

## LIBERTY AND SECURITY - Conor Gearty 9 July 2012

The contemporary discussion about secret trials in the UK echoes earlier controversies about TPIMs, control orders, detention without charge, special advocates, the use of torture – the list seems depressingly endless. Defenders of the rule of law and of human rights appear permanently on the back foot these days, desperate just to stay in the game and having long given up any notion of making the running themselves. For most of those working in the field (whether as lawyers, activists or scholars), the goal is survival not success.

Why should this be the case?

What has made it so difficult to argue positions that – until really quite recently – were taken largely for granted?

I have been thinking hard about this over the past few months as I have been finalising *Liberty and Security*, a book to be published later this year (or early next) by Polity Press. It is about the shape that these words ‘liberty’ and ‘security’ have taken through time and from place to place, how much they have been realised and for how many, and what their standing is today. In reflecting on these questions I have, I believe, stumbled upon an unattractive global trend, which in the book I call ‘neo-democracy’.

I want to use this short post to explain what I mean by this and - hopefully - start a discussion.

The key to understanding ‘liberty’ and ‘security’- and therefore to identifying how these words work today – is to see that while their core meaning is not hard to work out, it is the reach of the benefits that each word so powerfully evokes that truly matters.

- It is the ‘for how many’ issue that mainly concerns me: to whom are liberty and security to be extended?
- Is it to be to all or just the few?
- If it is to be to all, is it to be through community, state, non-state, regional or international action?
- If guaranteed for all, how practical in their reach do these theoretical commitments prove themselves to be?

I think that the central arguments over liberty and security have really always been about this issue of remit rather than of meaning.

My book argues for a particular approach, one that regards the benefits of liberty and security as being rightfully available to all, and thereby capable of reaching (being required to reach) the many rather than the few. It does not argue the ethic of such a perspective from first principles. Instead it rather takes the moral desirability of universality for granted – as most societies now *say* they do (whatever about how they truly act). Viewing liberty and security in this all-inclusive way shapes how I approach both the past work these words have done and the present-day reach that (I say) should be consistently accorded to them.

This is not as easy as it looks.

*Saying* is not *doing*. A different approach is reflected in the growing presence of walls in divided societies, blatant efforts by the ‘haves’ to shut out not only the sight of the ‘have-nots’ but also any

opportunity the unlucky many might have to glimpse what a better future would look like. Israel's 'partition fence' might be the most well-known of these but it is by no means the only one: see <http://www.marketplace.org/topics/economy/separation-barriers-world> And when where there are no physical walls, our neo-liberal society has increased embraced metaphorical walls even while it has ostentatiously embraced the virtues of the level playing field.

And important bits of our shared history might be on the side of the neo-democrats.

If we look to the past, neither 'liberty' nor 'security' has been routinely understood in the broad terms for which I argue. Indeed the primary understanding of liberty and security in the pre-democratic era was always narrowly selective as to who was to benefit from the opportunities afforded the one and the safety delivered by the other. It was only when the radically egalitarian idea of community self-government took hold on a national scale that liberty and security found themselves open to being wrenched out of their elitist corrals and offered to all.

Democracy gave the universalist reading of liberty and security an entry point and strong support but it could not by itself deliver effortless supremacy for the reach that this approach affords these words. This was because (as I argue in the book) the democratic victory was itself incomplete, a freedom for all that was invariably not forged afresh but rather tentatively grafted onto a pre-existing society that had been designed for the few.

Old elite readings of liberty and security persisted into the democratic era, jostling for space with their egalitarian interlopers.

This takes me to the central argument in the book, the one that I wanted to flag up in this post.

Around the world we are drifting towards a post-democratic ('neo-democratic') model of government. This is a polity that increasingly wears democratic clothes as a disguise rather than a proud necessity. So we see these old, pre-democratic meanings of the terms returning into popular use, underpinning and explaining readings of liberty and security which remain apparently universal but are now falsely so – words that hide inequality and unfairness by seeming to reach all when in fact in their practical impact they are tailored to the few.

It is not just the so-called emerging democracies that are in reality neo-democratic in this sense: increasingly it is places like the US, the UK and even the UN itself. Former authoritarian states are reaching up to neo-democracy while the old democracies are stooping down. They are meeting in the middle, in virtual democracy: this is the world of secret trials, special advocates and so on.

My book argues that we should recover the universal in liberty and security, restoring the egalitarian thrust that drove the turn to democracy that was such an important feature of the evolution of universal freedom. Such a move has two important allies in its quest to impose its version of the truth, two large-scale movements that have had a beneficial impact across the world.

The first, the rule of law, predates the democratic turn but complements it, maintaining that everyone must be subject to the same laws and (just as critically) that the maker of any given law should not at one and the same time be its authoritative interpreter.

The second, the human rights movement, is of more recent origin (at least insofar as we understand the idea today); the very way that its self-description dedicates itself to all humans reveals the

commitment shown by human rights to an egalitarian vision of the world, one in which we all should have a right to the freedoms that were once assumed to be the privilege of the few. And human rights today also reaches beyond the protection of liberty (narrowly defined) to encompass rich readings of human security, the sort which democratic government once made popular. It is about much more than this or that law, just as it is not about selfish choices masquerading as entitlements – it is about universal freedom.

The neo-democratic turn in contrast wants us to regard democracy, the rule of law and human rights in this sense as outmoded. It wants us to see these ideas as ‘old hat’, incapable of coping with the challenges of the modern global world, the rise of extremism, climate change, the movement of capital, population growth, refugees, etc. The proponents of neo-democracy (conscious and unconscious) are happy to see the terms ‘liberty’ and ‘security’ contaminated by misuse, forsaken by those who should love them most as creatures of illusion and hypocrisy.

True liberty and security – that is liberty and security for all and not just the already empowered few – depends on recovering the finest meanings of these terms and then using them as offensive weapons against the onward surge of the over-privileged minority whose ideal world would see liberty and security as their exclusive preserve alone. They must be resisted. It is time to get back on the front foot.