

## Written evidence from the Media and Persuasive Communication network (MPC) (AET0043)

# The Sorry Tale of British Journalism and our Right to Privacy

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## 1. Summary

1.1 Focusing on privacy, we address the inquiry's questions on cultural factors in ensuring that human rights are respected.

1.2 We show how British journalism does a poor job in promoting the right to privacy, especially given its demonstrable preference for a counter-narrative promoted by the intelligence elite on the importance of surveillance for national security. To explain this, we draw on published academic work on the 2013 leaks by National Security Agency (NSA) whistleblower, Edward Snowden, on mass surveillance.

1.3 We recommend that:

- Journalists should be encouraged to reject a simplistic binary narrative of surveillance versus privacy: there are many shades of complexity within these issues.
- Journalists should not automatically privilege intelligence elite sources (especially intelligence agencies and their political mouthpieces) but should give more prominence to those pointing out the human rights implications of security practices.

## 2. The Right to Privacy

2.1 One of the aims of the *Human Rights Act 1998* is to create a human rights culture that permeates society as well as the courts. As Bogdanor (2006) puts it: 'In the last resort, the preservation of our rights depends on popular support, not on institutional mechanisms' (such as judges and courts). Journalism arguably plays a crucial role here in propagating a human rights

culture. To examine whether British journalism encourages a human rights culture, we have examined journalism's coverage of a right that is restrictable rather than absolute – namely, the right to privacy.

2.2 In legal form, the right to privacy is recognized, *inter alia*, in Articles 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Political and Civil Rights. In 2013, following Snowden's leaks, the United Nations General Assembly adopted resolution 68/167, in which it expressed deep concern at the negative impact that surveillance and interception of communications may have on human rights. The General Assembly affirmed that the rights held by people offline must also be protected online, and called upon all States to respect and protect the right to privacy in digital communications. The European Convention on Human Rights [1953] (Article 8) similarly governs the protection of private life and the confidentiality of correspondence.

2.3 Privacy is a restrictable, rather than absolute, right (McStay, 2014). However, if the state seeks to invade a person's privacy, it must justify its interference. The interference must be legally permitted. The law must be sufficiently clear and public that everyone can know what it is and how to adjust their behaviour accordingly. Any exception permitted by law to a human right must be interpreted narrowly, and it must have a legitimate objective and be necessary to achieve that objective alone. There must be no alternative that would be less intrusive into the person's life. There must be judicial oversight of any state interference. A person affected by interference must have access to justice to challenge it (Bauman et al. 2014).

### **3. Liberty v. Security (e.g. Privacy v. Surveillance)**

3.1 To understand the issue, the framing of liberty v. security (e.g. privacy v. surveillance) should be examined. Thomas Hobbes (1985 [1651], 1998 [1668/1642]) considered this dyad some time ago. Liberty, for Hobbes, means giving up some rights to establish peace via an authority that works on our behalf for the common interest (such as with defence and policing). This 'social contract' involves giving up some natural rights for the benefit of social stability. Indeed, Hobbes recognises this as a balancing act, pointing out that safety cannot come at any cost or be the sole concern of life in society. However, for a 'social contract' to have widespread legitimacy, its terms must be understandable to its citizens. This was not the case with mass surveillance prior to Snowden's leaks, as the extent and the nature of the mass surveillance

programme was highly secret. Since Snowden's leaks, there has been a great deal of press coverage on mass surveillance, but has it deepened our human rights culture?

3.2 A healthy human rights culture would offer a robust debate on the appropriate balance between privacy and surveillance. This is not a simple binary. The debate needs to cover important complexity including issues such as: the proportionality of surveillance practices; questioning of effectiveness of surveillance in delivering security; controls on how citizens' data is used to combat lesser crimes; and the role of reactionary politics by our politicians. Also relevant is that, in a modern context, most people who argue for greater privacy rights do not think that surveillance is innately bad, or that we should not have security. The question is one of proportionality, effectiveness, the role of indiscriminate surveillance and whether mass surveillance should be used to track innocent people (McStay 2017).

3.3 So, how healthy is human rights culture in the UK? For a litmus test, we can do no better than to look at the news debates on mass surveillance following the leaks by NSA whistleblower, Edward Snowden. Academics have extensively researched media coverage of this issue, enabling us to evaluate journalism's performance (Bakir 2018).

## **4. Case Study: Mass-Surveillance revealed by Snowden**

4.1 In 2013, Snowden revealed the scale and nature of mass surveillance of populations undertaken by many democracies, including the UK. The published Snowden leaks reveal that signals intelligence agencies such as the NSA (in the USA) and GCHQ (in the UK) mass surveil citizens' communications by collecting data in bulk from the servers of US global telecommunications companies and from directly tapping fibre-optic cables carrying internet traffic. This data includes 'communications content' (e.g. emails, instant messages and full web browsing histories); and what was called 'communications data' (in the UK) and 'metadata' (in the USA) (e.g. who the communication is from and to whom; from where it was sent, and to where; and the record of web domains visited). Such data collection can be very privacy invasive as digital communications are central to modern life.

## **5. Does British Journalism Encourage a Privacy Rights Culture?**

5.1 The question arising is as follows: following Snowden's leaks, and leading up to the *Investigatory Powers Act* [2016], did British journalism offer a meaningful debate on the appropriate balance between privacy and security? Meta-analysis of studies on British journalism's coverage of this issue shows that, apart from a few notable exceptions (especially, the *Guardian*, which broke the leaks) little meaningful debate was forthcoming (Bakir 2018).

## **5.2 Evidence Point 1: UK News Privileged the Government's Stance**

5.2.1 Across the two years following the first published leak, the British press largely adopted the

British government's stance. Many longitudinal studies of British press and broadcasting coverage across the two-year period following Snowden's initial revelations find most outlets privileging political sources seeking to justify and defend the security services and mass surveillance (Branum and Charteris-Black 2015, Di Salvo and Negro 2016, Lischka 2016, Wahl-Jorgensen, Bennett and Cable 2016, Wahl-Jorgensen, Bennett and Taylor 2017). For instance, pro-surveillance newspapers were *Daily Mail/Mail on Sunday*, *Daily Mirror/Sunday Mirror*, *Daily Star/Star on Sunday*, *The Daily Telegraph/Sunday Telegraph*, *The Sun* and *The Times/Sunday Times*. The *Guardian/Observer* and *Daily Express/Sunday Express* were balanced in offering pro and anti-surveillance opinions; and *The Independent/Independent on Sunday*, the *i* and *The People* were anti-surveillance (Wahl-Jorgensen, Bennett and Taylor 2017). Prominent press themes were that social media companies should do more to fight terrorism, and that while surveillance of politicians is problematic, surveillance of the public should be increased. Citizens' privacy rights and surveillance regulation were minimally discussed, while mass surveillance was normalised by suggesting that it is necessary for national security (Wahl-Jorgensen and Bennett 2016, Wahl-Jorgensen, Bennett and Cable 2016, Wahl-Jorgensen, Bennett and Taylor 2017). British broadcasting gave governmental, pro-surveillance actors a voice by default as pro-surveillance arguments were expressed explicitly through the societal threat of terrorism, whereas counter-surveillance arguments about the consequences of mass surveillance for liberty and democracy remained obscure (Lischka 2016).

5.2.2 Various explanations have been put forward for these press patterns, including journalistic routines, ideology and self-censorship (Bakir 2018).

- On journalistic routines, the pro-surveillance bias arises from the debates being largely framed by elites, with politicians (in Britain) being the most frequently used sources (Di Salvo and Negro 2016, Lischka 2016, Wahl-Jorgensen, Bennett and Cable 2016). In the UK, while intelligence agencies rarely comment in mainstream media (Lashmar 2013), politicians fill this

vacuum. For instance, Wahl-Jorgensen, Bennett and Taylor's (2017) analysis of the British press in the 20 months following the first published leaks shows that while US or UK intelligence agencies each accounted for less than 5% of sources, politicians were the most frequently used source, accounting for over 40% of sources with their opinions reflecting the preoccupations of governments and intelligence agencies. Citizens were used as sources in just 6% of cases, and civil society groups and NGOs were used even less frequently.

- On ideology, Petley (2014) observes ideological affinities between those running the country and those who own and run most national newspapers: he argues that the British press is more part of the establishment than a fourth estate (also see Branum and Charteris-Black 2015, Wahl-Jorgensen, Bennett and Taylor 2017).

- On self-censorship, the *Guardian's* editor during Snowden's leaks, Alan Rusbridger, notes Britain's entrenched culture of official secrecy. He estimates that up to 90% of journalists are happy to submit their copy to the Defence Advisory (DA) committee - that advises the press to prevent inadvertent public disclosure of information that would compromise British military and intelligence operations and methods (Rusbridger 2013). For instance, across the six months following the first published leak, the *Daily Mail* reported extensively on how surveillance affects American citizens, but minimally reported on GCHQ: instead, it focused on Snowden's lavish lifestyle on the run and his sexual appeal – arguably strategies to delegitimise or distract from Snowden's claims concerning GCHQ (Branum and Charteris-Black 2015).

### **5.3 Evidence Point 2: Dissenting Press were eventually Silenced**

5.3.1 Snowden sought a specific journalist for his archive of leaks:<sup>1</sup> Glenn Greenwald.

Greenwald had cultivated a reputation for independence as a national security opinion writer since 2005 when, as a constitutional and civil rights lawyer, he blogged to counter the George W. Bush administration's radical theories of executive power, including the 2005 story of NSA warrantless wire-tapping. Snowden believed that Greenwald would understand the leaks' significance, and could withstand governmental and media pressure to patriotically self-censor (Greenwald 2014: 1-2; Harding 2014: 71). Greenwald took the leaks to the *Guardian*, a newspaper he had joined in August 2012 as an online daily columnist, attracted by its 'history of aggressive and defiant reporting' (Greenwald 2014: 67). However, 10 months after its first published leak, even the *Guardian* stopped reporting the leaks in a whistle-blowing capacity (i.e. it stopped reporting on fresh aspects of the leaked documents, and it made no further new hyperlinks to the leaked documents) (Bakir 2018).

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<sup>1</sup> The full archive of published leaks is available at: <https://www.cjfe.org/snowden>

5.3.2 This is unsurprising given the highly coercive government response to the *Guardian* comprising **threats and harassment**. British police pursued a criminal investigation into the *Guardian*'s actions surrounding the leaks, and David Cameron's administration politically pressurised the *Guardian* (Greenwald 2014, Harding 2014, Moore 2014). On Cameron's instruction, cabinet secretary Sir Jeremy Heywood told the *Guardian* to destroy its NSA files as they represented a national security threat. As the *Guardian* refused to hand back or destroy the documents, its employees were forced to physically smash their computer hard drives in London under GCHQ's tutelage in July 2013 after the British government threatened legal action (Watt 2013), despite the *Guardian*'s editor pointing out that this was pointless given that its New York office held copies of the documents, as did Greenwald in Brazil and documentary-maker, Laura Poitras, in Berlin (Rusbridger 2013). This *silencing* technique of **harassing non-compliant media workers** was further evident in state surveillance of the journalists publishing the leaks. As the *Guardian*'s US office started to publish the leaks, its journalists there noticed that they were being surveilled, both electronically as their computers succumbed to hacking, and in person by suspicious taxi-drivers and window cleaners (Harding 2014: 134-135). Reportedly, journalists involved with the leaked documents have been isolated or harried by the American and British governments. British journalist and *WikiLeaks* staffer, Sarah Harrison, who worked with Snowden in Russia, was advised by her lawyers that it was 'not safe to return' to the UK (in November 2013). Other journalists and activists involved in publishing the leaks that were 'in effective exile' in Berlin across 2013 include Poitras and Jacob Applebaum (Oltermann 2013). Meanwhile, *The Sun*, *Mail* and *Telegraph* called for the *Guardian* to be prosecuted for the leaks (Petley 2014).

5.3.3 To summarise: the British press largely adopted the British government's stance on mass surveillance at the expense of pointing out the privacy implications for British citizens; and the main dissenting UK outlet (*Guardian*) was silenced after 10 months.

## **6. Towards a Human Rights Culture in our Public Sphere**

6.1 British intelligence agencies maintain that Snowden's leaks exposed a vital and secret intelligence collection method whose fruits are used 'daily' to protect national security (Anderson 2016: 43, 94, 112, 123, 147). Intelligence agencies would argue, then, that their strong coercive response against the *Guardian* and their marshalling of political opinion-leaders was warranted to protect this method and deter future leakers. That the UK's mainstream news

outlets largely capitulated (many from the outset, but even, eventually, the whistle-blowing press (i.e. the *Guardian*)) does not point to a healthy public sphere in the area of privacy-based rights.

6.2 What is also clear is that public exposure of the mass surveillance policy did not end the mass surveillance regime. Rather, public exposure made the mass surveillance regime more transparent, producing the UK's *Investigatory Powers Act 2016* that, for the first time, in one piece of legislation, clearly articulated the security services' surveillance powers, as well as mechanisms for its oversight. In fact, Snowden's leaks indicate that it is entirely feasible to make public the merits, reach and oversight of the mass surveillance regime while retaining both the regime and the security benefits it delivers. Given this, it is hard to see how the intelligence elite's response can be justified in the mass surveillance issue. Indeed, a less coercive response would have generated a more informed public debate, as follows.

6.3 Had intelligence elites refrained from embracing silencing strategies (coercion of the *Guardian* and a DA Notice to the wider press), this would have encouraged further public debate on the appropriate balance between privacy and security; and on the ethics and human rights implications of surveillant intelligence practices and policies.

- Refraining from harassing non-compliant media workers such as those at the *Guardian* may have led to this newspaper publishing more of the leaks on mass surveillance than it did, and for longer (it stopped publishing new aspects of the leaks ten months after its first published leak).
- It may also have generated less self-censorship by the wider British press, thereby generating a public debate on privacy v. surveillance that was less one-sided in favour of the government.
- Instead, with *The Guardian* silenced, and the rest of the British press largely favouring mass surveillance, the British media's debate across 2014-2015 was far from robust, and across a crucial time when the Investigatory Powers Bill was being debated in Parliament. A more robust debate may have tempered the resulting *expansion* in the mass surveillance regime in the UK, as seen in the *Investigatory Powers Act 2016*.

## 7. Recommendations

7.1 Journalists should be encouraged to reject a simplistic binary narrative of surveillance versus privacy: there are many shades of complexity within these issues.

7.2 Journalists should not automatically privilege intelligence elite sources (especially intelligence agencies and their political mouthpieces) but should give more prominence to those pointing out the human rights implications of security practices.

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