

TIMES

Secrecy is not Justice

The Government's desire to legislate for closed courts has been scuppered by events

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There are many reasons why a policy, conceived with good intentions, might fall. It could prove to be too complex to administer. The cure might turn out to be, unexpectedly, as bad as the disease. Or its rationale could crumble in the light of events. This week, this last fate befell the Government's Justice and Security Bill. The Bill, which has already been mangled by defeats in the Lords, contains provisions to expand what, in the jargon, are known as "closed material proceedings", known to the uninitiated as secret courts.

The Government is claiming the right to hear evidence in secret which, it claims, would compromise national security if it were heard in open court. The case of Binyam Mohamed, a former Guantánamo detainee, is the most notorious example. The risk of compromising national security cannot be taken lightly. But justice has to be seen in broad daylight. It is wrong for the doors of the court to be closed and it is wrong for individuals to stand trial without knowing the evidence that has been presented against them. To know the charges brought against you is a basic right.

The case for the Justice and Security Bill has always been that good people have nothing to fear from the courts proceeding in camera. Secrecy, in other words, does not have malign consequences.

Unfortunately, it would be naive to be quite so sanguine. The provision to prevent a defendant seeing the evidence brought against him was recently invoked in the case of Tom Wilson, an accountant wrongly found guilty of fraud connected to the bribery of civil servants. Mr Wilson was denied permission to see the evidence on which his conviction was overturned. If the clause granting secrecy to the authorities can be used in such a case, it does not require great suspicion of the malign propensity of the State to think that the law might be invoked in other cases where it has absolutely no warrant.

But this week whatever remained of the theoretical case for secrecy has been skewered by events. Scotland Yard's attempt to keep secret the legal claims by women who say that they have been tricked into sexual relationships with undercover officers shows what will happen when a culture of secrecy is backed up by the authority of law. One claim even includes a demand that the Metropolitan Police take financial responsibility for the upbringing of a child who was fathered by an undercover officer. The attempt by the police to shift these claims from the courts into secret tribunals shows that, if the law permits institutions to seek secrecy, then seek it they will.

The same desire to avoid difficult truths was shown by the revelation that a diary that could have helped Eddie Gilfoyle to fight his conviction for the murder of his wife was kept from his lawyers for 16 years while Mr Gilfoyle was in prison. It was also exhibited last Wednesday by Sue Berelowitz, the Deputy Children's Commissioner, who sought not to make an issue of the sexual abuse of children by Asian men. No sooner had she made this case than seven Asian men in High Wycombe were charged with child sexual exploitation.

Openness is often difficult for public authorities and some of the issues they are confronting are difficult too. But the principle that justice must be done in the open is a fundamental one and, if the events of the week have shown anything, they have demonstrated that the Government is wrong to proceed with its Bill.