forms of malpractice.

This resulted in a court case between Epic and the DoH, because the DoH was allegedly in breach of contract by not giving the data to Epic. An out of

court settlement stated that the DoH pay damages to Epic and that they would supply Epic with the data that they withheld and from then on the normal quarterly data in accordance with the contract which continues up to April 2002.

MCA on behalf of the DoH never kept their end of the out of court settlement to supply the data that was already missing, nor did they totally renew the flow of quarterly data. They preferred to pay damages rather than give Epic the latest data.

Knowing the quality of the work of Epic, universities and pharmaceutical companies have continued paying them for data that is not yet available, preferring to do this rather than use the new database that the MCA have now created.

The plot thickens. Epic have used these funds, and the out of court settlement and the quarterly damages, to devise a scheme to re-collect the data from GPs. This new system bypasses the DoH so that Epic can own the data and it looks as though it will become a reality in April 2002.

Epic may still need help from Tell-It if the DoH attempts to prevent doctors giving the data by legislation or other means.

Dr Dean has said how much he and Epic appreciate the way Tell-It has helped with lobbying, and

“... some of the incomprehensible actions by people controlling the medical profession leave much to be explained.”

how leading SIF member Miss Lucy Ryder has been so helpful with legal advice and moral support.

Dr Dean's view is that the DoH has wasted approximately £5 million on their new enquiry system (the replacement method of questioning the GPRD) because it is so inadequate that the majority of Epic's old customers have decided not to take it up.

At the start of this campaign, we found it hard to believe that adequate, usable information regarding the long-term effects of drugs and treatments did not exist even for the medical profession. The subsequent story begs the question of why have millions of pounds been spent in ways which have done nothing we can interpret as construc-

tive but plenty to frustrate the realisation of our attempts to have this vital information produced and available for the medical profession and the public.

Must we assume that the MCA manoeuvres are to enable them to be the ones to say what part or parts of that information can or cannot be released? We admire the vast majority of medical practitioners enormously. However, some of the incomprehensible actions by the people controlling the medical profession leave much to be explained.

For the moment Tell-It is on the back burner, but Epic will contact us again as soon as it is clear what help is needed.



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CENSORSHIP IN THE UNITED KINGDOM

Ted Goodman

[Editor's note: The following is a summary of the talk given by Cllr Goodman to the SIF on the 27th November 2001 at the Westminster Arms, Storey's Gate, London. Please note in advance that it contains a mature and frank discussion of what is necessarily a sensitive issue. However, it goes without saying that only allowing freedom of speech and publication for 'nice' things is no sort of freedom at all, and the situation described in the following article lends itself to the presumption that the State can prohibit anything it chooses in the name of the 'public good'.]

Britain is by far the most secretive and censorious country in the Western world. There are several reasons for this.

Firstly, the English Puritan tradition means that sex is regarded as 'dirty' – to be, as far as possible suppressed. This is exemplified by what Profes-

sor Christie Davies of Reading University calls British 'Double Porn', i.e. pornography masquerading as an attack on pornography, e.g. 'Shock, horror: We expose those filth' tabloid stories. This contrasts with Continental 'good honest porn' which does not need to be so disguised.

Secondly, the British 'Establishment' (including politicians of all Parties) believes in authoritarian nannyism. A good example was the motion, signed by one hundred Members of Parliament in 1990, calling for the proscription of the paperback edition of De Sade's *Justine* on the grounds that this work should not be "generally available" i.e. cheap enough for the 'plebs' to read.

In addition politicians in this country are spineless and follow, not lead, what they believe to be pub-

lic opinion. Hardly any Members of Parliament will thus put their heads above the parapet and tackle the issue of sexually explicit material. In other countries, by contrast, Ministers are prepared to take a moral lead. Thus when legalising hard-core pornography in France in 1979, the Minister of Culture, Jacques Lang, declared "the State has no right to prevent citizens seeing what they choose."

Pre-publication State censorship exists in the British electronic media. All films and video recordings supplied commercially in this country must be classified and can be censored by the British Board of Film Classification (BBFC, formerly called the British Board of Film Censors). This system was introduced for films by the Cinematograph Act of 1909 and extended by the Video Recordings Act 1984. Other countries, however, have either abolished State censorship or never introduced it. The First Amendment to the United States Constitution specifically prohibits it.

The result was the all sexually explicit and many overtly political films were banned in Britain. The Establishment wanted popular culture to be sedative, not stimulating. In 1929 no fewer than 300 films shown in British cinemas had been cut by the censor.

The Soviet film *Battleship Potemkin*, for instance, was refused a certificate for twenty years. An anti-Nazi documentary suffered the same fate in 1937, as did a filmed exposé of the concentration camps in 1946, until an outcry about the latter decision by some Labour Members of Parliament caused a reluctant rethink by the British Board of Film Censors. To cap it all in 1992 the video recording *Visions of Ecstasy* about Saint Teresa of Avila was banned as blasphemous, because the finger of the figure on the Crucifix was seen to move. No other country in the world proscribed this work.

By the 1990s the situation was ridiculous. Most video recordings being sold in the United Kingdom were pirated sexually explicit works from abroad, being supplied 'under the counter' without certification from the BBFC and in contravention of the Obscene Publications Acts. Virtually all other Western countries had legalised this sort of material, but British politicians would not even consider so doing, for fear of offending perceived grundist public opinion.

The situation came to a head in 1999 when the Video Appeals Committee overturned refusals by the BBFC to grant 'R18' Certificates (i.e. restricting sale to licensed sex-shops) to several sexually explicit video recordings. The Committee took the sensible view that the whole purpose of licensed sex shops, which only adults could enter, was to provide a legitimate outlet for this type of

material. The BBFC challenged the Appeals Committee's decision in the High Court by way of judicial review, but lost. It thereupon realised that its strict *No Sex Please We're British* attitude was no longer tenable. Anne Widdecombe MP, the Shadow Home Secretary, on the other hand, publicly called for all the members of the Video Appeals Committee to be dismissed.

To deal with the situation, the BBFC decided to test the waters and it commissioned a survey of British attitudes. To its surprise, the Great British Public was revealed to be much more broad-minded than was previously imagined. It wanted sexual material to be made available to adults. Jack Straw, the 'born-again Christian' Home Secretary, to whom the BBFC is responsible for video censorship, had other ideas. Robin Duval, Director of the BBFC decided to call Straw's bluff.

In 2000, Duval publicly declared that the Home Secretary needed the BBFC, as otherwise the Secretary of State would have to carry out the controversial censorship function himself. In September the BBFC then revised its guidelines, allowing certain defined types of sexually explicit material in the 'R18' (sex-shop videos) Category. The Home Secretary did nothing. HM Customs and the Police followed the BBFC lead and ceased to prosecute importers and publishers of such material, if it was to be sold in licensed sex-shops and conformed to the BBFC guidelines. The officials had acted where politicians feared to tread.

The BBFC had, however, committed the moral crime of doing the right thing for the wrong reason. It had liberalised censorship because it wanted to keep BBFC jobs by being in tune with public opinion – not because it believed in freedom of expression. In other words, like all 'jacks-in-office' the BBFC pandered to what Dr Jinnah used to call "the brute majority".

The effect of the BBFC reform is, however, limited by certain factors. One, for example, is that the BBFC regards visible urination as unacceptable - as opposed to visible copulation. It therefore continues to refuse to allow depiction of urolagnia. In 2001 this led to the refusal of a certificate for the video recording *Ben Dover's Squirt Queens*, because it featured female ejaculation, which the BBFC interpreted as a form of urination, rather than masturbation.

In addition, the Labour Government has still not implemented its pledge to decriminalise male homosexual acts by consenting adults where more than two persons are present. The video classifiers take the view that the presence of the cameraman should not be counted, as otherwise no sexually explicit gay material could ever be given a certificate. If, however, there are more than two participants in such a video recording, it is refused a

"The officials had acted where politicians fear to tread... [but had] committed the moral crime of doing the right thing for the wrong reason."

Certificate on the ground that the acts depicted are illegal.

The refusal by over half the local authorities in England (mostly Labour controlled ones) to license any sex-shops operates as a form of covert censorship. The Labour Chair of Chesterfield Council Licensing Committee, for instance, publicly proclaimed that there would only be a licensed sex-shop in that town over his dead body. This means that the outlets in Britain for lawful sexually explicit material are few and far between.

In addition the Department of Culture illogically continues to proscribe foreign satellite television stations showing the type of material now legal on 'R18' video recordings in Britain. No other country in Europe does this, but the United Kingdom has criminalised the sale of decoders and advertising on ten such stations, including a Russian one. When asked to explain by the Campaign Against Censorship, the Department stated that British parents cannot be trusted to keep the decoders out of the reach of their offspring minors! Chris Smith, the openly gay Secretary of State for Culture, thus banned a satellite station catering for homosexuals.

Television is governed by the Cable and Broadcasting Act 1984 and the Broadcasting Acts 1990 and 1998. Control is exercised by the BBC Governors and the Independent Television Commission. They impose the strictest television broadcast control in Europe. Under their shadow, even newscasts are self-censored. French television, for instance, showed public executions by firing squads in Lagos which inspired protests in Paris against the Nigerian government. There were none in Britain, however, because television here would not broadcast the graphic and shocking scenes. Similarly the RSPCA obtained footage of cruelty in Greek abattoirs, but British television stations refused to screen it. Instead the RSPCA then managed to get it shown on newscasts in Greece, where it caused such an outcry that the government there took action.

Telephones are governed by the Telecommunications Act 1984 and control is exercised by the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS), which stops British companies allowing 'bad language' on chat-lines. Most therefore route their calls through foreign jurisdictions, to avoid this absurd restriction.

Computer pornography is criminalised by the Obscene Publications Act as amended and Part VII of the Criminal Justice & Public Order Act 1994. To enforce them, the Regulation of Interception Procedures Act 2000 allows police to demand at will, without a warrant, anyone's computer encryption code, on pain of two years imprisonment for refusal to comply. No other Western country

has such an Orwellian law. The architect of this odious statute was Patricia Hewitt MP, former General-Secretary of the National Council for Civil Liberties, but now a career politician and authoritarian Government minister. She should be ashamed of herself!

The Communications White Paper of 2000 envisages placing all the electronic media (including films and video recordings) under the control of one body. That at least might achieve consistency, ending the present much more restrictive standards imposed on television than on video recordings.

Non-electronically published material is not pre-censored in the United Kingdom, but is subject to a host of legal requirements and prohibitions that force self-censorship. In addition 'D-Notices' can be issued under the Official Secrets Act 'asking' editors to refrain from publishing material on the grounds of national security. The misnamed Freedom of Information Act (introduced by Jack Straw) allows Government Ministers to withhold information about their Departments on the grounds of perceived national wellbeing as well. The result is the United Kingdom remains the most secretive country in Europe.

Other statute laws which restrict freedom of expression are: Customs Consolidation Act 1876 (Section 42 prohibits indecent imports); Disorderly Houses Act 1751 (used against private erotic shows); Malicious Communications Act (prohibits insulting letters); Obscene Publications Acts 1959 and 1964; Post Office Act 1953 (prohibits sending of indecent articles); Protection of Children Act 1978 (criminalises possession of indecent photographs or computer images of children under sixteen); and the Theatres Act 1968 (prohibits obscene performances).

In addition there are antiquated common law offences, e.g. Common Law offence of Blasphemy; Common Law offence of Conspiracy to Corrupt Public Decency; Common Law offence of Conspiracy to Corrupt Public Morals; Common Law offence of Conspiracy to Outrage Public Decency; Common Law offence of Exhibiting Indecent Activities, Pictures or Things; Common Law offence of Keeping a Disorderly House (e.g. by staging an indecent performance in private); Common Law offence of Obscenity (no defence of public good); Common Law offence of Outraging Public Decency; and the Scottish Common Law offence of Shameless Indecency.

The Law Commission in 1976 recommended the abolition of these outdated crimes, but successive gutless governments have failed so to do. The common law thus continues to be used against art galleries, erotic exhibitions in night clubs, gay poets, naked protestors, private sex-shows, prostitutes advertising themselves, sex parties, streakers

"The BBC Governors and the Independent Television Commission ... impose the strictest television broadcasting control in Europe ... [and] even newscasts are self-censored."

and such like, making Britain an intolerant, authoritarian society.

Instead of repealing any of these laws, the Home Office instead proposes to increase penalties for public male nudity and criminalise advertising by prostitutes (see *Setting the Boundaries: Reforming the Law on Sexual Offences* published by the Home Office in July 2000).

The whole thing is a sorry tale of the English idea that overt sexuality is a subject that is too hot to handle and the consequent cowardly neglect of legal reform by lily-livered British politicians. Elected as legislators, they never open law books, but instead spend their time playing to the gallery by posturing to the local and national media and self-righteously preaching a morality which they rarely practice themselves. Being unprincipled careerists, they care not a jot for freedom of expression in itself and instead gladly support any

form of censorship if they think there are votes in it.

They therefore succumb to pressures from the likes of the Evangelical Alliance letter writers, who believe that people must be protected from themselves by the legal imposition of puritanical standards. (When asked why British television was subject to much greater sexual constraints, Christine Ockrent, a celebrated Paris broadcaster, stated that it was because of the English Protestant tradition). Consequently Government policy is largely determined by focus groups composed of *Daily Mail* readers, the supposed representatives of 'Middle England'. Principles do not come into it!

Ted Goodman is a practising solicitor, Chair of the non-party-aligned Campaign Against Censorship, and a Labour member of Reigate & Banstead Borough Council.

THE METRIC MARTYRS

Michael Plumbe, SIF Chairman

Members will be aware that the Metric Martyrs lost their appeals against conviction for selling goods by the pound. Much has been written about this but let me make two important points.

First, the judges in the District Court hearing the appeals introduced a strange distinction between 'Constitutional Law' and, for want of a better term, 'Domestic Law'. During the hearing the appellants' barrister (Michael Shrimpton) started to make the point that each Act of Parliament stood on its own and that, if there was conflict with another Act, the later one took precedence. This gives rise to the doctrine of 'Implied Repeal'; if the provisions of an Act are over-riden by those of a later Act, then effectively the earlier Act has been repealed. The judge cut in saying 'We are well aware of this; we are not in the first year of Law School.'

The point here is that the 1985 Weights & Measures Act specifically allows the use of both metric and imperial measures. This however is at odds with earlier law acceding to the rule of Brussels (the full situation is more complex but this is the nub of it).

In his judgement Sir John Laws went quite against what he said in open Court. He ruled that the accession acts made Constitutional Law which could not be over-riden by later Domestic Law. He has thus introduced a 'Hierarchy of Law' as a new concept in our law.

It is perhaps significant that it took Sir John more than three months to deliver his judgement. He must have consulted widely and at a high level to come up with this ingenious way of disallowing the appeals. Also, requests have been made to Sir John for a transcription to be made from the tape recordings of what was said in Court and for this to be made public. I am told that, whilst this is not necessarily a usual procedure, it can be done at the judge's discretion if any party in the case so requests. It may or may not be embarrassment on Sir John's part that he has refused to consider releasing such a text. All that can be said is that he has at least permitted a further appeal to the House of Lords on the matter of 'Implied Repeal'.

What I find particularly unpleasant about cases of this kind is that it costs such a great deal of money for 'the little man' to go to Court. I have seen many a potential action against 'authority' abandoned for lack of funds. In this instance public subscription to **The Metric Martyrs Fund, PO Box 526, Sunderland SR1 3YS** has enabled the fight to continue but more is still needed (cheques welcome!) if the final appeal to the House of Lords is to succeed.

My second point is that, after 2009, it will be a criminal offence even to show 'supplementary' information, such as imperial weights, on goods. Now, how can it possibly be criminal to show extra information as long as the statutory details are shown? This is bureaucracy gone quite mad.

"Sir John ... has thus introduced a 'Hierarchy of Law' as a new concept..."

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*The SIF's Aim:
To Promote Responsible Individual Freedom*

The SIF believes...

- That the individual, rather than the State, is the primary source of morality and authority.
- That all private citizens should have the freedom to act as they wish provided their actions do not harm others; in freedom under the law; the primacy of freely negotiated contract; and Parliament as the supreme law-making body in the United Kingdom.
- That although State prevention of violence and fraud may be necessary for an efficient market economy wherein all can prosper, the government's main economic function should be to remove unnecessary obstacles to free competition and co-operation.
- That taxes in Britain absorb far too much of the national income and erode individual responsibility and enterprise; and that in a truly free society citizens, with the benefit of higher post-tax earnings, would be free to decide upon their own priorities, with government assistance concentrated upon cases of unavoidable hardship.
- That justice shall be administered by independent courts that are not subject to political pressure; and that government decisions have no validity unless founded on clear legal authority.
- That to preserve the liberties of private individuals and unfashionable minorities we need more independent-minded Members of Parliament, a stronger Second Chamber, and more effective parliamentary control over the executive.
- That there is too much influence on government from pressure groups which call for legislation of an unnecessary and restrictive nature, thus not only adding to the material burdens on individuals and corporate bodies but reducing one's capacity to learn personal responsibility, self-reliance, and voluntary co-operation.

SIF Activities

The SIF organises public meetings featuring speakers of note; holds occasional luncheons at the Houses of Parliament; publishes this journal to which contributions are always welcome; and has its own website. The SIF also has an associated campaign, Tell-It, which seeks to make information on outcomes of drugs and medical treatments more widely known and available to doctors and patients alike.

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We also welcome letters in response to articles printed in *The Individual* or other aspects of the SIF's activities.

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