

“Big Brother Britannia”: Bouncing Parliament. Surveillance and Police State by Emergency in the UK

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Global Research, July 19, 2014

Region: [Europe](#)

Theme: [Police State & Civil Rights](#)

You have to give him some credit. The soul of the prison warder who inhabits the public school boy is not always easy to contain. Unrestrained, and lacking sound judgment, he is bound to spring out, however democratic, or liberal, a system can be. Prime Minister David Cameron, on the issue of jamming through bills connected with increased surveillance powers, has just about gotten what he wants. The rule in his playbook here: call anything you don't want looked at a matter of emergency.

For Cameron, “No government introduces fast track legislation lightly. But the consequences of not acting are grave.” No evidence is required; none is shown. What is important is the stress on terrorism, sustained by that good old giddy drug called fear. “As events in Iraq and Syria demonstrate, now is not the time to be scaling back on our ability to keep our people safe.” All that matters is that the government claims that not acting, even if it doesn't quite know what it is acting on, will be terrible than doing nothing to begin with.

Even as the Germans were celebrating their footballing triumph in Brazil, the frontlines of the UK papers featured Edward Snowden's unchanging face, and the efforts of the Cameron government to push through its emergency surveillance bill. Since the European Court of Justice made short work of the EU data retention directive, governments have been scrambling to respond. The UK reaction has been less than conciliatory to the privacy advocates, always suspicious about the very idea that retaining data was somehow illegal.

The legislative reaction was something of a race, lasting three days. Vital to the passage of the Data Retention and Investigatory Powers bill, known as Drip, was dizzying speed – pushed through the Commons on Tuesday, then passed within a vote after a second reading in the House of Lords. Thursday saw some tidying up, but when the rooms were ordered, it was clear that the surveillance team had won.

Drip has come in for a vocal beating from various sources. When it was being flagged in the halls of parliament on July 9, opposition Labour MP Tom Watson[1] tweeted that, “Something terrible could be happening in Parliament on Monday and I need your urgent attention”. UK-based Privacy International[2] called it a glaring shame “that a year since Edward Snowden revealed the scope of the UK mass surveillance activities, the only British parliamentary action in relation to surveillance has been to drastically expand the interception powers of the intelligence services.”

UN Human Rights Chief Navi Pillay made the obvious remark that Drip sidestepped, rather than confronted, the implications of the European Court of Justice decision. “To me it's difficult to see how the UK can now justify rushing through wide-reaching emergency

legislation which may not fully address concerns raised by the court, at time when there are proceedings ongoing by the UK's own investigative powers tribunal on these very issues" (*Guardian*, Jul 16).

This has not proven to be the sole province of the bleeding hearts or the conspiracy fraternity. Some far from radical voices feature, including Lord Butler of Brockwell, who was Cabinet secretary to Prime Ministers Margaret Thatcher, John Major and Tony Blair. In his words, the government had "bounced" parliament.

On the issue of responding to the decision on data retention, Butler noted that "the government was discussing this problem with Microsoft, and Yahoo and other providers. Why was it not willing to discuss the issue similarly with select committees of parliament? And if the government could reach a conclusion about the necessity for this legislation one week before the Commons went into recess, it beggars belief that it could not have reached that conclusion three weeks before recess, and thus given parliament proper time to consider this bill."

There are snips and abolitions of matters pertaining to oversight. Former counter-terrorist watchdogs are not really in vogue and are being pushed back – Lord Carlile had figured in a position that may well be abolished, given the coalition government's proposal for a privacy and civil liberties board.

What Drip does do is establish an "independent reviewer of terrorism legislation", but the legislation clearly curtails the exercise of discretion. Yes, there are tentative nods made to "safeguards to protect privacy" and notions of transparency, but there is an overwhelming insistence on "current and future threats to the United Kingdom" and "the capabilities needed to combat those threats".

There is much in the manner of weak language, the sort that admits that privacy is important before putting the kibosh on it. The Secretary of State, as Drip makes clear, may "require a public telecommunications operator to retain relevant communications data if the Secretary of State considers that the requirement is necessary and proportionate for one or more of the purposes" outlined in the act itself.[3]

The relevant point here is that metadata is not the sole object of access under the new act. Members of law enforcement can now access the actual content of the messages, irrespective of whether they are held by companies located outside the UK. The Act makes it clear that interception warrants may be served on "a person outside the United Kingdom (and may relate to conduct outside the United Kingdom)."

Is all this radical? No, claims Cameron. "I want to be very clear that we are not introducing new powers or capabilities – that is not for this Parliament." Everything bar what it actually was.

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Notes

[1]

<http://www.theguardian.com/politics/blog/2014/jul/10/cameron-announcing-emergency-surveillance-l>

[egislation-politics-live-blog](#)

[2] <https://www.privacyinternational.org/press-releases/passage-of-drip-surveillance-bill-shameful>

[3] http://www.legislation.gov.uk/ukpga/2014/27/pdfs/ukpga_20140027_en.pdf

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