

of the State to take steps to secure information about Lovelady's whereabouts at the time in question to disprove Oswald's alibi—and this could not have been predicted beforehand.

As well as it being clear that one usually cannot know in advance what information the agents of the State are morally permitted to secure it is also clear that once it becomes evident what information they are permitted to secure, gathering this is frequently difficult—as the continuing controversy over “who shot JFK?” indicates. Putting these two facts together, then, it is evident that there should be no moral bar against the agents of the State installing surveillance devices to secure all the information that they might potentially be permitted to secure access to, provided that *they only access the information thus gathered in circumstances where this access is morally permissible*. Thus, since it is *potentially* morally permissible for agents of the State to secure information about events no matter when or where they take place, it is morally permissible for the State to subject its citizens to surveillance at all times and in all places, provided that the information thus gathered is only accessed in the morally appropriate circumstances.

## FURTHER CLARIFYING THE ARGUMENT

Yet despite the above disclaimer that this argument is by no means as radical as it appears the conclusion that it is morally permissible for the State to subject its citizens to constant surveillance might still seem chilling. To alleviate this concern the above pro-surveillance argument should be clarified in two ways. First, it must be emphasized that although this argument leads to the conclusion that it is morally permissible for the State to place its citizens under constant surveillance, it does *not* lead to the conclusion that it is morally permissible for the State to have access to *all* of the information that its surveillance devices secure. Instead, this argument leads only to the conclusion that the State should have access to the information recorded

by these devices that it is *morally permissible* for it to have access to. Of course, the question of the extent to which the State is morally permitted to secure information about the actions of its citizens, or the events that they are involved in, is a vexed one. It is, for example, debatable as to how far the privilege that is accorded to information divulged within certain professional relationships (such as those between clergy and penitents,<sup>9</sup> doctors and patients,<sup>10</sup> lawyers and clients,<sup>11</sup> counselors and clients,<sup>12</sup> or journalists and sources<sup>13</sup>) should extend, and for what reasons (if any) such privilege should be trumped by other considerations.<sup>14</sup> It is also debatable as to whether the increased powers accorded to law enforcement agencies by the Patriot Act to secure information about suspects or “persons of interest” are morally legitimate.<sup>15</sup> However, it must be stressed that the question of *what* information the State that subjects its citizens to constant and universal surveillance should have access to is separate from the question of *whether it is morally permissible to place them under surveillance at all*—and it is the *latter* question that is at issue here.

The second way in which this pro-surveillance argument must be clarified is related to the first. In cases where agents of the State *are* morally permitted to access information about the actions of others the information that they are morally permitted to secure is limited to the *minimum* that is needed for them to achieve the legitimate purposes for which they need it. Accordingly they are not morally permitted to have access to, for example, videotaped records of the actions of others if the information that they are morally permitted to secure could be gleaned from an automatic transcription of such videotape. Thus, although it might be morally permissible for an agent of the State to secure detailed information about a criminal defendant's past adultery if this is relevant to the State's case against him in a criminal trial, it does not follow that it is also morally permissible for this agent to watch a videotape of the defendant in the act. Similarly, the agents of the State would only be morally permitted to place citizens under surveillance in private areas such as their

homes or offices if they could achieve this without accessing more information than they were morally permitted to access. It would thus not be morally permissible, for example, for the agents of the State to enter a person's house to install surveillance devices in it. This is because in doing so they would access more information than they were morally permitted to access (e.g., they would find out information about his domestic habits and the interior of his home during the installation process) for the installation of such devices would have to occur *before* there were reasons to believe that the State was morally permitted to secure such information to detect and prosecute criminal activity. Indeed, it is likely that, with respect to the interiors of the homes of most of the State's citizens, such reasons will never be forthcoming.

This second clarification of the above pro-surveillance argument is important in three respects. First, it underscores the fact that this argument does not cede to the State any information-gathering powers that it does not already enjoy. Second, it emphasizes that the conclusion of this argument is a parsimonious one, insofar as it only supports the State's securing the *minimum* amount of information that it needs for its morally legitimate purposes. This argument will thus *not* support the use of any surveillance devices that enable the State to secure more information than is necessary for its morally legitimate purposes. As such, although this argument does show that the State is morally permitted to use surveillance devices to gather information about events that occur in private areas (such as private offices and houses) it restricts its use of such devices to those whose use does not necessitate the State's securing any more information than it is morally permitted to secure. Thus, as noted above, this argument will not support the installation of surveillance devices in, for example, persons' homes without their consent. Although it does support the use of any technology, such as, for example, infrared thermal imaging systems that record the movements of persons in their homes, which could secure information about the events that occurred to them, that would not entail the State's securing of information

that it was not entitled to.<sup>16</sup> Similarly, this argument will also support the use of future surveillance technology that can similarly be used to record events that occur in persons' homes without having to enter them. Finally, and in a related vein, once it becomes possible for surveillance technology automatically to provide a written narrative of events, the use of any type of surveillance technology that provides *more* than this information, such as, for example, manned closed-circuit television monitors, and videotapes, will *cease* to be morally justified by the above pro-surveillance argument. Rather than justifying the *expansion* of the State's powers of surveillance, then, the above pro-surveillance argument will instead eventually justify their *curtailment*.

## THE ADVANTAGES OF UNIVERSAL STATE SURVEILLANCE

If the above pro-surveillance argument is sound, then it is morally permissible for a State to subject its citizens to constant surveillance. Given the horror with which the current proliferation of surveillance devices is usually greeted this conclusion is not likely to be a popular one. However, before turning to rebut the objections that it will be faced with, some of its advantages should be outlined.

The most obvious advantages to the State's installing such a surveillance system would result from the fact that witnesses would no longer be needed in either criminal or civil cases, for their testimony would be supplanted by information supplied by surveillance devices. Unlike witness testimony, this information would be accurate. It would, for example, be unaffected by any biases (whether conscious or unconscious) that human witnesses might be subject to and which could taint their testimony. It would also be free from distortions, whether deliberate (e.g., the witness is lying, or omitting parts of the truth), or accidental (e.g., the witness has a faulty memory). Moreover, the juries and judges to whom the information taken from surveillance devices would be presented in a court could take it at its face value, rather than having

subjectively to assess its accuracy in the light of the perceived reliability of the witness from whom it was taken. Furthermore, the fact that witnesses would no longer be needed under a system of constant and universal State surveillance would also benefit those who would otherwise have served in this capacity. Most obviously, they would no longer be burdened with the task of testifying, which might have required them to travel, or to take time off work. They would also be relieved from any threats that they might have faced from persons who would be adversely affected either by their testimony (e.g., the defendants, or their associates), or by its lack (e.g., the prosecutors).

A system of constant State surveillance would have other advantages, too. Under the current criminal justice system a wealthy defendant who is innocent of the charges that she is faced with can use her wealth to hire private investigators to demonstrate her innocence, either by finding persons who witnessed the crime of which she is accused, or by finding persons who can provide her with a legitimate alibi. This option is not open to poorer defendants who are similarly innocent, but who cannot afford to hire private investigators. Since this is so, innocent, poor defendants are more likely than innocent, wealthy defendants to accept plea-bargains, or to be convicted of crimes that they did not commit. If, however, a poor person were to be accused of a crime in a State that subjected its citizens to constant surveillance, the judge in her case would be morally justified (indeed, would be morally *required*) in enabling the defense to secure information that would prove her innocence, and that would have been gathered by the State's surveillance devices. A State's use of constant surveillance could thus reduce the number of persons who are wrongfully convicted. This would not only be good in itself, but it would also lead to a more equitable justice system, for the disparity in wrongful conviction rates between the wealthy, who could use their wealth to prove their innocence, and the poor could be eliminated.

In addition to these advantages constant State surveillance would also benefit the State's citizenry at large, by serving as a deterrent to

crime. This would not be because the citizens who lived under State surveillance would never know when they were being watched, and so would refrain from committing crimes for fear of being caught in the act, as would persons in both 1984 and Jeremy Bentham's Panopticon.<sup>17</sup> As is clear from the second clarification of this pro-surveillance argument, above, this argument does not justify the State watching its citizens, for in doing so it would acquire more information about them than it is morally permitted to acquire. However, if were the State to subject its citizens to the degree of surveillance that would be justified on the above argument its citizens would know that whenever a crime was committed its performance would be recorded, and so its perpetrator would be likely to be apprehended. This knowledge would deter many potential criminals from committing crimes.<sup>18</sup> It would also deter law enforcement officers from extending the limits of their authority.<sup>19</sup> To be sure, the knowledge that one's criminal act would be recorded would not deter all potential criminals from committing crimes. Some persons would still commit crimes of passion, and of anger; others would succumb to the temptation to commit an opportunistic theft, act under the influence of drugs or alcohol, or act on the belief that they would not be caught. But most persons would simply judge that the commission of crime not to be worthwhile once they are realized that they were subject to constant State surveillance, and so such surveillance would serve as an effective deterrent to most criminal activity.

## TWO INITIAL OBJECTIONS

Despite the advantages that would accrue to a system of constant State surveillance of the type that is defended above there are two immediate objections that its proponents must face. The first is that such a surveillance system would be open to abuse. The second denies the claim that it is morally permissible for agents of the State (e.g., judges) to compel witness testimony or authorize information-gathering surveillance.

### The Objection from Potential Abuse

The most obvious objection to a system of constant State surveillance is that it would be open to abuse. Jay Stanley and Barry Steinhardt, for example, note that the FBI's "Carnivore" program, which is "supposed to be used to tap into the email traffic of a particular individual," will filter through "all the traffic on the Internet Service Provider to which it has been attached"—and they note, "the only thing that is keeping the government from trolling through all this traffic are software instructions written by the government itself."<sup>20</sup> Similarly, they note that under the PATRIOT Act the FBI need not show any probable cause (or even reasonable suspicion of criminal activity) to gain access to "individuals' financial records, medical histories, Internet usage, travel patterns, or . . . other records"—a situation that is ripe for abuse.<sup>21</sup> It must be admitted that, in practice, a system of constant State surveillance *is* likely to be abused to some extent.<sup>22</sup> However, if one adopts a rights-based understanding of claim (ii), above (i.e., if one holds that such a system of State surveillance is permissible as it does not in itself violate persons' moral rights) the theoretical force of this objection can be rebutted. On such an understanding of claim (ii) one could first note that this abuse-based objection gets its force from the view that such abuse would violate persons' moral rights. The proponent of a rights-based understanding of claim (ii) would certainly agree with this underlying view, and would join with its advocates in condemning such abuse. However, the rights theorist who was in favor of such a system of State surveillance would also note that the condemnation of the *abuse* of State surveillance is not to condemn State surveillance *itself*. To condemn the use of *x* for the purposes of *y*, where *y* violates persons' rights (e.g., to privacy or autonomy) is *not* also to condemn the use of *x* for the purposes of *z*, where *z* does *not* violate persons' rights. Thus, a rights theorist who was a proponent of State surveillance could argue that to offer the possibility of abuse as an objection to constant State surveillance is to confuse the moral status of different possible uses of such

surveillance. This is not, of course, to downplay the either the badness of any abuse that might take place, nor to avoid the question of what practical measures should be imposed to attempt to minimize it. However, it is important to note that to object to a system of surveillance on the grounds that it could be abused is not to object to the surveillance itself, unless one believes (and can show) that the abuse in question would necessarily occur.

If one adopts a consequentialist understanding of claim (ii), however, defending the use of constant State surveillance against this objection is more difficult. This is because the likelihood of such abuse together with the likelihood of such abuse causing harm must be weighed against the benefits (as outlined above) that such a system is likely to provide. And, given that such a system has not yet been implemented, such a weighing and balancing of its relative costs and benefits will be difficult to assess with certainty. As such, then, the moral legitimacy of such a system would depend upon the political context in which it was proposed. If there is good reason to believe that little harm will accrue from the abuse of such a system of surveillance and there is reason to believe that it would bring important benefits to the citizens of the State in which it is installed, the possibility of its abuse should not deter consequentialists from endorsing the above pro-surveillance argument. Thus, it seems that installing a system of State surveillance in a State that possessed little power, a State that was too weak to exercise its power, or a State that had strict limits placed upon its power *and* that adhered to them, would be justified on a consequentialist understanding of claim (ii). However, installing a system of State surveillance in a State that possessed considerable power over its citizens, that was strong enough to exercise such power, or that either had little restraints imposed upon it in its dealing with its citizens, or that had such restraints but frequently failed to adhere to them, would be unlikely to be justified on a consequentialist understanding of claim (ii).<sup>23</sup>

### Compelling Testimony Is Morally Impermissible

Both the rights theorists and the consequentialists who support the introduction of a system of constant State surveillance can thus meet the objection that such a system might be abused—although it should be noted that the consequentialist's response is such that the imposition of such a system would not be justified in some States. What, then, of the second objection that those who support the introduction of such a system of State surveillance are faced with: that it is not morally permissible for the agents of the State (e.g., judges) to compel witness testimony or authorize information-gathering surveillance with probable cause? This second objection is less plausible than the first. As was noted in the initial clarificatory section of this essay the above pro-surveillance argument is a *conditional* argument, such that *if* it is ever morally permissible for an agent of the State (e.g., a judge, or a prosecutor) to secure information from a witness about past events, *then* it is morally permissible for her to use State surveillance devices to secure the same information. For the antecedent clause of this argument to be true all that needs to be true is that *in at least one case* it would be morally permissible for a judge to secure information from a witness. And this latter claim is very plausible indeed, for both rights theorists and consequentialists alike. To see this, assume that Lee Harvey Oswald really was innocent of the assassination of John F. Kennedy, and, to prove his innocence, needed to secure the photograph that was taken of him standing in the doorway to the Texas School Book Depository at the time of the shooting. Assume also that the owner of this photograph disliked Oswald, and wanted to see him wrongly convicted. Here, it would clearly be morally permissible for the judge in Oswald's case to require that the owner of the photograph produce it in evidence. This claim becomes even stronger if the production of this photograph would cost its owner nothing but the frustration of his desire to see Oswald wrongly convicted; if, for example, the judge sent a messenger over to the house of the owner of the photograph to collect a copy of it,

that he paid for this, and so on. Of course, extreme libertarians who oppose *any* form of interference by the State in the lives of its citizens would still hold that even this minimal interference in the life of the owner of the photograph is morally impermissible, and that under no circumstances should private individuals be required to give up any information, or any evidentiary items, that they might happen to possess.<sup>24</sup> It is not easy to provide a definitive rebuttal to this extreme libertarian position.<sup>25</sup> However, the advantages that this strict libertarian position possesses in terms of its ease of defense are, for most persons (rights theorists and consequentialists alike) greatly outweighed by its highly counterintuitive results. (Or, at least, results that are counterintuitive to everyone *but* an extreme libertarian!) It is simple to construct examples in which the ill effects that result from a person's refusal to produce an item of information in evidence are vast, and where the costs to him of supplying this information are tiny. Imagine, for example, a case in which ten men will be executed for a crime that they did not commit unless a man who for idiosyncratic reasons of his own dislikes discussing what clothes he wore in the past discloses to their judge which clothes he wore on the day of the crime. In this case the clothes that the uncooperative witness wore are, for some reason, crucial to establishing whether it is the accused, or another group of ten men, who committed the crime in question. Clearly, in this case it would be counterintuitive to claim that the judge was not justified in requiring this man to reveal what clothes he wore on the day in question. As examples such as this multiply against the extreme libertarian's position, with the ill effects of the failure to produce the information increasing, and the costs involved in its provision decreasing, the claim that it is not morally permissible for a judge to impose the costs in question on the person withholding the information becomes increasingly implausible. And, once one accepts that for *any* case outlined in an example such as this, it would be morally permissible for a judge to secure the information in question, then one will have granted the truth of the antecedent

claim on which this conditional argument in favor of surveillance rests. That is, once one grants that for any given case that it would be permissible for a judge to secure the withheld information, then one must also grant that it would be permissible to use State surveillance to secure the same information. And, since the State cannot tell where or when the actions or events that this information pertains to would occur, one would then also have to grant that the State would be justified in gathering information about *all* actions and events that occur, with, of course, the proviso that it can only *access* that which it is morally permissible for it to access. Unless one wishes to endorse the extreme libertarian's highly counter-intuitive claim that under no circumstances at all can a judge secure information from a witness that is relevant to a case in his court, then, one should reject this second objection to the above pro-surveillance argument.

## SURVEILLANCE, PRIVACY, AND AUTONOMY

The two most obvious and immediate objections to the above pro-surveillance argument can thus be met. However, it still faces two more. The first of these is based on the claim that such a surveillance system would violate the privacy of those subjected to it. The second is based on the claim that it would illegitimately compromise their autonomy.<sup>26</sup>

Both of these objections have been leveled by Stanley and Steinhardt against the increase in surveillance in the United State under the administration of George W. Bush. According to Stanley and Steinhardt, both "Privacy and liberty in the United States are at risk," as it is "at risk of turning into a Surveillance Society."<sup>27</sup> As was noted above in discussing the consequentialist understanding of claim (ii) in response to the objection that a system of State surveillance of the type outlined above could be abused, the worries that Stanley and Steinhardt express would be legitimate ones in certain political contexts—including that which they are explicitly addressing. However, were the system of surveillance

that is outlined above to be installed in a State that would be unlikely to abuse it, neither of their objections would be sound.

The objection that constant State surveillance would violate the privacy of those subject to it rests on a failure to acknowledge the legitimate limits of the proposed surveillance. On the system of surveillance argued for above the State would only be permitted to access the information that its surveillance devices gather *when it is morally permissible for it to do so*. As such, the State's use of such a surveillance system would not enable it justly to access any more information than it is morally permitted to access already. This point is not reiterated to defend the system of State surveillance advocated above on the grounds that it would not violate the privacy of its citizens any more than this is violated already. Rather, it has been reiterated to provide the basis for a *stronger* defense of this system of State surveillance: *that it would not violate the citizens' privacy at all*.

To develop this strong defense of the system of State surveillance advocated above it must be recognized that privacy is both a relative notion, and a normative notion. A certain item of information is private *relative to* a certain person, if that person cannot *legitimately* (a normative concept) require that that item of information be disclosed to her.<sup>28</sup> For example, my use of the checking account that I share with my wife is not private with respect to her, for she can legitimately require that I disclose my use of it to her. However, it is private with respect to my colleagues, who cannot legitimately require that I disclose my use of it to them. Similarly, the examination score of a student in my class is not private with respect to the student, since she can legitimately require its disclosure, but it is private with respect to my wife, who cannot. Given, then, that privacy is both a *relative* notion and a *normative* notion, and since, according to the pro-surveillance argument above, the agents of the State can only access those items of information that they are morally permitted to access, it is clear that the above pro-surveillance argument does not justify the violation of the privacy of the State's citizens. According to that argument,

the only time at which the State could permissibly access information about actions or events would be when it was morally permitted to do so; that is, when it could *legitimately* require that this information be disclosed to it. This being so, under the system of State surveillance argued for above, the State could only access information that is *not* private relative to it. Thus, in accessing such information the State would not violate the privacy of its citizens.<sup>29</sup>

Just as constant and universal State surveillance of the sort argued for above would not violate the privacy of the persons subject to it, nor would it compromise their autonomy—although it is easy to see why one might think that it would. In 1984 Oceania's citizens adjusted their behavior when they were in the presence of tele-screens to conform to the way that they believed that Big Brother's Party wanted them to behave.<sup>30</sup> Were they not to do this, and were they to be observed by agents of Big Brother during their refusal to conform, they risked severe punishment. To avoid the penalties that the Party would impose on them if they failed to conform to its expectations, then, Oceania's citizens ceded a degree of control over their actions to the Party. That is, when they acted out of fear that Party members were observing them, and so acted to conform to the Party's view of how they should behave, the citizens of Oceania satisfied their individual first-order desires to "Perform the actions that the Party wants me to perform." To the extent that they thus ceded control to the Party, then, Oceania's citizens were other-directed, and so heteronomous, rather than being self-directed, and so autonomous.<sup>31</sup> Thus, in 1984, Big Brother's citizens suffered from compromised autonomy as a result of being subjected to (or, potentially subjected to) State surveillance.<sup>32</sup>

Fortunately, however, the citizens of a State that utilized the type of constant surveillance that would be justified on the above pro-surveillance argument would not similarly suffer from compromised autonomy. As noted earlier such a surveillance system would not utilize the type of in-person surveillance that was used by Big Brother's Party in 1984. Instead, it would merely record the

actions of the citizens and the events that they participated in. Since this is so, most of the citizens subject to this form of State surveillance would not believe that they needed to alter their behavior to conform to the State's view of how they should act (were the State even to hold such a view) for they would recognize that the State would not actually be watching them. Moreover, if they were law-abiding then they would also recognize that the chances of the State having just cause to access information about their actions would be very slim indeed. Free from the pressure to conform of the sort that was imposed upon the citizens of Oceania, then, most citizens whose State subjected them to constant and universal surveillance of the type outlined above would *not* cede control over their acts to the State. The citizens of such a State would thus not become heteronomous with respect to their behavior, as did the citizens of Oceania. Instead, they would retain their autonomy with respect to it. Moreover, the claim that most citizens placed under constant State surveillance would not suffer from any diminution in their autonomy is not merely a speculative one. Persons subjected to surveillance are unlikely to alter their behavior once they become used to being "on tape" (unless they previously performed acts that they believed that they should not have been performing) when they realize that there is little chance that the information that the surveillance devices record would ever be required, and so there is little chance of their actions ever being observed.<sup>33</sup>

Of course, not all the citizens of a State that utilized the type of surveillance advocated above would retain full autonomy with respect to all of their actions. The exceptions would be those who are criminally inclined, and who, as a result of being placed under State surveillance, would alter their behavior by refraining from committing crimes. Such persons would suffer from compromised autonomy with respect to their deliberate omission of criminal activity, insofar as they alter their behavior solely to avoid incurring criminal penalties. Yet, given that the actions that these persons refrain from performing are criminal ones, the diminution in

autonomy that these persons would experience as a result of being placed under State surveillance is one that it is morally legitimate to inflict upon them.<sup>34</sup>

## CONCLUSION

It is now time to take stock. Although it is often claimed that the recent proliferation of surveillance technology is turning the West into an “Orwellian nightmare” it was argued in this paper that, rather than condemning the prospect of constant State surveillance, we should instead welcome it—provided that we lived in a State where its abuse would be unlikely.<sup>35</sup> Such surveillance would not, however, involve any expansion of State power into the lives of its citizens. If, under certain circumstances, it is morally permissible for judges to secure information relevant to their cases from witnesses, then, under the same circumstances, it should also be morally permissible for them to secure this information through the use of surveillance devices. Constant State surveillance is thus no different in principle than the current system of subpoenaing witnesses. Moreover, the State’s use of such surveillance would be morally *preferable* to the subpoenaing of witnesses. It would, for example, avoid the need to impose costs on those who would otherwise be called as witnesses, and it would result in the provision of more accurate information. There are, of course, practical concerns that must be addressed before any such State surveillance system is put in place. But since, as has been argued in this paper, there is no *principled* reason to oppose such a system, but there is reason to endorse it, once worries about the possibility of such a system surveillance being abused are laid to rest the road would be clear for its introduction. Big Brother would then indeed be watching over us. But, unless one has criminal tendencies, this should be a cause for relief, rather than concern.<sup>36</sup>

## NOTES

1. George Orwell, *1984* (London: Secker and Warburg, 1987), 119.
2. *Ibid.*, 123.
3. I thank an anonymous referee for pressing me on this point.
4. Note, however, that owing to the possibility that a constant and universal system of State surveillance will be subject to abuse it will be easier to justify such a system if one adopts a rights-based approach to ethics than if one adopts a consequentialist approach. This is discussed more fully below.
5. At least, if one accept a plausible version of consequentialism, such that human well-being is the good to be maximized.
6. A further clarification is also in order. Since claim (ii) can be accepted by both rights theorists and consequentialists, the fact that the arguments for the view that a system of State surveillance is morally preferable to the absence of such a system are based on the good consequences that such a system would have does not preclude rights theorists from accepting these arguments. A rights theorist could endorse such consequentialist reasoning provided that such a system of State surveillance would respect those moral rights that she believes that persons possess.
7. That Anglo-American common law recognizes these exemptions to personal privacy was noted by Warren and Brandeis in their seminal article “The right to privacy [The implicit made explicit],” in Ferdinand D. Schoeman, ed., *Philosophical Dimensions of Privacy: An Anthology* (Cambridge: Cambridge: University Press, 1984), 78, 88–89. Warren’s and Brandeis’s approval of, and lack of defense of, such exemptions indicates both that they found them to be morally permissible, and also that they assumed (as it is also assumed in the arguments in this paper) that this view would be so widely accepted as to need no defense.
8. Although the claim that, under certain circumstances, judges are morally permitted to compel witnesses to testify and to permit law enforcement agencies to monitor suspects is innocuous, the question of under what circumstances such compulsion and surveillance is morally permissible is a contentious one. As will be noted below, however, the arguments in this paper rest only on the innocuous view *that in some circumstances* such compulsion and surveillance is morally permissible, and not on any substantive claims concerning *when* such information gathering is morally permissible.



9. See, for example, Robert J. Araujo, "International Tribunals and Rules of Evidence: The Case for Respecting and Preserving the 'Priest-Penitent' Privilege Under International Law," *American University International Law Review* 15 (2000): 639-666.
10. See, for example, Jean V. McHale, "Medical Confidentiality and Legal Privilege," *Journal of Applied Philosophy*, 11, no. 2 (1994): 241-242.
11. See, for example, Paul R. Rice, "Attorney-Client Privilege: The Eroding Concept of Confidentiality Should Be Abolished," *Duke Law Journal* 47 (1998): 853-898, and John R. Przybynszy, "Public Assault on the Attorney-Client Privilege: Ramifications of *Baltes v. Doe*," *Georgetown Journal of Legal Ethics* 3 (1989): 351.
12. See, for example, Alan Meisel, "Confidentiality and Rape Counseling—Privacy vs. the Right to a Fair Trial," *Hastings Center Report* 11 (1981): 5-7.
13. See, for example, both Mark R. Wicclair, "A Shield Privilege for Reporters vs. the Administration of Justice and the Right to a Fair Trial: Is There a Conflict?" *Business and Professional Ethics Journal* 4 (1985): 1-14, and Richard P. Cunningham, "Commentary on Wicclair's: A Shield Privilege for Reporters vs. the Administration of Justice and the Right to a Fair Trial," *Business and Professional Ethics Journal* 4 (1985): 15-17.
14. For a general discussion of this issue see Bernard Baumrin, "Is There a Freedom Not to Speak?" *Metaphilosophy* 6 (1975): 25-34.
15. Thus, this argument should *not* be taken as an endorsement of the extended surveillance powers granted to law enforcement agencies by this Act.
16. The use of such technology was noted by Andrew J. Charlesworth, "Privacy, Personal Information, and Employment," *Surveillance and Society* 1, no. 2 (2003): 218.
17. Jeremy Bentham's Panopticon was originally designed to be a humane prison, in which the prisoners were reformed through subjecting them both to isolation and to the possibility of covert surveillance. Such conditions, Bentham thought, would lead the prisoners to modify their own behavior to conform to that which they believed their (possible) observers would endorse. The Panopticon was designed as a ring of cells, in the center of which was an observation tower equipped with special shutters, so that the guards could see out, but the prisoners could not see in—and so could not tell if they were being watched or not. See Jeremy Bentham, *Panopticon, or, The Inspection House*, originally published 1791, and Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford: Clarendon Press, 1993).
18. That overt surveillance deters persons from committing crimes is well documented. J. Ditton and E. Short, for example, have shown that the use of CCTV surveillance in Airdrie, Scotland, resulted in a significant reduction in crime in the immediate area, with no displacement of criminal activity to the adjoining areas without CCTV. They also noted that after the introduction of CCTV there was a reduction in the number of large-scale affrays. "Evaluating Scotland's first town center CCTV scheme," in C. Norris, J. Moran, and G. Armstrong, eds., *Surveillance, Closed Circuit Television and Social Control* (Aldershot, UK: Ashgate, 1998), 155-174.
19. In a survey on the effect that the presence of CCTV had on police behavior that was conducted by Benjamin J. Goold between June 1997 and March 2000 in six towns in the south of England over two-thirds of the fifty police officers interviewed said that "the introduction of cameras had forced them to be 'more careful' when out on patrol" to avoid being prosecuted for such breaches of duty as unlawful arrest or assault. See Benjamin J. Goold, "Public Area Surveillance and Police Work: The Impact of CCTV on Police Behavior and Autonomy," *Surveillance & Society* 1, no. 2 (2002): 192, 194.
20. Jay Stanley and Barry Steinhardt, *Bigger Monster, Weaker Chains: The Growth of an American Surveillance Society* (ACLU Technology and Liberty Program, 2003), 8.
21. *Ibid.*, 9.
22. Benjamin J. Goold claims that 1% of the targets tracked by CCTV operators in Britain are for voyeuristic purposes. See his *CCTV and Policing: Public Area Surveillance and Police Practices in Britain* (Oxford: Oxford University Press, 2004), 144. It must be stressed that the use of CCTV that Goold examined was not subject to the penalties that are proposed for misuse in this paper.
23. As such, then, it is highly unlikely that State surveillance of any but the most minimal kind would be justified in the contemporary United States, owing to the lack of judicial oversight of State action that Stanley and Steinhardt note.

24. Few rights theorists ascribe to this extreme libertarian position. Instead, the rights that they ascribe to persons such as privacy, or private property, are frequently conditional on such persons not being situated in "emergency situations" such as this.
25. One might, of course, challenge the extreme libertarian to provide a defensible account of the strong property rights that she must invoke as a basis for her argument. But this would not provide a definitive rebuttal of the extreme libertarian position so much as it would merely shift the burden of proof to its proponents.
26. These two objections might also be expressed in terms of moral rights, namely, that such surveillance would violate the citizens' right to privacy, or their right to autonomy. If the following arguments are sound, then, they also show that such rights-based objections are mistaken. See also notes 31 and 36.
27. Stanley and Steinhardt, *Bigger Monster, Weaker Chains*, p. 1. Although Stanley and Steinhardt use the term "liberty" rather than "autonomy," they make it clear in their essay that they are concerned with the erosion of control that persons have over how they live their lives that could be engendered by subjecting them to surveillance, and to the increase in the possibility that persons might be subject to an increase in State coercion if they are placed under surveillance. As such, then, it would not be inappropriate to hold that their concern with liberty is also a concern with autonomy.
28. The account of privacy that is offered here is an account of what it is for something (e.g., an item of information) to *be* private, rather than an account of what it is for a person to be *in a condition of* privacy. (As Adam Moore puts it, the concern of the account of privacy outlined here "is what should be considered a 'private affair'—something that is no one else's business." "Intangible Property: Privacy, Power, and Information Control," *American Philosophical Quarterly*, Vol. 35, no. 4 [1998], 372.) The focus of this account of privacy is thus different from accounts of privacy such as that developed by William Parent or Ferdinand Schoeman, for whom, respectively, "Privacy is the condition of not having undocumented personal knowledge about one possessed by others," and "A person has privacy to the extent that others have limited access to information about him . . . the intimacies of his life, or . . . his thoughts or his body." W. A. Parent, "Privacy, Morality, and the Law," in D. Johnson and J. Snapper, *Ethical Issues in the Use of Computers* (Wadsworth, 1985), 203 (reprinted from *Philosophy and Public Affairs* [1983]: 269–288), and Ferdinand Schoeman, "Privacy: Philosophical Dimensions of the Literature," in Schoeman, ed., *Philosophical Dimensions of Privacy*, 3. This difference in focus is important, for it explains why descriptive (rather than normative) accounts of privacy (such as Parent's and Schoeman's) do not compete with the normatively laden account that is offered here, and so there is no need to argue that this account is preferable to (e.g.) Parent's.
29. Thus, if persons did possess a moral right to privacy this pro-surveillance argument would not justify its violation. And this is true whether this right to privacy was purely a principle-based right, or one that was based on practical considerations (i.e., that such a right is needed to protect some more fundamental human good, such as autonomy or well-being.)
30. It should be noted that, unlike the type of surveillance argued for here, that which the Party subjected the citizens of Oceania to frequently *did* violate their privacy.
31. For a discussion of the relationships that hold between privacy, autonomy, and the ceding of control, see Taylor, "Autonomy and Privacy," 460–473.
32. "There was of course no way of knowing whether you were being watched at any given moment . . . You had to live—did live, from habit that became instinct—in the assumption that every sound you made was overheard, and, except in darkness, every movement scrutinized." Orwell, 1984, 4–5.
33. David Lyon offers evidence that shows that persons do not change their behavior when they are under surveillance once they realize that it is unlikely that their images will be accessed. See his discussion of the use of surveillance cameras in retail stores in *Surveillance Society: Monitoring Everyday Life* (Milton Keynes, UK: Open University Press), 51, 62.
34. Thus, if persons did possess a moral right to autonomy this pro-surveillance argument would not justify its violation.
35. The claim that the proliferation of surveillance devices will lead to an "Orwellian nightmare" occurs frequently in the philosophical literature on this

subject. See, for example, Adam Moore, "Employee Monitoring and Computer Technology: Evaluative Surveillance V. Privacy," *Business Ethics Quarterly*, Vol. 10, no. 3 (2000), 698.

36. I thank an anonymous referee for *Public Affairs Quarterly* for his or her exceptionally generous and helpful comments on an earlier version of

this paper, and the Editor of that journal for encouraging me to develop my arguments. I also thank Mort Winston for encouraging me to refine this paper further, and to acknowledge the concerns that would legitimately arise from the increase in State surveillance in the present day United States.

## 2.3 ARTIFICIAL INTELLIGENCE, ROBOTICS, AND NANOTECHNOLOGY

### 2.3.1 Us and Them

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RODNEY A. BROOKS

To the physical and emotional relief of many, technology has made it possible to incorporate various types of mechanical devices into our bodies in recent years. Although various scientific advances during that period suggested to some that far greater achievements were on the horizon, progress toward reaching those lofty goals has not been as rapid as earlier believed. Today, according to Rodney Brooks, the director of the Artificial Intelligence Laboratory at MIT since 2003, a new age is about to begin and such changes will have a major impact on our lives.

In both literature and film, robots have often been depicted as vying with humans for supremacy and posing serious threats to the continuation of life as we know it. In this article Brooks discusses ways in which humans in the future will incorporate many of the desirable characteristics of robots into their own bodies.

Most of his research at MIT was focused on designing and building intelligent robots capable of operating in unstructured environments. But his view of the future has shifted. The devices that he sees becoming part of us would go far beyond the artificial joints and other similar devices that benefit many today.

In addition to repairing damage to our bodies resulting from accidents, disease, or normal aging, Brooks asserts that we are on the verge of being able to enhance our natural capabilities in ways never before envisioned. The ability to move further into the realm of creating "designer" superbodies will bring with it new responsibilities and require a new form of ethics. From the mundane mechanical devices such as artificial hips or knees to the more esoteric such as cochlea and retinal implants using neural connections, Brooks is concerned with the broad ethical issues as well as the social acceptability of these new technologies.