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A just society must turn a spotlight on its spies

Our political leaders are to blame for loss of trust in the security services. They must set up a proper system of scrutiny

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It seems we are having a national debate about torture. Apparently not all Britons agree that the deliberate application of violence to confined and helpless prisoners is unacceptable. This is a shame, not only because the spectacle itself would be hideous, but also because it's reasonable to suspect that our very British grandfathers would have taken a strikingly different view.

In their troubled and violent generation, they saw things differently for the very hardest of reasons. As a simple illustration, the first volume of Richard J. Evans's masterly account of the Third Reich contains a photograph of Social Democrat politicians in crumpled, respectable suits trussed up in a Brownshirt torture chamber. They look as surprised as they seem scared.

Finally it's the shock in their eyes that gets you. Of course we take our security and civilisation for granted — why wouldn't we? There is obviously no danger of torture demeaning a British way of life for us or our children. It's only on the deranged fringes that anyone imagines thumbscrews in Britain outside the 16th century. Yesterday's judgment in the Court of Appeal, with the Lord Chief Justice's ringing endorsement of judicial openness, underlined this with eloquence.

In truth, we believe, the better history of Britain is a history of sailing and thinking and movement over the seas. It's a history of philosophy and ideas and writing. It's particularly a history, we might hope, of enlightenment, from Adam Smith and David Hume in Edinburgh to Christopher Wren's glorious geometry in the City of London and the palette of colour on modern British faces. Of course we know there's an uglier side to our pedigree as well, but in the end we are supposed to stand for the best.

Typically, Gordon Brown's senseless inquiry into Britishness missed all this. We should rejoice, to use Margaret Thatcher's term, that our identity defies definition by any government, because definition by the political class would certainly destroy it. We don't fly flags or slam our fists against our chests and swear allegiance, and we certainly don't march up and down the street like clowns. Like the naive and true Britons that we are, we either decide to fight or we live and let die.

This is something the judges generally understand, even if they don't always have the time or the inclination to articulate it. The truth is that they are usually closer to Britishness than their critics, and they're paid to make adjudications about power. Their decisions aren't always popular. Sometimes they're

thoroughly annoying, especially to people in government. But if judges failed ever to annoy powerful people, it would be difficult to see much point to them.

This doesn't mean that, just because a judge says so, the security services are riven with duplicity. It simply means that the rule of law makes no distinction between David Miliband and Binyam Mohamed and that both are entitled to its comfort and protection. In this sense, our law possesses the very same power that it's blind to, and this is the whole point of its embrace.

So attacking the judges is unwise. Not just because there is no point to it short of stripping them of their relevance, but also because, finally, they stand for the constitution. Personally, I have no interest at all in what a secretary of state thinks privately about a particular judgment, still less in the touching distress of his spin doctors. Instead of obviously co-ordinated attacks on the judiciary, what we should expect of men and women in democratic power is their absolute public loyalty to the law and its formal judgments.

Indeed, the Government should reflect that it is not the law but politicians who are responsible for the present crisis of uncertainty in our security agencies; and that this public concern doesn't result from dark prison tales alone. It is equally borne of a system of scrutiny obviously unfit for a modern democracy. It has been particularly unedifying in recent weeks to see the indecent haste with which the chairman of the Intelligence and Security Committee rushed to absolve without question the very agencies whose integrity he is supposed to secure. A parliamentarian charged with scrutinising organs of state would do well to avoid moonlighting as their cheerleader.

But we shouldn't be surprised, because the ISC lacks any real credibility. How could it have any when that same chairman is, in effect, appointed by the Prime Minister? Or when it conducts its meetings in secret and failed to uncover the very documents that led the Court of Appeal to criticise the security services? Only a degraded political establishment could delude itself that this is scrutiny designed to work with conviction in the 21st century.

Our security agencies deserve much better. Staffed by people of such intelligence and integrity, and engaged in work fundamental to our ability to go about our lives free from medieval violence, they deserve a modern settlement more capable of winning public trust. It is not enough for their chiefs to give interviews or for their websites to look swish. In place of Whitehall's patronising winks and nods, and the worthless warrants of clawless appointees, they need a healthy Parliament's independent scrutiny, free from executive control, and a mature submission to the courts. It is time, surely, for them to discover the strengths of accountability, and, in the very unlikely event that they have forgotten, to rediscover the benefits of the rule of law.

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