

The return of secret trials

800 years of the Magna Carta: the historic charter from 1215 is being commemorated this month in Britain and further afield. The King initially guaranteed the rights set out in the charter only to the nobility. The protection was subsequently extended so that no free citizen could be denied his or her freedom or other rights except on the basis of a law or a court decision. This idea served as the foundation of the Anglo-American legal system for centuries to come. Under the charter, the right to a fair trial was held in the same high esteem as the principle of equality of arms between the parties in legal proceedings.

The rights guaranteed in the charter were subsequently adopted in many legal frameworks and in the European Convention on Human Rights. But now this bastion of fundamental procedural rights is being eroded. Each new terrorism threat is met with a limitation of long-established rights. Guantanamo is just the most egregious example. We also see this erosion of rights in the form of administrative detention without trial and the placing of individuals on terrorist lists with no means of appeal, leaving them unable to access their bank accounts or to travel abroad. Even whistleblowers like Edward Snowden and Julian Assange, who are free from any suspicion of terrorism, are denied the chance to defend their actions before the courts in the USA because they face the prospect of prosecution under the Espionage Act.

Reports have recently been emerging on the terrorism suspect trials being held in secret in the UK. We know that at the Guantanamo trials the audio system is sometimes switched off when defendants start to talk about the 'wrong' things. The time delay built into the speakers in the courtroom makes it possible – for reasons of state security – to cut the sound when defendants talk about their torture. Even the defendants' lawyers are not permitted to speak about the details and could face criminal proceedings in the case of a breach. Recently British media have been banned from reporting the details of a trial due to be held in the UK under total secrecy. After a successful appeal, reporters were permitted to attend parts of the proceedings and report the acquittal of the defendants. But their notes have now been seized by MI5 and they would be criminally liable if they reported the reasons for the acquittals from memory.

Public scrutiny as a corrective force: that's the idea behind the criminal law principle of public trials. In the fifteen years since 11 September 2001 we have been able to see the value of an at least partly functioning system of public review. It was watchdogs from the media and civil rights groups – not prosecutors or parliaments – that uncovered the illegal arrests and CIA renditions, the torture by US military and secret services and the support for these programs from European governments. But such guardians of democracy are now under serious pressure. From Russia to India, critics are being censored and in some cases threatened or attacked while the right to free association is curtailed. In light of the readiness of authoritarian countries to limit basic freedoms, it is a fatal error for western, purportedly liberal powers to do the same while citing terrorism and state security. By doing so they are making it all too easy for the Putins and the Erdogans of this world.