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**The Legal, Ethical and Political
Implications of Fluoridation**

A Memorandum

by

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Barrister-at-law**

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The arguments for fluoridation are presented by doctors, dentists and administrators who appear to be unaware of the legal, ethical and political implications of fluoridation of the water supply. They seem to think that if fluoridation reduces the incidence of dental caries and provided it does not cause damage to physical health, there is no more to be said on the matter. Let us assume that these propositions are true and concede them at the outset (a very generous assumption considering the very real doubt as to whether fluoride is dangerous to health). I would still argue that the case against fluoridation is overwhelming.

From the legal point of view fluoridation is compulsory medication. It is done without the permission of the person at the receiving end. In English Law medical treatment without consent is only permitted by court order or for the mentally ill or for minors with the consent of their guardians. It therefore implies that either a person has forfeited his legal rights by criminal activity or that he is unfit through youth or insanity to exercise them. Fluoridation of the water supply puts every individual in this position. It is an affront to the human dignity which is explicitly recognised as a major objective in the United Nations Universal Declaration of Human Rights.

The foundation of the legal rights and liberties of the individual is the principle of his responsibility for his conduct and his own interests, chief among which is his health. As John Stuart Mill wrote, "over his own body and mind, the individual is sovereign". However, fluoridation encroaches on this sovereignty and the selfsame principle that justifies fluoridation would also justify adding tranquilisers, vitamins, antibiotics, contraceptives and countless other drugs to the water supply. That principle is that the State is sovereign over the mind and body of the individual, and however benevolent in any given case, it is the principle of totalitarianism*.

When this Memorandum was first written, it stated that fluoridation appears to be illegal as *ultra vires* the water authorities. In a leading Scottish case in 1983, *McCull v Strathclyde Regional Council*, Lord Jauncey came to the same conclusion.

The Government's response was not to desist but instead to try to legalise it by special legislation - the Water (Fluoridation) Act 1985 (which has subsequently been incorporated in Section 87 of the Water Industry Act 1991). This was carried in the House of Commons by 165 votes to 82 with 399 abstentions which demonstrates a remarkably lukewarm and sceptical approach by MPs. They had every right to be doubtful because this legislation may well fall foul of the European Convention on Human Rights.

When Governments have to resort to special legislation to try to legalise what would otherwise be unlawful they undermine the Rule of Law. They do so even more when they grant special indemnities to relieve certain persons from the legal penalties of their actions. (This is akin to giving free insurance against the consequences of a conviction for drunken driving). When one arm of the Executive offers (as it has done) an indemnity to the water authorities to cover successful legal claims against them arising out of fluoridation, the Law is mocked. The water authorities are freed from the legal consequences of their actions and thereby encouraged to break the Law. Law is one of the first casualties in the battle for fluoridation.

* In the Nuremberg trials some of the Nazis defended their infamous medical experiments by pointing to the more benignly-inspired American malaria experiments where free consent was not obtained. Once the principle of no medical treatment of sane adults without their consent is undermined it sets a precedent as it did in this case.

From the ethical point of view fluoridation is wrong on several counts. It is an assumption of moral superiority. It amounts to saying: "Some people's wishes can be ignored because other people know what is good for them whether they want it or not." It tends to weaken the individual's responsibility for his own health and that of parents for their children's health by offering a panacea that demands no effort or sacrifice. It encourages bad medical ethics - thinking that it is permissible to prescribe, not for the individual, but indiscriminately for the masses irrespective of individual differences; and thinking that it is permissible to prescribe and virtually coerce patients to take drugs that many of them strongly wish not to take.

The crucial question is who defines health? Is it the individual or the State? It is not a simple, technical, medical problem any more than is abortion. It is a value judgment to be made in the light of an individual's philosophy of life. Health is one value among many and people are entitled to sacrifice it to some extent for other values if they so wish.

Even if fluoride does significantly lessen the risk of toothache (which itself is questionable), some people may prefer to take the risk of toothache, which is not a fatal or permanently disabling condition, to the risk of fluoride, which is a cumulative poison, and may have such untoward effects in a small number of cases. It is arguable that even if these fears are groundless the psychological damage that they can do may itself be more detrimental to health than toothache could ever be. Surely all these kinds of decisions should be left to the individual who knows best what his own values and priorities are?

From the political point of view fluoridation sets a dangerous precedent. The force of precedent must not be underestimated in the determination of public policy which characteristically proceeds incrementally and by analogy with existing policies, rather than with reference to first principles. This factor can turn a precedent into the "thin end of the wedge".

In a democratic society it is for the people through their elected representatives to determine what is and is not conducive to the public welfare. Yet in a supposedly democratic society fluoridation is being introduced not by Parliament but through the back door by non-elected area health authorities in which the majority of members are medical personnel appointed to the committee. They are neither elected by, nor representative of, the people.

Indeed, to take an example, in the summer of 1976 virtually every (elected) local authority and Community Health Council in West Sussex had voted (often by a large margin) against fluoridation yet the Area Health Authority recommended (by 9 votes to 6 votes) that it should be introduced. Not only is this procedure undemocratic but the thinking behind it is undemocratic too. In fact it is anti-democratic because from the Ancient Greeks to the present day one of the most notorious arguments against democracy has always been the paternalist one that the administrators know best, and that contentious questions are really only "technical" questions best left to the "experts".

The decision on fluoridation was in the 1960s in the hands of elected local authorities and was thus clearly and officially recognised as a political issue. It was later transferred to the Area Health Authorities and this act has presumed to turn it into a simple medical issue with no political element (and health is defined in a very narrow way to refer only to physical health). If this convenient method of depoliticisation works on this occasion it will be a great invitation to try it again. Why bother with all the fuss and time-wasting involved in consultation, discussion and legislation when administrators can be appointed to take decisions on "technical" grounds? In a democracy ultimate control and the power to make the final decision must rest with the people and its elected representatives. In the British context this ideal is made operational by the twin principles of the supremacy of Parliament over the Executive and the subservience of civil servants to Ministers of the Crown (elected politicians accountable to Parliament). The introduction of fluoridation through Area Health Authorities puts the final decision in the hands of medical administrators and thus breaches these principles. This makes it not only undemocratic but also unconstitutional.

The crucial question is not "Will fluoridation do some good?" It is "Has the State the right to fluoridate the water supply?" The issue revolves round the question of the legal, moral and political rights of the individual. Medicine must be the servant of the individual, not his master. It is the business of the medical profession to offer help to those who ask for it, not to impose treatment on those who do not wish to receive it. It cannot be denied that fluoridation is medical treatment in the strict sense - it is not purification in the sense of "treating the water" but medical treatment in the sense of "treating the person". It is exactly the same as a doctor treating a patient - except that he does not know his name, or his medical history, or what precise dosage of the drug he will receive, or indeed whether he even needs the treatment. One fact, however,

is known - that a large number of people who will be forced to drink fluoridated water are strongly opposed to doing so. It is no consolation to them that they will also be forced to pay for the privilege of this unwanted treatment and that it may also do them some real harm.

The proponents of fluoridation have not taken account of the legal, ethical and political factors discussed in this Memorandum. Yet it is foolish to suppose that merely because these factors have been overlooked or ignored by those introducing it, fluoridation cannot therefore have deleterious legal, ethical and political implications and consequences. These factors are so weighty that either the legal or the ethical or the political factors on their own are sufficient cause for strong opposition to fluoridation of the water supply.

If it is a question of weighing one set of factors against another, who should do this - the individual, Parliament, or medical administrators? It seems to me that there is a responsibility upon the academic community to ensure that, upon this, as upon other issues in public affairs, public debate is informed and wide-ranging and that, above all, attention is drawn to the questions of principle that are implicit in various policy considerations, especially where these are in danger of being overlooked or not understood. Academics are eminently well qualified for this task since their training and their being at one remove from day-to-day public administration enables them to discern the broader issues and underlying questions of principle that are so easily overlooked. A number of scientists in the academic community have not been backward in alerting the public to possible benefits to dental health from the use of fluoride. Surely it is incumbent on their colleagues in the Arts and Humanities faculties to alert the public to the legal, ethical and political repercussions of fluoridation of the water supply as the chosen method of administering fluoride?

Unless and until the pro-fluoridationists manage to come up with a rebuttal of the legal, ethical and political arguments raised here and one that justifies fluoridation within the bounds of a liberal democracy (without resorting to principles that are an integral part of totalitarian ideologies), the policy of fluoridation should be vigorously opposed. The pro-fluoridationists have not won the intellectual argument: they have simply run away from it.

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