

My name is Adrian Wade.

*This relatively short submission is only as long as it is as a necessary consequence of the length of the epic journey I started on one of Barron Tebbit's bikes as a teenager in the late 80's. A description of the view from an unusual vantage point is difficult to understand without an explanation of how one got there to see it. I also found myself short of time to condense my thoughts on the business of this review. I am aware much longer and denser contributions have been invited - you have my respect and best wishes for that.*

I am not formally trained in law but have directed significant aspects of the negotiation and execution of commercial contracts related to national scale telecom infrastructure projects in Asia. I've lost sleep over enforcing their provisions to the commercial benefit of my multinational employers that saw small people's businesses and lives destroyed. I have also successfully defended innocent employees from the illegal exercise of corporate power over them despite the considerable personal political cost. Law liberates, and law condemns.

The high tech networks I helped deploy promised to help provide the world's poorest with the means to lift themselves from their destitution, which they emphatically did. The speed of the 'progress' we enabled was unforeseen, and the cost of exporting western self interested consumerism with its endless thirst for energy and materials may yet prove to be our collective undoing. Set up with capital from a salary fattened to six figures by performance bonuses, my consultancy in Malaysia lived on part of the considerable difference between operators' energy bills, before and after proposed optimisations. The contractually obligatory datasets I provided burnished my reputation as the 'go to guy' for this sort of analysis but also revealed the ugly fact that, reducing the energy needed for each network node, made it economically viable to deploy more and more of them causing total energy use to skyrocket as fast as pockets bulged. Our Royal Society issued a report\*, a little over twelve months ago, that republishes the 'expert opinions' of former colleagues that are in my hard earned opinion fundamentally misleading in this regard. Advice from foxes about guarding chicken coups usually is.

Misinformation whether politically or commercially motivated is poisonous to the public interest.

A year or so prior to my reluctant return to the UK (I was doing well in Malaysian terms, but couldn't be sure of my ability to fund my son through university as a full fee paying foreigner. He is a UK national but our law requires three continuous years in the domestic school system to be eligible for finance) the Snowden story broke. It was a serious shock.

My partners and I were well aware of the various methods a malicious actor might use to compromise network nodes - our business focused on defeating them in order to permit safe extraction of operating data from equipment deployed in central telecom data facilities where illegitimate access had national security implications.

\*<https://royalsociety.org/-/media/policy/projects/digital-technology-and-the-planet/digital-technology-and-the-planet-report.pdf>

The sheer scale, willful deceptiveness and awesome power of the strategies that GCHQ, and the NSA, were employing was staggering to everyone who understood them.

The initial reaction of my partners and I to this, was to instigate a crowdfunded technology project designed to give ordinary people the ability to enforce their right to freedom from unwanted snooping. Sadly we were forced to expose\* a competing manifestation of our technology proposal as the work of a charlatan who sought only to profit from the huge public interest in such countermeasures - he didn't care about efficacy. His offering would have made a user's plight considerably worse. A false sense of security is, after all, more dangerous than the certainty that your communication's are not secure. Sharing our findings was an ethical necessity that had the predictable effect of destroying public confidence in the overall approach, despite our monumental effort to get our work scrutinised and nodded - with important caveats - in the only forum capable of dissecting and understanding our technology, that being, the dark anonymous, digital realm managed by the TOR project and funded by the NSA.

At this point in my testimony it's worth providing the explanation, and justification, for a counterintuitive strategy employed by the most powerful intelligence agency in the world. The NSA funds the TOR project in order to collaborate with criminals to produce 'free to use technology' explicitly designed to provide an effective way for the truly evil to avoid being brought to book. They do this because mass collaboration by best in class programmers - identified as "best" only by the evidence of their anonymous contributions - ensures that the state of the art is a matter of fact in the public domain (the [EncroChat success](#) illustrates the hubris of thinking you can do better than this). In this way GCHQ, the NSA and so on, reduce the game of cat and mouse to one of simple computational power. Our spies are certain they have many orders of magnitude more computational power available to them than the bad guys do, guaranteeing them victory in any given asymmetrical encryption war with identified targets. The trade off is that they cannot unmask anonymous actors at will: the mathematical laws that govern the science of brute computational cracking power over encryption form the basis of the definition of effective encryption standards. Knowledge of those standards is the mainstay of routine fraud prevention in the modern world. In reality, criminals - those who understand the science at least - can avoid their communications being intercepted by bulk collection.

Apprehension of this fact seriously, if not fatally, undermines the logic of the arguments in favour of forcing private companies to keep records of the public's internet usage. Organised criminals know they should avoid using the public internet so the mass collection of internet usage data that might indicate criminality is useless for the stated legitimate purpose. Petty criminals who are stupid enough to get caught this way are idiot nuisances, and not the international terrorists and drug cartel bogeymen used to justify interference with the public's right to be free from surveillance.

I don't scare easily, but it was a frightening experience to put myself in the position of being publicly identifiable in a forum that is populated by spies and the lackeys of serious organised criminals who I could not, and would not, want to be able to identify in turn.

<https://www.wired.com/2015/04/anonabox-recall/>

I persisted with it regardless, in the certain knowledge that my partners and I had already undermined our own ability to profit from it. I did this because I could see far enough through the mists of prediction how very serious this was all going to become. [The TOR project](#) deserves our collective gratitude for facing down these sorts of fears, and the routine active bullying that comes with that most treacherous territory.

Ultimately, it was neither intimidation or lack of financial resource that rendered the effort futile, but the orchestrated campaign of public disinformation led by a British Home secretary under the dangerously misleading slogan, "If you have nothing to hide, you have nothing to fear."

By this I do not mean to defame Mrs May or the succession of subsequent home secretaries who have reinforced the self fulfilling prophecy of doom that "privacy is dead", but rather to restate the obvious fact of their own technical illiteracy. They could not possibly have understood how wrong they were and how much damage their strident counterfactual proclamations have done to the public interest.

In essence the British public were led to believe by ministers that they ought to only be concerned with how Human Rights protect them as individuals.

Cambridge Analytica proved how dangerous that misdirection could be. They conspired to take advantage of a public who wanted their faith in their own innocence to serve as an effective shield, and saw only joy in publically stabbing at those with differing political views. Mark Zuckerburgs business is an ogre of greed that feeds on political outrage begetting political outrage. Hideous partisan vitriol collects unaware voters like snowflakes into growing ball's of compacted opinion. They gain unstoppable momentum as they roll down, and down. Hitherto the power to deliver micro-tailored propaganda by algorithm did not exist. Malignant actors can now pay the ogre to agitate for political outcomes by delivering cynical mutually contradictory messaging that is based on what analysis robots tell campaigners people want to hear.

Zuckerburg takes anyone's money for this service and does not deign to be held accountable to our laws, whatever they may be. Increasingly our presumed leaders seem to pander to the proclamations of the masses as processed by this nefarious priest of Narcissus as the only way to get elected.

They follow his ogre and its shadow clouds their vision, and perhaps has cost them sight of their obligation to lead.

There is a lot to be afraid of if we don't somehow learn to stop setting ourselves up as targets for manipulation by advertising our strongly held issue based political views and biases publically on social media forums. We have everything to lose.

It is time for us to acknowledge that the threats we actually face are to our democracy, to the ongoing existence of our country as a Union of Great Nations, and to the rule of law itself. We are witnessing an ongoing assault in the court of public opinion on our judiciary. Endless characterisation of politically inconvenient interpretations of legislation as judicial policy making are too freely propagated by politicians. It makes them look as though they are attempting to interfere with the independence of judges.

They must desist. I have lived in countries where politicians and the partisan press they keep in their pockets routinely pillory judges and the human rights lawyers they dare grant hearings to.

It is the road to hell.

Judges create common law by doing their thankless job of trying to make sense of the legislative nonsense that all too frequently issues forth from our parliament. My mind boggles when I attempt to make sense of the two hundred and forty five page investigatory powers bill. I don't see how it is humanly possible to have had meaningful debate over the implications of it in the time available to a parliament. Please forgive - if that is necessary - my suspicion that that was intentional.

It appears it was simply rammed through by a tyrannical majority in a way which served to occlude the intentions of those proposing it. Debate was stifled and, often as not, the opposition didn't show up. It set up a secret court that proclaimed it was answerable to no other. You don't need to be a legal expert to see what that means. In the places I have lived, alluded to above, people also struggle under the cosh of injustice with two different courts claiming supreme authority over their human rights\*. It is an utterly nonsensical way to carry on.

But that place is a corrupt palm oil republic governed by despots who rule in the name of an ethnic majority who sneer at human rights. That place takes the BBC off the air when journalists ask awkward questions about handcuffed corpses. That place is not the United Kingdom.

The central relevance of all this to your deliberations should be clear.

With respect to your first theme, the relationship between our domestic courts and our international court in Europe is in grave danger of breaking down under pressure from a government that doesn't respect it, and is actively encouraging the public to join them in their derision of it. The British Public is largely ignorant of the fact that it has nothing whatever to do with the European Union and the timing of this review only fuels the suspicion that promises to avoid further conflation of the two in the minds of the public were cynically insincere.

Our Judges have done an exemplary job of avoiding conflict and have been hesitant to create precedent likely to produce such conflict. In various judgements I have read, the sense of relief that ECtHR precedent was available to obviate the need for new law, was palpable.

[\\*https://www.reuters.com/article/us-malaysia-religion-ruling-idUSSP20856820070530](https://www.reuters.com/article/us-malaysia-religion-ruling-idUSSP20856820070530)

For example, did our home secretary really not understand that deporting somebody who would surely die a horrible death in the absence of antiretroviral drugs\* would serve as a good example of what is meant by unusually cruel? That the person in question was a vile specimen of humanity does not, and must not, be used as a reason to permit us to behave like him.

There is a very real risk that if we start ignoring ECtHR jurisprudence in such cases, as your ToR suggests we might, we place ourselves at great risk of the sort of sanction visited on banana republics the world over who fall short in their respect for human rights. We have made powerful enemies.

I contend that there is no obvious reason at all to amend anything in our own Human Rights act and if there were, now would be the worst possible time to do it precisely because of how that will be viewed. Suspicions about the motivation and timing of this review appear to be very well founded indeed.

With respect to your second theme, quite frankly much of it comes across as a clumsy insult to the public's intelligence;

1, You note the important role that all three branches of government have in upholding and protecting human rights. We have witnessed in recent years, attempts by the executive through its domination of the legislature to dismantle them and the only thing that has prevented that happening is the judiciary - and here it is in dock for interfering in policy making!

The IPT is an illegal court and has to go - so says the highest court in this land with no reference to ECtHR jurisprudence necessary. That the ECtHR may happen to agree should be no surprise to anyone. This government seems to think it can make its obligations to us go away by means of statute. It can't and needs dressing down for the attempt.

2. Should any changes be made to section 3 and 4?

Emphatically, no.

Our current government has never been content with simply ignoring the demands and constraints of legal due process and here it is trying to find a way to remain a signatory to the convention in nothing but name. We can't get away using the ECtHR as a fig leaf with impunity.

3. Are there instances where, as a consequence of domestic courts and tribunals seeking to read and give effect to legislation compatibly with the Convention rights (as required by section 3), legislation has been interpreted in a manner inconsistent with the intention of the UK Parliament in enacting it? If yes, should section 3 be amended (or repealed)?

\*<https://www.supremecourt.uk/cases/docs/uksc-2018-0048-judgment.pdf>

This is a shocker. How is anyone supposed to know the intention of the UK parliament if it isn't written down in their laws, clearly and unambiguously. As will always happen, cases come before our judges that were unforeseen by lawmakers. Judges interpret the intention in order to avoid incompatibilities. If it were not done that way we would end up with an even more unholy mess of laws than we already have.

We must not change section 3 or amend it in my opinion. If the learned panel assembled can find good reasons to do so that help to strengthen the likelihood of more just outcomes for the weak who this body of law is there to protect, so be it. I still say now is the worst possible time to be doing it. Helping the government of the day to proclaim to the ignorant losers of rights, that watered down protections are political victories is a very bad reason indeed.

4. It is absurd to suggest that laws that flout our human rights are better addressed by the people who concoct such odious statutes than those who identify the nature of their failings.

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I have run out of time. I have said enough. I've had enough.

We have lived under illegal surveillance\* by the state for too long now. Terrorist's scare only politicians and not the lionhearted British people. They disgust us; but we are not cowards and I charge that those who illegally take away our human rights under the auspices of protecting us are just that. Cowardly law breaking populists who do us an enormously disrespectful disservice.

Many of us bear the hardships they cause. Yet we abide in patience until we can remove them - legally.

We are looking over the edge into a bottomless abyss and I urge this panel to be very cautious indeed. We are reeling from calamitous damage by forces both beyond, and well within, our control. This boat needs steadying - not more rocking.

Our government should be focusing on making good their transgressions. Dangerous constitutional meddling that seeks to legitimise them is wrongheaded. They are victims of their own undefined promises to take back control. They are not to seize the power of our judiciary for the sake of their own political skins. Control can't legitimately mean that.

Law liberates, and law condemns - whole nations as well as individuals.

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*The author is happy to provide any clarifications requested.*

\*<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200123en.pdf>