THE INDIVIDUAL

Newsletter of the Society for Individual Freedom

Grant House 56-60 St John Street London EC1M 4DT Telephone 071-608 3222 Fax 071 490 2296

President: **The Lord Monson**
Chairman: **Sir Richard Body MP**

No. 5: **September 1992**
Editor: Peter Campbell

FORTHCOMING MEETINGS

The Case for Free-Market Federalism
will be expounded on Wednesday 30 September at 6.30pm by **Dr Nigel Ashford**, author and editor of several works on freedom themes: upstairs room at the Red Lion, 48 Parliament Street, London, SW1.

Extending Freedom
will be the topic of the talk to be given on Wednesday 28 October at 6.30pm, by **Mrs Teresa Gorman MP**: private room at Kettners, 29 Romilly Street, London W1: ENTRY BY TICKET ONLY - PLEASE SEE ENCLOSED NOTICE.

The Annual General Meeting
will be held on Wednesday 25 November at 6.30pm in the Jubilee Room of the House of Commons: wine and light refreshments will be served at the end of the meeting. Members are reminded that security arrangements at the House can delay entry. If the date or venue has to be changed notice will be given when the papers for the meeting are distributed.

What is 'Business Ethics'? Thoughts of a Free-Marketer
will be the topic of the talk to be given on Wednesday 27 January at 6.30pm by **Professor Norman Barry**, Professor of Politics at the University of Buckingham: upstairs room at the Red Lion, 48 Parliament Street, London, SW1.

The programme for the period February-July will be given in the January 1993 issue of **The Individual**.

JOHN DONNE *versus* JOHN STUART MILL: Matthew Parris, author and commentator, formerly Conservative MP for Derbyshire West

For over a century we who defend the freedom of the individual from attempts to restrict it and who advocate extensions of it have often relied heavily on John Stuart Mill's formula that each man should be free to do whatever does not harm others: actions which affect only their author - even if they harm him - are no business of the law or the state.

I must tell you that Mill's formula is absolutely useless. Almost every human action - whether private or public - affects others sooner or later. As John Donne said, 'no man is an island, entire to himself'. It will not do to tell Mrs Whitehouse that nobody is forced to watch a degrading television programme. She has her answer: that degradation, like carbon monoxide, has a way of seeping out and into everything and ultimately touches us all whether we want it or not.

I think that Mrs Whitehouse's argument is probably true but it could have been used with the same force against women who wore skirts above the ankle when that was thought sinful, or against mixed-race marriages in South Africa. Practical observation teaches me that if people feel strongly enough that something is wrong, immoral or unpleasant, they will always be able to find an argument that it is harmful to society that it exists at all: even in private. So Mill's principle, that the state has no business interfering except where behaviour affects others, can in practice be exploited to give the state a pretty free rein.

I have tried for many years to defend Mill's principle because it sounds so reasoned and civilised but it is indefensible and I have given up. I have been forced to examine my own motives in cases where I defend individual freedom and have discovered that there are two

Firstly I must admit that it is sometimes a dishonest way of defending something that I do not myself believe to be wrong. I have caught myself calling 'tolerance' for unpopular behaviour when the truth is that I myself do not believe the behaviour is wrong, but, in finding that others will never agree, I have concluded that it is easier to avoid the argument about right or wrong, and simply call for tolerance.

Two examples of this are homosexual rights and Sunday trading. I do not believe that adult homosexuality is necessarily harmful or morally wrong but many voters will not be persuaded of that. The argument that we should all mind our own business is more likely to appeal to them although it is not necessarily true at all. I do not believe that concluding a commercial transaction on the Sabbath is necessarily sinful, but where someone *does* believe this I know I am unlikely to change his mind, but may at least persuade him that it should be for the individual conscience, not the law, to decide.

Second, on some issues the real motive that I have uncovered is very hard to state without sounding like a Fascist which I am not. I do actually believe that people should be allowed to hurt themselves and even each other a bit. A society in which the individual is prevented by law from all actions that may harm himself and is effectively protected by law from all the consequences of others' actions is a society in which the individual will grow weaker and less and less able to fend for himself. A society in which people are unable to fall will be a society in which people are unable to stand. For that reason, though I may be persuaded that some form of behaviour is hurting the actors and/or other people, that alone will not be enough to persuade me that it should be made illegal - even if it would be easy to prevent it. Examples of this are my opposition to the compulsory wearing of seat-belts, and the unchecked growth of home-safety and road-safety legislation. In all these cases I entirely accept that people are hurt as a result of their own and other's carelessness. Even in the case of seat-belts, you and I, the taxpayers, are hurt every time an avoidable injury occurs. On the other hand, checking whether people are wearing seat-belts or crash-helmets may distract the police from dealing with much more harmful behaviour.

There is no end to the laws and regulations that could be proposed to protect us from cradle to grave and through every moment of the day. Yet my physical co-ordination, judgement of distance, skill in self-defence, and self-preservation and such physical courage as I possess have all been learned through the seemingly endless series of scrapes I have got myself into since I first learned to walk! Rock-climbing falls, hang-glider crashes, broken limbs, electric shocks, I've had them all! Without them I would be a softer, weaker and stupider man,

yet I've seen proposed in Parliament new laws which would have protected me from every one of these potential disasters.

We cannot have people murdering, robbing or raping each other without hindrance from the criminal law. There must be limits to an individual's right to hurt another. I am simply concerned to point out that the arguments for legal interference trip more easily from the tongue and have a more immediate tug on the heart-strings than the arguments for standing back and leaving people free to run risks from their own actions and those of others. Much of what is finest and most admirable in the human spirit is learned through danger and adversity and can be learned in no other way.

As I approach middle age I am increasingly influenced by practical considerations in regard to these issues. People are tougher and society can take harder knocks than people like Mrs Whitehouse acknowledges. On a wide range of issues it will not really matter much if a minority does X rather than Y. As Ivan Lawrence argued about seat-belts we should recognise the practical objections to mandatory law.

People in general (such as my former constituents) do not believe in absolute liberty but can be influenced more by practical considerations than by the principle of personal freedom.

(Editor's note: I have extended the text of Mr Parris's short talk on 29 January 1992 by including some related points he made elsewhere.)

THE ULTIMATE RIGHT; John Oliver, General Secretary of the Voluntary Euthanasia Society

The usual arguments against voluntary euthanasia are variations on the theme 'Doctors should not play God'. This is rather like saying doctors shouldn't interfere with nature, something that most doctors do several times a day. Most of this interference is beneficial but some of it is not, notably the keeping alive of patients who would rather be dead and in less sophisticated times often would have been. Of course, not all patients are kept alive as long as some medical techniques would allow. A patient with dementia, or a severe stroke, or advanced cancer develops pneumonia. The decision has to be made, to treat or not to treat. Or a patient with severe heart disease has to be resuscitated - or does he? Often the treatment is not given because those in charge, ordinary doctors and nurses, believe (although they do not say as much) that it would be best for such patients if they did not live.

This is passive euthanasia. Its practice in British hospitals means we are spared recent American experience, where combined financial and legal pressures have led to some deplorable struggles to prevent desirable deaths. But the present position in this country is far from satisfactory. Are the patient's wishes taken into account when making the decision not to treat? Is the family consulted? The Society supplies our members with an Advance Directive on which the patient's wishes are clearly expressed before the crisis occurs. A recent legal opinion concluded that this is a legal document but as there is a dearth of case law in this country, this conclusion was expressed tentatively. As a result, a bill will shortly be introduced into the House of Lords to put the legality of the Advance Directive beyond doubt.

The knowledge that voluntary passive euthanasia was available would help to dispel the widely-felt apprehension about receiving futile and unwanted treatment at the end of life. But, on its own, it would still leave many terminal distresses unrelieved. The patient whose pneumonia is not to be treated may not develop that condition. The failing heart that is not to be resuscitated may not quite fail for a considerable time. If the patient is comfortable and content to wait, well and good; but if the patient is suffering and steadfastly asks to have that suffering ended, his best interest is not served by ignoring that request. Most pain can be relieved, though some cannot. But there are many other evils the patient may find intolerable and his doctor untreatable - difficulty in breathing, constant nausea, persistent vomiting and/or incontinence are a few of them. The patient needs medical help to die quickly and in peace.

In the Netherlands today many doctors have accepted this final act as part of their professional care of their patients and the courts have recognised their right to do so, provided they carefully observe the published guidelines. The guidelines do not attempt to give detailed instructions to doctors about the exact circumstances in which active euthanasia should be accepted as being in the patient's best interest. They do define the people who must be involved in that decision and the care that must be taken in carrying it out.

The Netherlands is a country with a long tradition of good medical care, respect for individual autonomy and humanitarian attitudes. Its current careful practice of active voluntary euthanasia means that it cannot be seriously argued that no respected or self-respecting doctor could contemplate administering a lethal dose in order to end the life of his patient.

In fact one of the arguments against the legalisation of voluntary euthanasia has been that it is unnecessary, since 'good' doctors do it anyway in appropriate cases, and there is anecdotal evidence to this effect. The argument was most eloquently presented by Lord Dawson of Penn, the royal physician, during the House of Lords debate on the first VE Bill in 1936. As we now know he spoke from impressive practical experience, having just dispatched his monarch with a syringe full of morphine.

However, there have been some very important changes in medical practice since Lord Dawson's spirited defence of medical discretion. Many more deaths now occur in hospital and medical discretion is more difficult to translate into medical behaviour. What used to be a private matter between one doctor and his patient (or, more probably, that patient's immediate family) inevitably becomes in a hospital setting an almost public act involving at the very least nurses and pharmacists, and often medical colleagues and administrators too.

The hospice movement is another post-Dawson phenomena. It has shown that much of the physical and emotional distress associated with terminal or incurable illness can be alleviated by proper management. The Society shares the general admiration of its achievements, and to a large extent we share its ideals. Where we differ is in thinking that the patient's considered and persistent wishes should be paramount, and his judgement that the time has come to die should be respected even if some medical help is necessary to put this into effect. Recent statistics from the Netherlands, as indicated in a Government Report, have shown that 2,400 people in one year, when offered the choice, prefer to die quickly rather than slowly.

The rather heartless argument that those who wish to end their lives are free to commit suicide ignores some important practical obstacles. Many of the patients we are referring to are incapable of independent action and assisting someone to commit suicide is still regarded as a very serious breach of the law.

Our parents had medically-developed means to choose whether and when we should be conceived. Is it so unreasonable to expect that we should also be helped to die well? The people who would benefit by this reform are not just those patients who would need and choose to have active euthanasia. The dread of sharing the fate of relatives and friends whose slow degeneration we have witnessed would be banished. Those caring for the appropriate patients would no longer have to turn aside from giving the only remaining help possible, or, in giving it, risk the consequences of their action becoming known.

The Society was founded by a group of doctors in 1936 in order to change the law so that an incurably ill patient suffering great distress has the option of medical help to die so long as the request is considered and persistent. It must be emphasised that the Bill we have prepared is permissive, extending the options open to doctors. There is no question of anyone being required to acting against their conscience. In the same way opposition to voluntary euthanasia based on sectarian religious attitudes should carry little weight in a pluralist society and in an age which has shown and accepted the need for religious tolerance. Only when the law is changed will we achieve our ultimate right and that is to die with dignity.

26 February 1992.

CIVIL LIBERTIES: AN ENDANGERED SPECIES John Wadham, Legal Officer of Liberty (the National Council for Civil Liberties)

The last decade has seen a substantial attack on civil liberties in this country. Looking back over the last few years and selecting out some of the issues indicates that there is something wrong with our system. Some examples:

(1985) MI5 vets journalists at the BBC, the European Court of Human Rights ruled that immigration rules discriminated against women and in response the government reduced the rights of men, the Interception of Communications Act prevents the disclosure of information about

telephone taps, (1986) the Public Order Act restricts the right to demonstrate and meet, (1987) *Spycatcher* is banned, a journalist is fined for not revealing his sources, (1988) the right to trial by jury is taken away from some 10,000 cases a year, the SAS shoots three IRA members in Gibraltar, the ban on broadcasting is upheld by the High Court (and later the House of Lords), the right to silence is abolished in Northern Ireland, (1989) the new Official Secrets Act does not include a public interest defence, thousands of local government officers are banned from engaging in politics, following a decision in the European Court of Human Rights on the Prevention of Terrorism Act the government 'derogates' and refuses to obey the ruling, (1990) half a million people are subject to secret employment vetting, (1991) 35,000 telephones are estimated to be tapped at any one time, over a hundred people are detained without trial during the Gulf war, long sentences are given to gay men for consenting sado-machistic sex, a national criminal intelligence system is set up, etc.

It is clear that the dominance of the government of the day over the parliamentary process and the lack of willingness of the courts to challenge the executive means that our current constitutional arrangements are insufficient to protect civil rights and liberties. Liberty has therefore drafted a Bill of Rights and is campaigning for its adoption. Although the Bill of Rights is based on various international treaties, including the European Convention on Human Rights, it has made a number of substantial improvements. Liberty has taken the best parts of a number of those treaties and where necessary has included protections found in the domestic common law and statute.

Liberty was particularly concerned that the European Convention contained too many exceptions and limitations. Liberty has removed many of these and only where absolutely necessary has it included limitations on rights. These limitations are only included where there are conflicts between the rights of some individuals and those of others. Concepts like the protection of national security have been avoided.

The Bill of Rights proposed does not give absolute power to the judges but provides a mechanism whereby Parliament and the judiciary act as a check and balance on the executive. Nevertheless, the Bill of Rights would give an increased role to the courts in interpreting the law and, at least initially, the power to strike down primary legislation; as a result the document includes recommendations to change the way in which the judiciary are appointed and promoted. It is proposed that judges should be appointed by an independent body and the appointments process should be open and subject to scrutiny. The proposals would ensure that judges were appointed on an equal opportunities basis but there would be a fast-track training system for those groups currently under-represented on the bench.

25 March 1992

CHRISTIANITY AND THE PLACE OF THE INDIVIDUAL IN SOCIETY;

Professor the Rev. Canon J R Porter

The speaker began with some comments on the concept of the individual, especially as regards his freedom, and Christianity. It may fairly be claimed that freedom of choice is fundamentally involved in what it means to be a Christian. For, unlike some other religions, one cannot simply be born into Christianity. Ultimately, it is always necessary to make an act of personal choice and commitment to the faith.

Closely allied to this is the Christian claim that each individual is answerable for his own actions and must accept responsibility for them. In Genesis, God gives to humanity 'dominion' over nature. What this means is that man is not enmeshed in the natural world. Unlike the animals, he is not forced to live in unconscious accordance with whatever laws of nature there may be: he has freedom to take decisions and make choices. So Christianity sets its face against any purely deterministic views of human nature or the notion that humanity is simply the throw-up of the evolutionary process.

Turning to society, it is often held that society is similarly determinative of human behaviour. Here we have a notion of a vague and amorphous entity as a kind of juggernaut, crushing all individual freedom. But, though of course, economic circumstances and social pressure inevitably exercise great force on how people behave, Christianity would say that the individual can overcome, and break free from, them. It is

noteworthy how often the New Testament stresses the absolute freedom of the believer and much earlier the prophet Ezekial rebutted the view that individuals are at the mercy of their background and environment.

One of the reasons why such great stress is often laid on society is that it is nowadays generally identified with the state, viewed as omnicompetent and to be held responsible for everything that happens in a community. From the very circumstances of its origin, Christianity was bound to reject any recognition of an omnicompetent or sovereign state. As Christopher Dawson once said, the great achievement of Christianity on the political level was to establish that religion, in its organised expression as the Church, was separate from the state and does not derive its life or authority from it.

Traditional Christian political thinking has therefore evolved a very different view of the nature of society. This view was brilliantly expressed earlier in this century by J N Figgis in his book *The Churches and the Modern State*. Here, drawing on a long tradition of Christian thinking, society is presented as a network of organs and institutions, to which various groups of people will belong but there is no one central authority which alone gives legitimacy to these bodies which enjoy their own independent existence and develop their own life and ethos, without the control of any central power structure. Whatever problems such a view involves in actual practice, it is a valuable corrective to the greatest threat to individual freedom today, the power and interference of centralised state authority.

All this may appear somewhat theoretical, but Christian tradition, springing from the Bible, draws some quite practical consequences for the place of the individual in society. The Bible takes the possession of private property for granted and is at pains to protect it, not for its own sake, but because it gives the individual the ability to live a proper life and to have power over his own destiny. It is the loss of this status which accounts for the prophetic denunciation of those who dispossessed others of their own property. So, in the Bible, we find a marked resistance to any interference with private property, not least to the levying of taxes by the state and traditional Christian teaching, as seen for example in the Middle Ages, accepts the authorities' right to tax only very reluctantly and seeks to limit it to the barest minimum necessary.

Individual freedom inevitably entails individual responsibility and Christianity views this under two aspects. First, against what is often claimed, Scripture knows of no 'bias to the poor'. Rich and poor alike are under the divine law, which operates in exactly the same way for both. Nobody can avoid the consequences if he deliberately chooses to do what he, and everyone else, knows to be wrong.

Secondly, the obligation to care for the poor and deprived in the Bible is to be resolved by the individual, acting by the compulsion of his own conscience. So it is the individual conscience, responding to the duty to use our possessions responsibly, which is the real driving force to create a better society. To contrast, as is often done, individual freedom with the dimension of the community, makes a false antithesis. It is the individual's free acceptance of his responsibilities which alone can transform the community: as Sir Jeremy Morse recently put it, 'people should not do as part of an institution what they would not be prepared to do as individuals'.

It is increasingly recognised by scholars that the ethical teaching of the Bible rests very much on what we might call 'natural law' or 'natural morality', something that is almost a part of the order of nature, self-evident to any right-thinking man. It is this broad basis of natural law which will form the guiding principle for the Christian individual's participation in society, not that it is by any means exclusive to Christians, but because they perhaps ought to understand its imnplications more clearly than some other.

27 May 1992

RENEWED GENEROSITY

The Society's Executive Committee is delighted to thank Mr Peter H Curry for a further donation of £1,000 to forward the Society's campaigning efforts. Readers will recall that Mr Curry gave £1,000 in 1991. His generosity is very greatly appreciated and the funds he has provided will be put to good use.

The Society will shortly be launching a new series of publications - the Armour Papers, named in honour of the late member whose bequest to the Society provides their financial basis. The first one will be a book on the damage which taxation does to production, wealth, the national economy and the freedom of the individual. **The Power to**

Destroy by Professor David Myddelton (who talked to the Society in January 1991 and is a member of our National Council) will be published in the spring of 1993. The publication will be celebrated at a party to which members will be invited - invitations will be sent early in the new year.

The Executive Committee is planning other ventures to extend the Society's advocacy of the cause of freedom: details will be given from time to time in **The Individual.**

WHAT DO YOU THINK? PART III

In the last two issues readers were asked which changes in law and government policy since May 1979 they regard as best or worst from the standpoint of individual freedom and which changes they would most like to see before 2000 (excluding the reversal of undesirable changes made since 1979).

Many thanks to those readers who kindly replied. The response was not an overwhelming one but it has provided a useful guide to members' views.

Nominees for the five best changes were: privatisation of state industries (but there was criticism of the failure to counter adequately monopoly or near-monopoly - e.g. in telecommunications and water); restructuring British Rail; making the NHS and local authorities more market-orientated; increasing parent-power in state education; reducing the power of the trade unions; starting to reform the professions (e.g. barristers, solicitors); trying to liberate Sunday trading; reducing income tax; and being ready to use military force in defence of freedom (Falklands, the Gulf).

Nominees for the five worst changes were: increased nannying by the state (in health, safety - especially in respect of seat-belts, and sexually explicit publications and videos); political censorship in the media; the stifling of free speech on immigration and race-related issues; restrictions on tobacco advertising; the anti-drugs campaign (condemned especially for overturning traditional principles of the common law); increased powers for the police; failure to deal adequately with misbehaviour by the police and miscarriages of justice in the courts; increased powers for social services departments; restrictions on children's rights; reductions in the armed forces to the detriment of Britain's capacity to defend freedom; allowing companies wholly-owned by foreigners to operate in Britain.

Nominees for changes that readers would most like to see before 2000 (excluding the reversal of undesirable changes made since 1979) were: reducing income-tax to 10% or even 5%; privatising both the remaining state industries and more of local government services; breaking up monopolies or dealing more effectively with their abuses of power; extending freedom of information; reforming legislation on official secrets; reducing the power of the police; repealing the Sunday trading laws; decriminalising sexual behaviour between consenting adults whether of different sexes or of the same sex; liberalising the law on obscene publications; decriminalising brothels; legalising soft drugs; legislating to protect privacy without protecting criminal behaviour; repealing the Race Relations laws; relaxing the laws on the private ownership of firearms; repealing legislation that enables people to squat in other people's vacant property and to refuse possession to the true owner; quitting the E.C.; establishing a written constitution (with guarantees of rights) for the U.K.; freeing British suppliers by imposing import duties on foreign goods competing with agricultural and manufactured goods which the U.K. can produce.

The second and third lists provide a lot of topics for legislation to reverse recent infringements of freedom and to extend freedom further. They include some proposals that might be seen by some advocates of freedom as reducing freedom rather than extending it: one person's freedom may restrict another's. Nonetheless it is probable that most topics in those two lists would be widely supported by our members. Would they be effectively supported by those legislators who say that they believe passionately in the freedom of the individual?

NO RIGHT TO REFUSE TREATMENT?

The Appeal Court's decision in July that doctors could continue giving blood to an adult woman patient who had refused consent to life-saving blood transfusions to please her mother, a fervent Jehovah's Witness, may prove an indicator of the attitude of senior judges towards Liberty's bill on euthanasia. Although it declared that every adult of sound mind had the right to refuse treatment the

Court held that where refusal of consent could endanger life or permanently damage health, doctors should inquire into the patient's ability to refuse treatment, the extent of the refusal, and whether the patient had been subjected to undue influence; if in doubt doctors and hospitals should ask the courts whether treatment could be given. The Official Solicitor was given leave to appeal to the House of Lords; he is concerned that the guidelines would be a forensic burden for doctors who would have to start looking for possible undue influence in cases where adult patients refused consent to treatment.

A DUTY TO LIVE?

The Appeal Court dealt with the blood transfusion case shortly after deciding that a 16-year old anorexic girl could be treated against her will so as to prevent her from slowly starving herself to death. She was not wanting to escape from an incurable and painful disease or from the degradation which senility can bring. She was rejecting life which had not made her welcome: she was an orphan whose grandfather had recently died and who seems to have suffered in various foster homes. The Court held that her deliberate and sustained decision should be frustrated. Was it right to do so?

A CHANGE FOR THE BETTER?

Almost 150 years ago a French observer wrote: 'In London, where every citizen is free of his actions so long as he does not interfere with his neighbour, the police look on placidly and respect the skaters' liberty to the extent of watching them drown' . (There were professional life-savers who would rescue people for a fee.)

In March 1992 the press carried a picture of a vagrant being 'ordered' off Oxford Street by the police because of a bomb threat. A writer to *The Sunday Telegraph* raised the question whether a country where the police can order people off the street rather than advising them on their personal safety, and where few regard this as remarkable, has ceased to be a free country and has become a police state.

LETTER TO THE EDITOR

Sir

Compulsory Ticketing.

Emulating their Continental counterparts, British Rail's Network Southeast and London Underground have introduced Compulsory Ticket schemes, linked to Penalty Fares. If a passenger is 'caught' on a train without a ticket or a 'Permit to Travel', a penalty fare can be exacted at the discretion of the train staff.

These schemes are dangerous, and operate against the public interest. First, they offend the natural law of the land. They create a class of 'crimes of omission' and they have a strong bias towards 'guilty unless proved innocent' (and innocence can be difficult to show).

Second, there are circumstances where it is quite unreasonable for the railway operator to expect the passenger to have a ticket, mainly because of inadequate ticketing facilities (closed ticket offices, machines out of order or not installed, unmanned ticket barriers, staff not authorised to issue tickets). Also if one is late for a train, why should one not be allowed to buy a ticket on the train without risking a penalty?

These schemes should be scrapped before they are more generally implemented over the networks.

Yours &c,
Michael Plumbe.

FREEDOM, EQUITY AND EDUCATION

Educational topics continue to take a prominent place in the news. Amongst those which raise important issues concerning the freedom of the individual and equality under the law is that concerning the grant of public funds to Muslim schools in extension of the policy applied to some Anglican, Catholic and Jewish schools since the Education Act of 1902. A recent pamphlet by Ray Honeyford states and assesses the case for such an extension carefuly yet controversially. *State-funded Muslim Schools: The Case Against* can be obtained from Majority Rights, BM Box 3515, London WC1N 3XX; £2 (including p.+p.).