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WHY TONY BLAIR COULD NEVER HAVE BEEN A SATISFACTORY FIRST PRESIDENT OF EUROPE

*Jon Silverman**

Introduction

Fluent in French and fluent in communication, a Europhile to his fingertips, Britain's erstwhile Prime Minister, Tony Blair, was, in many ways, an obvious candidate to be the first president of the European Union. Apart from his personal qualities, the prospect of anchoring the UK at the heart of Europe through the office of president, was a tempting one. But it is a temptation which was rightly resisted.

This is not because Blair, as a personality, would have been unsuited to the role of ambassador and figurehead for an institution representing nearly 500 million souls (though what he has achieved in his post-prime ministerial role as official Envoy of the Quartet on the Middle East remains a matter of conjecture). The objection is policy not personality-based. Tony Blair's appointment would have been a signal that the EU sees itself primarily as a corporate counter-weight to the economic power blocs of east and west and that, as a crucible of free expression and human rights, it is badly tarnished. This would have been a tragic lost opportunity.

Blair's dogged support for the post-9/11 'war on terror' is well known. It is a matter of record that the conflict has sacrificed lives in Iraq and Afghanistan and many civil liberties both in Europe and the wider world, amongst them a diminution of free expression. Tony Blair and the New Labour leadership provided both military and intellectual ballast for this agenda but it did not spring fully-formed from the attack on the Twin Towers. There is a back-story, as they say in the movies, and to fully appreciate the influence of Blairite thinking on the security strategy of the last eight years, it is worth examining his record during that time.

* *Jon Silverman has been Professor of Media and Criminal Justice at the University of Bedfordshire since 2007. He is the author of 'Crack of Doom' (1994), an investigation into crack cocaine and Jamaican gang violence; and, with Prof. David Wilson, of 'Innocence Betrayed' (2002), a study of paedophilia, society and the media. He is currently working on a book about the relationship between the media and criminal justice policy-making in the UK.*

I.

I.1. Tough on Crime – Redefining Civil Liberties

In 1993, a year before he became leader of New Labour, Tony Blair coined a phrase which he hoped would stand for a compellingly holistic approach to a key domestic issue. His party, he promised, would be "tough on crime, tough on the causes of crime".[1] The first part of the pledge was aimed at voters, many of them working class, who, over a generation, had deserted Labour for the Conservatives because they wanted a more robust approach to law and order. The second part of the promise was aimed at those in his own party (and others) who believed that social and economic deprivation had as much to do with crime levels as bad character and feckless behaviour.

The 'tough on crime…' pledge became a golden sound bite during the early years of Tony Blair's leadership of New Labour, constantly picked up by the media. But it was made at a time when recorded crime in England and Wales was rising to record levels. So, perhaps inevitably, the mainstream media focused almost exclusively on the first part of the promise and largely ignored the second. This put added pressure on the then Home Secretary, Michael Howard, to respond, which he did with an increasingly punitive programme, symbolised by the Criminal Justice and Public Order Act, 1994.

In many of its features, this piece of legislation would have sat comfortably with New Labour's programme in power, post-1997. Part V of the Act ('Collective Trespass and Nuisance on Land') responded to a slew of media stories about gipsies, unauthorised acid house parties, illegal raves, and squatting, with measures which many critics saw as an attack on freedom of expression, though in comparison with the later Blair years, it was not much more than a pinprick. However, in hindsight, this Act put down a marker that now seems highly significant; it began the process of re-defining the notion of civil rights.

For most of the 20th century, the argument on both Left and Right of British politics, was about the balance of power between the state and the individual. It was accepted that the citizen was owed a duty of protection which, if not quite a cast-iron guarantee along the lines of the US constitution ('we hold these rights to be inalienable…') was bolstered by three

[1] *Interview with New Statesman magazine (a political weekly), Jan 10, 1993. What is New Statesman? A magazine?*

centuries of certitude in the central importance of individual liberties.

But under pressure from rising crime levels and media attacks, what Michael Howard began to do in outline, and what Tony Blair filled in with detail, was to formulate a new equation of liberty. It was the right of the 'community' (the media-friendly term which is now as closely associated with New Labour as the word 'spin') to be protected from the aberrant or suspect individual. And the first great expression of this new equation, and the keynote legislation of New Labour's first term in government, was the Crime and Disorder Act, 1998.

I.2. Crime, Disorder & Control

Unlike Michael Howard, an instinctive penal hardliner, Tony Blair saw a strategic political advantage in exploiting the issue of crime[2] For a generation, opinion surveys had shown that the Conservatives were more trusted on 'law and order' than Labour. Blair and his advisers decided that to win back many of the lost voters, especially working class voters who lived on estates and in inner city areas, New Labour would need a bait. The bait was to promise to tackle so-called 'quality of life' issues – litter, vandalism, and drunken loutishness.

Showing its facility with coining resonant slogans, New Labour branded this "anti-social behaviour" and crafted a piece of legislation, the Crime and Disorder Act, 1998, to address it. What links this act with many of the post-2001 incursions into traditional civil liberties was the way that it by-passed customary legal protections or introduced the criminal law into areas where it had largely been absent. Thus although an anti-social behaviour order (ASBO) was a civil penalty, a breach of its conditions was a criminal offence and could lead to a prison term. The use of hearsay evidence and anonymous witnesses in relation to the ASBOs prefigures the government's later use of control orders to restrict the movement of terrorist suspects and their ability to communicate with the outside world.

[2] The most celebrated sound bite associated with Michael Howard (and, in many ways, a response to Blair's "tough on crime…") was his declaration, made at the Conservative party annual conference in 1993, that " prison works".

II.

II.1. Summary Justice

One vital aspect of freedom of expression which rarely gets mentioned is the freedom in a democracy with an independent judiciary to be arraigned in a court of law and to have one's defence heard in public. That freedom, too, has been curtailed during the New Labour era. In the summer of 2000, in a speech in Germany, Tony Blair showed his frustration at the slow and uncertain pace of the criminal court system by mooting the possibility that drunken louts who commit anti-social behaviour could be 'marched to the nearest cashpoint' by a police officer and forced to pay a £100 fine. The idea was widely ridiculed in the media and never implemented but it sowed the seeds of a Blairite obsession with the idea of summary justice which, like Topsy, has 'just grow'd'.

By 2007, figures from the Ministry of Justice showed that, for the first time, the number of offences handled by the police in the form of cautions and fixed penalty fines had overtaken those dealt with by the courts. According to a former Chief Inspector of Probation, this damaging trend has led to an 'accountability deficit'.[3] This is undoubtedly true. What goes on behind the closed doors of a police station hardly equates to the transparency of a court appearance with media and public present. It has also led to a perversion of legal language which has had wider ramifications in the 'war on terror'. A police caution or fine counts in the official statistics as an offence 'brought to justice'.

Notice the echo of President Bush's declaration after 9/11 that the perpetrators would be hunted down and 'brought to justice'? Anyone harbouring the naïve thought that this meant an eventual appearance in a court of law was to be swiftly disillusioned by the opening of Guantanamo Bay and the authorisation of extraordinary rendition. Administrative justice is a bastard form of justice and its most influential progenitor is Tony Blair.

[3] Professor Rod Morgan in a report entitled 'Summary Justice :Fast but Fair', Centre for Crime and Justice Studies, 23.8.08. Does this centre have a magazine or a website?

II.2. Mission Creep

Across Europe, anti-terrorism laws passed following 9/11, have been used in non-terrorist contexts and have had a chilling effect on the freedom of the media. It is an issue which rightly exercises many NGO's and the Council of Europe.[4] In a wide-ranging critique, the United Nations Committee on Human Rights (in a report published in August 2008) condemned provisions in the Terrorism Act 2006 covering encouragement of terrorism as too broad and vague and likely to have a "disproportionate interference with freedom of expression". The same report also called for reform of the libel laws to deter so-called 'libel tourism' in which wealthy foreign claimants deliberately sue in the UK courts over publications which would not warrant action in their own country (especially American claimants). Government use of the Official Secrets Act to prevent issues of public interest being disclosed was also singled out.

Britain now has more CCTV cameras per head of population than any nation on earth and a bigger DNA database. The explicit approval of parliament was not sought for either. Since 1997, almost 60 new powers contained in 25 Acts of Parliament have whittled away many of the staple freedoms which the British have cherished since Magna Carta and the 17th century Bill of Rights.[5] Although many, if not most, of these laws were passed to tackle terrorism and serious crime, so-called 'mission creep' has meant that they are also being used in non-terrorist contexts.

The Regulation of Investigatory Powers Act, 2000, ostensibly intended to place on a statutory footing a mish-mash of practices and common law powers relating to the use of surveillance by the security service and police has been used by local councils to spy on householders who have put their waste in the wrong bins! The European Arrest Warrant, enthusiastically promoted by the Blair government to help track down terror suspects who cross borders, has been used by one state in the EU (Lithuania) to extradite a piglet rustler and by another (Poland) to pursue someone alleged to have stolen a dessert.

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[4] For a well-argued and comprehensive survey of the effects of such legislation, see 'Speaking of Terror' by David Banisar, published by the Council of Europe Directorate General for Human Rights and Legal Affairs, November 2008.

[5] See an audit compiled by the Convention on Modern Liberty and published in February 2009.

Conclusion

The first case to come before the newly created UK Supreme Court in 2009 concerned the use of 'freezing orders' by the Treasury to prevent individuals suspected of supporting terrorism gaining access to their bank accounts and other assets. Such orders have also been adopted by the UN Security Council in the wake of 9/11. The British Chancellor, Gordon Brown – now Prime Minister – was instrumental in gaining global acceptance of such measures. In Britain, the freezing orders (building on legislation introduced to deliver a blow at the proceeds of organised crime) were imposed by the executive without discussion in parliament. It is another example of the radical shift in the relationship between the state and the individual which Blairite thinking from the 1990s has brought about.

It has become commonplace to argue that the legislative response to the shock of 9/11 was disproportionate, whether in the US or Europe, and that it has eroded many basic civil liberties. This article has attempted to show that, in the UK at least, the equation is more complex and that many of the techniques used to tackle aspects of terrorism and support for terrorism have their origins in criminal justice policies devised well before 9/11. Moreover, Tony Blair's influence on President George Bush and many of his fellow European leaders ensured that some of the criminal justice initiatives spawned in a British context were adopted elsewhere, with equally damaging effects. Reason enough to have looked at Mr Blair's putative candidacy for European President and say: "you had your time and it's gone now. The world has moved on. Thanks but no thanks."