

# Fighting 'Terrorism' or Repressing Democracy? Britain's System of Mass Surveillance

The British government's plans to monitor the entire population's electronic communication

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*The focus of critiques of authoritarianism today lies increasingly in the use by liberal governments of 'exceptional' powers. These are powers in which an imminent threat to national security is judged to be of such importance as to warrant the restriction of liberties and other socially repressive measures in order to protect national security. 'Terrorism' has offered a particularly salient source of justification for a level of social repression that would be intolerable in normal times. A dominant line of criticism is that the use of exceptional powers to this end has gone too far. Critics emphasise the need to curtail such power by bringing it into line with basic human rights standards.[1]*

*As pertinent as this critique may be, focus on the proper extent of the social repression tends to assume, Scheuerman, Herman and Peterson point out, that there is a real threat (e.g., terrorism) and that repression by an expansion of executive authority is itself an appropriate response to that threat.[2] A less noticed yet critical feature of governments' use of anti-terror power is the prior erosion of democratic oversight and control which has enabled repression to appear a plausible response to what is, in many respects, an as yet unspecified threat.[3]*

*The erosion is essentially three-pronged. The first aspect of democratic control to have been eroded is the power to define what constitutes a threat. In the absence of meaningful control, governments are able, Clive Walker explains, to ascribe to whatever political violence is being encountered, attributes of novelty and extraordinary seriousness so as to justify correspondingly alarming incursions into individuals rights and democratic accountability.[4]*

*Governments are able to do so in no small part because of the semantic fog that surrounds the core concepts of national security, threat and terrorism by which exceptional powers are usually evoked. Terrorism, for instance, is a concept that resists consistent definition.[5] Commonly understood by governments as the use or threat of use of serious violence to advance a cause, the term elides legitimate resistance to occupation and oppression with 'senseless destruction'. Furthermore, by relegating all terrorists to the criminal sphere, the term delegitimises any political content that acts regarded by authorities as terrorist may have. This helps to obscure from the public the reasons why people resort to such acts.[6] It also enables the police character of the proper response to be presumed.*

*This brings us to the second aspect of democratic control to have been eroded, namely, the power to determine proper responses to threats. Responses are deemed automatically to require a dramatic expansion in the scope of executive authority, a requirement that is*

heightened the more an atmosphere of fear can be created such as by declaring a 'war on terror'.<sup>[7]</sup> This response is alarming, Walker suggests, because governments may assume repressive powers unimaginable outwith dictatorial states. In Britain, for example, these now include powers to [curtail](#) critical liberties (e.g., speech, movement, assembly, protest, work, privacy), suspend habeas corpus and use armed forces to deal with domestic disturbances – all on the basis of 'threats' which the government assumes the power to define.<sup>[8]</sup>

The third aspect of the erosion concerns the capacity to review the use of both powers. Incursions into democratic accountability include, Walker continues, growing immunity from parliamentary and judicial control in the exercise of these powers.<sup>[9]</sup> It goes without saying, Girvan LJ points out, that the "dangers to the integrity of society and of citizens' lives" of undermining accountability in the use of exceptional powers were "amply demonstrated in the Fascist and totalitarian regimes of Europe".<sup>[10]</sup>

In short, the reported terrorism crisis is also part of an ongoing actual crisis of democracy.

A case in point is the **British government's plans to monitor the entire population's electronic communication** on grounds that this is 'necessary to fight serious crime and terrorism'.<sup>[11]</sup> Criticism of the plans is various and detailed, and has centred on the invasion of privacy.<sup>[12]</sup> Many regard plans for intensified surveillance as a '[snooper's charter](#)'. This is because they mandate a shift from monitoring communications on the basis of individual suspicion to the indiscriminate stockpiling of individual data – essentially blanket surveillance of the population – for a future unspecified purpose.

As pertinent as the objection may be, limiting criticism to the extent of the government's response leaves unquestioned the plausibility of the alleged threat and the merits of expanding executive power as a proper response to that threat. It would be useful to broaden criticism to take account of how the threat has been defined, and the proper response to it determined. To do so, it must look deeper into the extent to which democratic control has been eroded, as this is an obstacle to any viable opposition to mass surveillance and related socially repressive measures. Doing so would enable criticism to cast into sharp relief some of the most pressing questions concerning democracy and liberty in our times.

As part of a more precise characterisation of the erosion of democratic control, it would also be useful to see outlined some legally relevant aspects of this process, particularly given that legal challenge is likely if the government's surveillance plans become law. Three aspects stand out. They follow from the fact that because mass surveillance would breach of peoples' right to privacy guaranteed inter alia under the European Convention on Human Rights, the onus will be on the government to demonstrate that this breach is nonetheless [justifiable](#). To do so, the government must show that mass surveillance is (a) necessary in a democratic society for (b) the achievement of a legitimate end and (c) is proportionate to that end. The more any legal challenge takes account of the wider decline of democratic control, the less likely it is that the government should be able to show, in each of these three respects, that mass surveillance is justified.

### **Legitimate end?**

An example of a significant end that could justify breaching the right to privacy may be reasons of national security. Since fighting terrorism is such a reason, mass surveillance

could, according to official views in Britain and the EU, be justified as a way of preventing

acts or threats intended to influence the government or intimidate the public which, for the purpose of advancing a political, religious or ideological cause, are violent, damaging or disrupting and which include those that seriously destabilise the fundamental political, constitutional, economic or social structures of a country.[13]

Two difficulties undermine the idea that 'fighting terrorism' might serve as a legitimate end by which to justify mass surveillance.

### **Repressing democracy**

The first difficulty is a growing tendency to expand the use of anti-terror powers from suspects to the public, especially certain non-violent social movements.[14] This problem is made possible by the breadth of official definitions of terrorism: the very purpose of many social movements is to 'influence governments' by means such as protest which is by definition 'disruptive'. Particularly [targeted](#) are movements from environmental to social movements such as Occupy which are unified by resistance to the kind of 'destabilisation of basic political, constitutional, economic and social structures' that, it is claimed, follows from re-organisation of society around the market, in particular, financial markets.[15] The problem for government lies in showing how repressing popular democratic expression in this way - a litmus test for the democratic constitutional state, according to Jürgen Habermas[16] - could possibly be a legitimate end in a democratic society. This problem turns not only on a definition of terrorism that is sufficiently broad to permit authorities to generalise suspicion, criminalise certain behaviour and sanction surveillance and preventative detention. The problem also turns, more fundamentally, as is explained below, on a basic incoherence in the government's view of democracy itself.

### **Involvement in terrorism**

Even if it can be somehow shown that repressing democratic expression is legitimate in a democracy, a second difficulty lies in the government's involvement in terrorism, as defined. The definition preferred by government is sufficiently broad to capture two forms of terrorism with which it has involvement. For the sake of simplicity, these may be regarded, following Edward Herman, as 'retail' and 'wholesale' forms.[17]

'Retail terrorism' refers to individuals and small groups which are typically responsible for several hundred to several thousand casualties per year worldwide.[18] Recent analysis reveals involvement by successive British governments in financing, the training of, and logistical support and component supply for many groups.[19] Analysis suggests that involvement is motivated chiefly by ideological causes (a) of maintaining influence in world affairs, which helps explain why involvement centres on resource-rich and strategically useful countries, and (b) of protecting that influence from threats, which helps explain why support is given to groups in those countries unified by a common hostility to popular democracy, socialism and national secularism.[20]

'Wholesale terrorism' refers to the activities of major institutions capable of far greater harm such as states which, Mark Curtis explains, are "responsible for far more deaths in many more countries than [retail] terrorism".[21] Government involvement in wholesale terrorism is widespread.[22] Two areas stand out. The first is repressive geo-strategic foreign policy. Motivated by similar ideological aims of maintaining influence and of enabling

concentrations of private power to shape foreign economic affairs, repressive foreign policy from Malaya, Kenya and Iran to more recent examples such as Chechnya and Iraq has ranged from illegal sanctions and covert operations to active support for other government's violence.[23] Since World War II, it is possible to attribute, Curtis continues, several million deaths to such policies.[24] It is also possible to attribute to them an appreciable if unsurprising escalation in the risk of (retail) terrorism – a risk heightened where local resistance is criminalised and denied restitution.[25]

The second area in which the government has involvement lies in domestic policies which permit, rather than (say) criminalise, wholesale harms from private power itself. Permitted for similar ideological reasons, harms include (a) the 'destabilisation of the basic structures' of entire countries by financial institutions such as by means of induced crises forcing 'austerity' onto sovereign nations; (b) the 'intimidation' of governments by multinational corporations in order to drive political change to provide suitable investment climates by means of capital flight, investment strike and attacks on currencies; and (c) various kinds of direct 'violence and damage' to people, property and planet.[26]

Taken together, the problem the government would face is to justify mass surveillance as means of fighting terrorism in light of mounting evidence that certain forms are permitted, supported, created and perpetrated.

### **Proportionate?**

Even if a legitimate end can be established, doubts arise about whether surveillance is proportionate to that end.

### **A selective response?**

It is unclear why, when appeasement characterises government policy to (much) wholesale terrorism in ways indicated above, the comparatively limited effects of retail terrorism – in the range of up to several thousand casualties per annum worldwide – should warrant such pervasive and repressive domestic measures as mass surveillance.

A crude comparison with resources devoted to public survival elsewhere may be instructive. The current expenditure on counter-terrorism measures of some £3 billion per annum[27] and an annualised average death rate in Britain attributed to terrorism of five – a number that compares with those killed by wasp and bee stings and is one-sixth of the number of people who drown in the bath each year, – amounts roughly to £60 million per fatality.[28] In contrast, at £18.2 billion government spending on cardiovascular disease healthcare and research, which kills some 250,000 people annually, works out roughly at £7-10,000 per fatality.[29] Similar figures are found for annual deaths from cancer (150,000), air pollution (39,000; much of it from traffic) and traffic accidents (3,000).[30] Although the comparison is crude, it follows at least that even a small increase in efforts to combat these and other serious non-terrorist threats would, Thomas Pogge explains, do much more to protect public survival, at lower cost, than would escalating a fight against an unspecified, perhaps unspecifiable, threat.[31]

### **Advancing the goals of terrorism?**

A further problem lies in ways in which mass surveillance advances the apparent aims of certain retail terrorists. These aims, as former Home Office secretary, Charles Clarke

[declared](#) to the European Parliament, are to destroy “many hard-fought rights [such] as the right to privacy [and] the right to free speech”. Mass surveillance undermines these rights – and thus appears disproportionate – because it obliterates any distinction between law-abiding and law-breaking citizens: every citizen is to be treated like a potential criminal to be monitored without warrant or reason.

The suspicion of disproportionality deepens in light of two wider, disturbing incursions into individual rights and democratic accountability with which surveillance plans are linked. The first concerns wider surveillance measures developed by the EU to create a database on all European citizens.[32] The aim, as an EU Council Presidency paper makes plain, is to create a detailed digital record...[of] every object the individual uses, every transaction they make and almost everywhere they go.[33]

The second incursion follows from the ever-increasing scope of executive power. Incursions, to expand upon some already indicated, follow from the executive’s

- power to curtail critical liberties, suspend habeas corpus and use armed forces to deal with domestic disturbances;
- growing immunity from parliamentary and judicial control in the exercise of these powers; and
- power, reminiscent of the [German Enabling Act 1933](#), to [amend and repeal](#) almost any legislation, subject to vague and entirely subjective restraints, by decree and without recourse to Parliament – such as might render legal the government’s involvement with the US in abduction, torture and assassination.[34]

Such is the extent of these incursions into ‘hard-fought’ individual rights and democratic accountability that former MI5 chief, Stella Rimington, concedes that, unbeknown to much of the public, Britain appears to have been turned into a police state.[35] If one adds to these incursions the proposed surveillance, then it is difficult to escape the conclusion, Curtis [continues](#), that the greater threat to the public, to its liberty and to what remains of democracy lies in “the policies of our own government”. This outcome appears a qualified victory for certain terrorists. For they have, Jean Baudrillard notes, induced in the West a climate of fear and obsession with security, which is itself a veiled form of permanent terror.[36]

## **A proportionate response**

This idea of ‘fighting terrorism’ by means which actually advance its alleged aims should be contrasted with more mature responses such as that of Norway. Barely five days after Anders Breivik murdered 77 people, the Norwegian prime minister responded not by cracking down on civil liberties but by a pledge not to allow a fanatic to succeed in eroding Norway’s democracy:

the Norwegian response to violence is more democracy, more openness and greater political participation.[37]

## **Necessary in a democratic society?**

Even if mass surveillance might be proportionate to a legitimate end, it must also be shown to be necessary in a democratic society. Problems here are both specific and general in

nature.

### **Specific difficulties**

While mass surveillance may well help fight serious crime and terrorism, this does not mean that it is necessary to that end. It merely means that it is expedient to that end. To claim that mass surveillance is necessary implies that these problems could not be resolved unless it were imposed. This assumes that the police would be ineffective without it. The assumption is difficult to sustain for two reasons. First, mass surveillance is proposed at time when killings and related serious crime are fewer than at any time in almost thirty years[38] and when, according to the Home Office, “counter-terrorism work has made significant progress over the last ten years” to such an extent that “al Qa’ida”, for instance “is weaker than at any time since 9/11”. [39] Second, it is already quite possible with proper permission and oversight to monitor people suspected of terrorism and serious crimes. Consequently, the claim to be unable to deal with serious crime and terrorism except by removing what remains of personal privacy seems at best an admission of incompetence.

In any case, the government’s involvement in terrorism undermines the argument for necessity. It is actively preventing the achievement of the declared legitimate end (fighting terrorism) for which surveillance is supposedly necessary means. If the government were at all serious about fighting terrorism then it should, as Chomsky [remarks](#), first stop participating in it.

### **General difficulties**

Proving the necessity of mass surveillance requires, Keith Ewing explains, a “theory of democracy by which to determine whether a restriction on a [European] Convention [on Human Rights] right can be justified”. [40] A problem lies in the fact that, as Girvan LJ suggests, mass surveillance, while acceptable with totalitarian regimes, is antithetical to a democratic society. It is antithetical because, as the House of Lords Constitution Committee explains, since

privacy is an essential pre-requisite to the exercise of individual freedom, its erosion weakens the constitutional foundations on which democracy... ha[s] traditionally been based.[41]

The difficulty of formulating a theory of democracy by which the breach of privacy may be justified deepens in light of incoherence in the government’s view of democracy. The incoherence may be observed in the argument for exceptional powers in general and for mass surveillance in particular. It is an argument, Tony Bunyan notes, that assumes that “everyone accepts that the ‘threats’” which the government proclaims are real and that addressing them requires incursions into civil liberty and democratic accountability.[42] It follows that if national security requires, Bunyan continues, that the state

sets the limits, boundaries and sanctions of all peoples’ actions [including peoples’ telecommunication, then] there can be no individual freedom, except that sanctioned by the state.[43]

This is to say that when the state assumes exclusive power to define the nature of a threat, and the appropriate means to deal with that threat, it may also define the extent of individual liberty. Individual freedom becomes at most little more than a discretionary grant

subject to executive will; at worst, national 'security' becomes code for social repression.

In a framework in which the state determines which liberties to grant to which individuals, political liberty is effectively possessed by the state. The source of sovereignty resides in the state, much as it did for Hobbes, rather than in the individual. As Karma Nabulsi explains, this kind of 'social contract' affirms a theory of state, but it is far from a democratic one.[44] Elementary to a nominally democratic social contract (or similar democratic model) such as those expressed by the likes of J.S. Mill, Kant and Rousseau is the view that protection of citizens' liberty, particularly political liberty, is a supreme good. In this contract, the sovereign citizen does not surrender sovereignty, but instead delegates specific powers and functions to the state. Because political sovereignty is not transferred to the state, both civil rights and political liberties are inalienable. These include the right to define the public good and threats to it, the right to deliberate and determine laws including those which address threats, and the right to adequately review both.

Genuine democratic governance would by definition structure political power toward the public good. It would do so in part by encouraging, rather than excluding, considered public participation in the definition and determination of the public good. An essential preliminary to this would be to prevent those who benefit from social repression from exerting undue influence on the exercise of that power. A particular priority would therefore be to dismantle the [growing union](#) of state and private power – some harmful consequences of which have been observed (see 'legitimate end'). In their place would appear viable and legitimate ways and means of addressing violence, of which Norway's [response](#) appears one example.[45] In short, such governance would mean that the reported crisis of terrorism would no longer automatically mean an actual crisis of democracy.

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