



# Mass Surveillance and State Control

The Total Information Awareness Project

Elliot D. Cohen



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## Introduction

# Warrantless Mass Surveillance in a Culture of Control

In George Orwell's famous novel, 1984,<sup>1</sup> Big Brother kept 24/7 surveillance on all citizens of Oceania via a "telescreen" installed in every home, while the Ministry of Truth streamed in news and entertainment it deemed suitable for popular consumption. Should citizens harbor heretical thoughts, there was also always the Thought Police who, in the dark of night, would visit their homes in order to "vaporize" them, which included wiping out all traces of their past existence. The Ministry of Love was in charge of law and order, even though there were no longer any laws. And there was the "ultimate" enemy of state, Emmanuel Goldstein, whose diatribes against Big Brother were regularly broadcast, uniting citizens in hate and fear and in solidarity with Big Brother against this common enemy.

## A Culture of Control

In 1984, the tripartite slogan of "The Party" is, "WAR IS PEACE; FREEDOM IS SLAVERY; IGNORANCE IS STRENGTH." These three ideological perspectives characterize what in this book is called a *culture of control*. Such cultures are characterized by an unequal power structure where one individual or group dominates another; hence, power flows in only one direction. Examples of such a culture can be found in civilizations based on religious extremism. In such cultures, the enemy is the infidel who must be defeated or killed. Questioning one's faith or otherwise straying from it may even be punishable by death. One's allegiance must be to God (and hence to those who are His ministers). In such a culture, freedom consists in surrendering one's earthly possessions (often to a religious leader), thereby escaping the bondage of the flesh and of the material world, which is viewed as the source of all evil.

In the political sphere, despotic, fascistic states exemplify the idea of a culture of control. The Third Reich is a good example. Power was unilateral, war was waged against a common enemy in the name of national security; and all citizens were expected to have their views aligned with those of the Nazi party. Knowledge flowed only in one direction. The Nazis sought to know everything possible about those subject to their rule. They spied on everyone, including themselves. They wanted to know who were homosexual, Jewish, Gypsy, and who did not have allegiance to the Nazi party. On the other hand, citizens of the Third Reich were expected to believe the propaganda and lies that were disseminated by the Nazi government.

### **A Culture of Autonomy**

In contrast to a culture of control is a *culture of autonomy*. Such a culture permits power to flow bilaterally. Questioning authority is viewed as a healthy way to resolve differences in living a satisfactory life in common. Diplomacy and friendship are to be favored over attempting to destroy or ostracize those who are not ideologically aligned. In contrast to a culture of control, a culture of autonomy thrives on the mutual exchange of information. There is also transparency between the governor and the governed, and communication flows freely both ways. This kind of culture is identified with the democratic state. It is the idea of a culture that is enshrined in the Declaration of Independence according to which a government derives its power from the consent of the governed for purposes of ensuring unalienable rights to life, liberty, and the pursuit of happiness.

Both cultures of control and autonomy are ideals that are never completely realized. In the real world, a culture of autonomy may resemble, to some extent, a culture of control. Thus, no government is entirely transparent; nor is it entirely open to the views of those who oppose it. Nevertheless, some cultures have moved far enough in one direction or another so as to be appropriately called a culture of control or one of autonomy.

What sort of culture presently exists in America?

### **America as a Culture of Control**

In the past decade, since the 9/11 attacks, America has largely moved in the direction of a culture of control. The tripartite characteristics of such a culture are reflected in the conventional wisdom that “winning the war on terrorism” is the route to peace; “freedom is not free” and, therefore, requires sacrifice, such as giving up civil liberties for the sake of safety (including relinquishing our right to privacy); and questioning authority,



especially when it comes to national security, is unpatriotic and even treasonous.

Not unlike Orwell's Oceania, we are presently a nation under surveillance, a nation whose corporate mainstream media is largely under the influence of the government. While we do not yet have thought police (we do not yet have the technological means), we have indeed been known to "disappear" citizens deemed to be national security threats. Since the inception of the Bush administration in 2000, the rule of law has been severely compromised by the passage of "laws" enacted in the interest of "national security," that contravene the Bill of Rights of the United States Constitution. This legislation includes laws that permit mass warrantless spying on Americans' electronic communications without adequate judicial oversight. In this climate of fear, we have become a nation in the midst of an all out "war on terror," not against Emmanuel Goldstein, the dreaded "Jew," but this time against Arabs, whose associations and/or ideological ties with al Qaeda or other terrorist groups must never be put past suspicion. Indeed, as discussed in Chapter 3, new FBI laws now permit the FBI to engage in racial profiling in order to hunt for terrorists!

This brief characterization of America today is not a ruse. It is not an exaggeration. Nor is it another slippery-slope argument that lacks empirical evidence. It is a reality.

Will the Obama administration help move us away from a culture of control and more in proximity to one of autonomy? There are insidious roots of state control that have not yet been called into question by this administration, and much will depend on whether its actions will comport with its rhetoric of "change." A main purpose of this book is to help create the momentum for such real change.

### **Total Information Awareness**

In 1597, Sir Francis Bacon said, "knowledge is power." The American government has adopted this insight as the basis for research and development of a technologically driven system of "Total Information Awareness" (TIA). In the aftermath of the September 11, 2001, attacks on the World Trade Center and the Pentagon, in the name of "national security," it began research and development of a vast database containing the personal information of every American citizen. This technology also included high-powered search engines using secret matching criteria to parse through this personal information. Deploying this technology, beginning as early as 2004, the Bush administration had been secretly monitoring the e-mail messages, Internet searches, and phone conversations of millions of Americans without their knowledge, the approval of Congress, or a warrant issued by a judge.

In assessing the constitutionality of this program, it is instructive to look carefully at what the Fourth Amendment of the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

No warrants were issued! No probable cause was given! No details about the place to be searched or the persons or things to be seized, were presented to a court in application for a search warrant! Every American was instead treated as a terrorism suspect.

In 2008, Congress passed the Foreign Intelligence Surveillance Amendments Act to amend the 1978 FISA (Foreign Intelligence Surveillance Act), which had required a search warrant for any electronic communication passing through a U.S. switch. Effectively, this new legislation gutted the 1978 Act and gave the green light to continue warrantless surveillance of millions of Americans. And soon-to-be President Barack Obama (then an Illinois Senator) voted for it.

### **A Plea for Constructive Change**

This book will carefully examine the dangerous currents toward a controlled Orwellian culture now in the air. The TIA Project cannot be severed from the political, legal, social, economic, technological, and ideological climate that now supports it. These factors include:

- The passage of laws permitting egregious violations of human rights;
- federal courts—from FISA to the Supreme Court—falling asleep at the wheel;
- a “war on terror” used to promote the politics of fear and to justify increasingly greater abridgments of privacy;
- psychological manipulation aiming at mass, blind conformity, lock-step politics, and jingoism;
- corporate media consolidation, telecom mergers, and media-government quid pro quo;
- the consequent clogging and censoring of the arteries of mass communication;
- widespread and systematic injection of government propaganda into the mainstream media news hole;

- private data warehousing and mining companies working cooperatively with the U.S. Department of Defense to amass personal data on all of us;
- the military-industrial revolving door incestuously sustaining TIA technological development;
- corporate lobbies in Congress and the Federal Communications Commission seeking to undermine net neutrality;
- government monitoring of the internet;
- Defense Department sponsorship and use of social media to support its clandestine agenda;
- research and development of chilling late generation, privacy-eviscerating surveillance technologies;
- deployment of real time surveillance subsystems including video surveillance cameras in private zones;
- Secret Services death squads operating underneath the radar of Congress;
- a nationalistic, neoconservative ideology hell-bent on establishing and maintaining U.S. geopolitical supremacy;
- corporate globalization, breakdown of trade barriers, and the blurring of lines between political and corporate power, leaving a trail of exploitation of the world's labor force, destruction of the environment, and centralized means of world power and control in the hands of the superrich.

These are some of the factors that are indissolubly fused to the steady creep of a culture of control at the center of which is the TIA project. Accordingly, this book looks at all of these factors, among others, with an eye toward constructive change. It is, thus, a plea for activism regarding the climate of control that has been spreading like a cancer in this nation and throughout the world, especially in the past decade.

We cannot expect this degenerative process to remit if we sit by idly and permit it to fester and grow. Hence, this book appeals to Americans and the greater world community to form coalitions of groups for the survival of the free world. Again, this is not an illusion. The dangerous trends flagged in this book are supported by empirical evidence. But if some insist that the alarm sounded here is an overreaction, then the response must be that it is better to be safe than sorry, given the incredible importance of the stakes.



# Post-9/11 America's Culture of Control

The September 11, 2001, attacks on American soil were a decisive marker in the shift toward a culture of control in America. This does not mean that many of the seeds of this shift were not already planted. They were. The lesson of the Nixon administration had begun to fade, along with the Watergate break-in and the unlawful, warrantless wiretapping of private citizens. The 1996 Telecommunications Act, signed by William Jefferson Clinton, raised media-ownership caps of the already gigantic media corporations, thereby allowing further consolidation and, hence, less-independent sources of news and information for public consumption. The collapse of the Soviet Union in 1991 provided the occasion for right-wing, militant extremists from the George H. W. Bush administration to launch an aggressive campaign aiming at change in the balance of power toward American geopolitical dominance.<sup>1</sup>

## Restriction of Civil Liberties: The PATRIOT Act

In this context, the 9/11 attacks provided a pretext for restricting civil rights, especially privacy and the right to be kept informed. In particular, the U.S. PATRIOT Act was approved by Congress without careful examination or discussion and was signed into law by George W. Bush on October 26, 2001.

Section 213 of the PATRIOT Act, the so-called "sneak and peek" provision, allowed law enforcement officers to search the homes or businesses of private citizens without their knowledge or permission.

Section 218 of the Act eliminated an important protection established in 1978 under the Foreign Intelligence Surveillance Act (FISA) against warrantless surveillance of American citizens and violation of their Fourth Amendment rights. In particular, Provision 104(7)(B) of 1978's FISA

required that *the purpose* of conducting a warrantless electronic surveillance was to obtain foreign intelligence information.<sup>2</sup> The PATRIOT Act changed the language of this provision to say that *a significant purpose* of such surveillance was to obtain foreign intelligence.<sup>3</sup> This provided a loophole for law enforcement to gather evidence for criminal investigations without having or showing probable cause pursuant to the Fourth Amendment.<sup>4</sup>

Section 215 of the PATRIOT Act gave the Federal Bureau of Investigation (FBI) the power to access the “tangible things” of private citizens including their “books, records, papers, documents, and other items” through the issuance of National Security Letters (NSL). These letters did not require a court order. All the FBI had to claim was the surveillance was being conducted “to protect against international terrorism or clandestine intelligence activities.” No evidence needed to be produced to show that the subjects in question were “agents of a foreign power” as previously required. Further, those forced to turn over the information were placed under a gag order preventing them from disclosing the search to anyone else. As a result, the subjects of the search could have their personal records examined by government without being able to find out about it and therefore obtain redress against illegal searches.<sup>5</sup> Unfortunately, Section 15, as well as other questionable provisions of the PATRIOT Act, has been reauthorized under the Obama administration.<sup>6</sup>

### **God as a Political Weapon of Mass Conformity**

Under the George W. Bush administration, fundamentalist Christian values were mixed with politics in an effort to transform America into a theocratic state in contravention of the First Amendment right to freedom of religion. It is this theocratic line that now attempts to teach “intelligent design” as science, and to add an amendment to the U.S. Constitution proclaiming marriage to be exclusively between a man and a woman.

Under the George W. Bush administration, reverence for life equated to an absolutistic and inflexible “culture of life.” Personhood was redefined to include unimplanted human embryos that would never act, think, or feel. The result was to thwart and delay the progress of stem cell research in America and therewith the promise of saving millions of actual human lives. To his credit, President Obama has recently overturned Bush’s ban on stem cell research, but the “culture of life” that his administration helped to fortify (including its adherents in Congress) is still active in attempting to exercise political control over the direction of such research.

The Terry Schiavo case is a good example of how such a “culture of life” is part of a culture of control. Terry Schiavo was a patient on a feed-ing tube in a persistent vegetative state. Using her misfortune to advance

its political agenda, the Bush administration attempted to short-circuit decades of settled Florida law by passing federal legislation interfering with the removal of her feeding tube. After fourteen unsuccessful appeals, when Schiavo's feeding tube was finally removed, Florida Governor Jeb Bush, the President's brother, sent state police to Schiavo's hospice to seize her and have her feeding tube reinserted. Confronting local police who were ordered by a judge to guard her, the state police finally backed off.<sup>7</sup> Subsequently, when an autopsy was performed, it was learned that Schiavo's upper brain had liquefied.

Religious fanaticism of this kind threatens democracy not because of the views it entertains but because it seeks to silence public debate and unbiased exploration of controversial moral issues, and attempts to control others by imposing its views on them. During the Bush administration, ethicists who worked at publicly funded institutions, such as the National Institutes of Health (NIH) were "free" to do research on the cutting edge—to explore issues like cloning and stem cell research as long as the conclusions they drew squared with those held by the White House. Federal agencies, such as the Environmental Protection Agency (EPA), were overseen by "gatekeepers" who reported directly to the president. In this contrived context, scientists were muzzled. As such, Americans could not expect federal agencies to tell them the truth about such genuine concerns as global warming.

### **Fear and Hate Mongering**

The rallying cry of the Bush administration was that of giving up civil liberties for the sake of peace and security. American support for the war in Iraq was largely a product of such fearmongering rather than the higher reflective powers of a democratic nation. Thus, Saddam Hussein was a pretext used by the Bush administration to stir up support among Americans for the invasion of Iraq. And when the Bush administration fabricated a link between Hussein and the 9/11 attacks, most Americans came on board; and most were also willing to consent to having their electronic communications war-rantlessly wiretapped for the sake of averting the next terrorist attack.

### **Manipulation of Mainstream Media and Telecoms**

But it is not just the average American who is subject to being manipulated; the mainstream media is, and has been so subject. Giant media corporations have come largely under government influence or control. To a considerable extent, this is due to consolidation. A relatively few number of companies now control all of cable and network TV (News Corp, General Electric,

Viacom, Disney, and Time Warner being the prominent conglomerates). These companies also have joint ventures with the telecom companies such as AT&T and Comcast. All of these companies are beholden to the government for media ownership caps, mergers, tax breaks, military contracts, and other means of expanding their bottom lines. They also have lobbies in Congress and the Federal Communications Commission (FCC) and are, therefore, disinclined to report news that strains their relationship with the government. A classic example of this is the lead-up to the Iraq war. Even the *New York Times* was relegated to quoting government spokespersons in making the case for the Bush administration to go to war in Iraq.

An instructive example of what can happen to a company that refuses to cooperate with government is that of Qwest Communications, which refused to assist the Bush administration in its warrantless surveillance program.<sup>8</sup> According to the former CEO of Qwest, Joseph P. Nacchio, the Bush administration had withdrawn lucrative government contracts due to Qwest's refusal to comply with the directive to cooperate in its program. Qwest had entered into two classified government contracts and in 2000 and 2001, Nacchio participated in discussions with high-ranking government officials about the awarding of other similar contracts; but Qwest's refusal to participate in the program of warrantless surveillance, claimed Nacchio, led the Bush administration to cancel these contracts.

### **The Net Neutrality Crisis**

If the abuses of power perpetrated by the Bush administration teach us anything, it is that we cannot afford to place our blind trust in any government administration. But this means that we need a vigilant media to keep us informed. Unfortunately, the mainstream corporate media has been asleep at the wheel; and given its insatiable drive for profit maximization, and its reliance on the government to feed this appetite, there is presently no good reason to think that it will perform better in the future.

So we might conclude that the free and open architecture of the Internet provides the answer to our need to be kept informed. Unfortunately, as will be discussed in Chapter 7, the Internet is also in clear and present danger of becoming another branch of the corporate, mainstream media. Currently, there are powerful telecommunication companies such as Comcast seeking to turn the free and open architecture of the net into a "pay for play" system according to which only companies that have deep pockets would be able to afford an Internet presence. Consequently, these companies, which include the major cable and broadcast media corporations, would have the ability to control, censor, and otherwise manipulate the flow of information through



the Internet pipes. This would mean the end of net neutrality and a brave new world of Internet control.

### The Supreme Corp Decision

On January 21, 2010, in a vote of four to five, the Supreme Court handed down a decision in *Citizens United v. Federal Election Commission*<sup>9</sup> that gave corporations the right to finance the advertising campaigns of the political candidates of their choice. This decision portends serious consequences for the survival of mainstream media and Internet as democratic forums.

Powerful corporations already influence political outcomes. In the aftermath of the Court's decision, telecom and cable lobbies in Congress, to usurp net neutrality, will predictably be brought directly into the arena of the boardrooms of corporations like Comcast and AT&T, which will decide how much financial backing to give to a candidate in a congressional election (or even in a presidential election) based on the candidate's willingness to support legislation sanctioning a pay-for-play Internet. Similarly, giant media companies like News Corp and Time Warner will pay for the candidates who are willing to support tax breaks, corporate-friendly antitrust laws, and other legal changes calculated to massage the corporate bottom line. Similarly, private military contractors, such as Lockheed Martin and Boeing, will support candidates willing to escalate and fight wars, thereby offering lucrative defense contracts. In all these cases, it will simply be a matter of corporate cost-benefit analysis likely to determine who will ultimately be elected to office.

Clearly, contributions to campaigns made by individuals, unions, and political action committees will invariably wane in comparison to those amounting to billions of dollars that giant corporations will pump into the campaigns of politicians who are willing to support their business interests. The outcome is predictable. Politicians who have been bought by these corporations will win elections. The government will be by the corporations and for the corporations. There will be "free-market" capitalism but no democracy.

Curiously, the Court's decision was based on the ideology that every person has a right to free speech and that, therefore, so do corporations. According to this perspective, the Court's decision should thus be lauded as a move toward a culture of autonomy and away from one of control. However, nothing can be further from the reality.

It is settled law that people should not be free to sell themselves into slavery. Such granting of freedom would be contrary to respecting freedom in the first place; for people should not be free to sell their freedom.