

PARTI PRIS

“The police state will, legally, prevail over the rule of law” - France’s planned surveillance law: an attack on freedom

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The French government is rushing through a bill which will give wide-ranging powers to security and intelligence officials to snoop on the nation’s citizens. The measure, dubbed by some the French version of America’s Patriot Act, will allow spies to tap phones and emails without obtaining permission from judges. It will also allow agents to bug suspects’ homes with microphones and cameras and add covert software to their computers to track every letter and word they type. France’s lower house of Parliament, the National Assembly, will hold its final vote on the draft legislation on May 5th. Though the government has sought to justify the proposed law as a necessary tool in the fight against terrorism, the surveillance bill has met with unanimous opposition from civil liberties groups, administrative bodies and the internet community. Editor-in-chief Edwy Plenel here explains why Mediapart is so passionately opposed to this “wicked” law and urges people to join the public protest against it which is planned for Monday May 4th.

An attack on our fundamental freedoms is in process. Its authors are the people who govern us, ranged around its principal author, prime minister Manuel Valls, and include the minister of justice, Christiane Taubira, whose profound silence on the issue can be taken for approval. Their accomplices are those elected officials who represent us, from Left and Right, and who, with rare and brave exceptions, are hastening to approve this official crime to the point of making it worse with their legislative zeal.

A few cosmetic amendments will change nothing: this law ushers in the general surveillance of our society. Taking advantage of the technical potential of the digital revolution and the political opportunity afforded by fears over security, this proposed law authorises the ‘deep state’ – that shadowy part of government that hides behind the secrecy of security and defence issues, which remains faceless and which is never called to account – to spy on all and sundry, whoever they are, wherever they are, and at any time.

The introduction of this law will mean that from now on in France, the police state will, legally, prevail over the rule of law. It will mean that the government in power will be able to keep surveillance over individual citizens and those close to them without robust restrictions, without independent controls, without judicial authorisation. It will mean that suspicion will replace proof. That opinions will become offences. That associating with people will be seen as proof of guilt. That

curiosity will become regarded as dangerous. That differences and divergences from mainstream thinking or official policies will, potentially, be criminal.

One only has to read the detailed and unanimous opinion that France's human rights watchdog the Commission Nationale Consultative des Droits de l'Homme (CNCDH) has just delivered on the bill to be convinced of these dangers (read it in French, [here](#), on Mediapart). One should not be put off by the length nor the formal legal nature of this appraisal; behind its careful language one can hear the anxious alarm. This document makes short shrift of the standard government view which claims that this bill will, on the one hand, finally give a respectable legal framework to the hidden activities of the intelligence services and, on the other, put in place efficient oversight of those same activities.

From the very start the CNCDH emphasises that, quite the contrary, the way in which this bill has suddenly appeared completely contradicts its stated virtuous intentions. The watchdog highlights the fact that this bill was introduced to the weekly cabinet meeting of government ministers "barely two months" after the terrorist crimes of January and "only several days before the holding of [local] elections whose campaign was marked by a strong presence of populism and extremism". And a bill which had, moreover, been drawn up several months after the umpteenth anti-terrorist law came into force, one "following the [Mehdi] Nemmouche affair", which in turn had come after two other recent anti-terrorist laws "which followed the [Mohamed] Merah affair".

For while unemployment, vulnerability, social insecurity and economic injustices, hardship and misery are relegated to the background in public life, attracting no urgency or sense of priority from those who govern us, more than twenty-five laws relating to internal security have been passed in the last 15 years, between 1999 and 2014. Criticising this "proliferation of legislative measures that are more to do with political opportunism than considered legislative work", the CNCDH "recalls the importance of criminal law and security policy that is thought out, consistent, stable and coherent, and whose quality is not measured by the extent to which it reacts to events and the circumstances of the day".

The CNCDH points to the "greatest possible rush" to push through this legislation, as shown by the government's imposition of an accelerated parliamentary procedure for the measure, a procedure to which the body emphasises its "firm opposition". No current emergency justifies it. This procedure is in fact a government weapon, a means of silencing opposition, to cut short protests, to obstruct the normal working of Parliament, to restrain "considerably the time for reflection and for development that is necessary for a democratic debate".

This arbitrary procedure reveals the intentions of those who are promoting the bill: to play on emotions to impose a regressive measure. The executive is demanding a blank cheque for the 'deep state', for surveillance and the police, with neither appraisal nor assessment, without either oversight or self-regulation. There has been no prior debate, no parliamentary inquiry and no hearings to evaluate the recent security fiascos of the services in charge of the anti-terrorist fight, even though the backgrounds of Merah, Paris kosher supermarket gunman Amedy Coulibaly and the *Charlie Hebdo* killers Saïd and Chérif Kouachi would fully justify one, revealing as they do surveillance failures and a lack of vigilance.

Even worse, the CNCDH highlights the "poor quality" of the study into the likely impact of the legislation that accompanies the bill, its cursory nature, its vague formulations, its way of using "simple assertions that lack any documentary references". For this proposed law is not just a bad bill in itself, it is also of bad quality; badly drafted, incomplete and imprecise. Quite deliberately, this vagueness hides a thousand gremlins; it is a way of avoiding the demand for extreme precision when it comes to any measures that could undermine the right to private and family secrets, a ruse to avoid yielding to rigorous controls of the powers of surveillance, which always carry with them the

risk of arbitrary behaviour.

Calling in its conclusion for “amendments from the Government and Parliament [which] would allow for the reinforcement of the guarantee of public freedoms and fundamental rights”, the CNCDH does not go all the way to the logical conclusion of its own appraisal: the withdrawal or suspension of this law that is prejudicial to our fundamental rights, to the respect of our private and family lives, to our freedom of opinion, expression and information, to our right to know and to communicate.

For this bill certainly authorises “mass surveillance”, writes the watchdog, through the generalised collection of data from our computers, our telephones, our tablets, all those electronic items which are now part of our daily lives, and because of the length of time that data will be stored. On several occasions its appraisal states that the bill’s measures contain “a flagrant violation of article 8” of the European Convention on Human Rights which provides for the right of respect for a person’s “private and family life”.

“The risk of an ‘all-seeing state’ should be taken seriously,” adds the watchdog. In other words, a state that has at its full disposal the technological instruments that give it a comprehensive insight into the private lives of individuals, their secret thoughts, their innermost personality. Even worse, by extending the use of intelligence gathering to include defending the interests of foreign policy and economic and industrial interests, without even taking into account the preventative surveillance of incidents of mass violence, the bill offers a “potentially unlimited” field to intrusions by the intelligence services.

Nor does the CNCDH have many hopes for the ‘Commission Nationale de Contrôle des Techniques de Renseignement’, the body that the proposed law would set up to monitor the implementation of the surveillance measures. The watchdog calls into question the body’s independence, impartiality, its technical ability and its competence, saying these are “not guaranteed” under the legislation as it stands. There is a “strong risk” that the new body’s monitoring will “not be effective”, writes the CNCDH. The final criticism from France’s human rights watchdog - and it is by no means the least important - is that by handing control to the police administration of repressive measures which should be subject to judicial guarantees, this bill “undermines the principle of the separation of powers”.

The price of freedom

Put another way, this proposed law is anti-constitutional, attacking our fundamental law, of which the president of the Republic is usually the guardian. “Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution,” states article 16 of the 1789 Declaration of the Rights of Man and of the Citizen. How can president François Hollande or justice minister Christiane Taubira, neither of them legal experts, remain unmoved in the face of an appraisal so rigorous and unyielding as that of the CNCDH, a commission that is eminently representative of society in all its diversity, and whose highly effective president Christine Lazerges is one of those law professors who have made a point of “rationalising state reasoning”?(1)

If they do not, in one manner or another, stand in the way of this bloodless coup d’État against our fundamental rights, their names will forever be indelibly linked with the most regressive measure against our individual and collective freedoms since the state of emergency - an exemption from the rule of common law - brought in during an era of colonial ignorance. These were special powers imposed by governments - also of the Left - on their own ruling majority in the mid-1950s as France grappled with the Algerian war of independence. Have they forgotten this? A Republic - the Fourth Republic - died as a result, corrupted by sedition and torture, by men who wanted to be unfettered guardians of a security that had become an absolute goal regardless of freedom, something elevated

to an end in itself, whatever the means.

Manuel Valls himself is a prime mover behind this law having, unusually for a prime minister, symbolically made himself the rapporteur of it in the National Assembly, while its legislative passage is being overseen by socialist Member of Parliament Jean-Jacques Urvoas, who behaves more as if he represents the intelligence services than as an elected representative of the nation. Indeed, this bill really is a French version of the Patriot Act passed in the United States in 2001, with both its aims and the way it is being imposed similar to the intentions and actions of the neoconservatives after the 9/11 attack on the US. It involves the authorisation of state surveillance of society without serious or robust limits, made possible by playing on the panic provoked by January's terrorist attacks.

In its own discreet way, the CNDCH highlights the blackmail to which our national representatives and public opinion are currently being subjected: "It is all happening as if simply evoking greater efficiency justifies, without any discussion, the adoption of measures that are most detrimental to freedom." That is why the human rights watchdog takes the trouble to "reassert with force that states should not simply adopt any measure they want in the name of interests rightly considered vital". It adds: "The greatest victory for enemies of human rights (terrorists or others) would be to put in danger the rule of law through the emergence and consolidation of a so-called security state which would give itself legitimacy by adopting measures that are more and more severe and more and more detrimental to fundamental rights and freedoms."

That point has been reached, and that is why, between now and May 5th, all right-thinking people should come together to try and sink this proposed legislation. And if, in spite of this, the law is adopted, to work tirelessly to ensure that it fails at other hurdles, for example the Constitutional Council, the European Court of Human Rights or, quite simply, in society itself, a society roused by its right to show "resistance against oppression", a right that has been recognised since 1789 under article 2 of the Declaration of the Rights of Man and of the Citizen.

For, in addition to the fact that the Left in government has abandoned the issue of freedoms, of extending them and winning new ones, the most astounding aspect of this regressive step in terms of democracy is the sight of a government claiming to defend society against itself. There is in fact no discordant voice among all the different groups in society: from lawyers to judges, from journalists to bloggers, from independent administrative authorities to France's Ombudsman, from human rights groups to trade unions, from organisations in the digital world to social networks and so on, all have shown their unanimous opposition to this anti-freedom law.

But, for those in the know who claim to govern us, their private offices and their public relations staff, this citizens' verdict counts for nothing, even when it is expressed in the National Assembly, from a committee on rights and freedoms in the digital age that is made up of parliamentarians and representatives of civic society. As far as the government and its supporters are concerned, the society that is protesting must be wrong. It is badly informed, badly educated, badly intentioned. There is, in all this, the very worst of anti-democratic pedagogy, in which our representatives haughtily ignore those they are supposed to represent, in which the government proclaims itself the authoritarian guardian over an ignorant or threatening society, and in either case a society that is always kept at arm's length and under surveillance.

"In the course of this century France has several times experienced these panics provoked by attacks, the reaction to which has been skilfully exploited and for which freedom has always paid the price with unwarranted security." That was how journalist Francis de Pressensé, a co-founder of the Human Rights League (Ligue des droits de l'homme), started an article in 1899 which argued against the state of emergency legislation that was passed in 1893 and 1894 against a backdrop of

anarchist attacks which were at the time bringing bloodshed to France's Third Republic.

Pressensé entitled the article 'Our law of suspects' and in it he attacked those who, in having passed the legislation, had degraded the Republic, its ideals and its principles. "An upstart president who plays at being a monarch, an insidiously brutal prime minister who tries to adapt the sword of state to suit his own heavy-handed purpose, a Parliament where everything is represented except the conscience and soul of France." Shaped by the great battle over the Dreyfus Affair that they were involved with at the time, Francis de Pressensé and his peers, who included the socialist politician Jean Jaurès, concluded from it that it was down to society, to the citizens who form that society - in short, the sovereign people - to raise up this conscience and this soul, which had been abandoned and damaged by professional politicians.

We are all faced with the same imperative today: the duty of rebelling against this legal, official, governmental and, perhaps, parliamentary crime, which will become a presidential crime if the law is adopted and officially promulgated. This duty was performed at the end of the 19th century by a young state advisor who, following on from Francis de Pressensé, wrote an indictment of the 1893-1894 laws that was every bit as informed as that of the CNCDH appraisal of the current bill that today concerns us. Because he had to be discreet, he signed it anonymously as 'A Jurist'. But we now know that the author was Léon Blum, the future leader of French socialism, the man who would be behind the Popular Front, which came to power in 1936. It was his first political act.

"Such is the history of the wicked laws," Blum concluded, using words that we readily re-use today. "They deserve to be given this name, it's the name they will keep through history. They really are the Republic's wicked laws. I wanted to show not only that they were dreadful, which everyone knows, but also - and this is less well-known - with just what unprecedented rush, and amid what absurd incoherence and faced with what shameful passivity they were voted through."

Members of Parliament, between now and May 5th you have a choice between shame and honour. The shame of being an accomplice to an attack on freedom. The honour of being faithful to the true Republic.

Edwy Plenel

1. Since this article was first published in French, President Hollande has announced that he will himself refer the legislation to the body that ensures laws conform to the country's constitution, the Constitutional Council, to "convince" people that "this law will in no way undermine freedoms".

P.S.

*"France's planned surveillance law: an attack on freedom". MEDIAPART. 22 AVRIL 2015:
<http://www.mediapart.fr/journal/france/220415/frances-planned-surveillance-law-attack-freedom?onglet=full>

* English version by Michael Streeter. The French version of this article is on ESSF too.