

BONFIRE OF THE LIBERTIES



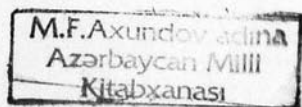
NEW LABOUR, HUMAN RIGHTS, AND
THE RULE OF LAW

K.D. EWING

Bonfire of the Liberties

NEW LABOUR, HUMAN RIGHTS,
AND THE RULE OF LAW

K D EWING



OXFORD
UNIVERSITY PRESS

1-4078

X911.3

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP
Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi
Kuala Lumpur Madrid Melbourne Mexico City Nairobi
New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece
Guatemala Hungary Italy Japan Poland Portugal Singapore
South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press
in the UK and in certain other countries

Published in the United States
by Oxford University Press Inc., New York

© K D Ewing, 2010

The moral rights of the authors have been asserted
Database right Oxford University Press (maker)

First published 2010

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any means,
without the prior permission in writing of Oxford University Press,
or as expressly permitted by law, or under terms agreed with the appropriate
reprographics rights organization. Enquiries concerning reproduction
outside the scope of the above should be sent to the Rights Department,
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover
and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data
Data available

Typeset by MPS Limited, A Macmillan Company
Printed in Great Britain
on acid free paper by the
MPG Books Group, Bodmin and King's Lynn

ISBN 978-0-19-958477-2 (Hbk)

ISBN 978-0-19-958478-9 (Pbk)

1 3 5 7 9 10 8 6 4 2



OXFORD
UNIVERSITY PRESS

Index

Abdulla, Bilal, terrorism conviction 180
 Abu Qatada, deportation case 258–259
 Afghanistan
 Brian Haw protest 116–120
 funding of orphanages in 228
 terrorist activity in 10, 210, 212
 Agee, Philip, deportation case 221
 air bases, protests at 111–115 *see also*
 Fairford RAF base
 airship used for police surveillance 135
al-Jazeera Memorandum case 153–161
 al-Qaeda
 banning 183
 dilemma in banning 184
 training manual downloading
 case 212–214
 use of detention against
 suspects 234–236
 Algeria, deportation to 256–258
 animal rights protests, injunctions
 restraining 120–125
 anti-social behaviour orders (ASBOs)
 children, and 15–17
 concerns over abuse of 28–30
 examples of abuse of 29–30
 human rights issues 30–31
 incidence of 28–30
 judicial approval of 30–31
 operation of 27–28
 use of 18, 28–30
 anti-terrorism *see* terrorism
 anti-war/weapons protests, pre-emptive
 tactics by police 105–106

Apple, Emily, police treatment of 9,
 127–128
 arms trade, protests against 125–127
 arrests
 anti-terrorism measures 11
 anti-war/weapons protestors,
 of 105–106
 breach of the peace 98–100
 complaints 36, 219
 conformity of powers with ECHR 38
 constitutional principle as to 19–20
 debate over new powers 36–37
 discrimination in use of powers 25–27
 environmental protestors, of 105–106
 extension of other powers related to 39
 JCHR concerns over powers 35
 MPs' freedom from 165–166
 new powers of 35–39
 obstructing a police officer 98–100
 operation of powers 37–39
 police powers 110–115
 pre-empt protests, to 105–115
 trespassory assembly 103–104
 without warrant 39–41
 Asian communities, likelihood of
 arrest 26–27
 'assembly', meaning of (Public Order
 Act) 101
 Australia, *Spycatcher* case 141–143
 bail
 conditional bail, release on 236
 conditions of 110–111, 112, 251

- banning *see* political organisations,
banning of
- BBC
effect of David Kelly inquiry 147–148
surveillance powers 64
- behaviour, threatening, insulting or abusive
Lindis Percy case 111–113
offence of 110
- Bellmarsh prison, detainees kept in 227
- Bill of Rights, proposals for new 16, 264
- black communities
approach to policing of 26
likelihood of arrest 26–27
- Bradlaugh, Charles, ejection from
Commons 170
- breach of the peace
arrests 98–100
custody as punishment 111
JCHR concerns over abuse of
powers 115–116
- British Transport Police, 'stop and search',
use of 203
- British Union of Fascists, public order
threat from 98
- Broadmoor prison, detainees kept in
227, 236
- bugging devices
authorisation of police usage 69
non-police use of 54
- Cambridge City Council Code of Practice
on CCTV cameras 56, 59–60
- Campaign Against the Arms Trade
(CAAT)
complaints about excessive police
presence 125
protests 125–127
Wood case 126–127
- Campaign for Accountability of American
Bases (CAAB)
complaints about excessive police
presence 125
protests 111–113
- Campbell, Duncan, secrets case 10
- Canada, constitutional protection
of rights 13
- Carltona* principle as to surveillance 70
- CCTV cameras
absence of systemic law of 55
authority for use in public places 57–58
compliance with DPA and Information
Commissioner's Code 58–60
growth of 55
Liberty's comments 57
local authorities' usage 55–56
random surveillance by 55–60
regulatory framework 55–58
rule of law, and 58–60
significance of 54
surveillance use of 8
celebrities, protection of privacy 94
centralised power as core problem
of government 2
Chahal deportation case 222, 223–224,
251, 251–252
Cheblak, Abbas, deportation case 221
children
ASBOs and 15–17
curfew 34
detention, and 242–244
removal of DNA database samples
from 87–88
search of 202
surveillance, and 65–67
Church of Scientology protest, police
action 115
civil disobedience
extent of HRA protection 130
place in history 135–136
relation to protest 130–134
civil liberties *see also* human rights
anti-terrorism powers, effect of 219–220
constitutional reform, and 273–275
courts' role in protecting 276–281
New Labour's policy 7–11
Parliament, role of 264–268
reform of Parliamentary procedures,
and 275–276
rule of law implications 6
Civil Procedure Rules, JCHR
recommendations on
amendment 125
Climate Camp protest, dispersal
of 128–130
climate change protests *see* G20 protest
Communist Party
effective outlawing of 181
public order threat from 98

- community support officers (CSOs),
dispersal powers 32
- confiscation orders, conditions for
issue 195–196
- Connor, Neil, surveillance case 61
- constitutional principle
anti-terrorism powers,
effect of 219–220
civil liberties, and 2–7
failure of 263
police powers, as to
effectiveness of 50–52
significance of 19–20
constitutional reform
civil liberties, and 273–275
New Labour measures 2
- contempt of court
journalists' defence 140
protection for journalists' sources 149
relation to Official Secrets
Acts 139–141
reporting restrictions in *al-Jazeera*
Memorandum case 157–161
Shayler case 174
- control orders
curfew, use of 241, 246, 247–8, 249, 259
definition 237
derogable orders 237
ECHR as to 246–248
family life, and 243–244
impact 241–245, 261
JCHR concerns 242–244
judicial proceedings under 240
kinds 237
legal challenges to 245–255
non-derogable orders 237
personal liberty, and 241–243
powers to impose 10
privacy, and 243–245
procedures 239–240
refugees, impact on 243
released detainees, on 236–240
responsibility for enacting 261
restrictions under 237–238
right to fair trial, and 248–250
right to liberty, and 246–248
scope 237–239
tagging, use of 243–244
usage level 241
- Convention on Modern Liberty
Parliamentary response to 15
purpose 1
reasons for 8
- Convention rights *see* European
Convention on Human Rights
(ECHR)
- Conwy Council, surveillance by 66–67
- coroners
role in de Menezes case 46–50
withholding of judgment of unlawful
killing 47–50
- corrosion of liberty, existence of 15
- Council of Europe, views on
derogation 232–233
- courts *see also* contempt of court; European
Court of Human Rights (ECtHR)
permissive approach to surveillance
society 94–95
power to review legislative
procedure 3
power to review political questions
see also contempt of court
reluctance to review national security
decisions 222
role in protecting civil
liberties 276–281
- covert human intelligence sources (CHIS)
agencies empowered to use 63–64
informers *see* informers
local authorities' use of
management 65
Surveillance Commissioners'
concerns 68
security services usage 71
usage level 64
use of 62
- covert surveillance
authorisation required 62
local authorities, by 65–68
types 61–62
use of 60–65
- Cullen, James, denial of access to
solicitor 45–46
- curfew
children 34
control orders 241, 246,
247–8
custody, overnight, as punishment 111

- damages
 - denial of 45–46
 - surveillance, resulting from 60–61
- Danish Embassy protest 215–216
- Data Protection Act 1998 (DPA)
 - CCTV cameras, as to 57–60
 - DNA database, as to 79, 82
- data storage *see* information storage
- de Menezes, Jean Charles
 - coroners' role 46–50
 - death of 179–180
 - implications of death of 17–19
- defamation of government and freedom of expression 151–152
- demonstrations *see* protests
- deportation *see also* rendition
 - Algeria, to 256–258
 - detention as alternative 224–225
 - detention prior to 214
 - ECHR as to 222
 - independent advisory panel 221–222
 - Jordan, to 258–259
 - national security grounds, on 11, 221
 - obstacles to judicial review 222
 - procedural fairness 222
 - response to *Chahal* judgment 223–224, 251–252
 - torture of deported persons, danger of 226–231
- derogation
 - Council of Europe's views 232–233
 - ECHR, from *see* European Convention on Human Rights (ECHR)
 - ICCPR Principles 232
- detention
 - 42-day detention proposals 264
 - alternative to deportation, as 224–225
 - Bellmarsh prison, in 227
 - Broadmoor prison 227, 236
 - children, effect on 242–244
 - conditional bail, release on 236
 - control orders upon release 236–240
 - deportation, for 214
 - derogation from ECHR 225–226
 - discriminatory use 234–236
 - disproportionate use 234–236
 - ECHR as to 225, 231–232
 - immigration, for *see* immigration detention
 - legal challenges to 231–245
 - new powers of 39
 - operation of powers 226–227
 - procedural fairness 227–229
 - release of detainees 236–237
 - secret evidence, use of 226–231
 - SIAC proceedings 231
 - Special Advocate's role 229–231
 - torture, potential danger to detainees 226–231
 - without trial 223–226
 - devolution, constitutional reform measures 2
- diplomatic assurances *see* memorandum of understanding
- directed surveillance
 - agencies empowered to use 63–64
 - number of authorisations 64
 - security services, by 71
 - technique 61
- discrimination
 - detention, in use of 234–236
 - DNA database 82–83
 - police 25–27
- dispersal of protestors 128–130
- dispersal orders
 - examples of abuse of 33
 - 'function creep' in use of 34
 - human rights issues 34–35
 - Joseph Rowntree Trust study 32–33
 - judicial review of use of 33–35
 - use of 32–33
- dispersal zones, designation of 32
- DNA database
 - claims for success 79
 - conformity with ECHR 84–88
 - conformity with European provisions on 84, 86–87
 - court oversight 80–81
 - discrimination issues 82–83
 - DPA as to 79, 82
 - ECtHR rulings 83–88
 - European countries' provisions 84, 86–87
 - expansion of, plans for 87–88
 - growth of 8, 54
 - legal basis 79
 - Marper* case 84–88, 94
 - privacy issues 84–86

- proposal for mandatory database 83, 95
- removal of children's samples 87–88
- removal of information 80–88
- rule of law and 81–83
- size 79
- Strategy Board 79–80
- DNA samples
 - identification from 81
 - information storage 80–81
 - retention of 80
 - right to take 80
 - Scottish law on retaining 80
 - taking of 37, 43–44, 79–80, 82, 219
 - use as evidence 43–45
- dogs *see* police dogs
- Duncan v Jones* and freedom of assembly 98–99
- electoral reform, protection of
 - liberty by 282
- email interception
 - growth of 54
 - Interception Commissioner's oversight 77–79
 - powers 74
 - rule of law and 75–77
- email storage by ISPs 54
- entry, new powers of 39
- Environment Agency, surveillance
 - powers 63
- environmental protests
 - injunctions against 123–125
 - pre-emptive tactics by police 105–106
- European Convention on Human Rights (ECHR) *see also* Human Rights Act 1998
 - admissibility of evidence under 43–45
 - confiscation of political literature, as to 192–193
 - conformity of arrest powers with 38
 - control orders, as to 237, 246–248
 - deportation procedures, as to 222
 - derogation from
 - power of 225–226
 - public emergency grounds 232–234
 - detention, as to 225, 231–232
 - DNA database, as to 80–81, 84–88
 - effectiveness as to arrest and search 50–52
 - free speech, as to 137–138
 - freedom of assembly, as to 101–105
 - freedom of expression, as to 112–113
 - freezing of assets, as to 196–197
 - glorifying terrorism offence, as to 216, 218
 - immigration detention, as to 251, 252–253
 - incorporation into UK law 12–15
 - judicial support for 11–13
 - liberty, right to 225
 - memoranda of understanding, as to 255
 - misconduct in public office offence, as to 164
 - protection against discrimination 27
 - retention of photographs, as to 127
 - right to fair trial, as to 248–250
 - right to liberty, as to 105–110
 - right to life violations 47–50
 - rule of law, as to 3
 - 'stop and search', as to 205–209
 - surveillance violations 61, 69
 - violation of rights generally 45–46
- European Court of Human Rights (ECtHR)
 - approach to surveillance 61
 - case law on public emergencies 232
 - continuing role in protecting liberty 263–264
 - memoranda of understanding, ruling as to 254
 - protection for journalists' sources, judgment as to 149
 - rulings on DNA database 83–88
 - rulings on telephone tapping 74
 - Spycatcher* cases judgments 142–143
- evidence *see also* Police and Criminal Evidence Act 1984 (PACE)
 - admissibility under ECHR 43–45
 - admission of illegally obtained 43–45, 59
 - David Kelly inquiry 145–147
 - DNA samples 43–45
 - secret evidence
 - control orders 248, 250
 - detention cases 226–231
 - executive dominance as core problem of government 2

- Exeter City Council Code of Practice on CCTV cameras 56, 60
- fair trial, right to, control orders and 248–250
- Fairford RAF base
bail conditions on protestors 111
Fairford Five case 130–134, 135–136
Liberty's comments 111, 125, 201
police presence 125
protests at 106–108
'stop and search', use of 201–202
- family life
impact of control orders 243–244
threat to right of 237
- Faslane base, custody as punishment of protestors 111
- fishermen, surveillance of 65–66
- Fit Watch, anti-FIT activities by 127–128
- Food Standards Agency, surveillance powers 63
- Foreign Affairs Committee (House of Commons), David Kelly inquiry 143–147
- Forest Gate terrorism arrests 219
- Forward Intelligence Teams (FITs)
Fit Watch activities against 127–128
storage of information from 126–127
use of 126
- Frankel, Maurice, critique of new Official Secrets Act 164–165
- free speech *see also* freedom of expression
common law as to 137
effect of dispersal orders on 34
effectiveness of HRA
protection 172–176
glorifying terrorism offence, and 214–218
MPs 165–172
national security restrictions 172–178
New Labour and Thatcher government compared 138–143
powers to restrain 10–11
restrictions on speech 137
unlawful forms of speech 137
- freedom from arrest, MPs' 165–166
- freedom of assembly *see also* trespassory assembly
common law principle 97–98
- Duncan v Jones*, effect of 98–99
- ECHR as to 101–105
- effect of banning of political organisations 184–185
- HRA as to 101–105
- meaning of 'assembly' (Public Order Act) 101
- miners' strike 1984 and 99–100
- new restrictions 115–120
- police powers 96–136
- pre-HRA 97–101
- threat to 220, 237
- freedom of association
banning of political organisations 181–190
threat to 220, 237
- freedom of expression *see also* free speech
al-Jazeera Memorandum case 153–161
defamation of government, and 151–152
effect of banning of political organisations 184–185
national security restrictions 172–178
protection for journalists' sources 148–151
reporting restrictions in *al-Jazeera* Memorandum case 157–161
restriction of 111–113
terrorism, and 209–214
threat to 220, 237
- freedom of movement, threat to 237
- freezing of assets *see* terrorist finance and property, confiscation of
- freezing orders
conditions for issue 195–196
Landsbanki case 196
- 'function creep'
dispersal orders, as to 34
Protection against Harassment Act 1997 as case of 124
- G8 protest
police presence 135
'stop and search', use of 202
- G20 protest
dispersal of protestors 128–130
significance of Ian Tomlinson's death 8
- Galley, Christopher, role in Damien Green arrest 162

- GCHQ
issue of warrants for surveillance to 70
- Sarah Tisdall case 10, 139–140
- Gifford, Martha, attempted bribery of 9
- Gilligan, Andrew
evidence to Foreign Affairs Committee inquiry 145
meeting with David Kelly 144
refusal to name source 148–151
- Glasgow airport terrorist attack 180
- Gloucestershire Weapons Inspectors, arrest of 106–108
- 'golden age of liberty', existence of 15
- Green, Damien, arrest of 38–39, 162–172
- Gun, Kathryn, prosecution of 10, 153, 178
- Harbour, Dr Peter Harbour, injunction against 123–125
- Haw, Brian, use of SOCPA against 116–120
- Health and Safety Executive, surveillance powers 63
- Healthcare Commission, surveillance powers 64
- helicopters used for police surveillance 135
- Hewitt, Gavin, role in David Kelly investigation 144, 146–147
- HM Revenue and Customs, surveillance powers 63
- Homage to Catalonia*, definition of terrorism 216
- Home Office
growth of Surveillance Society, and 8
warrants *see* warrants
- Hosenball, Mark, deportation case 221
- House of Commons
Charles Bradlaugh affair 170
parliamentary privilege and Damien Green's arrest 162–172
safe haven from injunctions, as 170
'Zircon' affair 170
- House of Lords, reform of 2
- human rights *see also* civil liberties;
European Convention on Human Rights (ECHR); Human Rights Act 1998 (HRA)
ASBOs, issues as to 30–31
contradictions in New Labour policy 5
- denial of 45–46
- dispersal orders, issues as to 34–35
- effectiveness as defence 11–15
- freezing of terrorists assets, and 194–199
- greater protection of liberty by power rather than 282–284
- international instruments 6
- Joint Committee *see* Joint Committee on Human Rights (JCHR)
- official contempt for 260–261
- rule of law commitment to 5
- terrorism, and 180
- whether beneficial 260
- Human Rights Act 1998 (HRA) *see also*
European Convention on Human Rights (ECHR)
civil disobedience, and 130
debate on Bill 12–13
effectiveness
anti-terrorism measures 220
detention, control orders and rendition 260–262
free speech, protection of 172–176
generally 16
policing of protests, as to 105–115, 134–136
failure of 263
freedom of assembly, as to 101–105
growth of surveillance society, and 54
judicial powers under 13–15
purpose 12
'stop and search', as to 207–209
- Huntingdon Life Sciences, injunctions restraining protests against 120–125
- Icelandic banking case 196
- identity cards *see also* National Identity Register
concerns over 9
potential police use of 54
- immigration
Appeals Commission *see* Special Immigration Appeals Commission (SIAC)
refugees, by 221
immigration detention
alternative to deportation detention, as 250–251

- immigration detention (*cont.*)
 bail conditions following 251
 detention without trial, as 251–253
 diplomatic assurances *see* memorandum of understanding
 duration of proceedings 251–252
 JCHR concerns 251, 253–255
 memoranda of understanding *see* memorandum of understanding
 response to *Chahal* judgment, as 251
 independent advisory panel for deportation cases 221–222
 inequality, increase under New Labour 16
 infiltration
 oversight of 63–65
 regulatory framework 61–63
 use of 60–61
 Information Commissioner
 Code of Practice on CCTV cameras 57–60
 surveillance powers 64
 information leaks
al-Jazeera Memorandum case 153–161
 Clive Ponting case 10, 140–141
 David Kelly inquiry *see* Kelly, David, investigation of
 David Shayler case 172–178
 Duncan Sandys case 166
 Kathryn Gun case 10, 153, 178
 Sarah Tisdall case 10, 139–140
Spycatcher case 141–143, 161
 information storage
 emails 54
 European countries' provisions for DNA samples 84
 information from FITs 126–127
 samples 80–81
 informers
 oversight of 63–65
 regulatory framework 61–63
 use of 60–61
 injunctions
 abuse of 123–125
 David Shayler case 173–174
 House of Commons as safe haven 170
 NECTU website, on 121, 123, 124
 restrain protests, to 120–125
Spycatcher case applications 141–143
 'Zircon' affair 168–169
 intelligence services *see also* security services
 issue of warrants for surveillance to 70
 surveillance powers 63
 Intelligence Services Commissioner,
 oversight of surveillance 72–74
 Interception Commissioner
 oversight by 77–79
 postholders 75–76
 report 75–77
 workload 76–77
 Interception Modernisation Programme,
 launch of 54
 interception of communications
 greater regulation of 8
 telephone tapping *see* telephone tapping
 International Covenant on Civil and
 Political Rights (ICCPR), derogation
 principles 232
 internet service providers (ISPs), email
 storage 54
 internment *see* detention
 intrusive surveillance
 authorisation required 62
 security services, by 71
 technique 62
 use of 63
 Investigatory Powers Tribunal, right
 of complaint to 63, 71
 Iraq War
al-Jazeera Memorandum case 153–161
 Brian Haw protest 116–120
 Foreign Affairs Committee
 inquiry 143–147
 London march against
 police response to 96–97
 significance of 96–97
 Official Secrets Act as to 153
 weapons dossier *see* Kelly, David,
 investigation of
 Irish organisations, banning of 181–183
 Islamic organisations
 banning 183
 challenges to banning 184
 Islamic protests 215–216
 Joint Committee on Human Rights
 (JCHR), comments by
 abuse of breach of the peace
 powers 115–116

- ASBOs 30
 control orders 242–244
 freezing of assets 197, 198
 glorifying terrorism offence 215–218
 immigration detention 251
 memoranda of understanding 253–255
 new arrest powers 35
 new laws on search warrants 40–41
 Prevention of Terrorism Bill 2005,
 reports on 270–272
 protest law reform 124
 Jordan
 deportation to 258–259
 memorandum of understanding
 with 252–253
 Joseph Rowntree Trust, study on dispersal
 orders 32–33
 journalists
 Contempt of Court Act 1981
 defence 140
 David Kelly inquiry *see* Kelly, David,
 investigation of
 David Shayler case 172–178
 national security restrictions 172–178
 Official Secrets Act restrictions 139
 protection for sources 148–151
 reporting restrictions in *al-Jazeera*
 Memorandum case 157–161
 Sally Murrer case 164
Spycatcher injunctions against *Guardian*
 and *Times* 142–143
 judicial commissioner, oversight of issue
 of warrants 8
 jurors
 challenge to verdicts of 49–50
 support for protestors 136
 Kelly, David, investigation of
 background 10, 143
 decision to reveal identity 146
 defamation of government,
 issue of 151–152
 effect on BBC 146
 evidence to Foreign Affairs Committee
 inquiry 145–147
 identification as Andrew Gilligan's
 source 144–147
 protection for journalists' sources,
 issue of 148–151
 Keogh, David, prosecution of 10, 153–161
 kettling
 G20 protest 128–130
 legality of 9–10
 use of 108–110
 Khan, Mohammed Sidique, widow's arrest
 and release 179
 King's College London students, stop and
 search of 200, 201
 Kratos, Operation, 'shoot to kill'
 policy 17–18
 Kurdish independence groups
 banning 183
 challenges to banning 184
 Landsbanki, freezing of assets 196
Laporte case 107–108
 Lawrence, Stephen, Macpherson Report
 on death of 21, 26
 legal process as means of protest 136
 lethal force in *de Menezes*, coroners'
 role 46–50
 liberty
 breach of protestors' 105–110
 constitutional irony 282
 control orders, and 241–243, 246–248
 Convention right to 225
 corrosion of 15
 corrosion under New Labour 15
 deprivation of 246–248
 ECtHR's continuing role in
 protecting 263–264
 existence of 'golden age' 15
 'golden age', whether 15
 national spirit as sustainer of 263
 protection by electoral reform 282
 protection by Parliament 263–284
 protection by power rather than
 rights 282–284
 protection for journalists' sources 282
 threat to right of 237
 Liberty (organisation), comments by
 CCTV cameras 57
 Church of Scientology protest 115
 Fairford RAF base protest 111, 125, 201
 POAC 190
 relative institutional competence 233
 limitation, Siracusa Principles
 (ICCPR) 232

- local authorities *see also* public officials
 CCTV cameras usage 55–56
 CHIS usage *see* covert human intelligence sources (CHIS)
 covert surveillance by 65–68
 Press Association survey on surveillance usage 66–67
 surveillance by 8, 55–56, 65–68
 Surveillance Commissioners' concerns 65–68
- Lockerbie death toll 179
- London terrorist attacks *see* terrorism
- Macpherson, Sir William
 concerns over police discrimination 26–27
 recommendations on 'stop and account' 21
 report on death of Stephen Lawrence 21, 26
- magistrates, issue of search warrants 42
- Mail on Sunday* and *Shayler* case 173, 175, 176
- Malik, Samina, possession of terrorist literature 210, 212
- Mandela, Nelson, justification for terrorism 216
- Marper, Michael, DNA database case 80–88, 94
- medical examinations under memoranda of understanding 253
- Members of Parliament (MPs), arrest of 38–39, 162–172
- memorandum of understanding
 ECtHR ruling 254
 JCHR concerns 253–255
 Jordan 252–253
 medical examinations under 253
- Menwith Hill RAF base, protests at 114–115
- MI5 *see* security services
- MI6 *see* intelligence services
- miners' strike 1984 and freedom of assembly 99–100
- misconduct in public office, offence of 163–164
- Mosley, Oswald, public order threat from 98
- Mujaheddin e Khalq (PMOI) *see* PMOI
- Murrer, Sally, collapse of trial 164
- National Assembly for Wales, surveillance powers 64
- National Association of Probation Officers (NAPO), concerns over abuse of ASBOs
 concerns over abuse of ASBOs 28–30
- National Extremism Tactical Coordination Unit (NECTU), injunctions posted on website 121, 123, 124
- National Health Service
 patient database 54
 surveillance powers 63
- National Identity Register *see also* identity cards
 advent of 54
 categories of registered persons 90–91
 Commissioner 92
 comparison with wartime measures 89
 concerns over 9
 enforcement powers 92–93
 registration a duty or a right? 90–91
 rule of law and 91–93
 significance of 88–89
 statutory framework 89–91
- National Identity Scheme Commissioner, office of 92
- national security
 accountability mechanisms 220
 courts' reluctance to review decisions 222
 deportation on grounds of justifying 222
 powers 221
 Government's obsession with 178
 linkage to public emergency 226
 restrictions on journalists 172–178
- New Labour
 commitment to HRA 16
 constitutional reform measures 2
 contradictions in human rights policy 1
 corrosion of liberty under 15–16
 free speech approach compared with Thatcher government 138–143
 increase in inequality under 16
 policy on civil liberties 7–11
 newspapers *see* journalists
- Nineteen Eighty-Four*, prediction of surveillance society, as 53, 93

Northern Ireland
 banning of political organisations 181–183
 devolution measures 2
 number plate recognition, police use of 135

obstructing a police officer, arrests 98–100

obstruction of the highway
 Linds Percy case 113–115
 offence of 110

O'Connor, Leo, prosecution of 10, 153–161

O'Driscoll, Rory, *Vatan* confiscation case 191–194

OFCOM, surveillance powers 64

Official Secrets Acts
 1989 reform 143, 164–165
 critique of 1989 Act 164–165

Duncan Sandys case 166

Iraq War, as to 153

offences 138–139

prosecutions under 10, 153–161

public interest defence, need for 175–178

relation to contempt of court 139–141

safeguards 139

Spycatcher case 141–143, 161

Thatcher government's use 139–141

trespass as to 130

use of 10

Orwell, George, defining terrorism 216

overnight custody as punishment 111

Parliament
 enhanced scrutiny 269–272, 282–284
 protection of liberty 264–268
 reform of procedures 275–276

Parliament Square protest (Brian Haw), use of SOCPA against 116–120

parliamentary privilege and Damien Green's arrest 162–172

parliamentary sovereignty, power of 278–280

Percy, Linds, arrest of 111–115

personal freedom, link with rule of law 3, 7

phone tapping *see* telephone tapping

photographing of protestors 126–127

picketing
 effect of dispersal orders on 34–35
 miners' strike 1984 99–100

Plane Stupid, attempted infiltration of 9

PMOI
 activities 187
 challenge to banning 184–190
Wednesbury test applied to banning appeal 188–189

police *see also* British Transport Police;
 police dogs
 accountability 36, 42–50
 anti-terrorism powers 200–209
 arrest powers *see* arrests
 complaints
 anti-terrorism operations 219
 arrests 36, 219
 dispersal of protestors 128
 entering of detainees' homes 243
 interference with property 71–72
 search of detainees' families 227
 search of protestors' children 202
 surveillance 61
 costs of operations 135
 CSOs, dispersal powers 32
 Damien Green arrest 163–166
 declining accountability of 19
 discrimination by 25–27
 effect of HRA on conduct 105–115
 effect of powers as to constitutional principle 19–20, 50–52
 exercise of power 125–130
 extension of powers 7, 17–52
 firearms usage
 anti-terrorism operations 219
 de Menezes case 17
 Stanley case 47
 Forward Intelligence Teams 126–127
 implications of de Menezes death 17–18
 increased statutory regulation of 7
 informal powers 42–43
 interference with property, authorisation for 62
 kettling *see* kettling
 legality of powers 19–27
 lethal force, use of 46–50
 militarisation of 7–8
 obstructing *see* obstructing a police officer

- police *see also* British Transport Police (*cont.*)
 powers as to protests *see* freedom
 of assembly; protests
 pre-emptive tactics, use of 105–115
 surveillance powers 63
 tolerance of unlawful conduct of 43,
 51–52
 violation of rights by 45–46
- Police and Criminal Evidence Act 1984
 (PACE)
 confiscation of political literature 192
 Damien Green arrest, and 169–170
 search powers 39, 110
 warrants provisions 168–169
- police dogs, use of 8, 106, 107
- political activism *see* protests
- political freedom, link with rule of law 3, 7
- political organisations, banning of
 appeal body *see* Proscribed Organisations
 Appeal Commission (POAC)
 Communist Party 181
 glorifying terrorism, for 183
 history 181
 Irish organisations 181–183
 statutory powers 182–183
- political questions, courts' power to
 review 233–234
- Ponting, Clive, prosecution of 10, 140–141
- Poole Borough Council, use of
 surveillance 65–66
- Post Office, surveillance powers 63
- power, protection of liberty by 282–284
- power stations, protests at 106
- Press Association, survey on surveillance
 usage 66–67
- Preston City Council Code of Practice on
 CCTV cameras 59
- Prevention of Terrorism Bill 2005, JCHR
 reports 270–272
- privacy
 CCTV cameras and 59–60
 control orders, impact of 243–245
 DNA database and 84–86
 protection for celebrities 94
 role in *Nineteen Eighty-Four* 53–54
 tagging, impact of 243–244
 threat to right of 237
- procedural fairness
 deportation, as to 222
- detention, as to 227–229
- property, interference with
 complaint to Investigatory Powers
 Tribunal 71–72
 police authority for 62
 warrants for 70
- property owners, rights balanced with right
 to protest 102–105
- property related to terrorism, possession
 of 209–210
- Proscribed Organisations Appeal
 Commission (POAC)
 appeal to 185
 Liberty's comments 190
- proscription *see* political organisations,
 banning of
- Protection against Harassment Act 1997
 'function creep' 124
 protests, as to 121–123
- protestors
 dispersal of 128–130
 juries' support 136
 measures against 9–10
 'stop and search' of 201–202
 surveillance of 126–127
- protests *see also* civil disobedience
 children, search of 202
 common law restraints 98–100
 custody as punishment 111
 effect of dispersal orders on 34
 House of Lords decisions 9–10
 HRA as to 105–115, 134–136
 injunctions to restrain 120–125
 kettling *see* kettling
 legal process, through 136
 obstruction of the highway, arrest
 for 113–115
 police powers 96–136
 police presence 125
 police treatment of protestors 9
 pre-emptive tactics by police 105–115
 preventing attendance at 106–108
 preventing participation in 108–110
see also kettling
- Protection against Harassment Act 1997
 as to 121–123
- Public Order Acts restrictions
 100–101, 111–113
- relation to civil disobedience 130–134

- right balanced with property owners'
 rights 102–105
- right on public highway 102–104
- soliciting to murder, convictions
 for 215–216
- sources of protest 1930's–80's 98
- statutory restraints 100–101
- threatening, insulting or abusive
 behaviour, arrest for 111–113
- public emergency
 derogation from ECHR, grounds
 for 232–234
 ECtHR case law 232
 linkage to national security 226
- public highway, right to protest on 102–104
- public interest defence to Official Secrets
 Act 175–178
- public officials *see also* local authorities;
 State officials
 operation of surveillance powers 93–94
 prosecution for public interest disclosure
 of secret information 10
 rule of law restrictions on 6–7
- Public Order Acts as to protests 100–101,
 102–105, 111–113, 128, 215–216
- public places, authority for use of CCTV
 cameras in 57–58
- Punch* magazine and *Shayler* case 173–177
- Queen's peace *see* breach of the peace
- Redknapp, Harry, search of premises of 42
- Reed Elsevier AGM, police presence at 125
- refugees, immigration by 221
- refugees, impact of control orders on 243
- Regulation of Investigatory Powers Act
 2000 (RIPA)
Nineteen Eighty-Four as
 foreshadowing 53–54
 operation of powers 63–79
 regulatory framework within 61–63
- Rehman* deportation case 223
- relative institutional competence,
 demarcation of 233
- rendition, legal challenges to 255–259
- Robertson, Margaret, surveillance
 case 60–61
- Royal Pharmaceutical Society, surveillance
 powers 64
- rule by law, distinction from rule of law 3–4
- rule of law
 CCTV cameras, and 58–60
 commitment to human rights 5
 defining 3–6
 distinction from rule by law 3–4
 DNA database, and 81–83
 email interception and 75–77
 foundational constitutional
 principle, as 2–3
 honouring of 263
 implications for civil liberties 6
 link with personal and political
 freedom 3, 7
 minimum requirements 4
 National Identity Register, and 91–93
 principle of 4–5
 requirement of compliance with
 international treaties 5
 restrictions on State and public
 officials 6–7
 role of 4
 security service surveillance, and 70–71
 sub-rules 5
 telephone tapping and 75–77
- Sabir, Rizwan, arrest and
 detention 212–214
- Salisbury District Council, Stonehenge
 exclusion order 102
- samples *see* DNA samples
- Sandys, Duncan, threatened prosecution
 of 166
- Scarman Report, call for new approach to
 policing black communities 26
- school admissions applications, surveillance
 of suspected fraud 65–66
- scope of book 1–2
- Scotland
 devolution measures 2
 dispersal zones 32
 Faslane base protest 180
 Glasgow airport terrorist attack 180
 overnight custody of Faslane
 protestors 111
 retention of samples, law on 80
 seizure of terrorist cash 195
 'stop and search', use of 202–203
 surveillance 61

- search
 after arrest 110
 children, of 202
 JCHR concerns over powers 40
 new powers of 35–36, 39–41
- security services *see also* intelligence services
 CHIS usage 71
 directed surveillance 71
 intrusive surveillance 71
 issue of warrants for surveillance to 70
 rule of law as to surveillance by 70–71
 surveillance by 69–73
 surveillance powers 63
- Sedley, Lord Justice Stephen, proposal for mandatory DNA database 83, 95
- Serious Organised Crime and Public Order Act 2005 (SOCPA)
 Brian Haw case 116–120
 operation of powers 118–120
- Serjeant at Arms, role in Damien Green arrest 167–168
- Shayler, David, prosecution of 172–178
- 'shoot to kill' policy, existence of 17–18
- sickness absence, surveillance of working during 67
- Siracusa Principles (ICCPR) on derogation and limitation 232
- soliciting to murder, offence of 215–216
- solicitor, denial of access to 45–46
- Speaker of the House of Commons, role in Damien Green arrest 167–172
- Special Advocate's role
 control orders 248
 detention cases 229–231
- Special Immigration Appeals Commission (SIAC)
 appeal to 224–225
 assessment of Algerian political situation 256–257
 bail conditions imposed by 251
 creation 222
 membership 22–23
 powers 227–228
 proceedings 231
 status 222
- speech *see* free speech
- Spycatcher* case 141–143, 161
- Stanley, Harry, death of 47
- state authority, exercise of 263
- State officials *see also* public officials
 increased statutory regulation of 7
 police *see* police
 rule of law restrictions on 6–7
- Stonehenge, protests at 102–105
- 'stop and account'
 discrimination in use of 25–27
 form filling 23
 incidence of 21
 Macpherson Report recommendations 21, 22
 police time spent on 22
 practice of 20–22
 procedures 22–23
 safeguards 22–23
 use of 18
- 'stop and question', legality of 19
- 'stop and search'
 anti-terrorism 200–209
 Code of Practice 21–23, 24
 debate over need for powers 202–204
 discrimination in use of 25–27
 disproportionate use against Asians 209
 exercise of 200–202
 extension of powers 24
 judgments on of use of 205–209
 legality 19, 24, 205–207
 safeguards 24, 206
 Scotland, use in 202–203
 usage level 209
 use of 24–25
- Stop Huntingdon Animal Cruelty (SHAC), injunctions restraining 120–125
- Straw, Jack, 'golden age of liberty', on 15
- students
 possession of terrorist literature by student radicals 210–212
 'stop and search' of 200, 201
- summary of book 263–264
- surveillance
Carltona principle 70
 children, and 65–67
 CHIS, use of *see* covert human intelligence sources (CHIS)
 Commissioners 63

- complaints 61
- courts' permissive approach 61
- covert surveillance *see* covert surveillance
- directed surveillance *see* directed surveillance
- ECtHR's approach 61
- Intelligence Services Commissioner's oversight 72–74
- intrusive surveillance *see* intrusive surveillance
- issue of warrants 70
- oversight of powers 69–70
- protestors of 126–127
- random surveillance by CCTV cameras 55–60
- right of complaint 63
- security services, by 69–73
- targeted surveillance 60
- Surveillance Commissioners
 concerns over covert surveillance by local authorities 65–68
 exercise of authority 63–65
 report 64
- surveillance society
 concerns at growth of 8, 53–54
 courts' permissive approach 94–95
Nineteen Eighty-Four as prediction of 53
 operation of powers 93–94
- Swain, Val, police treatment of 9, 127–128
- tagging, use of 243–244
- telephone tapping
 authority for 82
 ECtHR rulings 74
 growth of 54
 increase in 8
- Interception Commissioner's oversight 77–79
- issue of warrants 76–77
- legality 3
- MPs' freedom from 171
- powers 74
- rule of law and 75–77
- Wilson doctrine 171
- terrorism
 arrests 11
 banning of political organisations 181–190
 banning reversal procedures 184–185

- conviction rate 219
- definition
 George Orwell, by 216
 statutory 10
- freedom of expression, and 209–214
- Glasgow airport attack 180
- glorifying
 banning of political organisations for 183
 debate over new offence of 214–218
- human rights, and 180
- justification by Nelson Mandela 216
- legislation 10–11
- literature
 offence of possession 210
 possession by student radicals 210–212
 possession for academic study 212–214
- Lockerbie death toll 179
- London attacks
 21 July 2005 179–180
 29 June 2007 180
 7 July 2005 179–180
- police powers 200–209
- possession related to 209–210
- renunciation of 188
- 'stop and search' 200–209
- use of powers 218–220
- terrorist finance and property,
 confiscation of
 characteristics of terrorist finance 190
 confiscation orders, conditions for issue 195–196
 definition of 'property' 190
 freezing of assets
 Orders in Council, under 197–199
 powers in domestic legislation 194–197
 powers originating in UN measures 197–199
 safeguards 195–196
 measures for 190–191
 political literature 191–194
- Thatcher government
 free speech approach compared with New Labour 138–143
 Official Secrets Acts usage 139–141
 security measures 16

INDEX

- Tisdall, Sarah, prosecution of 10, 139–140
- Tomlinson, Ian, significance of death 8
- torture of deported persons
 - British citizens 262
 - danger of 226–231
 - diplomatic assurances *see* memorandum of understanding
 - official complicity with 261–262
- trade union rights, effect of dispersal orders on 34–35
- traffic cameras, police surveillance usage 135
- treaties, rule of law requirement to comply with 5
- trespass
 - civil disobedience, as 130
 - offences of 110
- trespassory assembly
 - arrests 103–104
 - meaning 103
- United Nations (UN), measures for freezing of terrorists assets 197–199
- United States
 - air bases in UK, protests at 111–115
 - al-Jazeera* Memorandum case 153–161
 - constitutional protection of rights 13
 - DNA database size 79
 - flag burning as freedom of expression 113
 - freedom of expression as to political debate 152
 - unlawful killing, withholding of judgment 47–50
- Vatan* confiscation case 191–194
- Wales
 - devolution measures 2
 - surveillance powers 64
- 'war on terror' *see* terrorism
- warrants
 - anti-terrorism operations 219
 - arrests without 39–41
 - effectiveness of safeguards 41–42
 - greater regulation of issuing 8
 - PACE provisions 168–169
 - parliamentary privilege and 168–172
 - surveillance, for 70, 72
 - telephone tapping 76–77
- watching of people
 - oversight of 63–65
 - regulatory framework 61–63
 - use of 60–61
- Wednesbury* test applied to PMOI banning appeal 188–189
- Wilson doctrine 171
- wireless telegraphy, warrants for interference with 70
- witnesses, failure to call 48–50
- Wolfgang, Walter, stop and search of 201
- 'Wombles, The', arrest of 106–108
- Wood, Andrew, retention of photographs of 126–127
- working while off sick, surveillance of 66–67
- Wright, Peter *see* *Spycatcher* case
- Yezza, Hicham, arrest and detention 212–214
- 'Zircon' affair 170

j-40771

This provocative book confronts the corrosion of civil liberties under successive New Labour governments since 1997. It argues that the last decade has seen a wholesale failure of constitutional principles and the futility of depending on legal rights to restrict the power of executive government. It considers the steps necessary to prevent the continued decline of political standards, arguing that only through rebalancing political power can civil liberties be adequately protected.

Relying on extensive new research of inaccessible sources, the book examines the major battlegrounds over civil liberties under New Labour, including the growth and abuse of police power, State surveillance, and counter-terrorist measures. It unfolds a compelling narrative of the major battles fought before Parliament and in the courts, and attacks the failure of the political and legal systems to offer protection to those suffering abuses of their civil liberties at the hands of an aggressive Executive. In doing so, it offers a definitive account of the struggle for civil liberties in modern Britain, and a controversial argument for the reforms necessary to contain executive power.

K. D. Ewing is Professor of Public Law at King's College London.

Cover illustration: Martin Rowson

OXFORD
UNIVERSITY PRESS

www.oup.com

*** "ADA" Kitab Mərkəzi ***

Bonfire of the liberties
Qiyafət 34.00 manat

34m



9 780199 584789

“Müəlliflik hüququ və əlaqəli hüquqlar haqqında” Azərbaycan Respublikası Qanununa və nəşr ilinə, ölkə üçün mühüm əhəmiyyət kəsb etdiyinə görə bu elektron resursdan yalnız kitabxananın “Lokal şəbəkədən istifadə üzrə oxu zalı”nda istifadə etmək olar.

* * *

Due to Law of Azerbaijan Republic on “Copyright and related laws”, year of publication and for this reason that this material is important for our republic you can use this electron resource only in the “Local network reading hall”.

* * *

Принимая во внимание закон Азербайджанской Республики "Об авторском праве и сопутствующим правам", год издания, и чрезвычайную важность для страны, получить доступ к данному электронному ресурсу можно только в библиотечном "Читальном зале по использованию локальной сети".