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Undergraduate Category

# **GOVERNMENT SPONSORED BLACKMAIL?**

**Mass Surveillance and the  
Threat to Personal Privacy**

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**E**dward Snowden is a polarizing figure. Yet even his detractors must concede that the information he disclosed about the surveillance operations of the US National Security Agency (NSA) and other security agencies worldwide have led to an important public discussion on surveillance and civil liberties in the post-9/11 world.

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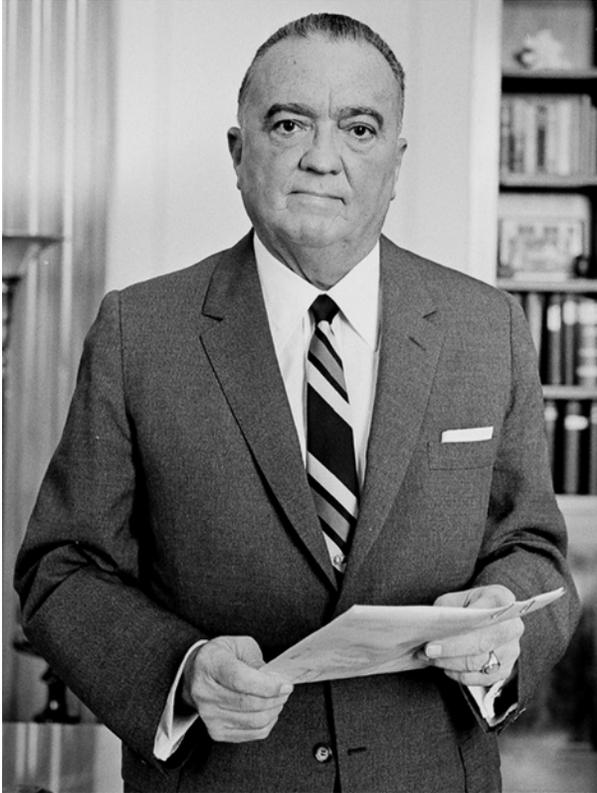
Snowden's disclosures have raised a series of important legal, philosophical, and political questions. Do mass surveillance programs actually keep us safer? More fundamentally, can we trust the government not to misuse the information it gains through mass surveillance? In the United States, where many of these debates are centered, there is a history of the state misusing the surveillance powers it has granted to itself. Historical government surveillance in the United States has resulted in blackmail intended to silence dissent. Disturbingly, this is also taking place today.

## **MASS SURVEILLANCE IN THE UNITED STATES BEFORE 9/11**

The debate raging around mass surveillance is not new. The American government has been using large-scale peacetime surveillance since at least 1919 (Senate Select Committee,

No. 755 at 227-230 (1976)). Every presidential administration since Franklin Roosevelt's has made use of the state apparatus to spy on political opponents (Downs, 2013, June 14). In the early 1970s, a series of scandals involving American intelligence agencies shook public trust in the US government. Between 1968 and 1975, public trust in government dropped from 61% to 36% (Pew Research Centre, 2014). As a result, Congress initiated the Church Committee in 1975 to investigate American intelligence gathering in the wake of these revelations (Senate Historical Office, 1975).

The final Church Committee report, published in 1976, revealed widespread and systematic abuses of power (Senate Select Committee, No. 755 at 16-17 (1976)). On multiple occasions, the CIA, FBI, and NSA violated the fundamental rights of peaceful American citizens. One specific example is worth highlighting. The founder of the FBI, J. Edgar Hoover, was notoriously unconcerned with violating certain citizens' constitutional rights in the name of protecting the country against (often imaginary) enemies (Kessler, 2002: 140). One such imagined enemy was Martin Luther King. Despite overwhelming evidence that he was not a security threat, Hoover ordered extensive surveillance and wiretapping of King. The surveillance produced nothing to suggest that King was a security threat, but it did produce evidence of sexual misconduct. This included a tape of King participating in an orgy in a Washington hotel. Although this information had no relevance to any security operations, a



J. Edgar Hoover, first Director of the Federal Bureau of Investigation. In office March 23, 1935 - May 2, 1972. *Wikipedia* photo

letter was sent out to King that included copies of the tape shortly before he received the Nobel Prize. The intention was clear: to blackmail King and either damage his credibility or force him to resign his position (Kessler, 2002: 144).

On repeated occasions, surveillance operations were not designed to simply monitor for suspicious activity. Rather, they were intended to collect information that could be used to attack the reputation and character of the individuals in question (Senate Select Committee, No. 755 at 221 (1976)). The temptation to use mass surveillance programs to silence and discredit political opponents is an obvious one, and it is one with a well-documented history. If

governments use these programs to violate citizens' basic rights and discredit political opponents then they become a danger to, and not a guardian of, the people they are supposed to protect.

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## **MASS SURVEILLANCE IN THE POST-9/11 ERA**

In the aftermath of the Church Committee, Congress established the Foreign Intelligence Surveillance Court (FISC), a special judicial body that had the power to consider requests for secret warrants to spy on non-US persons acting as foreign agents within US borders. The court was supposed to end the frequent abuses that the Church Committee uncovered by introducing a layer of judicial accountability.

Only weeks after the September 11 attacks, Congress passed the Patriot Act, which vastly increased the power of American intelligence agencies. Oversight from both Congress and the FISC was supposed to ensure the law was not misused. However, many suspected that intelligence agencies abused the law nevertheless (Greenwald, 2013, September 27).

In June of 2013, *The Guardian* began publishing leaked documents about



secret NSA programs. The suspicions of several critics of surveillance were confirmed, including revelations that governments have the capacity to collect, store, and analyze almost all of our online and electronic communications. Furthermore, governments have indeed exercised these abilities. Programs like PRISM, Boundless Informant, and XKeyscore allow the NSA to collect enormous amounts of information about anyone it deems of interest directly from the Internet backbone (Bauman, 2014: 122-126). Questions of constitutionality aside, these programs completely overstep the intent and scope of the Patriot Act.<sup>1</sup>

Does the NSA's abuse of surveillance power have any similarities to

historical abuses by agencies such as the FBI? Documents disclosed by Snowden suggests that this is the case. One document that Snowden released through *The Guardian* from October of 2012 suggests that the NSA had been collecting evidence of online sexual activity, such as visits to pornographic websites, by six different targets (Ehrenfreund, 2013, November 27). All six men were Muslims, and were believed by the NSA to have been involved in radicalization efforts. However, none of the six targeted individuals were accused in the document of being involved in terror plots. The document identifies at least one of them as being a "US Person," a significant legal category that would preclude surveillance overseen by

<sup>1</sup> For more information on the scope and constitutionality of the Patriot Act, see Etzioni, 2004.

the FISC. The intention of collecting this information, according to the document, was to release evidence of sexual transgressions online to discredit and destroy the reputations of the individuals in question.

As we have seen, this is not without precedent. The FBI under Hoover is the most obvious example of this. Not only has the NSA used surveillance tools to discredit those it deems dangerous, it has also used those tools to spy on the members of Congress tasked with overseeing NSA programs and funding (Pengelly, 2014, January 4). While it is unclear how extensive this spying is, the potential for abuse is evident. Mass surveillance programs are known to have been used by the NSA to blackmail individuals who were not involved in planning any terror attacks against the United States.

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## **CIVIL LIBERTIES AND MASS SURVEILLANCE**

The power that mass surveillance gives to governments creates a historically verifiable threat to individuals by creating the potential for state-sponsored blackmail. But why is this so dangerous? Put simply, when governments blackmail their citizens, the potential for dissent

is dulled. Individuals lose the full freedom to speak as they please, afraid of sanctions from a government that does not welcome certain views. Thus, in the name of security, these programs harm the very freedom they are supposed to protect.

In his dissenting opinion in *Olmstead v. U.S.*, Supreme Court Justice Louis Brandeis offered a famous formulation on the value of privacy. Brandeis wrote that:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. (*Olmstead*, 277 U.S. 438 (1928))

From formulating heterodox opinions to character evolution, privacy is a vital component in the development of our personal identities. Studies have shown that human behaviour changes substantially when people believe, correctly or incorrectly, that they are being watched (Ernest-Jones, Nettle, and Bateson, 2011). There is a reason that we do not have toilets in the middle of living rooms: we naturally value privacy. There are things about ourselves, from our bodily appearance to the

websites we visit to our personal banking information, that we do not want others to know. Regardless of any positive impact this may have on the behaviour of individuals, we should be wary of attempts by governments to influence and change our behaviour. State mandated paternalism reduces the autonomy of the individual and invites even more government intrusion in the private lives of citizens. Even if the behaviours of anti-war activists, or Martin Luther King, or Islamic preachers, were questionable or unpopular, they should not have been used by their government as a weapon to silence their speech. It is in the private realm that we can think, write, speak and act away from the judgement of others. Privacy is thus a foundational part of what it means to be a free individual.

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One of the major findings of the Church Committee was that that “covert action programs [had] been used to disrupt the lawful political activities of individual Americans and groups and to discredit them, using dangerous and degrading tactics which are abhorrent in a free and decent society” (Senate Select Committee, No. 755 at 211 (1976)). A 21st century investigation of the contemporary activities of American intelligence agencies would very likely find evidence of similar wrongdoings. Government agencies

often violate our civil liberties and abuse the immense power they wield to silence dissent and discredit opposition.

**Mass surveillance in the modern era fundamentally changes our relationship with the government.**

Privacy enables us to have private lives and to do things we may not want others to know about. When we lose this sphere of privacy, anything embarrassing or questionable in our personal lives becomes a weapon that can be used against us. This information can then be used to silence dissent or opposition, as both the FBI and the NSA have attempted to do. Time and time again, security agencies have shown that they cannot be trusted with the sensitive information they collect about individuals; the temptation to use this information is simply too strong.

Mass surveillance in the modern era fundamentally changes our relationship with the government by creating the potential to destroy the private sphere. If we cannot have privacy, we cannot have secrets. What’s worse, those who are not willing to give up their secrets become potential victims of state-sanctioned extortion. The deck is stacked against privacy either way. From FBI spying on prominent civil rights and anti-war activists to present-day NSA spying on Islamic preachers, there are too many examples of state-sponsored blackmail for us to trust that the government will not use

the information it collects against dissidents who pose no threat to national security. While surveillance programs are designed to protect us, ultimately the misuse of the information collected through these programs endangers the very rights they are supposed to protect. 



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