

Civil Liberties and Security

ANTHONY GRAYLING

Civil liberties exist to protect individuals against the arbitrary use of state power. They include rights to individual freedom, privacy, the secure possession of private property, the expression of opinion without prior restraint, and freedom to hold and exercise personal beliefs provided doing so does not harm others.

Central to civil liberties is the idea of a due process of law, consisting in a set of procedural formalities and restraints which protect the innocent, assure equal treatment to everyone, and require the authorities to show good cause why they exert state power over citizens, not least the powers of arrest and detention.

Tyranny exists wherever civil liberties do not exist. Think of a typical police state such as Soviet Russia in the period of its worst excesses, where men in leather coats knocked on doors in the darkest hours of night and took people away to torture and imprisonment without trial, or worse, because there was no regime of civil liberties, no institutionalised protection for human rights, to stop them doing it. The modern democracies of Western Europe are of course a long way from being tyrannies, but from Germany to Ireland too many of them are going down the alarming road of compromising civil liberties in the supposed interests of fighting terrorism and crime.

The price of liberty, it is said, is eternal vigilance. Authorities in all countries and at all times, even in Western democracies, find themselves inconvenienced by civil liberties because civil liberties make the job of policing society more difficult. In particular, and to the great irritation of governments everywhere, they interfere with the authorities' ability to detect, arrest, prosecute and convict bad people.

But there is a good reason why civil liberties make the work of the authorities more difficult in these respects, quite deliberately so: namely, to protect the great majority of people who are not bad. The

inconvenience of the authorities is the freedom of the people, and it is a price richly worth paying for all that matters to individual freedom and open societies.

The civil liberties which until now have served to define the open democracies of the Western world are taken for granted until something like the Criminal Justice Bill comes along to call them into question. People forget how very far from easy it was to achieve these civil liberties in the first place. It took centuries of hard and often bitter struggle to get them. Think of what had to happen in order for the ordinary twenty - first century Western citizen to attain the position of a free citizen protected in his rights by law. The process began in the sixteenth century reformation; first, the hegemony of a single church over the minds and lives of individuals had to be broken. Then absolute monarchy had to be challenged, and replaced by more representative systems of government.

Both processes were sometimes revolutionary but mostly evolutionary. They were plagued by setbacks, and made painfully slow and difficult by the reluctance of those in power, both ecclesiastical and temporal, to give anything away. Many died in furthering the cause of liberty - in fire at the church's stake, in chains in royal dungeons, on the battlefield. Their story is the story of the price paid for the civil liberties enjoyed today.

It is astonishing to think that the ordinary citizen of a democracy today enjoys rights, freedoms and possibilities that a few hundred years ago were only available to the very few: to aristocrats and senior churchmen. We are all aristocrats now in the degree of our liberties and opportunities, because we have replaced the rule of might with the rule of law. No arbitrary ruler can throw a citizen into prison at whim; there are institutions and practices that buttress the individual's liberties.

Among them is trial by jury, the need for proof to be brought before a court where it can be tested properly, and a presumption of innocence for anyone accused by the state committing crimes.

Any society which goes into reverse because it is facing hard times betrays the long history of struggle for institutions and a way of life according to ideas of rights and the rule of law. It betrays itself by betraying the principles on which it has come to be based. The test of a society's strength and maturity is whether it can stick to its principles in the face of difficult challenges.

The main point of civil liberties is to make, and to hold open, a space for individuals to choose their own way of realising what they choose to value, consistently with not harming others. The highest good for an individual is autonomy and the relationships freely nurtured within that autonomy. Without the protection of civil liberties, individuals are all too likely to have to live lives chosen for them by others.

Terrorist atrocities in the United States and Europe – the 9/11 attacks on New York and Washington, the London transport and Madrid train bombings – have hastened a process which had already begun in these advanced parts of the world: the process of eroding civil liberties by the increasing application of new and powerful technologies for surveillance of civil populations, for longer detention of suspects and easier criminal prosecutions, supported by laws increasing the powers of government and security services to do so.

In illustrating this point I shall use the example of the United Kingdom, which is the advanced democracy where surveillance has progressed further than any other, where the authorities carry out the most comprehensive centralized recording of personal data, and where the contrast between these developments and the liberties of a traditionally liberal society are especially striking. As a test case for the problem of the tension between questions of security and liberty, the United Kingdom is a paradigm.

The arguments in support of liberties - reducing security developments in all countries are various: illegal immigration, crime, the desire and in some cases need for greater bureaucratic efficiency, and the “war on terror” (a phrase now acknowledged even by governments as a mistake) have all been cited, and the terrorist atrocities just mentioned served as a powerful boost for the view that the rules of the game had

changed, in the sense that whereas talk of civil liberties has been all very well in a less dangerous past, it was no longer applicable.

This was exactly the message that Mr. Tony Blair, while Prime Minister of the United Kingdom, gave out quite soon after saying, in the wake of the London transport bombings of 7 July 2005, that “the terrorists will never change our way of life.” Shortly afterwards he proceeded to announce that our way of life was to undergo major changes in the direction of reducing civil liberties for the entire population so that the small minority of terrorists, criminals and illegal immigrants would be easier to detect. The chief proposed measures included biometric identity cards linked to a central computerised National Identity Register, and an extension of detention of suspects without charge or trial to three months. Sufficient commitment to the idea of civil liberties defeated this latter proposal in Parliament, but in a country where, once, a possibly innocent person could not be detained by the authorities for more than 48 hours without showing good cause to a magistrate, such suspects can now be held for a month.

But even before terrorism became the prime justification for such draconian measures, Britain had become the most watched country in the world, with closed circuit television cameras monitoring large swathes of public space. When this measure was first being rolled out there were no complaints; the cameras were regarded as doing – and more effectively – the job of policemen on the beat, and could be regarded as an enhancement of public safety.

But the conjunction of widespread CCTV monitoring with other policies at last began to prompt concerns. Suggestions were made that microphones could be added to the CCTV cameras to monitor conversations in the public spaces of British towns. As these words are written, measures are before Parliament for collection of electronic communications data – information on the senders and addressees of every telephone call made and email sent by every citizen is to be passed to government and stored. New and extensive powers have already been taken by government for the security services to access citizens’ private health, employment and banking records, and to eavesdrop on the content of communications directly. The wholesale

invasion of privacy represented by all these measures, from the CCTV cameras to the recording of personal communications data, constitute a massive change in the relationship between the citizen and the state, and turn the state into a snooper, a Big Brother institution, whose instruments of surveillance and control are premised on the idea that every citizen is a potential suspect, and must be treated as such.

The motivations for these developments, apart from the publicly stated ones of increasing security against terrorism and crime and combating illegal immigration, are twofold.

One is the fact that governing political parties believe that they must be seen by voters to be doing everything possible to combat terrorism and crime, so that they can be re-elected.

They see no votes in the statesmanlike alternative of reminding the public that civil liberties are precious and involve risks, and that security measures, though important, must not be allowed to compromise the long - fought - for and hard - won liberties that until very recently defined the modern Western world.

Moreover, full - time salaried legislators will, in the absence of better things to do, fill their time with passing legislation that supports the aim of being seen to be doing everything possible (and therefore mainly unnecessary) in the face of terrorism and crime: and the result will be laws that reduce civil liberties far more even than they are intended to do. For example: anti - terrorism legislation is now regularly used in Britain for such purposes as arresting demonstrators (two students reading aloud near Parliament the names of British military casualties in Iraq were arrested under this law), ejecting hecklers from party political meetings (a pensioner was removed under this law from a Labour Party conference for heckling the Prime Minister), freezing the assets of foreign banks (as in the case of branches of Icelandic banks during the 2008 credit crisis), and more. "Mission creep" and the doctrine of unintended consequences are making the new security laws a catch - all for control and suppression unimaginable even a decade ago.

But the principal driver of the new liberties - reducing measures is technology. The fact that electronic communications are wide open to monitoring and tracking - for just one example of the totality involved here: an individual can be located geographically by his mobile telephone signal, so not only what he is saying but where he is saying it is transparent to observers - has been the major factor in dismantling privacy, now a thing of the past. The gathering and examination of data by computer, "profiling" of travellers at airports, random visual and audio monitoring of the populace as it goes about its daily business, is all possible because of the already and growingly sophisticated equipment available to security services, licensed by government.

The biometric data identity card scheme is the classic example of how the new surveillance - state dispensation is being driven by technology - and by the commercial interests behind technology. The biometric data companies have persuaded the British government that they can provide a universal identity card scheme in which iris patterns, fingerprints, DNA, and all personal details from address and employment data to health and bank information can be instantly accessed by chip and reader device. The chip can be the size of a dot the size of a full - stop in this text (see the websites of the biometric data companies for this claim: it is in the public domain), and therefore if plastic cards are regarded as too insecure - easily lost, stolen or damaged - the full - stop - sized dot can be implanted under the skin of a wrist or in an ear - lobe.

The British government, in introducing legislation for a universal ID card scheme of this kind, attempted to deflect criticism by saying that the ID cards would in the first instance be voluntary, and that citizens would not be required to carry them at all times for production on demand by the authorities. These claims were not, because they cannot be, taken seriously: it is plain that a comprehensive ID card scheme would be pointless unless it was compulsory, and worthless unless every interaction between the state and the citizen were verified by the latter's proof of ID. So the question that this writer asked a British government minister, namely "What is the difference between a biometric identity device implanted under the skin of one's wrist, and a

number burned onto the surface of the skin of one's wrist?" becomes a particularly telling one.

For such a device – and we must speak bluntly about this, alas: such a device is used to keep track of cows and dogs, and in the form of a burned number on the arm was employed in the camps of the Holocaust – is equivalent to a motor vehicle license plate, for ease of tracking and monitoring, controlling and directing.

The period in Western history from the sixteenth century, when only aristocrats and senior clergy had any freedom and entitlements, to the late twentieth century when individual freedom, justice, free speech, privacy, democracy, and a due process of law protecting individual rights against the power of the state, saw a hard struggle to get these rights, in every case wrested with often bitter difficulty from the hands of privilege and power. These rights have been defining features of “the West” until very recently, and they are enshrined – or are meant to be enshrined – in the international codifications of human rights such as the UN Declaration and associated Conventions on human rights.

The rights to life, liberty, privacy, freedom of conscience, participation in the political process, and a due process at law designed to protect even the guilty individual from abuse and undue treatment, are marks of a civilized, mature society. It is the tragedy of our time in the West that this hard-won framework is being dismantled, quickly, heedlessly, for reasons of expediency, on the basis of over exaggerated fears, in the interests of managerial ideals of bureaucracy, encouraged by technology - producing companies who see vast profits in national schemes of surveillance and security.

Matters have already gone too far: but that is no reason not to protest, and to take action to reverse some of the worst features of what is in place and to come. In Britain, here used as a prime example of this disastrous process, a groundswell of opposition has been gathering momentum, and in 2009 has taken the form of a wide federation of interests in the Convention on Modern Liberty. The task of reclaiming civil liberties from the security state has begun; and one of its mottoes is

Beyond the Ballot Box

the observation of Benjamin Franklin, "Those who would exchange their liberty for security deserve neither."