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A Personal View

Fluoridation and Individual Freedom

Lord Avebury*

The marathon fluoridation case in the Scottish Court of Session last year provides a new opportunity of examining the antifluoridationists' frequently repeated assertion that fluoridation of public water supplies violates traditional British axioms of liberty. In the 392 pages of his judgement Lord Jauncey dealt with allegations of harm and found that, for instance, there was no association between fluoridation and cancer death rates, nor was fluoridation at a concentration of 1 part per million mutagenic. He did not address himself directly to the 'freedom' argument, however, since the rights of the individual tend not to be defined expressly in either Scottish or English law.

What are the rights of the individual citizen under the unwritten British constitution? Halsbury summarises thus:

“The so-called liberties of the subject are really implications drawn from the two principles that the subject may say or do what he pleases, provided he does not transgress the substantive law, or infringe the legal rights of others, whereas public authorities (including the Crown) may do nothing but what they are authorised to do by some rule of common law or statute. Where public authorities are not authorised to interfere with the subject, he has liberties. It follows that, apart from the general provisions ensuring the peaceful enjoyment of rights of property, and the freedom of the subject from illegal detention, duress, punishment, or taxation, contained in the four great charters or statutes which regulate the relations between the Crown and people, the liberties of the subject are not expressly defined in any law or code. Further since Parliament is sovereign, the subject cannot possess guaranteed rights such as are guaranteed to the citizen by many foreign constitutions. It is well understood that certain liberties are highly prized by the people, and that in consequence Parliament is unlikely, except in emergencies, to pass legislation constituting a serious interference with them.”

This passage has to be qualified by the adherence of the UK to the European Convention on Human Rights, which does in fact guarantee certain basic rights such as the right to liberty and security of person, the right to due process and the right to respect for private or family life.

If, therefore, the addition of fluoride to the public water supply is a process which water undertakers in Scotland-or in England and Wales-are empowered, as a matter of law, to employ, then no question of the liberty of the individual subject to insist that he shall receive a public supply without that addition can arise. The decision is one for the majority of the members of the water authority, and is binding upon both objectors and non-objectors, like any other decision of the authority lawfully made.

What is the position in Scotland, as Lord Jauncey has found it to be? Under the Water (Scotland) Act 1946, the local authority had a duty to provide a supply of 'wholesome water', and apart from the substitution of the water authority for the local authority in the 1980 Act, this provision has remained unchanged ever since. It was the Strathclyde Regional Council which had to satisfy the court that it was complying with the Act. .

The petitioner, Mrs Catherine McColl, contended that the obligation of the water authority was limited to treating the water so that it was free from contamination, and safe and pleasant to drink. The respondent, on the other hand, argued that the power extended to treating the water so as to confer a positive health benefit on the consumer.

Lord Jauncey found that some 18 different chemicals were added to the water supply in various parts of Strathclyde, and if it were treated with fluoride it would still be wholesome. But the other chemicals were added by the water authority of their own volition, whereas in the case of fluoride, it was the various Health Boards which took the initiative in asking for the treatment. The purpose was also different. It was not unlawful to adjust the chemistry of the water for *some* beneficial purposes, but could it be so for improving dental health of the population at large?

Here there are differing views. The Chief Justice held, in a case heard before the Supreme Court of Canada, that 'water is rendered more wholesome through the addition of fluoride in the proportion named', and Lord Jauncey preferred that view to that of the majority in the Canadian case. He also agreed with the opinion of Judge North in a New Zealand case, that a water undertaking should be entitled 'to to take any steps it may think to improve the quality of its available water supply' .It should not, however , introduce a substance which is foreign to the nature of water for medicinal purposes.

Fluoride is of course a natural constituent of water supplies-as indeed it is of many foods. The adjustment of the quantity to an optimum level cannot be compared with the addition to the water supply of a substance not found there ordinarily. Nor can it be described as 'mass medication', a term frequently used by the opponents, since it is not a means of curing a disease. A substance which has the effect of maintaining medical or dental health is more in the nature of a food or nutriment than a medicine.

The precedent of the Bread and Flour Regulations is an important one. There, iron and vitamin B were added to flour , adjusting to an adequate level the natural constituents of a common item of diet. It could be argued, however, that in that case the power was explicitly written into the Regulations, whereas in the case of fluoridation it was indirectly implied in the use of the term 'wholesome' .With the benefit of hindsight, the Government might now agree that Parliament should have been given the opportunity of clarifying the point years ago, instead of waiting until after it had been tested in a court action which cost the taxpayer £700 000.

The individual liberty arguments against fluoridation are invalid, as can be judged from the fact that the issue has never been taken up by the National Council for Civil Liberties. No consumer has the right to dictate the chemical composition of the water supply, a recipe for anarchy. What is at stake is not the erosion of liberty but, in the words of a former Minister of Health, 'the erosion of millions of teeth and the resultant suffering and misery of thousands of children which fluoridation would go far to prevent'. I warmly welcome the present Government's undertaking to introduce legislation clarifying the powers of water undertakers to fluoridate, and I look forward to the end of a controversy which has simmered away, at the expense of the people's health, for 25 wasted years.

**At the time of writing this article, Lord Avebury was President of the Fluoridation Society and Chairman of the Parliamentary Human Rights Committee. From 1963 to 1970 he was Chairman of the Parliamentary Civil Liberties Committee. He remains actively involved in civil liberties issues and is currently Vice-chair of the Parliamentary Human Rights Group.*