

The Risk of Freedom Briefing

Issue no. 1. October 1999

Risk and freedom, the individual and the state

A year ago a group of academics, journalists and intellectuals gathered for a conference, organised by the Institute for United States Studies in the University of London, in order to discuss freedom and risk, and the role of the state and the individual in the avoidance of risk. The organisers of the conference felt that matters of great public concern were being overlooked or side-lined, in the interests of short-term policies designed to secure temporary political objectives. For example, food scares, prompted by isolated cases of e-coli or the still mysterious CJD, had prompted the British government to impose severe regulations on British farmers and food distributors, effectively destroying much of our indigenous agriculture. In retrospect it is fairly clear that the measures were neither necessary nor relevant. However, the assumption was that the risk of eating food defines a responsibility of the state and not of the individual. How far can this outlook be justified? Is it sustainable? What are the consequences for individual freedom, individual responsibility and the self-renewal of civil society?

Those are real questions, and events draw our attention constantly to the inadequacy of contemporary answers. Scarcely a day goes by without some national or international body proposing to regulate some aspect of our lives, in order to minimize a risk which hitherto people were willing to undertake. And the effect of this is not merely to burden the state with costly duties but also to undermine individual responsibility. People begin to acquire the view that life is essentially risk-free, and therefore that if something adverse happens to them they have been wronged. This in turn leads to an increasing sense of grievance, either against the state or against individuals and corporations to whom the blame for any accident can be transferred. Hence, as Frank Furedi argues, the 'compensation culture', which undermines the trust on which civil society depends.

It has been a commonplace since Mill's *On Liberty* that a government is entitled to restrict the freedom of the individual citizen wherever others are at risk from his actions. Most people accept this principle, and are content, for example, with laws imposing speed-limits on highways, and penalizing those who drink and drive. For in these cases the person who takes the risk is also risking others who are no party to his conduct. However, a new situation is now developing, in which governments assume the right — indeed the duty — to restrict the freedom of the individual when he alone is at risk from

his actions. To what extent, and on what basis, should our freedom to take risks which affect only ourselves be curtailed?

There are many relevant cases to consider, and principles which apply in one case seem not to extend to others. For example, most modern jurisdictions compel motorists to wear seat-belts for their own protection. The justification is presumably that this law is easy to enforce, involves no real cost in human freedom, and has a clear benefit not merely to the individual whose is saved from injury, but also to the tax-payer who would otherwise have to meet his hospital expenses. But modern jurisdictions also outlaw the use of drugs — both 'soft' drugs like cannabis and 'hard' drugs like cocaine.

Here there is a genuine cost in human freedom, since many people not only want but (once addicted) need to take these drugs. And although they risk their health in taking them, the risk is theirs. Furthermore, laws outlawing drugs are difficult to enforce, and lead of themselves to a vast contraband industry, and a fertile ground for organised crime.

We touch here on one of the most difficult of all modern social problems,

and one for which we might reasonably despair of a solution. However, one thing is clear: the risk involved in drug-taking does not fall only on the individual. It is well documented that an addiction to hard drugs leads very rapidly to anti-social behaviour, to a loss of self-control, and to a brutal indifference to the interests of others which is intensely destructive to those who are in any kind of relation, professional or personal, with the addict. And if, as some maintain, soft drugs lead naturally to hard, this gives a strong reason for legal sanctions. Even so, however, the problem of enforcement will not go away.

In all cases there are five questions to ask:

- How do we calculate risk?
- On whom does it fall?
- Should we avoid the risk?
- Who has the primary responsibility?
- What measures will be effective?

Current thinking about all of these is radically confused, with pressure for legislative solutions before the risk has been identified or assessed, before the costs have been even debated, and before the effectiveness of the legislation has been considered. We only need consider the case of children's outings, and their virtual disappearance, to realize how much is jeopardized by the fear of risk. The one principle which seems to apply in all cases is this: that in freeing ourselves from risk, we risk our freedom.

“to free ourselves from risk is to risk our own freedom”

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Rosemary Righter

The Times (13/8/99)

opinion

"At home and abroad, flexibility and opportunity are themes that Tony Blair has sought to make the hallmarks of his Third Way. Yet the regulatory zeal shown by this Government tells a different and more disquieting story. For under new Labour, Britain is being carried, without many people even noticing, back into the careful embrace of the nanny state."

'The State should not row but steer' forms part of the Third Way manifesto: "But," continues Rosemary Righter, "what a vast deal of steering the Blair Government is doing. It is turning Britain into a regulated, minutely inspected land where, at public expense, hordes of standard-setters and auditors hired to vet auditors stumble over each other."

"New Labour has created a dozen new inspectorates, given ever wider powers to regulators of privatised industry, multiplied performance standards to be met by schools, hospitals, local and central government and, at the pinnacle of this pyramid, created the Better Regulation Task Force. . . But does Britain really need to spend an estimated £3 billion a year on financing these essentially parasitic 'services' and complying with the minutiae of regulations they impose? And that is a figure reached without counting the costs of Blair's decision to sign up to the EU's social chapter, or the new Food Standards Agency, not to mention implementing Jack Straw's whizzy plan to protect children from paedophile abuse through compulsory criminal record checks on all job applicants, paid for by employers and staffed by a bright new 1,200-man bureaucracy on Mersyaside."

Things must be forbidden if civilised society is to be preserved. The question is which things?

Food for thought:

Banned:

- Dangerous dogs — most of which were not dangerous at all, except to their owners, and all of which were ruthlessly destroyed.
- Beef on the bone — although nobody knows if it is good or bad to eat it.
- Duckett's cheeses (destroyed at a cost of £42,000, along with the business, on account of one case of illness which was never traced to this cause).
- Stag-hunting, banned by the National Trust on the strength of a 'scientific' report which has been exploded. (See Pseudo-Science below.)
- The wrong-coloured overalls. (See news item on back cover.)
- Hand-guns, despite the fact that 98% of guns used in crime are illegally owned.

To be banned?

- Tobacco advertising, despite proof that advertising makes no discernible difference to the numbers who smoke.
- Hunting with hounds, despite the absence of proof that this involves more suffering than the alternatives.
- 'Sexist' language, where this includes the old use of the masculine pronoun.
- Research into GM food, without which we could never know whether it is or is not a danger.
- Research involving the use of animals (or at any rate 'cuddly' animals).

To be allowed? (perhaps)

- 'Soft' drugs (policy proposed by the new Lib-Dem leader, Charles Kennedy)
- Hard porn videos for home viewing (recent decision of the Video Appeals Committee)
- Homosexual intercourse with sixteen year olds (Government policy).
- Swear words, blasphemy and offensive language on TV.
- Pop-music and mobile telephones in every public space.
- Junk-food, along with advertising of the same.
- Early release of terrorists in N. Ireland prior to any decommissioning of armaments
- 85mph on the motorways (policy idea from John Redwood)

Regulated to extinction:

- Small abattoirs. Animals must now travel long distances to their death, and small farmers can no longer market their meat as their own.
- Production and sale of green-top milk and unpasteurised cheeses.
- Village shops and small markets, killed off by 'health' regulations designed to exclude home-made food and creative local producers.
- All outings for children which involve the slightest risk — so producing adventureless children.

Is it time to compromise?

RIGHTS, RISK AND REGULATION

A CONFERENCE, IN BRUSSELS, 23-24 NOVEMBER 1999

organized by the Centre for the New Europe

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Pseudo Science: For the benefit of whom?

Many of the decisions made to ban or restrict our activities are supported by appeals to expert witnesses and scientific advisers. When can we trust them? Not often, argues Robert Matthews in *Prospect* Magazine for November of last year. Although statistical studies can be cited both for and against the connection between salt and heart disease, or between passive smoking and lung cancer, they are actually without any evidential meaning. Only proper scientific method, using Bayesian probability theory, could enable us to assess the real evidential value of these studies — and this method is never used by the scientists themselves.

The Bateson Report, produced by the animal ethologist Professor Patrick Bateson for the National Trust, purported to show that stag-hunting involves excessive stress to the hunted

animal. It has since been entirely repudiated by fellow zoologists, since its method of measuring stress could not possibly be used to prove the result claimed. Moreover, it does not define stress, except in terms of the tests used to measure it — a circular definition which leaves the subject exactly where it was. Nevertheless, the National Trust has stood by the report, which it adopted not for its truth but for its convenience.

The committee of 'scientific' experts advising the government on BSE was recently asked what to do about the possibility of CJD being transmitted by contact lenses. They responded, yes, it is possible, since the eye is connected to the brain. The Health Secretary, Frank Dobson, immediately ordered that 14,000 opticians destroy trial contact lenses after a single use. The cost of this will be astronomical — and on whom will it fall?

A SOMERSET meat trader has been told that his 100 year-old business must close, unless he changes his traditional staff uniform from blue to some lighter colour. The Meat Hygiene Service has told Mr Toby Baker that overalls must be light-coloured so that stains can be noticed.

ASSAULTS and vilification from animal rights activists have finally forced the closure of Britain's last farm (Hill Grove) licensed to breed cats for experiments. Without the use of the cats, always treated humanely, research into child blindness would be impossible. Now the cats must be imported in cages from abroad. A triumph for common sense.

THE BRITISH Government, at the same time as declaring war on the tobacco industry, has appointed a special adviser to help to combat the vast tobacco smuggling industry. £2 billion in lost revenue per year has made the Government wake up to the problem — but not to its cause, which is its own adoption of punitive taxes on tobacco.

SEMINAR PAPER

Litigious Britain

Consolation and the compensation culture

Frank Furedi

THE GROWTH of litigious activity is symptomatic of a profound social malaise. In financial terms, the costs are significant. My research suggests that this year, somewhere in the region of £6.8 billion is being paid out on compensation and legal fees for personal injury claims. However, financial costs pale into insignificance beside the human costs incurred because of the growth of the compensation culture. Litigation breeds suspicion and mistrust and, as I shall go on to suggest, directly harms relations between people.

Unfortunately there are no heroes in this story. Virtually all parties involved in litigation

“About £6.8 billion p.a. is paid out in compensation and legal fees for personal injury claims”

are complicit in obscuring the scale of the problem. Lawyers continually insist that there is no compensation culture and that in any case there is no substantial increase in litigation. Private and public sector companies keep quiet over the claims they face and insist on confidentiality when they settle out of court. They want claims to be kept hush-hush in case it encourages others and also seems to prevent bad publicity. Insurance firms often place defendants under considerable pressure to settle quietly and quickly, in order to save money. As a result there is a veritable wall of silence that prevents the public from grasping the dimension of the problem.

What we are talking about is a hidden crisis of litigation. With over 98% of settlements made out of court, it is simply impossible to have an accurate grasp of the figures. Few bodies are prepared to volunteer information about what the real situation is. Even local authorities, who are funded by you and me, often refuse to provide information on the amount of money they spent on litigation. I spent four weeks trying to discover from Manchester City Council how much they were paying out in compensation to pavement trippers. I knew from earlier enquiries that it was almost the equivalent of their entire road building budget. In the end they were forced to confirm this figure when placed under pressure by a *Sunday Times* journalist.

One of the arguments that I faced when debating with lawyers in the field of personal injury claims is the proposition that litigation empowers people. They argue that by giving the little man power through courts, the ordinary person in the street will become ‘empowered’. My research suggests the contrary — that litigation and the whole process of seeking compensation frequently dis-empowers and weakens people. It does not create brave Davids taking on Goliath, but it establishes a relationship of dependence on lawyers and on professionals such as expert witnesses.

The reality is far more complex. Once compensation is seen as a right, it begins to dominate every aspect of life. It used to be the case that people went to court as a last resort to sue those whose word they could not trust. It was the impossibility of working out a mutually satisfactory solution that invited third party intervention. The fact that today litigation has become normal suggests that there are very few people whom we are prepared to trust. Even relatives and close family members can now become a target of a law suit. When a Scottish law student sued his mother for £400 a month living costs, legal experts observed that this was an unusual ‘one-off’ event. Yet within a few weeks reports emerged of other students who had won legal aid to sue their parents for financial support. The other week it was the turn of a businessman to take the

absurd consequences of the compensation culture a step further. He is suing his former lover for the return of all the money that he lavished on her.

Sadly the expectation of compensation leads to the breakdown of even close personal relationships. Recently, a woman from Perth was ordered to pay £10,000 to her sister when her nephew died in her care. Not surprisingly, the two sisters, who had been close before this tragedy, do not speak to each other anymore. The compensation culture not only divides families but also splits whole communities. Disputes over the allocation of money after the Dunblane tragedy illustrates this. Similar conflict over money in the aftermath of the Hillsborough tragedy suggests that the case of Dunblane is by no means unique. That the sense of community built around a terrible tragedy could so easily give way to conflict about cash illustrates the destructive impact of a culture built around the claim for compensation.

Litigation imposes a major cost on relations between people. It sharpens every dispute and difference, whether between neighbours, family members or doctor and patient. It disposes people to regard each other and those in ‘authority’ with suspicion, and leads to the anticipation of negative outcomes. People now take their camcorder on holiday not only to video the wonderful sights but also to have recourse to videoed evidence in case their package tour does not live up to expectations. The normalisation of the expectation of compensation helps create an environment where making claims can become a sensible substitute for dialogue. There are people who now keep written records of grievances or the discomfort caused by their neighbours, in preparation for some possible future claim in court.

The compensation culture does not only degrade human relationships; it also has a negative impact on the life of the litigant. Leading psychologist Professor Simon Wessely has noted that claiming ‘has become more of a ritual and a piece of theatre rather than a solution’. He believes that for many people the ‘search for compensation for psychiatric injury has become part of their problems’. My own research suggests that the experience of pursuing a compensation claim often takes over the litigant’s life. Often, the court case becomes the dominant cause and everything else in the litigant’s life pales into insignificance. Breakdown in personal relations and divorce a frequent misfortune suffered by litigants. There is also growing evidence that the pursuit of compensation acts as a disincentive to people to overcome their illness. Claiming is clearly not good for your health.

Frank Furedi is Reader in Sociology at the Darwin College, University of Kent, Canterbury. This paper was delivered at the first Lanesborough Lunch 20/5/99. For a full transcript contact IUSS. 0171 862 8693.

“a hero treats triumph and disaster just the same”

writes Petronella Wyatt

Bad habits

Petronella Wyatt

When I was a child I used to look forward to the snooker on television. I liked the atmosphere of knife-edge smoulder. I liked the way in which the players made louché lunges in the air with their cues. They had cobalt eyes that had the steeliness of gangland hitmen. You wouldn't have wanted to mess with any of them, except perhaps the cake-batter smooth Steve Davis who always looked slightly out of place anyway.

Of course they smoked, how they smoked; what nonchalant Gary Cooperesque rings they made with those wands of tobacco. If they were dicing with disease or even death it was with a wry smile and a shrug of world-weary shoulders.

So what on earth is this, then, in the newspapers? The most gnarled and smokiest of them all, Alex 'Hurricane' Higgins, has announced he is suing the tobacco industry for giving him throat cancer.

According to reports Higgins instructed a solicitor to sue the makers of Benson and Hedges and Embassy brands of cigarettes. He is accusing the industry of withholding evidence that cigarettes are addictive and cause cancer. Higgins, who is 50, began smoking in his teens. He said that, at the time, he was not aware of the health dangers.

My father died of cancer, of the throat actually. He didn't smoke cigarettes but did smoke cigars, though he never inhaled them. When the disease was diagnosed he asked the doctors if the tumour might have been caused by smoking. They replied in complete honesty that they didn't know. But he had asked the question out of personal curiosity; it would never have crossed his mind to enquire for the purpose of suing anyone.

Taking people to the courts does not seem the correct way for a sporting hero to behave. Somehow, without wishing to sound harsh, it is not the sporting thing to do. I know what a horrible disease cancer is but it can also provide an opportunity to set an example. What ever happened to manfully, stoically suffering a disease? What happened to putting on a cheerful face for the sake of one's family and friends? I have a right to speak because my father, during the months of his painful last illness, barely complained, and never in public. He would have rather

died. In fact, he did. Another thing a hero doesn't do is renege on personal responsibility. He treats triumph and disaster just the same. If he becomes ill he doesn't blame some impersonal third person or thing and he certainly doesn't hold a press conference to do it in.

There is, in any case, something slightly suspicious about claims by middle aged heavy smokers that they had no idea it might be bad for them. So the coughing and the spluttering was a sign of good health, then? The wheezing and shortness of breath as one mounted the stairs was an indication of fitness and physical well-being? That creeping yellow stain on the fingers a beauty mark? Enough of this, sir. Mr Higgins must have begun smoking over 30 years ago, that is in the late Sixties. Don't tell me that no one had any idea then that smoking might not improve life expectancy.

As far back as the 1940s, people knew that smoking affected one's health. They referred to cigarettes as coffin nails. Those included Humphrey Bogart, who himself later died of throat cancer. When my father started smoking, his mum and dad knew that tobacco could do you in, even if cigarettes weren't directly linked with throat cancer — a link which any self-respecting doctor, incidentally, will tell you remains unproven.

But something else has been introduced here too. I refer to the old canard about tobacco advertising. Mr Higgins claims that the cigarette makers who sponsored snooker tournaments encouraged people to smoke. All the evidence, in fact, is to the contrary.

The West European nations with the highest numbers of smokers are Italy, Portugal and France. All outlawed advertising in 1987. Since then consumption in France has risen by 5.2 per cent, in Portugal by 7 per cent and in Italy by some 8 per cent. Of Norwegian children since 1975, when a total ban was imposed, 36 per cent of 15-year-olds were smoking in 1992. In Hong Kong, where advertising is still unrestricted, only 11 per cent of the same age group were smokers.

A few years ago the president of the Italian senate, referring to the tobacco law said, 'at least it protects the national product'. Since the government's ban on advertising I have noticed more new smokers not fewer. If you take up a bad habit you can't blame the fools who put up the billboards.

Reprinted courtesy of *The Spectator* (1/7/99)

Publications

Courting Mistrust — The hidden growth of a culture of litigation in Britain by Frank Furedi

The litigiousness of America is now widespread in Britain. A 'culture of compensation' has Britain firmly in its grasp.
(Centre for Policy Studies, 1999) 48pp
£7.95

Risk by John Adams

The definitive study from which all discussion must begin.
(UCL Press, London, 1995) pp228,
£12.95

Fear of Persuasion — A New Perspective on Advertising and Regulation by John E Calfee

"Advertising does not exploit consumers. On the contrary, consumers exploit advertising, using it to obtain the information they want and need. And far from supporting monopoly power, advertising is the key to breaking it down."

(Agora & the AEI Press, Washington.)
pp115 £12.95

Liability: the Legal Revolution and its Consequences, and Galileo's Revenge: Junk Science in the Courtroom by Peter W. Huber

Two books by a leading American lawyer, outlining the catastrophic social and economic consequences of recent litigation, which tries to pin liability on the defendant who can afford to pay the most, regardless of any duty of care, and which makes free use of 'experts' and 'scientific advisers' whose credentials are entirely home-made.

(Basic Books, New York, 1988 & 1991)
pp260 & pp274 respectively

The Risk of Freedom — Individual Liberty and the Modern World

(a collection of papers delivered at The Risk of Freedom Conference (see below), London, October 1998)
(Institute of United States Studies (University of London) 1999) 91pp

The Risk of Freedom Briefing will be published quarterly to continue the discussion of issues relating to risk and freedom, first raised at the Risk of Freedom Conference held at the United States Studies Institute. Themes discussed by the panels were:

The Moral Foundations of Freedom Responsibility and Risk Markets and Freedom Markets and Morality

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