

Thatcher rights

FREEDOM UNDER THATCHER

CHER: Civil Liberties in Modern Britain. By K. D. Ewing and G. A. Gearty. Oxford University Press, 305 pp. £72.50/£5.95 in UK.

By Brendan O'Leary

KEITH Ewing and Connor Gearty's description of the impact of Mrs Thatcher's governments upon traditional British civil liberties evokes the famous saying of the Roman historian Tacitus. Surveying the devastation of parts of Britain caused by Roman imperialism he declared: "...*Libi solitudinem jacunt pacem appetant*" (where they create a wilderness they call it peace). For Ewing and Gearty an appropriate obituary for the Thatcher governments might be: "Where they create centralised authoritarianism they call it liberty..."

In their powerful and vivid indictment these two lawyers construct a racy narrative of the gradual and now accelerating erosion of the traditional liberties of the person, expression, assembly and association in Britain. They are careful not to exempt the Wilson and Callaghan Labour governments from sins of omission and commission, but the bulk of the book is devoted to developments under Mrs Thatcher's governments in the last decade.

They chart the extension of police powers, in their capacity to arrest, detain, and question suspects, placing special emphasis upon the lack of significant accountability constraints on the police, and the negative consequences of the shift from detection to interrogation as the primary strategy through which the police conduct their business in serious criminal cases. The latter development contributed to the many infamous cases of injustice meted out to the Irish in British.

The lack of effective safeguards against the interception of communications, and in particular the reluctance of the executive to be subject to satisfactory scrutiny or control, merits chapter-length treatment, as do the restrictions on freedom of assembly imposed by the new public order offences under the 1986 Act. The management of the miners' strike in 1985 revealed how the resources of the flexible British constitution could be used to crush organised dissent.

However, the extraordinary harassment of a convoy of hippie-travellers en route to Stonehenge in 1985 and 1986 demonstrates more dramatically the extent to which intolerance had become actively encouraged by the Home Secretary and the Prime Minister. The absurd beliefs of the travellers about the religious significance of Stonehenge surely did not merit them being described as "medieval brigands" or the

manipulation of the law and their offices of state by Thatcher and Hurd to prevent the hippies from organising peaceable assembly.

Such farcical abuse of state power to crush harmless deviants of course pales in significance beside the development of national security law and policy during the last decade. Ewing and Gearty document the outlawing of trade unions at GCHQ, the use and abuse of the old Official Secrets Act, and the hilarious *Spycatcher* saga, with bemused irony. They subject the new Security Services and Official Secrets Acts passed in 1989 to withering dissections, providing as efficient hatchet jobs on the bodies of the victims as one could possibly want. Their witty analysis of the British state's legal responses to terrorism will also be of considerable interest to Irish readers.

This very good book, which proves that lawyers can write clearly, wittily and in an *engage* style, is marred by only two defects, neither of which should stop people from buying it. First, their explanation of the context in which centralisation and the erosion of civil liberties have occurred is incomplete. They place most emphasis upon the so-called British Constitution, which does not provide a framework of civil rights against the state, and has always had the potential to be abused by a dominant governing party. It is true that the Westminster model is a necessary feature of any complete explanation. However, much greater attention should have been paid to the impact of New Right political philosophy on the Thatcher governments. Second, when it comes to prescription, Ewing and Gearty pull their punches and push their readers towards pessimism. They are sceptical about proposals for a Bill of Rights in Britain, questioning whether such a Bill could work, whether it would make any difference, and whether it would be a good idea in principle given the reactionary character of British judges who are too frequently deferential to the executive. Rather, the solution seems to lie in a grand constitutional transformation sketched on the last page of the book, one which would have to be "as great as that which brought down the Stuart despots in the seventeenth century — although I take it that the authors are not advocating new Cromwellian and Williamite settlements..."

Understandable despair about British judges seems to have clouded the authors' otherwise very measured and compelling judgments. However, it is much easier to transform the pool of potential judges, to change judicial training, to appoint judges by parliamentary committees and to introduce a Bill of Rights than it is to transform the entire British constitution. So why not recommend the less difficult tasks first rather than reinforce the pessimism of liberal watchers of British politics?