

## Aftermath of the Split

The Libertarian Alliance has recently undergone a serious crisis, culminating in an ugly and damaging split. As a result, the informal though intimate connection between the LA and the Alternative Bookshop has been severed, and the former Secretary of the LA has started a new organisation of his own, which has no links or dealings with the LA.

Every member of the LA is entitled to know every detail of this dispute, and to argue freely about the rights and wrongs of it. On the other hand, members did not join the LA to receive endless bulletins on a continuing squabble, but to participate in libertarian propaganda. We therefore have to decide how much attention to devote to the recent unpleasant episode in the pages of Free Life.

There has already been considerable written and oral discussion of the dispute, and this will no doubt continue for years to come. Some LA members organised a successful public meeting to air the issues on 9th January. Two days later, there was an all-day hearing, conducted by Advisory Council member Hillel Steiner. Subsequently, Professor Steiner produced a report on his conclusions, in the form of a letter sent jointly to David Ramsay Steele and Chris R. Tame.

We reproduce below Hillel Steiner's report in full, followed by an account of the dispute by EC member David Ramsay Steele. Steele's account is in some respects critical of Steiner's report, though they agree on the crucial point: that the purported "expulsion" of five EC members (Alexander, McDonagh, Rantala, Steele, Zegarac) by three EC members (Davis, Levy Tame) on 25th October 1982, was unjustified. Steele's comments are his own, not necessarily endorsed by the Executive Committee.

We do not intend to publish any more on this matter in Free Life, with the exceptions of any replies Hillel Steiner or Chris Tame may make to Steele's criticisms. If you want to find out more, we recommend that you speak or write to the participants. Many highly revealing documents have accumulated in this affair, and copies of these will be made available for purchase. Contact Mark Brady, 531 East 6th Street, Apartment D4, New York, NY 10009, USA.

## Steiner's Report

I have now managed to give our discussions of Tuesday 11 January - along with the various documents I received before and since then - the reflection they deserve: a labour, I might add, that warrants at least three Queen's Awards to Industry (or some suitable non-statist surrogate). So, as promised, I am writing to you with my considered opinion.

You will appreciate the pointlessness of my here attempting to dissect each and every claim and counter-claim registered in those presentations. Rather, I propose to proceed in the following way:

- to state what I see as the crucial point in dispute;

- to survey and evaluate a selection of the reasons given on each side for its attitude toward that point;

- to offer a few suggestions for the future, as well as several pious remarks about friendship, trust and keeping things in perspective.

I also hope not to fudge, despite the fact that there are elements in both of your respective accounts that ineluctably rest on conjecture and interpretation, as distinct from hard evidence. In that latter connection and by way of a general admonition, I think both sides have sometimes failed to recognise that distinction in the course of the dispute and, in so failing, have been somewhat less than generous in framing their rival gap-filling hypotheses. The undeniable fact that no one has a natural right to another's generosity has, rather sadly (and invalidly), been taken

to imply that no one has an obligation to be generous. So much for preliminary pieties.

### **THE CRUCIAL POINT IN DISPUTE**

Although each side has charged the other with a wide variety of improprieties, it seems to me that the central question to be answered is whether Chris Tame, as Secretary of the Libertarian Alliance (LA) and acting in conjunction with 2 other Executive Committee (EC) members, was justified in expelling 5 other EC members from the EC (and 4 of them from the LA itself) on or before 25 October. Most, if not all, of the improprieties alleged by the two sides can reasonably be treated as actions taken in response to the circumstances leading up to, and consequent upon, the expulsion move.

(I hasten to add that I do not wish to become embroiled in - let alone prejudge - the at-least-partly legal question of who, if anyone, now constitutes the EC of the LA, where I take 'LA' to refer to that organisation that existed prior to 25 October. That is, I am not here concerned with whether the aforesaid expulsion move was *legal*, but only with whether it was morally justifiable. Hence I use the term 'expulsion' to refer to the action taken by the then duly constituted Secretary of the LA, i.e. Chris Tame, on 25 October, regardless of whether this use is legally correct).

On the face of it, and as is agreed by both, sides the expulsion of 5 EC members by another 3 EC members is a most extraordinary measure. Nonetheless, reasons have been offered for it. And it is to these, and their evaluation, that I next turn.

### **THE REASONS FOR THE EXPULSIONS**

Chris Tame's broad allegation is that the other side was plotting to take over the LA. His narrower charge, and the one which he regards as supplying the urgent need for the 25 October expulsions, is that the other side was poised to take an action which would have endangered the interests of the general membership of the LA. This action was the

publication of an article entitled 'We Oppose NTS' in the LA journal *Free Life*.

The reasons why this proposed article's publication was regarded by him as posing a threat to the membership are: that he had received a legal opinion suggesting that some of the article's claims about NTS might be libellous; that since the LA was not an incorporated association, every one of its members might be financially liable for any damages awarded against it in a successful court action by the NTS; that some of the EC members favouring its publication appeared unconcerned about the danger of this widespread financial liability, as they personally had few assets to lose; that a majority at an EC meeting had approved publication of the article and that, although this approval had been reversed at a subsequent EC meeting, the balance of opinion on the EC might shortly shift back in favour of publication.

As a defence of the expulsion move, this set of reasons poses several questions only some of which I feel competent to answer. I am not competent definitively to assess the legal views on whether the article was libellous, on whether members of an unincorporated association are liable for its debts (probably true), and on whether in the present case it is likely that the membership would actually have been so encumbered (uncertain). Some evidence, of a fairly fragmentary nature, exists to support Chris Tame's claim that some EC members were not overly exercised about the danger of incurring financial liabilities for LA members. Some similarly inconclusive evidence exists to suggest that the fear of a renewed EC decision in favour of publication was not unfounded.

In evaluating this defence of the expulsion, there are other things to be considered chiefly of a constitutional character. And this leads me to a parenthetical comment which is of the first importance. The LA has no written constitution. It does, by common consent of those in dispute, have a fairly clear unwritten constitution. Among the more salient features of this constitution are the following provisions regarding EC procedures: an EC meeting has no required quorum, and at least one such meeting consisted of only 2 EC members; the EC

may co-opt additional members onto it; all EC meetings are to be minuted and the minutes are to be duplicated and circulated by the Secretary; each EC meeting's minutes contain the time and date of the next scheduled EC meeting; decisions at EC meetings are taken by majority vote.

But if the unwritten rules of the constitution are reasonably clear, it is nonetheless also true that they do not cover all the sorts of contingency appealed to in the present dispute. There is no provision for emergency powers: that is, no provision stipulating the possibility of emergencies nor, therefore, defining what counts as an emergency nor, therefore, specifying who is empowered to act in such circumstances.

Nor are there any clear, grounds laid for expulsions (from either the EC or the LA itself), though both sides seem eagerly to agree - unwisely in my view - that there is an EC power to expel, the reasoning being that "we wouldn't want the LA to be taken over by the National Front or the Socialist Workers' Party, would we?".

As indicated above, I am in the end uncertain whether or not a danger of the sort alleged by Chris Tame did in fact exist. Let us suppose for the moment that it did and, therefore, that a necessary condition of the expulsion defence's validity is satisfied. Do we also have a sufficient condition here? This seems to me to depend upon what one makes of the above mentioned constitutional omissions. Here I shall pose several questions which I shall also answer.

**Q:** Was the expulsion decision, taken by Chris Tame and 2 other EC members on or before 25 October, made at a properly scheduled EC meeting?

**A:** No. The EC meeting of 18 October agreed that the next EC meeting be held on 1 November. A majority of EC members received no notification of any EC meeting to be held before 1 November, much less, of any proposal to recommend expulsions at such a meeting.

**Q:** Even if not done in the normal way, was the convening of a meeting earlier than the agreed scheduled one of 1 November made

plausibly urgent by virtue of the presumed danger to the interests of the LA membership?

**A:** No. Even if the danger is presumed to have been real, it was not imminent as there seems to have been no possibility of any irreversible decision to publish the article being taken prior to, the scheduled EC meeting of 1 November.

**Q:** More generally, should the Secretary or any other subset of EC members have the power to waive standard EC procedures in the face of what he/she/they deem to be an emergency?

**A:** Difficult. My inclination is strongly to say no. But since the term emergency seems to cover an almost infinite range of possible circumstances, from paranoid fantasies to clear and undisputed dangers, I hesitate to come down firmly against such powers. The matter is obviously even more complex when a perceived emergency is held to arise from the conduct of some EC members themselves. This does, at the very least, suggest the inadequacy of the EC's (non-existent) quorum requirements.

**Q:** Even if the Secretary or any other subset of EC members does/should have emergency powers, should an alleged threat to the LA membership of the present kind (i.e. of their incurring financial liabilities) count as an emergency?

**A:** Debatable. It must, at the very least, be an open question for libertarians whether a person voluntarily joining an unincorporated association is entitled to such (paternalistic?) protection of his/her interests, particularly since such protection involves the suspension of ordinary decision-making procedures and the rights implicit in them.

**Q:** Should there be a power to expel?

**A:** No. Grounds for expulsion from any organisation with political aims are bound to be ill defined and to lend themselves to arbitrary measures. The unacceptability to some members of other members' views should occasion competition within the organisation - in the form of contests over policy adoption and officer election - and, if

necessary, voluntary resignation. In other words, voting with hands and feet only.

## **THE REASONS AGAINST THE EXPULSIONS**

Some of these reasons are necessarily contained in the foregoing evaluations of the reasons for the expulsions. (it should be noted that not all of the former reasons are endorsed by those who were expelled.) Nevertheless, there remains the matter of whether some EC members were plotting to take over exclusive control of the LA.

The term 'Plot' is, of course, notoriously porous and covers a multitude of venial as well as cardinal sins. It is unavoidable - indeed, it would be surprising were it otherwise - that members of political organisations will find that their own views are shared to differing degrees by different members and will cooperate with like-minded members to advance those views. So rather than deplore or celebrate this fact of nature, I wish to address the following question: how convincing are the rebuttals, offered by the expelled EC members, of the charge that they were conspiring to exert exclusive control over the EC?

I take the pertinence of this question to lie solely in its bearing on Chris Tame's apprehension of a clear and present danger to the LA membership. There may, in the opinion of some, be other matters to which this question is pertinent. For example, it has been vaguely suggested that the alleged plot, if successful, would have taken the LA in undesirable political directions. I cannot regard this latter consideration as relevant, and am here concerned only with the alleged danger to the LA membership. Expulsion does not seem an appropriate instrument of policy-making and I cannot allow that policy differences *per se* warrant its employment. In this respect, my views seem to be at odds with those of both sides.

What seems quite certain is that there were differences of view among EC members about what, if any, should be the LA's published response to the *Searchlight* article on NTS. What is equally clear is that each side was aware of these differences and, thus, of which EC members were to be

regarded as their opponents on this issue. What is less clear is whether there were/are fundamental differences of attitude to NTS itself. This latter question would be of no consequence to our present concerns were it not for the fact that some EC members have attributed to others an attitude of being 'soft on NTS,' in the course of accounting for their own actions surrounding various EC decisions.

Some of these actions, as well as ones taken in response to them by the other side - and counter-responses to these responses - appear to have been rather unusual. They include: the sequestration of LA membership mailing lists and card-index files; the removal and photocopying of letters, Bookshop financial statements and other documents contained in other persons' files, briefcases and possibly jacket-pockets; the misinforming (deliberate or otherwise) of some EC members by others about EC business; the refusal by some EC members to meet with others to discuss their differences; and the circulation of the LA membership with mutual recriminations by various EC members.

A number of obstacles stand in the way of any unqualified attribution of culpability in this unfortunate sequence of events. Chief among these obstacles is that some of the aforementioned actions taken by each side were ones which the actors may have been entitled to take by virtue of their rights as EC members, of their rights and privileges as employees or assistants in the Alternative Bookshop, and of the set of customary if ill-defined liberties that persons working in close proximity and in a common cause tend to accord to one another. Consequently some actions which have been interpreted as conspiratorial - and others which have been interpreted as responses to an imaginary conspiracy - have been alternatively explained and justified as being not only legitimate (within the rights of those who did them) but also innocently undertaken for purposes quite unrelated to any issues dividing the EC.

Was there a conspiracy? From the evidence I have examined, it seems clear that those EC members who favoured a forceful public denunciation of NTS, aware of opposition within the EC to this move, were

consequently engaged in some degree of concerted action to overcome that opposition. The extent of this co-ordinated activity - how many persons were involved in it, how early each one's involvement began, how many of their various actions were undertaken for this purpose - is, I fear, something which I find incapable of exact estimation. It was assuredly greater than zero.

That said, however, there remains the question of whether the actions taken were within the rights of those who took them. And here again, regrettably, no definitive answer is available. The reason for this centres almost entirely on the uncertain content of the rights and privileges of persons working in the Bookshop and the disputed character of the customary practices which had developed there.

Who was entitled to have access to the LA membership mailing list and card-index file? Who was entitled to examine the Bookshop's financial accounts? Were there files kept in the Bookshop that, regardless of whether or not they belonged to the LA, were nonetheless available for examination by LA members working in the Bookshop? If persons were entitled to consult these documents, were they further entitled to make copies of them on the Bookshop photocopier? Different and opposed answers have been returned to all these questions, based on differing and opposed descriptions of prevailing Bookshop practices and varying interpretations of conventional courtesy. At some point in this escalating sequence of actions and reactions, persons began to do things which exceeded the bounds of propriety and which met with similarly improper responses. I remain unable to identify that point.

### **ARE THE EXPULSIONS JUSTIFIED?**

In my view, the expulsions are not justified. The grounds for this conclusion emerge from the foregoing discussion, though it is worth repeating yet again that not all of them are endorsed by the expellees themselves.

There are two kinds of reason for this judgement: immediate and proximate.

The immediate reasons are:

(a) no emergency, of the sort envisaged, could have arisen before the next scheduled EC meeting on 1 November, even though one might have arisen as a result of that meeting;

(b) in the absence of any precedent or constitutional provision for emergency powers, any decision requiring action before 1 November should have been taken by the EC itself and, thus, only at a duly notified emergency meeting of the EC; the expulsion decision of 25 October was not taken at such a meeting;

(c) expulsion does not appear to be the only means available for preventing an EC majority from endangering the interests of the LA membership. a court injunction against publication, for example, might have sufficed in this respect.

The proximate reasons are:

(d) the protection of the general membership, from the consequences of their own ignorance or negligence, does not justify suspension of ordinary constitutional decision-making procedures and, arguably, should not be a function of the EC at all;

(e) the power to expel, whether from the EC or the LA itself,, should not be held by the EC and should exist - if at all - only in the general membership at its annual or emergency general meetings.

I wish to note however that, though the expellees have the stronger case, the vindication of their position is not helped by (i) their ready acceptance of the absence of any EC quorum requirements, and (ii) their concurrence in the EC's possession of a power to expel.

It is indeed unusual for 3 members of an EC to expel 5 others. But under rules endorsed by (amongst others) the expellees themselves, such a move is entirely permissible - provided only that due notice is given of the meeting at which that decision is taken. I am not aware that there is even a requirement that advance notice of such a move be given in the notice of the meeting.

Certainly a number of controversial matters decided at recent EC meetings were ones which absent EC members had not expected to arise and, in at least one significant case, had been led to expect would not arise.

## **THE FUTURE OF THE LA**

Since I have been categorically assured by both sides that there is absolutely no prospect of their working together again, what follows may be regarded as perhaps little more than a bit of sentimental self-indulgence. Nevertheless I think it is worth recording what strike me as among the more lamentable aspects of this affair, at least partly with a view to avoiding some problems in the future.

From the perspective of libertarianism, the most regrettable feature of this whole business has been not the EC polarisation per se, but rather the fact that it has occurred along more or less conventional left-right ideological lines. A principal claim of libertarianism has been that the conventional ideological spectrum is morally and politically bankrupt, and that those who regard various political positions as differentiated in terms of it fundamentally misconceive the nature of the issues involved. Libertarianism is supposed to conceive the genuine division on political economic issues as lying between those who favour a more, and those who favour a less, extensive sphere of state activity. And unlike other self-proclaimed 'third ways', it distinguishes its rejection of the conventional left-right dichotomy as resting on a coherent and non-eclectic position.

Naturally enough, elements on the conventional left and right - insofar as they attend to libertarianism at all - are actively interested in showing that the conventional lines of polarisation, and/or some eclectic mixture of them, are largely irresistible and that libertarians delude themselves to think otherwise.

Despite insistent avowals by both sides in the present dispute - that they are not divided on substantive political issues - I cannot see how anti-libertarian sponsors of the conventional spectrum can take anything but great comfort from what has happened on the

EC. For it is simply undeniable that there is some division of attitudes toward NTS and *Searchlight*, and that this division reflects broader and deeper differences - of the conventional left-right sort - over the understanding of recent history and current geopolitical issues.

I do not say that libertarians must refrain from holding views on these divisive matters, much less, that they must all come down on one particular side of them. What I do say is that differences of this sort are grossly insufficient to license doubts by either side of the other's libertarian credentials. Rehashing the Cold War is an inevitable concomitant of reaching many editorial and seminar programme decisions. It ought not to occasion extra-constitutional measures or departures from common courtesy, in the running of a libertarian organisation. Anyone who thinks otherwise is being extremely naive if he/she also imagines that an organisation of more than one person can be sustained for long on this basis.

Another sad feature of this affair is the serious breakdown in trust it betokens. Here we have a group of people who have known each other for many years and who have worked long and hard to create a viable libertarian movement in this country. It seems to me little short of incredible that you should be willing simply to put behind you this record of successful co-operation to pursue these relatively ephemeral differences at the cost of much that you have achieved. One might have thought that a cool retrospective look at the history of the current conflict would suggest that it has reached its present exacerbated state by virtue of a set of readily alterable arrangements which, when altered, would allow that successful co-operation to continue - if not smoothly, at least profitably so far as libertarianism here is concerned.

These alterable arrangements have already been alluded to in what I've said above. Essentially, they pertain to two things. The first is the relationship between the Alternative Bookshop and the LA. If the LA were to continue to use the Bookshop - from which it derives many advantages, including an accessible mailing address and a venue

for EC meetings - it must be made very clear as to what the rights and responsibilities of Bookshop assistants/employees are, and where the boundary lies between these and the entitlements of EC members.

The second item is the need for a written and fairly comprehensive constitution. Since plans for drafting one were already in hand before the present difficulties arose, and since it goes beyond my brief (and competence) to make extensive proposals along these lines, I limit myself to a few suggestions which could usefully be taken into account in that exercise.

One of these, as previously indicated, is that there be quorum requirement for EC meetings. Another concerns emergency powers. Should there be a constitutional concept of 'emergency?' (I'm uncertain.) If so, the criteria for its application to circumstances must be very specific and explicit, as should the location of the special powers to be exercised on such occasions. Any judgement that some occasion is an emergency, along with any action taken under those powers, should be subject to EC revocation. And therefore no EC actions, which are themselves constitutionally permitted, should count as occasioning an emergency nor should expulsion of EC members be among any set of emergency powers. The agenda of each forthcoming EC meeting should be circulated along with the notice of it, and decisions on unannounced items arising at that meeting should be deferred until the following one. Finally, the present practice of co-opting persons onto the EC - whether as currently by majority vote, or even by unanimity - should be abolished. Election to the EC should lie in the power of the general membership alone, at its annual general meeting.

All of these suggestions are directed at reducing the scope for destructive factional manoeuvring to a level warranted by the legitimate differences that may exist within the LA itself. They should help to eliminate opportunities to take actions which, however innocent, only serve to increase the suspicion and distrust of all concerned and thereby to generate an escalating sequence of reprisals. Faction-fighting can be fun. But some pies are too small, and at the same time too important, to be worth dividing.

HILLEL STEINER

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