

A Legal Analysis of Surveillance Technology

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The 21st century has experienced ever-growing concerns of privacy resulting from rapid growth in technological development. From facial recognition software to data mining algorithms, many have begun to fear that the advancement of these technologies will only push us closer to an Orwellian state. In his novel, 1984, George Orwell had described a state in which the foundations of a free and open society had eroded. Rather prevalent were propaganda, surveillance, and disinformation. Though this was only meant to describe a reality from a distant future, one should consider what legal implications, or rather the lack of, resulted in that outcome. This answer will analyze whether the legal justification of surveillance technology truly outweighs the negative implications of it, with a particular focus on institutional abuse by government and law enforcement agencies as highlighted by the WSJ article.

Surveillance can simply be defined as “the observation and/or monitoring of a person” [1]. This not only implies visual observation, but all behavior, speech, and actions as well. The most prevalent examples of surveillance are surveillance cameras, or close-circuit television, wiretaps, and internet surveillance. Today’s technology has taken surveillance to new levels where the government can employ mass-surveillance methods without needing to be physically present in most cases. Many describe this one-way observation as an “expression of control” [1] which most citizens would be hostile to, given the valuable nature of privacy. Most would consider privacy to be a foundational building-block of American society, though it has remained a loosely defined idea in the legal sense. The idea of privacy dates back over a hundred years when Brandeis and Samuel D. Warren first defined it as the “right to be let alone” in 1890 [2]. In 1967, *Katz v. United States* attempted to deem surveillance as being a violation of our Fourth Amendment rights by equating the act of surveillance to that of unreasonable search and seizure [2]. In the early 2000s, the world underwent a massive transformation with the rise of the Internet, which has since also been responsible for the expansion of surveillance into every aspect of our lives.

Despite continued attempts by the government to justify their use of surveillance into the 21st century, there have been many cases where citizen’s rights have been violated and the effectiveness of this strategy has come into question. After the September 11 attacks, the U.S. government dramatically expanded their spying programs in the name of countering terrorism by passing the Patriot Act [3]. However, many organizations such as the ACLU were quick to criticize this move and argued that suicide bombers are likely not deterred by the presence of

security cameras given that their goal is to terrorize and spread fear throughout the public anyway. For comparison, the ACLU highlights Great Britain's surveillance system which takes up 20% of their criminal justice budget but provides minimal benefits when it comes to investigating attacks after the fact [4]. What further berates the effectiveness of such technology is that it does little to prevent even minor crimes, which is usually the reason these cameras are installed by local law enforcement agencies in the first place. One study found that "there was no evidence to suggest that the cameras had reduced crime overall in [London]" [4]. In 2013, Edward Snowden shined light on a similar reality in America when he leaked the NSA's internal documents exposing a state-wide surveillance program. Recent research has found that their surveillance program has not had any discernible impact in the war against terror [1]. This leaves many to wonder, then, what the point of collecting all of this information on American citizens is. It seems that the failure of surveillance systems to work the way governments had intended has given rise to other issues, particularly criminal and institutional abuse, discriminatory targeting, and predation and stalking for personal purposes.

The NSA is not the only government agency which has been accused of institutional abuse. More recently, in 2019, the Foreign Intelligence Surveillance Court found that the FBI acted unconstitutionally and violated privacy rights by using a surveillance database to query data on citizens [3]. This is rare given that the nation's spying programs have received virtually no legal challenge since passing of the Patriot Act. The court further ruled that this warrantless, internet-based surveillance program designed to target foreigners violated the Fourth Amendment's protections against unreasonable searches [3]. Another thing to note about these accounts of institutional abuse is that they often overlap into the territory of abuse for personal purposes. In the case of the FBI, the court found that some contractors had been found searching the intelligence database for information on friends, co-workers, and relatives [3]. This pattern of abuse is prevalent even in lower or local levels of government. An example of this is when an investigation into Michigan's law enforcement found that their surveillance database had been used by officers to stalk women, track estranged spouses, and threaten individuals with whom they had gotten into traffic altercations with [4]. The use of surveillance technology for such purposes is typically unjustified and may even be grounds for criminal prosecution.

What's ironic here is that although these surveillance tools are designed to limit crime, they often end up being used in a way that does just the opposite. The lack of checks and

balances in surveillance systems leaves room for wide-scale abuse if given into the wrong hands. Lagging legislation and the failure of lawmakers to address these issues properly and definitively is not surprising given the fast-evolving nature of this technology. Many say that the use of surveillance by local authorities for personal reasons should be of bigger concern than its use by national agencies for security purposes, despite how ineffective their strategy has proven to be. Regardless, both use cases seem to undermine an individual's right to privacy and fail to prioritize the public's interest which goes to show that surveillance technology has far more negative implications to it than it does benefits.

Sources

- [1] <https://cs.stanford.edu/people/eroberts/cs181/projects/ethics-of-surveillance/ethics.html>
- [2] <https://tcf.org/content/report/disparate-impact-surveillance/?session=1>
- [3] <https://www.wsj.com/articles/fbis-use-of-foreign-surveillance-tool-violated-americans-privacy-rights-court-found-11570559882>
- [4] <https://www.aclu.org/other/whats-wrong-public-video-surveillance>