

A Philosophical Essay on Privacy and Surveillance:

*Nowhere to Run, Nowhere to Hide*

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A controversial issue faced by many engineering professionals in the software engineering and cybersecurity field today revolves around the use of surveillance technology. This technology exists in several different forms ranging from mass data collection tools to facial recognition software. Regardless of what form it exists in, many believe that the further advancement of these technologies will only push us closer toward an Orwellian state. An “Orwellian” state is one in which the foundations of a free and open society have eroded. Under such a state, propaganda, surveillance, and disinformation are prevalent. Now while the dystopian novel, 1984, was written to bring light upon a potential reality in a distant future, it seems like that future may be here. In this essay, I hope to analyze the ethical nature of surveillance, or rather the lack of, using the Kantian and utilitarian theories studied in this course. I believe that while utilitarians attempt to justify surveillance by highlighting benefits such as security and well-being, they fail to recognize the Kantian belief that surveillance is, in itself, a contradictory idea which fails to recognize the rationality of citizens who aren’t really given security but rather a mere illusion of it.

A foundational building-block of societies which many individuals value is privacy. Privacy is a loosely-defined idea especially when it comes to legal matters. It is also not explicitly defined in any constitutional documents. This is partly the reason why it's such a highly debated topic. It was first attempted to be defined by Warren and Brandeis in 1890 as the “right to be let alone” (Macnish). The advent of new technologies over time has led to a rise in lawsuits claiming surveillance is a direct threat to privacy. One lawsuit from 1967, *Katz v. United States*, attempted to justify surveillance as being a violation of the 4th amendment by relating privacy and surveillance to unreasonable search and seizure (“*Katz v. United States*.”). Another lawsuit from 1972, *Eisenstadt v. Baird*, established that the right to privacy involved the right to make important choices without government intervention (“*Eisenstadt v. Baird*.”). This helped bring together the ideas of privacy and autonomy. It can be agreed upon that privacy provides us with an increased sense of security. We would prefer more privacy when interacting with a stranger than a family member because we prefer to maintain a certain level of personal safety.

One ethical approach you can use to evaluate this situation follows the teachings of Immanuel Kant. The main idea behind Kantianism is that an act is right if and only if it is performed with good intentions. In order for an act to be considered “good will,” it must pass the

universalization test, the means-to-an-end test, and the autonomy test. The first test follows that an action can only be good if the principle, or maxim, behind it arises from a sense of duty in the actor and allows it to be a universal law by which everyone acts (Hill). Kant also argued that humans should not treat others simply as a means to an end, but rather as an end in themselves. Lastly, the autonomy test requires every rational being to act as if they were a legislating member in the universal kingdom of ends (Hill). Given that *Eisenstadt v. Baird* (1972) had established a connection between privacy and autonomy, it can be argued that an increased state of surveillance may result in decreased levels of trust, especially between individuals ("*Eisenstadt v. Baird*"). This is because surveillance is limiting an individual from acting in the manner he chooses and truly desires, hence limiting their autonomy. This is also a violation of the third formulation of the categorical imperative since it doesn't recognize an individual's ability to rationally make decisions critical to their well-being and instead relies solely on the judgement of the state to determine what is best for an individual's well-being (Hill). Not only will this pressure an individual to conform to certain ideals, but will corrode the organic nature of relationships established in between person to person, person to corporation, and even person to society. It is also here where the contradictory nature of rule utilitarianism becomes apparent.

The rule utilitarianism theory states that we ought to act according to a set of rules which would lead to optimal consequences if they were to be accepted by an overwhelming majority of people in society (Smith). For a utilitarian, an increased sense of privacy among individuals will not only guarantee increased personal safety, but should produce the greatest good for the society as a whole. On the other hand, surveillance also sets itself out to protect citizens, but at the expense of their privacy. In this scenario, surveillance can produce the greatest good for a society, only if used properly. However, what truly determines which of these two scenarios produces the greatest possible outcome depends on the needs and means by which surveillance is justified. In the following paragraph I will discuss the different applications of surveillance and additional factors which must be taken into consideration when justifying them.

At its core, surveillance is simply the act of observing or monitoring a person. This not only includes visual observations but also a strict scrutiny of all actions and behavior. Now while surveillance itself is considered to be an ethically neutral concept, it is the nature in which this technology is used that determines whether the act of surveilling is morally permissible. The most common examples of applications of surveillance are wiretaps, GPS tracking, and security

cameras. Now while some may immediately associate these applications with nefarious activities, they can be used for good purposes as well. Security cameras, for example, are used by many retail establishments to protect their business from theft or burglary (Macnish). In this case, surveillance provides a mutual benefit to themselves and their customers. Another instance of surveillance, though less obvious, is done through loyalty programs. Each swipe of a user's card allows the business to see what type of goods one is purchasing and when. This is also a mutual relationship in which the customers hope to earn exclusive deals and the retailer hopes to continue business with their customers. What these mutual relationships serve to highlight is that with good intentions, surveillance can be used to promote human well-being and productivity. However, this may not always be the case. The use of surveillance begins to pose an ethical dilemma when the agreements between a mutual relationship have been compromised or when consent has been broken causing one side to reap significantly more benefits than the other side. In other words, there is always the possibility of surveillance being used for personal gain. For example, a hacker may break into a website in order to steal credit card information (Macnish). Considering an alternative view of our previous example, a store may begin to monitor spending habits of individuals who had not consented to their loyalty program. Clearly these examples show that justification for surveillance is not always clear-cut and there are other factors which must go into consideration such as the needs that surveillance will be addressing and the means by which this will be achieved.

The use of surveillance is a tactic many are quick to resort to without performing a proper assessment of the needs of the situation. According to the European Union Convention on Human Rights, "there shall be no interference by a public authority with the exercise of this right [to privacy] except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" ("European Court of Human Rights."). In order to determine whether surveillance should serve as a last resort and when exactly to resort to it, one can look at John Lango's two criteria for necessity (Lango). The first, called the feasibility standard, is when there's enough evidence to suggest that there is no feasible alternative. The second, called the awfulness standard, is when any alternatives are worse than the current course of action. In this case, surveillance becomes necessary when there are no feasible alternatives but should be

avoided when there are less compromising ones. The second factor we must take into consideration is the means by which surveillance is carried out. The main priority in the implementation of surveillance should lie in its proportionality. If you recall the idea of a mutual relationship from earlier, we know that the two or more parties involved should receive an equal amount of benefit from an even tradeoff. In other words, the extent of surveillance should be proportionate to its aim. An example where surveillance may begin to seem unnecessary or even intrusive is in the case of requiring school children to be fingerprinted to gain entry into the school and even pay for lunches. While it does make sense to use this surveilling technology to prevent unrestricted access to school grounds, it does not make sense to also use this technology for buying lunch according to the feasibility standard since there are valid alternatives available (Lango). Another example where the extent to which surveillance used was not proportionate to its aim can be seen in the full-body screeners introduced by TSA in 2009 which produced monochromatic “nude” images of airline passengers (Macnish). Many believe that they were not provided nearly as much security as they should have in return for giving up an extensive amount of privacy. Having now discussed some of the major elements in determining whether or not surveillance is justified, I will take a deeper look into the nature of surveillance by applying different ethical theories to a well-known case.

In 2013, Edward Snowden leaked internal documents exposing the NSA’s state-wide surveillance program. Out of all of this evidence, I would like to highlight that the NSA said their surveillance program has not had any discernible impact in the war against terror (Wu). This leaves many to wonder, then, what the point of collecting all of this information on American citizens was. It seems that instead of actually protecting our rights from terrorists, the surveillance program existed as a way to give American citizens merely the illusion of being protected from an external threat identified by the Department of Defense. It is clear here that what is good is being favored over what is right (Wu). In this case, the NSA’s act of secretly surveilling American citizens can be seen as a maxim which violates the perfect duty to be truthful and never lie. More specifically, it fails the first formulation of the categorical imperative which is the universalization test (Hill). If everyone were to surveill their neighbors, the outcome would be a trustless society where everyone is constantly worried for their safety due to the lack of security which results from a lack of privacy. Therefore, under a Kantian view, the NSA’s surveillance program would be considered unethical.

The NSA's surveillance program would be justified, however, under rule utilitarianism which places a greater emphasis on the outcome of an act. Although they lied to the public about the true nature of the program, the false sense of security they instilled in the minds of the public still seemed to serve its purpose. Had this program not been in place, the American people would have remained in a state of panic at the constant thought of domestic terror threats. This would have eventually led to an erosion of trust, peace, and safety within American society. Keeping citizens constantly reassured of their safety through the use of government agencies, regardless of their purpose, would lead to the greatest possible outcome for society.

In the preceding paragraphs, I discussed the role of surveillance in modern society and the means by which it is implemented. Some core values surrounding the ethicality of this technology which I studied include trust, autonomy, cause, necessity, and means. I did my best to analyze these core values in an unbiased manner because as a computer science student and cybersecurity aficionado, I am more inclined to favor a privacy-centered approach. I found that although surveillance itself is an ethically neutral concept, it is the purpose for which it is used which determines whether or not it is justified. Most uses involve a balanced exchange between the surveiller and the surveilled. However, when this balance is offset, its use becomes unethical. Additionally, analyzing surveillance under different ethical theories also helped highlight several key things. It seems that surveillance cannot be justified under a Kantian viewpoint due to its undisclosed and illusory nature. However, surveillance can be justified using a utilitarian approach because it can serve to improve the well-being of society as a whole.

Works Cited

- "Eisenstadt v. Baird." Oyez, [www.oyez.org/cases/1971/70-17](http://www.oyez.org/cases/1971/70-17). Accessed 22 Oct. 2020.
- "European Court of Human Rights." Legislationline, OSCE Office for Democratic Institutions and Human Rights, 15 Nov. 1996, [www.legislationline.org/documents/id/8072](http://www.legislationline.org/documents/id/8072).
- Hill, Thomas E. "Kantianism." Wiley Online Library, John Wiley & Sons, Ltd, 11 Dec. 2017, [onlinelibrary.wiley.com/doi/abs/10.1111/b.9780631201199.1999.00016.x](http://onlinelibrary.wiley.com/doi/abs/10.1111/b.9780631201199.1999.00016.x).
- "Katz v. United States." Oyez, [www.oyez.org/cases/1967/35](http://www.oyez.org/cases/1967/35). Accessed 22 Oct. 2020.
- Lango, John W. "Last Resort and Coercive Threats: Relating a Just War Principle to a Military Practice." Department of Philosophy, Joint Services Conference on Professional Ethics (JSCOPE), 2006, [isme.tamu.edu/JSCOPE06/Lango06.pdf](http://isme.tamu.edu/JSCOPE06/Lango06.pdf).
- Macnish, Kevin. "Surveillance Ethics." Internet Encyclopedia of Philosophy, University of Leeds, 13 Apr. 2018, [iep.utm.edu/surv-eth/](http://iep.utm.edu/surv-eth/).
- Smith, Holly M. "Measuring the Consequences of Rules." *Utilitas*, vol. 22, no. 4, 2010, pp. 413–433., doi:10.1017/S0953820810000324.
- Wu, Tony, et al. "The Ethics of Surveillance." *The Ethics (or Not) of Massive Government Surveillance*, Stanford University, 2008, [cs.stanford.edu/people/eroberts/cs181/projects/ethics-of-surveillance/ethics.html](http://cs.stanford.edu/people/eroberts/cs181/projects/ethics-of-surveillance/ethics.html).