

NELCO
NELCO Legal Scholarship Repository

New York University Public Law and Legal Theory
Working Papers

New York University School of Law

5-1-2011

Phone-Hacking, Muck-Raking, and the Future of Surveillance

Simon Chesterman

New York University School of Law, chesterman@nus.edu.sg

Follow this and additional works at: http://lsr.nellco.org/nyu_plltwp

 Part of the [Administrative Law Commons](#), [Civil Rights and Discrimination Commons](#), [Communications Law Commons](#), [Constitutional Law Commons](#), [Criminal Law Commons](#), [Human Rights Law Commons](#), [Law and Society Commons](#), [Politics Commons](#), [Public Law and Legal Theory Commons](#), and the [Science and Technology Commons](#)

Recommended Citation

Chesterman, Simon, "Phone-Hacking, Muck-Raking, and the Future of Surveillance" (2011). *New York University Public Law and Legal Theory Working Papers*. Paper 274.

http://lsr.nellco.org/nyu_plltwp/274

This Article is brought to you for free and open access by the New York University School of Law at NELCO Legal Scholarship Repository. It has been accepted for inclusion in New York University Public Law and Legal Theory Working Papers by an authorized administrator of NELCO Legal Scholarship Repository. For more information, please contact tracy.thompson@nellco.org.

Phone-Hacking, Muck-Raking, and the Future of Surveillance

[permalink](#) [buy this book](#)

Posted on Thursday, February 17th, 2011 at 3:24 am

By Simon Chesterman

The ongoing police investigation into phone-hacking in Britain by the tabloid [News of the World](#) has revealed the widespread use of surveillance techniques by private actors, with predictable outrage expressed at the violations of privacy. Yet the recent inquiries only began in earnest after [a major story](#) in the *New York Times*.

This is the paradox of today's media: investigative journalism is often key to revealing abuses of surveillance powers, yet the commercial reality of today's market drives unscrupulous journalists themselves towards ever more dubious methods.

That market has been radically altered by the "new media", with WikiLeaks as its poster-child — ably exploiting the Internet's capacity for widespread dissemination of data, but at the expense of credible efforts at analysis or minimizing the potential harm to named individuals. It is "journalism" by quantity rather than quality.

These two trends — muck-raking and unfiltered dissemination — become all the more serious when linked to the extraordinary tools of surveillance available to government and, increasingly, private actors.

The spread of surveillance powers through Britain has long puzzled outside observers. On the one hand, Britain is a rare example of a country that developed a comprehensive identity card regime during the Second World War and then dismantled it after the conclusion of hostilities — apparently to the dismay of many in law enforcement circles. Later in the century, however, the absence of constitutional protections of rights, a general belief in the benevolence of government, and episodes like the [1993 James Bulger murder](#) encouraged the growth of a sophisticated surveillance state.

Britain now enjoys the highest concentration of CCTV cameras in the world, manages the [London Congestion Charge](#) by recording details of every car entering and leaving the capital, and stores DNA samples from an ever growing proportion of the population.

In the 2010 general election, Britain's Conservative Party campaigned on a platform of scrapping plans for an [identity card](#) that would have been linked to a National Identity Register. Interestingly, the arguments that resonated with the public had less to do with privacy concerns than the expense involved, doubts about government competence to manage the data, and a general wariness that the whole enterprise looked a little too "European".

Does this mean that Britons do not care about privacy? Certainly not. But as in many other countries it is hard to reconcile the apparent sincerity of individuals claiming to be concerned about their privacy with the nonchalant behaviour of those same individuals in revealing personal information voluntarily or engaging in activities where there is manifestly no reasonable expectation to privacy.

This is not limited to teenagers. The current head of MI6, [Sir John Sawers](#), was embarrassed by photos that his wife posted on Facebook in 2009 revealing the location of their London flat and the whereabouts of their three adult children. Last October his daughter uploaded a suggestive photograph of herself holding a golden Kalashnikov — quickly cut and pasted from Facebook to the *Mirror*.

There is, however, a generational element to attitudes towards privacy. Whereas in the 1960s activists opposed even the creation of files, today's fears tend to stress the potential for abuse by private actors — identity theft, stalking — rather than nefarious activity by governments. This may change: high profile scandals might lead to a reining in of intelligence services comparable to the aftermath of Watergate. But it seems unlikely.

The scandals that have emerged in places like the United States and Britain have largely been confined in their impact to visible minorities, allowing a certain complacency on the part of the majority. A more probable scenario is that the activists, like the generation that used to write, sign, and seal envelopes, or confide in diaries locked with a key, will be succeeded by generations that send e-mails with all the privacy of a postcard and blog about the most intimate details of their lives.

Are we, then, 'sleepwalking into a surveillance society' as Britain's Information Commissioner Richard Thomas warned in 2004? The answer would seem to be: no, we are walking in that direction with our eyes wide open.

Which brings us back to journalism.

Given the precarious economic situation of many newspapers, Thomas Jefferson's well-worn quote on the topic is often cited. "Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government," he wrote during his term as ambassador to France, "I should not hesitate a moment to prefer the latter."

Jefferson's quote is often taken to mean the mere existence of newspapers, though the following sentence in his letter makes it clear that what really concerned him was the level of informed public opinion: "But I should mean that every man should receive those papers and be capable of reading them."

In these days when Lady Gaga displaces the sitting prime minister of Great Britain on *Time*'s list of the 100 most influential people, and when journalists are studying to write articles that are 140 characters long, perhaps the most depressing aspect of the phone-hacking scandal is that it was so trivial. It revealed nothing about the wars in Iraq and Afghanistan, the parlous state of Britain's economy, or the inner workings of 10 Downing Street. It began, it is worth remembering, with a story about a Prince's sore knee.

[Simon Chesterman](#) is Vice Dean and Professor of Law at the National University of Singapore, and Global Professor and Director of the New York School of Law Singapore Programme. His book, [One Nation Under Surveillance: A New Social Contract to Defend Freedom Without Sacrificing Liberty](#), is available now.

For information about the book, *One Nation Under Surveillance*, [click here](#).