Crying Wolf – Invoking 'National Security' as Grounds for Censorship

Paul Lashmar

Surveillance and censorship

Excessive secrecy has long been identified as a malignant British disease, and the UK also has the unenviable reputation of being a society characterised by a high degree of surveillance of one kind or another. Both of these make the serious journalist's job far more difficult than it should be in a modern democracy, and act as forms of censorship, as the examples discussed in this chapter will demonstrate.

In 2013 the *Guardian* published a massive archive of secret intelligence documents leaked by former National Security Agency (NSA) contractor Edward Snowden. This revealed the sheer extent of the programme of bulk interception of information carried out by the eavesdropping agency the Government Communication Headquarters (GCHQ) under the terms of the Regulation of Investigatory Powers Act 2000 (RIPA). As a consequence of the revelations, organisations such as the Bureau of Investigative Journalism and Big Brother Watch brought a series of legal challenges against GCHQ's bulk intercept regime. In 2015, *Press Gazette* revealed that the police had widely used the Act to secretly view journalists' call records and identify lawful confidential sources. The magazine subsequently launched the Save Our Sources campaign, which successfully called for action to ensure that the police could no longer view journalists' phone records without the approval of a judge.

Eventually, in May 2022, the top chamber of the European Court of Human Rights (ECtHR) ruled that the mass surveillance programme was unlawful in that it infringed the Article 8 right to privacy and Article 10 right to freedom of expression under the European Convention on Human Rights (ECHR) and contained insufficient protections for confidential journalistic material. The Court did not rule that operating a bulk interception regime was in itself a

breach of the Convention, "owing to the multitude of threats states face in modern society", but it did state that such regimes must be subject to "end-to-end safeguards" including assessments at each stage of the process in order to ensure the necessity and proportionality of the measures, and independent authorisation and supervision. Particularly significantly in the present context, the Court also ruled that:

> The protection of a journalist's sources was one of the cornerstones of the freedom of the press. Undermining this protection would have a detrimental impact on the vital public watchdog role of the press and its ability to provide accurate and reliable information. (Quoted in Tobitt, 2021)

However, in 2016, the government had replaced RIPA with the Investigatory Powers Act (IPA) which contained many of the same invasive provisions as its predecessor and which rapidly came to be known as the 'Snooper's Charter'. As Rebecca Vincent of Reporters Without Borders (RSF) claimed at the time of the bill's passage, it "could effectively serve as a death sentence for investigative journalism in the UK. It lacks sufficient mechanisms to protect whistleblowers, journalists, and their sources. It also fails to require authorities to give advanced notice to journalists before hacking their devices" (quoted in Ponsford, 2016). And as James Ball of the Bureau of Investigative Journalism was to claim after the legality of some of the new Act's provisions was challenged in the courts by Liberty: "It's starting to feel like the reason the government passes new online surveillance laws every few years is to make it moot when it turns out the old one violated human rights" (quoted in Tobitt, 2022).

As a result of the legal challenges to the IPA, in 2022 two High Court judges ruled that the British Security Service (MI5), the Secret Intelligence Service (SIS or MI6) and GCHQ had unlawfully been given permission to access individuals' communications data, using the clause for the prevention or detection of serious crime. Lord Justice Singh and Mr Justice

Holgate found that the ability of the UK's intelligence services to authorise their own access to the private communications data of members of the public for the purposes of investigating crime was contrary to the e-Privacy Directive and the EU Charter of Fundamental Rights (still binding on the UK as retained EU law), which required the services to apply to an independent judicial commissioner for prior authorisation in order to access communications data. In their view, the "mere fact" that the intelligence services operate in the field of national security does not make them exempt from the safeguards that apply to the police when investigating crime.

The ruling was at least a partial victory for privacy and confidentiality, with Liberty's lawyer Megan Goulding declaring that it "represents a huge landmark in reigning in our mass surveillance powers, and we hope now the government creates proper safeguards that protect our rights. Mass surveillance powers do not make us safer; they breach our privacy and undermine core pillars of our democracy" (quoted in Goodwin, 2022). These pillars include, of course, the role of journalism in holding power to account and exposing abuses of power, although the judges dismissed Liberty's argument that bulk interception does not provide sufficient safeguards to protect journalistic material and sources, pointing out that any surveillance requests to identify or confirm a journalistic source must be approved by a judicial commissioner and can be authorised only if there is an "overriding" public interest. They also observed that the that the government had accepted a decision by the ECtHR that safeguards are required for journalistic material and that it had announced plans to legislate to introduce greater protection for journalists in the UK. However, no such plans have been forthcoming, and the government has since repeatedly threatened to withdraw from the ECHR and in the Retained EU Law (Revocation and Reform) Bill is planning to "provide the Government with all the required provisions that allow for the amendment of retained EU law (REUL) and remove the special features it has in the UK legal systems."

Withholding evidence

In exactly the same week as the High Court judgment on RIPA, lawyers acting for the victims' families in the judge-led inquiry into the 2017 Manchester Arena bombing complained that they had been excluded during the inquiry from accessing crucial evidence from MI5. This evidence concerned in particular the bomber's prior connections with the UK military and security services via the war in Libya in 2011, in which the UK was involved, and whether MI5 possessed any information which could have prevented the bombing in the first place.

Salman Abedi's bomb had killed 22 mostly young people and injured many more, a crime for which he was jailed for life, and the subsequent inquiry was intended to explore the "knowledge of the Security Service, the police and others about Salman Abedi." However, the inquiry chair, Sir John Saunders, accepted the state's argument that giving open evidence "would assist terrorists in carrying out the sort of atrocities committed in Manchester and would make it less likely that the security service and Counter−terrorism Policing would be able to prevent them" (quoted in Declassified, 2022) and so MI5 was permitted to give nearly all its evidence in secret, closed sessions from which lawyers, including those for the families, and journalists were excluded and only certain lines of questioning were permitted by the chair. On the rare occasions when (anonymised) MI5 officers gave evidence in public, they frequently refused to answer questions from the families' lawyers, as did various (named) police officers. This repeated behaviour led one of the lawyers, John Cooper, to say to MI5 officer, 'Witness J':

> Can I suggest to you, and the families have this concern, you are using national security as an excuse not to answer legitimate questions …. We question the transparency and genuine motivations of MI5 and the security services, not only to assist this inquiry but

> to place matters properly suitable for open hearing in the open hearing domain in plain sight to be examined by the families. (Quoted in ibid.)

The inquiry produced three reports, and the final one, which was published in March 2023, focussed on the question of whether the bombing could have been prevented. It concluded that there was a "realistic possibility" that the bomber could have been thwarted if the security services had acted more decisively on intelligence. And although it was "quite impossible" to say definitively whether any different action would have prevented the blast, there was a "significant missed opportunity to take action" that might have done so (quoted in Halliday, 2023). But such is the state's addiction to secrecy, under the guise, of course, of protecting 'national security' that what that opportunity was could not be revealed (although it clearly relates to intelligence that MI5 failed either to act on or to communicate to the police).

Covering up

That government and the security services cry 'national security' when something might prove embarrassing is an old and much-repeated trope. Summing up his experiences over a five-decade career, the former *Guardian* national security reporter, Richard Norton-Taylor, stated:

> A government's most common defence of officials secrecy is that it is needed to protect 'national security' or 'the public interest', phrases that cover a multitude of sins. They are deployed to protect governments from political embarrassments and to cover up wrongdoing. The flag of 'national security' is hoisted immediately the security and intelligence agencies come into view. The record of MI5, MI6 and GCHQ, their failures and successes, and their uses and abuses needs to be examined. After decades

spent closely following these agencies, I believe I have the measure of them. They must be taken down from their pedestal, brought down to earth and opened up. (2019: 7)

All too often such concerns are enough to silence criticism and embarrassing revelations on the part of journalists, as we shall see below in the case of Edward Snowden, but on this occasion, one involving mass murder on UK soil, the press was actually united in its criticism of MI5's behaviour and in calling for greater openness on its part, which has to be regarded as some kind of victory, even if only a limited one.

Like Norton-Taylor, as a journalist I have had personal experience of the 'national security' flag being hoisted on many occasions over 45 years, often to deter legitimate reporting on intelligence matters. In 1986, while an investigative journalist on the *Observer*, I was one of the reporters, along with my colleague David Leigh and also Richard Norton-Taylor, injuncted by the Attorney-General to stop publication of claims of years of wrongdoing within MI5 by one of its former senior officers, Peter Wright. Margaret Thatcher's Conservative government took us and our editors to court to prevent what they claimed were secrets pertaining to national security being aired in public. Wright detailed in his book *Spycatcher* (1987) – which the Government was trying to ban – that he was tasked with identifying a Soviet mole in MI5, and claimed that his inquiries showed that the culprit was the former MI5 Director General Roger Hollis (although this was never proved). However, the Wright allegation that is now best remembered was of a coup plot by MI5 officers against the Labour prime minister, Harold Wilson. Wright cited numerous historic MI5 operations against the Left in Britain, and especially the Communist Party, many of which were illegal. He recalled that in the 1950s: 'For five years we bugged and burgled our way across London at the State's behest, while pompous bowler-hatted civil servants in Whitehall pretended to look the other way' (1987: 54). *Spycatcher* was eventually published in Britain and sold in millions.

The *Observer*, *Guardian* and *Sunday Times* fought the Thatcher government's use of prior publication injunctions all the way to the European Court of Human Rights (ECtHR) and three years later were mostly vindicated by it upholding the media's right to publish this material. The government responded to this and other revelations of wrongdoing by the intelligence community with a more catch-all Official Secrets Act in 1989, designed to deter further whistle-blowers and their journalist contacts. As noted throughout this chapter, bringing in new laws to prevent similar embarrassment in the future has proven to be the standard government response to revelations of intelligence wrongdoing.

It should also be noted that the government has failed to transfer to the National Archives the 32 files from 1986-87 relating to the *Spycatcher* case and attempted to block requests under the Freedom of Information Act 2000 to view them. In 2020 the film-maker Tim Tate was told by the Cabinet Office that the material was exempt because it was intended for future publication, and when he complained to the Information Commissioner's Office (ICO) the Cabinet Office then said that it was also withholding the material because it all related to the intelligence services. The ICO upheld their decision (Ungoed-Thomas, 2021).

Official secrecy

As noted at the start of this chapter, in 2013 the *Guardian* published a massive archive of secret intelligence documents leaked by former NSA contractor Edward Snowden. This revealed the capability of western nations to maintain a level of surveillance unsuspected by even the most informed observers (Harding, 2014)[1]. The government and the security services were outraged by the leak, but apart from making blood-curdling threats against the paper and staging the petty and wholly performative action of destroying a few of its hard drives, found themselves unable to prevent the publication of these startling revelations. And undoubtedly it was this humiliation that lay behind the proposal announced in May 2021 to toughen up the Official Secrets Act still further, although this was dressed up as 'Legislation

to Counter State Threats (Hostile State Activity)' (Home Office, 2021). It was argued that this revision was necessary because "the existing legislation does not sufficiently capture the discernible and very real threat posed by state threats", but, if passed, the new legislation would essentially equate certain forms of journalism with spying and pose a further serious threat to journalists' ability to hold government to account. This is because it includes a major crackdown on "unauthorised disclosures", or leaks of sensitive information, and much investigative journalism depends on precisely such leaks. The proposed legislation contains no public interest defence (Lashmar, 2021; Wahl-Jorgenson, 2021). The chaos of the Boris Johnson government prevented the bill from being passed in 2022, but at the time of writing the government has made it abundantly clear that it fully intends this measure to become law.

Citing 'national security' is a catch-all for governments trying to justify repressive actions against journalists, whistle-blowers and others when they reveal incompetence, corruption and malfeasance by the state, and especially by its secret operatives. For governments the phrase packs an emotional punch, as it trades on the mystique and unknowability of the world of intelligence, and requires the public to accept that there are certain matters on which only government can pass judgement. (The mythical figure of James Bond has a great deal to answer for). It touches on, and abuses, a civic fundamental: the Lockean political contract between the people and the state whereby citizens surrender certain rights to government in return for the government protecting their security. It must be emphasised that no serious journalist or editor takes lightly the revealing of details of the intelligence agencies' workings, especially when it comes to exposing operational information. But, repeatedly, the lack of robust oversight has seen serious wrongdoing by the agencies revealed only years later, and then only because of the considerable efforts of journalists and civil liberties campaigners.

Hiding behind the cloak of national security is not just a UK problem, but one found in most liberal democracies. Loch K. Johnson (2018), the United States leading intelligence studies academic, notes that the National Security Act of 1947, which created the modern American intelligence apparatus, places a special emphasis on the importance of shielding "sources and methods." Yet, as he states, this mantra can become an excuse for intelligence managers to keep all information about their activities tucked away from overseers in the U.S. Congress and the courts, as well as from the eyes of journalists. Daniel Schorr (1976), a journalist who covered the national security beat for CBS News as long ago as the 1970s, noted then that "there have always been in our country two urges – one toward security, one toward liberty. The pendulum constantly swings between them." The US demand that Julian Assange of WikiLeaks be extradited from the UK for releasing information that was undoubtedly in the public interest shows dramatically just how far the pendulum has swung away from liberty.

Above the law

As was demonstrated earlier in the case of both the IPA and the 'Snooper's Charter', it is often years after critics of information crackdowns have first raised concerns about secrecy, accountability and overweening state power that they are proved to be correct. But by that time, of course, the measure in question may have become a *fait accompli*. Take, for example, the removal of John Stalker, the deputy Chief Constable of Manchester and a police officer noted for his integrity, from an investigation into allegations of covert and illegal shoot-to-kill operations in Northern Ireland waged by the security forces against the IRA during the 'Troubles'[2]. Stalker was suddenly pulled off the investigation, on claims – never substantiated – that he had been too close to a Manchester organised crime gang. However, David Leigh and I concluded when we investigated this story at the *Observer* that the allegation was trumped up because he was just about to embarrass the security services in

Northern Ireland by revealing that they were involved in illegal behaviour of a particularly serious kind. (For full details of this case see Stalker, 1988).

In 2018, a top-secret report, almost 40 years old, was very reluctantly released by the successor to the Royal Ulster Constabulary (RUC), the Police Service of Northern Ireland (PSNI). Campaigners and journalists had spent years seeking the release of this document and at long last were granted access to it by an information tribunal. This was written by the former colonial administrator in Uganda, Sir Patrick Walker, who was then head of counter-terrorism at MI5 and went on to serve as head of the service between 1987 and 1992. Written in 1980, it laid out the need for a secret policy giving the RUC Special Branch wide-ranging powers so that the force could give priority to recruiting terrorist informers over prosecuting crime. This was implemented, and as Ian Cobain and Owen Bowcott (2018) state: "As a consequence, a number of British agents are now known to have been involved in murders, bombings and shootings, while continuing to pass on information about their terrorist associates."

When Stalker arrived in Northern Ireland, the Walker policy was in full swing, yet he was not briefed on the report. Thus it was almost certainly the fear that Stalker was about to go public on the policy's systemic exemption of the RUC Special Branch from the rule of law that was the catalyst for his removal. Professor Paddy Hillyard[3] of Queens University, Belfast, an expert on the history of the Troubles, stressed that the policy was secret: "What was so extraordinary about this fundamental change in policing was that it was never announced in a Green or White paper, let alone debated in Parliament. It was devised and implemented in secret, by the secret service."

Furthermore, there was no legal framework for the use of informers at the time. In his inquiry report into the 1989 murder of the prominent Republican lawyer Pat Finucane by loyalist

paramilitaries acting in collusion with the British security services, Sir Desmond de Silva QC noted: "Many of the grave issues relating to the involvement of agents in the murder of Patrick Finucane must, therefore, be considered in the context of the wilful and abject failure by the UK Government to put in place adequate guidance and regulation for the running of agents" (2012: 89). At the time of writing the British government still remains in breach of its legal obligation to carry out a human rights-compliant investigation of the murder (Erwin, 2022).

That journalists find it extremely risky to cover the issue of illegal behaviour by the police and security services in Northern Ireland is vividly illustrated by the treatment of Trevor Birney and Barry McAffrey, who were arrested in 2018 for investigating the 1994 Loughinisland massacre, in which gunmen from the Ulster Volunteer Force murdered six Catholics[4]. No-one was ever charged, and the strong suspicion of collusion between the police and the killers was confirmed in June 2016 in a damning report by the police ombudsman for Northern Ireland, Michael Maguire, in which he stated that he had "no hesitation" in concluding that such collusion had taken place. After a lengthy legal battle, in November 2020, the PSNI paid the pair £875,000 in damages for wrongful arrest.

However, the fact that the report received very little coverage in much of the British press, with the notable exception of an article by Ian Cobain (2016), as did the travails of Birney and McAffrey themselves, suggests that it is not simply the difficulties presented by onerous legal restrictions that discourage the reporting of subjects which the British authorities claim endangers national security in one way or another. Newspapers' own positions on these issues also play a key role here. In the case of Northern Ireland, right-wing national British newspapers generally support the Unionist cause, and are only too happy to accuse those that criticise the PSNI or the security services of being 'pro-IRA'.

'Cringing deference'

For example, take what happened when the *Guardian* published the Edward Snowden leaks mentioned above. The then editor of the *Independent on Sunday*, Chris Blackhurst wrote: "If the security services insist something is contrary to the public interest, and might harm their operations, who am I to disbelieve them?" And Edward Lucas, a senior correspondent for the *Economist*, said that if had Snowden had brought the documents to him, he would have "marched him straight down to a police station" (quoted in Ponsford, 2014). The *Mail*, *Sun* and *Telegraph* went into ideological overdrive day after day, accusing the paper variously of treason, aiding terrorists, endangering lives, committing criminal acts and so on and so forth (Petley, 2014). On the other hand, the former editor of *The Times*, Simon Jenkins (2013), did state that the idea that the assurances of a policeman or spy are "good enough for me" has been shown to be deluded, and that no group should be trusted with such unconstrained leverage over others. In his view:

> The press, showered with leaks, must resort to its own educated judgment in deciding where the public interest lies. Everyone knows secrets must be kept but keeping them needs a framework built on public trust. That framework must be informed and argued. It can no longer rely on the bark of command and a cringing deference to the gods of security.

Considerations such as the legal constraints faced by journalists and the ideological positions of many of the papers for which they work go a long way to explaining why so many issues covered in this chapter, which are overwhelmingly in the public interest, receive relatively little attention in much of the national press (although we should also add lack of resources for investigative journalism as a further limiting factor).

Straw in the wind

Such factors may help to explain the lack of general media interest in the revelations of British involvement in the CIA's campaign of 'extraordinary rendition' – that is, state-sponsored forcible abduction of those described as 'illegal combatants' in the years following 9/11.

At first, sections of the media did actually report that British intelligence officers were present during the torture of those subject to this process. However, in December 2005 the then Labour foreign secretary, Jack Straw, the minister responsible for the Secret Intelligence Service (MI6) and GCHQ, issued a categorical denial of the former's involvement in rendition and torture when he told the Commons Foreign Affairs Committee:

> Unless we all start to believe in conspiracy theories and that the officials are lying, that I am lying, that behind this there is some kind of secret state, which is in league with some dark forces in the United States . . . there simply, is no truth in the claims that the United Kingdom has been involved in rendition. (Quoted in Cobain, 2018)

Thus was begun the spin that the government and the intelligence agencies would parrot for fifteen years, and which was taken at face value by too many in the media.

However, in June 2018, two reports were published by the parliamentary oversight body, the Intelligence and Security Committee (2018a, 2018b), which contained extremely disturbing details of the involvement of the SIS/MI6 in the CIA's campaign of rendition and torture – involvement which, up to this point, had been deliberately concealed. This was all the more surprising, since in the past the Committee had taken a pretty meek attitude to the services which it was supposed to be overseeing. Although it was denied access to key intelligence individuals by the prime minister, and thus had reluctantly decided to bring its inquiry to a premature end, its reports were described by Ian Cobain and Ewen MacAskill (2018) as "one

of the most damning indictments of UK intelligence", although they did not receive as much media coverage as they merited.

The reports revealed that that the UK had planned, agreed or financed some 31 rendition operations. In addition, there were fifteen occasions when British Intelligence officers consented to prisoners being tortured or themselves witnessed torture, and 232 occasions on which the intelligence agencies supplied questions put to detainees during interrogation, detainees who they knew or suspected were being mistreated. In addition the Security Service had assisted in the financing of a rendition operation in June 2003. In October 2004, the then Foreign Secretary, Jack Straw, authorised the payment of a large percentage of the cost of rendering two suspects. The ISC directly reports contradict what the government and intelligence services had said publicly and forcefully from 2005 onwards about their involvement in torture and rendition.

The then prime minister Theresa May issued a statement saying that the lessons of what happened in the aftermath of 9/11 "are to be found in improved operational policy and practice, better guidance and training, and an enhanced oversight and legal framework." She also added: "We should be proud of the work done by our intelligence and service personnel, often in the most difficult circumstances, but it is only right that they should be held to the highest possible standards in protecting our national security." However as Cobain and MacAskill (2018) note, her statement did not address the committee's conclusion that the UK had been in breach of the international prohibition on torture. Nor did she say anything about the recommendation that a fresh police investigation be considered.

Censoring history

Suppression and censorship in the alleged interests of national security does not apply just to the present: it intervenes in our understanding of history. Government files from Whitehall

are expected to be released to the National Archives after twenty years. However, national security-related files are often withheld for much longer. Perhaps unsurprisingly, the files of MI6, MI5 and GCHQ are often withheld for 75 years, sometimes 50 years. There is very little material in the archives for these agencies (or their predecessor agencies) dated after the Second World War, and their official histories tend towards the bland. Since 1976, I have been intermittently investigating the Foreign Office's Information Research Department (IRD), which ran from 1947 to1977 as Britain's secret Cold War propaganda operation and which was integral to both SIS and MI5 (Lashmar and Oliver, 1998). When folders on the history of the IRD started being released into the archives in the late 1990s, it was expected that they would be released after twenty years. But researchers were baffled by the scarcity and opaqueness of the releases: for example, they never referred to IRD's involvement with the SIS and MI5 or to operations that were known to have taken place from interviews with former IRD officials, and it was assumed that the files were classified as SIS documents in order to prevent their appearance in the archives before 75 years had elapsed. In 2013 Ian Cobain revealed that the missing IRD files were part of a vast, illegally retained cache of documents held in a secret base called Hanslope Park outside London by the Foreign and Commonwealth Office (FCO). Since then, they have been slowly transferring those documents to the National Archives, but remarkably few journalists showed any interest in the original revelation. [Only one according to Cobain – maybe you?].

In the years 2019-2022 thousands of IRD files have actually been released. However, having spent many hours in the archives looking through files that should have been released long ago, I came to realise that a surprisingly large number are still retained. For example, FCO 168/1141 Information Research Department: Indonesia 1964 is still closed. This refers to a top secret unit within IRD that's that ran an operation in Indonesia where they used covert methods including forgeries to provoke the Indonesian military to overthrow left leaning President Sukarno. The military overthrew Sukarno,

murdering 500,000 people who they thought were communists and installing the autocratic tyrant General Soeharto as President. IRD intervened in many democratic nations in which the UK had absolutely no right to meddle, including engaging in information warfare. Then there is the FCO 162 series which consists of around 1,100 files from the war and before but also falls into the IRD period up to the late 1950s[5]. There are 125 files from 1948 onwards, of which 31 are being withheld even 70 years later. This file series was released to the National Archives only in February 2021.The catalogue entry reads:

> This series includes files of the Foreign and Commonwealth Office's Information Research Department regarding political and economic intelligence. This includes files concerning political figures and leaders between 1944-1950, Gestapo collaborators, resistance sabotage operations and copies of town street plans within Belgium, France, Greece and Italy. Other subjects covered include economic resources, propaganda, communist factions, espionage, reconnaissance, resistance groups, sabotage, troop numbers (German and Italian) and BBC radio broadcast audiences and reactions.

There are hundreds of other retained documents in other areas that fall under the 'national security' umbrella that have been held back for far longer than the twenty years after which documents are meant to be released.

In 2011, as a result of a court case brought by survivors of the brutal detention camps operated by the British colonial authorities in Kenya in the 1950s, the British government was forced to admit the existence of over 8,000 documents relating to the colonial era which it had hitherto kept concealed. Those working for the survivors also uncovered a letter from the Foreign and Commonwealth Office, dated 7 November 1967, which stated that it was general practice at independence not to hand over any files that "might embarrass HMG or other governments" or "members of the police, military forces, [or] public servants", and that

"the fact that it has always been British policy to withdraw or destroy certain sensitive records prior to independence has never been advertised" (quoted in Bowcott, 2011).

Denying the existence of archives and engaging in highly selective releases of official documents represents an attempt to "sculpt the archival trace", as Cobain (2013) aptly puts it. He continues: "Public archives are instruments through which democracies recognise their citizens' ownership of, and responsibility for, government", and releasing documents into these archives "acts as a brake on abuses of power. The hand of the present is kept honest by the gaze of the future". But this, it seems, is precisely what the British government does not want to see happen. When challenged on its secretive practices, it tends to claim that it is merely trying to protect the reputations of the dead, but, as Cobain quite correctly claims, what is really being protected here are "the sensitivities of the living. For the root of these practices of secrecy appears to be a perverse kind of historical narcissism, a desire for a Whiggish gaze into an unblemished national past that leads to our time". They can this be regarded as a form of culture war on the part of the state. While I would suggest the points raised in this chapter underline my concern for democracy in the face as ever more powerful political/intelligence complex, the secret world receives little attention from the majority of the mainstream news media, unless the words 'James Bond' can be used as a peg. It is notable how many of the perceptive newspaper quotes in this chapter are from the *Guardian, the Observer* or from trade mags like *Press Gazette* or *Computer Weekly*, who are the only consistent bringers of accountability to the secret world.

Conclusion: a state of exception

The examples of secrecy, surveillance and suppression explored in this chapter would suggest that we are now in what Giorgio Agamben (2005) calls a "state of exception", in which the state utilises draconian legislation that is in excess of what is required in order to suppress

terrorism (see also Lashmar, 2020). According to Agamben's concept, what in the West was once an exceptional, feared and temporary legal necessity is now the normalised and permanent. It has been well summarised as "the paradoxical suspension of democracy as a means of saving democracy" (Melley, 2012: 5).

Governments are comfortable with this approach because it enables them to invoke the mysterious and unknowable world of intelligence in order to enhance their own validity and to claim to 'protect' the public, thus garnering the support of grateful voters. As I have argued elsewhere (2016), the IPA, and the relative lack of public concern about it at the time that it was passed, demonstrated how successful Islamist terrorism had been in transforming Britain into a secret state – far more so than any other form of terrorism in the past 100 years, including the terrorism carried out both in Northern Ireland and the British mainland by the IRA from the 1970s to the 1990s. In the UK, citizens now accept restrictions, intrusions and draconian laws that would have been unthinkable only twenty years before. And this phenomenon is by no means unique to the UK.

Historically, government has been extremely reluctant to enhance oversight of the secret state unless it has been forced to do so by embarrassing revelations of its illegal activities (Aldrich 2009). However, in the heat of the war on terror, the UK government doubled down, safe in the knowledge that the public was more prepared to accept draconian laws than it might have been in less torrid times. Such extensions of state powers of surveillance are worrying enough while the normal machinery of the modern democratic state is in operation, but with the shift towards the form of authoritarian populism or illiberal democracy favoured by British governments led by Boris Johnson and his successors, this becomes more concerning still. Particularly disturbing are the repeated threats to withdraw from the ECHR, which, as this chapter has illustrated, has been successfully invoked repeatedly by those concerned to protect the population, and especially its journalists, from an oppressive degree of

surveillance. Would it be too cynical to suggest that this could be one of the reasons for recent governments' bleak hostility to the Convention?

References

Agamben, G. (2005) *State of Exception.* Chicago, IL: University of Chicago Press.

Aldrich, R.J. (2009) "Regulation by revelation? Intelligence, transparency and the media". In R. Dover and M.S. Goodman (eds), *Spinning Intelligence: Why Intelligence Needs the Media, Why the Media Needs Intelligence.* New York: Columbia University Press (pp. 13-37).

Bowcott, O (2011) "Kenyans sue UK for alleged human rights abuses". *Guardian*, 5 April.

Cobain, I. (2013) "Foreign Office hoarding 1m historic files in secret archive." *Guardian*, 18 October.

Cobain, I. (2016) "Loyalist informers smuggled weapons used in dozens of Troubles murders." *Guardian*, 9 June.

Cobain, I. (2018) "What did Jack Straw know about the UK's role in torture and rendition?" *Guardian*, 28 June.

Cobain, I. and Bowcott, O. (2018) "RUC told to put intelligence before arrests, reveals secret MI5 report." *Guardian*, 26 June.

Cobain, I and MacAskill, E. (2018) "True scale of UK role in torture and rendition after 9/11 revealed." *Guardian*, 28 June.

Declassified (2022) "How UK security services obstructed the Manchester bombing inquiry." 29 June. Retrieved from https://declassifieduk.org/how-uk-security-services-obstructed-the-manchester-bombing-inquiry/

De Silva, D. (2012) *The Report of the Patrick Finucane Review.* London: The Stationery Office.

Erwin, A. (2022) "Pat Finucane murder: UK government in breach of legal obligation over investigation, judge rules." *Belfast Telegraph*, 21 December.

Goodwin, W. (2022) "Spy agencies need 'independent authorisation' to access telecoms data, say judges." *Computer Weekly*, 29 June.

Halliday, J. (2023) “Manchester Arena attack: Families accuse MI5 of ‘devastating’ failure.” *Guardian*, 2 March.

Harding, L. (2014) *The Snowden Files: The Inside Story of the World’s Most Wanted Man*. London: Guardian Books.

Home Office (2021) *Legislation to Counter State Threats (Hostile State Activity):Government Consultation*. London: Home Office.

Intelligence and Security Committee (2018a) *Detainee Mistreatment and Rendition 2001-2018.* HC1113.

Intelligence and Security Committee (2018b) *Detainee Mistreatment and Rendition: Current Issues.* HC1114.

Jenkins, S. (2013) “The days of believing spy chiefs who say ‘Trust us’ are over.” *Guardian*, 20 November.

Johnson, L. K. (2018) *Spywatching.* Oxford: Oxford University Press.

Lashmar, P. and Oliver, R. (1998) *Britain’s Secret Propaganda War: A History of the Foreign Office’s Information Research Department, 1948-77*. Stroud: Sutton.

Lashmar, P. (2016) “Snoopers’ Charter: why journalists (and the rest of us) should be afraid.” *The Conversation*, 1 December.

Lashmar, P. (2020) *Spies, Spin and the Fourth Estate*. Edinburgh: Edinburgh University Press.

Lashmar, P. (2021) “Official Secrets Act: UK government has a long history of suppressing journalism to hide its misdeeds.” *The Conversation*, 27 July.

Lyons, R. D. (1976) “Schorr relieved of duties by CBS.” *New York Times*, 24 February.

Melley, T. (2012) *The Covert Sphere*. Ithaca, NY: Cornell University Press.

Norton-Taylor, R. (2019) *The State of Secrecy.* London: I.B. Tauris.

Petley, J. (2014) “The state journalism is in: Edward Snowden and the British press.” *Ethical Space*, 11(1/2), 9-18.

Ponsford, D. (2014) “Economist's Edward Lucas claims Russian 'radio silence' over invasion of Crimea was due to Snowden revelations.” *Press Gazette*, 28 March.

Ponsford, D. (2016) “Snooper’s Charter and Section 40 costs threats set to push UK yet further down Reporters Without Borders press freedom index.” 28 November.

Shirbon, E. (2015) “UK tribunal says intelligence-sharing with U.S. was unlawful.” Reuters, 6 February.

Stalker, J. (1988) *Stalker: Ireland, ‘Shoot to Kill’ and the ‘Affair’*. London: Penguin Books.

Tobitt, C. (2021) “ECHR condemns UK state surveillance regime for failing to protect journalistic sources.” *Press Gazette*, 25 May.

Tobitt, C. (2022) “UK Government admits pre-2016 journalist surveillance was illegal.” *Press Gazette*, 4 April.

Ungoed-Thomas, J. (2021) “UK officials still blocking Peter Wright’s ‘embarrassing’ Spycatcher files.” *Guardian*, 27 November.

Wahl-Jorgenson, K. (2021) “Official Secrets Act: Home secretary’s planned reform will make criminals out of journalists.” *The Conversation*, 21 July.

Wright, P. with Greengrass, P. (1987) *Spycatcher*. London: Viking.

Biography

Dr Paul Lashmar is a former Head of the Department of Journalism at City, University of London (2019-2021). He is a Reader in Journalism, and his research interests include media freedom, investigative journalism, intelligence-media relations and organised crime reporting. Dr Paul Lashmar has been an investigative journalist since 1978 and has been on the staff of *The Observer*, Granada Television’s *World in Action* current affairs series and *The Independent*. He is current writing a History of the Drax family of Dorset, who still own a plantation in Barbados where they held slaves for 200 years. Recent books: Lashmar P (2020) Spies, Spin and the Fourth Estate: British Intelligence and the Media. EUP. De Burgh H and Lashmar P (2021)(eds) Investigative Journalism. London: Routledge (3rd ed).

Notes

[1] The leaks concerned the activities of the Five Eyes, the colloquial name for the signals intelligence agencies, the National Security Agency (NSA) in the United States and Britain's GCHQ, who have worked closely together for over 70 years and with the other 'Five Eyes' countries – Canada, Australia and New Zealand – and not quite so closely with another 32 partner countries in order to create a network that has global surveillance capability.

[2] This provides the basis for Ken Loach's film *Hidden Agenda* (1990).

[3] From an email exchange with the author in 2018

[4] This is the subject of the film *No Stone Unturned* (2017).

[5] I am very grateful to Nicholas Gilby for pointing me towards this.