

Why is Intelligence Sometimes Controversial in Democratic States?

Written by Jeremy Jones

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Democracy means a lot of things to a lot of people and a distinct and universally acceptable definition has yet to be found. This essay will establish the main principles of democracy and then seek to compare these with the actions of secret intelligence agencies. For the sake of brevity, I will mainly use examples from the UK and the US.

There are however some basic tenets which apply to any real democracy, the first of which is accountability. As Pericles observed in 431BC “it is called ‘democracy’ because it serves the interests of not a privileged few but of the bulk of its citizens”[1]. In Rome the term *republic* was used to describe their democratic system of government which was *res publicas* – a thing that belonged to the people[2]. The United States constitution begins with “we the people”[3], a clear indication that the government is, in principle, indistinguishable from the people it serves and governs. In other words the government is accountable to the electorate who have the right to challenge what the government says and in a representative democracy, change the government at the next election. The accountability of government has been a cornerstone of democracy since Athens[4] and is one of the reasons why the work of the intelligence community is so controversial. Intelligence and military operations are by their very nature not open to public or political scrutiny and can potentially be misused by governments. In a country like the UK where the government is held to account for every last pound spent on education, health, transport etc., the budgets of the intelligence services are still largely undisclosed for security reasons[5]. Furthermore the public do not know who is working for intelligence agencies or what they are doing. In fact we do not even know how many agencies some governments have. In Israel, hailed as the only working democracy in the Middle East, the government flatly denied the existence of the Mossad, the Israeli foreign intelligence service, right up until the early 1990’s. Journalists who printed the name of the agency would find themselves penalised with the removal of press accreditation or in extreme cases even character assassination[6]. Here in the UK it has been alleged that alongside MI5 and MI6, there is a secret assassination unit called the Increment, comprising of elite SAS and SBS soldiers[7]. This has never been formally acknowledged by the British government, but the question of its existence came to public prominence following the investigation into the death of Princess Diana. I will explore the issue of intelligence accountability in the first part of this essay.

The second tenet of democracy is liberty. In the United States Declaration of Independence, Thomas Jefferson wrote “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”[8]. J. Roland Pennock, a leading scholar of democracy, states that liberty forms one of the basic elements of the democratic creed and goes on to argue that there is no distinction between liberty and freedom[9]. Hobbes also holds freedom and liberty indistinguishable in *Leviathan*, calling liberty “movement without impediment”[10]. The question of liberty then is another reason why intelligence can be controversial. It is important to remember here that the term intelligence does not just refer directly to the work of specific intelligence agencies, but also to the product of intelligence and intelligence/counter-intelligence led policy. I will explore the issue of liberty again later.

A third source of controversy occurs when the intelligence services of democratic nations support, either actively or tacitly, activities which are at odds with the ideals and values of the democracy they serve. For example, during the Cold War the CIA took an attitude of ‘better the devil you know’ and allied itself with any group who could assist them

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in the fight against communism. These included drug cartels[11], criminal gangs and fundamentalist militant groups[12]. Furthermore the CIA, with the support of the US government, propped up despotic regimes against popular revolutions[13] and toppled democratically elected leaders[14]. These actions were not only controversial but illegal, which brings us onto the final point I will discuss in this essay, the extra-legal nature of intelligence work. The legal basis for the work of intelligence agencies is shady at best. Governments claim that they operate outside of the law which generally makes them immune from prosecution in their home country. Also a lot of intelligence work abroad is carried out under the protection of diplomatic immunity by staff stationed in embassies around the world. This odd legal footing makes the work of intelligence services extremely controversial, as it questions the universality of the rule of law.

“A body of men holding themselves accountable to nobody, ought not to be trusted by anybody”

– Thomas Paine, 1791

Exactly how accountable are intelligence agencies and to whom? Before the 1970's many intelligence services acted by executive decree and there was very little in the way of legislature involvement[15]. This meant in America that the President had sole control over the activities of the CIA and that the agency was answerable only to him. In the British case this was the Prime Minister, with hardly any parliamentary oversight involved. In fact the accountability of the British security services was not governed by law until the Security Service Act of 1989 and even then only because of a string of damaging exposé's and government concerns over the possibility of GCHQ and MI5 breaking the newly signed European Convention on Human Rights[16]. According to the MI5 website the act “places the Service under the authority of the Home Secretary and sets out the functions of the Service and the responsibilities of the Director General”[17]. Subsequently, in 1994, the Intelligence and Security Committee was established, including members from both houses of Parliament. This was the first time that the British security services were legally bound to report directly to parliament on their policy, administration and expenditure[18]. Immediately there were concerns raised over the ISC. Labour opposition MP's at the time called the ISC “a pretence at accountability”[19] because instead of acting in the same way as other select committees, the ISC comprises of MP's and peers handpicked by the Prime Minister. The bill also allowed for material to be withheld from the committee if it was deemed to be ‘sensitive’ (which is very much open to interpretation) or at the will of the Home or Foreign secretaries[20]. The interpretation of what was deemed too sensitive to show to the ISC became a problem, culminating in 1999 with an intelligence report on action in Kosovo being “so heavily redacted that it was without meaning”[21]. The committee also decided not to investigate past security service actions or failures[22], a decision which made the British ISC unique amongst its oversight counterparts in the USA, Canada and Australia. All of this adds up to a pretty unrepresentative and somewhat powerless body. Further ISC failures came to light in 2003 when the notorious “sexed up” dossier was used by the Blair government to justify the invasion of Iraq. The ISC had access to all of the Joint Intelligence Council's reports on Iraq until 2001 and had then only been provided with eight of the 13 produced in 2002-2003. It transpired later that the government had deliberately held back reports from the ISC which ran counter to the theme of the dossier[23]. This highlights one of the major failings of the ISC, namely that it is generally a reactive body. It does not have a role in the direction of MI5, MI6 and GCHQ, it just has the power to question its activities after the fact and even then only when its members are provided with accurate and full accounts of intelligence work. The actual direction of the security services still lies with the executive. Todd & Bloch remark that “despite the nod towards oversight, Britain remains one of the most secretive states in the western hemisphere”[24].

In the American case the legislative branch has, as in general policy making, a much larger input into the work of the intelligence services. Intelligence funding must pass through a myriad of House and Senate committee's before meeting approval, including the House Permanent Select Committee, Senate Select Committees on Intelligence and the Intelligence Appropriation and Authorization committees[25]. Congress also has the power to call hearings on and launch investigations into Intelligence policy and service activities. For example hearings were held on the issue of Iraqi weapons of mass destruction in the lead-up to the Iraq war[26]. Congress has the right to subpoena any member of the executive or intelligence community to give evidence at these hearings, and those appearing are legally obliged to answer truthfully. Lowenthal remarks that the most profound power of oversight resides with the Senate. This is the right to confirm or reject presidential nominees for government positions including the Director of the CIA. Although the Senate has yet to reject outright any nominee for the position of CIA director, there have been

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cases where nominees have been forced to withdraw following the Senate confirmation hearings[27]. Despite this increased congressional oversight, the actual policy direction of the US intelligence organisations still lies with the executive branch. This leads to the same problems as in the UK, with the executive occasionally going above and beyond what is necessary and reasonable in the eyes of the public. No amount of accountability to the legislature seems to be able to prevent the sort of scandals which have dogged the intelligence communities in the past.

“Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.”

– Benjamin

Franklin, 1775

Next we come to the issue of liberty. Some of the most controversial and scandalous intelligence service actions have stemmed from the curbing or breaching of individual liberty. This is particularly relevant when discussing cases of democratic governments monitoring or taking action against their own citizens. An excellent example of this was the internment of Japanese-Americans during WW II. Following the Japanese attack on Pearl Harbour and America's subsequent entry into the war in 1942, a decision was made by Roosevelt, at the behest of military intelligence officers, to round up and detain all Issei (first generation legal Japanese migrants). An exclusion zone was implemented which included large parts of California, Oregon and Washington State in which no Japanese-Americans would be allowed to remain. This also included Nisei, second generation migrants who were American by birth[28]. These were people who had full American citizenship but were nonetheless interred for most of the war. This was controversial at the time but became a huge issue after the war was over. One Japanese-American journalist asked “is citizenship such a light and transient thing, which is our right in normal times but can be torn from us in times of war?”[29]. It was not until 1976 when President Gerald Ford publicly called internment “a mistake that shall never be repeated”[30]. This was not enough for the Japanese community in America who, inspired by the civil rights movement, demanded reparations for those interred during the war. This materialised in 1988, when President Reagan signed a reparations bill into law. The payments totalled \$1.6 Billion[31], a clear admission by the US government that the internment policy had violated civil liberties.

Allegations of civil liberties violations by intelligence services continue to this day. One of the most inflammatory came in the 1987 book ‘Spycatcher’, which was one of the first exposé's regarding the British intelligence services. In it Peter Wright claims that whilst he was working as a senior official at MI5 he was involved in a plot to undermine the British Prime Minister Harold Wilson. He claimed that the plot was instigated because of intelligence gained from the KGB defector Anatoliy Golitsyn, who had named Wilson as a Soviet informer[32]. These revelations gave credit to a 1977 article in the Observer newspaper, in which Wilson is quoted as saying that there was a ‘whispering campaign’ against him[33], which included his offices at Number 10 being bugged. Upon publication of the book, which the British government attempted to ban, a fresh investigation was ordered into the allegations. The investigation found no proof that any such bugging or plot had taken place, but the truth of the matter is still unknown. Another case involving British internal intelligence was the basis of the 1989 ECHR court case Harman & Hewitt v United Kingdom. The case came about after an MI5 whistle-blower, Cathy Massiter (later corroborated by David Shayler), revealed a list of individuals who had been under MI5 surveillance through the 1970's and 80's for ‘subversive’ behaviour. On this list were Harriet Harman and Patricia Hewitt, who later would both become government ministers, two employees of the National Centre for Citizenship and the Law (NCCL). As a result of the allegations, Harman & Hewitt brought a case against MI5 for invasion of privacy which was ruled in their favour by the European Court of Human Rights [34]. This case was instrumental in the drafting and implementation of the aforementioned 1989 Security Services Act. In fact the ruling described MI5 as “not a legally constituted and democratically accountable organisation, the minimum standard in a democracy”[35]. These cases were and still are incredibly controversial and are key to the debate about how much power intelligence services should have.

The British and American governments have, since 9/11, regularly engaged in activities which breach human rights and civil liberties. The rendition of terror suspects from Iraq and Afghanistan are key examples. Also the alleged complicity of MI5, 6 and the CIA in handing suspects over to foreign agencies in the knowledge that they would be tortured, is a clear violation of not only basic human rights but also international law[36]. Furthermore, intelligence-led

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policy has extended the powers of the British police and internal security services giving them powers to stop and search without cause and detention without trial. The ECHR subsequently ruled that police stop and search powers were illegal and in clear violation of civil liberties. The arrest and detention of nine men in Scotland in 2002 highlights again the undemocratic behaviour of the security services, particularly when dealing with potential terror suspects. These nine men were detained on suspicion of being terrorists for nine months without trial, whilst the police and security services attempted to gather evidence against them[37]. They failed in this and the men were subsequently released. Despite this wrongful detention the men were never compensated for their time spent in prison, nor were they ever charged with anything. If a government is able to suspend habeas corpus at will then the government can no longer be said to be working in the interest of its citizens. Another development since 9/11 is the increased use of racial profiling. This is "the practice of targeting individuals for police or security interdiction, detention, or other disparate treatment based primarily on their race or ethnicity"[38]. Many Western governments now engage in racial profiling at border control[39] and intelligence services use profiling to identify potential terror suspects[40]. This is highly controversial in a democratic country where everyone is supposedly equal.

"Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists."[41]

– George W Bush, 2001

Now we come to actions taken by intelligence agencies which are not in line with the ideals of the democracies they serve. During the first decades of the Cold War, America undertook a policy of containment towards communism. American policy makers believed that the USSR intended to lead a world revolution, exporting communism to one country at a time until the whole world fell. This thinking was embodied in NSC-68 (1950), the notorious report by the National Security Council which stated that the USSR was bent on the "complete subversion or forcible destruction of the machinery of government and structure of society in the countries of the non-Soviet world and their replacement by an apparatus and structure subservient to and controlled from the Kremlin"[42]. This inflammatory document resulted in successive American governments placing security above all else in international affairs and a willingness to use force to attain it[43]. This policy, which was driven by McCarthyist fervour over the 'red threat', led in 1953 to the CIA mounting a coup d'état against the democratically elected government of Guatemala. President Jacobo Arbenz was elected with a large majority in 1951, promising to improve life for Guatemala's farm workers whose average income was just \$87 per annum[44]. He was not a Communist but a leftist Guatemalan Progressive Nationalist. The centrepiece of his policy was land redistribution, as over 70% of the country's farmable land was in the hands of 2% of landowners. The US was alarmed by Arbenz's land reforms which assigned previously uncultivated land to peasants, giving them the right to cultivate and grow crops on the land. The US government was also lobbied hard at the time by the United Fruit Company, an American banana company which owned massive swathes of land and employed 15,000 people in Guatemala[45]. Furthermore United Fruit owned the vast majority of the country's railway lines, the only telegraph and postal service, the largest and most productive power station and the only sizeable Atlantic coast port[46]. Blum calls the company a "state within a state"[47]. The land reforms proposed by Arbenz included the government requisition and redistribution of 40% United Fruit's property[48] which was seen in Washington as communism, pure and simple. In March of 1953 the CIA contacted several right-wing military officers in Guatemala, offering to supply them with arms for an uprising. United Fruit also donated \$64,000 in cash to the project[49] and within weeks a series of small rebellions erupted. These were however suppressed by loyalist troops and the rebels were tried and executed[50].

During the trials the involvement of United Fruit came to light, but the involvement of the CIA remained secret[51]. The American administration was not happy with the result and Eisenhower was still intent on removing the 'red threat' of Arbenz from Central America. As such the CIA planned another Guatemalan Coup codenamed PBSUCCESS. This time they trained and armed a Guatemalan resistance army headed by an exiled Guatemalan army officer Colonel Carlos Castillo Armas[52]. The CIA planned PBSUCCESS for a year, until 1954 when Arbenz purchased a shipment of arms from communist Czechoslovakia[53]. Blum argues that Guatemala was forced into this transaction as they had consistently attempted to purchase arms from the US and other Western powers since Arbenz came to power but the American administration had negotiated a de facto embargo against them[54]. Subsequently on June 18th 1954 the CIA-run Guatemalan liberation army crossed the border from Honduras and made its way towards Guatemala City. However the army of only a few hundred men found itself outnumbered and

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made camp just six miles across the border[55]. The CIA then embarked on a campaign of disinformation and subterfuge. First a new radio station appeared, broadcasting right across Guatemala. It gave news of a huge rebel army sweeping through the countryside and converging on the capital. Later that evening under the cover of darkness, CIA planes dropped incendiary bombs on Guatemala City. Although fewer than 10 planes were used in the bombardment, radio reports combined with a government imposed blackout convinced people that they were under continuous attack by an entire squadron.[56] As the sun was rising the planes started dropping leaflets calling on citizens to join the rebellion. The next day many civilians fled the city. The false reports and continued panic eventually caused previously loyal army officers to turn on Arbenz, who resigned the presidency on the 27th June[57]. Power was transferred to a military junta and then to Col Armas[58]. The American government, a self-proclaimed bastion of democracy, had successfully toppled a democratically elected leader and replaced him with a military dictatorship. Guatemala was by no means a unique case. The CIA installed dictators across the world in the name of American security. In Iran, 1953, the CIA installed the despotic Shah after the democratically elected Mohammed Mossadegh threatened to nationalise British Petroleum[59]. In the late 1940's the CIA interfered with an Italian election to prevent a communist-socialist alliance from winning[60], even going as far as bribing candidates and the electorate. Throughout the Cold War the CIA engaged varying levels of political interference, often specifically going against the will of the resident populations, in Nicaragua, Mexico, Laos, Jamaica, Chile, Costa Rica, Cuba, Zaire, Afghanistan, East Timor and many more[61]. This interference flies in the face of democratic theory, particularly when coming from the 'leaders of the free world'.

There are numerous examples of the controversial nature of intelligence work in democratic states. Intelligence services are naturally unaccountable and are regularly required to breach civil liberties in the course of their work. Since 9/11 both the powers and importance of intelligence agencies have increased, particularly in Western states where the threat of terrorism is perceived to be highest. There is a tension between the necessity for secrecy in intelligence work and the potential for the abuse of that secrecy. On the one hand, intelligence services could not function without a degree of secrecy. On the other, the inherent secrecy of the work has been abused by politicians and those working for intelligence services in the past. The paradox of intelligence is that covert services have been shown not to act according to democratic principles, but they nonetheless work for the protection of democracy and society.

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