

Civil liberties under Labour: the wasted years

Roger Smith examines the record of the Labour government in relation to civil liberties.

Oh, irony of ironies. David Davis thinks there is electoral advantage in moving to the liberal side of Labour. He has launched a Tory campaign against identity cards and extension of pre-charge detention. So, the Labour government's decade-long attempt to blindside its main opponents ends with a government more royalist than the king.

Two cases summarise the Labour government's inherent anti-libertarianism. The government went to extraordinary, if ultimately incompetent, lengths to get legislation to remove Brian Haw from his demonstration against the Iraq War outside parliament and to prosecute Maya Evans for reading the names of the dead a couple of hundred yards further up Whitehall. All in the name of protection against terrorism.

The interesting issue is how Labour got itself into the position of penalising demonstrators against wars when its own senior membership had

it, and it alone, was "the party of law and order in Britain today". The Tories were lambasted for "forgetting the order part". Labour wanted action: the conviction of more offenders, a crackdown on petty crimes, more gun control and fast-track punishment for persistent young offenders. The manifesto gave prominence to the Blairite mantra of 'tough on crime, tough on the causes of crime'.

A major Labour priority was to wrest criminal justice from the Tories and make it a Labour issue. Accordingly, the Home Office became a prime source of Mr Blair's concern. And how active he has been. Remember the centrepiece legislation of his period in office: the *Criminal Justice Act 2003*. It was so deliriously long – 339 sections, 38 schedules. No chance of parliament stopping that – or even scrutinising much of it. How it showed a government and a Home Office at the height of their powers – six years into office and still three years from any deflating declaration of 'not fit for

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such personal histories of activism in movements such as that against apartheid. The party's natural position is surely much more libertarian. After all, two senior ministers, Harriet Harman and Patricia Hewitt, started in public life as senior officials in what was then the National Council for Civil Liberties.

Nor, as Labour approached 1997, was there particular evidence that it intended to lead an unprecedented assault on traditional civil liberties. On the contrary, its manifesto promised, and we got, the *Human Rights Act* – a stunning advance in the protection of rights that became a rock so strong that a number of the government's later authoritarian initiatives were wrecked upon it. Any assessment of Labour's role has to pay tribute to its commitment to legislation that transformed the whole concept of rights in the United Kingdom. That was an enormous achievement for which the Prime Minister is entitled to the credit. It provides a glimpse of a more libertarian road, down which Mr Blair might have taken his government.

There were, however, counter currents. Also in the 1997 manifesto was Labour's boast that

purpose'.

Yet, even a strong policy on law and order and the attraction of grindingly long legislation did not require Labour setting itself up to assault civil liberties. This came from the fatal combination of an attraction to spin with a deep culture of managerialism. Both were general conditions, not specific to criminal justice. Of the spin, let us say no more. The managerialism merits attention. Targets became the norm over whole swathes of government policy. In origin, managerialism derives from a fundamentally democratic position: that governments matter and should be measured. It is a doctrine, however, which needs to be tempered by realism.

The Blair government believed that, by its policies, it could decrease crime. At the heart of this was a fatal hubris. Governments may control some but not all the causes of crime. For example, the incidence of offending in Labour's first decade was always going to be affected by the consequences of the break-up of once settled communities, previously held together by a strong industrial and mining economy erased over the previous two decades. Labour was willing, however,



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fearlessly (not to say foolishly) to accept responsibility for the breakdown of social cohesion. On the one hand, it identified social exclusion as an issue and poured in funds. But, beware a liberal rebuffed. Refusal to respond appropriately merited government intervention at an ever-lowering threshold. Youth policy targeted children before they offended and in some cases before they were born. Behaviour was sanctioned at levels well below that which is criminal.

Anti-Social Behaviour Orders, introduced in 1998, provided a model for a raft of civil injunctions, breach of which gave rise to criminal and, often, penal consequences. Thus, we have such as: Sexual Offences Prevention Orders; Drink Banning Orders; Control Orders; and soon Serious Crime Prevention Orders. All are obtainable on a civil burden of proof but can lead to imprisonment – even, in the case of an ASBO, for behaviour which itself would not have been imprisonable or even an offence. More broadly, the Labour government deliberately proclaimed its mission to ‘rebalance’ the criminal justice system – setting itself against the traditional protections for defendants and successfully triangulating itself against its natural libertarian allies. How better to attract *Sun* and *Daily Mail* readers than to get its proposals attacked by stuffy lawyers and long-haired civil libertarians? Thus, the right to silence was cut back and previous convictions more easily brought before the court. The right of jury trial in serious fraud cases has remained only because the House of Lords has seen off three attempts to truncate it – with one more in the offing.

Reality has, of course, a habit of intruding. Prison sentences got out of control because sentencers listened to the mood music of Home Secretaries like David Blunkett

rather than his carefully crafted words. Out of the window went a sensible policy of bifurcation – prison only for serious offenders, community punishment for others. As a result, we have the return of the ultimate image of failed policy: the off-shore prison hulk.

Terrorism also intruded. We have here to be fair to the Blair administration. It is naïve to think that the implications of 9/11 would not have presented a severe challenge to the commitment of any state to the freedoms of those within its power. No government could afford to look weak at such a time, least of all a democratic one. But Labour did not help itself. The whole analysis behind the *Anti-Terrorism, Crime and Security Act 2001* was that the threat was external. That became increasingly hard to sustain as time went on. Why did it take a House of Lords judgement to make the government re-legislate? Why, when it did re-legislate, did Mr Blair seek to make anti-terrorism a party political issue and force a controversial bill through both Houses of Parliament in a scandalously short 18 days? Was it because he cared less about the legislative process than the making of a gesture to a country weeks away from a general election?

Many questions will be asked of Mr Blair’s time in office. Few will be more pertinent than to ask why the best Home Secretary of recent times was Douglas Hurd, not any of the four who have served under Mr Blair. And why a party traditionally marshalled under the banner of libertarianism marched to so illiberal a tune when, after its time in the wilderness, it found itself in office with such a crushingly large majority.

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