

Protecting Civil Liberties

Policy Paper 44



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Summary

Basic Principles

The beginning of the twenty first century poses new and serious challenges and opportunities for civil liberties. Politicians making decisions about the law relating to civil liberties should start from basic principles and not from a consideration of individual issues in isolation. For Liberal Democrats, the basic principles of civil liberties are:

- Individuals are normally the best people to make decisions about their own lives.
- In many areas the struggle for liberty is the same as the struggle for equality.
- The state has no role in preventing private activity which does not harm others.
- Government cannot, and should not, have a monopoly on the means of expression.
- Freedom of movement and of association are as much a part of freedom of expression as freedom of speech.
- There must be protection for individuals against those who would use their rights to express themselves to injure others.
- Education is key to protecting civil liberties.

Existing Protection of Civil Liberties

The European Convention on Human Rights (ECHR) has played a major role in protecting and upholding civil liberties in the UK. Liberal Democrats have consistently campaigned for the incorporation of the ECHR into domestic law and so warmly welcomed the enactment of the Human Rights Act. Making this Act work is central to Liberal Democrat policy, but it is not the final guarantee of civil liberties. Without a Bill of Rights to invalidate legislation which is itself difficult to change through the political process, basic rights will remain vulnerable to attack.

Medical and Scientific Issues

The discovery and introduction of new medical and scientific techniques has raised complex new situations that need to be considered in the civil liberties debate. Among these is the issue of genetic testing and insurance. Given the complexities of using genetic information, Liberal Democrats propose that genetic testing and test results should be used for therapeutic purposes and by medical professionals only, after the informed consent of the patient has been secured.

Liberal Democrats recognise that it is sometimes necessary to use medical data obtained from one or more members of an individual's family in order to give accurate clinical information to another member at risk from a genetic disorder. We support the position that professionals should try to persuade an individual to share relevant

information rather than breaking a confidence. However a breach of confidentiality is arguably right if it prevents harm to another.

Religious Issues

Liberal Democrats want to see legal parity between different religions and beliefs. This means, in the longer term, supporting the disestablishment of the Church of England. Liberal Democrats would also extend the existing arrangements for voluntary aided schools to other groups which are willing to deliver the National Curriculum and create a source of funding for those groups which feel unable to accept lottery funding due to their beliefs.

The Impact of Media and Technology

The media must be free to publish, and the public entitled to receive, information and opinions. At present, there is no formal acknowledgement of either right in the UK. Liberal Democrats believe that freedom of expression and information should be constitutionally guaranteed.

The invasion of personal privacy by the media is the cause of much anxiety. In order to deal with the worst cases Liberal Democrats propose introducing a right to reply, enforced via the Press Complaints Commission, and a carefully tailored offence of physical intrusion, to prevent harassment of individuals by the media.

Politicians face various challenges when dealing with civil liberties issues raised by the rapid developments of new technologies such as the Internet, monitoring devices and CCTV. While this paper cannot deal with every specific challenge, it does propose the following principles that Liberal Democrats would apply to decisions about new methods of information collection and use:

- Introducing tighter regulation of the way that information is collected and stored to give the public confidence that their privacy is being respected, and to make the information that is kept useful and available to those who have a legitimate need for it.
- Limiting the use of CCTV in public areas to trained operators amongst the police and recognised security officers. Part of this training would be designed to ensure that information which was collected was useful and admissible as evidence in criminal trials which would be the primary purpose of such collection.
- Supporting the use of the Internet as a resource for self-expression and learning by clarifying the law on responsibility for Internet sites, placing this firmly with those who originated the site. Internet Service Providers could only be required to remove access to sites under an injunction from the courts, unless they were requested to do so by the original owner.

Introduction

1.0 Our Commitment to Civil Liberties

1.0.1 Liberal Democrats believe that everyone, whoever they are, should have civil liberties. Civil liberties are rooted in freedom of speech and expression, freedom of association and freedom of movement. They depend on equality of treatment before the law.

1.0.2 The introduction of the Human Rights Act has given people a greater ability to access justice and has improved the balance of power between the citizen and the state. However Liberal Democrats believe that we still need a Bill of Rights. Introduction of such a bill would ensure that children grow up knowing their rights and create a more vigilant public. A Bill of Rights would also impose enforceable obligations on the state and re-assert the importance of an independent judiciary.

1.0.3 Civil Liberties are ‘rights’ and are not contingent on the performance of ‘responsibilities’ by individuals. Liberal Democrats recognise that the full rights and freedoms (universal and social rights) which make up civil liberties cannot be exercised and protected except in a supportive and thriving community where each citizen takes their part. But we also believe that a community cannot be created by force or purely by state action – it must arise from the free choice of its members, acting together to enhance each other’s liberties. The creation of a community does not blot out the individuality of its members. Healthy

communities are made up of diverse individuals.

1.0.4 Liberal Democrats have the protection of civil liberties at the heart of our purpose and philosophy. The body of rights and freedoms which make up our conception of civil liberties are, we believe, fundamental to building the free, fair and open society to which our constitution commits the Party.

1.0.5 This view predates the existence of any political party bearing the name Liberal. It goes back to the seventeenth century, and John Locke’s *Letter Concerning Toleration*, which first set out the argument for the liberty to carry out any act which does no harm to other people. This idea found fuller expression in John Stuart Mill’s *On Liberty* (1859), with its view that “The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection.” In the same text, Mill put forward the importance of dissent, arguing that, “If all mankind, minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.” Thus the Liberal Party of the mid to late nineteenth century focused on removing tangible barriers to liberty, such as the lack of the franchise.

1.0.6 But such negative definitions of liberty – freedom *from* oppression and

discrimination – are only part of the Liberal Democrat belief in freedom. We also emphasise economic and social inequalities which mean that people do not have the freedom *to* act as they would wish. The roots of this can be found in campaigns in the mid-nineteenth century on the Game Laws, public health, health and safety at work and the right to education, as well as in Mill's work. But it was not until the development of the New Liberalism that it was fully expressed, most notably by L.T. Hobhouse, whose *Liberalism* (1911) argued that “the struggle for liberty ... is the struggle for equality” and that “Liberty without equality is a name of noble sound and squalid meaning.” Throughout the twentieth century, this view has remained at the heart of Liberal and Liberal Democrat thought. In terms of civil liberties it means that the state has a duty to protect and promote a framework of fundamental rights, and to work actively to tackle inequalities that restrict liberty, such as the lack of a decent education.

1.0.7 Liberal Democrats have a unique view of the role of government. We think that the state is there to give us a chance to live as we choose, *provided* that our attempts to do so do not deprive anyone else of the same right. It is not the state's business to force us to live in a particular way. We know our own circumstances: the state does not. The state's role is to prevent us from infringing the liberty of others, and only in pursuit of that aim should it play any kind of persuasive role. All parties have views about how individuals should conduct themselves in society, but moralising by government about the family and private behaviour of citizens can be both exclusive and offensive.

1.0.8 So we believe that one of the state's major roles in protecting civil liberties must be to ensure that liberties are properly protected. That is why effective policing and accessible and affordable justice are at the forefront of defending individual rights and freedoms. But at the same time government must not undermine this role of the criminal and civil law by its actions. Asking the police and courts to enforce laws which are arbitrary or which restrict civil liberties and the diversity within society which they allow reduces respect for law and those who enforce it; a lack of access to justice reduces the ability of ordinary people to feel secure in their rights and freedoms. There is no such thing as a crime so terrible that an innocent person should be convicted of it.

1.0.9 That means that we are not *a priori* anti-state or anti-government in the context of protecting civil liberties, any more than in any other area of policy. Neither increasing nor decreasing state power can be viewed as a good in itself, since the purpose of the state for Liberal Democrats is as a means to the end of a balanced and thriving community of individuals. The judgement, for Liberal Democrats, of the state's actions must be what purpose they serve, and how far they restrict or enhance civil liberties in so doing.

1.0.10 That is a contrast to the other political traditions. For Conservatives, state power is supported in the name of ‘law and order’ and in order to enforce their own moral codes. A Conservative state is one which tries to order social behaviour using the law, whilst leaving individuals to find their own way in economic life. That makes Conservatives supporters of *laissez-faire* in the economy. This contrasts

with our belief in fair and open markets in which there is an equitable distribution of resources or where market failures are effectively regulated. Labour, meanwhile, has always put the state and the collective ahead of individuals. Even if Labour has sought to spread opportunity, notably through the work of the Attlee governments in developing the Liberal-initiated welfare state, Labour has fundamentally viewed people as members of groups rather than as individuals. Meanwhile, Labour has generally sought to maintain power at the centre, rather than devolving power to empower communities and individuals. So it is unsurprising, though disappointing, that it has recently moved onto the Conservatives' moralising agenda. Nor do Labour appear to recognise a sphere of private judgement in which the state has no competence.

1.1 Basic Principles

1.1.1 It is vital that politicians making decisions about the law relating to civil liberties start not from a consideration of individual issues in isolation, but from basic principles. The issue of what the goal of society as a whole is should always be uppermost, with specific measures considered only as ways of working towards that end. Too often in the past, this has not been the case – politicians have responded to specific pressures with laws which, taken as a body, form an unwarranted restriction of liberty.

1.1.2 We therefore set out the following basic principles of civil liberties:

1.1.3 **Individuals are normally the best people to make decisions about their own lives.** This principle runs

through all the work that we do in the community, as well as our policy. From this it follows that government's role in restricting the courses of action open to someone should be limited to minimising the harm to others that is caused by their actions. We believe that far from being a threat to society, the diversity of individuals which is brought out by allowing them to make their own decisions about their lives is an asset to strong communities – we would therefore maximise this, not seek to legislate it away.

1.1.4 **In many areas, the struggle for liberty is the same as the struggle for equality.** We believe that it is wrong to say that all people have the freedom to act in a certain way simply because there are no legal barriers. We recognise that there are often barriers to action stemming from inequalities of wealth, poor health standards, or from gender, sexuality or ethnicity. We also believe that many of the problems which we see in today's Britain with 'social exclusion' are products of the extreme self help philosophy which has left citizens with the freedom to be included but without the resources to support that. We therefore hold that measures to tackle poverty, to ensure that everyone has enough money to live on, and that they have access to education, healthcare and protection from crime are at the heart of ensuring civil liberties. Our proposals to strengthen provision in these areas are set out in brief in the party's *Freedom in a Liberal Society* document, published in 2000.

1.1.5 **The state has no role in preventing private activity which does not harm others.** This stems from our belief that government is there to help individuals to make their own choices, and not to make those

choices on their behalf. A modern, Liberal Democrat society can have no place for laws which seek to protect 'society' from moral indignation or offence – the outcome of such laws, rather than producing thriving communities, is to exclude individuals from taking part in those communities, and limit diversity. We also believe that government should not make laws against actions to which adult individuals have given their informed consent and which do not cause direct harm to others.

1.1.6 Government cannot, and should not, have a monopoly on seeking to influence the way that people live. Closely tied to the freedom every individual should enjoy to live their life in their own way is the right to freedom of expression. The opportunity to communicate that way of life to the rest of society and express opinions on the activities of others. This expression is what binds our communities together; building links between individuals which are stronger than those which the state can try to enforce. Because a Liberal Democrat government recognises the value of this communication, we want to encourage views to be expressed and allow citizens themselves to make their own choices about which they agree with.

1.1.7 Freedom of movement and of association are as much a part of this freedom of expression as freedom of speech. Governments should clearly act where there is a danger of harm to others or to property; but recent legislation goes much further, and in particular legislation such as the Criminal Justice and Public Order Act 1994, goes much further and restricts the freedom to protest and assemble which has formed the basis of civil action to challenge governments and

others for most of the past two hundred and fifty years. We recognise that there is a point beyond which freedom to protest may cause direct and assignable harm to others, and for that reason alone it may be restricted.

1.1.8 There must be protection for individuals against those who would use their rights to express themselves to injure others. In addition to physical violence, inciting such violence or other forms of crime against individuals because of their perceived membership of particular ethnic or other groups divides societies and leaves individuals isolated. It is therefore crucial to have strong legislation against incitement to commit harm against any individual; and to recognise that, in specific cases, harm can be psychological as well as purely a matter of physical attack. The law must protect every individual, and not merely those who belong to a particular group or community as it does at the moment with offences such as 'incitement to racial hatred'.

1.1.9 Education is key to protecting civil liberties. We place education at the heart of our philosophy. From school age onward, citizens must be provided with a balanced education, reflecting the diversity of our modern society, which will enable them to make those choices about their own lives. Important too is education which helps individuals to take an active part in their community – which is why we would include a course of 'citizenship education' in the curriculum for every secondary school pupil. We will all be far less powerless if we understand better at what point in the system it is best to apply our influence.

1.2 Challenges to Civil Liberties

1.2.1 The beginning of the twenty first century poses new and serious challenges and opportunities for civil liberties. These challenges include:

- The continuing process of globalisation which wrests power from many elected governments and places more power in the hands of the most powerful nations, undemocratic international bodies and transnational corporations.
- The growing body of international and European law which deals with the rights of individuals.
- The development of new technologies in medicine and communications which have implications for civil liberties.

- The existence of a Labour government in the UK which is increasingly illiberal in its policies.
- The existence of a Conservative opposition which has forgotten the One Nation tradition and will not hesitate to exploit fears of disadvantaged individuals and groups in society.
- The development of a devolved political settlement in the UK which offers new opportunities to enshrine civil liberties in legislation.

1.2.2 This document addresses these challenges by looking first at the context of current debates and the structures within which civil liberties debates take place. It then looks at the major thematic issues relating to civil liberties.

Existing Protection of Civil Liberties

2.0.1 The relationship between the individual and the state was until recently governed by the Victorian constitutional settlement. Parliament was the sovereign authority, and the executive had wide latitude in how it exercised the powers conferred by legislation. The good sense and restraint of public authorities was considered to be adequate protection for the rights and liberties of individuals. Dissatisfaction with this paternalist system has produced fundamental changes in how civil liberties are upheld and vindicated in British society. Liberal Democrats have played a central role in these changes, and welcome the development of measures which tend towards the effective protection of civil liberties.

2.0.2 Since the Second World War, international treaties recognising basic human rights have established the principle in international law that individual liberties and freedoms cannot be unjustifiably overridden by the state. The UK is a signatory to the major international agreements that uphold this principle. By recognising a common standard of fundamental freedoms, these agreements reflect a liberal philosophy of basic liberties. The UK has yet to agree to be bound by the international enforcement procedures provided for in the Optional Protocol to the UN Covenant of Civil and Political Rights, and other international treaties. Liberal Democrats welcome the evolution of international human

rights standards, recognising the role they play in establishing the fundamental and universal nature of basic freedoms. We believe that international scrutiny should be welcomed, rather than feared.

2.1 The European Convention on Human Rights and the Human Rights Act

2.1.1 The European Convention on Human Rights (ECHR) has played a major role in protecting and upholding civil liberties in the UK. The courts under the influence of the ECHR have interpreted the common law to recognise the importance of civil liberties and basic rights. Liberal Democrats have consistently campaigned for the incorporation of the ECHR into domestic law, and so warmly welcomed the enactment of the Human Rights Act (HRA). The HRA, in providing that civil liberties cannot be restricted without objective and rational justification, radically redefines the relationship between the individual and the state. By making it possible to secure judicial remedies against the erosion of basic freedoms for the sake of administrative convenience or short-term populism, the HRA protects the diversity and the liberty of individuals. Making the HRA work is central to Liberal Democrat policy. Already, changes to government practice and legislation required by virtue of the HRA (and case law arising under the ECHR and HRA) have contributed to

securing greater protection for basic rights such as free speech and privacy.

2.1.2 Liberal Democrats do not consider that the enactment of the HRA, while being crucial to protecting our freedoms, is the final guarantee of civil liberties. Without a written constitution and a Bill of Rights to invalidate legislation which is contrary to fundamental rights and which is itself difficult to change through the political process, basic rights will remain vulnerable to attack. Questions of access, new technologies, and the dangers of an unrestrained populist approach to lawmaking all give rise to concern. We believe that securing civil liberties requires continuous scrutiny and a willingness to resist complacency. This also requires that those whose rights and entitlements have been unfairly attacked have the opportunity of access to the courts and the political process.

2.1.3 Liberal Democrats welcome the European Union Charter of Fundamental Rights (as an EU-specific complement to the Member States' adherence to the ECHR) because it strengthens the protection of the political, civic and social rights of EU citizens against abuse of powers by the EU institutions. It reinforces the shared values of freedom, democracy and non-discrimination which underpin the Union and defines fundamental rights, the breach of which can lead to suspension from the EU. However, we are disappointed that the Charter has been merely proclaimed by the European Council at Nice and not entrenched in the EU treaty. Liberal Democrats believe the Charter should be given legal force as part of an EU constitution which would clarify the limit of EU powers and the rights of individuals to redress.

2.1.4 In the current populist political climate, rights and principles deeply ingrained within the criminal justice system are frequently treated as inconveniences to be overcome in order to provide simplistic, quick-fix solutions to crime. Both the last Conservative government and the present Labour government have not just failed to repeal or reform outdated laws which undermine civil liberties, but have also implemented superficially attractive measures which have weakened fundamental rights, with little return in terms of reducing crime.

2.2 Recent Legislation

2.2.1 Freedoms of movement and to protest are fundamental in a democracy. Government must have the power to act where there is danger of harm to others, or to property, but this must be a proportionate response. Recent legislation, in particular the Criminal Justice and Public Order Act 1994, has created wide restrictions on movement and protest which simply are not proportionate. Liberal Democrats would seek to repeal the provisions of this Act which could make peaceful protest criminal, and focus on the prosecution of those who cause damage and direct harm to others by their actions. It is a clear waste of limited prosecution and court resources to proceed with cases resulting from an overly prescriptive and disproportionate law.

2.2.2 Measures to restrict freedom of movement have also been introduced in the form of curfews for children. No local authority has yet used the powers contained in the Crime and Disorder Act 1998 which allows night curfews in a specific area for under-10 year olds, with the approval of the Home

Secretary. Nevertheless, the Government is now extending the proposals to cover children up to the age of 16. We are opposed in principle to this proposal as a blanket curfew restricts freedom regardless of the circumstances. There are also good practical reasons to oppose this proposal, such as the value of devoting scarce police resources to enforcing such curfews and the question of what penalties should be imposed for breaking a curfew. This policy highlights the quick-fix approach adopted by the two largest parties that undermines civil liberties in favour of inadequate and poorly-conceived proposals.

2.2.3 The rights of defendants have also been affected by recent legislation. The Criminal Justice and Public Order Act 1994 undermined the right to remain silent and therefore the privilege against self-incrimination. This reform has tilted the balance away from the principle of innocent until proven guilty and the protection of vulnerable defendants in favour of effectively requiring defendants to account for themselves. Initial Home Office research into the effects of the change in the law appears to confirm some of the views of those, including Liberal Democrats, who objected to the change. Little improvement has been made in obtaining convictions against the most serious criminals. Liberal Democrats remain committed to restoring the right to silence. Liberal Democrats would also remove the provisions of the Crime and Disorder Act 1998, in which the current Labour government extended the limitation on the right to silence imposed by the 1994 Act to children under 14. Such children are one of the most vulnerable groups in society, and removing their

right to silence is an unjustifiable and negative step.

2.2.4 The Government's persistent attempts to remove the right to elect jury trial in middle-ranking cases similarly undermines the traditional entitlement to jury trial in England and Wales. This protection for the accused has been central to our system of criminal justice. The absence of such a right in other systems, including Scotland, is not an adequate argument for ending this right because those other systems are not comparable in crucial respects. (In Scotland, for example, courts have lesser sentencing powers than in England and Wales when a case is not heard in front of a jury.) Liberal Democrats are not opposed to a general review of court processes, and have welcomed the setting up of the Auld Review. However, we oppose the Government's piecemeal and poorly thought-out attempt to undermine jury trial rights, with no regard to the implications of such a curtailment of a basic civil liberty for the wider criminal justice system. Nor does the Government appear to have considered the potential loss of confidence on the part of ethnic minorities in the criminal justice system that may result from their proposal. Research has demonstrated that ethnic minorities have considerably greater confidence in juries, representing as they do a cross-section of the community, than in magistrates who in the main tend to be less ethnically diverse.

2.2.5 The Liberal Democrats have vigorously contested other government measures that also threatened to undermine civil liberties, arguing that the legislation in question had to be amended to ensure its compatibility with the ECHR. The Football Disorder

Bill, which originally provided for the detention of individuals leaving the country for 24 hours on suspicion alone, was redrafted following intense opposition criticism in Parliament. Now detention is confined to 4 hours and simple suspicion is not enough to justify arrest. Liberal Democrat pressure in Parliament has also significantly improved legislation such as the Terrorism Act and the Regulation of Investigatory Powers Act, both of which as originally proposed would have reversed the burden of proof on a defendant.

2.3 Asylum and Immigration

2.3.1 The political debate on asylum and immigration issues has also been conducted with little regard for civil liberties or fundamental rights, including the right to equality. Practical considerations have also been notably absent from the policies of the two largest parties. Conservative proposals for the universal detention of all asylum seekers in the UK would clearly violate our international obligations, as well as involving immense waste and expense. The Government has made some limited progress in introducing some long overdue protections for asylum seekers. However, many of their policies have undermined basic rights. In particular, the voucher system of asylum support is demeaning and institutionalises social exclusion. We would abandon the attempt to use the asylum system to deter people from applying to this country. This attempt is both unjust and useless.

2.3.2 In addition to protecting the civil liberties of asylum seekers which have been under particular attack, we also need to ensure that immigration policy in general is non-discriminatory in its application. We will reform

current immigration laws so that families are not divided. We will also regularly review immigration policy, (as distinct from asylum policy), including an assessment of skills needs of the country in an increasingly global economy.

2.3.3 Asylum and immigration policy may be the starkest example of how the populist struggle between the Conservative and Labour parties to provide quick-fix solutions has a damaging effect on civil liberties. It also highlights the importance of non-discrimination and the principle of equal treatment in guaranteeing fundamental rights. Fighting prejudice is central to the Liberal Democrat philosophy of civil liberties.

2.4 Prejudice and Discrimination

2.4.1 Civil liberties can be restricted as much by prejudice and discrimination as by state control. Sex, disability and race discrimination legislation protect individuals against prejudice, which if unchecked corrodes basic liberties and freedoms. The recently enacted Race Relations (Amendment) Act extends the provisions of the Race Relations Act to public authorities and places them under a positive duty to promote equality. The Liberal Democrats played a key role in shaping this legislation, and seek to have the sex and disability legislation extended in a similar manner.

2.4.2 Liberal Democrats welcome the recent addition to European Community competence of a clause (Article 13) which allows EC legislation to outlaw discrimination based on sex, race or ethnic origin, religion, disability, age or sexual

orientation. We are impressed and glad that Directives were swiftly passed in 2000 on a European-level 'Race Relations Act' (which will require only modest amendments in the UK Act but means anti-racism legislation for the first time in some Member States) and for a European framework equality directive requiring the UK along with other Member States to introduce a statutory ban on discrimination in employment on the grounds of sexual orientation, age, religion or belief. This adds to the body of EU anti-discrimination legislation which already protects women.

2.4.3 Despite this positive progress, the existing framework of anti-discrimination legislation requires reform, simplification and streamlining to become fully effective. The Liberal Democrats support the introduction of a new and comprehensive Equality Act, which would reform existing legislation and extend equality law to combat other forms of prejudice such as discrimination on the grounds of age, sexuality and religious belief. We don't imagine the protection of equality begins and ends with an Equality Act.

2.4.4 In addition, Article 26 of the UN Covenant on Civil and Political Rights commits the UK to respecting the fundamental right of equality. Neither the ECHR nor the HRA incorporates such a right. The new Protocol 12 to the ECHR, if signed and ratified by the UK, would recognise such a right and make it enforceable in our courts. Liberal Democrats believe that this right to equal treatment and equal respect for each individual is central to any notion of civil liberties. A Liberal Democrat government would acknowledge this by remedying the failure to ratify the Protocol. In the

light of the Treaty of Amsterdam, our Equality Act would contain provisions to permit political parties to employ proportionate positive measures in their selection processes to remedy under-representation of one sex or of minority groups in public office.

2.4.5 The HRA is a major step forward, and Liberal Democrats are committed to making this legislation work. We also recognise that further progress is required, and that the defence of civil liberties requires constant scrutiny. The current equality framework plays a crucial role in combating prejudice, but again further measures are necessary to fight discrimination. Protecting civil liberties is an ongoing process, that requires a real political commitment to the protection of fundamental rights.

2.4.6 An example of an area in which Liberal Democrats have sought to enhance civil liberties is by the institution of civil partnerships. There are a considerable number of people who are either excluded from existing arrangements for marriage, or who have an objection to the quasi-religious elements involved in civil marriage, but who nevertheless wish to place their personal relationships on a sound legal basis. Liberal Democrats are committed to the establishment of a scheme of civil partnerships, which would be based in part on the legal effects and duties of marriage. Such partnerships would be open to any two unrelated people aged 16 or over in England and Wales. We will encourage all Liberal Democrat-run local authorities to hold a register of civil partnerships, and to provide evidence of a civil partnership having been entered into in that authority.

Medical and Scientific Issues

3.0.1 The discovery and introduction of new medical and scientific techniques has raised complex new situations that need to be considered in the civil liberties debate. Among these are the issues of informed consent and the right to control personal information.

3.0.2 Medical testing, especially genetics, is one of the fastest-moving sectors of information gathering. This information which can now be gleaned from the study of DNA has the potential to give not only benefits to the police in their detection of crime, but also to increase the health of individuals and give them the freedom to live lives free of diseases which have long haunted even the developed world without cure. Yet the collection of genetic information has raised public fears to unprecedented levels – the recent case of genetic data being collected for a population study of Icelandic adults is merely one example of the worry that genetic testing and the recording of genetic data can produce.

3.1 Genetic Testing and Insurance

3.1.1 Genetic testing is currently in its infancy. The first report on the implications of genetic testing for insurance was published in December 1997 by the Human Genetic Advisory Commission (HGAC). In October 1998 the Government established the

Genetics and Insurance Committee (GAIC) to assess scientific and actuarial reliability and predictive value of genetic tests. Since then a test for Huntington's Disease has been developed and tests for early-onset Alzheimers and rare inherited forms of breast, colon and other cancers are being reviewed by GAIC.

3.1.2 There is general agreement that medical records and medical examinations may be appropriately used by insurers as an assessment of risk. Such information is obviously historical and records previous illness, disease and disability which it seems proper to take into account in deciding premiums. Genetic testing on the other hand is a forward looking test, trying to establish what will happen. Some genetic diseases are multi-factorial, meaning that although a gene may predispose one to a disease, other environmental factors, such as diet and exercise, influence whether one gets it. Many genetic diseases are not currently treatable. Such information is clearly powerful for the person concerned. It may be argued that in a disease with a very poor prognosis they have a right not to know, that is not to be tested.

3.1.3 The problematic consequences of the results of genetic tests being made available to insurance companies are threefold. The first is the spectre of a whole underclass of people unable to obtain health insurance, mortgages or loans and thereby financially excluded

from society as a whole, a form of genetic discrimination as those with a clear genetic test gain lower premiums. Second, the compulsion of individuals to take genetic tests, against their will, to discover information that they do not want to know and which may offer them little or no medical advantage. This offers a severe threat to the principle of informed consent. The third is that some people who might benefit from appropriate medical intervention might be dissuaded from taking genetic tests on the basis that the information becomes available to insurers. This situation already occurs with those taking HIV/AIDS tests, whereby just taking the test will raise your premium.

3.1.4 Given the complexities of using genetic information, Liberal Democrats believe that genetic testing and test results should be used for therapeutic purposes and by medical professionals only, after the informed consent of the patient has been secured. This will encourage health promotion by removing disincentives from participating in genetic screening programmes whilst protecting consent and confidentiality. However genetic testing should not be used to create an underclass for insurance, whereby the state becomes the 'dustbin' for those the insurance industry refuses to cover.

3.2 Control of Information

3.2.1 Genetic information, unlike medical information, is arguably relevant to the family of an individual. Sometimes it is necessary to use medical data obtained from one or more members of an individual's family in order to give accurate clinical information to another member at risk from a genetic disorder. Every individual has the right not to disclose genetic information to family members, however this right is weakened if withdrawal of that information would cause harm to another person. We support the position that professionals should try to persuade an individual to share relevant information rather than breaking a confidence. However a breach of confidentiality is arguably right if it prevents harm to another.

3.2.2 We believe that individuals should have personal control of their medical information. Currently, control of decisions about what happens to a person after death, for example should they donate their organs, passes on to their next of kin, even where this means the express wishes of the individual concerned will be overridden by their family. Where there is a clear wish expressed by an individual whilst they were able to do so, for example, by the carrying of an organ donor card, this should not be overridden. Information held about a dead person should, in the absence of a clear advance permission for its use, be destroyed; no-one can properly authorise its use.

Religious Issues

4.0.1 The European Convention on Human Rights states that all people are entitled to “*freedom of thought, conscience and religion ... to manifest (their) religion or belief, in worship, teaching, practice and observance.*”

This is an important statement of principle, and its recent inclusion in UK law is welcomed, but it does not go far enough into how it is possible to protect the civil liberties of those who wish to practice their religious faith. At present there is specific legal recognition of Jews and Sikhs, but this unparalleled level of protection is denied to other religious groups. Religion can often be used as a smoke screen for other forms of discrimination which are more adequately combatted in law, and this makes it even more vital that further legislation is passed to deal with this.

4.0.2 There have been considerable advances recently in this area of religion and civil liberties. Previously marriages were not legally recognised unless they took place in a place of worship or in a Registry Office. This was reformed in the 1994 Marriage Act, whereby local authorities were given greater discretion to determine which premises should be licensed to hold the marriage ceremony. This is a clear example of how the state can inhibit the religious freedoms of individuals, and even though this aspect has been mainly resolved, it is proof of why civil liberties and religious faith is such are important issues.

4.1 The Issues

4.1.1 Before there can be any firm discussion of how people’s religious liberties should be protected, however, religious discrimination must be defined. There is a clear problem surrounding whether groups such as the Scientologists are a recognised religion deserving protection from religious discrimination in the same way as other mainstream religions. Many people would wish to argue that the Scientologists are not a religious group in the same sense that Jews, Christians or Muslims are, but there is a very fine line to be drawn between small branches of mainstream world religions and groups who are not seen as religions. This is an important decision, and one that underpins much of the thinking on civil liberties and religious faith, but it is fundamentally not a political decision, and should be left to the courts.

4.1.2 Anti-racism measures are all welcomed, but many cultural groups are defined by religious faith, rather than by ethnic group. Muslims, for example, come from many areas of the world, but many British Muslims find their religion more influential than their ethnic background. This leads to the need for service provision to be faith-based as well as ethnicity-based. For many a whole range of public services would be more relevantly allocated if religious faith was taken into account with the same weight as ethnic background. This should occur more effectively after the next census when a “religion question” will be included, but

there needs to be a better reflection of faith as forming the basis of some people's primary identity. Liberal Democrats would therefore:

- Include on census and other information-gathering questionnaires an *optional* question on religious faith or background. We would ensure that this information was used in the same way as information on ethnic background is currently used.

4.1.3 Sikhs are a clear example of a religious group who are easily recognisable as a community, and as the present law shows, they therefore receive greater recognition. This community feeling amongst people of the same religion, and discrimination on the basis of religion, is not limited to those who are as clearly recognisable as Sikhs, however. The Runnymede Trust has produced a report on the increasing acknowledgement in British society of the pervasive and powerful force of Islamophobia, but discrimination on the grounds of religion is not limited to Muslims. Religion can be one of the most important factors in determining how a person is seen by his or her colleagues and acquaintances, and so there needs to be adequate legislation, along the same lines as existing race legislation. We also recognise that freedom of conscience includes the freedom not to hold any religious belief. Liberal Democrats would:

- Introduce legislation protecting people from religious discrimination. This legislation should be equivalent to existing race discrimination legislation, subject to necessary exemptions and exceptions. It could also apply to those who claim they

have been unfairly discriminated against on the basis of a lack of a particular religious belief.

4.2 Parity Before the Law

4.2.1 We should move towards legal parity between different religions and beliefs. For example, we should be prepared to extend the existing arrangements for voluntary aided schools to other groups which are willing to deliver the National Curriculum, or in future our own proposed minimum curriculum entitlement.

4.2.2 In order to create legal parity between all religions and religious groups it is necessary to ensure that no one religion or denomination receives preferential treatment. There are three aspects to this: the position of the Church of England, the Blasphemy Laws, and the funding arrangements for faith based organisations.

4.2.3 The Church of England clearly has a special place in the country at present; a position which does not reflect the size of its membership, nor the diversity of religious beliefs throughout Britain. Therefore, in the longer term, Liberal Democrats support the disestablishment of the Church of England.

4.2.4 Liberal Democrats recognise that the existing Blasphemy Laws are discriminatory and would therefore abolish all such laws.

4.2.5 Many faith-based voluntary organisations feel unable to accept lottery funding because of their beliefs about gambling. At the same time there is a widespread recognition of the part played by faith-based charities and other voluntary organisations in the

charitable life of the country. As the Lottery becomes more and more a part of national life the feeling that buying lottery tickets makes people exempt from giving to charity will probably increase, and it is those organisations who are unable to accept lottery funding who will suffer most. Therefore there needs to be some form of equivalent funding or support so that

these organisations can survive without compromising their beliefs. Liberal Democrats would:

- Create a source of funding and support for those groups which feel unable to accept lottery funding due to their beliefs.

The Impact of Media and Technology

5.0 The Media

5.0.1 Liberal Democrats believe that freedom of expression is an essential foundation stone of a democratic society. The institutions that govern people's lives must be open to ideas and to criticism so that they can be properly held to account. This principle is as applicable to ideas and information that are shocking, disturbing or offensive as it is to those that are popular or inoffensive. An administration which conducts its business in secret and silences its critics renders itself unaccountable. Of course, freedom of expression and information must be subject to exceptions, but those exceptions should always be narrowly interpreted and the case for restriction must be overwhelmingly made.

5.0.2 Therefore the media must be free to publish, and the public entitled to receive, information and opinions. At present, there is no formal acknowledgement of either right in the UK. We believe that freedom of expression and information should be constitutionally guaranteed, for without such a guarantee there is no standard against which to set potentially restrictive measures and there will remain scope for abuse.

5.0.3 The invasion of personal privacy by the media is the cause of much anxiety. A number of cases involving MPs and members of the

royal family have highlighted the issue and the sales of tabloid newspapers clearly show a large public appetite for stories about people's private lives. This is a very complex area of civil liberties and it is therefore necessary to try and distinguish between an invasion of privacy that is justifiable and one that is not. There is arguably a case for media attention on individuals who have committed crimes, or have been hypocritical. However where people are merely indiscreet or are partaking in activities that are perceived as titillating to the general public then media exposure is less justifiable. Justifiable intrusions on privacy must be justified in terms of the public interest. The public interest means more than that the public are interested.

5.0.4 The issues described above mean that we have no immediate plans to introduce general statutory protection of privacy. However, as a result of the incorporation of the European Convention on Human Rights (specifically Article 8) into domestic law, there is now a legal right to privacy in the UK. We will therefore monitor the emerging case law decided by the courts, and consider the case for such legislation in the light of this experience. Nevertheless we support certain specific measures to deal with the worst abuses:

- Introduction of a right to reply for individuals. This would be enforced via the Press

Complaints Commission and provide a vehicle for those attacked or criticised by the media to respond. We believe that there should be no freedom to drown out the views and opinions of others.

- Introduction of a carefully tailored civil offence of physical intrusion, to prevent the harassment of individuals by the media. It is right that peeping toms and aggressive doorstepping and telephone harassment by the media should be regulated by the law. By providing a civil remedy to such offences we aim to provide a swift recourse to justice and recompense.

5.1 Technology

5.1.1 As complex electronic technology such as computers increasingly becomes part of everyday life, their impact on the liberty of the individual is increasingly a subject for concern and discussion amongst the general public. New technologies such as the Internet and monitoring devices such as CCTV are now cheaper and more widespread than ever before, coming into contact with more lives and changing the ways that society communicates and regulates itself.

5.1.2 We recognise that, in such a fast moving sector of the civil liberties debate, we cannot hope to make policy which will deal with every specific challenge with which politicians will be faced over the coming months and years. Below, therefore, we attempt to illustrate some of the principles we would apply to decisions about new methods of information collection and use, using examples from the current position.

5.2 Privacy Issues

5.2.1 Many of the concerns about the use of new technologies relate to privacy – ensuring that individuals have control of what information is known about their lives and that they can ensure that such information is still correct. The problem of inaccurate information being held, or of information being kept without the knowledge or the consent of the individual concerned, is not a new one – but new technologies give the potential for the problem to be felt on a wider scale than ever before. That is why Liberal Democrats feel that it is time for tighter regulation of the way that information is collected and stored to give the public confidence that their privacy is being respected, and to make the information which is kept useful and available to those who have a legitimate need for it.

5.2.2 There are, of course, legitimate reasons for collecting information on some of the movements and actions of some individuals – the use of CCTV and even telephone tapping has helped to catch criminals and often also has the effect of deterring crime by making it clear that the offender may be caught. However, the current rules governing the use of CCTV and related technology mean that these instruments are subject to much less control than telephone ‘bugs’ and other older surveillance technology. Liberal Democrats wish to see CCTV and other methods of covert surveillance used responsibly, and ensure that where it is used, this is in the most effective way possible. We would therefore limit the use of CCTV in public areas to trained operators amongst the police and recognised security officers; part of this training would be designed to ensure that information which was

collected was useful and admissible as evidence in criminal trials which would be the primary purpose of such collection. Confidentiality of the information collected in such a way would also be a requirement for those trained to use CCTV.

5.2.3 Liberal Democrats recognise that intrusive surveillance operations are important methods for law enforcement agencies to tackle crime, in particular organised crime. We also recognise that safeguards against the misuse of such powers have been improved. However, we are disappointed that both Conservative and Labour governments have resisted proposals to establish a system of prior judicial authorisation for warrants for the most intrusive techniques. Liberal Democrats believe it is unsatisfactory that Ministers still are the first point of authorisation with oversight after the fact in many cases. We believe there should be a proper separation of powers to ensure confidence in the oversight system and that a process of prior judicial authorisation should be established.

5.2.4 Where the use of surveillance equipment was not to be subject to such restrictions, individuals should be warned in advance that such equipment was to be used and given information as to the intended purpose of the information collected. Where this purpose changes, those being surveyed should again be informed unless the new forms of surveillance fall under the guidelines for collecting covert information outlined above (for example, during a criminal investigation on workplace premises using pre-installed equipment).

5.2.5 Such principles would apply equally to equipment used to monitor

general telephone and Internet use at work, as well as cameras and specific ‘bugging’ devices. In line with this, Liberal Democrats would seek to create a climate where employers felt confident that their workforce would not damage their business by their use of the Internet at work and where such use for personal purposes was negotiated between employer and employee. As a first step in this, we would seek to draw up clear guidelines on what constituted an ‘official’ communication when sent from an email address which was provided by an employer.

5.3 Information Sharing

5.3.1 Current regulation of the way that data is shared between commercial companies relies on the principle of opting out – assuming that an individual who has provided information (for example, by filling in a consumer survey) does not object to having that information shared with other companies unless they have specifically said they do not wish this to happen.

5.3.2 To ensure that individuals have control over the information which they provide, especially where that information may be kept for several years after it is originally provided and easily copied to others, we would seek to reverse this principle. Limiting data sharing outside of the original company or organisation to which it was provided to cases where positive consent has been sought and gained provides greater privacy for the individual. We would treat government agencies as separate organisations for this purpose, only allowing them to share data which they have collected with the specific consent of the individual.

5.3.3 The control of information which is held about an individual also provides the Liberal Democrats' major concern about the introduction of national identity cards, which we have consistently opposed. A scheme which held enough information to be useful to those carrying the card would have to contain large amounts of data which would easily become out of date and forgotten as well as requiring a large bureaucracy to control and update it. Any voluntary scheme backed by government would inevitably tend towards becoming effectively compulsory, and exclude from basic service provision those who were unwilling or unable to carry one. Moreover, there is little evidence that the bureaucratic costs of introducing such a scheme would actually be covered by savings in crime detection or elsewhere.

5.4 The Internet and Email

5.4.1 For the Internet to remain as useful, and as much of a resource for self expression and learning as it currently is, we believe that it is important that governments do not try to over-regulate the worldwide web. The recent case of an Internet service provider which withdrew information, written by a customer, from an Internet site which it hosted after the subject of the information claimed it might be

libellous should worry those concerned about freedom of expression. With the law assigning responsibility for material placed on the Internet still unclear, the usefulness of the Internet may be limited by companies and individuals attempting to protect themselves by following a line of extreme caution in all cases – effectively setting themselves up as censors of others' work.

5.4.2 In line with our belief that adults should have the opportunity to make up their own minds about what they choose to think, see and experience, Liberal Democrats want to see an Internet where those accessing it are protected from illegal material, but where those with controversial but legal material are able to express themselves and bring matters to public attention without governments or private companies acting to prevent them. We would therefore act now to clarify the law on responsibility for Internet sites, placing this firmly with those who originated the site. Internet Service Providers could only be required to remove access to sites under an injunction from the courts unless they were requested to do so by the original owner. In this way, ISPs would be established with the same status as other 'Common Carriers' of information such as the Postal service.

This paper has been approved for debate by the Federal Conference by the Federal Policy Committee under the terms of Article 5.4 of the Federal Constitution. Within the policy-making procedure of the Liberal Democrats, the Federal Party determines the policy of the Party in those areas which might reasonably be expected to fall within the remit of the federal institutions in the context of a federal United Kingdom. The Party in England, the Scottish Liberal Democrats and the Welsh Liberal Democrats determine the policy of the Party on all other issues, except that any or all of them may confer this power upon the Federal Party in any specified area or areas. If approved by Conference, this paper will form the policy of the Federal Party, except in appropriate areas where any national party policy would take precedence.

Many of the policy papers published by the Liberal Democrats imply modifications to existing government public expenditure priorities. We recognise that it may not be possible to achieve all these proposals in the lifetime of one Parliament. We intend to publish a costings programme, setting out our priorities across all policy areas, closer to the next general election.

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