Fluoridation and Human Rights

The ethical and legal basis of fluoridation under International Conventions and National legislation on Human Rights and Fundamental Freedoms.

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1. Introduction.

The debate between the pro-fluoridation lobby and their opponents is characterised by the adoption of two incompatible philosophical approaches. The pro-fluoridationists argue that the claimed benefit of fluoridation for the protection of children's teeth justifies the addition to the public water supply of chemicals that are known to be liable to cause severely damaging medical effects in all members of the public, including those outside the specified target group. They therefore support a system which advocates State intervention in the health of the population, regardless of whether or not all recipients of such an intervention are capable of profiting from it, or are prepared to consent to such treatment.

Their opponents, who include some eminent specialists who formerly supported fluoridation, object that most if not all of the claimed benefits can actually be attributed to alternative factors in dental hygiene and diet, and that the medical damage liable to affect the general population - which includes fatal conditions - represent an unacceptable public health risk compared with the merely inconvenient or cosmetic problems associated with dental caries. This group generally adopts a more rigorous scientific scrutiny of the evidence of the effects of fluoride exposure.

The apparently incompatible divide between the two camps is characterised by quite different approaches to putting their cases to public debate. The pro-fluoridation group supports its position by quoting a number of discredited studies which purport to show a specific beneficial effect of fluoridation on the incidence of dental caries. Without exception all of these studies have been shown to be procedurally defective. Contributions to the debate on fluoridation from this group are becoming increasingly assertive, with no new clear evidence in support of their claims.

In contrast, in recent years the evidence of the anti-fluoridation advocates has been carefully peer-reviewed, and additional research has been commissioned which adopts methodologically correct scientific and statistical procedures. Of particular importance has been additional work on the biochemical, physiological and neurological effects of fluoride ingestion, which have established a connection with a number of serious toxicological and pathological conditions unconnected with the issue of dental health.

The adverse effects of fluoride in the human body are now well-documented and present a powerful argument against the practice, particularly with respect to the many dangerous clinical conditions now known to be caused or promoted by the presence of fluoride in the body, and by its persistence once it has been absorbed.

However, whilst the arguments between the largely assertive camp of the pro-fluoridationists and the factual evidence of those opposed appear to be moving in favour of the anti-fluoridation camp, political dictat at Government level - particularly in the Anglophone world - fronted by public sector Health Authorities, pressurises Water Undertakers to adopt universal water fluoridation in the name of public health protection, as a matter or urgency. The water industry is therefore being forced to take part in controversial medical interventions as agents of Government policies.

2. Science versus law - what is possible and what is permissible?

I do not propose to discuss the scientific debate between the two camps in any detail. As a scientist of long standing, my personal inclination is to support the anti-fluoridationists simply because the evidence presented by this faction are far more convincing than those of the dental lobby. However, the interminable arguments between the two camps as to the merits of their respective arguments tend to divert critical attention away from the central issue in this matter - does any State have the ethical and legal right to impose compulsory medical interventions on the population without consent, regardless of the efficacy of the intervention in the protection of some aspect of public health? As I shall show below, whilst there is little doubt regarding the ethical aspects of the issue, the legal position is less well-defined than many people imagine.

The substance in question is a known highly toxic chemical, and is even classified in some countries as a hazardous waste which cannot be discharged into the environment without extreme precautions being taken to minimise its risks to the public and the environment. If it enters the human body, then it is extremely cumulative, cannot be eliminated, and has severely debilitating and disabling effects on those exposed to it for long periods, particularly as its victims approach old age. It can also precipitate a dramatic increase in an otherwise rare and fatal form of bone cancer in adolescent boys, even after relatively short periods of exposure.

The prophylactic administration of any such substance to the entire population in a form not easily avoided, regardless of the wishes of the subjects, would therefore appear to be an infringement of medical ethics and of basic human rights. Several International Conventions deal with fundamental freedoms and the ethical limitations of medical interventions by States in the private lives of their citizens. In Britain the principles of the European Convention on Human Rights are about to be embraced by English Law in the Human Rights Act, with effect from 2nd October 2000.

The degree to which individual States have endorsed these various agreements and statutes varies, but there are clearly defined links between individual Conventions and agreements which establish principles that any democratic society would consider valid. These Conventions reveal what such rights are in relation to unavoidable medication by interventions such as fluoridation. Taken together, they confirm that any practice of a State which results in the deliberate exposure of its people to potentially dangerous environmental pollutants without their express consent is an infringement of their rights under binding International and National legislation.

3. Structure of this analysis.

I have therefore analysed the provisions of relevant agreements and legislation to show what fundamental freedoms are being attacked by fluoridation, and which sections of each are relevant. In the first part of this discussion, the principles set out in the Convention on Human Rights and Biomedicine are examined, to clarify the medical and legal ethics and issues involved in the fluoridation debate. This Convention is a valuable reference point, because it establishes a set of strict guidelines which must be followed before a State is permitted to implement any such intervention. It also deals with the issue of medical research which, as I shall argue, is highly relevant to this contentious practice.

The links between the Biomedicine Convention, the UN Convention on the Rights of the Child, and the European Convention on Human Rights lead on to an analysis of the issues of fluoridation as they will be interpreted under the new Human Rights Act 1998, to be implemented in the UK on 2nd October this year.

Throughout this analysis, a recurring theme will become evident - that imposed medication by the State is unethical and an infringement of fundamental human rights. However, it is an unfortunate fact that in some circumstances - including water fluoridation - such actions may continue to be lawful after the implementation of the Human Rights Act in October.

4. What is the Convention on Human Rights and Biomedicine?

The full title of this Convention is the 'Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine; Convention on Human Rights and Biomedicine.' For convenience in the following, I shall refer to this as the Biomedicine Convention. It deals with the rights of people as they are affected by the fast-changing advances in modern biology and medicine, and establishes their right to limit the imposition of such advances by the State upon their persons.

Great Britain is a signatory, though with a number of reservations. However, for the purposes of this discussion, I propose to examine the principles set out in it, and to suggest that these are applicable under any rational system of Human Rights legislation, including the imminent Human Rights Act 1998 in the UK.

4.2 Rights of the individual versus those of the State

The term "human rights" refers to the principles laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which guarantee protection of such rights. In the Biomedicine Convention, Article 2 affirms the primacy of the human being over the sole interest of science or society. This establishes that the wishes of an individual in respect to his/her exposure to treatment for medical conditions takes precedence over State objectives, although such wishes might be over-ridden in the case of a virulently infectious person being allowed to move freely in public.

Dental caries is without question a medical condition and fluoridation, aimed at treating this condition, is a prophylactic medical intervention. As such it is covered by Article 2 and is subject to the consent of the individual. It cannot ethically be imposed on the population as a whole without express consent from every individual of the population.

4.3 What is an 'intervention'?

The term "intervention" covers all medical acts, including any action performed for the purpose of preventive care. All interventions must be carried out in accordance with the law in general, as supplemented and developed by professional rules of conduct. In England, the act of fluoridation is permitted by the Water (Fluoridation) Act 1985, subsequently incorporated into the Water Industry Act of 1991.

However, the mere existence of a law providing for such an intervention does not imply that the practices that it legalises are themselves ethical, or that they do not infringe personal rights of the subjects over whom the State has domain. Totalitarian regimes often pass such laws - early Human Rights Conventions were specifically aimed at providing internationally recognised standards by which the acceptability of such regimes could be judged.

4.4 Assessing medical needs.

Article 3 aims to ensure equitable access to health care in accordance with the person's medical needs. "Health care" includes preventive interventions, designed to maintain or improve a person's state of health or alleviate a person's suffering. This care must be of a fitting standard in the light of scientific progress, and be subject to a continuous quality assessment.

In the case of fluoridation, such action is clearly improper. Even the pro-fluoridation lobby does not claim that it benefits all people exposed - for example, many elderly people have no teeth at all, and there could be no conceivable benefit to them from fluoridation. There is no convincing scientific evidence that fluoridation is effective in its sole aim, or even the only means whereby tooth decay might be reduced. Indeed, there is strong evidence that dental health is directly linked to the quality of the diet, and is therefore amenable to improvement without any such intervention.

4.5 Quality control of medical interventions.

Quality assessments of fluoridation interventions by independent and disinterested specialists in a number of countries have revealed no net beneficial effects of the process. Indeed, there is increasing evidence for the development of seriously debilitating and even fatal conditions which greatly outweigh the relevance of any postulated cosmetic dental effect to a relatively minor sector of the public. Realistic quality assessment would therefore reject the practice as unproven and presenting unacceptable risks to a significant part of the target recipients.

4.6 Professional standards

Article 4 (Professional standards) applies to doctors and health care professionals generally. Since dentistry is a branch of health care, adequate standards are required to be adhered to by both the dental and the medical professions. The Convention deals in some detail with both legal and ethical standards, and it is clear that fluoridation in the fashion adopted by the State constitutes a major infringement of both.

As the Convention states,

> "Doctors and, in general, all professionals who participate in a medical act are subject to legal and ethical imperatives. They must act with care and competence, and pay careful attention to the needs of each patient.
>
> Competence must be determined primarily in relation to the scientific knowledge and clinical experience appropriate to a profession or speciality at a given time. It is accepted that professional standards do not necessarily prescribe one line of action as being the only one possible: recognised medical practice may, indeed, allow several possible forms of intervention, thus leaving some freedom of choice as to methods or techniques.
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> Further, a particular course of action must be judged in the light of the specific health problem raised by a given patient. In particular, an intervention must meet criteria of relevance and proportionality between the aim pursued and the means employed."

The promotion of fluoridation by Health Authorities raises urgent questions regarding the quality standards that are being applied by these Health Care Professionals in pressurising water undertakers to adopt universal fluoridation. Clinical research has already convincingly revealed the irrelevance of fluoridation to its specific main (and indeed, sole) objective. One alternative - topical application of fluorides in mouthwashes and tooth-pastes - may have slight beneficial effects, although it places young children as particular risk due to the late development of an effective ability to spit out such highly contaminated matter from their mouths.

But fluoride in drinking water has no value whatsoever in this respect. The evidence for widespread adverse effects in non-target members of the community is well established. Fluoridation is therefore not effective, is hazardous for many if not all members of the public, and its objective can be achieved by alternative and safer techniques of dental and general health.

Nor is the proposed intervention - the universal imposition of water fluoridation - ethically acceptable. It is incapable of taking into any account whatever the health problems raised by individual subjects - everyone is exposed, regardless of their individual health status, even those without any natural teeth at all!

4.7 Consent

The issue of consent is central to the provisions of this Convention, and is a major point of objection to fluoridation by a large section of the population.. Article 5

> "affirms at the international level an already well-established rule, i.e. that no one may in principle be forced to undergo an intervention without his or her consent. Human beings must therefore be able freely to give or refuse their consent to any intervention involving their person."

Adding fluoride to the public water supply cannot be regarded as optional intervention - the suggestion that people can buy bottled water, or filter their public supply, implies that anyone who wishes to opt out would be at a serious disadvantage to the rest of the population. The ethical imperative in such cases is that people must be required to actively opt into, and not out of, such medical interventions. In Article 5, the word "intervention" is understood in its widest sense. As in Article 4, it covers all medical acts, in particular interventions performed for the purpose of preventive care or research. I will return to the issue of research later.

4.8 When is consent 'informed'?

Consent must be based on an understanding by the subject of the nature and the potential consequences of fluoridation and its alternatives. They must have been informed by Health Care Professionals about all relevant facts, including the risks, which must include a full assessment of the risks related to the individual characteristics of each patient, such as age or the existence of other pathologies. Clearly, in the case of the fluoridation of the public water supply no such actions have been taken or are planned.

It is very important to note the wording of this section of the Convention. It contains the statement

> "The patient must be put in a position, through the use of terms he or she can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause."

4.9 Medical malpractice - intervention without consent.

In the case of any State medical intervention, each and every member of the public exposed is regarded as a patient, and must be accorded their full rights as such. Failure to do so constitutes medical malpractice, and is actionable. Yet there has been no example of fluoridation of the public water supply in which every member of the public has been informed, directly and individually, by the State or by its medical agents at any level, of the risks they may personally face from any of the known adverse effects of water fluoridation.
Full disclosure would, for example, require Health Authority representatives to visit every residential home for the elderly and explain to the people in them, with the consent of their own Doctor, the risks of them experiencing a potentially fatal hip fracture - fluoridation is believed to be implicated in the doubling of the incidence of this misfortune in the elderly in Britain in recent years.

4.10 The myth of freedom to withdraw consent in the fluoridation programme.

Freedom to consent implies that it may also be withdrawn at any time. So in theory, anyone can opt out of the imposed system, by moving to an non-fluoridated area - an increasingly rare location - or by purchasing, at considerable expense, equipment to remove the contaminant from their water supply.

But in the case of fluoridation, a special objection applies, and subjects cannot effectively opt out. Half of the fluoride contained in water is absorbed and permanently stored in the body, especially in bone tissue. There is no technique that will remove this substance from the body once it has been absorbed and incorporated into tissue. It is therefore not possible

for an objector to withdraw consent effectively and fully - once exposed he or she will continue to bear the residual burden of the consequences of their period of exposure, with no possible prospect of the alleviation of the residual effects of such exposure.

Consent by those in charge of persons unable to give valid consent themselves.

Article 6 deals with the special cases of individuals who may not be able to give full and valid consent to an intervention, particularly children and those with mental incapacity. This section states that

> "when a minor or an adult is not capable of consenting to an intervention, the intervention may be carried out only with the consent of parents who have custody of the minor, his or her legal representative, or any person or body provided for by law."

Clearly, anyone who has a duty of care towards people within this category - in practice a large proportion of the populace, since it includes children - has the legal right to refuse exposure to the intervention. This right is also guaranteed under Article 12 of the United Nations Convention on the Rights of the Child.

5. The status of water fluoridation - health care or research?

An interesting question is whether fluoridation as applied in Britain and some other countries constitutes medical research. Proponents of fluoridation would argue that the evidence supporting their claims is convincing, and that therefore its imposition on large sectors of the population is not research but 'health care'. But as discussed above, if it is health care, then it is a public medical intervention and therefore subject to the issues and interpretations already discussed. Since it fails to respect the rights and fundamental freedoms of those subject to it, it is unethical and may constitute medical malpractice.

If however it is research, then the validity of its basic hypothesis needs to be scrutinised in the light of evidence from all eligible sources. In the face of increasing evidence against the hypothesis, the pro-fluoridation camp continues to attempt to establish a viable body of evidence that confirms the validity of its own hypothesis, and that the views of its opponents are wrong. The current strategy is to initiate a substantial expansion of the experimental subject base to include as large a slice of the population as possible. It is also engaged in the continued collection of data relating to the efficacy of the exposure on the dental health of these subjects. Clearly, the objective in this case is to widen the statistical base upon which the hypothesis is founded, and the activity is therefore research, regardless of whether it is well-founded or not.

Research ethics

Ethical support for any specific research topic is not the prerogative of the holders of a specific view regarding that subject. It must also take into account both contrary evidence against the hypotheses postulated by that group and the balance of potential benefit and harm that the work may present to those subject to it. This is where the pro-fluoridationists are on very dangerous ground. Recent meticulously scrutinised research confirms that the hypothesis that fluoridated drinking water reduces the incidence of dental caries is unsound. Where a medical procedure is challenged with reliable data revealing contrary results to

those claimed, and especially where these contra-indications are of such severe nature that they present a significant threat to the well-being of the subjects, then it is highly improper to actually expand the number of subjects exposed to the challenged procedure.

Millions of people are already exposed to fluoridation as a procedure, and there should already be adequate data upon which to deliver a verdict on the hypothesis. To propose that the subject base should be expanded to even greater numbers suggests that, at the very least, the statistical data supporting the hypothesis that fluoridation is beneficial are so inconclusive that only a much larger experimental population sample would be able to reveal any significant differences from non-fluoridated areas.

This is both absurd and improper. If valid scientific analysis of the current methodological basis for the experimental exposure of the population to fluoride indicates that the methodologies so far employed have been defective, and the statistical analyses dependent on these data are consequently invalid, then only two options are available. The proponents should either concede that their hypothesis is defective, and that further action would be both redundant and unethical, or they should accept that the whole adventure needs to be reformulated to provide a new and more reliable research methodology, which can the be resubmitted for ethical and procedural scrutiny by independent experts.

If, as in this case, there are clear contra-indications of a high degree of unjustifiable risk to the subjects, then expanding the scope an already defective procedure without a fundamental revision of the experimental basis of exposure, and without regard to the ethical constraints of medical research, constitutes a serious assault, which is actionable.

5.3 Human Rights limitations on medical research - comparing benefits and risks

Under the Biomedicine Convention, Article 15 explicitly states that, in medical research, freedom to carry out such work is limited by the fundamental rights of individuals, as provided for in the Convention and by other legal provisions which protect the human being. The rights of persons subjected to medical research are defined in Article 16.

Of particular relevance here is the stipulation that the risks to that person must not be disproportionate to the potential benefits of the research. As I have already discussed above, this is manifestly not the case in the fluoridation of drinking water. Indiscriminate exposure of people with an unspecified range of pre-existing or impending medical conditions to this intervention, including the obvious example of the toothless, can be of no possible benefit to many of them. In contrast, the risks of adverse effects are increased for all persons exposed to the intervention.

Article 15 also requires independent examination of the scientific merit of all research, and of the legal and social ethics of the research project, carried out by independent multi-disciplinary ethics committees. But current attempts to achieve this are characterised by assertion without valid research backing by the proponents, often accompanied by absurdly aggressive and insulting displays of temper, and a remarkable reluctance on the part of the State to submit the foundations of its policy to disinterested and competent independent scrutiny.

5.4 The issue of consent by subjects of medical research

In the sphere of research, implicit consent is insufficient. Article 16 requires not only the person's free and informed consent, but their express, specific and written consent. The total failure of the State to secure any such universal documentary consent for the fluoridation experiment - which would of course, never be forthcoming - makes it a party to an illegal medical assault which is actionable by those exposed to it.

Article 17 continues the debate in the case of those not able to give consent to research upon their persons. This Article establishes the principle that the research must be potentially beneficial to the health of the person concerned. The benefit must be real, and the risk must not be disproportionate to the potential benefit. Also, there should be no alternative subject with full capacity. It is not sufficient that there should be no capable volunteers.

Clearly, here we are entering a minefield for the pro-fluoridationist camp. Many people in the population are incapable of giving legally valid consent. Moreover, the benefits are highly speculative, whereas the risks to all recipients are emerging as quite tangible. It is simply unethical to expose both minors and the mentally disadvantaged to such research - there is a large proportion of the population capable of giving their full consent - or of course, withholding it - so an alternative research population is available.

5.5 Objection to being the subject of medical research.

Research may not be carried out on objecting persons. This reflects concern for the autonomy and dignity of the person in all circumstances. This embargo is also a means of guaranteeing that the burden of the research is acceptable to the subject at all times. Here again, the evident failure of the State to explain the full implications of exposure to fluoridation establishes that full public understanding and acceptance of such ‘full burden’ is not present, and that the research is therefore unethical and an infringement of the rights established under this Convention.

6. Relevance of the Convention on Biomedicine to other Human Rights legislation.

I have discussed the implications of fluoridation with respect to the Convention on Biomedicine in some detail, since these provide a standard by which the State’s compliance with universally accepted ethical principles regarding medication and public health management can be judged. On all counts fluoridation is shown to be unethical, whether it is classed as a health intervention or as medical research.

The protection of the rights of those unable to provide lawfully valid consent to exposure to medical interventions by the State are supported elsewhere under existing International Conventions. The UN Convention on the Rights of the Child specifically states that

> "States Parties *(to the Convention)* shall take all appropriate . . . measures to protect the child from all forms of . . . . negligent treatment, *(or)* maltreatment (Article 19) . . *(and)* shall take appropriate measures to combat disease and malnutrition including . . . . the provision of . . . clean drinking water" (Article 24)

Clearly, the deliberate contamination of public drinking water supplies with a cumulative toxin which is liable to damage the future life of the child, in the guise of prophylactic fluoridation, is totally incompatible with this fundamental right of young people. Nor is there any escape clause available that a State might attempt to invoke on the grounds of public health - the provision is absolute and inflexible.

Article 26 of the Convention on Biomedicine contains similar stipulations as that stated in Article 8, (paragraph 2) of the European Convention on Human Rights. It is important to note that the protection of the patient's health is not mentioned as a relevant issue in the European Convention as one of the factors justifying an exception to the provisions of the Convention as a whole. The issues to be considered are purely those ethical and legal issues dealt with in the legislation. The argument that an intervention may be justifiable in the interests of a patient's health, whether or not s/he agrees to it, and whether or not it is even true, is not available - in this legislation, efficacy is not a relevant issue.

9. The Human Rights Act 1998

In practice, the European Convention on Human Rights is substantially equivalent to the new Human Rights Act 1998 which is about to be implemented in the UK, although with a very important exception which I will deal with below, so I shall consider mainly the impending British - or rather, English - legislation. Scotland has adopted a similar but not identical implementation of the European Convention.

Rather than plough through the whole of the new Act itself, I have relied on guidance notes recently issued by the British Home Office for the benefit of Government Departments, since these provide an indication of the way that the Civil Service proposes to regard issues arising from the new legislation. I have quoted directly from these Guidance Notes to avoid the charge of inaccurate reporting, but the interpretations with respect to the fluoridation debate are entirely my own responsibility.

Responsibility for fluoridation

Original, the decision on whether or not to fluoridate was the responsibility of elected local authorities, and therefore clearly an official political issue in the 1960s. But the subsequent transfer of responsibility to unelected Area Health Authorities represented an attempt to turn it into a purely medical issue, with no overt political status. The power to resolve any disputes regarding the acceptability of fluoridation was therefore removed from the public and transferred to civil servants, a procedure which has been branded undemocratic and unconstitutional by the UK barrister Paul McCormick.

The water industry responsible for the actual action of fluoridation is no longer a public authority, although it might be argued that it does fall into this category if it fulfils any public role apart from its purely commercial role as a supplier of a product. Therefore no action is available against water undertakers under the Human Rights Act in England, although an action for administration of a toxic substance, perhaps under the Offences Against the Person Act 1861, might be relevant..

Prohibitions on compulsory medical treatment.

I have repeatedly affirmed that fluoridation meets all the requirements of medical intervention, and that it is effectively unavoidable for the vast majority of the public living in a fluoridated area once this contamination of the water supply is imposed. So Article 3 in the new Act - the prohibition of torture - appears at first site to be irrelevant, as it is mainly directed at more extreme forms of State oppression. But the Guidance Notes specifically state that Article 3

> "aims to protect an individual from physical and mental ill-treatment. . . . . It is relevant in a wide number of situations *(including)* failure to provide (or compulsory provision of) medical treatment . . . etc."

Subsequent sections in the Notes reflect international concern for protection of the rights of those unable to provide legally viable consent, such as children and the mentally incapacitated:

> "57. The State . . . is obliged to . . . prevent breaches of the Article by one private individual against another, particularly against children and other vulnerable persons.
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> 59. (Re) Article 3 . . . . in considering whether an act amounts to inhuman or degrading treatment, a range of factors may be relevant. For example, decisions regarding the provision of medical treatment in relation to a mentally handicapped adult may involve questions about what is acceptable in today's society."

Clearly, in the paragraph 57 this implies that the State has an obligation to prevent infringements by private organisations as well as individuals - possibly an issue for consideration by organisations such as the Water Undertakers.

Paragraph 59 clearly identifies the relevance of the ethical considerations of any compulsory medical intervention affecting those unable to decide such matters for themselves, or to provide valid consent.

This is not the only section of the new legislation concerned with medication. Article 8 also deals with the requirement for consent to medical treatment. As the Guidance Notes indicate:

> 61. Article 8 covers a vast range of issues and subjects, including . . . . consent to medical treatment,
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> 62. A public authority may not interfere with these rights except:
> - in accordance with the law;
> - and where it is necessary in a democratic society in the interests of . . . . the protection of health

Exemption from liability under Article 8 of the Act

The exceptions stated in Paragraph 62 of the Guidance Notes give rise to considerable alarm about the new legislation. They quite explicitly exempt the State or its agents from restraint from infringing human rights of the population if there is already enabling legislation which permits an infringement, or even if it considers that an infringement is a valid method of public health protection.

As far as fluoridation is concerned, this is a very serious defect in the impending legislation. In England the requisite legislation is already in existence, as the Water (Fluoridation) Act was passed in1985, and subsequently incorporated into Section 87 of the Water Industry Act 1991. This was a blatant Government manoeuvre, designed to nullify the sanctions implicit in the important decision in the Scottish case of McColl v Strathclyde Regional Council, 1983, in which fluoridation was held to be ***ultra vires*** the water authorities, and therefore unenforceable.

Legal and procedural remedies available to subjects of fluoridation.

Under the Human Rights Act, the validity of any oppressive enabling legislation may be challenged if it appears that the State has given itself the power to carry out a medical intervention which is incompatible with the fundamental rights of the populace, as specified for example under the provisions of the Convention on Biomedicine. So it appears that there should be an effective remedy to the injustice of compulsory fluoridation under the Human Rights Act.

As Section 25 of the Guidance Notes states,

> "Where it is not possible to interpret subordinate legislation compatibly with the Convention rights, the court may quash or disapply the legislation or a provision of the legislation. But where the legislation or provision has to say what it does because of a provision of primary legislation, then . . . . a higher court can make a declaration of incompatibility."

(Note the use of the words ‘may’ and ‘can’ in this extract - no element of compulsion is denoted by this statement.)

The principle of restoring human rights by declaring legislation in contravention of fundamental freedoms is affirmed elsewhere in international agreements - for example Article 23 of the Convention on Biomedicine requires Parties which are Signatories to the Convention to provide for the possibility of judicial action to prevent or put a stop to an infringement of the principles set forth in the Convention.

Article 23 covers not only infringements which have already begun and are ongoing but also the threat of an infringement. And Article 24 establishes that any person who has suffered undue damage resulting from an intervention is entitled to fair compensation, a remedy which is also available under Article 50 of the European Convention on Human Rights, which allows the Court to afford just satisfaction to the injured party. So what is the position regarding possible revokation of the fluoridation legislation contained in existing English law?

Exemption for fluoridation in English but not Scottish Law

Section 6 of the new Act states boldly that it is unlawful for a public authority to act in a way which is incompatible with fundamental human rights. Unfortunately, it seems that in Great Britain as a whole the rights of some are deemed to be greater than those of others as far as the respective legislative codes concerned, and citizens living in Scotland are at a distinct advantage over the English.

In the Scottish legislation the express requirement that any existing incompatible legislation that infringes a person's human rights under the new legislation must be remedied is retained, reflecting a close acceptance of the principles of the original European Convention on Human Rights. However, as far as fluoridation is concerned this obligation has no force in English law! There is an explicit exemption attached to Section 6 of the Act, stating that an infringement by a public authority is exempt from the provisions of the Human Rights Act if primary legislation exists that dictates that the Authority could not have acted differently. And as I have pointed out above, the Guidance Notes make no mention of compulsory removal of any oppressive existing legislation - the Government may or may not take remedial action according to its whim.

The State has therefore exempted itself from automatically having to revoke oppressive legislation, even if a Court declares fluoridation incompatible with the rights of the people under the Human Rights Act. Since fluoridation is a part of official Government health policy, as expressed in s. 87 of the Water Industry Act, the reservation explicit in section 6 of the new Act means that opponents of fluoridation cannot force Health Authorities to reverse their policy and actions, regardless of the fact that they constitute a clear infringement of public human rights and any reasonable code of medical ethics.

The position with respect to Local Authorities, who may be called upon to state their own views on fluoridation, is uncertain. Since their original responsibility to determine local policy on the issue has been removed, it may be argued that they are no longer liable for any infringement of rights as represented by fluoridation. However, as representatives of the people, they may be forced to reconsider support of what is an oppressive and unethical medical intervention imposed on their electorate by the unelected Area Health Authorities.

This exemption lurking within the new English legislation clearly poses a problem to those opposed to fluoridation. Primary legislation exists that is incompatible with the free exercise of the fundamental human rights of the population, yet the English Parliament cannot be compelled to revoke the legislation that permits this infringement to continue. In this case, recourse to the European Court may be the only remedy open to English citizens. However, in Scotland a successful appeal to the Courts would require automatic revokation of the mandate to fluoridate drinking water supplies, an action that would inevitably set a powerful exemplary precedent for the English Parliament.

Elsewhere, it may be that in States such as the USA, where medical malpractice suits are far more common and lawyers geared up to less restrained confrontations, a precedent on ethical grounds could be more easily established, and the war between the two sides effectively won there, rather than in modern lethargic and undemocratic England!

10. Conclusions.

The application of the Human Rights legislation, internationally, throughout the European Union and nationally, is still in a state of confusion. The British Government in particular is notorious for its reluctance to grant its citizens the same rights and freedoms that are enjoyed in numerous other countries, and there is no reason to suppose that it will rush to rectify its past and present mistakes and offences against the persons of its subjects now that unsatisfactory new legislation has at last been introduced.

In respect to the attempt to impose the universal fluoridation of the public water supply in the UK, the strongest existing framework for resisting this is the Convention on Biomedicine, since it provides a clear and precise ethical framework dealing with all of the main issues raised by the fluoridation programme. In some respects the requirements of this Convention, particularly in respect to the rights of children and the mentally handicapped, are supported by specific sections of the UN Convention on the Rights of the Child and the European and UK Human Rights legislation. However, the clear and unreserved requirements of the International Conventions are far more strongly stated than the cleverly-worded UK legislation which actually fails to guarantee that legislation that infringes basic human rights will be removed or amended if there is evidence that it is oppressive and unjust.

The strength of the new UK legislation in upholding the principles of justice relating to infringements of the basic human rights of its citizens has not yet been subjected to more than perfunctory testing so far, and it is by no means certain that the manifest usurping of human rights expressed by the fluoridation will be remedied in the courts.

However, if fundamental human rights within the narrow field of medical interventions, as expressed and defined in the Convention on Biomedicine, are indeed held to be exactly that, then there seems scope for arguing that any parallel national legislation purporting to protect human rights (namely the Human Rights Act 1998) should therefore accept that the scope and definitions established under the Convention are also applicable to the new British legislation.

In such case, the arguments that I have proposed above could provide the basis for action under the new Act in the UK and elsewhere. If the Courts held the principles of the Convention to be valid here, then this would open up the possibility that equally offensive and misguided fluoridation interventions in other countries could be fought under the same banner, leading to the end of this grotesque malpractice by the State in the guise of acting for the benefit of the people - regardless of whether the people want or need such imposed ‘health care assistance’.