

# FREE LIFE

A Journal of Classical Liberal and Libertarian Thought

Number 35

£1.00



## For Sale



**One pound of salt - £0.50**

**A piece of wood one foot in length - £2.50**

**One English gallon (160 fl oz) of tap water - £1**

**Eight ounces of apples (wrapped) - £0.75**

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According to the British Government, the Weights and Measures (Units of Measurement) Regulations 1994 make it a criminal offence to sell in English measures. There are separate fines of £2,000 and £5,000 for those held to be in breach of these Regulations.

According to Thomas Aquinas:

Laws are [often] unjust.... [T]hey may be contrary to the good of mankind... either with regard to their end - as when a ruler imposes laws which are burdensome and are not designed for the common good, but proceed from his own rapacity or vanity; or with regard to their maker - if, for example, a ruler should go beyond his proper powers; or with regard to their form - if, though intended for the common good, their burdens should be inequitably distributed. Such laws come closer to violence than to true law.... They do not, therefore, oblige in conscience, except perhaps for the avoidance of scandal or disorder.

*(Summa Theologiae, I-II, 96, 4, Sean Gabb translation)*

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# Free Life

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*Free Life* welcomes contributions from writers, not necessarily libertarian, provided they address or challenge the issues of reason, progress, freedom, and the open society.

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Potential contributors are urged to write to the Editor for a "style Sheet and Guidance for LA Writers" - though it is worth adding that nobody ever has asked for one, and the Editor has not seen one since November 1991.

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## A Note on Contributors



**Sean Gabb** is the Editor of *Free Life*. He will apologise for his failings in the next issue. In the meantime, be grateful for this one.

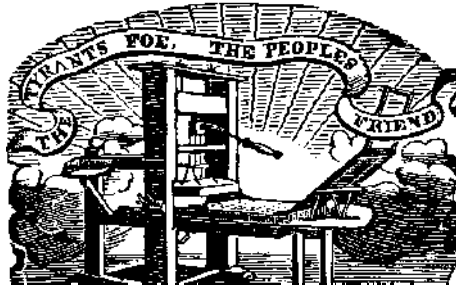
**Robert Henderson** is a political troublemaker whose name, it is to be hoped, will be found engraved on Tony Blair's black heart.

**Helen Szamuely** is a political researcher and writer with a particular interest in helping to destroy the European Union..

**Antony Flew** is Professor Emeritus in Philosophy at the University of Reading. He is also the author of countless books and shorter publications.

**Iti Saflaia** is the Chairman of Africans for a Free Market Economy.

**Brian Micklethwait** is the Editorial Director of the Libertarian Alliance.



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## When a Right Becomes a Duty

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Since the 1st January 2000, it has been illegal in this country to offer any commodity for sale using the English system of weights and measurements. The penalties for disobedience vary from a fine, and perhaps confiscation of the measuring devices, to imprisonment. It is to show our contempt for this law, and our denial of its legitimacy, that we have moved our regular advertisement of goods offered in English measure to the front page.

Now, when I say “we”, I must explain that I mean me as the Editor of *Free Life*, and Chris R. Tame as its Proprietor. I do not mean the Libertarian Alliance Ltd or any person who may be connected in any way with the Libertarian Alliance. If anyone is to suffer loss of personal or professional reputation as a result of breaking the law, it is to be the pair of us only. This very necessary disclaimer made, I will now explain why we are deliberately and openly breaking the law.

For a libertarian, and I suggest for most English conservatives, law derives its legitimacy from the extent to which it protects life and property. For us, the laws against theft and murder are to be obeyed not because they have been democratically agreed by the whole community, or because they have been made by some person or body to which we have an original duty of obedience. They are to be obeyed because what they prohibit is wrong, and would continue to be wrong in the absence of any law prohibiting them - and to the contrary of any law enjoining them.

From this, it follows that laws not based - however indirectly - on the protection of life and property have no binding force on the conscience, and may privately be broken as often as suits our convenience. Though it is illegal, therefore, to supply cannabis, or to have gay sex in hotel bedrooms, or to keep a handgun in one's bedside drawer, or to sell unpasteurised milk, or to lend money at interest without a licence from the State, such acts are not within the proper sphere of legal regulation; and anyone who tries a strict enforcement of the laws against them is upholding not justice but despotic power, and is to be seen not as the friend but as the common enemy of mankind.

Usually in the above formulation, we must insist on the adverb “privately”. Some acts that should not be illegal may, even so, be regarded as absolutely impermissible by the majority. We need also to consider that many people have little or no independent sense of what is right or wrong. For them, laws are legitimate not according to their content, but simply because

they are the law. In either case, to break unjust laws in public may be unwise. It may undermine respect for all laws whether just or unjust. Or it may provoke an extreme reaction. And so while private disobedience is both natural and reasonable, public disobedience requires careful thought about its likely consequences.

But where compulsory metrication is concerned, these considerations do not apply. In a sense, openness is inevitable. Advertising cheese only in pounds and ounces cannot reasonably be overlooked in the way that the Police now normally overlook the smoking of cannabis cigarettes. More importantly, we must disobey in public because what is being attacked is more than a private right. Undoubtedly, the imposition of grammes and millimetres is a further restriction on our right to buy and sell as we please. It is also an effect of special interest lobbying by the big retailers, who know that their smaller competitors cannot so easily afford the costs of compliance. Much more, though, it is part of a wider attack on the sense of identity that sustains all our freedoms. Odd it may sound, but there is a psychological connection between abolishing pounds and inches and abolishing Trial by Jury.

Let it be supposed that we still had a country in which English history was known and appreciated, and people lived in a continuity of customs and institutions inherited from the past: what would people then think of *Corpus Juris*? There would be an explosion of rage, and those politicians who had tried to accept it would be driven from office. But we live in a country where the authorities have long been at war with the past. Old associations have been stripped away. None but the middle aged can remember what it was like to live within unchanging county boundaries, or to work a sum in shillings and pence. The Prayer Book and English Bible have been turned into Newspeak. Within a few years, law students will need a dictionary to understand words like “plaintiff” and “writ”. If our culture were in the middle of a rain forest, there would be a chorus of protests at its destruction. Instead, we are losing it largely in silence; and the loss of identity relaxes most prejudice against the abolition of freedom.

Resistance to compulsory metrication means taking a stand - not one, I grant, with much hope of success - against the wider forces of change. This is one of those occasions when the right to disobey becomes a duty.

**Sean Gabb**

# My "Millennium" Diary

## Sean Gabb

Saturday, 1st January 2000, 8:03am  
At Home

I note with much relief and some annoyance that there has been no collapse of civilisation since last night. Staggering out of bed a few minutes ago for a pee, I noticed that the lights and water were still working. The computer comes on, and the time and date are accurate. WordPerfect 5.1 remains in good working order. Though quiet, the Internet is still there. It seems I strained the household budget on stocking up to no effect. But I suppose most insurance turns out to have been wasted: that doesn't stop people from buying it or from being pleased to have it.

Because everything seemed so normal, we went out last night - just a brief walk up to the motorway bridge in Charlton Road, so we could look down to the Dome and see what was promised to be the most spectacular fireworks display in history. Mrs Gabb wanted to stay at home so we could drink champagne in front of the telly, but I persuaded her out with the argument that she'd be able to tell everyone for ever afterwards that she had personally seen the Dome at the stroke of midnight.

Several hundred other people had decided to do the same, and we joined a growing crowd of the curious and the merely drunk. There were some people from Australia with their video cameras - they said they had come all the way just for this. There were local people with glasses of wine, and even a couple who had brought chairs to stand on. We stood looking expectantly down to the Dome. The motorway bridge gives a splendid view - probably the best in South London except from Shooters Hill. As midnight came, the lights in the Dome faded and there was a vast banging of fireworks from all directions. The crowd managed a ragged cheer, and a woman kissed me. Someone behind me lit another reefer and began talking nonsense to himself. But nothing else happened. The "river of fire" that had been so much talked about didn't happen. The crowd waited another ten minutes or so, then broke up. I tried to enjoy the fireworks, but so far as I'm concerned, the real pleasure in them comes from letting off my own. Even 29,000 tons let off by others doesn't give the same thrill as I used to get as a boy from igniting my own crudely made explosives: I never could get much colour or lift out of these, but I could probably have impressed Gerry Adams with their noise and destructive force.

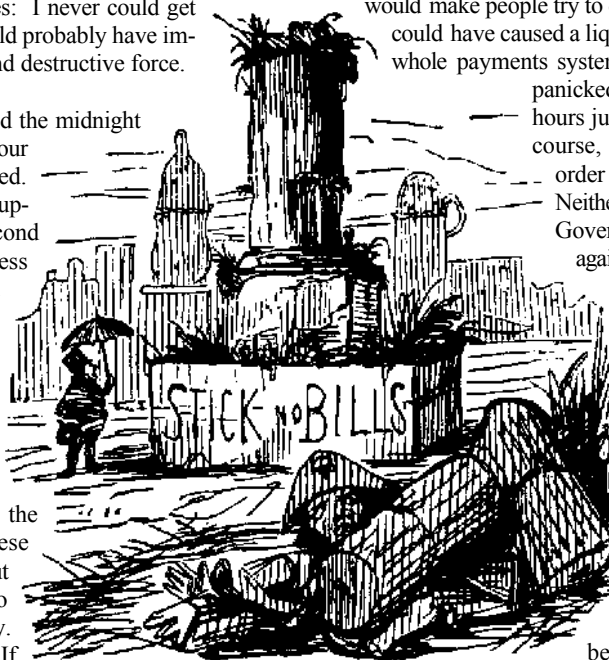
Mrs Gabb and I came home and watched the midnight celebrations on video while drinking our champagne. We were very disappointed. As with the summer eclipse, we were supposed to experience the occasion at second hand, as an endless parade of worthless "celebrities" preened themselves in front of the cameras. At last, the live coverage began. There was a concert from Greenwich Park. A choir and orchestra made a poor attempt at the opening chorus from the *Carmina Burana*, after which some middle aged pop singer called Simply Red came on to ragged applause. We wound the tape forward to the beginning of the Dome celebrations. These began with a "Christian Moment" - about three minutes of George Carey trying to look like the Archbishop of Canterbury. He cut a sorry figure - as well he ought. If

the politicians and media people can't wait another year for the real 2000th birthday of Jesus Christ, that is their problem. But I expected the Churches to show some restraint. Dr Carey should have made his excuses when asked to attend, and suggested another ceremony next year. But no, he was there, burbling on with the assistance of three children who had obviously been selected more for their ethnic and sexual diversity than for their ability to pray in public. The Church of England could be rescued even now - so long as all the bishops and four fifths of the clergy could be deprived for heresy or blasphemy or atheism, or just for stupidity, and then be replaced by anyone, male or female, gay or straight, willing to sign the 39 Articles and able to read the New Testament in Greek. But looking at Dr Carey last night, the best I could hope was that Peter Tatchell might push him out of the way again and give us a sermon of his own.

After this, it got worse. The nudey dancers I had read about in *The Daily Telegraph* turned out to be fully clothed - either the lack of heating in the Dome or orders from the Queen had forced them to cover up. As it was, the Queen looked bored and embarrassed throughout, and only cheered up and began to smile near the end, when she realised she could soon get away from the Blairs and go home to bed. Mr Blair looked more desperate than usual: perhaps he knew what a flop the whole thing had turned out. His wife stood beside him, her mouth as open and round as one of the entrances to the Blackwall Tunnel. William Hague drifted in and out of view, flopping around as if he were enjoying continuous multiple orgasms. I imagine his image consultants had told him to look more cheerful than he felt, and this was how he had obliged. As the Brazilian dancers began their turn, Mrs Gabb switched off the telly, observing that she could have spent £750 million to better effect than this. I disagreed. One day, the Dome will be just the place to hold Mr Blair's trial for high treason - it will be large enough for the sort of audiences to be expected, and will have the right symbolism.

I imagine the celebrations will be repeated on all channels every few hours until next Tuesday, and that the media people will hand out awards to each other for how good they were. For myself, I rather wish the Millennium Bug had brought civilisation as we know it to an end. I never believed it was a problem in itself, but I did worry that fears about it would make people try to draw all their money out of the banks: that could have caused a liquidity crisis nasty enough to shut down the whole payments system for a few weeks. But too few people panicked, and the supermarkets will open in a few hours just as they always do on a bank holiday. Of course, mass starvation and the collapse of all order are not things entirely to be welcomed. Neither, however, is the fact that the British Government can now devote its whole IT budget again to surveillance projects. This time next year, even the optimistic wing of the Libertarian Alliance will be muttering about a police state.

More to the point, Mrs Gabb will start nagging me as soon as she wakes up about the redundancy of my preparations. I know what we can do with the 25 gallons of Czech-style lager I've been brewing since November; and the cash can be paid into the bank next week, or spent in the sales. But search me if I have a use for all those candles and tins of corned beef...

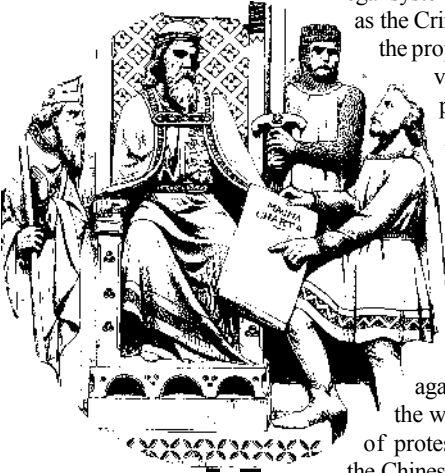


# What to Do if You Become Involved with the Criminal Law

## Robert Henderson

Those concerned with their liberty should prepare to guard it. Fundamental safeguards have been or are in danger of being removed from our

legal system through measures such as the Crime and Disorder Act and the proposed breach of the convention that no one is placed in double jeopardy" by being tried twice for the same offence. At the same time, the thrust of government policy and behaviour is ever more authoritarian, *vide* the neutering of parliament, the aggressive war against Serbia and straws in the wind such as the treatment of protesters during the visit of the Chinese Premier, Jiang Zemin.



In these circumstances a wise man looks to his rights in law, for no man is safe from the power of the state when authoritarianism takes hold. It is a guide to these rights, and the tactics by which they may be enhanced, that I attempt to provide here.

### General Tactics

Your general tactics should be three. First, to give the authorities (particularly the police) as little cooperation as possible whilst remaining formally polite and reasonable within the law. Second, to lay down markers all the way along the line if official misconduct occurs. This covers everything from complaints by you about the failure to observe procedures such as advising a suspect he is under arrest to complaints about outright abuse including physical violence. Third, to ensure that anyone in authority knows that you will fight any attempt to prosecute to the limit. Such behaviour will both give the police little to go on and be quietly intimidating.

Whenever you are abused, you feel that your legal rights have not been observed or you believe that police procedures have not been observed, (1) make it clear immediately to the nearest officer that you will be making a formal complaint and (2) make a written note, as soon as possible, of what has happened and sign and date that note. Pass the note to your solicitor as soon as possible so that he or she may certify the date that they received it. Ensure that a copy of your notes exists.

If you have a means of recording conversations, use this to record any conversations relating to you by police officers after you are arrested. Make it clear on the tape who you are, when and where the recording was made and the people recorded. Hand this tape to your solicitor as soon as possible. Ensure a copy of any recordings is made.

If you have the means of connecting to the Internet - mobile phones will soon commonly carry this facility - put out details of your plight through the Internet.

If the police stop you from doing any of this, ask the reason why, the rank of the officer and the name of the officer. Make a written note of it. If you threaten to make a complaint, you must always do so.

### The manner to adopt

Use a polite but firm manner. Many people imagine that they can gain an advantage by showing the police that they are subordinate by being ingratiating. This is an unqualified mistake. The police will interpret such behaviour as weakness. On the other side, aggressive or abusive behaviour merely alienates those in authority and those who will judge you, magistrates, judges or juries. Avoid it.

It is important that you maintain a psychological distance between the police and you at all times. You may think that by becoming on ostensibly friendly terms with the police that you will get better treatment. The reverse is the case. The police will identify your wanting to be liked as weakness and will use such surface amiability to lull you into a false sense of security. You are then more likely to volunteer information. This may either be directly incriminating or prompt a line of questioning which either incriminates you or leads to a situation where you have to suddenly refuse to answer.

If you encounter behaviour from the police which you judge to be unacceptable, for example physical threats or verbal abuse, make it clear instantly that you will be making a formal complaint. Having issued the threat you must always carry it out. Such complaints can of themselves be useful in discrediting in court police evidence or defusing any suggestion that by keeping quiet you had something to hide.

### Arrest

Anyone may make an arrest under prescribed circumstances such as the prevention of a breach of the peace or where there are reasonable grounds for believing that an arrestable offence (see below) has been committed - the popularly called "citizen's arrest". Such arrests are in practice fraught with difficulty for the arrester, because of the potential for disputes over the circumstances of the arrest and what constitutes reasonable force. Someone effecting what they thought to be a "citizen's arrest" might well end up on charges of assault, the use of an offensive weapon and false imprisonment.

For most practical purposes only the various police forces and Customs and Excise have an exercisable power of arrest. Members of the security forces (M15 and M16) have no powers of arrest beyond those of the ordinary citizen. However, a "citizen's arrest" by the security services would almost certainly carry fewer dangers for the arrester than it would for the ordinary citizen. This is because the state authorities would generally protect the arrester through their *de facto* control of prosecutions. (Politicians and the Director of Public Prosecutions (DPP) will deny vehemently that such control is exercised. The facts are heavily against them. Our justice system is controlled by law officers who are part of the government. The DPP is appointed by the government. One of the reasons the DPP may give for a failure to prosecute is that "prosecution is not in the public interest." It is also doubtful whether any security officer, *ie* an officer formally employed by the security services, has ever been prosecuted for offences committed during the course of his or her work.) It should be borne in mind that Special Branch - which is often mistakenly thought of as part of the security forces - is part of the Metropolitan Police and its members consequently can effect an arrest easily and safely.

A warrant signed by a magistrate (or occasionally a judge) is sometimes

required for an arrest. However, a warrant is not required for many offences and there are many circumstances where an officer can arrest without a warrant for offences which would normally require a warrant.

To obtain a warrant, the officer applying to the magistrate (or judge) must satisfy the granting authority that there are sufficient grounds for an arrest, ie that there is a reasonable suspicion that an offence has been committed.

If a warrant is granted for your arrest, always get the name of the person who has granted it and the reasons given by the applying officer for its granting. If possible ask to photostat or photograph the warrant. If this is not possible, ask for time to make notes about the detail of the warrant. If this is denied, note the officer who denies the request and the words in which the denial is given. Make a written note as soon as possible. Ask the person(s) engaged in the denial to sign the note you have made certifying it to be a true record. As soon as possible write to the magistrates (or judge) who granted the warrant asking them to confirm the reasons for granting the warrant. If necessary, call the magistrate (or judge) to your trial to justify the granting of a warrant.

A warrant is not required for what is known as an arrestable offence. An arrestable offence is any offence which has a fixed mandatory penalty (e.g. murder) or which carries a sentence of at least five years' imprisonment. Inciting, attempting, or conspiring to commit, or being an accessory to, an arrestable offence is also an arrestable offence. There are a few other offences, such as taking and driving, which are arrestable offences even though they carry a sentence of less than five years.

An officer may make an arrest for a non-arrestable offence if he reasonably suspects that a non-arrestable offence has been or is being committed and (1) he thinks "a general arrest condition" is satisfied (for example, he reasonably believes that an arrest is necessary to prevent a suspect causing injury) or (2) he has the statutory power to make the arrest (for example, for drunken driving) or common-law power (breach of the peace).

When making an arrest on a warrant the arresting officer must show the person arrested the warrant, but he need not do so at the time of the arrest. Always attempt to obtain a copy of the warrant and, if refused, note the refusal, the person who has refused it, the date of the refusal and the reason for the refusal.

To make an arrest without a warrant the arresting officer must have a reasonable suspicion that a crime has been committed, is being committed or is about to be committed. If he cannot show that he had such reasonable suspicion, he has prima facie wrongfully arrested and falsely imprisoned. The officer might also be guilty of an assault if force was used.

When an arrest is made the officer must tell the suspect why he or she is being arrested and give the grounds for the arrest. The officer will probably do the former but may well omit do the latter. If you are arrested, and the officer fails to do this, always ask immediately what his reasonable grounds are and the crime of which he suspects you. Note any failure to give the grounds. The caution

The present caution is this syntactical abortion:

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence"

The police, Customs and Excise and certain Inland Revenue officers can administer the caution, question under the caution and take statements under the caution.

The caution must be administered in accordance with a code of practice issued under the Police and Criminal Evidence Act 1984 (PACE).

Anything you say after the caution is administered is admissible in evidence. Anything you say before the caution is given is not normally admissible in evidence. However, there are exceptions where pertinent statements are made in circumstances where the officer cannot reasonably be expected to issue a caution. Such circumstances are most commonly found where a resisted arrest occurs. However, even in those circumstances, the officer must administer the caution at the earliest possible opportunity. It is unlikely but not impossible that words uttered before the caution was given while a person was peaceably under arrest or questioning would be admitted as evidence.

When the caution is given the officer must make clear whether or not the person to whom it was administered is under arrest. If he is not under arrest, the officer must make it clear that the person is free to go about his business. In any circumstances, the officer administering the caution must remind the suspect of his right to legal representation.

The officer administering the caution must note the fact in his notebook or interview record as appropriate.

After a caution has been administered, an officer continuing an interrogation after an interval or an officer beginning a new interrogation must remind a previously cautioned suspect that he or she is still under caution.

## What to do when cautioned

If the officer giving the caution states that you are not under arrest leave immediately. Say nothing in response to any question.

If the officer fails to advise you whether or not you are under arrest, ask whether you are under arrest. If you are not leave without making any statement. Make a note of the officer's name and the failure to advise you of your arrestable status.

If you are under arrest, try to obtain the officer's identification whether it be a name, number or office or station from which he or she works. Make a formal complaint about the failure to advise you whether you are under arrest. This is important because it may give grounds for invalidating the caution and thus affect the admissibility of evidence, in this case your failure to respond.

## The Right to Silence

If I had to give one piece of advice to anyone cautioned, arrested or charged with an offence it would be this: "Say absolutely nothing". That advice would apply whether or not the person had a solicitor in attendance during police questioning. Those who doubt that it is good advice should ask themselves two questions: (1) why do smart career criminals do it as a matter of course and (2) why did the last government circumscribe the right to silence? The answer is that it is generally the most successful tactic in both avoiding prosecution and if brought to court, conviction. Always go with the professionals - in this case smart career criminals - is a good piece of advice in any circumstances.

The reason for the tactic's success is that most criminal prosecutions involve some self-incrimination from the accused. This does not necessarily mean that the accused has admitted to anything which directly implicates them in a crime. It may often mean that they have told a lie which is discovered or have inadvertently contradicted themselves when speaking of circumstances not directly linked to a crime. The trouble with that is it casts doubt about their general truthfulness, which is an important consideration, particularly in a jury trial.

Information given in writing is a different matter. A letter to the police is obviously controlled by the writer. A formal statement is also controlled by the suspect. The police will almost always try to write these for you. They will say it will be better because they know what the courts want.

Resist this. Always write your own statement.

But written information should only be given where there is (1) a pressing reason such as the provision of an alibi and (2) where you are absolutely certain that the story you tell is not merely true but the whole truth. Where possible avoid giving any written information.

Contrary to popular opinion, the Right to Silence has not been abolished. All the present caution does is provide an opportunity for the court to draw to the attention of the jury (or magistrates), the fact that the accused refused or failed to give information at the pre-trial stage on which they base their defence partly or wholly.

If you do refuse to answer questions, one question only needs to be addressed by the jury or magistrate: was it reasonable for the accused not to have given information at an earlier time. Obviously there are reasons particular to a case such as the information not having been available to the accused at an earlier time. However, there are also general reasons.

It would be reasonable to refuse to speak without a legal adviser being present. It would be reasonable to refuse to speak if recording facilities were unavailable. It would be reasonable to refuse to speak if you had just been arrested in an unexpected and/or violent manner. It would be reasonable to refuse to speak if you had been abused by the police. It would be reasonable for you to refuse to speak if you believed that police procedures had not been applied. It would be reasonable to refuse to speak if you feel ill. It would be reasonable to refuse to speak if you have been kept in circumstances in which you might reasonably be judged to be exhausted. It is always reasonable to refuse to speak if your legal adviser tells you not to.

## Interrogation

The good old bad old days when people could be simply "verballed" by the police into prison or onto the gallows, are happily gone, although many an old copper still doubtless sheds a tear for their passing. The Police and Criminal Evidence Act (PACE) 1984 changed all that. The onus is now on the police to tape record - and increasingly video record - interviews wherever possible.

Once you have been cautioned, a simple statement that you do not wish to say anything should be enough to prevent further questioning.

If you do decide to be interviewed, insist that your legal representative is present. Insist also that the interview is videoed. Insist further that a copy of the tape is given to the legal representative immediately the interview is completed. Get your legal representative to make at least a tape recorded copy of the interview. Apart from obvious reason of ensuring the police do not doctor the interview tapes, such behaviour will be intimidating for the police.

Once the interview begins, refuse to answer any questions until the interviewing officer has answered some questions of your own. As first: do you have reasonable grounds for suspecting that I have committed an offence? If he answers no, get up and walk out. The police have no right to detain you and you have a *prima facie* case of wrongful arrest and false imprisonment. If the officer answers yes, ask: what are your reasonable grounds for suspecting that I have committed an offence? Let your legal representative judge whether the answer he gives meets the criterion for arrest. If it does not, seek to leave immediately. If prevented, do not answer any questions.

Doing interrogation, the police must make it clear when breaks are taken. Reasonable refreshment must be provided to the suspect. The suspect must be given reasonable opportunity for rest. Bullying, in the form of a question being frequently repeated might well disqualify the interview from being admitted in evidence.

The police may still try to play their age old tricks on you - "tough cop, soft cop", "You play ball with us son, and we'll make sure the judge goes easy on you", "Your mate's coughed" etc. (Yes, policemen do actually speak like this. I blame it on their watching too many TV police series). Do not believe a word they say. The police have no interest in you beyond obtaining a conviction. They will lie to their hearts content in pursuit of that end.

Although "verballing" is now difficult, the police can still plant evidence. This can be extremely difficult to disprove. The main means of disproving it are circumstantial. If, for example, you have no history of drug abuse, it might seem implausible to a jury if the police claim that they have found a gramme of heroin in your possession.

## If you are charged

Being charged does not necessarily mean that you will be prosecuted. However it is a formal accusation of a crime. It indicates that the police (or other authority such as Customs and Excise) think that there is evidence which may lead to a prosecution. The charge should be entered in the charge sheet at the relevant station and a copy should be supplied to the accused.

## Detention

You may be detained by an authorised officer, normally the police, only after arrest. You may, however, be detained without charge. But such detention may only occur when it is necessary to secure or preserve evidence or to obtain it by questioning. If detained without charge, always ask the detaining officer for justification of your detention. Normally such detention should cease after 24 hours unless it is in connection with a serious charge such as rape, kidnapping, causing death by dangerous driving etc. Then a superintendent or more senior officer - chief superintendent, assistant chief constable, deputy chief constable and chief constable in all cases except the Metropolitan Police - may authorise an extension to 36 hours. Magistrate's courts may authorise an extension of detention without charge for a further 36 hours. A suspect held without charge may thus be held for 72 hours at most.

If a suspect is charged with an offence, he or she must be granted police bail or brought before a court as soon as is reasonably possible. If the delay in bringing a suspect before court seem unreasonable, a writ of *habeas corpus* may be sought by the person detained. This will force the police to bring you before a court.

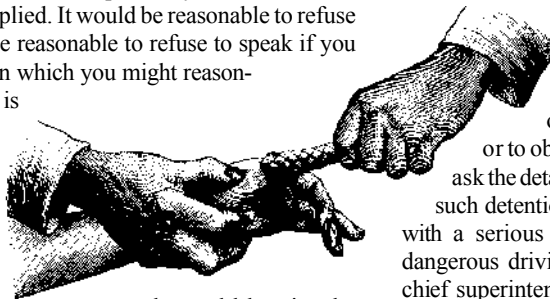
An arrested person held in custody may have one person told of this, although if a serious arrestable offence is concerned and a senior police officer reasonably believes that this would interfere with an investigation, this advice can be delayed for up to 36 hours. If you are refused a chance to tell one person that you have been arrested, ask for the reason, the name of the person making the decision and the name and rank of the person making the decision.

## Powers of search

You think your person is inviolate? You believe an Englishman's home is his castle? Think again. A magistrate may issue a search warrant if he believes there are good grounds for suspecting that a serious arrestable offence has been committed. However, there are many instances where a search may be undertaken without a warrant.

The police have a general power when arresting someone for an arrestable offence, to enter and search premises where they believe the suspect to be.

The 1984 Police and Criminal Evidence Act empowers the police to stop and search any person or vehicle in a public place (a place to which the



public have general access) for stolen or prohibited articles (e.g. offensive weapons, tools to commit a burglary) and to detain a person for such a search. Before such a search, the officer must state the station to which he is attached and his object in making the search. If out of uniform he must produce proof of his identity and status.

Under certain other circumstances the police may search without a warrant or any superior authorisation, for example when acting in a case involving the Misuse of Drugs Act 1971. Under the Criminal Justice Act 1994, the police have powers to stop and search if they fear that a violent event may occur. The private citizen has no powers of search. Thus M15 and M16 have no powers of search.

## The police

The police do not decide whether a prosecution is to be undertaken. Their responsibility is to gather evidence and then prepare the evidence (with a covering submission) for forwarding to the Crown Prosecution Service. The police may seek the advice of the Crown Prosecution Service at any point in an investigation, whether or not charges have been brought.

Policemen are generally neither very bright nor well-educated. The minimum educational qualifications for most forces are still dire: 4 GCSE's is par for the course. This means that they are not too hot on the paperwork side, either in its preparation or in their desire to undertake it. This natural reluctance has been built on in recent years by an immense increase in the paperwork required for a submission to the Crown Prosecution Service. Thus it is in your interest to make a case as unattractive to them as possible. Keeping silent does this. Occasionally, it may be expedient to flood the police with entirely legitimate paperwork, for example in the case of company fraud.

Bear in mind that policemen are human. If they make a serious mistake they will wish to cover it up even if it means killing a strong case against a subject.

## The Crown Prosecution Service (CPS)

The CPS is headed by the Director of Public Prosecutions (DPP). The DPP is appointed by the government. The present DPP is David Calvert-Smith.

The CPS is the public body which determines whether most criminal prosecutions are to be brought - the DPP has the formal responsibility for these decisions.

At the decision making level, the CPS is staffed by qualified lawyers. Apart from the most senior, these come in two sizes: the young and inexperienced and the older and incompetent. The current DPP, David Calvert-Smith recognises their widespread incompetence and has vowed to root out the dead wood. As an ex-civil servant, I can assure you he will be unsuccessful, not least because no competent experienced lawyer will ever work for the CPS for (1) he can earn far more in private practice and (2) he is not his own master.

The incompetence of the CPS lawyers can be exploited. As with the police they do not like either difficult or complicated cases. The action you take to dissuade police officers from submitting a case to the CPS will also work at the level of the CPS lawyer. As with policemen, bear in mind that CPS lawyers are human. If they make a serious mistake, they will also wish to cover it up even if it means killing a strong case against a subject.

## The government law officers

These are the Lord Chancellor, the attorney general and the solicitor general. They are all politicians of the ruling party. The idea is that they

act only as impartial law officers when concerned with legal matters. This is, of course, utter tosh. Their existence is the main means by which government of the day manipulates the justice system.

The few criminal prosecutions not left to the DPP to decide are matters such as treason, corruption and offences under the Race Relations Act. The decision on such prosecutions is made by a member of the government, the Attorney-General, the second most senior political law officer after the Lord Chancellor. In the Attorney-General's absence, the decision is made by the Solicitor-General, the third most senior law officer.

The Attorney-General (or the Solicitor-General) also has the right to intervene in criminal prosecutions. He or she may enter a plea of *nolle prosequi* (to be unwilling to prosecute) to terminate criminal proceedings. In the case of criminal proceedings on indictment, *ie* those tried by jury and thus generally the most serious, the proceedings are automatically ended. In the case of summary proceedings - those in magistrate's courts - the leave of the court is required. This leave would normally be automatic. Pleas of *nolle prosequi* are not appealable. Nor does the attorney-general (or the solicitor-general) have to give a reason for their plea, although normally a reason will be given such as "not in the public interest" or "unfit to plead".

## What to do if you get to court

Tempting as it may be to represent yourself, there is a good deal of truth in the adage that a man who represents himself has a fool for a client.

To begin with most people have little experience in speaking in public. That alone will make them very nervous. The court atmosphere will be intimidating even if the court is a modern one. Then there is the problem of court procedure which the novice will find bewildering. Above all, there will be the need to question witnesses. This might seem simple but it is not. The average person will not be able to keep the flow of questioning going or construct sequences of questions which logically build up to a "killer" question. The average person will also put questions to witnesses which are irrelevant or inadmissible (which tries the patience of the court) or questions which allow the witness to embroider their reply or questions to which no certain answer can be expected. Good barristers ask only questions to which they know the reply, which is -



normally yes or no.

However, having said all that there are cases where it may be necessary to defend yourself. This is where you cannot reasonably have any confidence in any barrister (or these days, solicitor) presenting your defence, honestly, ably or energetically in court. Such cases are very rare and are likely to arise only where the charge being answered is essentially political. Charges under Section 70 of the Race Relations Act would fall into this category.

The only other occasion when you should normally present your own case, is when you come to the conclusion during a trial that your counsel is making such a hash of your defence that to take it over yourself could not make matters worse.

There is one extraordinary instance beyond those given above when you should represent yourself as a matter of course: if you are (1) self-confident and (2) wish to make a political stand out of a court appearance.

If you do end up defending yourself, you may make use of advice in court from someone who is not your appointed counsel. The judge should also extend a good deal of latitude to you when it comes to questioning of witnesses. He may even question witnesses on your behalf if he feels that you are failing to do the job adequately.

### **Should you go in to the witness box?**

Generally I would say no for the same reasons that I hold to the belief that keeping silent is on balance the best tactic. Give the court as little to go on as possible. It also hamstring the judge, for "summing up" frequently revolve around evidence given by the accused in the box. Such advantages will more than counterbalance any disadvantage you may incur by the magistrate or jury questioning why you have not taken the stand. But there are other reasons as well.

If you go into the witness box you will probably be very nervous. Prosecuting counsel will hold all the cards. He determines what questions will be put. You will be restricted more often than not to yes or no answers. Even if you are completely innocent, you may well come out of the box seeming dishonest. Moreover, if you do not go into the box, the jury or magistrate do not get a glimpse of your personality. They have to go entirely on the facts of the case. That is generally an advantage, particularly where a jury is concerned.

### **Expert witnesses**

If you want an "expert" opinion to support your case you can usually find one. Moreover, certain types of evidence are either intellectually worthless or so questionable that they should rationally immediately create a "reasonable doubt", the evidential test for a criminal conviction.

It is up to you and your lawyers to make sure the questionable nature of the evidence is brought out emphatically during your trial.

Such things as handwriting comparisons and voice prints are inconclusive - try getting a so-called handwriting expert to identify correctly fifty pieces of handwriting when he does not know how many were written by the same person. If you are faced with such an expert, get your counsel to set him such a test. If an audio recording is produced purporting to contain your voice, have it tested to see if it is edited and the tape is an original not a copy. Different recording machines of the same model may produce different "electronic footprints". Ditto videotape. If you are faced with an audiotape alone, simply claim the person is not you. It is damned difficult to prove otherwise. Much video evidence is inconclusive because of camera angles and image quality.

Psychiatry is no better than institutionalised quackery. Patients who have received treatment from psychiatrists show no greater rates of recovery than those who have received no such specialised treatment. Incredible but true. Any psychiatric evidence should be challenged by a general attack along the lines of "Dr X, what objective evidence is there that your understanding of the human mind is any better than the next man's". There being none, the psychiatrist will be eventually forced to admit it - he is under oath. If he cannot show that he has special expertise, then he should be disqualified as an expert. At the worst you will have demonstrated to the jury or magistrate that there are solid grounds for doubting the evidence.

If you require expert advice on your side, you have two main problems: finding and paying the expert and (2) getting counsel who can understand the expert. (If you want to see counsel making an idiot of themselves, go and see a case involving serious forensic evidence. Second favourite for this sport is a case where counsel has to deal with a company fraud case involving arcane accountancy practices.) A further problem is that much of the forensic expertise readily available in this country is to be found in government controlled laboratories.

If you cannot get your own forensic tests done, you could be convicted simply because of incompetence by the laboratory used by the prosecution. Quite a few instances have come to light in recent years. Moreover, there have been a number of cases where there has been a deliberate attempt to cover up mistakes. So do try to get your own forensic tests done.

There is also the question of forensic being planted by the police. Take DNA. It is a simple matter to obtain DNA evidence from a suspect. Get them to touch something. Get them to eat something like an apples. Take a hair from them without their knowledge. I think a defence could reasonably be mounted against DNA evidence on the grounds that it was planted. Similar objections could be made against other forensic evidence. Juries in particular are more susceptible to claims of the planting of evidence than they once were.

## **Right Wing Revolution? What Right Wing Revolution?** **Helen Szamuely**

Recently I discovered something rather terrible. In a way I had always known but refused to acknowledge it. Now I have done so. I have established beyond any reasonable doubt that the right-wing revolution, of which we have heard so much both with praise and loathing, never happened. It was a very simple discovery that led me to the acknowledgement of this fact: the fact that I and many others are fighting very largely the same battles my father and his friends and colleagues fought thirty years ago. The only difference is, and I am loath to acknowledge it, that many people who were or would have been on our side at the

time, no longer are.

The most recent reminder of how little things have changed and if they have done, mostly for the worse, was the visit of President Jiang Zemin of China. Not only were we reminded of the obsequious welcome prepared or given years ago to President Kosygin, Ceausescu and his wife, KGB boss turned trade union leader Alexander Shelepin, police interrogator and torturer turned prime minister Mitja Ribicic, to name but a few, but reality in 1999 proved to be far more shocking. British police

officers were seen to attack peaceful demonstrators. They had, it transpired later, co-ordinated their security arrangements with Chinese security officers, whose previous job may well have been even more distasteful. At the end of a few humiliating days we were told triumphantly that trade agreements had been signed to the tune of £1.6 billion with the murderous Communist regime.

That appears to be the price of British freedom, which some time in the past the Right allegedly fought for: £1.6 billion. So much for the fight and the supposed victory. Unfortunately, the same problem appears in other walks of political, economic and social life. The state no longer owns huge tracks of our economy - it now regulates, a far cheaper alternative, since the price is paid by those who are regulated and the state does not have to raise unpopular direct taxes. But the results are very similar: economic disincentive, social dislocation, loss of freedom. At a time when power is exercised by apparatchiks either in Whitehall or Brussels, whose devotion to their ideology of regulatory order and European integration is legendary, what has become of the right-wing victory over the forces of state control?

I need not even enumerate what is happening in education, the social services, in organizations hitherto untouched by left-wing propaganda, like the police or the many ways in which our lives are being restricted by the bloated insatiable state. But I do want to mention one more failure: while the Right has meekly accepted all the accusations flung at it about spurious connections with ridiculously stupid, unpleasant but unimportant extremist organizations, no such obloquy has attached itself to those who have openly, consistently and for a long time supported murderous Communist and other vaguely left-wing regimes. Again, the situation has become worse: confused by the post-Soviet political situation, many on the Right with impeccable anti-Soviet credentials now happily and vociferously give their support to former Communist bosses masquerading as nationalist leaders.

All of which leads one to suppose that not only the so-called right wing revolution fizzled out ineffectually but that the Right itself has destroyed itself in the one battle it appears to have won - the destruction of the Soviet Union. (Though the victory seems somewhat hollow as one surveys the developments in the former Soviet and other East European countries.)

It has become a political truism that the Left lost its bearings the day the Berlin Wall was brought down. Unfortunately, so did the seemingly victorious Right. In other words, the Soviet system like a scorpion managed to accomplish its aim: the destruction of Western political life. British political life, particularly on the right, did not survive the events of 1989-92. Clearly, what had motivated the Right had been a justified fear and distrust of the Soviet Union and its clients, whether states or organizations. There appears to have been no other principle, no uniting, even multifaceted ideology that could have carried it through victory into the new political reality. Judging by subsequent pronouncements many of those who had fought against the Soviet Union never really understood clearly why it was a bad system and its agents and supporters bad people.

There are three aspects of political activity where the Right has failed to build on its victory over the menace abroad and at home. It has not followed up economic liberalization with a political one, not understanding that a change in attitude towards individual life and individual responsibility had to support the change towards property that had taken place in the eighties. Secondly, it did not work out a coherent point of view on matters constitutional and has come up with no useful definition of what is a democracy, preferring to accept the Left's self-serving definition of simple majoritarianism, otherwise known as demagoguery. Thirdly, it has found itself completely at a loss in foreign affairs.

The tempting response that it is an admirable characteristic of the Right to have many different opinions is not sufficient. I am not talking about necessary differences in opinion but about a lack of underlying principles

or even basic points of view.

Let us look at the first aspect of political activity. The fight against nationalization and the power of the unions was important and necessary. The transfer of utilities and other business into private hands, making it possible for private enterprise to flourish, undermining the illegitimate and oppressive power of big trade unions, the sale of council houses, all these were admirable. But they did not go far enough, not simply because the Thatcher government ran out of time but because there was no real push to go on. The question arises did the Right fully understand the importance of politics either ideologically or strategically or did it simply turn the crudest form of Marxism on its head and become completely embroiled in purely economic discussions? Certainly, it has taken the Right a long time to grasp that ownership of production may not in the modern world be as important as regulation of it. And all-pervasive regulation proceeds partly from the power-hungry officials both in Whitehall and in Brussels but also from the wide-spread acceptance by the people of this country that it is the government's duty to "do something" about whatever it is that has gone wrong at that moment. The notion of political and social freedom has not gone along with that of economic freedom, as a result of which we stand in grave danger of losing even the latter. Even privatization has not been fully accepted if the popular reaction to the Paddington train crash is anything to go by. People will not really like the renationalised railway but their first instinct is to suggest that as a solution to any complicated or difficult problem.

Has the Right then really won the battle for economic freedom? Not according to small businessmen who are being driven to the wall by a combination of busybody regulation and big business pressure. By big business pressure I do not mean competition in the market but pressure by big business on government to bring in more regulations, allegedly in the name of safety but really to make sure that smaller competitors do not stay the course. And yet, small and medium size, often niche business, agile, alert, capable of trading in the modern world is one of this country's strengths, or would be if it were allowed to continue through the dismantling of the regulatory order and the abandonment of the popular notion that the government is there to solve everybody's problems.

What of the constitution and the definition of democracy? Is that not what the whole battle was about? Freedom, democracy, a clearly comprehensible legal order? Maybe, but that is hardly what we have now. The present government is perhaps the greatest political vandal since the seventeenth century, with the difference that Mr Blair has no real ideas beyond power wielded by him and his cronies. But by accepting the proposition that democracy depends solely on the number of votes cast for a candidate selected by a party, the Right has stood by and allowed the destruction of the Union, of Parliament and of the legal system to take



place, all in the name of democracy or a spurious definition thereof. Added to that is the all-embracing question of whether Britain should belong to the European Union, a question that the Right seems unable to answer, understanding some of the problems but refusing to contemplate drastic solutions.

Finally, foreign affairs - a sad tale. With no immediately visible enemy, the Right has been at a complete loss. Now supporting former Communist thugs, rebranded as democrats, socialists or national leaders; now wringing its hands about possible or probable victims; now recoiling when the going got a little tough - the Right seems to have no ideas what sort of a world it would like to work towards in the post-Soviet era. It seems unable to understand that the world did not either stop on November 9, 1989 or change instantly and irrevocably. Many of the same people and the same ideas are still around but at the same time many completely new ones have emerged. And decisions will have to be taken. Where do British interests lie? Which side are we going to take in the old conundrum that has just acquired a new sheen: territorial integrity or national self-determination? How long are we going to accept the

supremacy of international bodies that have no real legitimacy but had grown out of a particular situation immediately after the War? It is a difficult new world we are facing in which decisions cannot be taken simply by looking at one particular large monster. Whatever the Soviet Union backed had to be bad and vice versa. Now, questions of right and wrong are beginning to reassert themselves and the fates of peoples and nations we have forgotten about are once again on the agenda. In this bad new world the Right of this country is adrift, which is what makes one think that many of its supporters had never understood what was wrong with the Soviet Union. For it certainly seems unable to understand what is wrong with many of those who had succeeded to the Soviet rulers or the Soviet backed rulers in many parts of the world.

And so, thirty years on, many of us are finding ourselves fighting the battles we thought our parents had won. This time round we had better define our terms a little more clearly and choose our allies a little more carefully. Otherwise we shall either lose once more or win spuriously. And our children will have to fight the same battles yet again.

## Reflections on the Gary Glitter Case

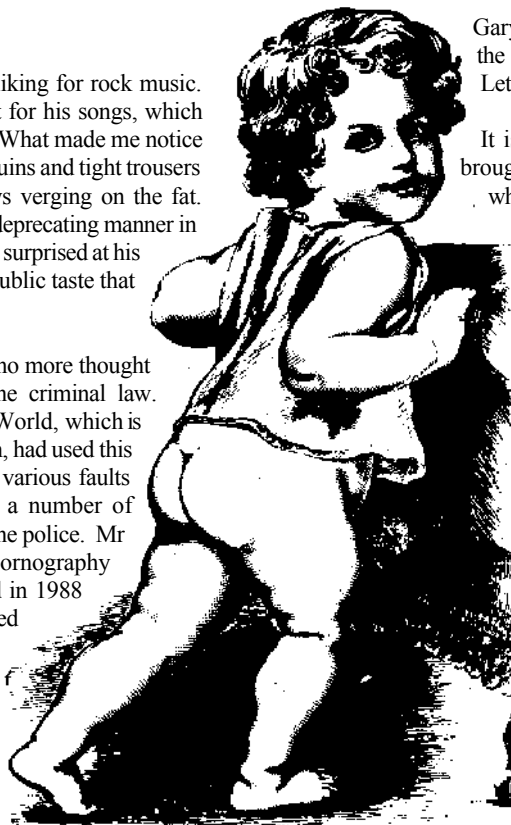
### Sean Gabb

Paul Gadd, performing under the name Gary Glitter, was a very popular British singer in the early to middle 1970s. Even as a child, I had no liking for rock music. But I did notice and like Gary Glitter. It was not for his songs, which were as unmemorable as all the others of his day. What made me notice him was the wild extravagance of his dress - all sequins and tight trousers - thrown carelessly over a figure that was always verging on the fat. What made me like him was the pleasant and self-deprecating manner in which he handled television interviews. He seemed surprised at his popularity, and even a little contemptuous of the public taste that had raised him so high.

I lost sight of him after about 1974, and gave him no more thought until I heard last year of his difficulties with the criminal law. Apparently, he had bought a computer from PC World, which is the largest computer retailer in the United Kingdom, had used this for a while, and then had taken it back to have its various faults put right. The repair engineer had discovered a number of pornographic images on the hard disk and called the police. Mr Gadd was charged with possession of child pornography under the Protection of Children Act as amended in 1988 and 1994.<sup>1</sup> Sometime after this, a middle-aged woman came forward and accused Mr Gadd of having seduced her when she was fourteen and of having kept her as a "sex slave" for the next twelve years.

The case reached its end on Friday the 12th November 1999. The Jury cleared Mr Gadd of all charges in connection with the middle-aged woman, but he had already pleaded guilty to the child pornography charges, and the Judge sentenced him to four months in prison. The radio journalist who reported all this to me gloatingly predicted that it meant the end of Gary Glitter. Bearing in mind the number of young and not so young women who danced and cheered in the public gallery and outside the court as the news of his partial acquittal, and his ability to survive all the changes of fashion in the past quarter century, I am not so sure. Gary Glitter will be banned from every radio station in the English-speaking world, but his live concerts will never be less than standing room only.

Now what I find so interesting about this case is not the personality of



Gary Glitter, but how it illustrates the best and the worst about the British system of justice. Let me begin with the middle-aged woman.

It is absurd that charges of seduction can be brought so long after the alleged event. I do not wholly share Peter Tatchell's belief that the age of consent should be lowered to fourteen, and I do believe that adults who have sex with young people under a certain age should have to face criminal charges. But there surely ought to be a time limitation on bringing such charges. To let them be brought without any limitation is an abuse of justice. A child who complains immediately after an alleged assault should at least be listened to. An adult who complains 20 or 30 years after the event should be laughed at. I would say that anyone who spends so long brooding over something that might at the time not have been so terrible, but which with the passing of years becomes increasingly trivial, should not be seen as a reliable witness. At the very best, dates and places and other facts become blurred in the memory of all parties. At worst, elaborate lies can be told against which there can be no easy defence.

The injustice is heightened by the anonymity guaranteed by law to the accuser. Someone who stood up in court three centuries ago and accused an old woman of cursing his sheep was known to the Jury and had his name reported in the newspapers and the court records of the day. The middle-aged woman who accused Mr Gadd was unknown to the Central London Jury who assessed her evidence, and her name cannot be published anywhere. I do not know if she was lying.<sup>2</sup> But the fact that no one will ever know her name must have been an incentive not to tell the truth. Except she still had to give her evidence in person, the procedure was borrowed straight from the Inquisition. This corruption of process is an achievement of the feminist movement, aided by politicians and civil servants who instinctively hate the old notion of

equality before the law. The next step - already demanded, though not yet granted - is to reverse the burden of proof, so that the defence will need to prove innocence.

Then there is the partiality with which the law is applied. If ever accused of legal oppression and wasting taxpayers' money, the authorities will hide behind a wall of excuses about having had no choice but to prosecute. "The evidence was there" they will say. "There was a *prima facie* case against Mr Gadd. It was our legal duty to prosecute and let a Jury decide." This is a lie. The authorities have almost unlimited discretion over what cases to drop and what to pursue. Look, for example, at a recent case in Lancashire. Eleven Asians were charged with the murder of a young white man. Just before the trial started, all the murder charges were dropped. This was not for want of evidence, but because "prosecution would not be in the public interest". It would not be in the public interest because it would mean letting the media report that some parts of this country are sliding into a low intensity civil war between different ethnic groups.<sup>3</sup> Mr Gadd was made to stand trial not because there was overwhelming evidence against him, but because the authorities do not approve of sexual pleasure - unless, of course, it is their own; and then puritanism melts instantly into hypocritical mewling about "diversity", and the sanctity of private life.

Or look at the Mr Gadd's accuser. She had accepted money from *The News of the World* for her story, and had been promised another £25,000 if Mr Gadd was found guilty. Will she be charged with contempt of court and sent to prison for two years? I doubt it. Her example will be used to justify further censorship of the media, but she will never be punished under the known, ancient laws against what she did.

I turn now to the pictures found on Mr Gadd's computer. There is no certainty that these were of young persons under the age of sixteen. The police make it their habit to classify all pornographic images they find as of children, no matter how old the models appear to be. They then rely on threats of exposure in the newspapers and castration in prison to force a confession to something else. It may be that Mr Gadd held out too long. Or perhaps he really was guilty under the law. We shall never know, as he confessed to possession at the last minute, so the pictures were not shown in court. But let us assume that these pictures were of children. This being so, are there any credible reasons for why possessing them should be illegal? In asking this, I take the standard libertarian position that an act should be criminal only so far as it can be shown to have caused an identifiable individual harm that would be recognised as such by a reasonable person. What harm did Mr Gadd cause to anyone?

One answer is that if Mr Gadd had taken them himself, they would be evidence of a crime. It would be the same if he had procured somebody else to take them. That would make him an accessory to a crime. But the crime here would not be possession: possession would be no more than evidence of a crime. In any event, there is no claim that he ever knew the models or the photographers. He appears simply to have downloaded them from the Internet.

Another answer is that looking at such pictures somehow encourages attacks on children. There is a vast literature on the alleged inflammatory nature of pornography, and I will not refer to it beyond saying that I have yet to be shown a causal connection between pornography of any kind and sexual violence. But I will observe that if Mr Gadd, as we are told, spend up to twelve hours a day downloading his pictures, he can have had little time for doing much else. And I will observe that if possession of child pornography is to be banned because it might provoke attacks on children, possession of all pornography ought to be banned for the protection of everyone else. And once we have done this with pornography, we should extend the ban to most kinds of religious and political literature. I have no idea how many sexual murders there have been in the past five centuries, but I doubt if they amount to even a thousandth of one per cent of those committed for the greater glory of God or the welfare of the masses. To imprison Mr Gadd because he had some smutty pictures, and let others go for having copies of *The Bible* or *The Communist Manifesto*, is at the very least inconsistent.

An answer still less convincing is that by downloading the pictures, he was somehow encouraging their production. This might be the case had he been paying for them. But I am not aware that he paid for anything. So far as I am aware, he downloaded from various newsgroups and open access web sites. And even if he had paid for some of the pictures, it is hard to see why there should be laws against possession of what he had bought. I have numerous objects in my home that I strongly suspect were made with child labour. This computer is running on electricity that I am sure was generated from coal mined at least partly by Colombian children. In a sense, therefore, I am encouraging the exploitation of children. But I stand no chance of being arrested and put on trial. What is the difference between Mr Gadd - assuming he paid for the pictures - and any of us who pay for children to be treated in a manner that we regard, perhaps rightly, as criminal? Indeed, it can be argued that it is less harmful for a child to be photographed in a warm studio over several hours than to be worked day after day in a factory with unguarded machinery all around. The real difference between Mr Gadd and the rest of us is that the exploitation he may have encouraged gave him sexual pleasure, and the pleasure we derive is not sexual. It is not harm to children, therefore, that is the real object of prohibition, but the nature of the enjoyment that others derive from it.

And so that law has no justification. Its only consistent purpose is to make a crime of certain fantasies. Its most likely effect is to give the police unlimited power to destroy anyone they do not like by planting evidence. If I am accused of murder, a body must be produced. If I am accused of even a victimless crime like selling drugs or pornography, some objective evidence must be produced in court - either witnesses or a paper trail showing payment of suppliers and laundering of the proceeds. But a law against possession of certain images makes it ridiculously easy to get convictions on the basis of planted evidence. Let the police "find" the wrong sort of image on my hard disk or among my books, and there is no need to prove how it got there. Life is made easier for Inspector Fitup and Sergeant Plant; and we have another law that moves us further away from the ideals of the old Common Law and towards the practice of the Inquisition.

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I should repeat that I do not know what images Mr Gadd confessed to looking at. When a confession of guilt is accepted in court, no evidence is produced. Some of the news readers gloated over how some of these images were of children "as young as two". Doubtless, this came from the Police. In my own experience - from arguing about recreational drugs - such claims are to be given the same status as any advertising claim that "prices start from only £199" when the real price is £50 higher. Mr Gadd downloaded his images from news groups. Therefore, he probably downloaded thousands of spam advertisements, religious injunctions and images that did not interest him. It is quite possible - without further information - that he did not know that images of this kind were on his hard disk. From all the evidence that was presented, his taste was for young teenagers. Even if the "as young as" images were not planted, there is little reason to suppose that he had ever looked at them. But the Police and media have never been known to let facts stand in the way of a good story.

I did say that I would mention what is good about the British system of criminal justice. This is Trial by Jury. So long as twelve ordinary people have the unrestricted right to find someone not guilty even in the face of the evidence, we still live in a reasonably free country. The authorities in this country have turned democratic accountability into a joke, and can make whatever laws take their fancy. But the enforcement of these laws will always be partly restrained by the need to persuade a Jury that they should be enforced. I did not follow Mr Gadd's trial with close attention, but I am ready to believe that the Jury acquitted him of the charges brought before it partly because of the oppression involved in laying such charges so long after the alleged event and because of the evident corruption of the only prosecution witness.

I will not say more about Trial by Jury, however, as it is on the way to abolition. The Government is about to bring in a Bill to limit the right to no more than a few hundred cases a year; and this last remnant will be swept away as soon as the Government introduces the *Corpus Juris* - that is, full harmonisation with European criminal law: no Trial by Jury, no *habeas corpus*, no presumption of innocence, no rule against double jeopardy, and so forth.

But let us enjoy it while we have it. Paul Gadd is a victim of injustice. But things might have gone worse for him had his computer not broken down until after the abolition of the Common Law. Perhaps he should even be grateful that PC World sells such rotten, unreliable products to its customers. Of course, if he had bothered to learn a little more about wiping and deleting data from his hard disk, he might still be at liberty. But that is another matter entirely!\*

## Notes

1. The law has been created as follows:

Section 1 of the Protection Act 1978 reads:

It is an offence for a person -

- (a) to take, or permit to be taken, any indecent photograph of a child (meaning in this Act a person under the age of 16); or
- (b) to distribute or show such indecent photographs; or
- (c) to have in his possession such indecent photographs, with a view to their being distributed or shown by himself or others; or
- (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs, or intends to do so.

Section 160(1) of the Criminal Justice Act 1988 amends this Section by adding that

It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.

Section 84(2) of the Criminal Justice and Public Order Act 1994 further amends the 1978 Act as follows:

In section 1 (which penalises the taking and indecent photographs of children and related acts) -

(a) in paragraph (a) of subsection (1) -

(i) after the word "taken" there shall be inserted the words "or to make", and the words following "child" shall be omitted;

(ii) after the word "photograph" there shall be inserted the words "or pseudo-photograph...."

The wording of the other paragraphs of the 1978 and 1988 Acts is similarly changed to reflect the creation of the new offence.

Section 7(5) of the 1978 Act is amended to read as follows:

(6) "Child", subject to subsection (8), means a person under the age of 16.

(7) "Pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

In this section the laws of Scotland and Ulster are also amended to the same effect.

2. As an aside, I can say that most girls when I was fourteen would have been deeply honoured to take their knickers off for Gary Glitter. To become his sex slave for an entire twelve years would have seemed very heaven.

3. The case was reported on BBC Radio 5's *Drive Time* programme on the 3rd November 1999. The interviewer was Peter Allen. Robert Henderson, who told me about the case, checked *The Daily Telegraph*, *The Times*, *The Guardian*, *The Independent*, *The Daily Express*, *The Daily Mail*, and *The Mirror*. Not one carried a single word about the story.



# Reviews

*The Noblest Triumph:  
Property and Prosperity through the Ages*

Tom Bethell

St. Martin's Press, New York, 1998, vi + 378 pp., \$29.95 (hbk)  
(ISBN 0 312 21083 3)

This is a rich and fascinating historical survey. Its key idea is that self-sustaining economic growth is possibly only in areas in which private or, as Hayek would have preferred us to say, several property is respected. The author became persuaded that "A wide-ranging book" was needed about "the institution of private property" by the response of World Bank officials to a talk which he gave to them. In it he argued that if they wanted to see "real growth and modernisation" in the countries with which they were dealing "then tinkering with the levers of macroeconomic policy — here a little fiscal stimulus, there a little monetary restraint — would not do the job." Instead the "legal and political systems" of those countries "would have to be bought more closely into line with those of the Western world."

The general response of those officials was, apparently one of polite puzzlement: such ideas had never previously been entertained on the premises of the World Bank. That was the seed from which the present book grew. Unfortunately for the reviewer the word 'grow' is all too apt. For the book would seem to have grown with the accumulation of its materials rather than to have been first planned and later constructed according to that plan.

For instance, the first chapter on 'The Blessings of Property' does not proceed systematically to state what these blessings are. Instead it begins with an account of how "Over one hundred years ago, the institution of private property fell into intellectual disrepute." In its second section we are told that although the 'many blessings of a private property system have never been properly analysed' its main merit is that it is the necessary but not sufficient condition of "liberty, justice, peace and prosperity". The third section 'The Lens of Property', maintains that "Seen through the lens of property, the continued and unanticipated pre-eminence of the West in the half century since World War II becomes understandable." The fourth section, 'Property and Progress' notices that "Property's eclipse coincided with the reign of progress, and points out an important connection between the two" ideas.

Despite its ramshackle construction even that first chapter is frequently illuminating. It notices, for instance, that all the classical economists, lived in places where there was a satisfactory law of property, regularly enforced. Their successors were thus enabled to overlook this necessity. Later chapters provide abundant examples of the lamentable consequences for what it is politically correct to call developing countries of taking such defective economists' advice.

In many cases the policies based upon such defective economists' advice produced results quite opposite to the intentions of their promoters. The most striking examples of this are provided by the chapter entitled 'Land Reform: Taking Liberties Abroad.' Although the policies of land redistribution promoted by the US occupation forces in Japan and Korea must be accounted successful, the similarly intentioned but very differently managed policies promoted by the US in South Vietnam and in Iran led directly to the overthrow of the leaders whom they were intended to sustain: namely President Thieu and the Shah. It was, as Mr Bethell nicely says, a matter of "Well intentioned people" feeling "that they could be entrusted with Leninist means in order to achieve Jeffersonian ends."

Although, as has been hinted already, Mr Bethell's arrangement of his materials is somewhat shambolic those materials are abundant, and

again and again provide welcome fresh support for conclusions most readers of *Free Life* will find congenial. Thus Part VIII deals with two historical puzzles: 'Property in Arabia'; and 'Why Did Ireland Starve?' Mr Bethell insists that no one should be misled by the brutality of the Islamic punishments for theft to think that property or indeed any other rights are securely protected in any Arab state. He quotes the fourteenth century historian Ib Khaldun as recording that "civilisation always collapsed in the places the Arabs . . . conquered." He goes on to note that today the region of the Arab League "has a (rapidly growing) population of 260 million, but its non-oil exports are less than those of Finland (population 5 million).

Again, "When the Palestinian Authority was created, in 1993, a Ministry of Planning was created and, thanks to foreign aid, the planners began to receive salaries before any wealth was created . . . Arafat's bureaucracy laid its heavy hand of economic controls on to Gaza. Forty percent of the land was confiscated . . . more than 2,000 small production facilities were closed down, and more than 40,000 labourers were laid off."

Nothing could be more unlike the deserts of Araby than green and fertile Ireland. In 1997 our newly elected Prime Minister seized his first opportunity to apologise for the alleged fact that, at the time of the Great Famine, the government in London had allowed a crop failure to "turn into a massive human tragedy." But economic historians insist that the prime problem is to discover why Ireland was so poor. "The proximate cause of the famine was the fungus . . . But the famine is not easily explained by the blight, which also struck Belgium, the Netherlands and Scotland with little demographic effects.

In the first half of the nineteenth century many people sought for the cause of Ireland's poverty, and found answers in various places. Malthus after a tour of the country wrote to Ricardo in 1817, claiming that the "predominant evil of Ireland" was a population "greatly in excess of the demand for labour." But by the time of the second edition of his *Principles of Political Economy* (1836) Malthus had changed his mind. "There is indeed a fatal deficiency in one of the greatest sources of prosperity, the perfect security of property; and till this defect is remedied it is not easy to pronounce upon the degree in which the redundant capital of England would flow into Ireland with the best effect.

Antony Flew

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## *Political Correctness and Social Work*

Terry Philpott (ed.)

Institute of Economic Affairs, London, 1999, 82pp, £5.00 (pbk)  
(ISBN 0 255 36457 1)

Political correctness has much more to do with ideological hair-splitting than with meeting the needs of the poor and oppressed, according to the chief executive of one of the country's leading social welfare agencies. Writing in *Political Correctness and Social Work*, published by the Health and Welfare Unit of the Institute of Economic Affairs, Helen Dent, Chief Executive of the Family Welfare Association, says that:

the length of the political correctness wars has been excessive, and much time and passion misdirected (p.27).

Political correctness has been used

not to tackle oppressors, but those on the same side who do not quite have the right attitude... by the 1980s, the PC police were swapping the pursed lips of 'you should see the state of her kitchen' for the pursed rhetoric of "you should see her ideology... (P.28).

For the users of social services, the concerns of political correctness seemed

a long way from their day-today priorities' like mouldy walls and unpaid electricity bills (p.37),

but then

political correctness was more achievable than social change, and it was a lot more fun (p.41).

The desire to address the issues of oppression and inequality which are the concern of political correctness is widespread amongst social workers. Helen Dent asks why it is that, given their commitment, so little progress has been made. One problem has been the failure of managers to set priorities and act on them.

The losers from all of this were the 'clients' of social work, the people who needed help but found that their social workers were away on training courses, or 'convening meetings for squabbles over whether to write "black" or "Black"' (p.30). Helen Dent gives the example of an elderly widow who needed personal care, but wanted a female home-help. She was told that such a request violated the local authority's equal opportunities policy, and that she would get no help at all.

The woman's relatives queried the policy. They pointed out that their mother had only experienced one man's hands on her-and her husband had died some 15 years previously. No man had ever washed her smalls! They pointed out that she was so embarrassed about taking her clothes off that she did not see the doctor until the lump in her breast had grown to the size of a tennis ball and she needed a double mastectomy. What with that and her rheumatoid arthritis and angina, she did sometimes need personal care. Could they not flex the rules for an old lady too embarrassed, proud and dignified to show her mutilated body to a man? Certainly not. In the era of political correctness new categories of undeserving poor emerged (p.35).

Mrs K. is still without her home-help. As Helen Dent says, this sort of attitude leads us into a moral maze. Would more gender-sensitive authorities allow a white woman to say she wanted a white home-help?

Would that same authority allow an Asian woman to specify an Asian home-help for cultural reasons? (p.35).

Political correctness claimed to challenge powers structures in society, but ended up by re-enforcing them.

Whilst we worried about the ... politically correct, poverty increased in depth and scope, inequality grew, homelessness flourished. The traditional voice of the oppressed had found other priorities (p.41).

In spite of this, Helen Dent is optimistic that social work can now make progress if it develops 'a coherent strategy for action', combining the data and the knowledge base which have been accumulated with the motivation and commitment of social workers. Social work may have lost its way amongst the competing priorities of political correctness, but there are hopeful signs in various government initiatives such as

the white paper on the personal social services, 'quality protects' initiatives for children's services, and reviews to address the problems of inadequate services for mentally ill and socially excluded people ... but the reasons, in part at least, for government action should be a constant reminder of the damage wrought in social work and social policy by political correctness. It is time to move forward (p.41).

Her chapter forms part of a collection of essays edited by Terry Philpot, the former editor and now editor in chief of *Community Care*, the social care workers' magazine. Other contributors include Polly Neate, the current editor of *Community Care*, Anthony Douglas, director of community services for Havering, John Pierson, senior lecturer in social work at the University of Staffordshire, and Robert Pinker, emeritus professor of social administration at the London School of Economics. All authors were asked to address the question of whether or not political correctness plays an important part in social work, and whether there is enough evidence to brand social workers with what Terry Philpot describes as "the modern mark of Cain".

Iti Saflia

## Final Jottings Brian Micklethwait

### One

Christmas and the new year should be done the way they've always been done, so that we can all feel comfortable. Tradition! This is *Free Life* in February. So: here's hoping that you will all have a Happy last Christmas.

My best millennium night experience was taking, from my own London SW1 front window, with my new Minolta Dimage EX Zoom 1500 Digital Camera, a very blurred photo of Millbank Tower having an orgasm, surely an appropriate image for the whole event. I'm hoping to persuade Our Editor to reproduce it. If so, there it is.

How about that! If not, it was just a firework going off behind the tower's roof. The original photo was full of irrelevances like my curtains, other buildings, trees, etc. But with digital cameras you can feed the picture into your computer and then get to work on it, just as if you are Boots the Chemist, except that you care how it looks the way they only do if they

can tell the police it's child porn.



I've been trying for decades to get some Libertarian Alliance comrade to take decent and frequent pictures of all the other Libertarian Alliance comrades, to put on top of Libertarian Alliance pamphlets, both physical and now virtual in the form of Internetted Acrobat files of Libertarian Alliance artwork. Now I'll be doing the pictures myself. It's not that I'm a good photographer. It's that the new camera gives me immediate feedback of what my last photo looks like, and I can delete and delete and delete until I get something usable, at no further cost in paper, trips to Boots, etc.

Also, the camera I got is expensive and has an optical zoom which means I get lots of detail, e.g. of comrades' faces. It feels entirely right to take a fine example of a Twentieth Century Thing

with me through the Y2K barrier, into an era that already looks as if it's going to consist not of Things, but of wobbly vibrational effects and Interactive Dispersed Intelligence Fields coming at you from who knows where, with all the mere Things being too small and too cheap to matter.

Any Libertarian Alliance subscribers angered by the thought of me playing with my new camera when they are still owed the last subscriber mailing of 1999 should know that I feel their pain. First it was my photocopier, which was out of serious action for about six weeks, and which actually at one point burst into flames. The thing had taken to sizzling ominously like it was already the next century. Faulty wiring, presumably. The third time it sizzled I opened the top. This turn a very hot non-fire with no oxygen to burn into an actual fire. After three maintenance engineers of ascending rank and determination had looked at it, it was finally got going again, just before Christmas. By which time I had got my new camera (something to while the photocopier was on the blink) and the software for feeding the pictures from the camera to the computer caused Windows 95 to go on the blink. It was all, as they say in America, a learning experience, or as we say here, a shambles.



## Two

When your computer goes haywire you get to talk computers with all the computer-fluent friends you can assemble to fix it - including Our Editor by the way, who, in among all his loathing of everything that has happened in the world since the coronation of Queen Victoria is a computerisationist of considerable considerableness. Well, listening to all these computerers gibbering away to me and to one another I believe I detected something rather interesting, namely, the forthcoming fall from grace of Microsoft. The computechies are now talking about Windows with the same rage and contempt that I once heard one of them displaying during a similar discussion that occurred in the early-to-mid-80s among computerians about the more expensive sort of IBM hardware, and we all know what happened to IBM. The bloke who assembled my computer for me first time around, and who helped me most to fix it this time around (Dave - thank you Dave), now says: "I'm never going to sell another computer to anyone again. They're too much trouble."

For computing individuals and for the computer industry as a whole, computing proceeds not only in smooth small steps, but also in giant traumatic leaps from one way of doing things to the next. Advance by parachute drop, I call it.



You do things the way you do them, year after year and regardless of how bizarrely so long as they work. You add new toys and tweaks, speed it up, get a better printer and an email number, but basically everything remains as it was when you first got the stuff. Eventually your existing kit becomes ridiculous, and you do a

r a d i c a l r e k i t , which enables you to do amazing new stuff and which keeps you happy for the next twenty years, and quite possibly for the rest of your life. (My last serious switch was when I dumped my Osborne nearly fifteen years ago, and moved to my previous PC but one. By the late eighties I was using Ventura 3 to do DTPing and have been using it ever since. It isn't bust and I haven't fixed it.)

I am approaching my serious point. When you do a parachute drop, your basic approach is not: how do I get my old kit to work better? It is: how do I get my new kit to work well according to its own rules, and how do I then get my new kit to make as much sense as is makeable of the stuff I was doing with my old kit? Windows is approaching this moment. Microsoft is saying: how do we improve Windows? How do we keep the whole show on the road? How do we clean up all the bad Windows decisions we've made over the years and keep all Windows activities semi-rational, and faster, and cleverer, and not crashing that much more than usual, and just as profitable and expensive as ever? How do we persuade the whole world to buy Windows 05 with the same ferocity that it once bought Windows 95? The rest of the world is starting to say: To hell with Windows 05. It's just Windows 95 with a few extra bells and whistles and mess-ups. If Windows didn't exist, how would we now do things? Why don't we do that anyway, and then turn around and rescue what we can from Windowsworld and dump the rest? (This is what Personal Computers did to the IBM of old, and ironically IBM itself made the biggest early move, by setting up its PC operation completely outside the regular IBM set-up.) The popular favourite Windows-killing operating system is now Linux, and Linux could indeed be the Next Big Thing. I don't know. What I do sense is that some new Rough Beast Operating System is even now slouching around in Silicon Valley. Be ready to sell your Microsoft shares, any year now.

The point of all this is: capitalism in general is, like computers in particular, a learning experience stroke shambles, but that it does indeed learn, and progress. Politics means Bill Gates buying Politics and making non-Windows PC software illegal. It means IBM buying Politics and making PCs illegal. It means IBM's cash-register-making predecessors buying Politics and making IBM illegal. Politics means very occasional and very bloody revolutions. Capitalism means mostly bloodless and far less occasional revolutions. It means that each computer "monopoly" has its fifteen years of fame, and then it crumbles away into a regular big company such as IBM is now (IBM's latest miniature storage devices for use in, e.g., digital cameras look fabulous), and such as Microsoft will be in fifteen years time. Politics means politicians organising the occasional firework party, and leaving the serious stuff to regular people like you and me and Bill Gates to sort out amongst ourselves.