



The Church of Scotland

Church and Society Council

Surveillance and Social Justice – May 2017

Section 7. Security

7.1 States gather intelligence and choose to designate particular threats as imperilling “national security.” There then follows a ‘securitisation of identity’, which offers ‘conditional access to...the benefits of liberty’.¹

7.2 Fear of the unknown operates against a possibly catastrophic horizon of devastating harm (such as a biological weapon in terrorists’ hands), and the more immediate horizon of day to day surveillance. We are sure that significant terrorist threats exist but unsure of the specifics.² However, state authorities can retrospectively justify their practices by claiming it impacts on security, which offers the possibility of using fear and unease as a way to govern.³ To designate a group or person as a threat to ‘national security’ attempts to close down critical discussion.

7.3 The assertion of human rights can be used to push back against this trend, but, under the European Convention on Human Rights, a fundamental danger is posed by the absence of any agreed definition of ‘national security’. National security is frequently invoked to erode human rights, not only with regard to the right to privacy (Article 8, ECHR) but Article 6 (the right to a fair trial). For a right to a fair trial to be assured, it is essential that communications between lawyers and their clients are protected by rules of professional privilege and professional secrecy. However, there is constant pressure from security services in democratic societies (including the UK) to be able to conduct surveillance of such communications, leading to a need for lawyers to seek to use technical means (which can never be wholly effective) to prevent such intrusions.⁴ Human rights activists, journalists, lawyers and arguably ministers of religion may need to have secure ways of communicating confidentially, especially where governments are hostile.⁵

7.4 In the event that there is any future change in Human Rights law in the UK, vigilance is required to prevent any further erosion of the benefits of liberty in the name of ‘security’.

7.5 Securitisation comes into focus at international borders. Passenger information goes ahead of travellers with clearance sometimes given before departure (as with US immigration operating at Shannon airport in the Republic of Ireland or British immigration officials working on French soil in Calais). However, for many people the ‘border is everywhere’ with negative effects in cities where ID cards and identification are checked in multiple ways.⁶ We cannot even be confident that our bodies present a border to the securitisation of identity. Invasive and non-invasive gathering of biometric data, including swabs for DNA sampling, can be utilised in surveillance.⁷

[See the full report](#)

¹ Nikolas Rose, *Powers of freedom : reframing political thought* (Cambridge: Cambridge University Press, 1999), p. 243.

² Claudia Aradau and Rens Van Munster, ‘Governing terrorism through risk: taking precautions, (un)knowing the future,’ *European Journal of International Relations* 13: 1 (2007), 89-115 at 108.

³ Didier Bigo, ‘The (in)securitisation practices of the three universes of EU border control: Military/Navy – border guards/police – database analysts,’ *Security Dialogue* 45: 3 (2014), 209-25 at 211.

⁴ ‘Recommendations on the Protection of Client Confidentiality Within the Context of Surveillance Activities’ (CCBE: Brussels, 2016); ‘Guidance on Improving the IT Security of Lawyers Against Unlawful Surveillance’ (CCBE: Brussels, 2016).

⁵ In July 2015, Amnesty was informed by the UK intelligence tribunal that its private communications had been intercepted and accessed by the UK’s intelligence agencies, Tanya O’Carroll, “Human rights groups cannot do their jobs in a surveillance state”, Amnesty International <http://bit.ly/1HeB0rN> (accessed 10-Feb-16).

⁶ David Lyon, *Identifying Citizens: ID Cards as Surveillance* (Cambridge: Polity, 2009), p. 142.

⁷ Irma van der Ploeg, ‘Biometrics and the body as information: normative issues of the socio-technical coding of the body,’ in David Lyon (ed.), *Surveillance as Social Sorting: Privacy, Risk and Digital Discrimination* (London: Routledge, 2003), pp. 57-73 at p. 71.