

**Civil Society  
and David Blunkett**



**Civil Society and  
David Blunkett:  
Lawyers *vs* Politicians**

**Kenneth Minogue**

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## ***Author***

**Kenneth Minogue** is Emeritus Professor of Political Science at London University. Born in New Zealand, educated in Australia and Britain, he has written *The Liberal Mind* (1963, new edition published by the Liberty Fund 2001), *Nationalism* (1967), *The Concept of a University* (1974), *Alien Powers: The Pure Theory of Ideology* (1985), *Politics: A Very Short Introduction* (1995), *The Silencing of Society: The True Cost of the Lust for News* (1997) and *Waitangi: Morality and Reality* (1998). He has edited several books, including most recently *Essays in Conservative Realism* (1996), and contributed essays to others. In his academic persona, he has lectured and visited universities and research institutes in many countries, but he has also written columns for *The Times* and *The Times Higher Education Supplement*, as well as reviewing for *The Times Literary Supplement*. He currently writes a monthly column for the *Adelaide Review*. In 1986 he presented on Channel Four in England a six-part television programme on free market economics called *The New Enlightenment*, repeated in 1988. A frequent commentator for radio and television on European Community issues, he was Chairman of the Bruges Group, 1991-93. He is a director of the Centre for Policy Studies (for which he has written 'The Egalitarian Conceit' and 'The Constitutional Mania') and a trustee of Civitas. He is an Honorary Fellow of the London School of Economics.

## ***Foreword***

Not many politicians deserve to be admired but David Blunkett is one of them. This essay by Professor Kenneth Minogue is a respectful critique of some of the policies being pursued by Mr Blunkett and the Government of which he is part. It was occasioned by a lecture given to Civitas by the Home Secretary in October 2001. His speech is available online at the web address given at the end of this Foreword.

Many politicians manage to change a policy here, or a clause in a Bill there, but David Blunkett has distinguished himself by helping to change some of the fundamental beliefs that underpin political thought and action. Four contributions can be singled out.

First, he thinks that criminals are personally responsible for their actions. He is a socialist with a high level of faith in the capacity of political leaders to solve problems but he does not think that a murderer or a street mugger can turn round and claim that 'society made me do it'.

Second, he has challenged those who have argued that patriotism is no more than a cloak for racism. At its best it is a justified pride in national institutions that embody and protect freedom and democracy.

Third, and closely related to the second point, ethnic minorities should not be viewed as if they are nothing but victims of white racism. True equality means treating people of all races as the potential bearers of all the faults and virtues known to human experience. Asylum seekers, for example, may be taking advantage of the generosity of the host country and if found to be lying, sent back.

Fourth, Mr Blunkett has highlighted the changing role of judges, a transformation that has never been

subjected to proper debate. As someone who wields executive power Mr Blunkett might well be expected to come up against judicial limits, but his criticism is much more than the irritation of an overmighty ruler whose wings have been clipped. Increasingly judges have abandoned their role as guardians of every individual's opportunities to make the most of their lives in favour of imposing their own moral beliefs on other people under the guise of human rights.

Judges used to mistrust rulers with too much power; now they mistrust ordinary men and women with too much discretion. Judges formerly prided themselves on being the custodians of the laws that applied equally to all and that gave everyone the chance to make the most of their talents; today they are more likely to pride themselves on enforcing elite moral beliefs on the unenlightened plebs who, at home, insist on smacking their children and, at work, persist in believing that employers should give jobs to people who are good at their work not to individuals who happen to belong to a recognised racial category.

Some judges have become social engineers intent on removing issues from the sphere of moral debate—where 'experiments in living' are tested one against another and we gradually learn what works and what doesn't by watching, learning and criticising fellow citizens—to the realm of law and order—where beliefs and actions are overshadowed by the writ, the fine and the prison cell. But not all the changes in the judicial world are the result of zealotry. Often the chief motive is money. New human rights laws are seen by many lawyers as commercial opportunities for money-making. The language is that of fees, turnover and profits, not justice. And it is from the ranks of such men that judges are drawn.



Mr Blunkett has not voiced his criticism as strongly as I have done in the last paragraph or two, but he has put the issue on the map. And the judges have a case to answer.

*David G. Green*

David Blunkett's speech is available here:

[www.civitas.org.uk/pdf/blunkett2510.pdf](http://www.civitas.org.uk/pdf/blunkett2510.pdf)

# **Civil Society and David Blunkett: Lawyers vs Politicians**

**I**t is a common belief that the New Labour government that came to power in Britain in 1997 has learned the lesson that central planning fails, and as a result has lost its passion for radical change. It may be the case, however, that Labour radicalism has merely moved from the economic to the social arena. The Blair government shares the immemorial ambition to create a perfect, or at least what it would judge to be a more just society. I want to explore this judgement by looking at the work of David Blunkett and the Home

***‘The Blair government shares the immemorial ambition to create a perfect, or at least what it would judge to be a more just society.’***

Office, especially since the 2001 election when a set of interlocking crises provoked the government into policies that often put it in conflict with many of its traditional supporters. And I shall use the idea of civil society as an instrument with which to clarify this complex area. Let me first mention a few of the issues whose meaning I want to put into a wider context.

The terrorism bill which Blunkett piloted through the Commons in late 2001 in the wake of the Islamic attack on the Twin Towers in New York aroused fears for civil liberties, and the proposals on religious hatred were rejected. Most people breathed a sigh of relief. Blunkett’s response to race riots in Oldham was to suggest that those settling in Britain should learn

English and acquaint themselves with the customs of the country. He thereby offended the race relations lobby, as he also did with his remark in April 2002 that in some areas the children of asylum seekers were 'swamping' other children in schools. The word 'swamping' had been part of the growing dictionary of forbidden words ever since Margaret Thatcher had used it in 1978. Blunkett's expression had invoked one of the anxieties haunting Britain's nervous political élite: namely that the British masses might degenerate into frenzies of racism if multicultural issues were discussed too frankly: *pas devant le peuple!* Blunkett found allies, however, as he often does, in many who are often critical of Labour policies: *The Times* called his stand 'brave' just as the *Daily Telegraph* had earlier approved of him as a 'hate figure' on the left of the Labour Party. Meanwhile, the Home Secretary found himself responsible for dealing with a nasty surge in the crime statistics. This provoked his passion for nettle grasping, and he locked himself into contention with a demoralised and inefficient police force. One might have said that he had found himself at the eye of a storm, but a storm that goes on for more than a year is something more serious.

It is clear that he is a courageous figure struggling not only with difficult public problems, but also with a bad legacy. The broad response he has to public problems has been, I think, to call up civil society so that it can be mobilised against the interests that are blocking his reforms. This policy comes out clearly in an address he gave to Civitas in November 2001 outlining a broad strategy<sup>1</sup> for tackling the problem of crime. The success of this policy depends entirely upon the vitality available in British civil society today. Let us first consider this central idea, and then locate Blunkett himself in the current political constellation.

### ***1. How to Get Civil Society Wrong***

The fall of the Berlin Wall was a moment when the very idea of civil society came into clear popular focus. The failure of communist régimes resulted from the fact that they had systematically destroyed civil society by subjecting all social activities to the direction of the state. The Communist Party, claiming to be society itself, administered everything that its miserable subjects got up to. Those staggering out of the Communist boredom during the 1980s were quick to recognise at least that the central feature of their new freedom was the vibrancy of a life not subjected to the plans and projects of the state.

***‘Civil society was here distinguished as the free associations and institutions made possible by the state’s framework of law and order.’***

The term ‘civil society’ had been used by early modern philosophers to refer to an association of individuals linked together in subjection only to a rule of law which they had some part in creating and modifying. It was the German philosopher Hegel who in *The Philosophy of Right* (1821) built on the social theory of the eighteenth century to distinguish a modern state as being made up of three realms: individual and family, civil society (which included the economy) and the state itself. Civil society was here distinguished as the free associations and institutions made possible by the state’s framework of law and order. It thus included business enterprises, universities, guilds, sporting clubs, religious groups, academies, newspapers and any other kind of project human beings might legitimately get up to. Not long afterwards, Alexis de Tocqueville was remarking on the

vast range of associations to be found in English-speaking societies.<sup>2</sup> Anglo-America was in the nineteenth century less centrally controlled than most Continental countries which had only recently emerged from the enlightened absolutism of the previous century. Yet all of them enjoyed areas of independence from the state, partly resulting from the pluralism of aristocratic and bourgeois patronage. This freedom was the source of the vitality by which Western states have in modern times revolutionised technology, society and culture.

Civil society as the arena of freedom has remained vital in Western states since the time of Hegel, but has come to be severely modified by the exigencies of warfare and welfare. In war, governments mobilised the resources of the state for victory, and administrative habits grew up that continued into peacetime. The effect of welfare was slower, and perhaps more insidious. The problem with welfare is that civil society, and especially the economy, is an arena of inequality: some prosper and succeed, others do not. Democratic states commonly seek to use the power and authority of the

***'the projects of government cannot help but overshadow the projects and purposes of the members of society.'***

state not only to sustain a framework of law, but also to redistribute wealth and status. The modern state thus acquires a new character; it becomes not only a framework of law, but also a source of benefits for those in need. The civil relief of need has a dramatic effect upon civil society: the projects of government cannot help but over-

shadow the projects and purposes of the members of society.

Business firms, for example, become components in a national economy directed by the government, and the pill of central regulation is often sugared by protection against foreign competition. The arts come to be subsidised as components of national prestige, and as part of state encouragement of tourism. Schools and universities become contributors to the 'knowledge economy'. As governments develop policies for bringing the disabled, or women, or ethnic minorities more fully into the economy, they instruct firms in the required composition of the labour force. Heavy responsibilities

***'We live, then, in an intermediate condition of things, in which civil society remains an area of freedom to act, but is massively constrained by national purposes articulated by governments.'***

for compliance and reporting what has been done are imposed on every company. Professions such as medicine are incorporated into national schemes for equalising health care. We are all familiar with these details of the contemporary welfare system, in which the state disposes of around 40 per cent of the national wealth for the good causes it supports. And the more the state takes over the guidance of civil society, the more it is tempted to move into the arena of family life. Even domesticity must conform to national strategies which can range from the disciplining of children to the work of the International Obesity Task Force, another fantasy military organisation designed presumably to fight flab. We live, then, in an intermediate condition of things, in which civil society remains an area of freedom to act, but is massively constrained by national purposes articulated by governments that have both the authority and the

power to acquire by taxation the resources they require to please the electorate in the hope of returning to power.

In abstract terms, there are good reasons why society has taken this road. The difficulty is that every social problem requires (in this manner of thinking) a legislative solution, and in logic there is no reason why the state should not move to a point where it determines *everything*, except possibly the trivia of our inner lives. Just such a condition was the aspiration of the Bolsheviks, who thought they could live peoples' lives better than people themselves. We are saved from this evolution of servility only by the discovery that beyond a certain point of state control, seriously diminishing returns set in. The prosperity that we also value depends on at least some degree of freedom for enterprise. This is, however, a very slim support for a freedom whose real value is entrenched in the little discussed moral basis of Western states.

It is this pressure of a misguided social perfectionism that explains why that exquisite moment of clarity about the importance of civil society has been lost. The old demons have reappeared, and they have all picked up a seductive line in pseudo-moral jargon from passing through higher education. Let me alert the reader to one or two of the current mystifications of servitude. One such mystification is the talk of social responsibility. 'Responsibility' is a moral term relating us to specific duties, but we seldom if ever have a specific duty to anything as amorphous as 'society'. The state is always there, however, to tell us what we ought to do for society. Another way of subjecting individuals to this wider purpose is the busybody theme of setting up creatures called 'stakeholders' who must be called in and consulted about everything we

do. Sometimes institutions are seduced by soothing talk of social 'partnership', describing a relationship that would make sense only if the state and the institution were engaged in a common project. In European Union circles, this subjugation of institutions to civil authority is sometimes, by muddled people, referred to as 'organised' civil society, which is a contradiction in terms. The whole point of civil society is that it is (as a large component of the way we live) spontaneous and unorganised. Political theorists are keen to politicise the institutions of civil society by creating 'participatory democracy', which is generally a demand that the citizenry should turn up at meetings to be addressed by activists. Sometimes the domesticated world of social institutions controlled by government is referred to as 'the public realm'.<sup>3</sup> The ultimate impertinence of the projectors of servility is, perhaps, the idea just surfacing in Labour think-tanks of according to some institutions what is called 'earned' autonomy. Here we have a confusion resembling the idea that a governmental remission of taxes is a gift of government.

***'The ultimate impertinence of the projectors of servility is, perhaps, the idea just surfacing in Labour think-tanks of according to some institutions what is called 'earned' autonomy.'***

The obverse of these trends is found in the growth of non-governmental organisations, or NGOs to their familiars, which are in principle a classic expression of the vitality of civil society. But even here, the heavy hand of government will be found pulling the strings. Many of them are in fact funded by the state, and some are even used by governments in order to



achieve by law what cannot be achieved politically. NGOs are now themselves a power in the land and sometimes claim to *represent* 'civil society' on the international stage. The only real way in which people can be represented is, of course, by voting for governments in a modern state. The imposture of NGO representativeness, like the multiplication of rights, is one aspect of the current attack on

***'The imposture of NGO representativeness, like the multiplication of rights, is one aspect of the current attack on democracy...'***

democracy by those who seek the stability of an entirely controlled and predictable world.

These are some of the more recent rhetorical absurdities of a managerial mode of thinking that has long sought to turn modern states into instruments of some grand purpose—happiness, justice, democracy, community and the rest—to which we must all be subject. In all these cases, the trick is to present the aspiration to homogenise human life as a triumph of diversity, but tracing out these connections is a theme for another occasion. What we have said may suffice to show the rhetorical world that Blunkett has inherited. It might, tentatively, be presented as a conflict between perfectionism and common sense. Both sides of the conflict, however, aim to transform British society. What that means will appear, but first we must consider Blunkett himself.

## ***2. David Blunkett in Political Context***

As Home Secretary, Blunkett stands out as an exception to the widespread public disdain for politicians. He rings true. Like Ernest Bevin in the Attlee government, who was admired for similar reasons, he exhib-

its a conspicuously working-class common sense. This is an important part of the context in which we may understand the politics of his contribution to governing the country. It distinguishes him from two dominant elements in the current Labour Party.

The first, often wrongly called 'old Labour', consists of that majority of the Party who have picked up from their contact with higher education a set of abstract allegiances to socialism and community. When they look at Britain, they see not a unique historic society but capitalism, imperialism, oppression, gaps between rich and poor and a variety of other abstractions, virtually all with pejorative overtones. Among academics, these theories not only seem sophisticated, but also proclaim that whoever holds them is critical and independent of mind, capable of standing aside from inherited pieties. This cast of mind leads politically to the imitation of foreign models of social desirability. Such models change, of course, from decade to decade, but currently the European Union is the tops. Here, then, is an élite that is egalitarian in the Orwellian sense of being more equal than others. While most of them are in some sense themselves middle-class, they can focus their animating antipathies on a disdain for the middle class. Anti-Americanism is also built in to their reflexes. Hence their basic position is a visceral anti-patriotism. It was on display instantly the moment Blunkett responded to the recent race riots by suggesting that the migrants, rather than racist British society, might be part of the problem. One might be tempted to call this the nihilist tendency, but that would be to ascribe to it a more coherent character than it actually has. It consists rather in a kind of bloodless negativism about Britain. It does not approve of the Home Secretary.

The other tendency useful in locating Blunkett is that of the New Labour modernisers who have rejected cultural self-hatred yet still aim to *make* Britain fit an abstract ideal. The basic aim is to combine productivity with social redistribution. Tony Blair is of course the leader, one might almost say the ‘icon’, of this tendency, and it has had immense electoral success. Blair is the kind of patriot who wants Britain to be a beacon to the world, which means that he is at the

mercy of the world’s fashions. There is, however, a certain power to the simple idealism of this strand of socialism, and even its failures, such as the Dome, have a certain perverse grandeur. Yet there is something rootless about it. A certain insincerity, a preoccupation with image and spin, ex-

***‘Blair is the kind of patriot who wants Britain to be a beacon to the world, which means that he is at the mercy of the world’s fashions.’***

poses a shallowness resulting from the fact that its inspiration is international respectability rather than responsiveness to British distinctiveness. It is Blunkett’s strength that he combines the reforming ambitions of the modernisers with a powerful drive of sturdy common sense.

And since common sense is both rare and central to this subject, let me specify what it is. Common sense recognises that the world is not going to change in a hurry, that there is generally some justice on both sides of any serious conflict, that sweet reasonableness will advance many proposals, but not very far, and that power and fear are never very far from the surface of human affairs. If these elementary opinions make common sense seem rather thin, let the reader meditate on the history of ideal solutions to British

social problems in the course of the twentieth century—the history that has brought us to our present condition. If the reader wants a bit of scientific validating for such common sense, let him be referred to the Rappoport testing of iterated prisoner's dilemma games in which tit-for-tat turns out to be the best strategy. And if he wants the opposite folly illustrated, I would cite, in recent discussions of the problems of the National Health Service, the commentator who said: 'What we need is to bring back matron—without the fear, of course'. Blunkett is certainly one who knows that a matron without fear would be no matron.

***'the problems faced by Blunkett have resulted from accumulated layers of blinkered idealism.'***

Here then was our Home Secretary, and it is hard not to think of his task as similar to that of Hercules confronted by the Augean Stables. Just as the land of King Augeas was rendered horrible by all the dung that had accumulated over time, so many of the problems faced by Blunkett have resulted from accumulated layers of blinkered idealism. Hercules diverted two rivers to sweep the dung away. Lack of common sense has got us into much of the present fix, but it is far from clear that a flood of common sense can get us out. What is it that stands in his way? One answer might well be (in Tony Blair's phrase) 'the forces of conservatism', where conservatism means precisely the opposite of conservatism.

More specifically we might take our bearings from the television commentator on *Newsnight* who characterised Blunkett's anti-terrorism bill as a 'crusade against the legal profession and the judiciary'. This is only slightly hyperbolic, and it does bring out what is

at stake, not only in the events that first brought him to the eye of the storm at the end of 2001, but also of a constitutional crisis that is ripening nicely. The question is simply: who is to be the master—the judges or the politicians?

### ***3. The Problem of Rights***

Blunkett's problem with lawyers is that they impede the executive (a.k.a. David Blunkett in this case) in doing what ministers think evidently needs to be done, and his impatience is both the strength and (as we shall see) the weakness of his position. Judicial review is part of our freedom, but it can destroy a policy, or force the government back to time-wasting supplementary legislation. The snail's pace of legal processes can turn administering the asylum process into a string of social problems. And the fashion for rights makes modernising ever more difficult.

The rights question is the most important because many lawyers have taken up the international fashion for encasing current moral opinion in the abstract language of universal human rights. They have done so partly out of conviction and partly because (as the more cynical put it) 'there's money in rights'. And rights are popular. Simple people can be persuaded that to be given a right is to receive a benefit. Many

***'the essence of British freedom is to have only one right—the right to do anything at all so long as it does not conflict with the law..'***

people (even notional democrats such as Tony Benn) do not realise that the essence of British freedom is to have only one right—the right to do anything at all so long as it does not conflict with the law. To be 'given' rights by one authority or another (and how these generous

authorities have showered such things on us of late!) thus circumscribes rather than extends our freedom. Rights are often fiscally demanding, which warrants governments in raising more in taxation, and before long many of the beneficiaries find themselves in a Kafkaland of tribunals and adjudication.

The thing about a universal human right is that in principle it cannot be changed—especially by parliaments. That is its point—to move something (generally an apparent benefit) from the arena of politics into that of law. For how can you legitimately take away a universal moral right? But every formulation of a right inevitably reflects in some degree the circumstances of its formulation, and circumstances change, leaving us high and dry with rules we cannot (in principle at least) violate or, alternatively, repeal.

The 1951 European Convention on the Status of Refugees, elaborated in post-war circumstances, has long been a thorn in the side of the Home Office. Again, it might be thought a net improvement of the world to deal with the problem of child abuse by declaring a nice gleaming set of rights for children. When,

however, teachers are terrified of laying a finger on a pupil, and significant numbers are on suspension at any given time for allegedly violating such rights, the practical difficulties multiply. Controlling a class of pupils is already difficult enough. The case of the luckless French tourist who spent two nights in a Scottish cell for slapping his daughter illustrates the nastier side of rights. Only a simple radical who

***'The case of the luckless French tourist who spent two nights in a Scottish cell for slapping his daughter illustrates the nastier side of rights.'***

mistakes the word for the deed would imagine that declaring a set of rights actually diminishes real child abuse. It merely destroys the necessary discretion of parents and teachers.

It is no doubt the business of lawyers to make life difficult for rulers. What is less widely recognised is how rights (and in many cases modern legality generally) are eroding civil society. Human rights attach to individuals and can be used as battering rams against the autonomy of institutions. The discretion of those who run them is replaced by state prescription, while

***'It is no doubt the business of lawyers to make life difficult for rulers. What is less widely recognised is how rights ...are eroding civil society.'***

the flexibility of belonging to or resigning from an institution is replaced by the rigidities of membership as a status. The individual who in earlier times would be forced to respond to the world he found, or to make a new one, now appeals to lawyers and tribunals for rights that have the effect of making every institution resemble every other.

When for example a school rule on uniforms is claimed to violate human rights, the solution is not that the individual should find a school more to his or her taste, but that the school must submit to a new law. It is vital to realise that the individualism involved in this kind of episode is totally different from the creative individualism on which the modern world was founded. It is, indeed, virtually the opposite—in one case the indulgence of impulse, in the other, its control.

Blunkett facing lawyers waving writs has a problem, but as we shall see, his problem is double-edged. 'Empowered citizens,' he told Civitas in November

2001, 'are able to say no to drug dealers on their estates, stop offending, as well as support others in their neighbourhood and help people to recognise right from wrong.' This is no small ambition. Indeed, if the drug dealer is under-age, the empowered citizen had better watch out. He is more likely to be in court for infringing child rights than the drug dealer is to be prosecuted by the police. Such is but one example of the hobbling of common sense achieved by the legal fashion for rights.

#### **4. *The Blunkett Contradiction***

A running theme of the Blunkett strategy for dealing with crime is that citizenship, or what he calls 'political literacy', is a form of knowledge that 'we' must improve, and the 'we' seems to mean government and people working together. The form this democratic regeneration will take is neighbourhood meetings, residents' associations, citizens' juries and other grassroots organisations—and that is just a start. Rhetorically, then, we are in the area of community, co-ordination and talk. The hot topic of individuals taking protection into their own hands is not touched. Instead, what we have is a general call for the regeneration of civil society as a whole. Blunkett is here exhibiting what we may call 'the idealist's fallacy', which consists in asserting that *this* problem can be solved only if we solve all other problems at the same time. Dealing with crime, for example, requires nothing less than the abolition of poverty, or whatever is currently on the mind of the idealist.

No one will doubt that Blunkett is pointing to a real problem. He has inherited a situation in which the people tend to behave as if they were mere bystanders in a conflict between criminals and the police. He



wants crime to be the business of society no less than of the state. At this level of policy, we may all cheer his efforts. But it is impossible, also, not to think that he has misunderstood the situation we are in.

Civil society, as we have seen, is the spontaneous vitality of a people exploiting the opportunities available within a framework of the rule of law. It presupposes an active population capable of organising itself so as to deal with whatever problems it faces. Such a

***'Civil society ... is the spontaneous vitality of a people exploiting the opportunities available within a framework of the rule of law.'***

people is essentially active and self-moving, with projects of its own distinct from those of the current government. But we have for years been living in a diminished civil society, called the welfare state, that presupposes precisely the opposite. Welfarism responds to the needs of a population that is assumed *not* to be able to create and man-

age its own resources. It requires a government willing and eager to respond to the demands of what are patronisingly called 'ordinary people'. And it is not just that welfare provision is made for those who by some misfortune or other need it, at least for the moment. Rather, the assumption is that everyone *ought* to make himself or herself a beneficiary of a universal system of governmental provision. Not to do so is to be exclusive, élitist, undemocratically superior.

There are, of course, good reasons for our condition, suspended between civic vitality and dependency, and it corresponds to widely shared sentiments about what a just society is currently believed to be. It is, indeed, so familiar that we do not often reflect on its consequences. Let us mention one or two of them.

Consider first the transfer of responsibility away from families towards a state bureaucracy authorised to spend the resources of a heavily taxed economy. The result is that individuals have much less need to budget for a rainy day. If scourged by illness, or unemployment, or family break-up, they can expect the state to provide, after its fashion. The effect is not just that many people become individually less self-reliant, but that those they *do* rely on are different. They have less need of friends or family. They can indulge negative passions so as to break apart and separate into precisely the kind of atomised alienation that it had always been the aim of socialism to cure rather than to cause. The real solidarities of the past depended on both need and circumstance. People knew about debt, and strove to avoid it. The history of friendly societies is a testimony to thrift as a virtue in the lives of past generations. They certainly knew about unemployment, and relied on family and neighbourhood. They shared an ethic of neighbourliness that also made crime exceptional. They knew that children needed to be kept on the straight and narrow, and sometimes resorted to a clip over the ear. In all of these cases, of course, some people were feckless, or went too far, or otherwise exhibited the human folly that is an inescapable feature of the human condition. But they were left free to make their own mistakes, and to learn from them. They stood on their own feet.

It was this active freedom that made civil society in the past a vast complex of institutions more or less independent of government and run by people themselves. The history of Britain in recent times, by contrast, has been one of increasing dependence and of governments keen 'to help ordinary people', right down to the details of their lives, from getting to see a doctor quickly to Mussolini's ambition of making the

***'Children now know that Santa Claus is legend. Parents seem to have forgotten it.'***

trains run on time. Half a century of enfeeblement has clearly changed the character not only of people but of politics itself, and many people in Britain have abandoned larger issues and instead hope for favours from governments conceived no longer as the mere providers of a framework of order, but as omnipotent providers of benefits. Children now know that Santa Claus is legend. Parents seem to have forgotten it.

The state now provides our healthcare. It provides our schools. It looks after the elderly, and many classes of those in need. Politicians have been so good to us that the politics industry has multiplied prodigiously. Britons, once subject only to laws made at Westminster, now find themselves the beneficiaries of laws and regulations emanating from Brussels,

***'The world David Blunkett has inherited is one in which the people are being forever put to the test by their democratic rulers, and everywhere they are flunking their tests.'***

Cardiff and Edinburgh as well, not to mention the rising tide of legislation by international bodies. How lucky we are to have so many people thinking about our welfare! And yet—can those be murmurs, even shouts, of discontent one can hear? What we actually find is petulant dissatisfaction. It isn't just that the state isn't very efficient at helping ordinary people; it is that those ordinary people have come to take a low view of politicians as a class. This is an interesting example of modern ingratitude, but not half as interesting as the parallel fact that politicians take the same view of the

people. The fact is that politicians in Britain obviously have nothing but contempt for the people they rule. The world David Blunkett has inherited is one in which the people are being forever put to the test by their democratic rulers, and everywhere they are flunking their tests.

### ***5. As Civil Society Fails ...***

Our Home Secretary, for all his common sense, shares this view. As Minister for Education, he decided that we had flunked our citizenship test. This was clearly the thing called a 'social problem' and the government had to act. Nothing much could be done about the hardened apathetics of the present generation, but the hope of radicals always lies with the young. Blunkett had the solution. From 2002 there will be citizenship classes in schools, teaching the young improving things about politics, community and how to discuss values. This is what he calls, in a notable metaphor, 'political literacy'.<sup>4</sup> Politicians are not alone in wanting to have it all. What they want in this case is the power a welfare state gives them, *and* an active self-reliant population that can help when problems get out of hand. And these two things are in large degree incompatible.

***'What [politicians] want ... is the power a welfare state gives them, and an active self-reliant population that can help when problems get out of hand. And these two things are in large degree incompatible.'***

Again, take the example of parenthood. The active citizen in the past knew how to bring up children. Rising levels of juvenile delinquency and other signs make it clear that our contemporaries often fail at this

task. The real reasons for these failures are complex, but governments know how to toss up a policy or two to show that they are 'making a difference', and legislation now mandates, for example, how long people may leave children of what age unattended and how they may punish them. It may be the case that children are being rather cheated in their upbringing, but governments always have the solution: children's rights can always be declared, and that at least sounds as if they are better off, even if it weakens parental authority by transferring discretion to courts. Even the parenting problem is subjected to the same reflex solution by which radicals look to the young, and luckless schoolchildren are in danger of being given lessons in parenthood. How much this rising tide of rights and regulations has improved family life is arguable, but it has clearly made life very difficult for parents, teachers and the police. Our rulers no longer trust anyone's discretion.<sup>5</sup>

Again, it turns out that as immigrants enter the country, whites and immigrants separate off into 'ghettos' and live separate lives. The dread word 'apartheid' is even used. It is thought that more mixing will diminish the likelihood of riot. In a bureaucratic babble about 'action plans' (rather than 'inaction plans' no doubt) powerful voices have suggested that schools must be integrated racially. There is an interesting possibility that a decade or two after bussing has failed in the United States, it may become the *dernier cri* in British social engineering.

A significant version of how governments construe problems is that Blunkett, as Minister of Education, had to respond to teaching in schools so lamentable as to be turning out illiterates and innumerates. His solution was to impose literacy and numeracy hours in each day's teaching. This has been a successful move

in that the test scores have improved, but it does rather turn teachers into puppets forever responding to strings pulled by a directives-crazed ministry. It is true, indeed, that this policy responded to the folly of teachers who had embraced various kinds of child-centered education, but that problem came from the same source as the Blunkett solution: namely that schooling had been taken

***'The reason teachers can indulge in folly is that parents have virtually no say in the way their children are educated'***

over by the government and run as a single centralised system. British education has grown worse precisely in proportion to the increasing control of the ministry of education. The reason teachers can indulge in folly is that parents have virtually no say in the way their children are educated and an activist ministry has hopped from one improving expedient to another. In 1944, the system had to be grammar schools, technical schools and secondary moderns. In the 1960s comprehensives became the rage. By 2001, technical schools were in and grammars were making a come back. These endless political twitches in search of the perfect educational system have weakened the real vitality of an educational tradition. They may already have destroyed it.

This is a pretty brief selection of the measures taken by recent governments to supply deficiencies in the society its presides over. A crazed dialectic in which each new social problem demands new government accretions of power is at work. But the real problem

***'A crazed dialectic in which each new social problem demands new government accretions of power is at work.'***

for the government is the British people themselves. Whole sections of the population are regularly selected and denounced for their inadequacies. The government is displeased with merchants ('rip-off Britain'), lawyers (as we shall see), doctors (unaccountable), parents, farmers (subsidised fraud) and many others. And after half a century of democratically responding to the needs of 'ordinary people' the

***'A new people must be brought into being. And the worrying thing is that this is a government that wants "to make a difference".'***

government finds that this unlikely lot are not only hopeless but even pretty ungrateful. It was, no doubt, a joke when Bertold Brecht, the German Marxist, responded to the 1953 riots in East Berlin by suggesting that the government should dissolve the people and elect a new one, but it isn't a joke any more. The British are, to judge by the complaints of their rulers, undereducated, obese, uncultured, apathetic, uncitizenly, and cannot be trusted with guns, alcohol, punitive canes, sugary food or even children. A new people must be brought into being. And the worrying thing is that this is a government that wants 'to make a difference'. They are actually trying. They are certainly spending record amounts of money on public relations campaigns.

### ***6. Megalomania, Government and Lawyers***

My point is not, of course, to deny that there are real problems, but to suggest that the heavy hand of the law is the wrong way to go about dealing with them. Much can be left, and ought to be left, to society's own resources of self-correction.

For there is one grandiose theme running through

this remarkable story of folly. It is that the decisive voice is never the people but that of the government, which monopolises all initiative. It has authority, unlimited cash and often assumes that it has the power and the wisdom to solve all problems. And it is as ubiquitous as the air. Whenever two or three are gathered together in our society, to play sport, set up a theatre, initiate

***'the tragedy of Britain over the last half century is that government has "crowded out" the real energies of the people.'***

a business or a trade union, establish a charity or anything else, the government will be there, first seducing by subsidy and then (sometimes as long as a generation later) taking over by regulation. To adopt a metaphor from economics, the tragedy of Britain over the last half century is that government has 'crowded out' the real energies of the people. And the crowding out of civil society by welfarism involves assuming that everyone requires help on the same level as those who really do need it. Yet it is hard to name one area of British life

in which the government has not advanced some brilliant scheme, and failed. Whether it be nationalised railways, the National Health Service, slum clearance, the expansion of universities, the schooling of children, the failure of grand

***'it is hard to name one area of British life in which the government has not advanced some brilliant scheme, and failed.'***

schemes is the rule, yet new ministries regularly emerge from the wreckage touting some marvellous new initiative with which to seduce a population increasingly incapable of doing things for itself. Part



of the reason, no doubt, is that the population is so bombarded with news that it soon forgets about the failure of the last grand policy in its bewitchment with the new. No wonder our democratic rulers even want to tell *us* how to be citizens. If we retained any vitality, we would be telling *them* how to be democrats.

It is against this background that we may judge such initiatives as the Home Secretary's strategy for dealing with crime, a strategy that seeks to bring in the people to counterbalance the lawyers. It is a polite but unmistakable attack on pettifogging jurists and power-crazed judges. Blunkett quotes Michael Beloff in support of his view that the judiciary has been exercising control over the legislatures and even 'infringed the sovereignty of Parliament'. He argues also that some lawyers are more concerned with finding loopholes for their clients than with the justice of a trial's outcome. No doubt he is thinking, in part, of the fact that if an asylum seeker has his application for British residence rejected, he can appeal to the courts and his case may still be undecided three years later, by which time he has disappeared from sight. The thing about judges is that they do not have responsibility for the fiscal or social consequences of what they declare the law to be—or even of how long they may take in declaring it.

Many readers will be unable to resist a cheer at the recognition of these defects, but unfortunately common sense may not in this area be the best guide. Blunkett's dissatisfaction with the lawyers certainly points to the logical crux of the problem. The point is that it is, in fact, the business of lawyers to look for loopholes, and they become far more dangerous when they imagine, as they come increasingly to do, that it is their business to improve society. Losing sight of

one's professional limitations in favour of re-making the world is the same wild ambition that has seduced governments themselves. Megalomania unhinges the wits of these perfectionists. It is one way of describing our present decadence. Blunkett,

***'Megalomania unhinges the wits of these perfectionists. It is one way of describing our present decadence.'***

perhaps understandably given our present situation, thinks he must not only deal with the responsibilities of the Home Office, but must also act as teacher, father, spiritual guide, policeman and nanny to the nation. With the authority of government behind him, he is tempted to think (rather like the writers of editorials) that he can do everything better than the actual practitioners. But that *strategic* cast of mind is exactly how we got into our present mess, and it certainly isn't how we might get out of it. In this respect, at least, he is a paragon of New Labour.

The developing struggle between Blunkett and the lawyers is thus best seen as a conflict between two groups both bent on gaining power over society. Blunkett is understandably cautious in tangling with so powerful an interest. As he says in his remarks to Civitas: 'I am not intent on knocking the professional esteem and wisdom, or the key role, of our judiciary. But if we don't have a system where people are clear on who makes decisions—and why they are the people who make decisions—democracy fails.' It does indeed. Lawyers have for centuries been our protectors against an overmighty executive; on the other hand, judges have increasingly become surrogate legislators, fully capable of destroying the integrity of institutions in the name of human rights. Blunkett's remarks to

Civitas are a broadside in the emerging war of the executive against the lawyers. And the wider significance of this conflict may be illustrated by invoking some recent remarks made by David Bean QC who has criticised the Auld Report proposals limiting the use of jury trials.<sup>6</sup>

### ***7. Three Conceptions of British Society***

Mr Bean is the new Chairman of the Bar, and part of Matrix Chambers; he is a colleague of Cherie Booth QC. Matrix has a particular interest in human rights cases. Mr Bean's complaint is that, to the extent that juries are replaced by what he called 'a souped-up magistrates' court but with quadrupled jurisdiction', then defendants will not be tried by their 'peers'. His special emphasis is on ethnic minorities. Mr Bean seems to mean that members of ethnic minorities should never find themselves being tried only by white judges and jurors. Only two per cent of district judges and five per cent of lay magistrates, he observes, are from ethnic minorities. He clearly feels there ought to be a representative quota on all these bodies, though he might bridle at the word 'quota'. Even were such a revised 'representativeness' to be implemented, some ethnic defendants would often find themselves in an all-white environment. The logic is clearly that there ought to be an ethnic quota on *all* juries, but Blunkett has had no hesitation in dismissing this absurd suggestion.

It seems to me difficult here to disentangle the special interest of lawyers from policy advocacy, but their general drift is revealed in Bean's arguing that '[t]here is a strong public interest in securing a legal profession, and in due course a judiciary, that is more reflective of the composition of society as a whole'.

People often say things like this, but (I suggest) without thought. If 'society' were a single harmonious and unanimous body like a church, then perhaps it might be appropriately 'reflected' in judicial decisions, but society is, rather, a tangle of conflicts and disagreements held together within a framework of law. The idea that 'society' rather than 'law' should settle disputes must therefore be counted as a special interest trying to pass itself off as justice itself. The thing called 'society' here could only be, for these purposes, a political régime. I hesitate to speculate what interest it might serve, but this is an opinion that has been held by a variety of people such as Lenin and Hitler whose company I am sure that Mr Bean would not want to keep. What I take it we actually want in a democracy is that the courts should express, not 'reflect', the law, and that happy outcome can only result from the competence of lawyers in declaring the law and not from their ethnic or class composition.

We may thus clarify some of the confusions of modern British politics by distinguishing three conceptions of our collective life. The first we have met as civil society, our inherited mode of freedom in which Britain is an arena for the many projects of its active citizenry. The second conception is that of the welfare state in which the population is understood in terms of its least resourceful members as a collection of needy individuals who must have provided for them by governments the average resources of the current manner of living. In Mr Bean's conception of that highly disputed word 'society', we have a third view, which is a variant of the welfarist view of a modern society: this is multiculturalism in which Britain is understood as a weave of different ethnic minorities whose representativeness comes not from the

democratic politics of voting but from members declaring the assumed natural interest of their culture. In its assumption that each social component has a clear and unambiguous 'interest', the multicultural position would seem to derive from Marxist class and feminist gender theory. It is a rising managerial interest setting out the class of dependents on according collective rights to whom its power will be based. The way in which our politics is actually conducted is a rather incoherent mix of these three ways of conceiving the state we live in. Yet each of them yields a different idea of what might be described as the public interest or the common good.

### ***8. The Social Division of Labour***

Blunkett too wants crime to be the business not merely of the state, but of society in general. He too wants a criminal justice system that reflects 'society', though he has a different notion of society from that of David Bean. Both agree, however, that 'society' (understood as sociologically representative) should act in preference to the specialised institutions we have inherited. What is left in this conception of the individuals who inhabit civil society? Not much, we must say. Human beings are assumed to be biological entities with needs to be satisfied and frustrations to be avoided, equipped with skills that are in aggregate socially interchangeable. They are thus eligible to be shuffled around the social world according to the dictates of its managers. People are not, of course, like that.

This misunderstanding of the real world is particularly relevant to Blunkett's problems with the police, who are often thought to have a 'macho' culture that makes them unresponsive to 'gendering' and

other equal opportunity policies. But the current reality turns out to be that our extensively 'gendered' and increasingly multi-ethnic police force is better at meeting measurable performance targets (such as picking up drink-drivers) than at catching criminals. Yet even in this bureaucratised police force, morale is low, many seek early retirement, and promotion depends to a serious extent less on deterrence and detection than on politically correct sentiments. The police are one more set of people Blunkett wants to take by the scruff of the neck and make over.

What if, however, it were the case that working in the police force (as in the army) should appeal to some men precisely because it is a job that women don't do very well. It might even be that some potentially excellent bloodhounds want to join the force because they feel that these public duties are best performed by white recruits whose continuity with English traditions makes them more suitable for understanding the tradition, or perhaps even that they feel more at home with 'their own kind'. These

might well be deplorable prejudices, but they raise a serious question for public debate. Everybody knows that the wealth of nations depends on the division of labour. It is less commonly realised that the dynamism of a free society depends also upon the division

***'the dynamism of a free society depends ... upon the division of institutional cultures.'***

of institutional cultures. Different jobs depend not only on different skills but also on different temperaments and attitudes, and different sets of people have a comparative advantage (and correspondingly a comparative disadvantage) in different occupations.

Ghurkas appear to have a comparative advantage as infantrymen, and no one was ever foolish enough to want to subject them to equal opportunity policies. Kenyans are great long distance runners, women have vast talents in the so-called caring and teaching professions, blacks often excel in sport and certain types of music, etc. It is even the case that middle-class public schoolboys (*pace* David Bean QC) seem to be pretty good lawyers. None of these associations is eternal, and there are obviously many individual exceptions, but it might be suggested that a successful society goes with the grain of these preferences. David Blunkett, however, finds himself a New Labour minister in a government dedicated (as indeed most British governments have been for many decades) to homogenising every institution so that it reflects 'society'—and then calling this homogenisation 'diversity'. Orwell, thou shouldst be living at this hour.

Equal opportunities sounds like a cast iron formula

for fairness, and there are many cases where indeed it is. But like all abstract principles, it can distort reality. The grand principle of wise government used to be the skill of balancing between conflicting desirabilities. Modern governments are incapable of holding more than one abstract principle in their heads at a time. They seem to

***'Their current enthusiasm is for turning the police force into an equal opportunity playground rather than a highly disciplined and controlled instrument for catching criminals and sustaining civil order.'***

be the helpless victims of whatever ideological fashion strikes our culture. That is the hidden source of their hyperactivism. It is also the reason why they leave a litter of big projects collapsing behind them. Their

current enthusiasm is for turning the police force into an equal opportunity playground rather than a highly disciplined and controlled instrument for catching criminals and sustaining civil order.

This Russian doll conception of how British life ought to be arranged should make it clear that when Blunkett declares that his crime strategy needs to hear the voice of the people, he's not serious. His conception of a 'public debate'<sup>7</sup> is no more real than any other politician using that whimsical expression. A majority of the people are often quite keen on capital punishment for the worst kind of murderer, but this would be, as they say, 'outside the box' in modern élitist British politics. Any modification of the policy of making the police force sociologically 'reflect' society is so far outside the box as to be out of sight. Public opinion on this may change in time, as the inefficiencies of homogenising the police become more evident, and a return to Dixon of Dock Green becomes thinkable. But this whole area is one in which democracy has been deliberately and efficiently bypassed.

In any case, the public are not really a very useful source of wisdom on forensic matters. It seems unlikely that they will help the Home Secretary in his request for advice on how to prevent organised criminals from influencing jurors. The people seem to be no better than governments in taking on board the basic legal wisdom that hard cases make bad law, and their attitude to difficult questions, such as what to do about paedophiles, is dangerously susceptible to the stentorian hysteria of the tabloids. Popular judgement on how long those convicted should serve in prison is largely incoherent, though some tincture of it might correct the therapeutic tendencies of prison reformers



and the social services. But it seems clear to me that this is one area where elementary democracy does have to be corrected by those who have a coherent overall understanding of the wider situation. We may sympathise with Blunkett in regretting that we are lumbered with some of the judges we have, but we had better make the best of it.

### ***9. Civil Society and the State***

***'[Blunkett] wants to call up the virtues of a vigorous civil society at a time where generations of welfare have enfeebled those virtues.'***

It is hard not to be stirred by Blunkett's courage and common sense; he says sensible things that many of his fellows won't say. Yet our basic argument suggests that he has mistaken what modern Britain is like. He

wants to call up the virtues of a vigorous civil society at a time where generations of welfare have enfeebled those virtues. And one consequence of that mistake is that all he can give us is the mere pretence of active involvement in public policy. All that he will actually allow is the harmless letting off of steam. Blunkett's instincts seem to me to be pretty sound, but that very benevolence and good sense may be leading him into dangerous waters. Increased power is sometimes more dangerous in the hands of the good than the bad.

Let me end by citing one confusion, and making one further comment on the central contradiction I have diagnosed.

The confusion is to be found in his argument that the present mischief results from an imbalance of power between the executive and the judiciary. The quantitative idea of balance can sometimes be useful,

but what is at issue here is a matter of function, of the separation of powers. The judiciary has the narrow but vital function of declaring the law, and the executive is concerned with the public interest, or *salus populi*. Twentieth-century lawyers went off the rails when they fell for bad philosophies of law telling them that law (like everything else) was really politics. This led them to the illusion that their business was with justice rather than merely declaring what the law was. Some even came to think that they represented the people better than those power-crazed politicians. The whole drama of the recent terrorism bill was a conflict between two interests highly mistrustful of each other and both seeking to extend their power. Getting the principles of functional demarcation right won't solve the problem, but without it there's unlikely to be any solution at all—merely the constitutional crisis of public law that is on its way.

The contradiction I have discussed is between governments on the one hand demanding we should actively co-operate in their projects, and on the other hand treating us as dependents of the state. This contradiction can be seen more specifically in Blunkett's attitude to civil society. It is, he rightly says in his remarks to Civitas, 'made up of often informal, but very real, connections that bind individuals, families and communities together. These self-reliant, active communities are the bedrock of democracy.' Hardly have these wise words been uttered, however, before he is remarking that the Home Office is increasingly becoming the Department for the

***'This is New Labour speaking, with its passion to regulate, codify, define and help us poor ordinary citizens to live better lives.'***

Citizen. 'It is at the heart of identifying and defining the values that bind us together as a society and helping to influence and shape the views of what make this a decent, open, just and tolerant country in which to live.' This is New Labour speaking, with its passion to regulate, codify, define and help us poor ordinary citizens to live better lives. Two generations ago, a man of Blunkett's sturdy common sense would have recognised this as the dangerous hogwash it is. Today he is struggling in its sticky toils.

## *Notes*

- 1 I shudder delicately at having to use the word 'strategy' which has replaced 'plan', 'policy', 'scheme' and other less pretentious words but it has now become universal as expressing the modern fantasy that whatever one is doing, one is engaged in war or struggle (as in war on poverty, drugs etc.). The aim of a real strategy is to destroy an opponent and achieve victory, and this is not at all how politics works, or indeed much else in social life.
- 2 de Tocqueville, A., *Democracy in America*, London: Everyman, Dent, 1835, 1994.
- 3 See for example Hutton, W., *The World We're In*, London: Little, Brown, 2002.
- 4 Trudging through pretentious nonsense impels one irresistibly to comment on what has been done to the language. The idea that listening with attention to Mr Blunkett or Mr Blair is like being able to read a book cannot but invoke clichés about 'dumbing down'. Some other genius has invented the idea of 'emotional literacy'. This is all part of 'educating' people in how to be better members of an improved modern society. The reason our schools and universities are in the condition they are might in part be attributed to the ignorance of what education is, as revealed by these out-of-control metaphors.
- 5 It is very hard in writing this kind of argument to keep up with the march of folly. As I write, the *Sunday Telegraph* of 28 April 2002 reports that the government is considering dealing with the problem of juvenile crime by taking away the tax credits (i.e. some of their wages) from parents, an interesting reversal of the Biblical belief about the sins of the parents. Parenthood is already pretty difficult, leading to serious demographic

problems. The government wants to make it even more onerous. At least it is reported that Blunkett is not in favour of this idea.

- 6 *The Times*, 17 December 2001.
- 7 The police have been charged with something called 'institutional racism', a term that might function as an intelligence test for the capacity to say anything sensible in 'public debate'. For racism, though seldom accorded a definition, certainly refers to a subjective hostility of mind towards other peoples, while 'institutional' is explicitly designed to point to a supposed ethnic imbalance that is not related to such subjective hostility. The expression thus incorporates a contradiction, and it is a familiar principle of logic that from a contradiction anything—in this case any bit of nonsense—can follow.