LAW AND LIBERTY

Shirley Robin Letwin

The John Bonython Lectures

THE CENTRE FOR INDEPENDENT STUDIES

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Opening Remarks

Will Bailey
Chairman, CIS Board of Trustees

As Chairman of the CIS Board of Trustees it is my pleasant task to welcome you all here this evening for the fourth annual John Bonython Lecture.

It has now been just on eleven years since the dream of Greg Lindsay came to fruition — the dream that there should be an independent think tank able to raise the level of intellectual debate in this community on matters that concern us all. The Centre for Independent Studies is flourishing today because of the support it gets from the community at large.

First I would like to acknowledge some of the people who are here tonight. In particular I would like to recognise Mr John Bonython, his wife Shirley and their son Hannibal. It is good to see them here. It was through John's initiative and commitment as the first Chairman of Trustees that the Centre for Independent Studies got off to such a strong start. Welcome Sir!

It is also very nice to see John's successor, Hugh Morgan, who was Chairman of the Board of Trustees for a number of years. Hugh quietly said to me one day about a year ago, here is a job you would enjoy doing, I've been in it long enough and we need someone new, so what about you doing it? It's amazing the things one says yes to, but I'm glad I did because I have found it quite fascinating. Another of our trustees is here tonight, Bruce Kirkpatrick from Tasmania; also the Chairman of the CIS Executive Board, Maurice Newman; and one of the other members of the Board, Michael Darling. Welcome to the three of them.

I am also pleased to see so many supporters here tonight. Support is what these things are about. Independent institutes require independent support. The goal of the CIS from the beginning has been to lift the level of academic debate across the full spectrum of ideas in the community. And in fact the list of academics who make up Greg's Board of Academic Advisers does cover the full spectrum of ideas in Australia. Hence we are able to say that the CIS is quite independent. The views that come forward are ones which I know I totally agree with, and

they come through because of their intellectual superiority, not because we are trying to push them down anyone's throat.

Tonight it is my pleasure to ask Professor Ken Minogue to introduce our lecturer, Shirley Robin Letwin. Ken is an Australian even though he was born in Palmerston North, New Zealand. He spent his childhood in Sydney and attended Sydney University. From there he moved to London and is now Professor of Government at the London School of Economics and Political Science. So please welcome Professor Ken Minogue.

Introduction

Shirley Robin Letwin

Kenneth Minogue
London School of Economics and
Political Science

Thank you very much, Will. I am delighted to be here and equally delighted to introduce Shirley Letwin to you. Introductions are an important part of life under all circumstances. I am reminded of a famous story that illustrates the point. Once after a concert Sir Thomas Beecham was talking for a time to a lady he felt he knew. After a while he asked 'And what does your husband do these days?' She said, 'Oh he's still King'. Introductions help.

The task of the introducer is in some respects also the task of an encourager. I started thinking about this introduction at the time of Wimbledon, and with Jimmy Connors on the court before me I was reminded of the early Connors, who was always supported by his mother. She was known every so often at exciting moments to shout 'Come on Jimbo baby, show 'em how it's done!' But then Jimmy, according to the story, would walk quietly over to the edge of the court and say 'Cool it ma'. I would not like Shirley to have to say anything like that to me.

I suppose you might say that Shirley Letwin is the Margaret Thatcher of social and political philosophy, in the sense that she has brought to a number of subjects in which there have been decades of drift and cliche — which I suppose is the intellectual equivalent of socialism — a sharpness and a clarity that had previously been lacking. I'm reminded, for example, of her views on the subject of tolerance. It is common for people to think that a liberal society is essentially a tolerant society in the sense that nobody should have very strong opinions about anything under the sun. Shirley's reflections on the virtues of tolerance have preceded and are not altogether dissimilar to the views of Allan Bloom, who in a recently celebrated book called the *The Closing of the American Mind* attacks the way pluralist values have turned at least undergraduates, and to

some extent American society, into a kind of mush in which nobody has any very strong opinions on anything.

Mrs Letwin is a philosopher, a jurist, a historian of political ideas and a student of politics. Her first book was on human freedom. Then she worked for a number of years on a book called *The Pursuit of Certainty*, in which she studied how David Hume's sceptical and humane understanding of the human world was transformed into a rigid and dogmatic thing by a number of people like Jeremy Bentham, John Stuart Mill and finally Beatrice Webb. This theme is one that has run through her work in many ways.

Shirley Letwin has concerned herself particularly with some of the special qualities of English life. To some extent these are matters of Anglo-Saxon life in general, but above all the moral qualities she has looked at are fairly specific to English life. She is, for example, a notable foe of the idea that the British are a collection of snobbish, introverted, shy, twisted, class-bound people. The notion that nothing exists in English life except the rigidities of class is one that she and indeed quite a few other people have been taking apart. This led her to write more recently a book on the idea of the gentleman. One of the interesting things about the idea of the gentleman is that it is virtually untranslatable into other languages. Nothing quite corresponds to it. This is true of course of many other ideas. John Rawls years ago wrote a book called *Justice as Fairness*, and I remember coming across a Dutchman who said he was engaged in translating this into Dutch but there was no Dutch word that corresponded to fairness. I remember hearing of the Chinese putting on Arthur Miller's *Death of a Salesman* and they faced the problem of having to translate an idea like 'I give it to you straight'. They came up with an expression which I am told literally meant 'I talk to you open door see mountain'. So translation is a tricky business. But Mrs Letwin has written a book on the nature of the gentleman and she has done it largely in terms of a study of the novels of Anthony Trollope. In the 19th century you will remember Trollope produced a long string of novels that give a marvellous account of English life and moral attitudes. Shirley wrote a book about the gentlemen in Trollope, and about individuality and moral conduct. The background to this discussion of Trollope's novels and their plots is really a view of the entire history of ideas about human personality from Plato,

who believed that human personality is a matter of reason controlling the set of unruly passions, through to the more Christian view, which is that human personality is constituted of loves and affections related to each other in various ways.

I wouldn't like to give the impression that Mrs Letwin is in any sense a reclusive scholar. She is a well-known figure in London literary and intellectual circles. She is a Director of the Centre for Policy Studies and takes an intense and close interest in everything that goes on there. She has also been working on a book about the history of the idea of law, a subject that is of central importance in her work. In Sydney recently she has been talking in particular about how people have misunderstood the liberal society, which is notionally based on consent, as meaning that people have to consent to each and every law that is passed. If you don't find the law desirable or you don't approve of it then you are really not bound to take any very serious notice of it. This leads on to her preoccupation with the relationship between authority and law and government.

I hope in saying these few things I have brought you to some sort of threshold. Not wanting to cross over that threshold myself, without further ado and very happily let me welcome Shirley Letwin.

Shirley Robin Letwin was born in 1924 in the USA. A graduate of the University of Chicago, she taught at Chicago, Cornell, Brandeis and Harvard Universities before moving in 1969 to the Philosophy Department of the London School of Economics. From 1972 to 1982 she taught at Cambridge University, resigning in 1982 to concentrate full-time on her research and writing. She is a Director of the Centre for Policy Studies and in the 1987–1988 academic year will be a Guggenheim Fellow.

She is the author of *Human Freedom* (1952); *The Pursuit of Certainty: David Hume, Jeremy Bentham, J.S. Mill, Beatrice Webb* (1965); and *The Gentleman in Trollope: Individuality and Moral Conduct* (1982).

Law and Liberty

Shirley Robin Letwin

As this is the fourth lecture in the series, the John Bonython lectures have a well-established tradition. The essence of tradition is that it constantly changes while remaining continuous. The past lectures have addressed themselves to different aspects of a market economy and have concentrated on the truth that some of our most prized public benefits are the unintended consequences of private actions designed to satisfy private interests. They were speaking about the virtues of what Hayek calls a 'spontaneous order', which are now coming to be recognised even behind the Iron Curtain. But as always, conversion to truth introduces new dangers. In the West, the lesson about unintended consequences has been learnt too well. We tend to forget the other side of the coin.

I should therefore like to consider a different aspect of a free society — an institution that deliberately and systematically tries to restrict the unintended consequences of human actions. I would like to remind you of why that institution is essential for liberty. I mean the rule of law.

No one has yet denounced the rule of law in the name of liberty. But a dangerous confusion about the relation between the law and liberty grows worse every day. That confusion appears in connection with two questions: Why should judges let established law interfere with a 'just decision'? Why should the citizen obey a law that he considers unjust? The issue in both questions is the same — whether the law should be respected. Such respect is now described pejoratively as

'legalism' and dismissed as an old man's superstition or a reactionary conspiracy.

One of the ironies of our time is that defenders of liberty have joined forces with collectivists to condemn the respect for the letter of the law. Earlier this year the *New York Times* rejoiced that the 'newest judicial activists come from the Right'. So distinguished a free marketeer and professor of law as Richard Epstein of the University of Chicago wants the courts to use the Constitution's protection of property and contract rights as a power to strike down state regulation of economic activities. In Britain, when Lord Denning turned out highly eccentric decisions, cutting down the special privileges of trade unions (such as some now propose to bestow upon Australian unions), those who appreciated the evil of those privileges refused to worry about Denning's high-handed way with the established law.

The dispute between activists and legalists is often described as a division between humane people who care about others and arid heartless prigs. It must be admitted that, melodramatic though it is, this description contains a grain of truth. For all rules, however admirable in form and content, have a serious drawback. Because a rule deals in general categories, it is like a rigid piece of wood used to measure an uneven surface — it necessarily omits to measure the bumps. This shortcoming is somewhat mitigated by judicial interpretation of rules for particular circumstances. If, however, the interpretation is strict, it does not attempt to exclude all undesirable consequences and the judge might therefore appear to be heartless. At the same time, even strict interpretations change the law insofar as they add a new meaning to a rule. All this, added to the disagreements that arise among judges about what constitutes a correct interpretation, lends credence to the argument that sticking to the letter of the law is a mere pretence that prevents justice from being done. And this has made it seem reasonable to conclude that the rule book should be abandoned and that judges should decide what is 'just' regardless of statute and precedent.

That proposal is especially beguiling to admirers of a market economy. Since they believe that a spontaneous order is the best way to regulate economic activities, they find it inconsistent to venerate rules deliberately constructed by a few for the rest and by the past for the future. Would it not be better

if judges decided each case as it arises just as we do in market transactions? The long answer is no. We should stick to the letter of the law for the same reason that we prefer a market economy. But to see why, we have to go back to fundamentals, to consider what we mean by liberty. And to be clear about liberty we have to have a precise understanding of human individuality.

Nowadays, individuality is equated with a readiness to wear green hair, be stinking dirty and break every rule. In other words, individuality is used as a synonym for man's original virtue, disobedience. But if we take this view, then we shall have to concede that cats are superior to human beings. For it is certainly true, as Saki said, that, 'Confront a child, a puppy, and a kitten with a sudden danger, the child will turn instinctively for assistance, the puppy will grovel in abject submission, the kitten will brace its tiny body for a frantic resistance'. That distinction may be worthy of a cat, but it is not enough for man. Human individuality is something more than an arched back. It is not a recent innovation. It was not discovered in the Renaissance. Even in ancient Greece, Pericles paid tribute to the individuality of his fellow Athenians. Individuality is the quality assumed in the Christian idea of every human being as an immortal soul, who has to answer for what he makes of himself. And this regard for individuality, which distinguishes European civilisation, means recognising in each human being an independent personality, and an end in himself who may not be treated merely as a means.

Hardly anyone denies that every man should be treated as an end in himself, but few appreciate all the implications. We forget, for instance, that each of us possesses individuality because we are not inert, passive, neutral vessels of whatever happens to fall upon us. Our rationality gives us the power to choose how to understand what we see, hear, and feel. And in doing so we invent an infinite variety of interpretations and responses. We invent not only things that are useful, but also the uses to be served; not only scientific theories, but also different attitudes to science, as well as activities wholly unlike science — poetry, history, grammar, games, parliaments, markets, holidays and lectures. This creative power explains why the human world is full of so many things. Our inventiveness enables us even to deny that we have such power, as those pied pipers, Marx and Freud, have persuaded many to

believe. Some try to repress their own individuality by following a leader or entering a commune and some attempt to obliterate individuality in others by force. But all of this only serves to acknowledge that each human being has the capacity to think and act as he chooses. And it follows that when two people disagree, it is not necessarily because one of them is mistaken or too lazy or stupid to find the correct answer. People disagree because they are rational.

Of course, religious faith may give us a conviction that God has communicated to us an indisputable truth. But as faith is a personal commitment, my faith cannot oblige others to adopt the same conviction. And even those who share the same faith commonly rely on their church to settle disagreements about the precise meaning of God's communication. In short, the individuality of human beings gives them a talent for disagreeing. And that, surprising as it may seem, is what makes it difficult to give individuality its due. While we prefer not to melt into one lump of uniformity, we also want to live and work together in peace, but we cannot do so unless we manage to agree on some matters. And that gives rise to the individualist's dilemma: How can we secure the agreement needed for civil peace without destroying diversity?

The market, where people exchange goods and services by mutual agreement, might seem to be an obvious solution. A market economy is rightly valued by lovers of liberty because it is both orderly and open to diversity. But a market economy does not operate in a vacuum; it rests on the rule of law.

It takes a Marxist to spell out the peculiar contribution of law to a market economy. The man who ran the juridical establishment in Soviet Russia in the twenties and early thirties, Evgeny Pashukanis, formulated the only plausible version of a Marxist theory of law, according to which 'bourgeois society' rests on a system of law because otherwise commercial contracts would be impossible. For under the rule of law, the state is an impersonal apparatus with no purpose of its own and can therefore provide an objective standard to govern the relations of people who enter into a variety of contracts and exchanges. By enforcing stable rules, the state enables people to make arrangements on which they can rely.

What distinguishes people ruled by law, Pashukanis says, is that they are independent subjects because each is pursuing different projects of his own choosing. And Pashukanis

contrasted the subjects of law with the subjects of what he called 'technical regulation', such as the rules for running a railroad or factory. The subjects of technical regulation are not independent because they are all parts of a single enterprise being directed towards the achievement of the same objective. As the virtue of communism is its elimination of all independent projects, and the organisation of the whole community into one unified, all-embracing enterprise, Pashukanis concluded that communism needs only technical regulation and has no place for law. Unfortunately, in 1936, the communist bosses decided otherwise, and so Pashukanis's troubles were brought to an end.

Pashukanis recognised what many opponents of Marxism have yet to realise, that the genius of law is its ability to secure agreement without extinguishing diversity. Because legal relationships rest on an agreement not to do anything in particular but to observe certain conditions in whatever is being done, they are compatible with a great variety of activities. That law does not impose any particular project is assured also by the fact that laws, being standing rules, are made when the circumstances in which they will be invoked are unknown. The impartiality of the law is therefore a function more of its form than its content. Under the rule of law people can remain independent and do different things while living and working together because the law translates substantive disagreement into procedural agreement.

The purest example of this procedural character is contract law, which designates the conditions to be observed by anyone wanting to make an agreement that can be defended at law, but obliges no one ever to make a contract. This is not true of all so-called laws. Tax laws, for instance, do command specific performances; so do laws ordering people into the army or allocating funds for defence or social services. Laws of this kind can never be altogether avoided. But in modern times, thanks to the growth of collectivist projects, such technical regulations have proliferated at an unprecedented rate. Although the character of the legal system is distorted by this sort of measure, the rule of law can nevertheless persist as long as all acts of government are required to conform to the established legal procedures and genuine rules of law provide the foundation.

Since the more diversity there is in a community, the more likely are disputes about what the rules are or require, it has,

since ancient times, been considered essential to the character of law that it should be recorded in some public fashion. A recorded rule provides something obviously fixed to which different people can refer at different times. And this is no less true of English common law than of the Napoleonic Code, for the common law is not, as we are often told, 'unwritten law'. It is to be found in the many heavy volumes that record the decisions of judges since the Middle Ages.

If instead of relying on what is written in the law reports we were to depend, as we are being urged to do, on 'judges' theories about what the law is', or the community's 'sense of justice', or 'custom', or 'the law above the law', we would have as many different versions of law as there are judges and people. In a small, relatively homogeneous and static community, it might perhaps be possible to discover an unrecorded consensus, though the rumour that such communities really exist may be an advertising gambit of the anthropological trade. Certainly that kind of consensus is hardly obvious in a society that includes people with many different customs, where change is rapid and constant and individuality highly developed. Then, keeping to the letter of the law is the only alternative to being governed by arbitrary power. And the subjects of arbitrary power have no liberty because, as they cannot know from one moment to the next what is permitted and what is a crime, they cannot run their own lives responsibly.

Keeping to the letter of the law is not, however, a simple matter. In order to understand why we should respect the letter of the law and precisely what it entails, we have to make fine distinctions and answer hard questions. We must, first of all, distinguish between the authority and the justice of law. When a rule or decision conforms to the requirements of the law, it has authority. And we are obliged to observe it. But we can also question its authority, and the law itself provides procedures for doing so. We can claim that parliament did not observe all the requisite procedures or that the defendant lacked time to collect evidence. Yet, until a rule or decision is declared invalid, we remain obliged to conform.

We can also ask a different kind of question, such as arises in arguments about whether a piece of legislation is 'fair' or 'good' or otherwise desirable. It is a question about the justice rather than the authority of law. The distinction between the two questions is like the logical distinction between 'is' and 'ought'.

In one, we are asking whether this is a law; in the other, whether it ought to be a law. Anyone who denies that we can distinguish between the authority and the justice of law might as well say that 'I see what I eat' means the same as 'I eat what I see'.

It has nevertheless become fashionable to deny that unjust law can have authority. One argument, promoted by both 'left' and 'right' appeals to 'natural law' to justify the conclusion that it is immoral to insist on an obligation to obey law just because it has authority, or to require judges to enforce the law as it stands even when they consider it to be defective. Advocates of this view forget that whether a law is just, far from being a manifest truth, is highly disputable. And it is precisely because the answers to such questions are passionately disputed that the procedures of law have come to be valued. Sticking to the letter of the law is the only alternative to letting such disagreements be settled by the will of those who happen to have the power to do so, whoever they happen to be at the moment.

Those who take this view forget that if all judges became addicted to doing justice regardless of the law, adjudication would become wholly arbitrary. Instead of being bound by the rules of their office to interpret the existing law, judges would make new law whenever they found it desirable to do so. Then there could be no definite and known limit to the judge's powers. What is permissible might change with each case and each judge, and no one could say what the law is. In short, judges would exercise tyrannical power. And that is why those who despair of getting the measures they favour accepted by elected representatives in the legislature try to persuade the public that judges should be free to change the law. They encourage attempts like that of Justice Brennan in the United States Supreme Court, who recently tried to make the Equal Rights Amendment unnecessary, as he put it, by deciding the case before him so as to change the law then and there by judicial fiat. And they find it impossible to believe that a judge may decide cases, as Judge Bork and others claim to have done, in terms of their understanding of what the law requires even when their preferences would have dictated a very different conclusion.

The other popular avenue to arbitrary power nowadays is civil disobedience. The suggestion that we can claim a 'right' to disobey unjust laws is especially seductive to those who love liberty. Why they should find it seductive is obvious; the

reasons for resisting seduction are as usual more difficult to remember.

It has to be admitted that the case against a right to civil disobedience is exceedingly complicated. When faced with a doubt about whether to obey a law, we have to ask three separate questions: Does it have authority? Is it just? Is the system in which it appears just?

If I conclude that the rule in question is authoritative, then I am obliged to observe it, regardless of whether I consider it just. To say that I am 'obliged' means that I cannot claim a right to disobey. But I am not thereby obliged to approve of the rule and nothing prevents me from trying to change it by legal means. I may even decide deliberately to disobey it. But if I recognise the rule's authority, I have to acknowledge the justice of being punished for my violation of the law and to suffer the punishment prescribed.

That was the attitude adopted by that New England romantic, Henry Thoreau, when he refused to pay his taxes and went to jail. It was the position defended by Socrates when he was unjustly sentenced to death, and his friend, Crito, urged him to escape. Socrates refused on the ground that he had all along enjoyed the benefits of Athenian law; he might have left Athens but he had never chosen to do so. Therefore, he argued, by his behaviour, he had acknowledged an obligation to obey Athenian law regardless of whether he approved of it. If he now tried to escape his punishment, he would be destroying the law by refusing to acknowledge its authority. And by destroying the law he would be destroying the city that had nurtured him. He would become an enemy of civilisation whom everyone would rightly shun.

Socrates's argument explains why it makes sense to say that even a conscripted soldier chooses to die for his country. If we enjoy the benefits of living under a system of law and we can leave the country but do not choose to emigrate and renounce our nationality, we implicitly recognise the authority of its system of law. Since the obligation to comply with a duly authorised order to enlist follows from our choice to enjoy the protection of the country's laws, our compliance is that of an independent subject, not a slave.

Socrates and Thoreau accepted their punishment because they believed that the system as a whole was just; they answered the third question positively. Notice that they

distinguished particular injustices from the justice of the system as a whole, and concluded that the defects of the established regime were not of a nature to justify withdrawing their loyalty.

Yet it is conceivable that in other circumstances it might be reasonable to find the regime as a whole too iniquitous to be tolerated. This does not mean, however, that there is a 'right' to rebel. Such a right is claimed by those who justify rebellion by an appeal to 'natural rights' as if they were written in the sky, manifest and indisputable. But such knowledge of indisputable rights could be available only if all our minds were merely fragments of one mind. Then, indeed, disagreement would disappear because no human being could think independently. But then, too, individuality would consist of nothing more than the separateness of our bodies; we would not be independent persons. Of course, that objection becomes irrelevant if everyone agrees to recognise the same rights. But even then, since rights are abstract, they could not tell anyone what to do here and now. Even if you grant me a right to equal respect, that does not tell you whether to insist that I stand on my own feet, to lend me money or to give me half your income. Agreement at an abstract level, even if everyone were clear about its precise meaning, which is hardly likely, is always compatible with disagreement at the level of practical action.

To claim a 'legal' justification for rebellion is nonsense. The law cannot grant a right to destroy the law. One might, however, take the line of the Americans in 1776 that the English government had violated rights guaranteed by the English law, and rebel in order to restore those rights. Then the rights claimed would be legal rights but the means taken to secure them would be distinctly illegal. However wise the Americans may have been, they were nonetheless rebels. We may think that they were right without attributing to them a 'right' to rebel or denying that they were repudiating the rule of law.

Even when people are all agreed on the iniquity of a regime, that does not automatically justify rebellion. St Thomas Aquinas tells a story about an old woman who refused to join in the general rejoicing upon the death of the tyrant. When the new ruler asked her to explain her attitude, she replied that she had seen a number of tyrants come and go, and each had been worse than the last, so she saw no reason to celebrate. The

moral of the story is that however bad a regime, the benefits of destroying it are far from certain.

Our inability to be perfectly sure about whether it is right to rebel does not, however, put rebellion wholly out of the question. Uncertainty is a coward's excuse for inaction. If we respect the rule of law, we are obliged to recognise that rebellion is a last resort and difficult to justify. Rebellion cannot and should not be absolutely excluded, but it should be recognised for what it is — a repudiation of the rule of law.

In last year's John Bonython lecture, Lord Harris commended the banner of 'radical reaction'. He suggested that:

> We should be deeply conservative, even reactionary, about the fundamental values of personal independence, responsibility and choice in a free society. But we should be radical, even revolutionary, in applying these values to the collectivist institutions and changing circumstances of the day.

I should like to add respect for the letter of the law to his list of radical reactionary values, for without it, the others cannot survive. The rule of law can prevail only if we respect the letter of the law. And that entails maintaining a sharp division between interpreting and making law and between acknowledging the authority and the justice of law. It entails recognising that the rule of law exists only where people are ready to abide by the established legal rules even when they do not like the results of doing so or are eager to remedy an immediate evil. If we commit ourselves to the rule of law, we cannot expect easy answers to questions about how to respond to dissatisfaction with the existing state of affairs. Paradoxical though it may seem, our devotion to liberty requires us to recognise that the undesirability of a law or a regime, however profound or notorious, cannot by itself justify either disobedience or rebellion. And if we are fortunate enough to live in a constitutional democracy and want to preserve liberty, we ought to reconcile ourselves to pursuing Lord Harris's 'agenda for economic disarmament' by the slow, awkward, and precarious means made available by the established legal procedures. The rule of law is full of inconveniences. That is the market price for liberty.

Closing Remarks

Maurice Newman

Chairman of the CIS Executive Board

I won't begin to summarise Shirley Letwin's remarks this evening. So much was said that it would take a great deal of contemplation and a considerable amount of intellect, beyond what I have, to distil within the few minutes I have at my disposal the nub of what we have heard. But there are a few things that need to be said nevertheless.

The first is that Shirley Letwin's visit to Australia is very timely. I think many people have the notion that the problems confronting those of us who support and cherish liberty are no longer as large or worrisome as they were five years ago. This is because we are being blinded to a large extent by the changes in the economic environment, namely the liberation of the economy and its so-called deregulation.

The confusion that Dr Letwin mentioned to us between law and liberty is, I think, a two-fold confusion: confusion from the point of view of those who are legislated against, and a confusion of the legislators. The wealth of current legislation in relation to individual liberty prevents most of us from seeing that we are overlooking a great deal of fiddling going on with the law: the substitution for the common law of a great deal of specific law, laws relating to families, relating to consumers, and so on. New South Wales recently even passed a law that sacked the Sydney City Council, and then introduced a retrospective law to prevent the councillors from appealing to the court. Those sorts of things tend to go by relatively unnoticed because we don't see them for what they are. It may have seemed at the time a reasonable thing to have done; many people probably didn't think much of the Sydney City Council anyway. But it is just one more case of a further curtailment of democratic freedoms and liberties.

The fact that we have so many laws seems to have debased the fundamental respect that we had for the law in the past. I'm old enough to remember when there was respect and

obedience for the law, and I think it was perhaps because we didn't have as many laws. People believed that when the law was applied it was applied uniformly without fear or favour, and was therefore something to be respected. We have moved a long way from those days and it is time for us to reinforce the institutions that Dr Letwin referred to. It is time for us to recognise what has been happening and call a halt to such things as identity cards and other infringements of individual liberty. They aren't the acts of evil men doing evil deeds, they are in the main advocated by well-intentioned individuals seeking to bring about what is in their minds a better society. But the individual does have responsibility and all of us have a responsibility to stand up if we believe that the society into which we are moving is not one that we would wish to see for our children and grandchildren, and to try to reverse the trends in the same way that we have tried to free up the economy.

I leave you with the thought that a free economy is a necessary condition for a free society but it is not a sufficient condition. Any of you who have been to Chile have seen one of the freest economies in the world operating under the police state of General Pinochet.

I urge all of you, in relation to Dr Letwin's timely remarks this evening, to review what is happening to the law. We must realise that there is still a great deal to be done. We must take more interest in what is happening to the law in order to safeguard our liberties because, to take up Dr Letwin's point, disobedience and rebellion become the ultimate conclusion. In this country and to this audience that may sound far-fetched, and let's just hope it is. Many other countries have believed it was a far-fetched notion, to their regret.

Dr Letwin, we thank you very much for having come here this evening and for giving us such a cogent and well-argued case for law and liberty. And we thank all of you also for being here this evening and for sharing this fourth annual John Bonython Lecture with us. Thank you.

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Shirley Robin Letwin

In the Fourth John Bonython Lecture, Shirley Letwin analyses the way in which the rule of law sustains individual liberty and a free society. Because the law provides a framework of rules for general cases, activists of all political persuasions argue for a greater role for judges in interpreting the law to allow each case to be decided on its merits.

Although this might seem particularly attractive to those who favour a market economy, according to Shirley Letwin 'We should stick to the letter of the law for the same reason that we prefer a market economy'. Dr Letwin argues that in the long run, respect for the rule of law is the only way to accommodate human individuality and our best guarantee against tyrannical and arbitrary government. Although legal procedures can be slow and awkward, this inconvenience represents the market price for liberty' and as such is a price that we must pay without hesitation.

Shirley Robin Letwin taught at Chicago, Cornell, Brandeis and Harvard Universities before moving in 1969 to the Philosophy Department of the London School of Economics. From 1972 to 1982 she taught at Cambridge University, resigning in 1982 to concentrate full-time on her research and writing. She is a Director of the Centre for Policy Studies and in the 1987–1988 academic year will be a Guggenheim Fellow.

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