

Protecting Citizens from the State

Public Lecture: Conor Gearty discusses State responses to terrorism

By Sven Edquist

In recent years Western States have taken “actions in defence of democracy which...stray from democracy’s own foundational commitments to dignity”, according to Professor Conor Gearty. Professor Gearty, the Rausing Director of the Centre for the Study of Human Rights at the London School of Economics was speaking during his visit to the Castan Centre as a Holding Redlich Fellow. His lecture was particularly poignant as it came only nine days after Victoria became the first State and only the second Australian government after the ACT, to introduce its own Human Rights Charter into Parliament.

Professor Gearty began his presentation by addressing the subject of terrorism and the fact that continuous state manipulation had rendered it meaningless. The West has “come to view terrorism not as a method of violence but rather as a category of person, a kind of militant rather than a tactic, the sort of thing a person is rather than the kind of thing a person does.” He suggested that it was around 1970 when Western thinking lost the point that “political terror was actually a description of violence and not necessarily a moral condemnation of that violence.” Use of the terrorism label became exclusively that of the state to condemn the violence they opposed, regardless of the situation. National liberation groups were conflated with groups such as Bader-Meinhoff and the Weathermen, tarnishing them with the uniquely evil tag of terrorism, while brutal invasions and counter-insurgency operations by governments were not. Consequently the concept of terrorism had now become so distorted that it was widely seen as something that state authorities - acting either directly or through authorised paramilitary forces - were incapable of doing.

Gearty linked this distortion to the recent shift in western discourse from issues of “human rights” to those of “human values”. He considered this shift as the start of a very slippery slope leading to the normalisation of state-authorised abuse accompanied by the suppression of the criminal justice process, in favour of a security model based upon fear and suspicion. To counter this Gearty suggested national security should be recast “to show that human rights were about the rights of everybody and not just this or that minority clique.”

Gearty stressed that terrorism must be seen as a “serious criminal problem” if it was to be effectively tackled and

human rights upheld. The language of terrorism provided the justification for egregious acts, such as the death of Brazilian Jean Charles de Menendez by UK security forces on a London train, which could not have happened if the criminal model had been adhered to. He also believed that it was a mischaracterisation to call the criminal law reactive, and therefore unsuited to dealing with modern-day “terrorists”. The criminal system, he noted, already had a number of measures that could be used to effectively deal with pre-substantive offences, such as attempt, incitement, conspiracy, and solicitation to murder. Ordinary criminal law also empowered police to stop and search or arrest people and to enter and search private property. Gearty used the US case of Zacharias Moussaoui and the British trial of Abu Hamza al-Masri, to describe how the criminal justice system could be effectively used to both prosecute and convict terrorism suspects. Because the criminal justice system was based upon fact and fairness these convictions brought a legitimacy to the state’s anti-terrorism agenda that were not possible under emergency measures.

Gearty went on to stress that in the current climate of fear, a Bill of Rights is an essential tool for protecting human rights from state excesses. He moderated this stance however by stating that a Bill of Rights should not be absolute and that states should have the right to derogate from some rights in case of emergency. He also suggested that the legitimacy of a human rights charter is bolstered when the ultimate responsibility lies with the legislative and executive branches. Unlike the US system, judges should not be allowed to strike down legislation. “The judiciary’s judgements should be seen as part of the discussion, rather than conclusive statements overriding declarations of law.”

In concluding, Gearty made sure to point out that despite serious attempts to distort the human rights agenda in recent years, it appears that such attempts have failed. Abu Ghraib did the dirty work, compelling the Bush Presidency, which had attempted to make human rights violations such as torture normal, to revert to the traditional stance of “plausible deniability.” In an imperfect world, Gearty commented, the realisation that it is embarrassing to admit that you practice torture must be seen as a moral advance. In order for human rights to survive, we must stand firmly against this “distortion of its essence which states have turned into a basis for selective aggression abroad and an alibi for brutality at home”. Having a Bill of Rights Gearty suggested, is a critical step in the right direction.



Conor Gearty