

The Dangers of Surveillance

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OUTLINE OF THE PAPER

- ▶ Establish the modern scope of surveillance and what legal precedents exist
- ▶ Detail the harms of surveillance
 1. Intellectual Privacy
 2. Watch/Watcher Power Dynamics
- ▶ Four recommendations for limiting harms

A DEFINITION OF SURVEILLANCE

The focused, systematic and routine attention to personal details for purposes of influence, management, protection, or direction
(David Lyon)

THE SCOPE OF SURVEILLANCE

- ▶ Governments — Autocratic and Democratic
- ▶ Liquid Surveillance
 - ▶ Private Companies — Behavioural Advertising
 - ▶ Big Data — Target
 - ▶ Internet of Things — MyRate Driving
- ▶ Corporation and State Cooperation

● This article is more than **10 years old**

The new totalitarianism of surveillance technology

Naomi Wolf



If you think that 24/7 tracking of citizens by biometric recognition systems is paranoid fantasy, just read the industry newsletters

WHAT LEGAL PROTECTIONS EXIST?

- ▶ First and Fourth Amendment Rights
- ▶ Electronic Communications Privacy Act (ECPA)

BUT...

- ▶ NSL — "Relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities"
- ▶ State-Secrets Doctrine

INTELLECTUAL PRIVACY

The idea that free minds are the foundation of a free society, and that surveillance of the activities of belief formation and idea generation can affect those activities profoundly and for the worse.

NORMATIVE CLAIMS ON INTELLECTUAL PRIVACY

- ▶ Freedom of thought is a core of Western values.
- ▶ Cannot have freedom of speech without freedom of thought

EMPIRICAL CLAIMS ON INTELLECTUAL PRIVACY

- ▶ Cultural and Literary Works - 1984, Panopticon
- ▶ Surveillance Studies — EU Data Retention Directive —
“under pervasive surveillance, individuals are inclined to
make choices that conform to mainstream expectations”
- ▶ First Amendment Doctrine — Chilling Effect

BEYOND INTELLECTUAL PRIVACY

- ▶ What are the concrete effects?
- ▶ Power Relationships under surveillance.

BLACKMAIL

- ▶ Dr. Martin Luther King Jr.
- ▶ Eastern European Elections
- ▶ Libyan Government under Gadhafi

PERSUASION

- ▶ Subtler than blackmail
- ▶ Target
- ▶ CCTV Cameras

SORTING/DISCRIMINATION

- ▶ Census Records — Internment Camps
- ▶ Marketing Profiles

QUICK RECAP

- ▶ Surveillance is widespread, and few legal protections exist
- ▶ Challenges to intellectual privacy
- ▶ Distorts power dynamics

... So, what do we do about it?

LIMITING SURVEILLANCE

Four principles to protect us from overwhelming harm.

SURVEILLANCE TRANSCENDS THE PUBLIC/PRIVATE DIVIDE

- ▶ Statutory laws — binds both government and nongovernment actors
- ▶ Database restrictions — Driver's Privacy Protection Act of 1994

SECRET SURVEILLANCE IS ILLEGITIMATE

- ▶ Freedom of Information Act
- ▶ Fair Information Practices — “there must be no personal-data record-keeping systems whose very existence is secret”

TOTAL SURVEILLANCE IS ILLEGITIMATE

- ▶ Potential for massive abuse
- ▶ Rest upon existing legal basis of wiretapping

SURVEILLANCE IS HARMFUL

For all the reasons we've seen so far

- ▶ Menaces intellectual privacy
- ▶ Creates power imbalance

Surveillance deserves more than just probable cause

MY THOUGHTS

1. Very Americentric
2. A lot has happened since 2013

DISCUSSION QUESTIONS

- ▶ To what extent do “social media bubbles” reflect instances of sorting and persuasion vs. an accidental consequence of prioritizing engagement? Does the intent matter?
- ▶ How should the law treat third party actors who engage in surveillance (i.e, observing a hacked CCTV camera)?
- ▶ How does a Canadian perspective on free speech and expression affect our perception of legal protections against surveillance? R. V Elliott case?
- ▶ How should a legal framework address the collection of data across borders (e.g, TikTok in North America)?