

# On the Key Role Intelligence Agencies Can Play to Restore Our Democratic Institutions

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**Abstract.** After the Snowden leaks, it has become evident that a discussion is needed on how to reorganize the huge intelligence agencies so that they fit a Western thinking and to avoid that they are evolving into a clone of what the KGB and the Stasi used to be. Well before the Snowden leaks, the author had been thinking along this line.

On the 26th of October 2012, at the closed workshop on “Online Security & Civil Rights: a Fine Ethical Balance,” Hertfordshire, UK, the author put forward the idea that modern intelligence agencies should be split. The part which is involved today in mass surveillance, should work for the people and no longer for the government. That means that the intelligence agencies should spy on these working in the government and these working for lobbyists. The recipient of this information should be the public at large. The foundation of this idea comes from the Magna Carta and the US Bill of Rights that regard “We the People” as the trustworthy party and the government as potentially corrupt.

In this paper we present the above ideas put forward by the author at the aforementioned 2012 Hertfordshire workshop. We also reflect on these 2012 ideas in the context of the Snowden leaks.

## 1 Introduction

Since the summer of 2013 the Snowden leaks have dominated the discussions on privacy. So far, only a small fraction of the data collected by Snowden has been published in newspapers [20].

Although most of the information revealed by the newspapers was well known to technical experts who took a broader interest in the topic, it seems the public at large only became aware of these activities after the Snowden leaks. Prior to these newspaper publications, books such as “The *Codebreakers*” [17] and “The *Puzzle Palace*” [2] revealed NSA capabilities. Moreover, the Patriot Act [22], gave the government the legal means to move to the current situation. Finally, for several years now NSA is interested in the “Black Hat” conference, not hiding the fact that in today’s world, intelligence agencies are hiring hackers, buying malware, etc.

When in 2012, the author, who was aware of NSA’s capabilities and the legal means the Patriot Act provided, was invited to the closed workshop on “Online

Security & Civil Rights: a Fine Ethical Balance,” Hertfordshire, UK, he decided to reflect on the ethical and civil rights aspect of massive eavesdropping. In the light of the Snowden leaks and the debate on privacy, it is time to have this 26th of October 2012 presentation published. Note that this lecture was given prior to the leaks.

In putting these 2012 ideas forward, the author was largely influenced by his statement during the Question/Comment part of the panel at the ACISP 1997, Sydney, Australia. Since the panel had only representatives of the *pro-key-escrow* viewpoint, a careful reaction was needed. The author then stated<sup>1</sup>:

At the height of the industrial revolution, Marx pointed out that *private ownership* can be abused. The solution he proposed was to have the *government* nationalize all private property. Today, during our information technology revolution, we see governments argue that *private data* can be abused and they have proposed as a solution the reduction of the rights of the private owner. In the light of the analogy to Marx’s reasoning, we call this philosophy: cyber-communism.

In this paper we put forward the ideas as they were presented at the aforementioned 2012 workshop. To avoid being influenced by the Snowden leaks, and to reflect the original ideas, we will quote as much as possible from the slides that were used on the 26th of October 2012. To maintain the quality of the publication, comments received during the aforementioned 2012 workshop are discussed in a separate section (see Sect. 7) and in footnotes. When we refer to the 2014 presentation given at the Security Protocols Workshop, we refer to “SPW 2014.” Finally, Sect. 8 incorporates what was learned from the Snowden leaks and discusses some of the reactions. We also remind the reader that these proceedings contain a transcript part, which we also recommend to consult.

## 2 Justifying Governmental Eavesdropping

According to the foundations of “communism, fascism (and Nazism) the government is<sup>2</sup> considered as a *trusted power*.”

“Western society, on the other hand, finds its foundations in such documents as: [the] Magna Carta [and the] US Bill of Rights. Looking at the US Constitution, we see it starts with: ‘We the People’. We see that government is considered as a potential threat and that freedom protects us against abuse *by the government*.” This is quite clear from documents such as [30], which explains the reasoning behind the (US) 2nd Amendment.

<sup>1</sup> The exact wording not having been recorded, the statement is based on the author’s and participants’ recollection.

<sup>2</sup> A more appropriate use might have been “should be” considered. However, one of the SPW 2014 participants, originally from China, confirmed after the 2014 lecture that in her classes on Marxism, Marx viewed the government as being the trusted party. Whether the population of communist countries regard their government as trustworthy or not, is beside the point.

As a *logical* consequence of these very different viewpoints on trust in the government, we concluded that: “in communist and fascist countries, governmental eavesdropping (using, e.g., malware) is easy to justify.” Moreover, “seeing the foundations of freedom [and] the different role of the government in Western societies, eavesdropping by the government should only be an *exception*, where the exception is truly limited.”

We can wonder “what are the exceptions? September 11 has been used as an example,” which we discuss in the next section.

### 3 Impact of September 11

As stated at the 2012 workshop “11 years after the September 11 attack, security seems more important than ever. However, we should wonder [why] governments are taking measures, *year after year* bringing us further away from a free society [that is] based on Civil Rights, Human Rights, etc.

We should be willing to compare this trend to what happened in Germany after the November 7 1938 terrorist attack in Paris that killed Ernst vom Rath, a German diplomat. In contrast to popular believe it did *not* trigger *immediately* the requirements for Jews to wear the Star of David on their right arm. In fact, it took until November 23, 1939 until the Nazi Governor-General of occupied Poland, introduced the requirement” [26].

“In these 11 years after September 11, we have seen:

- in the *UK*: new rules were introduced from [the] 1st of February 2005 requiring marriage visitor visa, *except for Anglicans*.” Moreover, “certain [UK] Islamistic organizations” have been declared “terrorist organizations. These acts imply it is *illegal to even mention the names of these organizations!* This implies that one cannot debate whether these organizations were indeed terrorist organizations or whether they were just expressing freedom of speech.
- the dress code rules, [such] as: the anti-scarf law (10th February 2004) in France.” It is remarkable that one can “easily find pictures on the internet of famous non-islam people using a scarf.” Moreover, more anti-Islam measures such as “no-face covering laws in France (since April 2011) and in Belgium (July 2011)” have been introduced.
- in the USA [we now have] the Patriot Act [and] the DHS fusion centers” [25].

One can wonder whether this trend will continue? “The answer depends from region to region.” Indeed, in 2012, the “Tokyo Governor Shintaro Ishihara, . . . created a new extreme right wing party [and] a new extreme right wing party in Greece received lots of votes. In the US, a US Senate subcommittee. . . stated” [29]:

DHS’ work with those state and local fusion centers has not produced useful intelligence to support federal counterterrorism efforts. . . sometimes endangering citizens’ civil liberties and Privacy Act protections

Finally “on October 16, 2012, a US appeals court quashed the earlier conviction of Salim Hamdan, Bin Laden’s driver.” The reason given by the court was that “he had been jailed for ‘aiding and abetting terrorism’ between ‘1996 to 2001’, but that only became illegal after September 11, 2001” [21].

## 4 A Critical Look at Our Modern Western Democracy<sup>3</sup>

When we look at “the ‘*democracy*’ we live in, we see that checks and balances of our modern democracies are failing at an alarming rate! We find that except for the judicial system, both the executive [and] the legislative branches of government have been hijacked by lobbyists. Examples are:

- After banks lobbied for deregulation, we have seen that we now have *neo-anarchists*<sup>4</sup> in the government, i.e., Greenspan, who caused the trillion dollar “Great-Recession” [10, 13, 15].
- According to the “official report of The Fukushima Nuclear Accident Independent Investigation Commission [27]<sup>5</sup> lobbyists played a key role in the Fukushima disaster!
- On the 60th birthday of the German invasion of Poland, the EU made the selling of 60 Watt (and over) Edison bulbs illegal and forced it being replaced by the Compact Fluorescent Lightbulbs. These lightbulbs are quite controversial, since: they contain mercury [12] [and are] well known to cause migraines [7]!” By having overruled the rights of the individual, we see that capitalism has been replaced by what [is called Inverted Totalitarianism] in which the rights of corporations outweigh these of the individual and that the government is there to facilitate this.
- the exclusion of the EPA [US Environmental Protection Agency] rules to *inside areas* of homes and other buildings.” As an example, the American Lung Association [5] warns that
  - Chemicals used in some new carpets, carpet pads and the adhesives used to install them can harm your health. Some of these chemicals and glues are made with volatile organic compounds (VOCs), which emit odors and pollutants.
- deployment of full-body scanners. “Michael Chertoff, Secretary of Homeland Security (2005–2009), [is] now [the] founder of the Chertoff Group [and] represents manufacturers of full-body scanners [11, 18]. We have seen the rushed adaptation of this technology *without* the proper medical checks, as became clear when the EU stopped its deployment on November 13, 2011 [16].
- the massive use of antibiotics in soap, sprays at airports, etc.

With a US president who promised not to take lobbyist[s] in his government, but did anyway, we should wonder whether democracy has been replaced by: *Demagogocracy*.

[We can wonder what happened to] your grandfather’s *capitalism*? [In classical capitalism,] failed corporations go bankrupt. In Nazism, corporations too

<sup>3</sup> The original title of the corresponding slide was “Not your grandfather’s capitalism/democracy.”

<sup>4</sup> “Proponents of anarchism (known as “anarchists”) advocate stateless societies” (from Wikipedia). In this context a *neo-anarchist* could be regarded as a proponent advocating societies without proper regulations.

<sup>5</sup> At the 2012 workshop, this statement was received in a very critically way. The author responded that the cited web page is at a Japanese governmental site.

crucial from a national viewpoint, were nationalized. Today, we see that corporations that view themselves as too important, get bailed out. Examples [include] Citibank and several UK banks, Chrysler and GM. As in Nazism (see, e.g., IBM<sup>6</sup>) we see a collaboration between corporations and government. [Modern] examples [include the] location obtained by mobile phones [and] social networks.

Moreover, we can wonder whether the foundation of capitalism, i.e., *competition*, still exists? Indeed, we have seen [that] prices of products are kind of arbitrary and competition is limited. [An example is the high cost of] Apple's (pre-Samsung) iPhones. [Moreover] outsourcing did *not* reduce the cost of products in Western shops." For example, Western toothbrushes sold in Beijing stores cost a fraction of what they cost in the West. Finally, "shareholders are often the real 'customers' of modern corporations." The classical economic theory of 'supply and demand', assumes an increase in supply, will decrease the costs. However, such theories ignore the fact that today "shareholders are often the real 'customers' of modern corporations."

## 5 Potential Solutions

"Having neo-anarchist[s] in the government causing the Great-Recession [see Sect. 4], having lobbyist[s] dominate the government [see e.g. [1, 6]], we have moved [to] a society in which the biggest threat to our Western society comes from the government and lobbyists, no longer [from] a disorganized individual anarchist, [or from] unions (who lost their power), etc. So, how can we restore our democracy?"

Potential solutions [could be to] make government[s] responsible: [such] as in Ukraine"<sup>7</sup>. However, [relying on] the judicial system may lead to unexpected problems, [as shown by] the *New York Times* [23] article titled: 'Italy Orders Jail Terms for 7 Who Didn't Warn of Deadly Earthquake.'

Another potential solution is to "increase salary of governmental employees: e.g., [an approach] used in Singapore. [Indeed] today the salary of the UK prime minister is less than the one of several US Computer Science professors." Alternatively, some Gulf countries, such as Saudi Arabia, have a "negative tax," which means that instead of requiring citizens to pay tax, it is the state who pays its citizens!

The main focus from now on, "will be on using *Intelligence Agencies* to solve the problem.

Current intelligence agencies are active against foreign countries, foreign spies, etc., [and] their own population (e.g., MI5). They provide information about the individual *to* the government.

However, with the US Constitution starting with 'We the People,' the *government is there for the people* and *not* the other way around. With Western

<sup>6</sup> The fact that IBM electromechanical sorting machines were used by the Nazis to identify these who were Jewish is well known [3].

<sup>7</sup> In 2011 Prime Minister Yulia Tymoshenko was convicted for 7 years for her deal on Russian gas [28].

governments failing, we *need to split these agencies* into these that spy for the government (minor, except when the target is foreign), [and] these that *spy for the people*. This proposal could be implemented as following: [the] *target* [would be] lobbyists and anyone working for the government.” Related to the question/comment, what part of the communications and which ones should be eavesdropped, we are inspired by “the Theresa May proposal” [9].

“We adapt the proposal of the UK Home Secretary’s (Theresa May) to keep track of who talks to who via internet, i.e., the People Intelligence Agencies inform the public who inside the government talks to who inside a lobbyist organization.” Moreover, we suggest the “*Starting date* [to be] 2014.” Indeed, “2014 is the year one can regard the fight against terrorism to be won sufficiently to have NATO pull its troops out of Afghanistan.” Moreover, “George Orwell predicted a Big Brother society in his novel: *Nineteen Eighty-Four*. 2014 is 30 years later, a good moment to undo the current Big Brother society that has damaged freedom.” Related to the question how long this should go on, we propose a “test period for 10 years. If Theresa May is right that this does not violate human rights, then the Western governments cannot complain. After the 10 years test period, a debate among the population could start to see whether her arguments to introduce this against the UK population as a whole, makes sense or not.”

We now analyze potential impacts of this proposal. We consider several scenarios. We first start with looking at the UK “Leveson Inquiry.” During a part of this inquiry on the involvement of the “Murdoch family and the UK governments, only 1 (former) prime minister said that he [felt] pressured by Murdoch. With the intelligence information: (former) prime ministers may be more careful, checking their records before replying.”

The Fukushima accident might have been prevented if the advice to increase the height of the Fukushima stormwall would had been followed. However, the link between lobbyists and the Japanese government implies relaxed rules. If the Japanese People Intelligence Agencies would have revealed this link and its potential consequences, the accident might have been prevented.

Similarly, if in the US the cozy relation between lobbyists and the government would have been undermined, lobbyists might have failed in rushing full body scanners without a proper medical study.

“So, *People Intelligence Agencies* can help restore the check[s] and balance[s] in our democratic Western institutions.” By having intelligence information flow in both directions, we see we move towards a more *balanced way*.”

## 6 Original Conclusions

The following conclusions were drawn. First, one can state that: “It is ethical for a communist country to have cyber-communism and for a Nazist regime to have cyber-Nazism (in which cooperations and the government collaborate in cyber space and the rights of corporations dominate the one of the individual). However, in a democratic society, believing in human rights, wiretapping should only be [performed] in exceptional circumstances.”

The second conclusion was that “Western societies should stop handing over a victory to Al Qaeda. Indeed, September 11 has changed our society to a frightening degree. Due to the reactions to September 11, we are now on a slippery slope! We should stop installing technology and laws which will facilitate the next Holocaust. That means that each camera used by the FBI should be regarded as violating the restriction on ‘random search.’ [Moreover,] \$10,000 cash laws make escaping the next Holocaust impossible as became clear when [former] US Senator Lieberman convinced Mastercard, VISA, etc., to stop accepting donations to WikiLeaks.”

The third conclusion was that “Western societies should restore human rights, otherwise they will continue being criticized by China for being hypocrites.”

The fourth point made was that: “We need to extend human rights to include cyber-freedom and virtual-freedom.” The following examples were mentioned. We need to:

- “introduce privacy at the constitutional level.
- [make] it much harder to violate the constitution.”
- We need to take into account that “today we live in a virtual world in which we have many nomads (businesses travelers, crew on a ship, etc.). The current constitution does not extend to nomads.”

Finally “we hope the proposal to have People Intelligence Agencies may restore the checks and balances we used to have.”

## 7 Feedback from the 2012 Workshop

Several questions and comments were given after the 2012 lecture. Some of these comments were given during the banquet of the workshop.

It was pointed out that Brin’s book “*The Transparent Society*” [4] predates the ideas put forward. However, as pointed out by Schneier [24] Brin’s proposal is *symmetric*. Today the role of eavesdropping is *anti-symmetric*. The proposal made here is primarily anti-symmetric, so different from Brin’s. Moreover, the proposal is more refined. Indeed, intelligence agencies would still collect military intelligence and continue to spy on foreign countries and this information would *not* be released to the public.

One of prediction Brin made in his book came true. The size of cameras became so small one can hide them everywhere. However, the argument that this authorizes the government to use cameras to massively spy on their citizens is wrong. Indeed, some types of guns fit in a purse, and so can easily be hidden. However, this is not a valid argument to argue that gun regulations, used in many countries, should be abolished. In this regard, the proposal we make is again quite different from Brin’s, since we stated that (see Sect. 6) “each camera used by the FBI should be regarded as violating the restriction on ‘random search’.”

Another question that was raised is why intelligence agencies would change their role? To answer this, we focus primarily on the US, although some of the

ideas generalize. First, the former KGB has been replaced by two organizations, showing such organizations are sometimes reorganized. Second, the *US Supreme Court* might reduce the role of intelligence agencies. The recent Supreme Court case involving the search of data on smartphones [19] is a step in the right direction. However, such ruling would not reverse the role of intelligence agencies. A third solution would be when citizens sue the government and sue the phone companies to have the metadata of government employees released under the freedom of information act. Using such an argument to obtain the metadata of communications from lobbyists might be more difficult. Fourth, once in a while idealist follow their viewpoint; an extreme example was former Secretary of State Frank B. Kellogg, who was instrumental to outlaw war in 1928. Such idealist may succeed in convincing the government and/or congress. Fifth, a new cold war may force the West to stop its hypocrisy and force it to restore freedom and human rights to what they used to be before the invention of the telephone. The following solution was suggested to the author *without* his endorsement: the suggestion was that citizens could start planting eavesdropping devices inside non-military governmental buildings.

Obviously, our proposal would only work if we can trust this task to agencies. One should not forget that people who join such agencies are very patriotic. Given them a new target, they will likely take their task seriously.

Finally, the following references were suggested to the author [8,14].

## 8 Putting the Proposal in the Post-Snowden Context

The Snowden leaks confirm the 2012 idea that the focus of agencies has to change.

Snowden only leaked NSA data. What other Western agencies are working against human rights in the West? Do we need leakers in other agencies (CIA, DHS, FBI, MI5, MI6, etc.)?

International agreements should *extend* the rights of foreigners visiting *friendly* countries. In other words, we need agreements on *limiting* spying on foreigners from friendly countries.

Finally, it should be pointed out that although NSA has built a huge eavesdropping capability, it is not a decision making agency. When asked by e.g., CIA, FBI, etc., they will provide information.

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