

# Justifications for the Investigatory Powers Bill are based on a very specific interpretation of freedom

[democraticaudit.com/2016/03/16/justifications-for-the-investigatory-powers-bill-are-based-on-a-very-specific-interpretation-of-freedom/](http://democraticaudit.com/2016/03/16/justifications-for-the-investigatory-powers-bill-are-based-on-a-very-specific-interpretation-of-freedom/)

By Democratic Audit UK

2016-3-16

*The Investigatory Powers Bill, currently progressing through the Commons, has been defended on the basis that only those with something to hide have anything to fear from the extended surveillance powers. But **Nat Rutherford** writes that this argument is based on a minimal liberal understanding of freedom, and if we take a broader view, the new Bill poses a considerable threat to our freedom in the UK.*



'If you have nothing to hide, you have nothing to fear'. This was the defence offered by Conservative MP Richard Graham of the Investigatory Powers Bill at its recent airing in the House of Commons. The [latest version](#) of Theresa May's legislation, published earlier this month, will require that internet service providers collect and store 12 months of every British resident's internet browsing history, will allow the police to access browsing histories in certain investigations, and will give police and security services the power to hack smartphones and computers upon obtaining a warrant. While you may feel uneasy about these proposals you may also find it difficult to pinpoint exactly what you find objectionable. This difficulty stems from the way in which we conceptualise freedom. The flaws of this conceptualisation can be exposed by looking at Graham's defence of the bill. Do we really have nothing to fear if we have nothing to hide?

The doctrine of 'nothing to hide, nothing to fear' is a prevalent one. In a [YouGov poll](#) only around 21% of respondents thought that it was unacceptable to intercept British citizens' communications. The logic is simple: why should I fear surveillance if I don't do anything wrong? Only those who act illegally object to surveillance. So what if someone can see my internet history if that keeps us safe from the baddies? Endorsing this motto insulates us from paranoia about the state. By publicly supporting it we advertise our willingness to sacrifice our privacy for the sake of security in what is presented as a virtuous trade-off. By understanding surveillance in this way it's only ever the bad-guys who can suffer.

This defence of surveillance, which exchanges reflection for comfort, is an example of British common sense at its most misleading. Although those who make this case are probably unaware of it, 'nothing to hide, nothing to fear' rests on a particular idea of what freedom means. Liberal political philosophy understands freedom as freedom from interference. In other words, you are free if other people do not coerce you. [Following Isaiah Berlin](#), this conception

of freedom is known as negative liberty. 'Nothing to hide, nothing to fear' reassures us that our freedom will not be jeopardised by surveillance unless we ourselves choose to jeopardise it. Surveillance does not, on the liberal view, limit our freedom, rather it enhances it by protecting us from the criminals and terrorists who would take it away. Monitoring alone does not count as coercion as it doesn't prevent you from doing the things you wish to. We can be surveilled without losing our freedom.

There is, however, a broader (and arguably better) way to understand freedom: as non-domination. This understanding, known as the republican conception of freedom, suggests that we need to not only be free from interference by others, but also from the *possibility* of interference by others. Other agents, especially the state, dominate us if they hold the stick, regardless of whether they bring it down.

For republican theorists, it is not enough that you are not currently interfered with, but also that there cannot be a threat of interference looming over you. As Quentin Skinner, a prominent advocate of the republican conception, [has suggested](#), surveillance 'takes away liberty because it leaves us at the mercy of arbitrary power'. The state limits our freedom merely by having powers of surveillance, even if those powers are never used against us. Just because the security services don't monitor my browsing history to interfere with my life, it doesn't mean that my freedom is untouched. That supporters of surveillance claim to use their powers only for good is no reassurance, as they also set the terms of what counts as good and those terms are subject to change.

Republican philosophers, such as Philip Pettit, often give the following example to illustrate their case. Imagine a generally kind and well-intentioned slave-master (if you can imagine such a person). Although the slave-master is legally entitled, though not morally permitted, to whip his slaves and treat them as badly as he pleases, he mostly chooses to leave his slaves alone. He is not so beneficent though that he releases the slaves from their bondage. On the liberal conception of freedom, we are forced to accept that the slaves have at least some degree of freedom, as they are generally not coerced. This conclusion seems awry however, as slavery is the paradigmatic case of unfreedom. By comparison, the republican conception of freedom recognises the lack of freedom that a slave endures, as the master's current disposition offers no guarantee of his future leniency. So understood, freedom is more than the minimal liberal understanding of non-interference, rather, it's the absence of institutional structures that enable domination.

If we apply the republican conception to the case of the Investigatory Powers Bill, it becomes apparent that the expansion of surveillance power also expands the state's power to dominate its citizens and thereby reduce their freedom. The bill includes safeguards against the abuse of these powers, such as the 'double-lock' of judicial and ministerial approval of phone or computer hacking. These protections, however, fail to address the central insight that republican theorists make about freedom. The creation of a database of browsing histories or the granting of powers to intercept communications enable structures of domination merely through the existence of these powers. That they could be used to stifle political dissent, in the case of climate change protestors for example, is certainly worrying, but even without the abuse of power, citizens are still subjected to their domination.

Opponents of mass-surveillance often invoke their right to privacy in order to criticise new surveillance powers, prompting a conceptual battle between the values of privacy and security, but on the republican view it's more than our privacy that is threatened, it's our freedom itself. If we accept this view of freedom then Richard Graham is wrong: even those with nothing to hide still have something to fear.

---

*This post represents the views of the author and not those of Democratic Audit UK. Please read our [comments policy](#) before posting.*

---

**Nat Rutherford** is a doctoral researcher in political theory at Royal Holloway, University of London. He tweets at

@nat\_rutherford