

# Taking Liberties

## Interview with Larry Gostin

**Larry Gostin was active in the American civil rights movement. After six years as director of MIND, he has recently taken over as General Secretary of the National Council for Civil Liberties. Here he is interviewed by Alan Hunt and Stephen Sedley.**



*A number of civil liberties issues are currently playing a central part in British politics — NUM picketing, the Sarah Tisdall case and the freedom of demonstration at Greenham Common. Do you see any link between these issues and is there any evidence of a general assault on civil liberties?*

We're seeing a pattern of neglect of civil liberties on an unprecedented level. I think this is probably the most authoritarian government I have ever seen. They are simply not willing to tolerate differences of opinion and are using high-minded sounding concepts like patriotism, national security and secrecy as a way to cover and justify this authoritarian streak. There is a very authoritarian core to this Government which sits very uncomfortably with its use of terms like freedom and liberty.

We have a government that is prepared to take measures which we would have thought unthinkable five years ago. What they are doing is trying to stifle any dissent against government policy. Take Greenham Common. The Government protests that all the things they have done about Greenham Common have nothing to do with the right to protest against nuclear weapons. They first have the local council try to evict them, they then tried character assassination against the women, as if littering the Common were more important than the momentous issue about which they are protesting. Now all of a sudden they want to build a road, and they really ask us to believe it has nothing to do with those women's rights to protest, but clearly any reasonable man or woman knows this is exactly what is happening. There has been a series of decisions to prevent trade unions from exercising their dissent from this Government's policies and their dissent at the workplace. We saw an attempt to bring lie detectors and political vetting into national security areas in the civil service, and then, having not achieved their goals, the Government went right to the heart of the matter, the right to join a trade union at GCHQ. We've seen also a series of leak enquiries to prevent the press from publishing information which is against government policy. What we are seeing is a subtle change in the definition of national security, from anything endangering the nation's security to anything damaging government policy. Nobody would pretend for a moment that the information that Sarah Tisdall released had anything to do with national security. What it had to do with was opposition to government policy; it caused the government embarrassment. The action against the Kent miners is another illustration. All of these are examples of government activity which seeks to prevent dissent from its policies.

*This is the 50th anniversary of the NCCL and a Charter of Rights has been launched. Do you accept the suggestion that this is a sign that the NCCL is moving to the right in attempting to capture the middle ground? Is there not a conflict between different conceptions of civil liberties held by liberals and held by socialists?*

I think that undoubtedly there are particular issues over which civil libertarians of a socialist or liberal persuasion will have differences of opinion. But I do believe there are certain basic and fundamental civil liberties principles which span the political spectrum. They are mentioned in the Charter of Rights. Such rights as freedom of expression, freedom of assembly, anti-discrimination, and privacy are basic civil libertarian concepts which are above party politics.

*Do you think we are dealing with absolutes or that liberties and their values are historically determined?*

I don't think we're dealing with absolutes. For any liberty that you can mention there is a conflicting right on the other side and civil libertarians have to balance them. The way that they can be balanced is that, for example, a person has the right to free expression until the point where there is an imminent danger to another person by causing violence or inciting racial hatred.

*And is the striking of that balance an exercise that in part is politically determined?*

I think civil libertarians strike the balance on the concept of 'imminence'. Take the Kent miners as an example. It is one of the most astonishing assaults on civil liberties to stop a Kent miner 300 miles from a picket. On the other hand, if any human being, whether it be a police officer or a miner, were at the point of joining the picket waving a truncheon, that would be the point that I would be prepared to say that expression of opinion is in conflict with someone else's rights.

*That way of picturing it is not dissimilar to John Stuart Mill's harm principle. And it is simple to identify 'harm' or 'danger' in your example. But where there is competition between rights which may harm the economic or political interests of another group, can the 'harm' principle determine the decision between conflicting liberties?*

An organisation like NCCL, focusing upon civil liberties concepts

needs to accentuate these civil liberties principles. From an organisational point of view, I think that it needs to try to stick to a civil liberties approach that it will fight for with determination and integrity. Yet personally I have very acute recognition of the conflict between social and equality rights on the one hand and pure civil liberties on the other. I would personally take on certain issues which I don't think it appropriate for NCCL to be involved with. There are social equality issues which I don't think come within NCCL's role.

*What distinguishes your narrower category of 'pure civil liberties', and other forms of social liberties?*

Take the example of welfare benefits. I have a long tradition of fighting for welfare benefits, but I don't think it's NCCL's role to say that the child allowance should go up. However, if one particular group were to be discriminated against in the giving of that benefit, then that would be a civil liberties question as an anti-discrimination issue. The welfare movement has to recognise that NCCL can make its strongest contribution by speaking with determination and integrity on civil liberties issues. On the other hand I personally believe that equality as a concept is as important as freedom.

*You suggest that the NCCL should stick to the defence of core liberties; yet one of the most successful areas of NCCL's work in the last decade has been the branching out into areas such as the inequalities which women suffer. Now, in the example you gave of family welfare benefits, the latter are an integral part of the larger issue of women being denied equality in employment and other fields. Do not such issues identify an expanding field of civil liberty work?*

The NCCL's women's rights work is one of the most important areas of endeavour that we have gone into. But there have been many difficult issues that we have had to grapple with in women's rights work. For example the freedom of expression would conflict with the freedom of advertising to exploit women on billboards and in magazines. The position that NCCL has taken is that it will energetically oppose discrimination against women and it will also draw attention to the exploitation of women. But it also has to balance that with the general defence of freedom of expression. I sometimes as a person see the social equality issues as much more important than the pure civil libertarian principle. But nonetheless I would continue to maintain that the NCCL is correct to focus on the civil liberty principles of the Charter.

*But it is possible that if 'balance' is your governing concept as between competing liberties, you are going to find yourself confronting situations where you cannot strike a balance, where you have got to take sides. How do you strike a balance between the right of the Bengali community in Spitalfields to live free from fear and the right of the National Front to organise and to march through Spitalfields? Surely the NCCL has got to say which of those two rights it considers to be more important.*

I hope it never seems that the NCCL doesn't find itself anguishing over conflicts of rights. Civil libertarians seek to locate the 'balance' by saying that people have the right to freedom of expression until there is an imminent interference with the rights of another group. By applying that principle it allows us to protect the rights of free expression of groups that I do not personally like to hear express their views. We must be very cautious giving the right to those in power to decide who can speak and who cannot. History has

shown us that it is groups to the left that are muffled, not groups on the right.

Now specifically about the National Front. The NCCL advised members of the NF on two occasions: the advice was brief, suggesting to them that they should seek their own legal advice. The first issue concerned the detention of a member in a lay-by for several hours while they were on their way to an anti-IRA march; the police action was much akin to that involved with the Kent miners. The second occasion was when an NF member's home was searched by the police, and his family photographs and address book were seized in a way similar to the search of Duncan Campbell's home, and the offices of Friends of the Earth. In all of my years working in civil rights and civil liberties, I've never been so personally upset and distraught by any single issue. To have any association with the NF, that ugly, deplorable group — I have no words to begin to express my disgust. I would first like to get the record straight. The *Guardian* suggested that it was a decision that I



*GCHQ staff meeting, Cheltenham*

took to move the NCCL towards the centre. In fact that is quite untrue. The NCCL, ever since the 1960s, has had a policy of free expression so that in the 1960s it defended the rights of both socialists and right wing groups to hire halls to have their meetings. It is not that I have personally chosen to take NCCL along this direction. The policy is going to be reviewed by the executive and the AGM and by the time this interview is published that policy may have been revised.

Let me say why NCCL has adopted its policy. The NCCL ever since it was first founded 50 years ago has been one of the groups at the forefront of the fight against fascism and racism. When I was appointed to this job that was where I wanted to strengthen NCCL's work. I wanted to move NCCL into the area of

anti-discrimination, but now this has happened it's obviously going to take a great deal of rebuilding to be able to do that. NCCL's position has been that the best way to fight fascism and racism is not by proscribing groups and banning marches but by exposing their lies. To give the power to the government to decide who will and who will not speak is very dangerous. It will be those on the left who will be silenced and not those on the right.

*It's one thing for NCCL not to want to see formal bans on anybody because of their views, it's another thing to assist an organisation which, under protection of that liberty, has promoted views which are injurious to the liberties of others whose views I think every member of NCCL would rate more highly. Isn't there a distinction?*

Yes. And I think yours is the strongest intellectual argument on the other side. What I have difficulty with, as you do, and as I think all of NCCL does, is giving aid and comfort to an organisation whose very existence is inimicable to the civil liberties of others. There is no possibility of balancing the very real daily experience of racial hatred and discrimination with the theoretical principle of free speech. But the issue is whether you can best fight racism and fascism by drawing up lists as to whom you will and will not advise. Once NCCL decides it will never advise a group whose very existence is inimicable to civil liberties, then NCCL has to start drawing lines about who it will and who it will not defend or advise. Is the IRA that type of an organisation? Is a Protestant group in Northern Ireland which has religious hatred as part of its doctrine? What about revolutionary groups from the extreme Left? The difficulty is to define which groups are wholly inimicable to the liberty of others.

*Does not this general problem arise because you have already ranked the principle of freedom of speech as taking priority over other rights? Why does freedom of speech take priority over the freedom from racial abuse?*

Anti-discrimination is as important as freedom of expression and I wouldn't want to say that one had priority over the other. And I've made it absolutely clear that in my own personal perspective the racial hatred that a black or Asian person wakes up to and lives with day after day is the more important. But do you actually prevent that racism by having bans or preventing freedom of expression? I would suggest not. Stopping people from speaking does not prevent the grotesque evil of racism.

*It is necessary to draw a distinction between what laws the supporters of civil liberties would like to see or would rather not see, and what NCCL itself must adopt as the important causes. NCCL can only succeed as a civil liberties organisation if it has the confidence of those who most need its help. Can I return to this question whether our perception of liberties is historically determined. One can say that in the 1980s the right to picket has become one requiring defence because it is under attack. Similarly the right to live free of fear of racial abuse is today a fundamental question in Britain.*

Fundamental human rights do not change but certainly priorities change. And whenever the NCCL decides on a particular direction it should go in, it should be aware of those priorities and it should give help to those most vulnerable that need help. The fundamental right of assembly and to picket now indeed is under attack. I sometimes despair at the mass media in this country; they actually do not accept the basic and fundamental principle of freedom of assembly and freedom to picket. NCCL's greatest contribution to this debate is to defend absolutely and as a

question of principle the right to demonstrate dissent whether in the workplace, or from government policies. But this does not require the NCCL to get involved in industrial disputes and to say, for example, that we support the miners and not the Coal Board. That is what trade unions are for and that's why they need to be strong. NCCL's job is to make sure that they have the climate of opinion and the fundamental right to exercise those freedoms.

*What happens then if there's a repetition of what happened in the 1950s on British Rail where a colour bar strike took place — while workers refused to work with black. It's capable of happening again. Would NCCL stand back or take sides on that issue?*

We would take sides — on the basis of the principle of anti-discrimination. Only in that sense. It wouldn't matter, for example, whether the employers were wanting integration and



*Police stopping pickets' car during the NUM dispute, Ollerton, Notts*

certain sections of employees were wanting segregation or the reverse. We would be sticking by the principle of anti-discrimination.

*In your answer you have said that the principle of anti-discrimination is in those circumstances a higher principle than the freedom of workers to organise collectively and to take strike action for whatever objectives they specify. Doesn't this conflict with what you have argued about the fundamental principle of freedom of expression?*

NCCL could not and would not say that the workers in that particular issue did not have the right to take strike action. But if it occurred, and I was with NCCL, I would have no hesitation in siding with and advising those who were suffering discrimination. I would think NCCL's position would be clear on such an issue.

*There are a number of freedoms which the political centre and Right hold to be every bit as self-evident and important as those we have been talking about and which NCCL, no doubt because of its history, does not give priority to or indeed include in its charter. Take, for example, the freedom of individual enterprise. Will a move on NCCL's part to broaden its base lead it to consider the adoption of such liberties?*

Emphatically not. My intention is not to take NCCL into the centre stage of politics. All I believe to be doing is to press the long-standing NCCL policy which is that there are certain

freedoms which go beyond party political boundaries.

*Is freedom of enterprise one of them?*

No. I do not know of any respectable civil libertarian principles that say freedom of enterprise is a civil liberty. I think I see it in much the same way as the issue of welfare benefits, as actually a social issue; I don't believe that corporations have civil liberties. I believe that people do.

*What the proponents of freedom of enterprise would say in answer to that is that it is the individual's right of enterprise which they may carry on through a corporation or individually. That is the individual's right. Where, they might say, does the NCCL stand on this, if the NCCL wants my subscription? For example, let us consider the right-wing opposition to what they regard as illiberal restrictions on freedom of enterprise such as the Rent Acts or fair trading legislation. It is a view which propounds the liberty of enterprise as a greater good than the social restrictions placed on it.*

I do not believe that state interference with capitalist enterprise has anything to do with civil liberties. To me it does not involve any fundamental human right.

*I don't think so either, but the political Right would. Is not the better response to argue that in a society in which power resides in one particular class, that class can be left to take care of itself. The proper concern of people concerned with liberties is that those whose interests are opposed to the governing groups should be protected as much as possible?*

I see that as a persuasive argument but it's not something that I would agree with.

*Is there any other theoretical underpinning for the attitude you've expressed about what are and what aren't civil liberties?*

NCCL has published a charter and in that charter it does not include the right to free enterprise, nor does it include the right to social benefits. I think any position one takes in the civil libertarian field will have its inconsistencies, its conflicts. I believe that NCCL's position is one that stands on fundamental principles which civil libertarians have for many decades defended. Other social equality principles need to be debated in the struggle between those who are in authority and those who are not; but I don't think that should be NCCL's contribution.

*Can I question you a bit on one specific example of the conflicting liberties problem? Let's take the issue of the pre-entry closed shop. The question is whether or not taking employment should be dependent on doing something that the individual may not wish to do. In your perspective, is the pre-entry closed shop a curtailment of individual liberty?*

The NCCL does not have a policy for or against the closed shop as such, but it does distinguish between pre-entry and post-entry closed shop. I abide entirely by conference decisions on that matter but I will stick my head on the chopping block by saying that I personally believe that NCCL would be a stronger organisation if it did not favour the closed shop. I say that coming from a trade union background, but looking at it as a civil libertarian. In any case, I don't think it is in the trade union movement's interests that the NCCL should defend all of the interests that trade unionists defend, rather NCCL should defend

the primary freedoms of trade unions such as the right of association, the right to withdraw labour and the right to picket.

*Do not these difficulties of drawing the line between competing rights illustrate the fact that civil liberties are historically determined? Civil liberties have traditionally been seen as individual rights and that is because they have been, so to speak, the liberal face of an individualist society. As a result very scant regard has been given to collective rights. One of the problems is that civil libertarians continue to disregard collective rights; and to say that if such rights come into conflict with individual rights then it is the individual rights that must prevail.*

The historical perception that you have put forward is undoubtedly true. A civil liberties organisation in a society with socialists in power might develop rather differently. The kind of organisation that NCCL is reflects its history, reflects our fighting fascists 50 years ago and all that that meant. So I don't deny what you say, that it is historically determined. But I don't believe that there's a justification for disregarding these fundamental principles of individual liberties by shifting towards a collectivist view. I think we must still defend the rights of individuals. I think if we did stop doing that we would have a much more repressive society at the end of the day and that repression would fall on the Left rather than the Right. So I think it is essential to stick by these principles. Nor do we only defend individual rights. Where we help best is providing a climate where collective assembly and the exercise of trade union freedoms can be respected and defended. If you didn't have civil liberties in the traditional sense that I have talked about, I don't think you would have trade unions. We have a poster that says that if this government's employment law was in force in Poland there would only have been six pickets in the Gdansk shipyards; that expresses the civil liberty perspective well. •

**Beyond Poor Images**

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**Michael Meadowcroft**, Liberal MP  
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