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One of the more remarkable side-effects of the financial tsunami that has gripped global capital is that issues that were once believed to be of the greatest importance suddenly seem not to matter. A good example is 42 day detention without charge. Until the UK prime minister found other matters to detain his attention, the need for this quasi-internment power was deemed to be such that no end of opposition from a host of experts, ex law officers, politicians and even former security service chiefs could persuade the government to relent. Then suddenly, after the latest in a long line of defeats in the lords, the Home Secretary Jacqui Smith appeared simply to give up, announcing in a grumpy sort of way that the counter-terrorism bill would now proceed without this provision.

Though emphatic, the victory for civil liberties is not as complete as might at first appear: the government's retreat is tactical not strategic. The Home Secretary was clear that she would return to Parliament with a short bill 'to enable the police and prosecutors to do their work should the worst happen, should a terrorist plot take us and threaten our current investigatory capabilities.' The assumption is almost explicit that the lords would not dare to do their civil libertarian duty once again in the atmosphere of panic and anxiety generated by an attack (or the imminence of an attack) of this sort. We are back in the familiar territory of the politics of the last atrocity, the tried and trusted method used by successive governments in this country to force through legislation that under the calm scrutiny afforded in less chaotic times would have no hope of success. It was by these means that the Prevention of Violence (Temporary Provisions) Act was rammed through in the space of a few days in August 1939, to deal with an IRA threat that posed a serious but not fundamental challenge to the criminal system. This was the law that was to form the model for the prevention of terrorism legislation rushed through in the immediate aftermath of the Birmingham pub bombings in 1974. A similar set of provisions was enacted in a matter of days in 1996 when the then Home Secretary Michael Howard demanded new powers to deal with an extreme IRA threat that in fact never materialised. After the 1998 Omagh bombing, yet more new powers were added to the arsenal of state counter-terrorism.

It needs to be remembered that it was never satisfactorily established that any of these laws would have stopped the attacks (or the imminent attacks) that were in each case their supposed rationale. Indeed the governments of the day have rarely even claimed this, being content to use the fact or threat of violence as a sufficient justification, without more, for new laws of its choice. And we should also recall other aspects of these anti-terrorism laws: how much pain and suffering they have caused to the innocent (as well as from time to time no doubt the guilty – though the ordinary criminal law would always have been enough for them); how counter-productive they have been in the way that they have alienated the communities supplying the violent extremists they have sought to counter; and how corrosive they have been of Britain's commitment to freedom and the rule of law. But which lords will be brave enough to say all this on the night of a 'terrorist outrage' or during some early morning debate when the latest Home Secretary speaks as Michael Howard did in 1996 of an imminent albeit not yet realised terrorist attack? On the day after the withdrawal of the 42 day power, the Prime Minister's security adviser Lord West told peers of

'another great plot building up again' which 'we are monitoring'. The threat, he said, is 'huge'. Now Lord West's inability to stay on message had already turned him into a slightly comic figure and these remarks were duly played down by security sources. But this is choice. Supposing he says similar things in six months and Mr Brown and Ms Smith decide to make a large-scale issue out of the advice that this man has given them? We will be immediately back in the territory of 42 day detention via a one line bill, there being once more 'a terrorist plot' which 'take(s) us and threaten(s) our current investigatory capabilities'. And of course all of this will have to be taken on trust.

The economic crisis is the reason that the government withdrew here – civil libertarians should use the breathing space it has given them to address the fault lines in the government's whole approach to the problem of terrorism, in particular the fixation of ministers on ever-broadening police powers as a central response to the security challenges that they (undoubtedly) face. To do this effectively, it is necessary to engage thoughtful members of the government, included among whom is the prime minister, on the question of how all this can be squared with the importance accorded to liberty in the minds of many of those in the cabinet: Mr Brown alone has delivered two speeches on liberty since he has become Prime Minister.

Civil libertarians need to acknowledge that there are theories of freedom which point in the direction of the kind of security-centred state which empowers the executive to do all that is required in the name of the protection of the people. Thomas Hobbes's notion of a *Leviathan* which protects people from the consequences of their own liberty (in a pre-governmental state of nature) is one; the old republican idea of a free state able to do what it takes to protect itself from its enemies is another. Both have respectable antecedents and each does not baulk at bringing the forces of the state to bear on those who are believed to be of suspect loyalty. Civil libertarians want to protect not just the majority but also the minority communities and individuals who are exposed under these two approaches to liberty: their version of freedom fits much better with the diverse communities which make up the nation states of today. They can most effectively do this by arguing for a version of liberty that is rooted in the human rights insight that each individual and community matters and that no majority interest (even one ostensibly rooted in the imperative of liberty - protection) should be allowed to destroy lives. This does not mean that action cannot be taken against those who would cause death and injury within the state for political ends. But it does require that any such coercive move by the state be publicly accountable and that no one arm of government can secure a blank cheque for all that it does through the simple expedient of stamping its actions with a 'national security' label. Engaging in this sort of discussion now might help reduce the effect of the politics of the last atrocity when next they appear (as they surely will) as a driver of emergency legislation.

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