How real is the Liberal Democrats’ dedication to civil liberties? This may seem an odd question, given that the protection of liberty would appear to be among the very few areas on which liberals of all political persuasions agree, and to which they increasingly cling as the rest of their commitments melt away.

But to what, exactly, is the party committed? Clearly there is a strong libertarian thread, a belief that the big brother state needs to be shaken off, and this explains the hostility to identity cards, CCTV cameras and the retention of DNA samples. Another theme is a romantic dedication to the past, with promises to ‘protect historic freedoms’ through a return to jury trial, to ‘restore rights to non-violent protest’ and to act to prevent ‘the proliferation of unnecessary new criminal offences’. The Tory party shares exactly these perspectives as well, so there is no real conflict between the parties on these points.

If carried forward in an unambiguous manner, however, these policies would be likely to have big implications in terms of criminal law enforcement, the safety of the general public and the administration of justice. We have already seen this with the decision apparently taken by a number of local authorities to wind down their camera controls on speeding. The Deputy Prime Minister’s website consultation on which laws should be abolished, Your Freedom, gives a taste of the marauding jungle of free individuals in which it would seem many libertarians of this sort believe we should live – Hobbesians, but without a belief in any need for Leviathan. Free to lunch at the Savoy so long as you can afford to, and have the guards to stop the hungry getting in.

One of the greatest mistakes made by Labour in the run up to the last General Election was to allow the Lib Dems ownership of civil liberties. The socialist version of freedom is much deeper and altogether more universal than the desiccated individualism of the centre and centre-right parties. But trapped by an unpopular war and the perceived necessities of counter-terrorism, neither the Blair nor Brown administrations were able to stop this important part of the Party’s ethic slipping out of reach.

Will the Lib Dems make similar wrong turnings, keeping only the libertarian part of the civil liberties agenda that works for the rich and powerful while losing everything else? True the Human Rights Act survives, but this owes more to Ken Clarke at the Ministry of Justice than it does to Clegg and his colleagues – the joint programme for Government made no explicit commitment to the Act. As with Brown and Blair, it may well be that it will be terrorism law that proves their undoing. It is through the threat of terrorism that the State seeks to control whatever progressive instincts various ministers may occasionally show.

This is what makes the debate about Control Orders so important to the Lib Dems. At one level, we are just talking about nine people whose lives are being badly damaged by the judgment of our security services that they are in that odd position of being a threat to the State without being open to being proceeded against in the ordinary way, under the criminal law. Even the damage that is being done to those subject to these orders has been modified by a series of cases in which the judges have insisted on a set of minimum fair procedures that were not initially in the legislation. But at a deeper level the squabble has raised one of the most important questions that can be asked in any democracy: who really runs the country?

Control Orders are a creature, twice over of reaction. First there was the infamous detention of ‘suspected international terrorists’ introduced by the then Home Secretary David Blunkett after the attacks on 9/11, when it had become clear to him that his preferred option, the expulsion of foreigners he did not want to have around the place, was not open to him on account of the insistence of human rights law that no one could be expelled to a country where they were likely to be mistreated, sadly invariably the case with the people Mr Blunkett

Civil Liberties and the Con-Dem Coalition

by Conor Gearty
had in mind. Then when this regime was rendered politically unfeasible by the powerful Belmarsh ruling by the law lords, now the Supreme Court, in 2004, Control Orders were introduced as a kind of internment-lite, a system of inhibitions on movement and interaction that comes pretty close to what in countries we disapprove of might be called house arrest. Crucially no crime needs to be proved for such orders to kick in; they are administrative, relying in the main on security intelligence which would not pass muster in a real court.

The Lib Dems pledged in their Manifesto ‘to scrap controls’ and also to reduce the maximum period of pre-charge detention in terrorism cases to 14 days, it is currently 28. They also promised by ‘allowing intercept evidence in court’ to make it easier to convict terrorist suspects than is the case currently. The party was planning all this because it believed that ‘the best way to combat terrorism’ was ‘to prosecute terrorists, not give away hard-won British freedoms’. The Coalition programme for Government promised to ‘introduce safeguards against the misuse of anti-terrorism legislation’ and to that end a review was established, overseen by the Liberal Democrat peer and former DPP Lord Macdonald to ‘look at issues of security and civil liberties in relation to the most sensitive and controversial counter-terrorism and security powers and, consistent with protecting the public and where possible, to provide a correction in favour of liberty.’

This is where we are now. The Review’s publication has been delayed for months. The media has been full of stories of clashes at the highest level of Government. Lord Macdonald has been reportedly rebuked by the Home Secretary for believing that his role was anything more than a merely procedural one. Former Lib Dem shadow Home Secretary and leadership contender Chris Huhne has publicly declared his desire that the orders should go, even though he is in the coalition cabinet.

The liberals are learning some hard lessons about government. First, Labour ministers did not retain these powers out of authoritarian whimsy – the pressure from the security services to keep what are essentially intelligence-led Cold War practices is intense. Already the relevant bureau chiefs have been warning ministers about the indispensability of both Control Orders and 28 day detention. Second, in this field the spectre of atrocity, past and future, hangs over all discussion. Reason will not stand in the way of public opinion if we have a terrorist attack after the Lib Dems have repealed Control Orders: even if there is no link between the two, the Party risks taking the blame for rendering the country less safe. Third, the Home Office has changed since its one-time boss John Reid broke it up, declaring parts of it ‘not fit for purpose’ when he took over in 2006. The liberal bits have all drifted off to the Ministry of Justice, where Ken Clarke is reportedly opposed to Control Orders but has little say in the eventual outcome. The authoritarians and the spooks alone remain.

So what will happen? The Lib Dems have been tamed by the Tories; are they now about to be tamed by the security services as well? This debate is not about these nine people subject to Control Orders. It is about who has the final say on freedom and liberty. Ed Miliband has given the coalition some space on this by signalling that he will not make opportunistic use of the issue by attacking any changes that are made for the better. But will this make any difference? Though I hope I am wrong, it looks very much as though in this, as in so much else, it is not the Lib Dems who run the country. It is not even the Tories.

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