A New Nonagenarian Considers Liberty

by Francis Bennion

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Editor's Note

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This issue is also a special bumper issue, planned to coincide with the upcoming Commonwealth Law Conference scheduled for Cape Town in September 2013. Delegates attending that event will receive a copy of this issue in their conference bags, and we have pulled out all the stops to ensure that they, and our regular readers, are provided with a rich and rewarding fare . . . Many of the contributors are well known to readers of this journal, including some frequent contributors such as Francis Bennion . . . A similar call for moderation and common sense informs Francis Bennion's contribution on Liberty. As he approaches his ninetieth birthday, this stalwart of freedom under the rule of law laments the decline of liberty in the United Kingdom. 'The state', he argues, 'has encroached in many areas which were previously free of its domineering control, but the law has ceased to be itself an instrument of such control over minorities such as homosexuals, gypsies, and persons suffering from mental or physical disability. Respect for the rule of law has ebbed, with increasing belief in that alluring but poisonous maxim that 'the end justifies the means' - which today translates in popular belief as 'worthwhile causes justify criminal acts'. Some elements of the human rights lobby will doubtless disagree with Bennion, but it is to be hoped that his article will form the basis for a free and frank debate on the important issues raised by him . . . **Dr Venkat Iyer**

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A New Nonagenarian Considers Liberty

Francis Bennion

Introductory

God willing, I shall attain the age of ninety at the beginning of 2013. In this article I look back on one aspect of my legal career: the defence of liberty. The career began one day in 1947 in the room of Lord Lindsay of Birker, the Master of Balliol (known as Sandy). As an Oxford undergraduate I had decided to switch studies from Philosophy, Politics and Economics (PPE) to Law; and it was necessary to convince the Master of the wisdom of this. He wasted no words. 'Why?' he asked. 'Because I find I am making my friends from among Mr Tylor's pupils.' This was a reference to the British Chess Master and Bridge Master, later Sir Theodore, who was then the Balliol law tutor. 'That's as good a reason as any' said the busy Sandy, dismissing me.

It would have been nearer the heart of things if I had said the reason was that I wanted to fight for liberty, as in a different way I had been doing for the previous five years as a volunteer Royal Air Force pilot; but that would have sounded crass. Here I do not mean the sort of so-called liberty that is defended by the pressure group that has usurped the name of the defunct National Council for Civil Liberties – and has also usurped the very title Liberty. If you key in liberty on the Internet you are likely to come up with this impudent body, which prominently lists thirteen personal Rights it defends but not a single personal Duty. My sort of liberty believes it has to be earned.

America is called by its inhabitants 'sweet land of liberty'[1], but my own country England has surely earned a like description. America has gone a step further and put up on Bedloe's Island the 150 foot Statue of Liberty, but then they had to do something with it when it was kindly presented to them by France, a country which also boasts of loving liberty, along with equality and fraternity. But one has to be careful here, as John Milton warned:

> 'Licence they mean when they cry Liberty,
> For who loves that must first be wise and good.'

I do not mean licence; I mean the opposite. I side with President Kennedy, who said that observance of the law is the eternal safeguard of liberty, while defiance of it is the surest road to tyranny.[2] In particular I have set my face against the tyranny of lawless direct action.

I have fought for different kinds of liberty in different ways. In the early 1970s I fought for liberty of the press by serving on the executive of the Defence of Literature and the Arts Society (DLAS), today known as Campaign Against Censorship. I then also fought for liberty within the law by monitoring the 1970 disruption by Women's Liberation of the Miss World contest at the Albert Hall. Then, with the active support of the secretary of the Society for Individual Freedom Gerald Howarth[3], I founded an organisation rather grandly called Freedom Under Law International (FUL) which had a youth section (YouthFUL). Below I describe this organisation, but first I must come up to date for a moment and tell you about the opening of Four Freedoms Park in October 2012.

Four Freedoms Park

In the East River, New York City, you will find Roosevelt Island, formerly known as Welfare Island. It used to be the site of civic buildings needing to be hidden away out of sight, like the city smallpox hospital, the penitentiary and the lunatic asylum. Then these buildings were vacated, the site was cleared and the name of the island was changed to commemorate that great President of the United States Franklin Delano Roosevelt, universally known as FDR. I well remember his influence in favour of Britain and our allies in the Second World War.

A four-acre site on the island has been opened under the name Four Freedoms Park. There, on a huge block of granite, are inscribed words spoken by FDR in his 1941 State of the Union address to Congress. They begin: 'In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms'. What would you consider to be these four essential freedoms? I will leave a moment for you to ponder that question.

Four Freedoms Park is situated at the end of the long narrow island. Being shaped like a triangle, its site points north like the prow of a ship. This is a reminder by the architect Louis Kahn of the time when FDR was Assistant Secretary to the Navy under Woodrow Wilson. There is a large bronze head of FDR by Jo Davidson.[4]

The first freedom specified by FDR was freedom of speech and expression—everywhere in the world. The second was freedom of every person to worship God in his own way—everywhere in the

world. The third was freedom from want—'which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world'. The fourth was freedom from fear.

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[1] 'My country 'tis of thee/Sweet land of liberty/Of thee I sing . . .' Samuel Francis Smith (1808-1895), *America*.

[2] John F. Kennedy, Radio and Television Report to the Nation at the University of Mississippi, 30 September 1962.

[3] Later Sir Gerald Howarth MP, Parliamentary Under-Secretary of State (International Security Strategy) at the Ministry of Defence.

[4] For information about Four Freedoms Park I am indebted to an article by D. D. Guttenplan in *The Times Literary Supplement* 12 October 2012, p. 17.

FDR said that the last, translated into world terms, meant a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation would be in a position to commit an act of physical aggression against any neighbour—anywhere in the world. He added that that was no vision of a distant millennium. It was a definite basis for a kind of world attainable in our own time and generation. That kind of world was, he said, the very antithesis of the so-called new order of tyranny which the dictators sought to create with the crash of a bomb.

There is however another kind of fear, characterised as the fear of the knock on one's front door in the small hours by secret agents of the state intent on forcibly taking one away to be interrogated, sometimes under torture. This is nothing to do with the crash of a bomb, and the state in question is usually one's own. This should be regulated by democratic law, but few states today manage this adequately or at all. Even our own state, which we like to think enlightened, sometimes falls short. What is needed is a state of affairs which is rarely fully achieved. It is known as the rule of law.

The Rule of Law

Some people think that law itself can infringe liberty. In 2002 the leading Conservative MP and Shadow Minister Oliver Letwin put forward a proposal that each parliamentary Bill for amending the law should be accompanied by a statement of how the resulting Act of Parliament 'would affect liberty'. I wrote to him saying that, since its primary operation is inevitably coercive, legislation always reduces liberty. I added that a statement of the kind Mr Letwin proposed would duplicate explanatory memoranda already issued and further complicate the legislative process. Mr Letwin replied that 'within the framework of law, we are free to do as we please', adding that when a piece of legislation gives, for example, a Secretary of State certain powers, it seems perfectly reasonable that somebody should sketch out how far those powers will affect the liberties of the subject. Mr Letwin was right in suggesting that this necessary information may be lacking, as I myself have pointed out:

> 'Sometimes, where an enactment says that something "must" be done without stating what the result is to be if it is not done, this result is not obvious . . . This applies for example to provisions of the Anti-social Behaviour Act 2003. This says that an oral closure notice "must" be confirmed in writing. The notice "must" be served by a constable. A constable (which constable?) "must" apply for the making of a closure order. And so on. The consequences of failure are not stated, and are difficult to surmise.[5]

However it would be impractical and often redundant to follow Mr Letwin's suggestion and specify in some standing instruction to drafters just how the necessary information is to be provided.

When we speak of the rule of law, just what do we mean by law? I start with the human invention of *words*, arranged in grammatical sentences. There can be no law without these. If you don't believe me try thinking without using words.

Next, humans needed some way of perpetuating the sentences. Early societies relied on *memory* to educate the young in their primitive laws and hand them down from generation to generation. Then came the development of *writing* by way of cuneiform (wedge-shaped) script stamped on clay tablets. Nowadays *spoken* words can be perpetuated by electronic recording. In between came writing on papyrus or paper, then *printing* on paper.

We may say then that a law is a verbal sentence. An early example of lawyers' verbosity referred to: 'The Statute before mentioned, or any Clause, Sentence, Matter or Thing whatsoever therein conteyned.'[6] It could as well have stopped at 'mentioned', or at least been

[5] *Bennion on Statutory Interpretation* (5th edn. 2008), p. 45.
[6] Rymer's *Fœdera* (1631), XIX 305.

shortened to make the following words ‘or any sentence in it’, there being an assumption that the singular included the plural, which it has always done.[7]

That is far from being enough of course: not every type of grammatical sentence can be classed as law. It needs to be of the type that is generally recognised and accepted as law. Here we run into a great many complications. There is statute law and there is common law. There are public Acts of Parliament and private or local Acts. There is ecclesiastical or canon law and mercantile law or the law merchant. There is tax law and contract law – and so on.

Then we could consider countries. There is English law, there is Scottish law, and there is international law. If we consider the United Kingdom only, there are Acts of the Westminster Parliament, Acts of the Scottish Parliament, Acts of the Northern Ireland Parliament, and Acts of the Welsh Assembly, as well as delegated legislation made under any of these. In religion there are the 39 Articles, there are measures made by the General Synod of the Church of England, and there is Sharia law. I could go on: the list is endless. So we are reduced to saying that to be law the sentence must be ‘made’ as such by a person or body recognised as one having law-making powers. That risks circularity.

We now have to consider constitutions. These, which are usually written (though that of the United Kingdom is partly unwritten), say which persons and/or bodies have law-making powers, and how these are to be exercised. A constitution will often divide the basic powers of the state into executive powers, law-making or legislative powers, and judicial powers. It may insist on their being operated separately, each independently of the others. In Britain however they are intermixed. The British executive, known as the

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government, not only possesses the executive power of the state but has wide powers over the state legislature as well. Through these powers the executive also impinges on the judicature or judicial process, principally by control of the purse.

The doctrine of separation of powers divides state legal powers into executive, legislative and judicial. In Britain there is also a fourth power, which may be called the prosecutive power or power to put persons on trial. The ruling principle is that each of these powers must be exercisable independently, without interference from the holder of any of the other powers. In particular the judiciary must be shielded from interference by the executive, which is much more easily said than done.

My interest in this was stimulated by a survey in this journal by an Irish judge, Adrian Hardiman.[8] Another precipitating factor was a piece by Marcel Berlins, veteran legal correspondent of *The Guardian*. In 2006 he feared what he called ‘a continuation of the British government’s intemperate assault on basic civil liberties’. This, he thought, would ‘inevitably be accompanied by stout resistance from our judges, followed closely by a thuggish and abusive reaction from whoever is Home Secretary’.[9] Both articles raised questions about how the doctrine of separation of powers is working (if it is working) in Britain at the beginning of the third millennium.

The idea that there was some kind of war going on in Britain between the executive and the judiciary, with the legislative chamber as the arena, was a feature on which I had earlier contributed a series of articles to *Justice of the Peace*.[10] If there is a clearly-established

[7] See now UK Interpretation Act 1978 s. 6(c).

[8] ‘Socio-economic Litigation and the Separation of Powers’, 14 *The Commonwealth Lawyer* (December 2005), p. 38.

[9] *The Guardian*, 2 January 2006.

[10] ‘Government v Judiciary - Constitutional Crisis: Special Report 1’ 169 JP (2005) 651, *www.francisbennion.com/2005/050.htm*; ‘Government wish to instruct judges on interpretation - Constitutional Crisis: Special Report 2’ 169 JP (2005) 812, *www.francisbennion.com*/2005/056.htm; ‘Detaining Fanatics Without Trial - Constitutional Crisis: Special Report 3’ 169 JP (2005) 913, *www.francisbennion.com/2005/060.htm*; ‘Evidence Obtained By Torture - Constitutional Crisis:

doctrine of separation of powers in Britain between the executive and judiciary how could such a conflict arise? Yet the separation doctrine was reasserted at the highest level (though in a disputed way). by Lord Hoffmann in a case where, commenting on an earlier decision of the House of Lords[11], he said:

> 'Under the constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interests of national security are not a matter for judicial decision. They are entrusted to the executive . . . The refusal of the House [of Lords] to re-examine the executive's decision that having nuclear bombers was conducive to the safety of the state was based purely on the separation of powers'.[12]

This view is controversial, though I would support it. Writing in 2012 I would point out that the judiciary (who have the last word, unless Parliament intervenes) have now grown accustomed to the idea that many former executive decisions are matters for them. They are likely to take strong exception to executive interventions on what they may think is clear judicial territory. An example of such an intervention is the action of a junior government minister who in 2011 wrote to the Sentencing Council for England and Wales urging it to amend judicial guidelines so as to increase punishments for people who desecrate war memorials.[13] But the position on sentencing has been blurred by the fact that this Sentencing Council, constituted by Part 4 of the Coroners and Justice Act 2009, consists of eight judicial members and six non-judicial members. Sentencing of convicted persons used to be thought of as a judicial function exclusively. It is not so any longer. When it comes to separation of powers this muddies the waters.

Another disputed area concerns the rights of the individual. *The Daily Telegraph* published the following letter from me:

> 'You today report the Lord Chief Justice as saying that "it is the court's role to hold the balance between the rights of the individual and the rights of the state". If that is true, which I doubt, it is a newly-created role, self created by the courts themselves. Under our ancient common law the role of the court is to apply the law. Nowadays the law is chiefly made by our democratic Parliament, subject to European incursions. It is therefore for Parliament, not the judges, to decide where to draw the line between the rights of the individual and the rights of the state.'[14]

My description as self-appointed defender of the rule of law is *defensor legum auctoritatis.* The phrase was kindly Latinized for me by the University of Oxford Public Orator, Professor Jasper Griffin.

The Dicey Trust

I founded the Dicey Trust to act as the charitable accompaniment to Freedom Under Law, which was not eligible to be registered as a charity because of its mainly political objects. The Dicey Trust was established by a Deed of Declaration of Trust executed on 27 January 1975 and varied by a deed dated 15 August 1975. It hoped to raise £100,000.[15] It was registered as charity no. 269165 on 13 October 1975 with the following objects:

> 'To promote for the benefit of the public the science of law, to advance public education anywhere in the world as to the relationship between the rule of law and

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Special Report 4' 169 JP (2005) 989, *www.francisbennion.com/2005/062.htm*; The Crisis Deepens – and Widens - Constitutional Crisis: Special Report 5 170 JP (2006) 326, *www.francisbennion.com/2006/017.htm*; Human Rights Act May Be Amended - Official - Constitutional Crisis: Special Report 6 170 JP (2006) 368, *www.francisbennion.com/2006/018.htm.*

[11] *Chandler v Director of Public Prosecutions* [1964] AC 763.

[12] *Secretary of State for the Home Department v Rehman* [2002] UKHL 47, [2002] 1 All ER 122 at 139.

[13] *The Daily Telegraph*, 24 February 2011.

[14] *The Daily Telegraph*, 17 September 2002.

[15] 'Trust to back rule of law', *The Guardian*, 11 March 1975.

> parliamentary democracy, to carry out study and research into the origins,

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> development and application of the doctrine of the rule of law, and to publish the results of all such study and research.'

I could not allow my name to appear because I was at the time a senior civil servant, one of the Parliamentary Counsel. A letterhead of the Trust displays the following:

> A quotation from Professor A. V. Dicey: 'Englishmen are ruled by the law, and by the law alone'.
> President: Lord Broughshane.
> Trustees: Dr J. B. Bracewell-Milnes, Diana Crick, J. Trevor Donaldson, Professor Anthony Flew, David Forth, Frederick Philpott, Joan S. Wimble.

In a television programme about Freedom Under Law broadcast in the Open Door series by BBC 2 on 10 November 1974 and repeated on 16 November 1974[16] Professor Flew, introduced by Gerald Howarth said:

> 'The trust is called the Dicey Trust in honour of A. V. Dicey, who in the days of Queen Victoria published the acknowledged classic on the idea of the rule of law. The rule of law means the denial of arbitrary power, that no man shall exert power over his fellow citizens except under the authority of law, and that every man shall be subject to the ordinary courts and the law – and nothing more.

In their book on disruptive children Jean Lawrence, David Steed and Pamela Young said 'In this country the establishment of the Dicey Trust (1975) was a move towards intervening in the school curriculum, through educating in the rule of law, in an attempt to reduce disruptiveness in school.'[17] The usual leftwing suspects proceeded to blacken the name of the Dicey Trust, often by lies. For example the following was said on the PowerBase website:[18]

> 'During the 1980s Beloff Chaired the Dicey Trust, a conservative organisation established in January 1975 by pro-Apartheid campaigners, purportedly to "encourage the rule of law" through lectures and presentations at schools and colleges, though in reality to discredit challenges to state authority particularly direct action campaigning groups . . .members included a charter surveyor [*sic*] Francis Bennion'.

I told PowerBase that this statement was factually incorrect and that I was the sole founder of the Dicey Trust and am on record as being opposed to Apartheid. I said that the Dicey Trust was not a conservative organisation but was recognised by the Charity Commission as politically independent, that it was untrue that it only *purported* to encourage the rule of law and that it opposed direct action campaigning only where this was done by criminal behaviour. I added: 'I am not a "charter surveyor" (the correct term is anyway 'chartered surveyor).' They corrected some of the errors, but did not apologise. The most wounding misstatements remain on the website to this day.

In 1980 Lord Beloff became chairman of the Dicey Trust. He had been Gladstone Professor of Government and Administration at Oxford University and had later set up the University of Buckingham as what the *Oxford Dictionary of National Biography* calls a privately financed institution of higher learning set up to show what university education could become if freed from direction from and financial dependence upon the government of the day. In 1981 Lord Beloff spoke in a House of Lords debate on a misconceived private member's ,, the Sex Discrimination (Amendment) Bill. He said:

> 'My interest in this matter is primarily as chairman of the Dicey Trust, a body which exists in order to promote the appreciation of the importance in our society of the rule

[16] BBC Project No. 9254/2146, Recording No: VTC/6HT/PRG/91361.
[17] *Disruptive Children - Disruptive Schools?* (Routledge 1989, 1984), p. 35.
[18] www.powerbase.info/index.php/Max_Beloff.

> of law. The rule of law requires that laws should be germane to their purpose, readily understood, and incapable of being used to perpetrate injustice. Lord Monson has shown beyond a peradventure that the subsection that we are discussing conforms to none of those desirable qualities.'[19]

The subsection in question was s. 13(2) of the Sex Discrimination Act 1975, of which I was the draftsman. The sole purpose of Lord Monson's Bill was to repeal it. I had thought it up when drafting the Consumer Credit Act 1974, and copied it into the Bill for the 1975 Act. Lord Monson said (incorrectly):

> 'The obligation which [section 13(2)] imposes is as follows. When . . . associations interview candidates for admission into the profession in question to ascertain whether they are of sufficiently good character to merit admission . . . they are obliged by this subsection to consider whether the candidate has ever committed an act of unlawful sex discrimination. If so, it must be counted as a black mark against him . . .'[20]

In fact I had carefully drafted the subsection so as *not* to produce this undesirable result. It requires the interviewing body to consider the candidate's discrimination history *only* if evidence of malpractice was tendered to it. Happily Lord Monson's Bill failed, and the subsection is still in place. The incident shows how fallible our legislators are.[21]

Unhappily the Dicey Trust lost support. It was dissolved on 3 March 1993.

Freedom Under Law

Freedom Under Law fought against public apathy over criminal direct action protests. It published a journal which for obvious

reasons was called *Ostrich*. In a private prosecution it obtained a conviction against Mr Peter Hain for conspiracy to engage in a criminal direct action protest. The Old Bailey trial ran from 24 July to 21 August 1972. A later trial in which I argued in person led to the prosecution being awarded costs amounting to £20,000.[22] The Labour Party rewarded Mr Hain with Cabinet office. In a later broadcast in which I took part he defiantly said he would commit the same crime over again if it were possible.[23]

In 1977 *The Daily Telegraph* published the following letter of mine about a notorious trade union dispute:[24]

> 'My attention has been drawn to an item on the Grunwick dispute in which you called the National Association for Freedom (NAFF) a right-wing ginger group and went on to describe me as 'the association's Mr Francis Bennion.' In fact I am not the association's Mr Francis Bennion, and never have been. When in 1971 I founded Freedom Under Law (FUL, which you are no doubt confusing with NAFF) it was upon the clear principle that it would not be party-political. Its object was to help in enforcing legal rules which uphold personal freedom, but without party bias. Freedom is always two-sided. There is freedom to do a thing and there is freedom not to have it done. In the Grunwick case there is to be considered the freedom of staff to unionise and the freedom of an employer to have exclusively non-union staff. NAFF is concerned only with the latter. It is thus one-sided and mischievous. I have always

[19] HL Deb. 8 December 1981, col. 1305.
[20] Ibid., col. 1295.
[21] On this see my article 'Should Non-Lawyers Have Power to Change the Law?', www.francisbennion.com/2010/025.htm.
[22] *In re Central Funds Costs Order* [1975] LR 1 WLR 1227. The figure was arbitrarily rounded down from the actual sum of £22,787 by Melford Stevenson J, an unjust act which in effect picked my pocket of £2,787 for no sufficient reason.
[23] 'Politically Charged', *The Westminster Hour,* BBC Radio Four 27 January 2008 (repeat).
[24] *The Daily Telegraph*, 6 July 1977.

> supported trade unionism because without it workers rarely escape severe exploitation. For any employer to dismiss staff simply because they join a union is reactionary and unacceptable. That does not mean I condone breaches of law by pickets. Disputes of this kind are however settled by people who accept that there are two sides to be considered and reconciled. Extremists of either sort can only do harm.'

Having made it clear that I am not anti-trade union I need to deal with another criticism of my defence of liberty. That defence relies on enforcement of the law regarding the indictable offence of criminal conspiracy and is sometimes criticised as unfair. Yet direct action protest is founded on the harm that can be done by protesters *in the mass* which could not be done by individuals acting alone. This is notorious in the case of animal rights activists. In the 1990s the English port of Shoreham in Sussex was overwhelmed by animal rights protesters objecting to shipments of farm livestock. In the view of many the Sussex police declined to act sufficiently decisively, and an action was brought against the Chief Constable of Sussex which failed. On appeal Lord Nolan said:

> 'The result may be seen as the acceptance by the courts of a victory for the violent elements in the crowds at Shoreham over the forces of law. I would describe it myself as an acceptance of the plain fact that there are limits to the extent to which the police can control unlawful violence in any given situation. If these limits are felt to be too narrow, the remedy lies in increasing the resources of the police.'[25]

In fact the remedy lies in the authorities quelling such criminal acts by conspiracy proceedings, which they are strangely reluctant to do.

In 1999 there occurred one of the biggest triumphs of lawlessness in British postwar history, the forcible closure of the cat-breeding Hillgrove Farm in Oxfordshire by animal rights demonstrators. These highly organised criminals broke the law incessantly over several years, and by brute force compelled Chris Brown, the law-abiding owner of the farm, to close down. Mr Brown is reported as saying that this was a loss to medical research, upon which we all depend. The organizers of these mobs should also have been prosecuted for criminal conspiracy, but Thames Valley Police ignored this important aspect of the criminal law.

The final illustration I have space to give concerned a new arrival on the unlawful protest scene, the Occupy movement. On 23 January 2012 I had the following letter published in *The Times*:

> 'I am still reeling after reading the 49-page judgment delivered by Mr Justice Lindblom in the St Paul's Cathedral case.[26] Anyone who still sympathises with those responsible for the illegal protest camp in this holy place needs to learn the full facts by reading and absorbing it. I can recall no other example of such flagrant contempt for the public good in all its aspects. The judge recited the shocking facts in pitiless detail; I cannot attempt a summary in a letter. He made the order sought, terminating the nuisance. I have only one objection to the judge's decision. Discussing the possibility of a prosecution, he dismissed this on the ground that the penalty on conviction would be only a fine. In fact, as I informed the City of London Police on 2 November last, a prosecution for conspiracy to contravene section 137 of the Highways Act 1980 could be brought under the Criminal Law Act 1977 and here imprisonment could be awarded on conviction. The judgment shows that it is essential that our law should not countenance the illegal occupation of other people's premises on the plea of protest. Such a development would strike at the heart of the rule of law.'

Conclusions

[25] *R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd* [1999] 1 All ER 129 at 146.
[26] *City of London v Samede & Ors* [2012] EWHC 34.

I have mixed feelings when looking back on Liberty since that day in 1947 when Sandy Lindsay gave me the green light to transfer to law. On the whole, it has diminished in Britain and the West generally. The state has encroached in many areas which were previously free of its domineering control, but the law has ceased to be itself an instrument of such control over minorities such as homosexuals, gipsies, and persons suffering from mental or physical disability. Respect for the rule of law has ebbed, with increasing belief in that alluring but poisonous maxim that 'the end justifies the means' - which today translates in popular belief as 'worthwhile causes justify criminal acts'.

There has been weakening of the power of the legal profession, and indeed of the consultant professions generally. I sought to define these in a book published in 1969,[27] following my spell of service as chief executive officer of the Royal Institution of Chartered Surveyors (RICS). I identified six characteristics:

1. *Intellectual Basis* An intellectual discipline, capable of formulation on theoretical if not academic lines, requiring a good educational background, and tested by examination.

2. *Private Practice* A foundation in private practice, so that the essential expertise and standards of the profession derive from meeting the needs of individual clients on a person-to-person basis, with remuneration by fees from individual clients rather than a salary or stipend from one source.

3. *Advisory Function* An advisory function, often coupled with an executive function in carrying out what has been advised or doing ancillary work such as supervising, negotiating or managing; in the exercise of both functions full responsibility is taken by the person exercising them.

4. *Tradition of Service* An outlook which is essentially objective and *disinterested*, where the motive of making money is subordinated to serving the client or patient in a manner not inconsistent with the public good.

5. *Representative Institute* One or more societies or institutes representing members of the profession, particularly those in private practice, and having the function of safeguarding and developing the expertise and standards of the profession.

6. *Code of Conduct* A code of professional ethics, laid down and enforced by the professional institute or institutes.

I reproduce this list because my readers are largely professional people; and the old-fashioned breed it describes, based on the liberty of the subject, has largely vanished. Why should this be? We could blame the cynicism of Adam Smith[28], and following him George Bernard Shaw.[29] Instead I blame the professions themselves, for weakness and servility – and undue concentration on their financial pickings.

Finally I draw attention to the fact that Liberty alone is not enough: we also need Honesty as my anecdote about PowerBase illustrates. An ancient Latin maxim says *magna est veritas et prevalebit,* great is the truth and it shall prevail. But too often it does not prevail.

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[27] *Professional Ethics: The Consultant Professions and their Code* (Charles Knight). See www.francisbennion.com/book/professionalethics.htm.

[28] 'People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices' (Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations,* 1776).

[29] 'All professions are conspiracies against the laity' (George Bernard Shaw, *The Doctor's Dilemma*, 1911).

References:

None