

Secret trials

*The trustees of Quaker Concern for the Abolition of Torture ask:
Is justice being served by secret trials?*

A key aspect of justice is its transparency in the conduct of law – ‘open justice’. This is currently under threat in this country. Quaker Concern for the Abolition of Torture (Q-CAT) trustees would like to share their disquiet over this with Friends.

Open justice has been a founding principle of British justice for over 1,000 years, and was described by David Neuberger, baron of Abbotsbury and president of the Supreme Court of the UK, in October 2013, as ‘a fundamental feature of the rule of law in any modern democratic society’. In the past, transparency in the conduct of legal actions has not been an optional extra. It has been an essential. This is set to change.

Recently, the Crown Prosecution Service (CPS), backed by the Home Office and Foreign Office, wanted two anonymous defendants to be tried entirely in secret, claiming this was due to ‘national security’. Eminent lawyers vehemently opposed this move and achieved some modifications to the secret conduct of the trial. The lawyers maintained that transparency cannot be an optional extra in the pursuit of justice, especially so when ‘the going gets tough’. The lawyers stated that ‘they find it difficult to conceive of a situation where [these] departures from open justice will be justified’. Despite this, the lawyers were forced into a compromise. The principle of transparency in our justice system has been fatally undermined.

Why is this so important? It means that those in power have become less accountable for their actions and decisions to those who have entrusted that power to them: the public. Now a defendant tried in a secret trial, potentially, may not know what charge they face nor the evidence against them, which can be withheld.

The government now allows itself to hide what is inconvenient or potentially embarrassing. Previously, the government had tried to prevent disclosure of illegal actions in our courts by pleas of ‘national security’, but eventually the facts emerged. Two terrorism trials were partly held in secret to conceal

the role of intelligence services in Pakistan in 2005 and 2008. MI5 strongly denied complicity in torture and rendition, but this was proved to have occurred.

The Justice and Security Act, the Data Retention and Investigatory Powers Act and the current Emergency Surveillance Bill all have the potential to undermine our civil liberties and allow poor governance. Our ability to interrogate those in power and our freedom to carry on our private lives are damaged. The speed with which they were railroaded through parliament undermines the rule of democracy. This state of affairs might be acceptable if we were at war. We are not.

Our concern also relates to our confidence in being under good governance, and believing in the good intentions of government for us all: that is our trust. Unfortunately, such trust is undermined by recent revelations.

Unknown to us until now our online communication has been, and is being, intercepted to be checked for pointers for future dissent. Once we were not guilty until proven under law, not now. Is this liberty?

Can we trust our governance? A simplistic view is that justice prevails when the common good is supported and citizens in a country can feel that fairness prevails in areas of dispute or crime. We know about police manipulating evidence, about the extension of private contracts, about the government’s use of language to manipulate our views. None of this is ‘just’ or ‘fair’. Yet, at least we know about it and can require amends be made to those involved.

Transparency in civil law is essential so that we can know all the facts. Equally essential is our quest for justice and our faith in the essential goodness that lies within all people, which may respond when truth speaks to power in love.

*The trustees
Quaker Concern for the Abolition of Torture*