

I first wrote that Britain was in danger of becoming a police state in this journal, in June 1986. The occasion was the Public Order Bill that was then before Parliament. Our civil liberties were being 'horribly squeezed' by an increase in police power that was producing a 'distressing drift into discretionary law.' I ended by declaring that a 'police state, even a benevolent one, is not a free society for long.' I wish now I had not used that phrase: it was too shrill for the circumstances it sought to describe, drawing too quick a conclusion from too flimsy a factual base. Yet if we are to believe many of the enthusiastic champions of freedom at the recent Liberty Convention we are still –twenty-three years later – on our way to becoming a police state or a 'surveillance society' or whatever the latest colourful label is to describe the decline of freedom in Britain. The point is as overstated today as it was when I made it in 1986.

First it reveals a serious lack of historical perspective. When was this golden age from which we measure the decline? Subsequent work on this point has convinced me that it has never existed: that if anything in recent years the power of the police and of the state generally has been regulated by statute in ways that simply did not exist in years gone by. Until quite recently the police simply did whatever they wanted and the common law (for which read reactionary judges) upheld them in court on the very rare occasions that they happened to be challenged. Before that the military turned up, read the riot act and either shot you or threw you out of the country. Odd though it might seem to say, the existence of laws on state power may actually point to a move *away from* rather than *in the direction of* a police state. Two examples of this are the rules regulating the interception of communication which were brought in to replace an entirely unaccountable executive scheme which had operated for years in total secrecy, and a recent house of lords decision on public protest which overruled police use of the common law on the basis that the police should now work within the statutory framework that parliament had enacted for them. This is progress.

Second there is the naked selectivity of much of the current discussion on liberty. Proponents of the 'end of freedom' hypothesis seem simply to ignore all evidence pointing the other way. But there is a very great deal of this indeed, at least since 1997 – devolution legislation; the Freedom of Information Act; the Data Protection Act; and (above all) the Human Rights Act 1998 together with the many judgments under that Act which have been accepted by the executive even where these have not been to its taste (the 'Belmarsh' detention case for example). A similar kind of mistake is made with regard to the common law, often treated by proponents of liberty as a beautiful work of freedom which has been irreparably damaged by the intrusions of a big brother state. But without legislation it would still be ok to engage in racial discrimination, to deny women the full rights of personhood and to prioritise individual property rights to the exclusion of other public interests. The new legal action available for breach of privacy would not exist without the Human Rights Act. There have been many occasions when progressives have needed the state to save society from the common law.

The third problem, linked to this, is one of proportionality. For advocates of the end of freedom thesis, it often seems that any evidence of state intrusion will do in support of their case. This makes it impossible for them to discuss the rights and wrongs of particular interferences: all is always bad in all possible cases. The reality however surely is that some governmental intrusions are defensible and some are not. CCTV cameras save lives and secure convictions of bad people that might otherwise not be achieved. DNA evidence has the potential to transform the process of crime detection in this country. The interception of communications can play a vital part in preventing

serious wrongdoing. Of course these powers can be abused and so must be controlled in a way which balances their importance with the risk that they impact on personal freedom too severely. It is not enough to rule out all discussion of this new technology as inevitably unacceptable, yet this is what many of today's self-styled defenders of liberty seem to do. And doing this in such an indiscriminate manner means that we lack the verbal tools to critique truly unacceptable exercises of state power on the occasions that these arise – if everything is always condemned, nothing truly is.

The idea that the state is an unwarranted assault on individual freedom is not a progressive one. This kind of libertarianism works to protect privilege by cloaking the advantages of the rich in the garb of personal autonomy, individual freedom and the 'human right' to privacy. It is not at all surprising that the Liberty Convention is attracting strong support from those on the Right of politics, politicians who hanker after a golden age of rights for the rich and responsibilities for everyone else. But the Left, or at least those parts of it that believe in the progressive power of the state, need to be more careful about defining exactly where they stand when they join in this chorus of dissent.