



A duty to inform? The outsourcing of state surveillance responsibilities to the British public

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The government is increasingly encouraging - and in some cases compelling - members of the public to monitor and report on each other's behaviour. This practice disproportionately targets the poor, foreign nationals and the already marginalised, and contributes to the normalisation of surveillance within British society.

The coalition government has adopted and extended Labour's strategy of outsourcing the surveillance responsibilities of law enforcement agencies to the private sector, most notably in the field of immigration. UK businesses that employ non-European Economic Area (EEA) workers and universities that enrol non-EEA students are obliged to conduct extensive checks for the UK Border Agency (UKBA) or face severe financial penalties. Under changes announced in the Queen's speech of May 2013, this requirement will be extended to landlords and possibly schools, doctors and hospitals.

The Queen's Speech also outlines a replacement for Anti-Social Behaviour Orders; a Labour initiative that relies on members of the public informing on one another to be enforced effectively and is notorious for facilitating vindictive behaviour. Moreover, in recent years a plethora of government publicity campaigns have urged the public to report those who exhibit suspicious behaviour in relation to a wide range of offences including terrorism, benefit fraud, social housing violations, bad driving and even the improper use of rubbish bins.

The fact that in most cases allegations can be made anonymously and without substantive evidence means that these schemes provide an outlet for malicious accusations and often do little more than furnish the police and government officials with mounds of inaccurate data through which they have to trawl.

The outsourcing of immigration controls

The centrepiece of the Queen's speech is a new Immigration Bill that will fulfil the coalition government's pledge to make Britain's immigration rules "amongst the toughest in the world." [1] It has yet to be published so precisely what this will entail is unclear, but government briefing notes state that the Bill will focus on "stopping immigrants accessing services they are not entitled to" and "making it easier to remove

people from the UK." This will include further outsourcing responsibility for enforcing immigration control to the private sector.

Businesses that employ foreign nationals are already incentivised to adopt UKBA functions by monitoring and reporting on their staff because doing so can help them avoid a fine if they are later found to have breached immigration rules. Under the civil penalty system introduced by Section 15 of the Asylum and Nationality Act 2006, employers can be fined up to £10,000 for each illegal worker they employ. In serious cases, the UKBA can prosecute those who knowingly employ (or have employed) illegal workers; an offence punishable by an unlimited fine and/or a prison sentence of up to two years. In all cases, sanction can be avoided if employers demonstrate a willingness to inspect the original documents of prospective employees and perform annual checks on the eligibility of those already employed. This effectively turns all employers into agents of the UKBA.

The new Immigration Bill promises yet harsher sanctions; it will "enable tough action against businesses that use illegal labour, including more substantial fines." In March 2013, Nick Clegg called for the size of the maximum penalty to be doubled to £20,000 per worker. [2] Any strengthening of the civil penalty system would be alarming because it has already been shown to have a divisive and stigmatising effect in the workplace. Many employers, anxious to avoid culpability, have imposed increasingly rigorous checks on prospective and existing staff. Migrants' Rights Network argues that "based on accounts from trades unions and workers associations...giving employers immigration responsibilities has thus far often resulted in confusion among employers, discrimination against minority workers, and persecution of many small ethnic businesses by the immigration authorities." [3]

The Bill introduces a similar system for private landlords who will now be required to "check the immigration status of their tenants and could face fines for failing to do so." [4] It is unclear how this system will be implemented and enforced because landlords and the state do not have a formal relationship, nor are landlords required to join a national register. Hours after the Queen's speech, Health Secretary Jeremy Hunt gave a radio interview in which he was unable to provide any details of how the new arrangement might work. [5] The housing and homelessness charity Shelter has voiced concerns over the practicability of "a system of using landlords and letting agents as an arm of the state to check up on illegal immigrants" and warned that this could "lead to increased discrimination against prospective renters of BME [Black and Minority Ethnic] backgrounds, foreign nationals and those with poor English." [6] The civil penalty system for businesses has caused some employers to adopt a safety-first approach to recruitment whereby all non-EEA candidates are avoided; a policy that inevitably forces people into illegitimate forms of employment. Many landlords might now feel the need to take a similar approach when considering tenancy applications. This would leave more people with little choice but to enter into agreements with unscrupulous and exploitative landlords; an existing problem that the new Bill is likely to exacerbate rather than redress. The administrative costs of performing background checks could also be passed onto tenants.

The coalition government's desire to outsource responsibility for immigration control goes further. The Immigration Bill intends to stop temporary and "illegal immigrants accessing services they are not entitled to," specifically the National Health Service (NHS). Speaking in the House of Commons in March 2013, Jeremy Hunt suggested that NHS staff would be responsible for evaluating whether foreign nationals are eligible to receive healthcare treatment. [7] Similarly, the Guardian revealed in March 2013 that ministers were considering a plan to require schools to check the immigration status of their pupils. [8] Migrants' Rights Network warns: "The business of immigration control has expanded outwards from the borders of the country and has managed to wrap itself into ever more relationships between businesses and services, and immigrant communities - which is to say effectively everyone in Britain today." [9]

UK universities: the Points Based System and reporting 'radicalisation'

Nowhere is this more evident than in UK universities. Not only must they screen all non-EEA employees (be they academics or cleaning staff) to mitigate the risk of punishment under the civil penalty system, but since 2009 have been obliged to monitor foreign students under the UKBA's Points Based System (PBS) for immigration. Under the PBS, any educational institution wishing to employ staff and enrol students from outside the EEA and Switzerland must apply to the UKBA to become a Highly Trusted Sponsor (HTS) and agree to adopt functions of immigration control. This means that, among other things, they have to maintain a record of non-EEA student passports, visas and contact details and report poor attendance to the UKBA. Failure to do so can result in the withdrawal of the institution's HTS status and with it the ability to admit non-EEA students and benefit from the high tuition fees they pay.

In his foreword to *A Points Based System: Making Migration Work for Britain*, published in March 2006, then Home Secretary Charles Clarke said:

"I believe that this new points-based system will allow employers and those in educational institutions to take ownership of migration to this country. They, rather than just the Home Office alone, will be able to vet who comes into the UK..." [10]

But is this an appropriate role for universities to play? The PBS clearly undermines the principle of academic freedom which is based, in part, on the notion that universities should be independent from government to ensure that teaching and research can be carried out without political interference and that academics can publish findings and act as independent experts in their field without fear of state sanction. Making academics do the work of the UKBA attenuates this tenet, but so disastrous are the financial implications of losing HTS status that most universities have adhered to the PBS's surveillance requirements with little or no internal debate. Their obedience is motivated, in part, by the government's decision in August 2012 to strip London Metropolitan University of its HTS status because "a small minority of its international students did not have accurate documentation to remain in the UK." [11] This ruling was reversed in April 2013, but, according to the University and College Union (UCU), not before it created "an atmosphere of paranoia among many institutions" that led to the introduction of "more heavy-handed procedures for monitoring the performance, behaviour and activity of international staff and students." [12] Some institutions have gone so far as to introduce biometric fingerprint systems to log which students are present at lectures, even though in many cases attendance is not compulsory.

The UCU reports that "much of the day-to-day responsibility for monitoring staff and students and ensuring that their records are kept up to date has fallen upon existing academic and related staff members." This has damaging repercussions for their working relationship with non-EEA colleagues and teaching relationship with non-EEA students. Anyone who comes from outside the EEA now has every reason to be cautious about what information they divulge in case it is reported to the UKBA. UCU continues to campaign against the PBS for this reason: it has turned "academic and support staff into agents of the state" by forcing them to "assume roles commensurate with being an extra arm of the UK Borders Agency." [13]

Police have also visited a number of universities to ask them to report students whose work shows signs of "radicalisation". [14] Even before the PBS was introduced, some universities displayed a willingness to assume this responsibility. In May 2008, the University of Nottingham reported a student, Rizwaan Sabir, and a member of staff, Hicham Yezza, to police after university staff discovered an Al Qaeda training manual on Yezza's office computer. Both men were arrested and held for six days, but were eventually released without charge when the police found no evidence linking them to terrorism. The training manual, which Sabir was using to help draft his PhD proposal and had emailed to Yezza to print out, was shown to be an open source, declassified document that is readily available for download from a wide range of sources, including the US justice department website and Amazon.com.

In April 2011, a Nottingham University lecturer, Rod Thornton, published an article criticising both the university's decision to report Sabir and Yezza and university management staff's subsequent treatment of the men which, Thornton alleged, included increased monitoring and character smearing. [15] The university refuted these "baseless accusations" and immediately suspended Thornton. Two months later, Unileaks website published over 200 confidential Nottingham University documents to corroborate Thornton's assertions. They revealed that university security staff filmed students on campus with the intention of monitoring potential extremists and kept logs of Middle East related activities, including details of talks and seminars on Palestine. [16] The pressure group Support the Whistleblower at Nottingham, who helped leak the documents, argued:

"These leaks show how everything can, and does, go wrong when a brand-conscious university is left to deal with security issues such as terrorism. What's more this case highlights how a leading British university can act with impunity on such a sensitive issue" [17]

Anti-Social Behaviour Orders

Labour's campaign against anti-social behaviour also encouraged members of the public to monitor and report on each other's behaviour. Many of the schemes introduced by successive Labour governments between 1997 and 2010 rely heavily on public pro-activeness to be effective, most notably Anti-Social Behaviour Orders (ASBOs). These are civil orders that can be issued by a magistrates' court to any person over ten years of age. They can ban an individual from committing certain acts, entering designated geographical locations or socialising with specific individuals. Breaching an ASBO is a criminal offence punishable by up to five years in prison, but that has not prevented over half of all recipients violating the terms of their order. Members of the public are encouraged to gather evidence against objectionable neighbours to aid the application process, which has often led to accusations of vindictiveness.

Once an order is made, many of the things prohibited by an ASBO, and thus criminalised, are so petty that it is virtually impossible for the police to enforce. Thus if someone is banned from walking along a specific road, wearing a hooded top, or swearing too loudly at their television set, it is typically the responsibility of their neighbours to notify police of a breach and ensure that the person is punished. To this end police actively encourage public participation by "naming and shaming" ASBO recipients. Their name, photograph and the terms of their order are often distributed in leaflets, published in the local press and posted on the internet. Some local councils have offered people diaries, video cameras and Dictaphones to gather and log evidence against their neighbours. ASBO usage peaked at 4,122 in 2005 but has declined every year since as evidence of their ineffectiveness mounted; 1,414 were issued in 2011. [18]

Soon after its inception in July 2010, the coalition government said that it was "time to move beyond the ASBO." Almost three years later, the recent Queen's speech announced a new Anti-social Behaviour, Crime and Policing Bill which will be responsible for "Replacing and condensing the 19 existing powers to deal with anti-social behaviour into six faster, more effective ones, giving victims the power to ensure that action is taken to deal with persistent anti-social behaviour through the new Community Trigger." [19] ASBOs will be replaced by Criminal Behaviour Orders and Crime Prevention Injunctions, both of which will have a lower standard of proof meaning they can be more quickly put in place. It remains to be seen whether the effectiveness of the new system will be any less dependent on members of the public reporting on one another. The new "community trigger" scheme, under which police will be forced to investigate any incident of anti-social behaviour that is reported to them by at least five people or by the same person on three separate occasions, has already prompted concern from police that it could facilitate vindictive behaviour and "spurious complaints." [20]

‘Crowdsourcing’ the monitoring of CCTV cameras

The numbers of CCTV cameras operated in the UK – both publicly and privately owned – has grown rapidly in recent years, but there is little regulatory oversight governing how and where CCTV can be used and by whom. This has led to function creep, as cameras become increasingly prominent in new areas of everyday life. For example, since 2011 in Soham, Cambridgeshire, volunteers have been given responsibility for monitoring feeds from the town’s CCTV network. [21] This cost-cutting measure went ahead despite the obvious privacy concerns of allowing people to view footage of their neighbours. The website “Internet Eyes”, which since 2010 has streamed live CCTV feeds from businesses and shops to its subscribers, at least does not broadcast images from within a 30 mile radius of a user’s postcode. For an annual membership fee of £15.99, Internet Eyes allows anyone over 18 years of age to monitor CCTV footage and report “suspicious activity” by clicking an alert button. An email is then automatically sent to the owner of the CCTV camera (the website’s customer) containing video footage of the incident. Users are awarded £10 for every “positive alert.”

Combatting terrorism

There are many other examples of members of the public being encouraged to surveil one another. The Metropolitan police ran anti-terrorism campaigns in March 2009 and December 2010 under the slogan: “Don’t rely on others. If you suspect it, report it.” Their current campaign postulates: “It’s probably nothing, but...” [22] Genuine concerns about terrorism should be reported, but the blanket approach advocated by police whereby even the most tenuous suspicion is communicated has been criticised for fostering distrust and wasting police time. One Metropolitan police poster encouraged people to report anything suspicious they saw in their neighbours’ garbage bins such as empty chemical bottles or batteries. Another poster urged people to report anyone they saw studying any of the UK’s vast array of CCTV cameras. [23] Similarly, a Metropolitan police campaign in March 2008 encouraged the public to report anyone they believed to be taking suspicious photographs. Advertisements ran in national newspapers with the slogan: “Thousands of people take photos every day. What if one of them seems odd?” [24] In May 2013, the former head of MI5, Stella Rimington, emphasised that the British public has a duty to act as the “eyes and ears” of the security services because “the enemy is everywhere.” [25]

Lest members of the public forget their duty to disclose any suspicions they might harbour about terrorist plotters, section 38B of the Terrorism Act 2000 provides that if a person has information which he or she “knows or believes might be of material assistance in (a) preventing the commission by another person of an act of terrorism or, (b) in securing the apprehension, prosecution or conviction of another person, in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism”, they commit a criminal offence if they do not disclose the information to police “as soon as reasonably practicable”.

The London Olympics

This “duty” assumed a political dimension in April 2012 when the Minister for Sport, Hugh Robertson, criticised those planning protests during the Olympic Games for “letting down” Britain and urged the public to report them: “If you know of people, including neighbours, who are going to break the law during the Olympics you should let the authorities know.” Robertson acknowledged that the right to peaceful protest is enshrined in UK law, but argued: “This is an opportunity for us all to show the world the best of Britain and the last thing I want is that ruined by Occupy London protests or anything like that.” [26]

Suspicious financial transactions

The banking sector, target of the Occupy protests, has also been drafted into the state’s surveillance machinery - the centuries old principle of banking privacy having long been kicked into touch. UK law requires the staff of banks to conduct ongoing surveillance of their customers and report “suspicious activities” to the Financial Intelligence Unit of the Serious Organised Crime Agency (SOCA).

The Proceeds of Crime Act 2002 (POCA) criminalises the failure to report suspicion of money laundering. Money laundering is defined extremely broadly: concealing, disguising, converting or transferring property which is the proceeds of crime [s.327, SOCA]. If you are employed by a bank, casino, real estate agent, dealer in precious metals or stones, legal or accountancy firm, you are committing a criminal offence under sections 330 or 331 of POCA if you fail to report your suspicion or knowledge of another person's money laundering to SOCA.

Exemplary fines imposed on banks for lapses in "due diligence" have extenuated the risk adverse position taken by the financial sector with the net result that some 200,000 "Suspicious Activity Reports" are reported to SOCA every year. [27] The majority are stored in SOCA's ELMER database for a period of six years and may be accessed by 80 different UK "end user organisations" via the money.web server. [28] This reportedly includes Trading Standards and some county councils, including "Nottinghamshire County Council [which] uses ELMER to investigate housing benefit fraud." [29]

The House of Lords Select Committee on the European Union has criticised this framework and called for a change in the law so that failure to report a suspicious transaction relating to a minor criminal offence cannot be prosecuted. [30] The Information Commissioner has called for the government to reconsider the "very low threshold of suspicion that handling criminal property or money laundering is taking place." [31]

Grassing for austerity

The government also encourages the public to help reduce state spending, for example by reporting benefit fraud. Tip offs can be made by post, online or by phoning the National Benefit Fraud Hotline. People can also call the charity Crimestoppers with their suspicions as part of a campaign launched by the Department for Work and Pensions in December 2011. [32] Reports can be made anonymously and with no evidential requirements. There are many instances of people claiming to have endured financial hardship and lengthy legal battles due to spurious allegations made by vindictive neighbours. [33] The deputy chief executive of Crimestoppers, Dave Cording, estimated that only one in every six calls received by his organisation would provide genuine information on benefit fraud. [34] In 2009-10, 253,708 cases were reported to the National Benefit Fraud Hotline of which 46,258 were referred to the Fraud Investigation Service for further action. In only 3,360 cases did this result in a sanction; a meagre overall success rate of 1.32%. [35]

In Scotland, the 'Made from Crime' initiative encourages the public to report anyone they perceive to be living beyond their means. The scheme encourages people to eye one another suspiciously: "How can he afford that flash car? How did she pay for all those designer clothes? How can they fund so many foreign holidays?" [36] Again reports can be made anonymously meaning there is no limit to the frequency and number of people an individual can accuse.

Members of the public have also been urged to report anyone they suspect to be unlawfully sub-letting social housing. The government announced a scheme in November 2009 that would pay £500 to the first 1,000 people whose telephone tip-offs led to a council house being repossessed. [37] Encouraging people to monitor each other's living arrangements backfired spectacularly on then Home Secretary Jacqui Smith in February 2009 when her neighbours reported her to the parliamentary commissioner for standards for erroneously designating her London home as her main residence. This had allowed Smith to claim more than £116,000 in second-home allowances, none of which was she forced to repay despite being found to have breached House of Commons rules in October 2009.

Local schemes

Similar schemes have been introduced at local level on a smaller scale. For example, since 2010, Sussex police has piloted a road-safety scheme called Operation Crackdown which encourages motorists to report instances of poor driving or excessive car noise. All complaints are checked against the Driver and Vehicle Licensing Agency database and the Police National Computer. If a driver is reported twice within a

12-month period they face police action despite never having been caught breaking the law. Big Brother Watch, who uncovered the scheme, said: “the whole process is based on unfounded accusations by untrained and possibly prejudiced members of the public... This scheme is wide-open to abuse; ranging from people with minor grudges against neighbours to busybody drivers who think they know what constitutes bad driving.” [38]

Other examples include local councils in England encouraging householders to report neighbours who put out their rubbish bins too early or fail to remove them on time. This includes issuing “environmental crime incident diaries” and asking people to provide photographic evidence of transgressions. [39] Repeat offenders will be fined £100 but this could rise to £1,000 should they fail to pay.

In July 2009, Cambridgeshire and Hampshire police forces launched radio campaigns encouraging people to check the background of anyone they think behaves oddly around children. Members of the public could contact police and check whether an individual is on the Violent and Sex Offenders Register. [40]

Conclusion

Undoubtedly there are instances where it is necessary for the public to report behaviour they believe breaches the law, but the catch-all approach advocated by the raft of government schemes that promote this form of active citizenship sets too low a threshold on what should be reported and does not require those levying accusations to present substantive evidence. When the government is encouraging people to report chemical containers in their neighbours’ rubbish it is reasonable to conclude that the net has been cast too wide. [41]

This level of self-policing can foster suspicion and mistrust and cultivate a sense of paranoia that our actions are never free from scrutiny. Certainly the practice appears incongruous with prime minister David Cameron’s vision of a “big society” in which “communities with oomph” will be built around the values of “voluntarism and philanthropy”. [42]

Most alarming is the extent to which these schemes normalise the idea that surveillance and informing are facts of everyday life. Increased public tolerance of Britain’s burgeoning surveillance culture and its targeting of the poor, foreign nationals, and the already marginalised, should give pause for thought about how society is being shaped by the systematic outsourcing of surveillance by the state.

Endnotes

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