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FREEDOM IN OUR TIME

BY

OLIVE and IVAN CRUCHLEY.

"The price of liberty is eternal vigilance."

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It has wisely been said that a country must either be gaining or losing its liberty; at the moment most countries would appear to be losing their liberty, although some never had very much to lose, but whether much or little, there is a general tendency almost everywhere to restrict freedom. England has long been justifiably proud of her reputation as a free country, and it is quite natural for an Englishman to be conscious of his liberties, of the precious legacy of freedom to do what he likes and to say what he thinks bequeathed him by generations of resolute and independent forbears. This freedom was not achieved without struggle. Early kings had to be coerced to acknowledge it, the despotism of the Tudors endured, the bubble of Divine Right pricked; it was a prolonged and bitter contest for the establishment of the Englishman's status as an individual not subject to the arbitrary wishes of any ruler. Yet, from the culminating crisis of the seventeenth century there emerged the vindication of those same principles that forced King John to sign Magna Charta, and for which many Englishmen have suffered. It is not difficult, therefore, to understand how highly the liberties of the subject are valued, and with what alarm is regarded any inroad, actual or threatened, upon them.

These liberties are simply "implications from the two principles that the subject may say and do what he pleases, provided he does not break the law, whereas public authorities can do nothing but what they are authorised to do by Common Law or statute. Where public authorities are not authorised to interfere with the subject he has liberties. It follows that, apart from general provisions ensuring the peaceful enjoyment of rights of property and freedom from illegal detention or taxation contained in Magna Charta, the Petition of Right, the Bill of Rights and the Act of Settlement, the liberties are not expressly defined."¹ Paradoxically, out of this absence of express declaration of rights has arisen greater and more secure liberty. There is no question that the subject has liberties, no uncertainty as to what the liberties are. Consequently he possesses on the one hand all the advantages which an explicit conferment of rights in a written constitution could give, yet, on the other, he escapes the defects inherent in a written grant. In England the subject's liberties are not granted by the State; they are not derived from any imprimatur or preliminary licence, but the principles of freedom are inherent in the Common Law as

¹ Halsbury's "Laws of England."

established by judicial decisions and consolidated by the establishment of a Parliamentary democracy. Two results follow. First, remedies exist for the enforcement of liberties, or as the lawyer would say, "ubi jus, ubi remedium"; secondly, a general suspension of them is not an easy matter. No one denies that liberties can be suspended, but such suspension must be authorised by Parliament which is, theoretically at any rate, representative of the will of the majority of the electorate, and history shows that so far suspensions have been temporary and not general in nature. The danger to the modern body politic is not direct suspensions, but the insidious flank attacks on liberty by statutes, such as the Incitement to Disaffection Act, 1934, or judicial decisions, which, though possibly innocent seeming in themselves, may by their cumulative effect reduce the structure of liberty, so laboriously erected, to a mere empty shell. An assault upon the entire citadel would inevitably bring the majority of citizens promptly to its aid, but its foundations can be effectively mined without even a minority of citizens fully appreciating that the assault had begun, because it is always possible to dress a case for the restriction of liberty so as to make it appear a benefit to the majority. Therein lies a grave danger, that in the name of public benefit, liberty shall be regimented, controlled and ultimately possibly destroyed. The price of liberty is indeed eternal vigilance, and in our present age the task of the watch is not light and may grow heavier when a movement such as Fascism, so subversive of every form of freedom, continues to drive its way into the political systems of so many countries. It may be necessary to safeguard more jealously than ever these essential liberties, which make an Englishman's life so infinitely more pleasant than that of his foreign friends.

These liberties do not, however, include all the particular benefits which can be legally claimed, but only those that can be said to flow either from the Common Law principle of individual freedom or that of freedom of property. Nowadays, there is a universal right for example, to a free elementary education or a right in the aged, widowed or orphaned to a pension, but these benefits are conferred by statute and are not properly "rights of the subject," because they can be entirely taken away at any time by repealing the relevant enactments. That which a statute has conferred, a statute may take away, and upon a repeal the benefit would automatically and entirely cease. On the other hand, the rights of the subject are conferred by the Common Law, and although capable of being abolished or restricted by statute, the abolition or restriction would bring about merely a temporary abeyance of the original rights, which would automatically revive should at any time in the future the restrictive statute be repealed.

The liberties of the subject may now be enumerated; they comprise personal liberty, liberty of discussion, of public meeting, of association, of property and of presenting petitions.

The most fundamental right of every citizen is that of personal liberty; the right not to be subjected to any physical restraint or detention unless justified by some legal authority. The root idea underlying all legally justifiable detentions is that the public safety demands the restraint of the particular individual's liberty; hence the power to arrest and detain criminals. The idea may be accompanied by another, that of the interests of the person to be restrained, as in the case of lunatics detained in authorised institutions, and the right of control over children accorded to parents and school authorities.

So long as detentions of normal persons in the interests of public safety are confined to those cases where definite legal offences have been committed, personal liberty is in no danger. But if a person is detained who has committed no offence, merely because it is for the good of the State, then indeed the whole principle of personal liberty is at stake. Such "preventive detentions" are continually taking place under the present German constitution, where anyone can be taken into protective custody *pro bono publico*, either by the ordinary police or the secret police; in the former case he has the right to have the validity of his detention inquired into by the Courts, but in the latter he may be arrested and detained for an indefinite period without a judicial determination of the validity of his detention.

A similar encroachment upon individual freedom can occur in England when the Habeas Corpus Acts are suspended in the interests of public safety. Normally, the operation of these Acts affords the citizen an effective remedy against wrongful deprivation of his liberty, because he can secure his release by means of a Writ of Habeas Corpus, by which his case is brought before a Court of Law where, if there is no lawful justification for his detention, his release is immediately ordered. The right to obtain the Writ is the bulwark of personal freedom, for although other remedies, such as actions for damages, exist, it is sorry comfort for a man to be told that on his release he may obtain redress; what he wishes first of all is his release.

The original suspensions of the Habeas Corpus Acts were of a direct nature, that is, Parliament enacted that persons imprisoned under warrant, usually for treason, could be detained without being brought to trial. Between 1689 and 1848 there were in all fifteen suspending Acts. But what is infinitely more dangerous is the indirect suspension of modern times due to Parliament having vested in the Government powers so wide that they allow the detention of a person who has neither com-

mitted, nor been charged with, a crime. During the Great War British subjects were interned on the ground of being persons of hostile origin and association, and it would appear that in future wars of any magnitude, the liberties of the subject would be in grave danger of withdrawal on the ground of public safety, which could be interpreted as purely public or political expediency. Even in time of peace such an inroad on personal freedom might occur, and is occurring at the moment in Northern Ireland, where, since 1922, the Habeas Corpus Acts have remained in suspension so that any citizen may be arrested and detained without being brought to trial, and even in Great Britain a similar erosion of personal liberty has begun with the provision in the Public Order Act, 1936, that a person charged with the offence of wearing a political uniform may be detained in prison for a period not exceeding eight days pending the Attorney General's decision whether or not to prosecute. It would not be difficult for the police to use this provision as a convenient method of obtaining the temporary detention of some person whose political activities at the particular time were causing embarrassment to the Executive.

The average Englishman has a simple faith in the existing legal safeguards of his personal liberty, but he should have a growing feeling of uneasiness were he fully alive to the scope which recent legislation affords to direct the use of powers towards stifling the individual's right to influence government, and in time of war or civil commotion he may well lose what he has always regarded as his inalienable right.

Freedom of discussion is another fundamental liberty of the subject. As regards this liberty, it is common knowledge that, generally speaking, a man who avoids the Scylla of private libel and slander, and the Charybdis of public libel, need not fear the consequences of his speech or writings. A private libel is the publication through a permanent medium, such as writing, of a false and defamatory statement concerning another without justification, and a public libel the publication in similar circumstances of a statement which injures government, religion or morals. Consequently the law of public libel deals with seditious, blasphemous and obscene statements. Slander is also a defamatory statement against an individual, but not transmitted by a permanent medium.

The present law relating to private libel is definitely unsatisfactory; it is intended to provide a remedy for vindication of one's fair name but is frequently used as an instrument of extortion. While the ordinary person may not have much sympathy with the deliberate originator of a libellous statement, he is bound to feel sorry for the innocent party who through the operation of our present law is equally penalised, a situation into which many printers and publishers may be unwittingly

drawn. But while the majority of actions for private libel attract the attention of but a few, a prosecution for public libel invariably arouses feeling in one direction or the other because an Englishman regards it as certainly his right, and often his duty, to declare his views about the existing Government; it is quite repugnant to him to regard honest criticism and censure on any public matter as a criminal offence, and here the law echoes these natural sentiments. For although the Common Law definition of sedition is very wide, embracing all those practices whether by word, deed or writing, which fall short of high treason, but directly tend to have for their object to excite discontent or disaffection, to excite ill-will between different classes of the King's subjects, to create civil commotion, to bring into hatred or contempt the sovereign or the government, or the laws or constitution of the realm, or to incite people to unlawful association, or to use any form of physical force in any public matter connected with the state, yet, in spite of this gargantuan definition, persons will be prosecuted for sedition or seditious libel only where they have deliberately and plainly exceeded the limits of frank, temperate and honest discussion, and the borderland is one in which there can be considerable skirmishing.

Apart from this general restriction on freedom of discussion of public affairs, there are certain statutes, the purpose or effect of which is to impose some sort of control. They can be conveniently classified into two groups. The inspiration of the first group was the determination of the Government of the day to prevent the spread of more liberal political thought among the hired defenders of the existing order and comprises the Incitement to Mutiny Act, 1797, making it a felony to endeavour to seduce any member of the armed forces from his duty *and* allegiance; the Incitement to Disaffection Act, 1934, making it a misdemeanour to endeavour to seduce any such member from his duty *or* allegiance; the Police Act, 1919, establishing the misdemeanour of causing disaffection among members of the Police Force. The paucity of prosecutions under these Acts does not signify the measure of control exercised; for example, although there have been no prosecutions under the Incitement to Disaffection Act, 1934, its operation is continuous in this way. It is an offence for anyone advisedly to write, print, publish or distribute material likely to cause disaffection; if literature is even in a remote degree likely to cause disaffection, it is difficult and perhaps impossible for an author to obtain a printer, publisher and distributor, all willing to suffer punishment. Literature particularly affected by the Act is that of a pacifist nature, which might be considered by those in authority as detrimental to good discipline in the armed forces, a factor that naturally restricts the output of pacifist literature almost to vanishing point.

The second group of statutes was passed to prevent injury to public morals and comprises the Post Office Act, 1908, making it an offence to send or attempt to send postal packets containing indecent matter; the Judicial Proceedings Act, 1926, the effect of which is that a report of judicial proceedings must not contain any account of indecent matter dealt with in the proceedings, and reports in matrimonial cases are confined to the bare outlines of the case and the summing-up of the judge. Lastly, by an Act for regulating theatres of 1843, the Lord Chamberlain is given power to ban plays, the presentation of which in his opinion would not be conducive to good manners, decorum or the public peace; similarly the Vice Chancellors of Oxford and Cambridge may forbid the presentation of plays within their jurisdiction.

Any discussion on freedom of speech would be incomplete without reference to the position of the Press in England. The indirect censorship set up by statutes such as the Incitement to Disaffection Act, 1934, has just been referred to, but there is no direct governmental control over the tentacles which this mighty octopus casts about the land. The idea of the Government suppressing a particular newspaper or of prohibiting the publication of particular views on matter of government died with the lapse of the Licensing Act in 1695. The law which applies to ordinary citizens applies equally to newspapers, so that they must not print a private libel nor give the hospitality of their columns to a seditious, blasphemous or obscene article, but because of their peculiar liability to exploitation they enjoy additional protection in the way of special defences and an immunity from prosecution for criminal libel except by leave of a High Court judge.

The third great civil liberty is that of public meeting. Never far in the background, to-day it positively monopolises the stage of liberty because the admirers of a foreign ideology have forgotten the good old English maxim of "Play the game." The Fascists, intolerant, with a penchant for abuse and a predilection for racial incitement against the Jews, display an ignorance and contempt for democracy, which have aroused uneasiness in the minds of ordinary decent people. A number of questions present themselves for solution; when can a public meeting be lawfully held? At what stages does it become unlawful? Is it possible to ban a provocative meeting in advance?

It might seem an astounding statement to say that there is no right of public meeting in England, nevertheless it is true. Yet, it is equally correct to say that there is no wrong in holding a public meeting. Every subject possesses liberties of personal freedom and freedom of discussion and when a number of subjects congregate together at a public meeting each and every-

one of them is simply exercising his individual rights. So long, therefore, as the members of the meeting do not infringe the law, the meeting cannot, as a general rule, be lawfully dispersed. The restrictions upon liberty of public meeting are to be found in the ways in which the law may be infringed.

A public meeting must not commit a trespass; technically, it is a trespass to hold a meeting in a public thoroughfare or place, such as Trafalgar Square, for the public are entitled to use such a place only for purposes of passage and any further use is in excess of their licence. The police can disperse any meeting which causes an obstruction of the highway, a difficulty which can be avoided by holding the meeting in a cul-de-sac.

But the most important of all restrictions is the law relating to unlawful assemblies. The essence of an unlawful assembly is the apprehension aroused in the minds of ordinary persons that a breach of the peace will result. The purpose of the meeting may be lawful, the members of it may not intend to commit a breach of the peace, nevertheless, if they so conduct themselves in such a manner as to inspire in others a reasonable apprehension as to a breach of the peace it is an unlawful assembly.

It is often the case that a public meeting arouses the opposition of other sectional interests, and the opposition may be ready to go to lengths exceeding the bounds of ordinary criticism or argument to prevent or to break up the meeting. How does this affect the legality of the meeting? The law on the point is contained in three leading cases and shows how subtle is the line between lawful and unlawful assemblies. A meeting called for a lawful purpose which is not intended to cause a breach of the peace and is not conducted in a manner likely to cause one, does not become an unlawful assembly merely because it arouses opposition, and the duty of the police in such circumstances is to take the steps necessary to restrain the illegal action of the opponents. But if the opposition is such that the only reasonable way of preserving peace is to forbid or disperse the meeting, then the authorities responsible for order may do so. This is an exceptional limitation to liberty of public meeting since it allows restraint of perfectly legal actions of the citizen. The justification is to be found in the principle of "*salus populi suprema lex*"; where the duty of preserving peace conflicts with the duty of respecting private rights the latter, being subordinate, must give way, provided always, of course, the belief in the imminence of the public peace being broken is reasonably justified.

A further limitation is to be found in the principle that if a meeting is conducted in a provocative manner likely to cause, or in fact actually causing, a breach of the peace, that meeting is

an unlawful assembly. It is not illegal merely because of the place where the meeting is held. To convince opponents a man may go into their stronghold, but if it is carried on in a way that cannot fail to lead to disorder, then it is an unlawful assembly. Provocation is an undefinable term, it may take different forms and depend on different circumstances. What may provoke a man to violence in one place or at one time may simply be entirely disregarded in another place or at another time. Because of this relativity of provocation there is difficulty in national legislation against particular types of provocation, so the only alternative is to leave the question of what constitutes provocation to the discretion of the police or the Courts. To set up the judgment of a police officer as a criterion would seem to be open to grave mistrust, particularly in relation to forbidding meetings, because to give the police such powers would be a divergence from the spirit of the constitution and from the principle which has been the boast of Englishmen, that in England a subject can only be punished for a breach of the law and not made to suffer because of a suspicion which may not be fulfilled that he contemplates a breach of the law. This is the danger of any form of "preventive justice," namely, that in its exercise innocent persons may be deprived of their legal rights.

Public meeting is not a topic upon which there has previously been much direct legislation, the only two statutes of importance being the Prohibition of Revolutionary and Dangerous Meetings by an Act of 1798, and prohibition of meetings summoned or held within one mile of the Houses of Parliament for the purpose of presenting petitions to Parliament when the Houses are in session and the meetings are likely to cause a breach of the peace. These two enactments are clear and above criticism on constitutional grounds. But a more disquieting feature to upholders of civil liberties is the powers which may be claimed by inference under certain other statutes. The old Act of 1360 granting a commission of the peace to Justices and the power to require from a subject sureties for his future good behaviour has been used to prohibit meetings, by exacting sureties from the organisers. The interpretation of the offence entitled "obstructing a police officer in the exercise of his duty" may be so strained as to introduce the practice whereby the police decide what meetings may or may not be held with all the dangers consequent upon such arbitrary powers. The right of public meeting is a vital right in any democracy, and it is essential if we are to maintain our civil liberties of which we are as a nation justifiably proud that all lawful meetings should be allowed to take place. But it is equally essential that no particular section of the community

should be permitted to conduct meetings in a wrongful and provocative manner. This has been clearly impressed on the public mind by the recent activities of the Fascists. Because, therefore, of a recurrent danger to public peace legislation did appear necessary to prohibit the donning of political uniforms and thereby help to destroy the threat of incorporating in our constitution foreign military methods of government which are quite alien and actually intolerable to the majority of British citizens. The Public Order Act has been the result. This Act has been hailed as a measure to safeguard liberty, but there is a most unfortunate twist in its tail resulting in a considerable subjugation of liberty. It is an interesting sidelight on the Act that whereas it was supposed to be a new measure suddenly designed to counter the effects of Fascism, most of the clauses had been suggested as early as 1934 when the Government was proposing extensions to police powers, and it is a minor if not a major tragedy that the Labour fly walked so willingly into the Tory spider's parlour. The purpose of the Act as set out in the Preamble is to prohibit the wearing of political uniforms and maintenance of private armies, and to make provisions for the preservation of public order on the occasion of public processions and meetings.

If the Act had stopped at the prohibition of political uniforms and the upkeep of private armies there would have been little with which to quarrel, but the succeeding clauses range at large over the whole field of public order.

Section 1 while prohibiting uniforms in general permits their use on anniversaries at the discretion of the police.

Section 2 provides for the disbandment of organisations designed to usurp the functions of the police or the armed forces of the Crown, and the forfeiture of their property.

Section 3 provides the first big extension of police powers by giving to the police the right of diverting processions and, subject to the approval of the local council and the Home Secretary, a right to ban a procession altogether. Even this safeguard against any unjustified action on the part of the police is not afforded where the Metropolitan or City of London police are concerned, who are subject only to the Home Secretary's approval.

Offensive weapons are prohibited at public meetings and everyone in public places or at public meetings who behaves offensively with intent to commit a breach of the peace is guilty of an offence.

One innovation is the provision permitting a constable to take the name and address of anyone seeking to disturb a public meeting and refusal to supply such details or tendering of false information will render the person liable to immediate arrest.

Incidentally there is no reciprocal provision whereby the ordinary citizen can obtain details of police (e.g., inspectors who have no visible numbers) who might be exceeding their powers.

There is undoubtedly a new stringency in the Act towards the conduct of public meetings and unless there is a very liberal interpretation of the Act's provisions public gatherings, particularly those political in character, will lose much of their spontaneity, and heckling, which has always been regarded as an enlivening of what might otherwise be incredibly stodgy proceedings, will be one more nation institution to disappear. The Act hangs a Sword of Damocles over many innocent meetings and it is a great pity that in putting an end to certain sources of political conflict so many restrictions should have been imported into the law.

Closely allied to liberty of public meeting is freedom of association. The general rule of the Common Law is that citizens have complete liberty of association for any object unless the purpose of the association is to do an unlawful act, or to do a lawful act but by unlawful means. Individuals may form themselves into any association, club or society for any lawful purpose without obtaining the government's permission, and, with certain exceptions resulting from statute, without complying with any prior legal formality. Hence results the large number of groups which exist in this country for all manner of aims and objects, and the dissolution of any legitimate group simply because the government did not favour its activities would be quite illegal. A few glancing blows might be struck at such a group through legislative channels, but never direct dissolution.

Two important applications of freedom of association are associations formed for political purposes and trade unions. The significance of the former is that it affects the right of the ordinary individual to influence government, and the first society of the kind was the one formed to support the Bill of Rights at the end of the seventeenth century; once started the movement for the formation of political societies gained ground apace and bodies such as the Anti-Slave Society, the Anti-Corn Law League and the Anti-Tariff League were formed. Liberty of association is well illustrated here, for these societies were all created for the purpose of opposing some Government project, and whenever a government threatens to pass an unpopular measure or refuses to expedite some necessary reform, a society is promptly found to oppose it.

The interference of the State with associations or combinations of employed persons extends as far back as 1548. In that year the first of the Combination Laws was passed making it a criminal offence for workmen or labourers to combine not

to work except at certain wages, or to regulate the output of labour in a day, or to work at certain hours and times. Since then a long battle has been waged between employers, employed and the State for control of the terms of industry and of industry itself. The introduction of the factory system in the later eighteenth century showed the inability of the existing State regulations to cope with the new circumstances; the fluctuation of the workers between poverty and yet greater poverty led to the formation of various clubs and the rise of trade unions. The history of trade unionism is curious; various decisions seem to indicate a certain premise in the judicial mind that the function of the judiciary was to strengthen existing order by curtailing the Unions' powers, and several statutes were required to overcome the effect of decisions adverse to liberty of association for trade purposes. For instance, in 1851 the doctrine of criminal conspiracy was laid down, namely, that at Common Law and independently of the use of illegal means, a combination of workmen for the purpose of obstructing an employer in his business, and so of forcing him to agree to certain rates of wages, by persuading workmen to leave his service was a crime. This crime was abolished by the Conspiracy and Protection of Property Act, 1875. In 1901 unions were held liable for the torts of their officials (*Taff Vale Railway Case*), a liability abolished by the Trade Disputes Act of 1906. Again, it was held illegal for a trade union to levy contributions from members for a political fund (*Amalgamated Society of Railway Servants v. Osborne*), a matter put right by the Trade Union Act of 1913 while reserving to members the right to contract out if they wished. After the General Strike in 1926, what had previously been apparent judicial alarm at the growth of trade union power, became governmental alarm, resulting in the Trade Unions and Trade Disputes Act, 1927, which aimed at weakening the strength of the trade unions by making certain strikes illegal and establishing the principle of contracting in. Liberty of association is like a pendulum which swings backwards and forwards oscillating between manifold restrictions and absolute freedom, but throughout it all has always endeavoured to guard the liberties which have been wrested at such cost and through so many years.

The freedom of property accorded to the individual has been for centuries a fact so commonplace as to be accepted without question and without thought of the constitutional struggle which resulted in its establishment. Any subject not under certain civil disabilities, such as infancy or bankruptcy, has all rights which in English law fall under the head of property, and he cannot legally be deprived of any of them except by authority of Common Law or statute. The Crown and public authorities

are, therefore, obliged to show legal justification for any interference with property rights against the owner's will. This is a negation of illegality not of powers, for statute authorises the imposition of taxation, the compulsory acquisition of land, and in time of public danger, even the acquisition of goods.

One important aspect of freedom of property is that the dwelling of the subject is inviolable and shall not be entered against his will except in accordance with law, or to put it in simple language, "An Englishman's house is his castle." From time to time the castle has suffered assaults at the hands of authority, for example, by the practice of billeting soldiers and sailors on unfortunate citizens. No one fears a recurrence of this practice and any alleged infringement now usually arises in relation to the entry of police on private premises. Their powers in this connection may be considered under two heads, the power to arrest and the power to search.

The police may lawfully enter private premises to execute a warrant they hold for the arrest of a person reasonably suspected of being on the premises. On the question of entry without a warrant some doubt existed, and so far there has only been one authoritative decision on the matter, *Thomas v. Sawkins*, 1935, in which case it was held that the police can enter private premises when they hear an affray on the premises, and further, can enter and remain on premises in order to prevent the commission of any offence or breach of the peace which they reasonably suspect may be committed or may occur. The point of great constitutional importance involved is that the right to enter is not confined to cases of an apprehended breach of the peace, but extends to reasonable apprehension of the commission of any offence. Apparently only offences in connection with a public meeting are intended to be covered by the judgment, but the point is not clear. And, if in fact the wider meaning is to be attached, the police may enter anyone's premises on suspicion, a principle which would seem to rock the very foundations of the Englishman's castle.

The power to enter for the purpose of searching premises is another right of the police. They have this right at Common Law, either by virtue of a special warrant to enter and search for specific documents or goods, or if they enter premises lawfully (for example, in pursuance of a warrant to arrest a man) they may search them, and if they find anything which is reasonable evidence of an offence having been committed by *anyone* (not only the person for whose arrest they hold a warrant) they may seize that evidence and retain it until the conclusion of any criminal proceedings in respect of the offence. This latter power was a new principle introduced as recently as 1934 in the case of *Elias v. Pasmore*. The effect of this

case is that the police having once gained lawful access to premises even if not in the occupation of the wanted man, are entitled to search them; the observation of a learned judge two centuries ago "that to enter a man's house by virtue of a nameless warrant in order to procure evidence is worse than the Spanish Inquisition, a law under which no Englishman would wish to live an hour" would seem to suggest that Englishmen are now of a less belligerent nature when the privacy of their home is threatened. The fact that a specific as opposed to a nameless warrant is now necessary does not affect the basic principle.

In addition to their Common Law powers of search the police have certain statutory powers. There are over fifty Acts enabling premises to be searched and dealing with matters as diverse as search for children, vagrancy, coinage, lotteries, firearms and unsound food. With two exceptions the matters concerned are of a non-political nature, and only three Acts authorise a search for papers or documents. These are the Obscene Publications Act, 1857, the Official Secrets Act, 1911, and the Incitement to Disaffection Act, 1934; this last Act is the most important from a constitutional aspect and its importance is emphasised by the fact that only a High Court judge (as distinct from mere magistrates under the other two Acts) can authorise the warrant for the search for documents calculated and intended to excite disaffection among the armed forces of the Crown. Furthermore, no police officer below the rank of inspector can even apply for the issue of such a warrant. To the uninformed it would seem from these statutory safeguards that a search of private premises and consequent enfeeblement of the security of home or office is not intended to be lightly undertaken; but these concessions were grudgingly given as a result of public protest, and were not inherent in a Tory policy which has been responsible for legislation, the trend of which is towards more and more curtailment of civil liberties. Hence can be seen the danger of any extension of the principle laid down in *Elias v. Pasmore*.

Lastly, the right to present a petition for the redress of grievances has always been a privilege of the subject. Originally these petitions were presented to the King and were chiefly concerned with private hardships. It was only during the seventeenth century that petitions began to be presented asking for some change in the general law, or some legislation to meet new circumstances. As a result of the famous Seven Bishops Case, the Bill of Rights in 1689 expressly recognised the subject's right of petitioning the Crown. Modern petitions, such as the one brought by the Jarrow marchers, are now presented to Parliament, a practice which became general also in the seven-

teenth century. In a resolution of 1669 the House of Commons declared that it was the inherent right of every commoner in England to present petitions to the House of Commons in cases of grievance. The procedure on presentation may be very briefly described: No debate takes place at the time of the presentation; under the Standing Orders the members presenting the petition merely state its object, its authors and the number of signatures attached to it, and the petition is then referred to a Select Committee called the Public Petitions Committee and usually consisting of fourteen members. The duty of this Committee is to convey to the House all requisite information concerning the contents of the petition.

The above, therefore, is an outline of the civil liberties of the citizen in England, but it would be undesirable if there remained in the mind of the reader the impression that all is well, even though Parliament has seen fit in the name of order to limit or diminish the freedom of individual liberty of speech, writing or conduct in relation to matters political. The proposition that "where public authorities are not authorised to interfere with the subject he has liberties" may be true enough in theory, but not likely to convince the Socialist or Communist who has had actual experience of any deplorable conduct of members of the police force. On numerous occasions within the last two years the police have overstepped their powers; these occasions are well authenticated* and the subject of complaints or questions in the House of Commons. For example, in Walthamstow, in April, 1936, the police dispersed an orderly anti-Fascist meeting and installed a Fascist meeting on the spot from which the former had been turned away. In March, 1936, the police made a baton charge on a peaceful meeting in progress in Thurloe Square, half a mile away from the Albert Hall where a Fascist meeting was being held; apparently the alleged justification for the police charge was that the Commissioner of Police had forbidden any meetings to be held on that evening within a half mile radius of the Albert Hall and that the meeting was within the forbidden area. On other occasions the police have refrained from interfering with Fascist speakers who were using insulting words and guilty of behaviour likely to cause a breach of the peace, but instead ejected and arrested persons present who very naturally objected to the scurrilous abuse of members of the Jewish race. Such partisan conduct on the part of members of a force which exists to protect the citizen, his rights and his property cannot fail to arouse in the minds of ordinary persons a fear of injustice and in the minds of the working man and woman a positive conviction of injustice. There is a lacuna

* N.C.C.L. News Sheet, No. 4.

ever widening between the theory and practice of English liberty. The crest of such liberty was possibly just before the Great War, but with the outbreak of war came a swift and perhaps inevitable curtailment of freedom. It began with the restrictions imposed upon aliens and extended to the abridgement of the liberties of British subjects. After the War, owing to the atmosphere engendered by the post-war fear of other nations and their nationals, the restrictions remained, but there seems little justification for the continued unmistakably retrogressive tendency in the legislation affecting freedom of the last twenty years. The reaction was heralded by the Emergency Powers Act of 1920 and continued with the Trades Disputes Act, the Incitement to Disaffection Act and all too recently that unfortunate piece of anti-democratic legislation, the Public Order Act.

The time has come for a decisive stand against any further encroachments upon civil liberties, because the increasing volume of anti-liberal thought and action in the world seems to be permeating those of our rulers with a natural bias towards such thought and action. These liberties are a very precious heritage and any process of devitalisation whether patent or latent must be fully resisted. It must not, however, be forgotten that when these liberties were originally gained, although ostensibly won by the people against the Crown, in reality they were won by some privileged subjects who never intended the "common people" to use their freedom against those privileged interests. There is some evidence that this attitude has not entirely disappeared; it may be camouflaged by occasional approving pats on the proletarian back or casual sops to the British bulldog when he threatens to fasten his teeth in the Tory trousers, but the governing class still views with dismay any suggestion of too much power on the part of the working class in this country, and with a certain amount of Conservative prescience, a quality seldom shown on other occasions, they create legislative dams that will effectively harness those powers that they fear may be utilised against them.

Liberty, never static, slides slowly backwards and the village Hampdens who withstood the petty tyrants of their fields may soon be called on to withstand a far greater tyranny, the jeopardisation of British liberty, without the existence of which no movement for the improvement of conditions, including primarily the Socialist advance, can thrive and develop.

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