Nothing to Hide, Nothing to Fear?
National ID Cards, Civil Liberties and Human Rights

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If you have nothing to hide, you have nothing to fear. Michael Howard used this argument in 1995 when he argued, as Home Secretary, that ID cards would cut crime and foil benefit cheats (so eager was his audience that they booed him for daring to suggest that his scheme might be voluntary and not compulsory). The decent, law-abiding citizen would have nothing to fear from his proposals, he promised.

The current Home Secretary, David Blunkett, has similar views. “No one has anything to fear from being correctly identified,” he told Parliament in November 2003. ID cards are about “asserting our sense of identity and belonging; about our citizenship; about reinforcing the balance between rights and responsibilities.” In his philosophical calculus, ID cards are justified because concerns about civil liberties and rights, such as privacy and protection from discrimination, relate to the “individual” only, whereas immigration control, terrorist prevention, and the fight against crime are collective, “public” rights.

This has also been the Government’s rationale on other issues, such as asylum (the individual right to appeal must be played off against the public funding of some unfounded challenges), crime (the innocent being convicted is not as problematic as “too many of the guilty going free,” the Prime Minister told his party conference) and anti-terrorism (detention of a small number of foreign nationals without trial is justified by the public right to supposed security). When the analytical scales are set up in this manner, it is inevitable that the individual right is trumped by the public right, the one loses out to the many. A Government that introduced the Human Rights Act and once fondly talked of “bringing rights
home” should realise that rights have collective, as well as individual, value. The scheme of the European Convention on Human Rights (ECHR) assumes that rights have presumptive weight, and limitations to them be strictly construed. This echoes the presumption of liberty at common law. The Home Secretary has ignored this by mistakenly characterising ID cards as striking a “balance” between the individual and the public.

Experience in countries with ID card systems in fact shows that the British public has much to fear, and little to gain, from their introduction. David Blunkett claims that a “cost-benefit analysis” supports the cards, but he has underestimated and misunderstood the many cultural and legal costs, and he has assumed likely benefits in the absence of convincing evidence.

The arguments in favour of ID cards, now trotted out by Ministers on autopilot, are hardly intellectually rigorous. Tony Blair tells us that the Madrid train bombings have underlined the need for Britain to accelerate ID card plans – yet Spain has a fully compulsory ID card scheme, complete with the most advanced biometric technology. This helped not one iota on March 11th 2004. David Blunkett tells us that the cards will boost the fight against illegal working, giving employers a way of ensuring people are entitled to work in Britain – yet employees are currently obliged to have National Insurance numbers, and there is nothing to suggest those employers who are prepared to ignore this requirement will suddenly demand to see ID cards. Nor will the information gathered on asylum seekers differ from that collected since 2000 under the Asylum Registration card and fingerprinting scheme. ID cards, it is argued, help to combat crime and benefit fraud, but the eleven European countries with ID cards have similar rates of crime and benefit fraud to the four without (Britain, Ireland, Sweden and Norway). The lack of evidence to support these blithe assumptions has not prevented their repetition, however. This is not a Government prepared to experience what Herbert Spencer called *The Tragedy of the Murder of a Beautiful Theory by a Gang of Brutal Facts*. 
Those who oppose ID cards are often asked to set out the case against. “What’s wrong with ID cards?” is the standard question. Human rights principles, our traditional presumption of liberty, and common sense tell us that this is the wrong question; the burden should always be on Government to tell us what’s right with ID cards, to make a compelling case in favour. Their failure to do so, in itself, undermines the proposal.

The Prime Minister now tells us that civil liberties objections to the cards have disappeared, and the debate has shifted to logistical considerations only. But there is a principled case against. Experience in other countries and Britain itself indicates three major areas of concern Government has so far ignored: (i) constitutional issues, (ii) privacy, and (iii) racial discrimination.

(i) Constitutional Issues

No common law country in the world has a national ID card. Proposals to introduce such a scheme were roundly rejected in Australia in 1987, New Zealand in 1991, and, most recently, in the U.S. in 2002, after the tragic events of 9/11. Ireland, the only other common law country in the E.U., has recently rejected the idea. This is not merely coincidence. Any national identity scheme raises profound constitutional concerns regarding the relationship between the individual and the state. At common law, there is a traditional rebuttable presumption in favour of the liberty and autonomy of the individual. These concerns and presumptions can only be rebutted by clear and compelling evidence to the contrary, and a proportionate and effective means of achieving the state’s aims. In common law countries, the issue is whether governmental ID proposals rebut this strong presumption.

The designers of the proposed British scheme seem not to have appreciated the need to fit it into its cultural context. The focus has been on civil law countries with long-standing schemes despite their inappropriateness as a comparator.
Differences of history and culture lie behind the fact that the E.U.’s civil law countries have ID card schemes. The majority has had them in place for a long period of time (France since the nineteenth century; Belgium since 1919; Portugal, Spain, Germany and Italy since they were ruled by Fascist governments). The timing means there has been no modern public debate – non-abolition of an old scheme is incomparable to positive endorsement of a new one. Current cultural differences are also important: in a country with compulsory military service and a restrictive list of officially sanctioned children’s names, an ID card does not mean what it would in a common law country.

*The manner in which the Government has handled this issue also raises concerns about the democratic process in this country. The Home Office kicked off public debate with an explicit guarantee that, “the Government has already ruled out the option of compulsory scheme and does not want to consult on it”; lukewarm support for a voluntary scheme was then cited in favour of a compulsory scheme, to be phased in between by 2013 in two separate statutes; now what is proposed is one short bill, with the details - including, crucially, the move to compulsion – left to secondary legislation. At best, this is poor, if well-intentioned, Government practice; at worst, this amounts to deliberate political sleight of hand by the Home Secretary.*

(ii) **Privacy Concerns**
Privacy is a qualified right, but it should not be restricted without logical, necessary reason, and a proportionate method of restriction. The ID card scheme does not pass these hurdles. The proposal must also be examined in a broader context, alongside the incremental expansion of Regulation of Investigatory Powers Act 2000 powers, the national DNA database, the proposed national database of all children, and so on. Of particular concern is the Performance Innovation Unit of the Cabinet Office’s proposed ‘presumption in favour of data sharing’ unless there is a specific reason not share data. This is a
reversal of the traditional presumption in favour of the citizen’s privacy, and it turns the ECHR on its head.

Germany and France, the pin-up countries for our proposed scheme, may have ID cards, but they also have comprehensive privacy laws to accompany them. The Home Secretary’s cherry-picking approach to comparative legal and policy analysis means that we get the cards without the safeguards.

(iii) Racial Discrimination
Perhaps the most worrying aspect of these proposals is the inevitable adverse impact on ethnic minorities and non-nationals. This can be confidently predicted from three things.

First, comparative experience tells us that the colour of the individual’s skin determines the card’s impact. In France, despite the fact that the ID card is supposedly ‘voluntary’, young Algerian men are overwhelmingly more likely to be stopped and asked for their card than others. In Germany, where the card is compulsory to carry at all times, Turkish Gastarbeiter report that the card is used to support discriminatory policing.

Second, this prediction is bolstered by the skewed operation of stop and searches under existing legislation in Britain which has soured relations between the police and minority communities for years.

Third, the scheme proposed by the Home Secretary involves structural, institutionalised discrimination, both in its aims (if stopping illegal immigration is one of the scheme’s aims, it stands to reason that appearance will be a factor in deciding who to question) and its method (the cards will become compulsory for all “foreign nationals”, including E.U. citizens, before this requirement applies to Britons).
The Home Office’s glib dismissal of these concerns is undermined somewhat by the fact that ID cards appear in the ‘Community and Race’ section of its website.

It is easy to be alarmist about ID cards. But there are good reasons to be alarmed. They will result in the escalation of racial tensions, the diminution of privacy and liberty, with absolutely no commensurate gain in security. We have nothing to hide from this Government, but we have much to fear.