THE INDIVIDUAL

Newsletter of the Society for Individual Freedom

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President: The Lord Monson
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Editor: Peter Campbell

FORTHCOMING MEETINGS

The following meetings will be held in the upstairs room at the Red Lion, 48 Parliament Street, London, SW1: the stairs to that room are on the left just inside the pub's front door - it is not necessary to make one's way through the crowded bar.

John Donne versus John Stuart Mill
is the title of the talk to be given on Wednesday 29 January at 6.00 for 6.30pm by Matthew Parris, author, political commentator and former Conservative MP.

The right to die with dignity
is the theme of the talk to be given on Wednesday 26 February at 6.00 for 6.30pm by John Oliver, General Secretary of the Voluntary Euthanasia Society.

Civil Liberties: an endangered species?
is the theme of the talk to be given on Wednesday 25 March at 6.00 for 6.30pm by John Wadham, Legal Officer of Liberty (the National Council for Civil Liberties).

Islam and the freedom of the individual
is the topic of the talk on Wednesday 29 April at 6.00 for 6.30pm by Dr Zaki Badawi, Principal of the Muslim College.

Christianity and the place of the individual in society
is the topic of the talk on Wednesday 27 May at 6.00 for 6.30pm by Professor the Rev. Canon J R Porter, Professor Emeritus of Theology, University of Exeter.

Does it any longer make sense to talk about 'the Free World'?
is the title of the talk to be given on Wednesday 24 June at 6.00 for 6.30pm by Professor Kenneth Minogue of the London School of Economics and Political Science.

FREEDOM, DEMOCRACY AND THE EUROPEAN COMMUNITY

The 'ever closer union' proposed by Continental political leaders in the European Community is now at least revealed to be no mere empty phrase but to mean the creation of a federal 'superstate' in which the individual members countries will be provinces. This is a very real danger not only to Britain's self-government but also to individual freedom

It is Britain's fortunate heritage of centuries of relatively peaceful development and constitutional government which has helped to ensure the relatively high degree of freedom for the individual which we have enjoyed. There have been many regrettable restrictions on our freedoms imposed by socialist and paternalist governments, but compared with the history of most European countries we have enjoyed a haven of freedom.

It is all the more inexplicable and unfortunate, therefore that many of our political leaders in all the main parties are willing to hand over much of the government of Britain to political institutions in which our voice would be only a small fraction of the whole, and in which the majority have histories and often priorities which differ from ours.

It is not as though the majority in the European Community are anxious to draw on Britain's traditions and experience. On the contrary, we are constantly urged to accept their way of doing things. We are told to accept the value-added tax, metrication, and in due course probably proportional representation, identity cards, driving on the right and many other changes not on their merits but because that is what the majority of the Community wishes. Of course, when considering the advantages and disadvantages of some of these things, it is right to take into account what other countries in the world do, and to learn from their experience. But the decision on what to accept in each case should be ours, and not one imposed on us whether we approve or not. Moreover, if we decide at some future stage that something does not suit us (for example, value-added tax which imposes a much larger administrative burden on business than did purchase tax), we must be free to change without first having to persuade at least half of Europe that the change we want would suit them too.

Many countries are much more bureaucratic than is Britain, and our membership of the European Community ('Eurocomm' for short?) has already inflicted some of their inclination for regulations on us. There will be much more of this to come if we do not assert our independence. How many people in Britain realise, for example, that in France every club and society has to be registered with the police? How many know that in Italy the law on public contracts is so labyrinthine that it is estimated that public procurement is affected by about 587 laws? It is this sort of excessive bureaucracy which the 'eurocrats' are gradually foisting on Britain under the cover of seductive words like 'harmonisation' and 'co-operation'.

Just as progress in science depends on experiment and not just on theory, so progress in social and political affairs depends on variety. It is through variety that better ways of doing things are discovered. Only by allowing, and if necessary even encouraging, variety can we compare realistically the effects of alternatives. Allowing variety is very much tied up with individual freedom of action. Bureaucracy, however, does not in general like variety, especially unplanned variety. Bureaucracy likes to pigeon-hole everything, to have uniform rules, to lay down the ways in which things must be done.

There is another reason why the so-called 'pooling of sovereignty' proposed by the Euro-nationalists is a backward step. Democracy is a fair and useful device for resolving differences when a collective decision has to be arrived at, but it is very much a second best to individual choice. It is undesirable that collective decisions be taken more often than necessary. As far as possible, decisions should be left to the individual concerned. For example, what shows to wear should be for the individual to decide, not the collective. National defence, at the other extreme, is impractical other than on a collective basis.

Furthermore, when collective decisions are inevitable, they should be taken on as small a scale as possible. There are several reasons for this. The first is the need for variety for the sake of progress. The second is the need for variety for the sake of choice. If an individual cannot stand the decision taken by the group to which he belongs, the cost of

moving to another group whose values he shares is likely to be less the smaller the groups are. The third reason is that it is statistically likely that progressively more people will be happy with the decisions of the groups in which they find themselves if those groups are small and many than if they are large and few. The ultimate small group is of course the individual, and it is through choice at this level of 'group' that satisfaction is maximised.

For example, if the choice of type of shoe to be worn were to be a collective one, the maximum dissatisfaction would result if the decision were made (albeit democratically) on a world basis. Dissatisfaction would be somewhat lessened by making the choice (again democratically) on a national basis, as some allowance could be made for differing climates and customs, but only individual choice can maximise satisfaction at the outcome. Democracy is a useful thing, but let us remember its limitations, whatever the scale on which it is practised,

The larger the scale on which democratic choices are made, the worse the dissatisfaction, and the more widespread the resentment by those who are made to endure the preferences of others. Democracy becomes a progressively cruder instrument the larger the scale on which it is practised. Moreover, the larger the community, the more insignificant the ordinary individual is within it, and the less his voice can be heard. Already we have constituencies for elections to the European Parliament which are of necessity so large that both candidates and those elected are remote figures who can rarely be met or questioned in person by most of their constituents.

Yet another reason for concern about 'superstates' is the resulting concentration of power in the hands of those who guide the destiny of such monstrous creations. People who seek such power are liable to be dangerous, if not before acquiring it then certainly thereafter. Humming the 'Ode to Joy' is no protection against power having its usual corrupting influence on those wielding 'superpower' in a European federal state. Moreover, such power will attract those who crave such, and the danger of tyranny cannot be shrugged off. Furthermore, the larger the scale on which tyranny is practised, as Professor Leopold Kohr has observed, the more difficult it is to deal with.

Lately it has been suggested that the Euro--federalists are quite aware that democracy should be practised on different levels, and that this requirement has been fully taken care of by what is called the principle of 'subsidiarity'. Of course, this just begs the important question of who decides what, and it is the Euro-federalists' preferences which cause concern rather than the principle itself. Indeed, the United Kingdom, although not as bad as France in this respect, was already too centralised even before we joined the deceptively titled 'Common Market', and the subsequent concentration of decision-making has already made matters worse., Some decades ago a leading socialist (Douglas Jay) wrote that in various matters the man in Whitehall really does know best. Now the implicit cry of another socialist (Edward Heath) is that on many matters the man in Brussels really does know best.,

It is lack of faith in the individual as well as in the community and in our country which must to a large extent lie behind the widespread acceptance of the plunder which is proposed by the political leaders of our European 'partners'. If we do not make our opposition known loudly and clearly, Britain could - if not in 1992 then a few years later - become a province in a 'superstate' largely created by and for those who seek power on a larger stage.

Should we demand a referendum, as some do? The government, if they agreed, would choose the question and the occasion. The resources available to the federalists would be much greater than those available to the patriots, and their ability to deceive was shown at the time of the 1975 referendum. Moreover, no transitory simple majority, of Parliament or people, should commit future generations in such a manner. Before a club or society changes its constitution, let along a country, it is normal to require a majority of three-quarters or at least two-thirds, rather than a simple majority. There is no such provision in the British constitution, and this is a weakness, but it is an understandable one. Such a profound constitutional change as is not proposed has not been anticipated.

The federalists demand a fundamental and almost irreversible change in the constitution and government of the UK, one which certainly could not be simply reversed following the subsequent general election, as can ordinary decisions of Parliament. We must demand that no such change be effected unless with the approval of both Parliament and people by a majority of at least two-thirds in each case.

ROBERT CARNAGHAN.

THE BRITISH CONSTITUTION AND A BILL OF RIGHTS

This was the topic of the talk on 29 May 1991 by Professor Roger Scruton, the distinguished Conservative polemicist.

He challenged the view held by many people in widely different sectors - some right, some left - that Britain had no proper constitution or Bill of Rights and that without one we are defenceless against the executive. In contrast, he held that we do have a constitution - the body of laws, rules and practices determining how we are governed and that a written constitution in itself is not a sure safeguard against the abuse of power, as had been shown by the experience of many countries, including the USSR whose Stalin Constitution of 1936 gave worthless guarantees of rights.

In his view rights were created less by constitutional texts than by judicial decisions, as was shown by American experience during the two centuries of the United States. For example, the constitution does not guarantee the right to abortion but in successive cases the Supreme Court has held that the constitution implies a right to privacy and that this implicit right in turn legitimates abortion. Judicial decisions had played a similar part in extending people's rights in Britain, where the courts interpreted the law - including statutes passed by Parliament - in the course of adjudicating in specific cases.

A Bill of Rights would be of value only if judges were independent and alert to the rights of the people but if judges had those qualities they would not need the guidance that a Bill of Rights would provide. Indeed, such a Bill might encourage excessive judicial activism, as had happened in the USA, where the courts had struck down statutes and had adopted new principles (e.g. in regard to discrimination on grounds of race and sex) regardless of whether those principles had been endorsed by the people.

ACCESS TO INFORMATION ABOUT ACTIONS BY THE SOCIAL SERVICES - PART II

Readers will remember that some MPs are interested in the bill proposed by the Society's Treasurer, Miss L S I Ryder, to enable people dealing with the social services to learn why important decisions concerning those people were made.

To test parliamentary opinion Peter Rost, MP, has tabled Early Day Motion 354 on the topic. An Early Day Motion is a text which is not actually debated but which enables MPs to show support for a point of view by signing it. The text is:

"That this House is concerned at the difficulties experienced in obtaining information by individuals in respect of actions taken by the social services with regard to themselves or their family and equally in obtaining information regarding their medical treatment, when they request such information; and urges the Government, as part of its Citizen's Charter, to make provision to ensure that answers are provided in a prompt, accurate and comprehensive form."

The more MPs who sign the Motion, the more likely it is that the MPs sponsoring it will go ahead with presenting the Bill. Members of the Society interested in this issue are invited to write to their MPs urging them to sign the Early Day Motion; please ask your friends to do the same.

WHAT DO YOU THINK? - PART II

Many thanks to those readers who have kindly responded to the invitation in the October issue to say what changes in law and policy since May 1979 they regard as best or worst from the standpoint of individual freedom.

More replies would be very welcome. Please say which five changes seem best, which five seem worst, and also which five changes you would most like to see before 2000 (excluding the reversal of undesirable changes made since May 1979). There is no need to cite specific Acts of Parliament or statutory instruments: it is the nature of the changes you welcome or detest or would like to see that is of interest. The names of respondents will not be revealed. Please write to the editor at the Society's address - 56 Britton Street, London, EC1M 5NA

HOMOSEXUALITY, FREEDOM AND THE LAW

This was the topic of the talk given on 30 October 1991, by Tim Barnett, Director of

the Stonewall Group, founded by Sir Ian McKellan to campaign for achieving equality under the law for homosexuals.

Mr Barnett said that British law does not explicitly or implicitly recognise homosexual relationships as being valid in themselves or as giving rise to obligations, rights, or expectations comparable to those entailed by heterosexual relationships in or out of matrimony. On the contrary, homosexuals - especially men - are the only sizeable category of the population who suffer hostile discrimination: for example, the age of consent is 21 for male homosexual acts while it is 16 for heterosexual or lesbian acts; both male homosexual "soliciting" (which may involve merely smiling at another man) and male homosexual acts are criminal in circumstances in which comparable heterosexual behaviour would not be criminal; in consequence a high proportion of homosexually-oriented males between 16 and 21 have broken the law - and many have been convicted and punished for engaging in behaviour which would not have been unlawful if it had occurred between men and women of that age group. The criminal law in this field is much more severe in Britain than in most European states, many parts of the British Commonwealth or many states in the USA. In some of those countries (for example Canada, Denmark, the Netherlands, and Norway) there is general acceptance of homosexuality and a recognition of public opinion on the law, of the validity of gay relationships (whether between men or between women).

Hostility to homosexuals is deeply rooted in religion and in attitudes about nature and normality, the family, and the protection of children and young people. In the last thirty years there has been considerable debate amongst Christians in regard to the meaning and application of biblical texts that seem to condemn homosexual acts. There has been a greater readiness to recognise that people can be homosexual by nature, that for such people homosexual relationships are as natural as heterosexual relationships are for most people, and that homosexuality is not a perversion, disease, illness, or a condition automatically eradicable by medical or psychiatric treatment. Contrary to the implications of some views about them, homosexuals are produced in ordinary families and contribute to family life - for example an unmarried homosexual son or daughter quite often looks after elderly parents while the married siblings are concerned with the responsibilities of their own families. In the last ten years an increasing readiness to face the facts about the sexual abuse of children has revealed the falsehood of earlier beliefs that homosexuals are more likely than heterosexuals to abuse children. Those adolescents who are coming to realise that they are homosexual by nature need acceptance and support rather than the anxiety and fear that society inflicts both on them and on itself by its traditional attitudes to homosexuality.

Mr Barnett emphasised seven main points concerning the law in this field. Legal rights and protection and social responsibilities should be developed without prejudice; homosexual behaviour is as valid for homosexuals as heterosexual behaviour is for heterosexuals and the law should apply the same criteria in regard to penalising sexual behaviour. There is no more violation of rights involved when consenting adults of the same gender have sexual activity in private together than when persons of different gender do so; the fact that it is unappealing to the majority does not make it immoral or justify its prohibition. The moralising tone of the law concerning homosexual behaviour - both statute law and judicial pronouncements in certain important cases - encourages a judgemental and interventionist approach in other areas of the law concerning sexual behaviour, personal relationships, and moral issues. The law should not be passive in regard to discrimination arising from prejudice against natural conditions or against behaviour that is not unlawful; to rely wholly on 'changes in the public mood' in inadequate; publicly-funded authorities and services in particular should be required to treat all members of the public equitably. The acid test of belief in individual liberty is provided by an adult person's wish to engage privately either alone or with like-minded people in behaviour that one regards as completely repugnant. In respect to consenting adult behaviour the state has no role to play in the bedroom or its private equivalent: the right at stake is the right to privacy. The case for reforming the law concerning homosexuals is essentially a case concerning human rights - the campaign for equal treatment in and under the law is not and should not be the preserve of the political left.

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Note by the Editor: The news in the October issue of *The Individual* that Mr Barnett would be speaking to the Society caused one long-standing member to resign on the grounds that a speaker from an organisation such as Stonewall should not be heard by the Society. Like our Chairman I was greatly saddened by this resignation. My regret was increased by the fact that it had been I who had invited Mr Barnett in the course of arranging the speakers for 1991-92. Developments in recent years, including the discussion of law reform which the Prime Minister was having with Sir Ian McKellan, seemed to make the issues which Mr Barnett would raise topical in general and appropriate for the Society to consider. My aim for this year, as for 1990-91, was to get interesting speakers on a variety of topics concerned with individual freedom. The speakers will not necessarily say what we all welcome: for example, some of our members were alarmed by what they saw as anti-libertarian implications of Professor David Marsland's call for the defence of moral order; some of our members will reject the theological presuppositions of one or both of our speakers on Islamic and Christian attitudes towards individual liberty; in the past some of our members have strongly deplored the attitudes which some of our speakers have had to the European Community and Britain's participation in it. It seemed to me that 'homosexuality, freedom and the law' would be an appropriate topic for the Society; I would have held that view even if I were not a Vice-President of the Conservative Group for Homosexual Equality; to the best of my knowledge Mr Barnett's talk was the first occasion on which the topic had been raised (at any rate since the 1960s, when it may have been considered at the time of the efforts which resulted in the limited decriminalisation of male heterosexual actions by the Sexual Offences Act, 1967.

It may well be that readers will disagree with these views. As Editor I should welcome letters on this topic - and on others!

FREEDOM, RIGHTS THE LAW AND EUROPE

This was to have been the theme for 27 November 1991 but very unfortunately our speaker - Mr Peter Ashman, Legal Officer of Justice, the British Section of the International Commission of Jurists - was prevented at the last moment from speaking to the Society because of an unavoidable high-level discussion at the Home Office; very sadly, his efforts to inform us were unsuccessful. He has kindly provided the following summary of what he would have said.

* * * * *

One of the most spectacular features of the 20th century is the explosion of official regulation of everyday life. Acts of Parliament provide the skeleton and statutory instrument (SIs) the flesh of government. In 1948, some 8,000 SIs regulated the whole of the British Empire. In 1948, some 8,000 SIs regulated life in the United Kingdom. Since the UK joined the EC, more and more regulations from Brussels supplement those from Whitehall. To these must be added all the Town Hall regulations, and those of trade associations, unions and professions and so on.

Never has mankind been so regulated. In the past, no State knew enough about its citizens to enforce such a degree of regulation. Today, the computer, the camera, science, can ensure that the State is aware most of the time where we live, and how we spend our time, and can force us to comply with its diktats.

In the UK, the citizen has traditionally looked to Parliament and the courts for protection against abuse of power, whether imposed by Government or fellow citizens. How have these institutions fared against the avalanche of regulation and invasion of private life? Surely most poorly. First, Parliament has directly and indirectly sanctioned this state of affairs, and the courts have said, time and again, that provided the regulations have been correctly carried out, then they cannot interfere.

Increasingly, in recent years, the final protection for the citizen against abuse of power has had to be sought overseas, in Europe, particularly using the mechanisms established under the European Convention on Human Rights. It is ironic that an institution established because of the abuses of State power in Nazi Germany should be regarded as the final bulwark against oppression in democratic Britain.

This Convention acknowledged that in every democratic State there is a tendency for the majority to impose its views on the minority for the sake of 'the common good'. What it sought to do was to define a series of inalienable rights that every individual was entitled to simply by existing in a country, regardless of whether s/he is a citizen, or a taxpayer, or a voter or of any other qualification. These rights can be asserted against the State, and in many cases the State has an obligation to respect them, not just refrain from violating them. Moreover, these rights are the same in every European country which has ratified the Convention, from Spain to Sweden, Ireland to Turkey.

In the forty years of its existence, the Convention has been asserted against every State that allows its individuals to use it. It has been held that the State cannot do the following:

- take away parental rights without full legal help;
- discriminate against the illegitimate;
- discriminate against those who do not want to join a trade union;
- outlaw male homosexuality;
- ill-treat prisoners;
- take too long to bring people to trial'
- extradite people without proper legal procedures;
- discriminate on grounds of sex;
- compulsorily detain the mentally ill without regular hearings to check continuing mental illness;
- confiscate property without proper compensation;
- restrict press freedom except in clear and narrowly-defined circumstances;
- control correspondence and telecommunications without proper legal safeguards.

There are many other areas where it has been successfully invoked.

So successful has it been,m that the member states of the EC are currently discussing whether the EC itself should be subject to the Convention so that a Government cannot hide behind an EC obligation to excuse itself from responsibility for its actions.

The sad reality for the individual in the UK today is that there are no national institutions capable of ensuring that individual freedom prevails over the State and that only European institutions can provide the longstop against benevolent tyranny.

ANY RIGHT TO A TRIAL?

Lorrain Osman has just started his seventh year of remand in custody at Brixton awaiting trial in Hong Kong on charges concerning funds there. The Hong Kong authorities have not yet completed the enquiries they began more than six years ago and seem likely to take another two years or more before a trial could commence.

Meanwhile it has been discovered that a leading witness has been lying to the authorities about the case, the prosecutor himself has been jailed, some two-thirds of the key evidence has been lost, and other developments have occurred that seriously reduce the likelihood of a fair trial.

Nonetheless, the efforts to get Mr Osman released on bail have failed. The Home Office insists on detaining him although he has now been imprisoned - unconvicted - longer than if he had been given a UK jail sentence of 12 years and longer than many persons given a life sentence by the courts. Recently the UK courts have admitted that convictions secured by gravely impregnable evidence cannot be upheld; in the circumstances described above it is difficult to see how Mr Osman could be convincingly convicted. His case has become a scandalous travesty of justice.

Fresh efforts are being made to get him released and readers wishing to support those efforts should write to the Prime Minister, 10 Downing Street, London, SW1A 2AA, urging that he ask the Home Secretary to Act swiftly.

FREEDOM OF INFORMATION

This issue has to go to press too soon for us to comment on the decision of the House of Commons on the wide-ranging Freedom of Information Bill proposed by Archie Kirkwood and other MPs from all main parties. The bill would permit a "whistle-blower" defence for civil servants and would apply freedom of information principles to many national regional, and local public authorities.

BOOKS

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