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#### The Drug Enforcement Administration is creating a massive database of license plate tracking information—this will be used for political targeting and other kinds of violence

SALLES 2015 (Alice, journalist specializing in civil liberties, “License plate surveillance may invite political targeting,” Watchdog Arena, Feb 4, http://watchdog.org/197745/license-plate-surveillance-political-targeting/)

License plate surveillance may invite political targeting

By Alice Salles / February 4, 2015 / 2 Comments

LICENSED TO TARGET? The national collection of license plate data under the recently exposed DEA program could open American citizens up to political targeting and other malfeasance from public servants.

By Alice Salles | Watchdog Arena

The drug war has made a series of waves recently, but one in particular hasn’t been receiving the attention it deserves.

Through a Freedom of Information Act request filed by the American Civil Liberties Union, the American public had the opportunity to learn more about the high-speed license plate cameras and the Drug Enforcement Administration program behind them. Such details were kept under wraps until ACLU took action.

The program that stores data pertaining to motorists nationwide has one use: to gather drivers’ personal information.

Once the cameras harvest the data, it is either sold to third-party companies or made available to local law enforcement agencies. To some extent, it’s safe to say data collected may have been widely used in civil asset forfeiture operations–the legal practice that got President Obama’s Attorney General nominee Loretta Lynch under the spotlight recently.

Drug trafficking activity near the Mexican border prompted the DEA to first launch the program. But as officers’ access to the technology expanded, so did the program’s reach.

Today, the surveillance operation runs nationwide while remaining unchecked. No state has passed legislation to deter it and few civil liberty groups have used their voice to promote awareness. One of these groups is the Electronic Frontier Foundation, a nonprofit that works to defend civil liberties in the digital world.

In an interview with Watchdog Arena, EFF spokesperson Dave Maass said it’s hard to pinpoint just one rationale behind the development of the national license plate reader program. Regardless of its goals, Maass says, “Maintaining a massive database of locational data on everyday people is a disproportionate response to the amount of crime the DEA seeks to investigate.”

Reporters and activists have been voicing concerns linked to how officers are making use of this data. Considering we’re dealing with officers having hands-on access to this powerful tool, it’s not unlikely that the program may be vulnerable to malfeasance. According to Maass, “Such databases invite opportunities for abuse, whether it’s police using it to stalk women or using it to spy on political adversaries.”

Maass explained to Watchdog Arena how the DEA is jeopardizing our privacy by collecting license plate information on all Americans:

It only takes a few locational data points to begin to identify the individual traits of a person. Combined with other forms of data collection, plate data can create detailed pictures of the private lives of citizens and visitors to this country.

#### License plate monitoring has pushed the US to the edge of full-scale totalitarianism—resistance now is necessary

SUAREZ 2013 (John, human rights activist who has spoken before the United Nations Human Rights Council on several occasions, PanAm Post, Oct 18, http://panampost.com/john-suarez/2013/10/18/the-us-surveillance-state-and-the-totalitarian-tipping-point/)

Today, massive and unsustainable debts are maintaining the US standard of living. Freedom continues to be whittled away at, but more US Americans are awakening to this hard truth, because material prosperity for many is evaporating. One area that they view with growing alarm is the emergence of the United States of America as a surveillance state, since, along with a militarized police force, it is **the infrastructure of totalitarianism**.+

This is the second in a series of reflections seeking to understand these negative trends in the United States. The first essay analyzed the role of the US Supreme Court — in particular, its decisions that undermined private property rights and forced taxpayers to cooperate with evil. I concluded with the controversial proposition that the present system in the United States is post-constitutional.+

For generations, US Americans believed that the first, third, fourth, and ninth amendments found in the Bill of Rights protected the privacy of citizens of the United States — that only a small number engaged in criminal conduct would be subjected to surveillance, following a court order permitting such activity by the authorities.+

However, the arrival of new technologies provided the state with the means to circumvent these constitutional provisions. In the state of Florida, for example, automated systems are replacing toll operators, and they either process your information via your Sun Pass or by photographing your license plate and sending you the bill. According to the pre-paid toll program privacy policy, “information concerning a SunPass account is provided only when required to comply with a subpoena or court order.”+

In other words, they are compiling and storing information on your whereabouts.+

Affirming this reality, the American Civil Liberties Union stated on July 18, 2013, that “Police around the United States are recording the license plates of passing drivers and storing the information for years with little privacy protection. The information potentially allows authorities to track the movements of everyone who drives a car.”+

However, the Electronic Frontier Foundation makes clear that the federal and state governments are monitoring not only US Americans’ physical movement, but also their telephone and e-mail communications.+

The government is mass collecting phone metadata of all US customers under the guise of the Patriot Act. Moreover, the media reports confirm that the government is collecting and analyzing the content of communications of foreigners talking to persons inside the United States, as well as collecting collecting [sic] much more, without a probable cause warrant. Finally, the media reports confirm the “upstream” collection off of the fiberoptic cables that Mr. Klein first revealed in 2006.

The Edward Snowden revelations expose a national government that is systematically monitoring and recording the communications of the entire US American people all of the time, and beyond. From the Wall Street Journal:+

The National Security Agency — which possesses only limited legal authority to spy on U.S. citizens — has built a surveillance network that covers more Americans’ Internet communications than officials have publicly disclosed, current and former officials say. The system has the capacity to reach roughly 75% of all U.S. Internet traffic in the hunt for foreign intelligence, including a wide array of communications by foreigners and Americans. In some cases, it retains the written content of emails sent between citizens within the U.S. and also filters domestic phone calls made with Internet technology . . .

What is equally disturbing is that private companies are complicit in the behavior — when not engaging in their own monitoring of internet communications — although, to be fair, their will is not always on the side of the spying. (See the video below.) Further, even though the immense and illegal surveillance apparatus is out in the open now, we see no remorse from the instigators and the elected officials responsible. Rather, they are doubling down, and their apologists are right there with them.

Unfortunately, there is no plan; there is no conspiracy. This expansion and centralization of power has continued under both Republicans and Democrats in the United States and would most likely continue under a third party. Centralized power has become an end unto itself, and as the late Czech president Vaclav Havel observed:+

Once the claims of central power have been placed above law and morality, once the exercise of that power is divested of public control, and once the institutional guarantees of political plurality and civil rights have been made a mockery of, or simply abolished, there is no reason to respect any other limitations. The expansion of central power does not stop at the frontier between the public and the private, but instead, arbitrarily pushes back that border until it is shamelessly intervening in areas that once were private.

The United States is reaching a **tipping point** that leads into a **totalitarian abyss** and the crackdown on privacy whistleblowers is one of many ominous signs regarding where this centralization of power is heading.

#### Freedom from surveillance is an a priori value: it’s the key liberty that defines the value of our lives and our capacities for agency

GREENWALD 2014 (Glenn, Snowden’s lawyer, “Why Privacy Matters,” http://www.ted.com/talks/glenn\_greenwald\_why\_privacy\_matters/transcript?language=en)

Now, there's a reason why privacy is so craved universally and instinctively. It isn't just a reflexive movement like breathing air or drinking water. The reason is that when we're in a state where we can be monitored, where we can be watched, our behavior changes dramatically. The range of behavioral options that we consider when we think we're being watched severely reduce. This is just a fact of human nature that has been recognized in social science and in literature and in religion and in virtually every field of discipline. There are dozens of psychological studies that prove that when somebody knows that they might be watched, the behavior they engage in is vastly more conformist and compliant. Human shame is a very powerful motivator, as is the desire to avoid it, and that's the reason why people, when they're in a state of being watched, make decisions **not** that are **the byproduct of their own agency** **but** that are about the expectations that others have of them or **the mandates of societal orthodoxy**.

8:08

This realization was exploited most powerfully for pragmatic ends by the 18th- century philosopher Jeremy Bentham, who set out to resolve an important problem ushered in by the industrial age, where, for the first time, institutions had become so large and centralized that they were no longer able to monitor and therefore control each one of their individual members, and the solution that he devised was an architectural design originally intended to be implemented in prisons that he called the panopticon, the primary attribute of which was the construction of an enormous tower in the center of the institution where whoever controlled the institution could at any moment watch any of the inmates, although they couldn't watch all of them at all times. And crucial to this design was that the inmates could not actually see into the panopticon, into the tower, and so they never knew if they were being watched or even when. And what made him so excited about this discovery was that that would mean that the prisoners would have to assume that they were being watched at any given moment, which would be the ultimate enforcer for obedience and compliance. The 20th-century French philosopher Michel Foucault realized that that model could be used not just for prisons but for every institution that seeks to control human behavior: schools, hospitals, factories, workplaces. And what he said was that this mindset, this framework discovered by Bentham, was the key means of societal control for modern, Western societies, which no longer need the overt weapons of tyranny — punishing or imprisoning or killing dissidents, or legally compelling loyalty to a particular party — because mass surveillance creates a **prison in the mind** that is a much more subtle though much more effective means of fostering compliance with social norms or with social orthodoxy, much more effective than brute force could ever be.

10:07

The most iconic work of literature about surveillance and privacy is the George Orwell novel "1984," which we all learn in school, and therefore it's almost become a cliche. In fact, whenever you bring it up in a debate about surveillance, people instantaneously dismiss it as inapplicable, and what they say is, "Oh, well in '1984,' there were monitors in people's homes, they were being watched at every given moment, and that has nothing to do with the surveillance state that we face." That is an actual fundamental misapprehension of the warnings that Orwell issued in "1984." The warning that he was issuing was about a surveillance state not that monitored everybody at all times, but where people were aware that they could be monitored at any given moment. Here is how Orwell's narrator, Winston Smith, described the surveillance system that they faced: "There was, of course, no way of knowing whether you were being watched at any given moment." He went on to say, "At any rate, they could plug in your wire whenever they wanted to. 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."

11:16

The Abrahamic religions similarly posit that there's an invisible, all-knowing authority who, because of its omniscience, always watches whatever you're doing, which means you never have a private moment, the ultimate enforcer for obedience to its dictates.

11:33

What all of these seemingly disparate works recognize, the conclusion that they all reach, is that a society in which people can be monitored at all times is a society that breeds conformity and obedience and submission, which is why **every tyrant,** the most overt to the most subtle, **craves that system**. Conversely, even more importantly, it is a realm of privacy, the ability to go somewhere where we can think and reason and interact and speak without the judgmental eyes of others being cast upon us, in which creativity and exploration and dissent **exclusively reside**, and that is the reason why, when we allow a society to exist in which we're subject to constant monitoring, we allow the **essence of human freedom** to be severely crippled.

12:29

The last point I want to observe about this mindset, the idea that only people who are doing something wrong have things to hide and therefore reasons to care about privacy, is that it entrenches two very destructive messages, two destructive lessons, the first of which is that the only people who care about privacy, the only people who will seek out privacy, are by definition bad people. This is a conclusion that we should have all kinds of reasons for avoiding, the most important of which is that when you say, "somebody who is doing bad things," you probably mean things like plotting a terrorist attack or engaging in violent criminality, a much narrower conception of what people who wield power mean when they say, "doing bad things." For them, "doing bad things" typically means doing something that poses meaningful challenges to the exercise of our own power.

13:24

The other really destructive and, I think, even more insidious lesson that comes from accepting this mindset is there's an implicit bargain that people who accept this mindset have accepted, and that bargain is this: If you're willing to render yourself sufficiently harmless, sufficiently unthreatening to those who wield political power, then and only then can you be free of the dangers of surveillance. It's only those who are dissidents, who challenge power, who have something to worry about. There are all kinds of reasons why we should want to avoid that lesson as well. You may be a person who, right now, doesn't want to engage in that behavior, but at some point in the future you might. Even if you're somebody who decides that you never want to, the fact that there are other people who are willing to and able to resist and be adversarial to those in power — dissidents and journalists and activists and a whole range of others — is something that brings us all collective good that we should want to preserve. Equally critical is that the measure of how free a society is is not how it treats its good, obedient, compliant citizens, but how it treats its dissidents and those who resist orthodoxy. But the most important reason is that a system of mass surveillance suppresses our own freedom in all sorts of ways. It renders off-limits all kinds of behavioral choices without our even knowing that it's happened. The renowned socialist activist Rosa Luxemburg once said, "He who does not move does not notice his chains." We can try and render the **chains of mass surveillance** invisible or undetectable, but the constraints that it imposes on us do not become any less potent.

#### Surveillance violates our basic ethical imperative to treat people with dignity and protect freedom, but even if utilitarianism is good, you should still vote aff

BURKHART et al. 2007 (Laurie Burkhart, Michael Haubert, and Damon Thorley, undergraduate editors who published a book on surveillance under the supervision of Dr. Dirk S. Hovorka, “The Efect [sic] of Government Surveillance on Social Progress,” in Confronting Information Ethics in the New Millennium” <http://www.ethicapublishing.com/5CH1.htm>)

Under utilitarian, duty-based, **and** rights-based ethical theories the act of heavy government surveillance policy is an ethical violation. From a utilitarian perspective, one must look at the consequences of an action, and determine which consequence would be the most desirable for the greatest number of people involved. In this case, the government is not acting in line with what is the greatest good for the greatest number.

The greatest good is allowing a society to have the ability to freely participate and change the system in order to adhere to what is best for the people. By limiting radical political groups the government can effectively take away this ability. In taking the ability to change and progress away from the people in a democratic system the government violates the greatest good for the greatest number. The use of government surveillance to hinder radical movements is causing a “chilling effect” on political participation and results in an obstruction of social progress. The consequences of these government actions are undesirable, the actions are considered to be unethical under utilitarian or consequence-based theory. The duty-based and rights-based theories also show extreme surveillance to be an ethical violation. From a duty-based, or deontological perspective, heavy government surveillance is an ethical violation because it does not treat people in a universal or impartial way. Immanuel Kant, one of the most famous and influential deontological theorists, claimed that actions are unethical if they conflict with the idea that all people are free and rational beings. He stated that everyone has a duty to stop such unethical acts and promote freedom and rationality. Furthermore he stated that rules should only be applied if they are universal and impartial. Acts of government surveillance are often carried out with heavy biases against certain types of groups and ideologies, such as the civil rights or communist groups. In addition, using surveillance tactics against certain groups and individuals goes against the idea that people are free and capable of making their own decisions, and implies that people need to be monitored and controlled. Certain types of monitoring and controlling are necessary in any society, but in a democratic society when the control tactics goes as far to limit the effect the people can have on their own society then the system is not only undemocratic ,but unethical as well. The surveillance bias towards particular groups also violates several rules and regulations stated in our countries legal doctrines. Rights-based theory states that an action is unethical if it goes against rights that have been given through contract or law. Surveillance practices of the FBI and other government groups have shown to violate several laws and the rights that have been given to citizens by the government, such as freedom of speech, freedom of assembly, protection against illegal searches, and many more. In order to be ethical under a rights-based theory a democratic government must follow the laws and regulations set forth by the people‟s elected government agents. Past and present government surveillance tactics violate these principles and are therefore unethical.

“One does not establish a dictatorship in order to safeguard a revolution; one makes a revolution in order to establish a dictatorship.” -- George Orwell16 Legal Implications

Our democratic system is built on the people‟s participation in politics. This participation is most commonly practiced by voting in government elections and identifying with a major political party. Although these types of political participation are the most practiced and socially accepted they are not the only form of participation the system is built on. As outlined in Amendment I of the U.S. Constitution Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances17. Based on these laws the people of our country can speak out, challenge, and criticize the government as they see fit without fear of persecution. The theory behind this system is to allow for free and unaltered participation in the government by the people so that the laws and discourse of the country reflect that of the people‟s beliefs. For this legal system to function properly the free participation of the people must be protected. Although our society generally chooses to believe this to be true, U.S. historical evidence shows the contrary. Each radical social movement in the U.S. has posed a general threat to the government administration of that time. From a present day perspective some of these movements brought about positive social change. Aside from the moral value of each radical movement, the government agencies of their times determine what to be in the best interest of the country and exude enormous surveillance and propaganda tactics for or against them. At the time of the civil rights movements the FBI classified pro-black groups as threats to national security. Despite these past classifications, these groups made a large positive impact on our countries values and laws. As a result of these “threats to national security” citizens of our country can now expect to be treated equally under the law and not endure unjust policies based on race. At the basis of all social change there is an opposition to the norm or majority. In the case of the civil rights movement the norm was a predominately racist society with national laws and regulations to perpetuate the racist system. Despite the efforts of government agencies to curb the radical groups and halt the social progress being made the people were able to assemble and cause radical reformations to take place in legal and social aspects of the country. It can be said that although the FBI and government tried to curb the Civil Rights movement the social change did occur and the theory of free political participation was upheld. Although it is true that the government ultimately failed in stopping the movement and societal change, they did not have the same technology that is available today. During the civil rights movement the FBI used basic surveillance technology including wire taps, bugged rooms, stake outs and propaganda. Today technology is advancing at a quicker rate than we can make use of it. The government now has technology and the access to information far greater than that of the 1960‟s and can use it however they see fit. If not kept in check the government surveillance can lead to a system in which social change brought about by the people becomes **impossible**.

Conclusion

Demonstrated by the history in our country each government administration has used every resource they have in order to pursue the values and goals of their administration. As technology increases, so does the power of the government to monitor citizens, infiltrate groups, control information, and further push their view of what is best for the society. In an age of data mining, satellite surveillance, RFID chips, vast social networks, and an overall state of heightened security there is almost no limit to the capabilities of the government and its surveillance. We can assume based on historical facts that the government is currently monitoring to the best of their ability all radical groups in the country as well as the world. With current technology it‟s also safe to assume that this surveillance and group monitoring is much more effective than in the past and could possibly end radical political influence before it starts. Coupled with increased technology there has been a decrease of freedom in our legal system with war time laws such as the Patriot Act limiting fundamental rights and legal discourse outlined in the U.S. constitution. The system is moving away from free political participation and towards an information influenced **police state**. The U.S. legal system is based on change and adaptability. A historical example of this is the change in role the U.S. legal system took on in the nineteenth century. “An instrumental perspective of law did not simply emerge as a response to new economic forces in the nineteenth century. Rather, judges began to use law in order to encourage social change even in areas where they had previously refrained from doing so. It was not until the nineteenth century that the common law took on its innovating and transforming role in American society18.” Examples such as this show that the legal system has always played its part in influencing societal change since the early days of this country, but conversely the U.S. society members have also influenced changes to the legal system. The changes and innovation of U.S. law have consistently been influenced by social movements. The labor movements, civil rights movements, and feminist movements have all challenged the government of their time and as a result moved the U.S. towards a more equal and just society. As the power and technology of the government increases today so do the chances of any kind of societal change being halted. “Social movements are not distinct and self-contained; rather, they grow from and give birth to other movements, work in coalition with other movements, and influence each other indirectly through their effects on the larger cultural and political environment19.” If the government can monitor and stop one major movement they can influence and deter the masses from further radical ideology. In this lies the ethical violation. Under utilitarian, duty-based, and rights-based ethical theories the act of heavy government surveillance policy is an ethical violation. From a utilitarian perspective the government is not acting in line with what is the greatest good for the greatest number. The greatest good is allowing a society to have the ability to freely participate and change the system in order to adhere to what is best for the people. By limiting radical political groups the government can effectively take away this ability. In taking the ability to change and progress away from the people the government violates the greatest good for the greatest number. The duty-based and rights-based theories also show extreme surveillance to be an ethical violation. These theories examine how government surveillance is carried out and the ethical and legal violations that are inherent in the practices. From a duty-based perspective, heavy government surveillance is an ethical violation because it does not treat people in a universal or impartial way. It is often carried out with heavy biases against certain types of groups and ideologies. Not only is the surveillance bias towards particular groups but it also violates several rules and regulations stated in our countries legal doctrines. Surveillance practices of the FBI and other government groups have shown to violate several laws and the rights of the group participants. This type of surveillance discourse causes it to be an ethical violation.

The democratic system needs free political participation and radical movements in order to progress. History has shown the positive effects radical groups have played in the progression of American society through out U.S. history. If the unethical practices of government surveillance are not kept in check into the future, the ideologies of freedom of speech and the power of the people will be **lost forever**.

#### Actions determine morality, not results—consequentialism might be good, but moral side constraints exist that we cannot violate

NAGEL 1979 (Thomas, Philosopher, Mortal Questions, p 58-59)

Many people feel, without being able to say much more about it, that something has gone seriously wrong when certain measures are admitted into consideration in the first place. The fundamental mistake is made there, rather than at the point where the overall benefit of some monstrous measure is judged to outweigh its disadvantages, and it is adopted. An account of absolutism might help us to understand this. If it is not allowable to *do* certain things, such as killing unarmed prisoners or civilians, then no argument about what will happen if one does not do them can show that doing them would be all right. Absolutism does not, of course, require one to ignore the consequences of one’s acts. It operates as a limitation on utlitiarian reasoning, not as a substitute for it. An absolutist can be expected to try to maximize good and minimize evil, so long as this does not require him to transgress an absolute prohibition like that against murder. But when such a conflict occurs, the prohibition takes complete precedence over any consideration of consequences. Some of the results of this view are clear enough. It requires us to forgo certain potentially useful military measures, such as the slaughter of hostages and prisoners or indiscriminate attempts to reduce the enemy population by starvation, epidemic infectious diseases like anthrax and bubonic plague, or mass incineration. It means that we cannot deliberate on whether such measures are justified by the fact that they will avert still greater evils, for as intentional measures they cannot be justified in terms of any consequences whatever. Someone unfamiliar with the events of this century might imagine that utilitarian arguments, or arguments of national interest, would suffice to deter measures of this sort. But it has become evident that such considerations are insufficient to prevent the adoption and employment of enormous antipopulation weapons once their use is considered a serious moral possibility. The same is true of the piecemeal wiping out of rural civilian populations in airborne antiguerrilla warfare. Once the door is opened to calculations of utility and national interest, the usual speculations about the future of freedom, peace, and economic prosperity can be brought to bear to ease the consciences of those responsible for a certain number of charred babies.

#### Our advantage is one of those side constraints—the injustices we have described should not be tolerated at any cost

**RAWLS 1971** (John, philosopher, A Theory of Justice, p. 3-4)

Justice is the first virtue of social institutions as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by the many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.

#### No consequence justifies voting neg—either rights are absolute and we win, or they’re not, and the neg’s moral calculus is incoherent. The question of this debate is whether the plan is a *moral action* or not. The judge as a moral agent is not responsible for intervening actors no matter how bad the consequences sound. The decisions of other agents are outside your power to determine and you should therefore say that you support the aff even if we should perhaps also stop bad consequences that stem from it because consequentialism with no limit results in constantly escalating evils which make it self-defeating and also undermines the value of life

GEWIRTH 1981 (Alan, prof of philosophy at U Chicago, “Are There Any Absolute Rights?,” Philosophical Quarterly, January)

It is a widely held opinion that there are no absolute rights. Consider what would be generally regarded as the most plausible candidate: the right to life. This right entails at least the negative duty to refrain from killing any human being. But it is contended that this duty may be overridden, that a person may be justifiably killed if this is the only way to prevent him from killing some other, innocent person, or if he is engaged in combat in the army of an unjust aggressor nation with which one’s own country is at war. It is also maintained that even an innocent person may justifiably be killed if failure to do so will lead to the deaths of other such persons. Thus an innocent person’s right to life is held to be overridden when a fat man stuck in the mouth of a cave prevents the exit of speleologists who will other- wise drown, or when a child or some other guiltless person is strapped onto the front of an aggressor’s tank, or when an explorer’s choice to kill one among a group of harmless natives about to be executed is the necessary and sufficient condition of the others’ being spared, or when the driver of a runaway trolley can avoid killing five persons on one track only by killing one person on another track.1 And topping all such tragic examples is the cata-strophic situation where a nuclear war or some other unmitigated disaster can be avoided only by infringing some innocent person’s right to life. Despite such cases, I shall argue that certain rights can be shown to be absolute. But first the concept of an absolute right must be clarified.

I1. I begin with the Hohfeldian point that the rights here in question are claim-rights (as against liberties, powers, and so forth) in that they are justified claims or entitlements to the carrying out of correlative duties, positive or negative. A duty is a requirement that some action be performed or not be performed; in the latter, negative case, the requirement constitutes a prohibition.

A right is fulfilled when the correlative duty is carried out, i.e., when the required action is performed or the proliibited action is not performed. A right is infringed when the correlative duty is not carried out, i.e., when the required action is not performed or the proliibited action is performed. Thus someone’s right to life is infringed when the prohibited action of killing him is performed; someone’s right to medical care is infringed when the required action of providing liim with medical care is not performed. A right is violated when it is unjustifiably infringed, i.e., when the required action is unjustifiably not performed or the prohibited action is unjustifiably performed. And a right is overridden when it is justifiably infringed, so that there is sufficient justification for not carrying out the correlative duty, and the required action is justifiably not performed or the prohibited action is justifiably performed.

A right is absolute when it cannot be overridden in any circumstances, so that it can never be justifiably infringed and it must be fulfilled without any exceptions.

The idea of an absolute right is thus doubly normative: it includes not only the idea, common to all claim-rights, of a justified claim or entitlement to the performance or non-performance of certain actions, but also the idea of the exceptionless justifiability of performing or not performing those actions as required. These components show that the question whether there are any absolute rights demands for its adequate answer an explicit concern with criteria of justification. I shall here assume what I have else- where argued for in some detail: that these criteria, insofar as they arc valid, are ultimately based on a certain supreme principle of morality, the Principle of Generic Consistency [PQC).\* This principle requires of every agent that he act in accord with the generic rights of his recipients as well as of himself, i.e., that he fulfil these rights. The generic rights are rights to the necessary conditions of action, freedom and well-being, where the latter is defined in terms of the various substantive abilities and conditions needed for action and for successful action in general. The POC provides the ultimate justificatory basis for the validity of these rights by shoving that they are equally had by all prospective purposive agents, and it also provides in general for the ordering of the rights in cases of conflict. Thus if two moral rights are so related that each can be fulfilled only by infringing the other, that right takes precedence whose fulfilment is more necessary for action. This criterion of degrees of necessity for action explains, for example, why one person’s right not to be lied to must give way to another person’s right not to be killed when these two rights are in conflict. In some cases tho application of this criterion requires a context of institutional rules.

2. The general formula of a right is as follows: “A has a right to X against B by virtue of Y”. In addition to the right itself, there are four elements here: the subject of the right, the right-holder (A); the object of the right (X); the respondent of the right, the person who has the correlative duty (B); and the justificatory basis or ground of the right (Y). I shall refer to these elements jointly as the contents of the right. Each of the elements may vary in gener- ality. Various rights may conflict with one another as to one or another of these elements, so that not all rights can be absolute.

One aspect of these conflicts is especially important for understanding the question of absolute rights. Although, as noted above, the objects of moral rights are hierarchically ordered (according to the degree of their necessity for action), this is not true of the subjects of the rights. If one class or group of persons inherently had superior moral rights over another class or group (as was held to be the case throughout much of human history), any conflict between their respective rights would be readily resoluble: the rights of the former group would always take precedence, they would never be overridden (at least by the rights of members of other groups), and to this extent they would be absolute.8 It is because (as is shown by the PGC as well as by other moral principles) moral rights are equally distributed among all human persons as prospective purposive agents that some of the main conflicts of rights arise. This is most obviously the case where one per- son’s right to life conflicts with another person’s, since in the absence of guilt on either side, it is assumed that the two persons have equal rights. Thus the difficulty of supporting the thesis that there are absolute rights derives much of its force from its connection with the principle that all persons are equal in their moral rights.

3. The differentiation of the elements of rights serves to explicate the various levels at which rights may be held to be absolute. We may distinguish three such levels. The first is that of Principle Absolutism. According to this, what is absolute, and thus always valid and never overridden, is only some moral principle of a very high degree of generality which, referring to the subjects, the respondents, and especially the objects of rights in a relatively undifferentiated way, presents a general formula for all the diverse duties of all respondents or agents toward all subjects or recipients. The PGC is such a principle; so too are the Golden Rule, the law of love, Kant’s categorical imperative, and the principle of utility. Principle Absolutism, however, may leave open the question whether any specific rights are always absolute, and what is to be done in cases of conflict. Even act-utilitarianism might be an example of Principle Absolutism, for it may be interpreted as saying that those rights are absolute whose fulfilment would serve to maxi- mize utility overall. These rights, whatever they may be, might of course vary in their specific contents from one situation to another.

At the opposite extreme is Individual Absolutism, according to which an individual person has an absolute right to some particular object at a partic- ular time and place when all grounds for overriding the right in the particular case have been overcome. But this still leaves open the question of what are the general grounds or criteria for overriding any right, and what are the other specific relevant contents of such rights.

It is at the intermediate level, that of Rule Absolutism, that the question of absolute rights arises most directly. At this level, the rights whose absoluteness is in question are characterized in terms of specific objects with possible specification also of subjects and respondents, so that a specific rule can be stated describing the content of the right and the correlative duty. The description will not use proper names and other individual referring expressions, as in the case of Individual Absolutism, nor will it consist only in a general formula applicable to many specifically different kinds of rights and duties and hence of objects, subjects, and respondents, as in the case of Principle Absolutism. It is at this level that one asks whether the right to life of all persons or of all innocent persons is absolute, whether the rights to freedom of speech and of religion are absolute, and so forth. The rights whose absoluteness is considered at the level of Rule Absolutism may vary in degree of generality, in that their objects, their subjects, and their respondents may be given with greater or lesser specificity. Thus there is greater specificity as we move along the following scale: the right of all persons to life, the right of all innocent persons to life, the right of all innocent persons to an economically secure life, the right of children to receive an economically secure and emotionally satisfying life from their parents, and so forth.

This variability raises the following problem. For a right to be absolute, it must be conclusively valid without any exceptions. But, as we have seen, rights may vary in generality, and all the resulting specifications of their objects, subjects, or respondents may constitute exceptions to the more general rights in which such specifications are not present. For example, the right of innocent persons to life may incorporate an exception to the right of all persons to life, for the rule embodying the former right may be stated thus: All persons have a right not to be killed except when the persons are not innocent, or except when such killing is directly required in order to prevent them from killing somebody else. Similarly, when it is said that all persons have a right to life, the specification of ‘persons’ may suggest (although it does not strictly entail) the exception-making rule that all animals (or even all organisms) have a right to life except when they are not persons (or not human). Hence, since an absolute right is one that is valid without any exceptions, it may be concluded either that no rights are absolute because all involve some specification, or that all rights are equally absolute because once their specifications are admitted they are entirely valid without any further exceptions.

The solution to this problem consists in seeing that not all specifications of the subjects, objects, or respondents of moral rights constitute the kinds of exception whose applicability to a right debars it from being absolute. I shall indicate three criteria for permissible specifications. First, when it is asked concerning some moral right whether it is absolute, the kind of specification that may be incorporated in the right can only be such as results in a concept that is recognizable to ordinary practical thinking. This excludes rights that are “overloaded with exceptions” as well as those whose application would require intricate utilitarian calculations.4

Second, the specifications must be justifiable through a valid moral principle. Since, as we saw above, the idea of an absolute right is doubly normative, a right with its specification would not even begin to be a candi- date for absoluteness unless the specification were moraljustified and could hence be admitted as a condition of the justifiability of the moral right. There is, for example, a good moral justification for incorporating the restriction of innocence on the subjects of the right not to be killed; but there is not a similarly good moral justification for incorporating racial, religious, and other such particularist specifications. It must be emphasized, however, that this moral specification guarantees only that the right thus specified is an appropriate candidate for being absolute; it is, of itself, not decisive as to whether the right is absolute.

A third criterion is that the permissible specification of a right must exclude any reference to the possibly disastrous consequences of fulfilling the right. Since a chief difficulty posed against absolute rights is that for any right there can be cases in which its fulfilment may have disastrous con- sequences, to put tliis reference into the very description of the right would remove one of the main grounds for raising the question of absoluteness. The relation between rights and disasters is complicated by the fact that the latter, when caused by the actions of persons, are themselves infringements of rights. This point casts a new light on the consequentialist’s thesis that there are no absolute rights. For when he says that every right may be overridden if this is required in order to avoid certain catastrophes— such as when torture alone will enable the authorities to ascertain where a terrorist has hidden a fused charge of dynamite—the consequentialist is appealing to basic rights. He is saying that in such a case one right—the right not to be tortured—is overridden by another right—the right to life of the many potential victims of the explosion. This raises the following question. Can the process of one right’s overriding another continue in- definitely or does the process come to a stop with absolute rights?

In order to deal with this question, two points must be kept in mind. First, even when catastrophes threatening the infringement of basic rights are invoked to override other rights, at least part of the problem created by such conflict depends, as wras noted above, on the assumption that all the persons involved have equal moral rights. There would be no serious con- flict of rights and no problem about absolute rights if, for example, the rights of the persons threatened by the catastrophe were deemed inferior to those of persons not so threatened.

Second, despite the close connection between rights in general and the rights threatened by disastrous consequences, it is important to distinguish them. For if the appeal to avoidance of disastrous consequences w'ere to be construed simply as an appeal for the fulfilment or protection of certain basic rights, then, on the assumption that certain disasters must always be avoided when they arc threatened, the consequentialist would himself be an absolutist. We can escape this untoward result and render more coherent the opposition between absolutism and consequentialism if we recognize a further important assumption of the question whether there are any absolute rights. Amid the various possible specifications of Rule Absolutism, the rights in question are the normative property of distinct individuals.6 In referring to some event as a “disaster” or a “catastrophe”, on the other hand, what is often meant is that a large mass of individuals taken collectively loses some basic good to which they have a right. It is their aggregate loss that constitutes the catastrophe. (This, of course, accounts for the close connec- tion between the appeal to disastrous consequences and utilitarianism.) Thus the question whether there are any absolute rights is to be construed as asking whether distinct individuals, each of whom has equal moral rights (and who are to be characterized, according to the conditions of Rule Abso- lutism, by specifications that are morally justifiable and recognizable to ordinary practical thinking), have any rights that may never be overridden by any other considerations, including even their catastrophic consequences for collective rights. II

4. We must now examine the merits of the prime consequentialist argu- ment against the possibility of absolute moral rights: that circumstances can always be imagined in which the consequences of fulfilling the rights would be so disastrous that their requirements would be overridden. The formal structure of the argument is as follows: (1) If R, then D. (2) 0 ('--'D). (3) Therefore, 0(~R). For example, (1) if some person’s right to life is fulfilled in certain circumstances, then some great disaster may or will occur. But (2) such disaster ought never to (be allowed to) occur. Hence, (3) in such circumstances the right ought not to be fulfilled, 80 that it is not absolute. Proponents of this argument have usually failed to notice that a parallel argument can be given in the opposite direction. If exceptions to the fulfil- ment of any moral right can be justified by imagining the possible disastrous consequences of fulfilling it, why cannot exceptionless moral rights be justi- fied by giving them such contents that their infringement would be unspeak- ably evil? The argument to this effect may be put formally as follows: (1) If ~R, then E. (2) 0(~E). (3) Therefore, 0(R). For example, (1) if a mother’s right not to be tortured to death by her own son is not fulfilled, then there will be unspeakable evil. But (2) such evil ought never to (be allowed to) occur. Hence, (3) the right ought to be fulfilled without any exceptions, so that it is absolute.

Tw'o preliminary points must be made about these arguments. First, despite their formal parallelism, there is an important difference in the meaning of ‘then’ in their respective first premises. In the first argument, ‘then’ signifies a consequential causal connection: if someone’s right to life is fulfilled, there may or will ensue as a result the quite distinct phenomenon of a certain great disaster. But in the second argument, ‘then’ signifies a moral conceptual relation: the unspeakable evil is not a causal consequence of a mother’s being tortured to death by her own son; it is rather a central moral constituent of it. Thus the second argument is not consequentialist, as the first one is, despite the fact that each of their respective first premises has the logical form of antecedent and consequent.

A related point bears on the second argument’s specification of the right in question as a mother’s right not to be tortured to death by her own son. This specification does not transgress the tliird requirement given above for permissible specifications: that reference to disastrous consequences must not be included in the formulation of the right. For the torturing to death is not a disastrous causal consequence of infringing the right; it is directly an infringement of the right itself, just as not being tortured to death by her own son is not a consequence of fulfilling the right but is the right. This distinction can perhaps be seen more clearly in such a less extreme case as the right not to be lied to. Being told a lie is not a causal consequence of infringing this right; rather, it just is an infringement of the right. In each case, moreover, the first two requirements for permissible specifications of moral rights are also satisfied: their contents are recognizable to ordinary practical thinking and they are justified by a valid moral principle. 5. Let us now consider the right mentioned above: a mother’s right not to be tortured to death by her own son. Assume (although these specifica- tions are here quite dispensable) that she is innocent of any crime and has no knowledge of any. What justifiable exception could there be to such a right? I shall construct an example which, though fanciful, has sufficient analogues in past and present thought and action to make it relevant to the status of rights in the real world.6

Suppose a clandestine group of political extremists have obtained an arsenal of nuclear weapons; to prove that they have the weapons and know' how to use them, they have kidnapped a leading scientist, shown him the weapons, and then released him to make a public corroborative statement. The terrorists have now announced that they will use the weapons against a designated large distant city unless a certain prominent resident of the city, a young politically active lawyer named Abrams, tortures his mother to death, this torturing to be carried out publicly in a certain way at a specified place and time in that city. Since the gang members have already murdered several other prominent residents of the city, their threat is quite credible. Their declared motive is to advance their cause by showing how powerful they are and by unmasking the moralistic pretensions of their political opponents.

Ought Abrams to torture his mother to death in order to prevent the threatened nuclear catastrophe? Might he not merely pretend to torture his mother, so that she could then be safely hidden while the hunt for the gang members continued? Entirely apart from the fact that the gang could easily pierce this deception, the main objection to the very raising of such questions is the moral one that they seem to hold open the possibility of acquiescing and participating in an unspeakably evil project. To inflict such extreme harm on one’s mother would be an ultimate act of betrayal; in performing or **even contemplating the performance of such an action** the son would lose all self-respect and would regard his life as no longer worth living.7 A mother’s right not to be tortured to death by her own son is beyond any compromise. It is absolute.

This absoluteness may be analysed in several different interrelated dimen- sions, all stemming from the supreme principle of morality. The principle requires respect for the rights of all persons to the necessary conditions of human action, and this includes respect for the persons themselves as having the rational capacity to reflect on their purposes and to control their behav- iour in the light of such reflection. The principle hence prohibits using any person merely as a means to the well-being of other persons. For a son to torture his mother to death even to protect the lives of others would be an extreme violation of this principle and hence of these rights, as would any attempt by others to force such an action. For this reason, the concept appropriate to it is not merely ‘wrong’ but such others as **‘despicable’**, ‘dis- honourable’, **‘base’, ‘monstrous’**. In the scale of moral modalities, such con- cepts function as the contrary extremes of concepts like the supererogatory.

What is supererogatory is not merely good or right but goes beyond these in various ways; it includes saintly and heroic actions whose moral merit surpasses what is strictly required of agents. In parallel fashion, what is base, dishonourable, or despicable is not merely bad or wrong but goes be- yond these in moral demerit since it subverts even the minimal worth or dignity both of its agent and of its recipient and hence the basic presupposi- tions of morality itself. Just as the supererogatory is superlatively good, so the despicable is superlatively evil and diabolic, and its moral wrongness is so rotten that a moralty decent person will not even consider doing it. This is but another way of saying that the rights it would violate **must remain absolute**.

6. There is, however, another side to this story. What of the thousands of innocent persons in the distant city whose lives are imperilled by the threatened nuclear explosion? Don’t they too have rights to life which, because of their numbers, are far superior to the mother’s right? May they not contend that while it is all very well for Abrams to preserve his moral purity by not killing his mother, he has no right to purchase this at the ex- pense of their lives, thereby treating them as mere means to his ends and violating their own rights? Thus it may be argued that the morally correct description of the alternative confronting Abrams is not simply that it is one of not violating or violating an innocent person’s right to life, but rather not violating one innocent person’s right to life and thereby violating the right to life of thousands of other innocent persons through being partly responsible for their deaths, or violating one innocent person’s right to life and thereby protecting or fulfilling the right to life of thousands of other innocent persons. We have here a tragic conflict of rights and an illustration of the heavy price exacted by moral absolutism. The aggregative consequen- tialist who holds that that action ought always to be performed which maxi-mizes utility or minimizes disutility would maintain that in such a situation the lives of the thousands must be preferred.

An initial answer may be that terrorists who make such demands and issue such threats cannot be trusted to keep their word not to drop the bombs if the mother is tortured to death; and even if they now do keep their word, acceding in this case would only lead to further escalated demands and threats. It may also be argued that it is irrational to perpetrate a sure evil in order to forestall what is so far only a possible or threatened evil. Philippa Foot has sagely commented on cases of this sort that if it is the son’s duty to kill his mother in order to save the lives of the many other innocent residents of the city, then “anyone who wants us to do something we think wrong has only to threaten that otherwise he himself will do some- thing we think worse”.8 Much depends, however, on the nature of the “wrong” and the “worse”. If someone threatens to commit suicide or to kill innocent hostages if we do not break our promise to do some relatively unimportant action, breaking the promise would be the obviously right course, by the criterion of degrees of necessity for action. The special diffi- culty of the present case stems from the fact that the conflicting rights arc of the same supreme degree of importance.

It may be contended, however, that this whole answer, focusing on the probable outcome of obeying the terrorists’ demands, is a consequentialist argument and, as such, is not available to the absolutist who insists that Abrams must not torture his mother to death whatever the consequences.9 This contention imputes to the absolutist a kind of indifference or even callousness to the sufferings of others that is not warranted by a correct understanding of his position. He can be concerned about consequences so long as he does not regard them as possibly superseding or diminishing the right and duty he regards as absolute. It is a matter of priorities. So long as the mother’s right not to be tortured to death by her son is unqualifiedly respected, the absolutist can seek ways to mitigate the threatened disastrous consequences and possibly to avert, them altogether. A parallel case is found in the theory of legal punishment : the retributivist, while asserting that punish- ment must be meted out only to the persons who deserve it because of the crimes they have committed, may also uphold punishment for its deterrent effect so long as the latter, consequentialist consideration is subordinated to and limited by the conditions of the former, antecedentalist consideration.10 Thus the absolutist can accommodate at least part of the consequentialist’s substantive concerns within the limits of his own principle.

Is any other answer available to the absolutist, one that reflects the core of his position? Various lines of argument may be used to show that in refusing to torture his mother to death Abrams is not violating the rights of the multitudes of other residents who may die as a result, because he is not morally responsible for their deaths. Thus the absolutist can maintain that even if these others die they still have an absolute right to life because the infringement of their right is not justified by the argument he upholds. At least three different distinctions may be adduced for this purpose. In the unqualified form in which they have hitherto been presented, however, they are not successful in establishing the envisaged conclusion.

One distinction is between direct and oblique intention. When Abrams refrains from torturing his mother to death, he does not directly intend the many ensuing deaths of the other inhabitants either as end or as means. These are only the foreseen but unintended side-effects of his action or, in tliis case, inaction. Hence, he is not morally responsible for those deaths. Apart from other difficulties with the doctrine of doublo effect, this distinction as so far stated does not serve to exculpate Abrams. Consider some parallels. Industrialists who pollute the environment with poisonous chemicals and manufacturers who use carcinogenic food additives do not directly intend the resulting deaths; these are only the unintended but foreseen side-effects of what they do directly intend, namely, to provide profitable demand-fulfilling commodities. The entrepreneurs in question may even maintain that the enormous economic contributions they make to the gross national product outweigh in importance the relatively few deaths that regrettably occur. Still, since they have good reason to believe that deaths will occur from causes under their control, the fact that they do not directly intend the deaths does not remove their causal and moral responsi- bility for them. Isn’t this also true of Abrams’s relation to the deaths of the oity’s residents?

A second distinction drawn by some absolutists is between killing and letting die. This distinction is often merged with others with which it is not entirely identical, such as the distinctions between commission and omission, bctwoen harming and not helping, between strict duties and generosity or supererogation. For the present discussion, however, the subtle differences between those may be overlooked. The contention, then, is that in refraining from killing his mother, Abrams does not kill the many innocent persons who will die as a result; he only lets them die. But one does not have the same strict moral duty to help persons or to prevent their dying as one has not to kill them; one is responsible only for w-hat ono does, not for what one merely allows to happen. Hence, Abrams is not morally responsible for the deaths he fails to prevent by letting the many innocent persons die, so that he does not violate their rights to life.

The difficulty with this argument is that the dutios bearing on the right to life include not only that one not kill innocent persons but also that one not let them die when one can prevent their dying at no comparable cost. If, for example, one can rcscuc a drowning man by throwing him a rope, one has a moral duty to throw him the rope. Failure to do so is morally culpable. Hence, to this extent the son who lets the many residents die when he can prevent this by means within his power is morally responsible for their deaths.

A third distinction is between respecting other persons and avoiding bad consequences. Respect for persons is an obligation so fundamental that it cannot be overridden even to prevent evil consequences from befalling some persons. If such prevention requires an action whereby respect is withheld from persons, then that action must not be performed, whatever the con- sequences.

One of the difficulties with this important distinction is that it is unclear. May not respect be withheld from a person by failing to avert, from him some evil consequence? How can Abrams be held to respect the thousands of innocent persons or their rights if he lets them die when he could have prevented this? The distinction also fails to provide for degrees of moral urgency. One fails to respect a person if one lies to him or steals from him; but sometimes the only way to prevent the death of one innocent person may be by stealing from or telling a lie to some other innocent person. In such a case, respect for one person may lead to disrespect of a more serious kind for some other innocent person.

7. None of the above distinctions, then, serves its intended purpose of defending the absolutist against the consequentialist. They do not show that the son’s refusal to torture his mother to death does not violate the other persons’ rights to life and that he is not morally responsible for their deaths. Nevertheless, the distinctions can be supplemented in a way that does servo to establish these conclusions.

The required supplement is provided by the principle of the intervening action. According to this principle, when there is a causal connection be- tween some person A’s performing some action (or inaction) X and some other person C’s incurring a certain harm Z, A’s moral responsibility for Z is removed if, between X and Z, there intervenes some other action Y of some person B who knows the relevant circumstances of his action and who intends to produce Z or who produces Z through recklessness. The reason for this removal is that B’b intervening action Y is the more direct or proximate cause of Z and, unlike A’s action (or inaction), Y is the sufficient condition of Z as it actually occurs.11

An example of this principle may help to show its connection with the absolutist thesis. Martin Luther King Jr. was repeatedly told that because he led demonstrations in support of civil rights, he was morally responsible for the disorders, riots, and deaths that ensued and that were shaking the American Republic to its foundations.12 By the principle of the intervening action, however, it was King’s opponents who were responsible because their intervention operated as the sufficient conditions of the riots and injuries. King might also have replied that the Republic would **not be worth saving** if the price that had to be paid was the violation of the civil rights of black Americans. As for the rights of the other Americans to peace and order, the reply would be that these rights cannot justifiably be secured at the price of the rights of blacks.

It follows from the principle of the intervening action that it is not the son but rather the terrorists who are morally as well as causally responsible for the many deaths that do or may ensue on his refusal to torture his mother to death. The important point is not that he lets these persons die rather than kills them, or that he does not harm them but only fails to help them, or that he intends their deaths only obliquety but not directly. The point is rather that, it is only through the intervening lethal actions of the terrorists that his refusal eventuates in the many deaths. Since the moral responsibility is not the son’s, it does not affect his moral duty not to torture his mother to death, so that her correlative right remains absolute.

This point also serves to answer some related questions about the rights of the many in relation to the mother’s right. Since the son’s refusal to torture his mother to death is justified, it may seem that the many deaths to which that refusal will lead are also justified, so that the rights to life of these many innocent persons are not absolute. But since they are innocent, why aren’t their rights to life as absolute as the mother’s? If, on the other hand, their deaths are unjustified, as seems obvious, then isn’t the son’s refusal to torture his mother to death also unjustified, since it leads to those deaths? But from this it would follow that the mother’s right not to be tortured to death by her son is not absolute, for if the son’s not infringing her right is unjustified, then his infringing it would presumably be justified. The solution to this difficulty is that it is a fallacy to infer, from the two premises (1) the son’s refusal to kill his mother is justified and (2) many innocent persons die as a result of that refusal, to the conclusion (3) their deaths are justified. For, by the principle of the intervening action, the son’s refusal is not causally or morally responsible for the deaths; rather, it is the terrorists who are responsible. Hence, the justification referred to in (1) does not carry through to (2). Since the terrorists’ action in ordering the killings i8 unjustified, the resulting deaths are unjustified. Hence, the rights to life of the many innocent victims remain absolute even if they are killed as a result of the son’s justified refusal, and it is not he who violates their rights. He may be said to intend the many deaths obliquely, in that they arc a foreseen but unwanted side-eflfect of his refusal. But he is not responsible for that side-effect because of the terrorists’ intervening action.

It would be unjustified to violate the mother’s right to life in order to protect the rights to life of the many other residents of the city. For rights cannot be justifiably protected by violating another right which, according to the criterion of degrees of necessity for action, is at least equally important. Hence, the many other residents do not have a right that the mother’s right to life be violated for their sakes. To be sure, the mother also does not have a right that their equally important rights be violated in order to protect hers. But. here too it must be emphasized that in protecting his mother’s right the son does not violate the rights of the others; for by the principle of the intervening action, it is not he who is causally or morally responsible for their deaths. Hence too he is not treating them as mere means to his or his mother’s ends.

8. Where, then, docs this leave us? From the absoluteness of the mother’s right not to be tortured to death by her son, does it follow that in the described circumstances a nuclear explosion should be permitted to occur over the city so that countless thousands of innocent persons may be killed, possibly including Abrams and his mother?

Properly to deal with this question, it is vitally important to distinguish between abstract and concrete absolutism. The abstract absolutist at no point takes account of consequences or of empirical or causal connections that may affect the subsequent outcomes of the two alternatives he considers. He views the alternatives as being both mutually exclusive and exhaustive. His sole concern is for the moral guiltlessness of the agent, as against the effects of the agent’s choices for human weal or woe.

In contrast, as I suggested earlier, the concrete absolutist is concerned with consequences and empirical connections, but always within the limits of the right he upholds as absolute. His consequentialism is thus limited rather than unlimited. Because of his concern with empirical connections, he takes account of a broader range of possible alternatives than the simple dualism to w'hich the abstract absolutist confines himself. His primary focus is not on the moral guiltlessness of the agent but rather on the basic rights of persons not to be subjected to unspeakable evils. Within this focus, however, the concrete absolutist is also deeply concerned with the effects of the fulfilment of these rights on the basic well-being of other persons. The significance of tliis distinction can be seen by applying it to the case of Abrams. If he is an abstract absolutist, he deals with only two alternatives which he regards as mutually exclusive as wrell as exhaustive: (1) he tortures his mother to death; (2) the terrorists drop a nuclear bomb killing thousands of innocent persons. For the reasons indicated above, he rejects (1). He is thereby open to the accusation that he chooses (2) or at least that he allows (2) to happen, although the principle of the intervening action exempts him from moral guilt or responsibility.

If, how'ever, Abrams is a concrete absolutist, then he does not regard himself as being confronted only by these two terrible alternatives, nor does he regard them or their negations as mutually exclusive. His thought- proccsses include the following additional considerations. In accordance with a point suggested above, he recognizes that his doing (1) will not assure the non-occurrence of (2). On the contrary, his doing (1) **will** probably **lead to further threats** of the occurrence of (2) **unless** he or someone else **performs further unspeakably evil actions** (3), (4), and so forth. (A parallel example may be found in Hitler’s demand for Czechoslovakia at Munich after his taking over of Austria, his further demand for Poland after the capitulation regarding Czechoslovakia, and the ensuing tragedies.) Moreover, (2) may occur even if Abrams does (1). For persons who are prepared to threaten that they will do (2) cannot be trusted to keep their word.

On the other hand, Abrams further reasons, his not doing (1) may well not lead to (2). This may be so for several reasons. He or the authorities or both must try to engage the terrorists in a dialogue in which their griev- ances are publicized and seriously considered. Whatever elements of ration- ality may exist among the terrorists will thereby be reinforced, so that other alternatives may be presented. At the same time, a vigorous search and preventive action must be pursued so as to avert the threatened bomb- ing and to avoid any recurrences of the threat. It is such concrete absolutism, taking due account of consequences and of possible alternatives, that constitutes the preferred pattern of ethical reasoning. It serves to protect the rights presupposed in the very possibility of a moral community while at the same time it gives the greatest probability of averting the threatened catastrophe. In the remainder of this paper, I shall assume the background of concrete absolutism.ni

9. I have thus far argued that the right of a mother not to be tortured to death by her son is absolute. But the arguments would also ground an extension of the kind of right here at issue to many other subjects and respondents, including fathers, daughters, wives, husbands, grandparents, cousins, and friends. So there are many absolute rights, on the criterion of plurality supplied by Rule Absolutism.

It is sometimes held that moral obligations are “agent-relative” in that, at least in cases of conflict, one ought to give priority to the welfare of those persons with whom one has special ties of family or affection.13 Applied to the present question, this view would suggest that the subjects having the absolute right that must be respected by respondents are limited to the kinds of relations listed above. It may also be thought that as we move away from familial and affectional relations, the proposed subjects of rights come to resemble more closely the anonymous masses of other persons who would be killed by a nuclear explosion, so that a quantitative measure of numbers of lives lost would become a more cogent consideration in allocating rights.

These conclusions, however, do not follow. Most of the arguments I have given above for the mother’s absolute right not to be tortured to death apply to other possible human subjects without such specifications. My purpose in beginning with such an extreme case as the mother-son relation was to focus the issue as sharply as possible; but, this focus once gained, it may be widened in the ways just indicated. Although the mother has indeed a greater right to receive effective concern from her son than from other, unrelated persons, the unjustifiability of violating right® that are on the same level of necessity for action is not affected either by degrees of family relationship or by the numbers of persons affected. Abrams would not be justified in torturing to death some other innocent person in the described circumstances, and in failing to murder he would not be morally responsible for the deaths of other innocent persons who might be murdered by someone else as a consequence.

These considerations also apply to various progressively less extreme objects of rights than the not being tortured to death to which I have so far confined the discussion. The general content of these objects may be stated as follows: All innocent persons have an absolute right not to be made the intended victims of a homicidal project. Tliis right, despite its increase in generality over the object, subject, and respondents of the previous right, still conforms to the requirements of Rule Absolutism. The word ‘intended’ here refers both to direct and to oblique intention, with the latter being subject to the principle of the intervening action. The word ‘project’ is meant to indicate a definite, deliberate design; hence, it excludes the kind of unforeseeable immediate crisis where, for example, the unfortunate driver of a trolley whose brakes have failed must choose between killing one person or five. The absolute right imposes a prohibition on any form of active participation in a homicidal project against innocent persons, whether by the original designers or by those who would accept its conditions with a viewr to w'arding off what they would regard as worse consequences. The meaning of ‘innocent’ raises many questions of interpretation into which I have no space to enter here, but some of its main criteria may be gathered from the first paragraph of this paper. As for ‘persons’, this refers to all prospective purposive agents.

The right not to be made the intended victim of a homicidal project is not the only specific absolute right, but it is surely one of the most important. The general point underlying all absolute rights stems from the moral principle presented earlier. At the level of Principle Absolutism, it may be stated as follow's: Agents and institutions are **absolutely prohibited** from degrading persons, treating them as if they had no rights or dignity. The benefit of this prohibition extends to all persons, innocent or guilty; for the latter, when they are justly punished, are still treated as responsible moral agents who are capable of understanding the principle of morality and acting accordingly, and the punishment must not be cruel or arbitrary. Other specific absolute rights may also be generated from this principle. Since the principle requires of every agent that he act in accord with the generic rights of his recipients as well as of himself, specific rights are absolute insofar as they serve to protect the basic presuppositions of the valid principle of morality in its equal application to all persons.

#### Dead bodies aren’t the key metric for decisionmaking—surveillance might not be dramatic, but the failure to confront it now adds up to a worse harm over time as abuses accumulate

SOLOVE 2011 (Daniel, professor of law at George Washington University, Why Privacy Matters Even if You Have 'Nothing to Hide', May 15, http://chronicle.com/article/Why-Privacy-Matters-Even-if/127461/)

Investigating the nothing-to-hide argument a little more deeply, we find that it looks for a singular and visceral kind of injury. Ironically, this underlying conception of injury is sometimes shared by those advocating for greater privacy protections. For example, the University of South Carolina law professor Ann Bartow argues that in order to have a real resonance, privacy problems must "negatively impact the lives of living, breathing human beings beyond simply provoking feelings of unease." She says that privacy needs more "dead bodies," and that privacy's "**lack of blood and death**, or at least of broken bones and buckets of money, distances privacy harms from other [types of harm]."

Bartow's objection is actually consistent with the nothing-to-hide argument. Those advancing the nothing-to-hide argument have in mind a particular kind of appalling privacy harm, one in which privacy is violated only when something deeply embarrassing or discrediting is revealed. Like Bartow, proponents of the nothing-to-hide argument demand a dead-bodies type of harm.

Bartow is certainly right that people respond much more strongly to blood and death than to more-abstract concerns. But if this is the standard to recognize a problem, then few privacy problems will be recognized. **Privacy is not a horror movie**, most privacy problems don't result in dead bodies, and demanding evidence of palpable harms will be difficult in many cases.

Privacy is often threatened not by a single egregious act but by the slow accretion of a series of relatively minor acts. In this respect, privacy problems resemble certain environmental harms, which occur over time through a series of small acts by different actors. Although society is more likely to respond to a major oil spill, **gradual pollution** by a multitude of actors often creates **worse problems**.

Privacy is **rarely lost** in **one fell swoop**. It is usually eroded over time, little bits dissolving almost imperceptibly until we finally begin to notice how much is gone. When the government starts monitoring the phone numbers people call, many may shrug their shoulders and say, "Ah, it's just numbers, that's all." Then the government might start monitoring some phone calls. "It's just a few phone calls, nothing more." The government might install more video cameras in public places. "So what? Some more cameras watching in a few more places. No big deal." The increase in cameras might lead to a more elaborate network of video surveillance. Satellite surveillance might be added to help track people's movements. The government might start analyzing people's bank rec­ords. "It's just my deposits and some of the bills I pay—no problem." The government may then start combing through credit-card records, then expand to Internet-service providers' records, health records, employment records, and more. Each step may seem incremental, but after a while, the government will be watching and knowing everything about us.

"My life's an open book," people might say. "I've got nothing to hide." But now the government has large dossiers of everyone's activities, interests, reading habits, finances, and health. What if the government leaks the information to the public? What if the government mistakenly determines that based on your pattern of activities, you're likely to engage in a criminal act? What if it denies you the right to fly? What if the government thinks your financial transactions look odd—even if you've done nothing wrong—and freezes your accounts? What if the government doesn't protect your information with adequate security, and an identity thief obtains it and uses it to defraud you? Even if you have nothing to hide, the government can cause you a lot of harm.

"But the government doesn't want to hurt me," some might argue. In many cases, that's true, but the government can also harm people inadvertently, due to errors or carelessness.

When the nothing-to-hide argument is unpacked, and its underlying assumptions examined and challenged, we can see how it shifts the debate to its terms, then draws power from its unfair advantage. The nothing-to-hide argument speaks to some problems but not to others. It represents a singular and narrow way of conceiving of privacy, and it wins by excluding consideration of the other problems often raised with government security measures. When engaged directly, the nothing-to-hide argument can ensnare, for it forces the debate to focus on its narrow understanding of privacy. But when confronted with the plurality of privacy problems implicated by government data collection and use beyond surveillance and disclosure, the nothing-to-hide argument, in the end, has **nothing to say**.

#### “Life key to rights” is backwards—life and death are not inherently good except for the things we enjoy about them which the status quo erodes and the plan protects

Nagel 12 [Thomas, University Professor of Philosophy and Law at New York University, “Mortal Questions”, Cambridge University Press, Mar 26, 2012, Pg.1-3]

If death is the unequivocal and permanent end of our existence, the question arises whether it is a bad thing to die.

There is conspicuous disagreement about the matter: some people think death is dreadful; others have no objection to death per se, though they hope their own will be neither premature nor painful. Those in the former category tend to think those in the latter are ~~blind~~ [not privy] to the obvious, while the latter suppose the former to be prey to some sort of confusion. On the one hand it can be said that life is all we have and the loss of it is the greatest loss we can sustain. On the other hand it may be objected that death deprives this supposed loss of its subject, and that if we realize that death is not an unimaginable condition of the persisting person, but a mere blank, we will see that it can have no value whatever, positive or negative.

Since I want to leave aside the question whether we are, or might be, immortal in some form, I shall simply use the word ‘death’ and its cognates in this discussion to mean permanent death, unsupplemented by any form of conscious survival. I want to ask whether death is in itself an evil; and how great an evil, and of what kind, it might be. The question should be of interest even to those who believe in some form of immortality, for one’s attitude toward immortality must depend in part on one’s attitude toward death.

If death is an evil at all, it cannot be because of its positive features, but only because of what it deprives us of. I shall try to deal with the difficulties surrounding the natural view that death is an evil because it brings to an end all the goods that life contains. We need not give an account of these goods here, except to observe that some of them, like perception, desire, activity, and thought, are so general as to be constitutive of human life. They are widely regarded as formidable benefits in themselves, despite the fact that they are conditions of misery as well as of happiness, and that a sufficient quantity of more particular evils can perhaps outweigh them. That is what is meant, I think, by the allegation that it is good simply to be alive, even if one is undergoing terrible experiences. The situation is roughly this: There are elements which, if added to one’s experience, make life better; there are other elements which, if added to one’s experience, make life worse. But what remains when these are set aside is not merely neutral: it is emphatically positive. Therefore life is worth living even when the bad elements of experience are plentiful, and the good ones too meager to outweigh the bad ones on their own. The additional positive weight is supplied by experience itself, rather than by any of its contents.

I shall not discuss the value that one person’s life or death may have for others, or its objective value, but only the value it has for the person who is its subject. That seems to me the primary case, and the case which presents the greatest difficulties. Let me add only two observations. First, the value of life and its contents does not attach to mere organic survival: almost everyone would be indifferent (other things equal) between immediate death and immediate coma followed by death twenty years later without reawakening. And second, like most goods, this can be multiplied by time: more is better than less. The added quantities need not be temporally continuous (though continuity has its social advantages). People are attracted to the possibility of long-term suspended animation or freezing, followed by the resumption of conscious life, because they can regard it from within simply as continuation of their present life. If these techniques are ever perfected, what from outside appeared as a dormant interval of three hundred years could be experienced by the subject as nothing more than a sharp discontinuity in the character of his experiences. I do not deny, of course, that this has its own disadvantages. Family and friends may have died in the meantime; the language may have changed; the comforts of social, geographical, and cultural familiarity would be lacking. Nevertheless these inconveniences would not obliterate the basic advantage of continued, though discontinuous, existence.

If we turn from what is good about life to what is bad about death, the case is completely different. Essentially, though there may be problems about their specification, what we find desirable in life are certain states, conditions, or types of activity. It is being alive, doing certain things, having certain experiences that we consider good. But if death is an evil, it is the loss of life, rather than the state of being dead, or nonexistent, or unconscious, that is objectionable.1 This asymmetry is important. If it is good to be alive, that advantage can be attributed to a person at each point of his life. It is a good of which Bach had more than Schubert, simply because he lived longer. Death, however, is not an evil of which Shakespeare has so far received a larger portion than Proust. If death is a disadvantage, it is not easy to say when a man suffers it.

#### The obsession with human survival is self-defeating—the tyranny of survival paradoxically destroys more people in the long run and diminishes the value of life

CALLAHAN 1973 (Daniel, institute of Society and Ethics, The Tyranny of Survival, p. 91-3)

The value of survival could not be so readily abused were it not for its evocative power. But abused it has been. In the name of survival, all manner of social and political evils have been committed against the rights of individuals, including the right to life. The purported threat of Communist domination has for over two decades fueled the drive of militarists for ever-larger defense budgets, no matter what the cost to other social needs. During World War II, native Japanese-Americans were herded, without due process of law, to detention camps. This policy was later upheld by the Supreme Court in Korematsu v. United States (1944) in the general context that a threat to national security can justify acts otherwise blatantly unjustifiable. The survival of the Aryan race was one of the official legitimations of Nazism. Under the banner of survival, the government of South Africa imposes a ruthless apartheid, heedless of the most elementary human rights. The Vietnamese war has seen one of the greatest of the many absurdities tolerated in the name of survival: the destruction of villages in order to save them. But it is not only in a political setting that survival has been evoked as a final and unarguable value. The main rationale B. F. Skinner offers in Beyond Freedom and Dignity for the controlled and conditioned society is the need for survival. For Jacques Monod, in Chance and Necessity, survival requires that we overthrow almost every known religious, ethical and political system. In genetics, the survival of the gene pool has been put forward as sufficient grounds for a forceful prohibition of bearers of offensive genetic traits from marrying and bearing children. Some have even suggested that we do the cause of survival no good by our misguided medical efforts to find means by which those suffering from such common genetically based diseases as diabetes can live a normal life, and thus procreate even more diabetics. In the field of population and environment, one can do no better than to cite Paul Ehrlich, whose works have shown a high dedication to survival, and in its holy name a willingness to contemplate governmentally enforced abortions and a denial of food to surviving populations of nations which have not enacted population-control policies. For all these reasons it is possible to counterpoise over against the need for survival a "tyranny of survival." There seems to be no imaginable evil which some group is not willing to inflict on another for sake of survival, no rights, liberties or dignities which it is not ready to suppress. It is easy, of course, to recognize the danger when survival is falsely and manipulatively invoked. Dictators never talk about their aggressions, but only about the need to defend the fatherland to save it from destruction at the hands of its enemies. But my point goes deeper than that. It is directed even at a legitimate concern for survival, when that concern is allowed to reach an intensity which would ignore, suppress or destroy other fundamental human rights and values. The potential tyranny survival as value is that it is capable, if not treated sanely, of wiping out all other values. Survival can become an obsession and a disease, provoking a destructive singlemindedness that will stop at nothing. We come here to the fundamental moral dilemma. If, both biologically and psychologically, the need for survival is basic to man, and if survival is the precondition for any and all human achievements, and if no other rights make much sense without the premise of a right to life—then how will it be possible to honor and act upon the need for survival without, in the process, destroying everything in human beings which makes them worthy of survival. To put it more strongly, if the price of survival is human degradation, then there is no moral reason why an effort should be made to ensure that survival. It would be the Pyrrhic victory to end all Pyrrhic victories.

#### Hence the plan: The Drug Enforcement Administration should curtail its use of Automatic License Plate Recognition in the United States.

#### The plan is a necessary response to violations of liberty--federal action is key

SALLES 2015 (Alice, journalist specializing in civil liberties, “License plate surveillance may invite political targeting,” Watchdog Arena, Feb 4, http://watchdog.org/197745/license-plate-surveillance-political-targeting/)

But if the program was allowed to be carried out unchecked for so long, what could be done now to turn things around?

In the name of transparency, EFF is filing a lawsuit against the Los Angeles police and sheriff’s offices “to gain access to one week’s worth of ALPR (Automatic License Plate Recognition) data.” The action would offer more details into how the program works. Such information would play an important role in making the public understand the importance of challenging the DEA.

According to The Daily Caller, the data is made available only through the El Paso Intelligence Center, known as EPIC. Jay Stanley, a senior policy analyst at the ACLU, says “It’s unconscionable that technology with such far-reaching potential would be deployed in such secrecy.” Partisanship, Stanley believes, should not be holding this story back:

People might disagree about exactly how we should use such powerful surveillance technologies, but it should be democratically decided, it shouldn’t be done in secret.

In California, Maass told Watchdog Arena, lawmakers could use information made available after the EFF’s lawsuit to limit ALPR practices. State legislators could follow the California Highway Patrol (CHP) example and limit “how long it can store data.” The CHP also must disclose “when it shares that information with other local agencies,” a crucial part of keeping law enforcement agencies in check.

While much can be done to limit the practice locally, the civil liberties group believes that any “federal agency may be able to use a court order or subpoena to access specific ALPR records from an agency” in the future. That problem would make this issue much more difficult to address fully only through local legislation.

According to Maass, privacy advocates have a great opportunity to get involved by filing “public records requests with their own local agencies to survey what ALPR technology local police are using and what their privacy policies are.” More people involved would mean more law enforcement agencies under scrutiny for the power overreach.

But that is not all; pressuring lawmakers could also make a difference, Maass said. “Too often, policymakers aren’t even asking questions about civil liberties and privacy when approving this technology.”

#### We must resist license plate tracking as an infringement of liberty—this form of surveillance will constantly expand to new abuses with no security rationale

COOKE 2015 (Charles, writer at the National Review, “As You Drive, So Are You Watched,” National Review, Jan 25, http://www.nationalreview.com/article/397303/you-drive-so-you-are-watched-charles-c-w-cooke)

Another day, and another of **Leviathan’s tentacles** is exposed for all the world to see. This time the culprit is the Drug Enforcement Administration, and the target is the American motorist. The Wall Street Journal has the scoop: The Justice Department has been building a national database to track in real time the movement of vehicles around the U.S., a secret domestic intelligence-gathering program that scans and stores hundreds of millions of records about motorists, according to current and former officials and government documents. The instant reaction to this news has been mixed. As might be expected, the civil libertarians have cast the measures as the latest chapter in America’s slow descent into ubiquitous security theater. Before long, they have proposed, we will be living in Richard Brautigan’s country; still free in many ways, yes, but living our lives on camera rather than in camera, and raging impotently as we are woven slowly into an irreversible “cybernetic ecology” and “all watched over by machines of loving grace.” The government is spying on cars? Naturally. And soon they will have graduated to ankle bracelets, and then . . . Those who are more interested in security than in liberty, meanwhile, have taken precisely the opposite approach. Because the state is acting in the public square, they note, there is no obvious Fourth Amendment violation here. In consequence, they establish, there are no rights being violated per se, no codified principle is being undermined, and it will be almost impossible for opponents of the scheme to mount a challenge in court. Their bottom line, if I’m reading it correctly, is that this isn’t a question of “privacy” as we traditionally understand it, and that it should therefore not be inspiring knee-jerk condemnation or appeals to American radicalism. All told, I cannot say that I am convinced by this latter argument. “It’s legal” is a convincing rejoinder when the question is “May the government do this without falling foul of the Constitution?” But it is rather irrelevant when the inquiry is “Should the government be doing this at all?” Effectively, defenders of the DEA are telling us that we are dealing here with a political, not a legal question, and they are drawing a crucial distinction between the public and private realms. That’s fine. But, there being a difference between what is legal and what is right, they are not making a case for its acceptability. Given the axioms of contemporary jurisprudence, it would not be illicit for the federal government to impose a flat tax of 90 percent, or to fill the national parks with sulfur, or to insist that gasoline contained at least 40 percent chocolate. Nor, for that matter, would it violate the law for the feds to hire 10 million secret police to keep an eye on California. Nevertheless, such measures would be incompatible with the presumptions and expectations of a free society, and we would expect the people who populate that society to push back. Why not here, too? Within a system of ordered liberty, there is of course some room for the state to monitor public spaces and to keep an eye on those who are suspected of wrongdoing. Contrary to the suggestion of my friend Gabriel Malor, I do not in fact wish to “live in a world where the gov’t must pretend to be blind,” and nor do I consider that there is anything inherently wrong with the government’s electing to watch a person “drive around in public.” But I do think that the details of that surveillance really matter. Simply put, I am quite happy to live in a world in which, in the course of acting locally and in response to a discrete threat, the state is able to thwart the plans of those who would harm the innocent people. At the same time, I do not want to live in a world in which the state films everybody in public as a matter of unprovoked routine. As so often, the key here is necessity. Can the security forces intrude upon my liberties in a genuine emergency? Absolutely. Should they be watching or recording the movements of private citizens absent a specific, time-limited, and easily explicable reason to do so? No, they should not. Whether the DEA can offer a plausible justification for the width of its net seems doubtful. Per the Wall Street Journal, “the primary goal of the license-plate tracking program, run by the Drug Enforcement Administration, is to seize cars, cash and other assets to combat drug trafficking.” Of late, however, “the database’s use has expanded to hunt for vehicles associated with numerous other potential crimes, from kidnappings to killings to rape suspects,” and the “DEA has spent years working to expand the database ‘throughout the United States.’” The system, the Journal notes, now has more than 100 cameras, and it continues to expand. How extensive does the federal government hope its reach will be? Even Idaho has been invited to participate. One can see here how **mission creep works in action**. First, an agency establishes a program to deal with a specific threat: in this case, drug cartels on the Mexican border. Then, it realizes that its system could be more generally useful to the powers that be. Quickly, the reasons given become mawkish and emotive. “We need this,” advocates will say, “or we can’t rescue kidnapped children.” And, eventually, we end up with a system of “just in case” that is invariably justified with the old line that if you aren’t doing anything wrong you shouldn’t worry about being watched. Well, I’m not doing anything wrong. But I do mind being watched — yes, even in public. And so, after a point, does everybody. Over at Hot Air, a sympathetic Jazz Shaw reminds his readers that “your right to privacy essentially drops to zero once you leave your home and go out in the public square.” This is true. But presumably Shaw would not endorse everything that the state chose to do in public? Would he be fine, for example, with a vast team of anti-mass-shooting police that monitored all concealed-carry holders once they had left their homes? How would he feel about a satellite system that could recognize citizens carrying wads of cash and track their forays in real time? And would he endorse the introduction of high-definition cameras onto all residential streets if the move were rationalized as a means by which the state could weed out and prosecute those guilty of domestic violence? If not, why not? He’s not doing anything wrong. Shaw sums up his case by asking, “What is it that is so private about driving your vehicle on the taxpayer funded roadways that we don’t want that information recorded?” This, I think, is an easy question to answer. Because they are public, I certainly have no legal right to use the roads; and nor, for that matter, do I have a right to be ignored as I follow them. And yet there is only one way that I am able to travel to most places in this country — and that, in one form or another, is by car. To permit our employees in the bureaucracy to watch and record our movement on the roads is to establish as a matter of public policy that it is **impossible** for one to go **anywhere in the United States** without being observed by those who enjoy a **monopoly** on legitimate **violence**. Is that really how the land of the free is supposed to work? There are eerie parallels here with the debate over the NSA and its metadata-collection program. Because the state is not delving into the content of most communications, the NSA’s apologists propose, those whose information is captured have nothing to fear. Superficially, this argument has much to recommend it. And yet, as the Electronic Frontier Foundation has wisely pointed out, all is not quite as it seems. As a matter of fact, one does not need to read the details of a given exchange to obtain useful and sensitive information about its participants. Just as frequent calls to an AIDS clinic or to a firm of bankruptcy lawyers can tell us a great deal about a person and his private vulnerabilities, so recurrent visits to a given place can betray confidences that most people do not want betrayed. Even if we willfully ignore that datasets can always be hacked and stolen; that not all those who have access to real-time or recorded information are virtuous; and that, governments often being **terrifying**, it is our Burkean **duty** to “augur misgovernment at a distance and **snuff the approach of tyranny in every tainted breeze**,” the onset of quotidian mass-surveillance in a country that prides itself on its limited government strikes me as being rather unseemly. As our founding documents confirm, the federal government is the creation of the people, and it is charged with fulfilling only those functions that those people have delegated to it. Watching us all around the clock, as one might a consumptive child in a hospital incubator, is nowhere included within its brief.

#### No counterplan can solve the case—the ability of another actor to address the harm doesn’t absolve you of your obligation to do so as well

AITKEN 77 (William, teaches philosophy at Chatham College, World Hunger and Moral Obligation, p 93-94)

Some have maintained that there is a fourth minimal condition which a potential helper of a person in need must satisfy in order to be obligated to act—the condition of being the ‘last resort’. Richard Brandt suggests such a condition in his book, *Ethical Theory*. He specifies that it is only in cases where “we are the only one in a position to help” that we have a moral obligation to assist a person in dire need and that the person in need has a right to our assistance. There is a danger in adopting this ‘last resort’ condition since it poses an additional epistemological difficulty, that is, the determination of whether or not I am the last resort. Beyond this, it is an undesirable condition because it will justify inaction where more than one person *could* act but where no one *is* acting. In most emergency situations there is more than one potential assistor. For instance, five persons may simultaneously come across a drowning child. Each would be obligated to act if he were the last resort, but since no single one *is* the last resort, then all five may refuse to act, claiming that it is not their duty to act any more than it is the duty of the other four and so each one would be justified in not acting. If this condition is placed on the right to be saved, the child could drown and none of the five spectators could be held morally accountable. But surely the presence of another person at an accident site does not automatically relieve me of a moral duty to assist the victim in need, any more than the presence of one police officer called to the scene of a bank robbery relieves other officers in the area from attempting to apprehend the suspects. The condition of last resort is too strong; it is not a minimal condition for obligation.

#### We can’t make policy based on linear predictions—the complexity of government and the chaos of unpredictable events means that as a judge you should simply ignore disads based on future impacts

**WARD 1996** (Brian, “The Chaos of History: Notes Towards a Postmodernist Historiography,” Limina, Vol 2, http://www.limina.arts.uwa.edu.au/previous/volumes\_15/volume\_2?f=73934)

Porush establishes the link between narrative-as-history and chaos theory by recognising that before chaos theory, a view of human experience based on the metaphor of the Butterfly Effect was ‘dismissed as pertinent only to the realm of accident, coincidence, kismet, and messy human affairs’.35 Now however, chaos theory suggests that unpredictable or nonlinear events are not only the product of human experience but are also a part of ‘reality’. Stephen H. Kellert contends that historical events can be seen to unfold as the Butterfly Effect suggests because history teems ‘with examples of small events that led to momentous and long-lasting changes in the course of human affairs.’36 Porush and Kellert share this belief with physicists like Marcelo Alonso and Gottfried Mayer-Kress. Alonso states that because ‘social systems are not linear, certain local fluctuations (inventions, discoveries, revolutions, wars, [and the] emergence of political leaders etc.) may result in major changes’.37 Mayer-Kress also uses the Butterfly Effect as a historical metaphor to argue that nation states can be described as chaotic systems, and that in such systems small events such as terrorist bombings or minor military deployments can act as catalysts, resulting in all-out nuclear war.38 Chaos theory thus appears to have direct historiographical implications. One consequence of chaos for historiography is that a linear model of causality can no longer be used to determine the causes and effects of historical events. A postmodernist historiography demonstrates the ineffectiveness of linear causality, which cannot take into account the inherent discontinuity and indeterminism of historical events. A new historiography that relies on the techniques of literary criticism to achieve its deconstruction of historical narratives is developing. This postmodernist historiography takes nonlinear causality into account, and acknowledges that a single historical text cannot represent the whole of an event.39 Because of this, any piece of information within the text is considered to be significant, and no detail, however irrelevant or unimportant it appears, can be overlooked. A postmodern historiography accepts that detail within the historical text is crucial and tiny details or fragments of information may have great relevance and importance to the event being studied. William V. Spanos calls these details ‘minute particulars’, and argues that knowing the minute particulars of a historical event can make a difference to the analysis of that event.40 Ankersmit argues that the postmodernist historiographer must be ‘capable of linking a small, insignificant detail in one part of the work he investigates to an apparently unrelated detail in another part of that work’ in order to gain information and meaning out of a historical event recorded in a text or a series of texts.41

#### This is particularly true for war—it’s too chaotic to be controlled or avoided through policymaking

**FONT AND RÉGIS 2006** (Joan Pere Plaza i Font UAB – Universitat Autònoma de Barcelona – Spain Dandoy Régis UCL – University of Louvain – Belgium “Chaos Theory and its Application in Political Science” IPSA – AISP Congress Fukuoka, 9 – 13 July 2006 http://www.sciencespo.site.ulb.ac.be/dossiers\_membres/dandoy-regis/fichiers/dandoy-regis-publication18.pdf)

Betts (2000) observed a useful application of chaos to strategy and international security. In his view, doubts about government’s capacity to cause intended effects through strategy are reinforced by the chaos theory, given the fact that the strategy results do not follow plans. The complexity and the contingency preclude controlling causes well enough to produce desired effects and little connection between the design and the denouement of strategies is observed. The author stressed that, in this case, the chaos theory emphasizes how small, untraceable events produce major changes, referring to the ‘butterfly effect’ characteristic. Chaos theory sees war as a nonlinear system that produces ‘erratic behaviour’, through disproportionate relationships between inputs and outputs or synergies, and in which the whole is not equal to the sum of the parts (Beyerchen, 1992). However, Betts conceded that chaotic nonlinearity is common in war strategies, but neither absolute nor pervasive. “If chaos theory meant that no prediction is possible, there would be no point in any analysis of the conduct of the war” (Betts, 2000: 20). Those who criticize social science approaches to strategy for false confidence in predictability cannot rest on a rejection of prediction altogether without negating all rationale for strategy. Finally, one should mention that the nonlinear perspective misrepresents the structure of the problem as the military strategy seeks disequilibrium, a way to defeat the enemy rather than to find a mutually acceptable price for exchange. More precise but still rhetorical examples of the application of the chaos theory in the field of the international relations can be found in the example of the spontaneous and mass revolutions as the Iranian revolution of 1978-79 that is considered a massive rupture of chaotic uncertainties and bifurcations into unpredictable dynamical changes in a political system (Farazmand, 2003:341), similarly to the predictions made on the post-castro environment in Cuba (Radu, 2000). A single man – Adolf Hilter – was considered as the ‘butterfly’s wing’ that could cause the German system to bifurcate from democracy to totalitarism (Peled, 2000:31). Similarly, the events of September 2001 in the United States, the appearance of the Macedonian Alexander that ruled the Persian Empire are assessed as good examples of how small scale chaotic events can lead to large scale chaotic consequences with far reaching implications. (Farazmand, 2003:353). But political scientists do not only use metaphors for describing political and IR phenomena. For example, Saperstein (1988) studied empirically whether the development of SDI in the United States would lead to a transition from an offensive to a defensive mode of strategy from ICBM attacks. His complex model appears to be sensitive to noise and even chaotic. The outcomes of the system clearly show erratic oscillations and predict an undesired escalation of risk of strategic intercontinental nuclear war in the case of the development of SDI. They confirmed that, in the political science field, the transition from predictability to chaos in deterministic mathematical system is possible.

**Various world systems exist in a critical state where sudden and unpredictable collapse is possible at any time—it is literally impossible to learn from history or identify a cause of war even minutes before it breaks out**

**BUCHANAN 2002** (Mark, Ubiquity: Why Catastrophes Happen, p. 62)

This book is not only about earthquakes. It is about ubiquitous patterns of change and organization that run through our world at all levels. I have begun with earthquakes and discussed them at some length only to illustrate a way of thinking and to introduce the remarkable dynamics of upheavals associated with the critical state, dynamics that we shall soon see at work in other settings. "When it comes to disastrous episodes of financial collapse, revolutions, or catastrophic wars, we all quite understandably long to identify the causes that make these things happen, so that we might avoid them in the future. But we shall soon find power laws in these settings as well, very possibly because the critical state underlies the dynamics of all of these different kinds of upheaval. It appears that, at many levels, our world is at all times tuned to be on the edge of sudden, radical change, and that these and other upheavals may all be strictly unavoidable and unforeseeable, even just **moments before they strike**. Consequently, our human longing for explanation may be terribly misplaced, and **doomed always to go unsatisfied**.

## 2AC Extensions

### ALPR Violates Liberty

#### License plate monitoring is a massive violation of liberty—the government watches both vehicles and people

A.P.P. 2015 (Asbury Park Press, “EDITORIAL: Big Brother is our co-pilot,” Jan 30, http://www.app.com/story/opinion/editorials/2015/01/30/editorial-big-brother-co-pilot/22613505/)

The road to hell and the death of privacy in America is paved with government programs originally designed to keep us safe. The question is no longer, “Is Big Brother watching?” but rather, “When is Big Brother not watching?” It is time for Americans and Congress to curtail these kudzu-like incursions into our lives.

The latest example of the ever-lengthening reach of government into the lives of law-abiding Americans is the news first reported in the Wall Street Journal that the Drug Enforcement Agency has spent years working to expand its license-plate tracking program.

The Justice Department has been building a national database to track in real time the movement of vehicles around the U.S., a secret domestic intelligence-gathering program that scans and stores hundreds of millions of records about motorists.

The DEA program collects data about vehicle movements, including time, direction and location, from high-tech cameras placed strategically on major highways. Many devices also record visual images of drivers and passengers, which are sometimes clear enough for investigators to confirm identities.

#### License plate monitoring leads to a broader erosion of liberty

A.P.P. 2015 (Asbury Park Press, “EDITORIAL: Big Brother is our co-pilot,” Jan 30, http://www.app.com/story/opinion/editorials/2015/01/30/editorial-big-brother-co-pilot/22613505/)

Still, there is something unsettling about both the asset forfeiture program and the massive collection of the travel habits of millions upon millions of Americans. The last thing we need is complacency about this issue. Too many Americans believe that if they have nothing to hide, they have nothing to worry about when Big Brother comes calling.

The trouble is that civil rights and basic freedom can slip away in increments. As George Orwell put it in his continually prophetic book “1984:” “Always eyes watching you and the voice enveloping you. Asleep or awake, indoors or out of doors, in the bath or bed — no escape. Nothing was your own except the few cubic centimeters in your skull.”

Liberty itself means that Big Brother should not be able to have “eyes watching us always.”

### Privacy Impacts

#### The aff should win even under a utilitarian calculus—privacy isn’t about individual rights but the collective goods of a society where justice, deliberation, economic exchange and everything we care about is made possible by protection from the state

SIAVOSHY 2015 (Babak Siavoshy is a fellow and supervising attorney at the Samuelson Law, Technology & Public Policy Clinic at the UC Berkeley School of Law, Why privacy matters even if you don’t care about it (or, privacy as a collective good), Concurring Opinions, June 14, http://concurringopinions.com/archives/2015/06/privacy-as-a-collective-good.html)

This leads to what I think is the better (but perhaps more controversial) answer to the puzzle: privacy is worth protecting even if turns out most people don’t care about their own privacy. As counterintuitive as it seems, questions about privacy and surveillance don’t–and shouldn’t–hinge on individual privacy preferences.

That’s because questions about privacy rights, like questions about speech or voting or associative rights, are bigger than any individual or group. They are, instead, about the type of society we (including all those survey-takers) want to live in. Or as scholars have suggested, privacy is best thought of as a collective rather than merely an individual good

Privacy is like voting

Many of our most cherished rights, such as expressive, associational, and voting rights, are understood to protect both individual and collective interests. The right to vote, for example, empowers individuals to cast ballots in presidential elections. But the broader purpose of voting rights–their raison d’être–is to reach collective or systemic goods such as democratic accountability.

The fact that many individuals in the United States don’t vote doesn’t tell us much about whether the right to vote is worth protecting, let alone whether we should enact or scale back a particular set of voter protections. When it comes to voting, we intuitively understand that the right to vote has societal benefits that are worth protecting regardless of individuals’ attitudes towards voting. For example, the very existence of robust voting and electoral rights—the possibility that people might exercise their voting power if unhappy—incentivizes accountability on the part of government officials.

Privacy is like voting. Privacy rights create space for individual freedom, but their raison d’être is protecting broader societal and systemic goods. The point of protecting privacy rights—even rights that we choose not to exercise—is to facilitate the creation and furtherance of these social goods. Absent the space provided by the rights to private thought, private communications, and private associations, it is difficult to imagine how any of the major socio-political movements of the past century—from civil rights, to women’s rights, and gay rights—could have survived long enough to influence policy.

The same, perhaps, can be said of major innovations in science, business, and technology. When properly balanced, privacy rights protect the creative process; they create space for deviance, and for experimentation; they allows for the testing and weeding out of weak arguments; they create new pathways for minority viewpoints and groups to gain public support, and for unpopular legal and political arguments to move from off the wall to on the wall.

The question of whether privacy rights are worth protecting is tied to the value we place on these systems and processes–and the public goods they facilitate–rather than to any individual’s interest in the secrecy of their own information. Even if it turns out to be true that most people don’t care about their privacy, that would not be enough to settle important questions about whether (and what) privacy rights society should protect. Privacy rights, like voting rights, are the types of rights that are worth protecting even if many of us don’t care to exercise them.

Rethinking privacy harms

Once we recognize that a critical purpose of privacy rights is to protect collective interests, we have to rethink some of the ways we evaluate privacy harms in our legal and political discourse. For example, courts and policymakers evaluating the harm from (say) data breach or overbroad surveillance must look beyond the intrusion on a particular individual’s privacy and give weight to the broader societal harms of the legal rules or rulings being promulgated. In privacy cases, as with first amendment and voting rights cases, the harm to the individuals is often less important than the harm to society.

Unfortunately, courts and policymakers very often undervalue the societal harms of privacy intrusions. In data breach litigation, courts typically throw out privacy claims unless the victims can prove the data thieves misused their stolen information. This is a very high bar that does little justice to the many social costs of the poor security practices that cause data breach. In its 2012 decision in Clapper v. Amnesty International, the Supreme Court set a similarly high bar for plaintiffs challenging surveillance laws. The Clapper majority’s decision was premised, again, on the theory that the plaintiffs could not prove that they suffered more than speculative harm from the government’s expanded surveillance powers, which in the view of four dissenting justices had a “very strong likelihood” of ensnaring lawful communications.

In Fourth Amendment cases courts routinely contort themselves to force decisions with broad implications for collective interests (decisions that fundamentally affect “the right of the people to be secure”) into a narrow individual-privacy box. Take Maryland v. King, in which the Supreme Court authorized Maryland’s practice of genetic testing suspects arrested, but not charged or convicted, with a violent felony. The majority’s operative legal analysis focused on the “negligible” intrusion caused when the police swabbed the suspect’s cheek with a Q-Tip, and not the brave new world of warrantless genetic testing. In evaluating the reasonableness of the government’s conduct, the majority weighed the degree to which the cheek-swab “intrudes upon an individual’s privacy,” on one hand, and “the promotion of legitimate governmental interests” in crime prevention, on the other.

Put otherwise, the Court weighed the right of the people of Maryland to efficient law enforcement against one man’s right to have his cheek let alone. If it doesn’t seem like a fair fight, it’s because it’s not. As the Court concluded, “[a] gentle rub along the inside of the cheek does not break the skin, and it involves virtually no risk, trauma, or pain”—a small price to pay for the safety of the people of Maryland. Not only does Court’s legal analysis gives short shrift to societal implications of broadened genetic surveillance, it focuses on the wrong individual harm: the momentary (and “negligible”) intrusion of a cheek-swab, rather than the privacy implications of suspicionless DNA searches and lifelong inclusion in ever-searchable, all but permanent, law enforcement DNA databanks.

The Court’s pro-privacy decisions are often similarly contrived. In U.S. v. Jones, the Court held that the Fourth Amendment regulates the use of GPS trackers by law enforcement. The case presented difficult questions about the scope of privacy rights in public places in the face of new technologies that allow pervasive tracking of location and patterns of life. Instead of grappling with the implications of unchecked, ubiquitous location tracking, the Court fashioned a brand new legal rule rebuking the FBI’s minor physical intrusion onto the undercarriage of Mr. Jones’s Jeep. The Jones case, of course, wasn’t about the car; it was about the broader implications of the type of unchecked, automated, warrantless location surveillance, which has become increasingly routine.

In Jones, as in King, the justices of the Supreme Court understood the impact of their rulings on collective interests—those stakes are addressed in the merits and amicus briefs, the concurrences and dissents, and even in the majority’s dicta. But in each case, the Court went well out of its way to make those stakes seem tangential to what it framed as its real job, crafting rules to protect the cheeks and the car-undercarriages of individual Americans. This misses the forest for the trees. Even recognizing the need for strong limits on judicial decisionmaking (enforced in part through justiciability rules), one must believe that there is—there must be–better ways to do justice to the broader societal impact of legal rules that undermine privacy.

Privacy rights are worth protecting for reasons that go beyond any individual’s interests in avoiding embarrassing disclosures, minor physical intrusions, or pecuniary damage. Privacy rights are worth protecting because they create space for innovation, creativity, expression, dissent, competition, and political participation. They are a condition precedent to the healthy functioning of our political and economic system. Policymakers and courts should do more to recognize these social and collective interests protected by privacy in their decisions.

Doctrinal implications

What are the doctrinal implications of recognizing privacy as a collective good? While there is no simple answer, we may look to our experience with other “collective rights” for guidance. When it comes to free expression, association, and voting, Courts and policymakers have long devised doctrinal mechanisms to fill the gaps between the individual and collective interests protected by these rights.

In First Amendment cases, courts apply a modified version of traditional standing requirements–the same requirements used to toss privacy and surveillance claims–to account for the societal harms of speech-chilling statutes. Under the Supreme Court’s overbreadth cases, litigants may challenge speech restrictions that are substantially overbroad even where they are unable to demonstrate individualized harm to their own speech rights. The collateral damage from overbroad statutes on speech and associational rights is just too high, and courts will strike such laws rather than to wait for the perfect litigant.

Courts have also relaxed standing requirements in election law. According to Saul Zipkin’s 2014 piece Democratic Standing, when adjudicating disputes involving voting rights courts “attribute[] structural or probabilistic harms to plaintiffs without an individualized showing of particular harm.” These doctrinal fixes are necessary to correct the awkward fit between the individual-harms focus of traditional standing doctrine and the core purpose of election law, which is the protection of a system and a process rather than of any individual vote:

Standing, premised on a litigant who has suffered injury in fact, fits awkwardly with election law, which often involves claims of harm to the electorate or the democratic process and presents contexts where it may be impossible to identify an individual who has suffered concrete harm. Surveying an array of election contexts […] demonstrates that federal courts have applied standing in a distinct manner in this setting, thereby positioning themselves as monitors of the electoral process. [From the asbstract].

Courts have not, to my knowledge, adopted similar corrective mechanisms in the context of privacy rights, though they have had several notable opportunities to do so (the Clapper case, discussed above, is a recent example).

Perhaps they should. Modified constitutional standing requirements—or at least a rethinking of what the harms from privacy intrusions entail—may be necessary to do justice to broader privacy interests, at the very least for the subset of privacy rights that are inextricably intertwined with freedom of thought, expression, and the proper functioning of the democratic process (what some have called the rights to intellectual privacy). In many other contexts, remedies crafted by lawmakers, rather than courts, are likely to be more appropriate.

Changing the discourse

To be sure, the doctrinal analogies discussed above quickly reach the limits of their usefulness. Changing a few laws is unlikely to get at the problem’s root, which is the contrived and outdated vocabulary of privacy rights and the wooden policy and political discourse built around it. Our inability to conceptualize privacy as more than a purely individual right is damaging: it drives our broken notice-and-consent model of privacy protection, and it makes genuine debate (whether in the courts or otherwise) about the costs and benefits of surveillance difficult and unwieldy.

The longer we avoid grappling with the broader implications of privacy intrusions–the longer we frame the issue as a question of balancing the individual preferences of a few civil libertarians against the convenience and security of the many–the more likely it becomes that the big questions will be decided for us: by technology, by fear, and by the inertia of a new status quo, created without deliberation.

#### Privacy is the key check on government power—it’s a precondition for democracy and dissent

McFARLAND 2012 (Michael McFarland, S.J., a computer scientist with extensive liberal arts teaching experience and a special interest in the intersection of technology and ethics, served as the 31st president of the College of the Holy Cross., “Why We Care about Privacy,” June, http://www.scu.edu/ethics/practicing/focusareas/technology/internet/privacy/why-care-about-privacy.html)

Privacy is even more necessary as a safeguard of freedom in the relationships between individuals and groups. As Alan Westin has pointed out, surveillance and publicity are powerful instruments of social control. 8 If individuals know that their actions and dispositions are constantly being observed, commented on and criticized, they find it much harder to do anything that deviates from accepted social behavior. There does not even have to be an explicit threat of retaliation. "Visibility itself provides a powerful method of enforcing norms." 9 Most people are afraid to stand apart, to be different, if it means being subject to piercing scrutiny. The "deliberate penetration of the individual's protective shell, his psychological armor, would leave him naked to ridicule and shame and would put him under the control of those who know his secrets." 10 Under these circumstances they find it better simply to conform. This is the situation characterized in George Orwell's 1984 where the pervasive surveillance of "Big Brother" was enough to keep most citizens under rigid control. 11

Therefore privacy, as protection from excessive scrutiny, is necessary if individuals are to be free to be themselves. Everyone needs some room to break social norms, to engage in small "permissible deviations" that help define a person's individuality. People need to be able to think outrageous thoughts, make scandalous statements and pick their noses once in a while. They need to be able to behave in ways that are not dictated to them by the surrounding society. If every appearance, action, word and thought of theirs is captured and posted on a social network visible to the rest of the world, they lose that freedom to be themselves. As Brian Stelter wrote in the New York Times on the loss of anonymity in today's online world, "The collective intelligence of the Internet's two billion users, and the digital fingerprints that so many users leave on Web sites, combine to make it more and more likely that every embarrassing video, every intimate photo, and every indelicate e-mail is attributed to its source, whether that source wants it to be or not. This intelligence makes the public sphere more public than ever before and sometimes forces personal lives into public view." 12

This ability to develop one's unique individuality is especially important in a democracy, which values and depends on creativity, nonconformism and the free interchange of diverse ideas. That is where a democracy gets its vitality. Thus, as Westin has observed, "Just as a social balance favoring disclosure and surveillance over privacy is a functional necessity for totalitarian systems, so a balance that ensures strong citadels of individual and group privacy and limits both disclosure and surveillance is a prerequisite for liberal democratic societies. The democratic society relies on publicity as a control over government, and on privacy as a shield for group and individual life." 13

When Brandeis and Warren wrote their seminal article on privacy over one hundred years ago, their primary concern was with the social pressure caused by excessive exposure to public scrutiny of the private affairs of individuals. The problem for them was the popular press, which represented the "monolithic, impersonal and value-free forces of modern society," 14 undermining the traditional values of rural society, which had been nurtured and protected by local institutions such as family, church and other associations. The exposure of the affairs of the well-bred to the curiosity of the masses, Brandeis and Warren feared, had a leveling effect which undermined what was noble and virtuous in society, replacing it with the base and the trivial.

Even apparently harmless gossip, when widely and persistently circulated, is potent for evil. It both belittles and perverts. It belittles by inverting the relative importance of things, thus dwarfing the thoughts and aspirations of a people. When personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the community, what wonder that the ignorant and thoughtless mistake its relative importance.... Triviality destroys at once robustness of thought and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its blighting influence. 15

For Brandeis and Warren, privacy was a means of protecting the freedom of the virtuous to maintain their values against the corrupting influence of the mass media that catered to people's basest instincts.

Although the degrading effect of the mass media is still a problem, today a more serious threat to freedom comes from governments and other large institutions. Over the last century, governments have developed sophisticated methods of surveillance as a means of controlling their subjects. This is especially true of totalitarian states, as the passage from Westin quoted above indicates. The Soviet Union, Communist China, Nazi Germany, Fascist Italy and white-run South Africa all used covert and overt observation, interrogation, eavesdropping, reporting by neighbors and other means of data collection to convince their subjects that independent, "antisocial" thought, speech and behavior was unacceptable. In many cases the mere presence of the surveillance was enough to keep people in line. Where it was not, the data collected was used to identify, round up and punish elements of the population that were deemed dangerous. For example, Ignazio Silone, in his book Bread and Wine, described the use of surveillance in Fascist Italy in this way:

It is well-known [says Minorca] that the police have their informers in every section of every big factory, in every bank, in every big office. In every block of flats the porter is, by law, a stool pigeon for the police.... This state of affairs spreads suspicion and distrust throughout all classes of the population. On this degradation of man into a frightened animal, who quivers with fear and hates his neighbor in his fear, and watches him, betrays him, sells him, and then lives in fear of discovery, the dictatorship is based. The real organization on which the system in this country is based is the secret manipulation of fear. 16

While totalitarian regimes may not seem as powerful or as sinister as they did 50 years ago, surveillance is still used in many places as an instrument of oppression. For example Philip Zimmerman, the author of the PGP (Pretty Good Privacy) data encryption program, reports receiving a letter from a human rights activist in the former Yugoslavia that contained the following testimonial:

We are part of a network of not-for-profit agencies, working among other things for human rights in the Balkans. Our various offices have been raided by various police forces looking for evidence of spying or subversive activities. Our mail has been regularly tampered with and our office in Romania has a constant wiretap.

Last year in Zagreb, the security police raided our office and confiscated our computers in the hope of retrieving information about the identity of people who had complained about their activities.

Without PGP we would not be able to function and protect our client group. Thanks to PGP I can sleep at night knowing that no amount of prying will compromise our clients. 17

More recently social media and the Internet played major roles in the "Arab Spring" uprisings in the Middle East, causing Egypt and Libya to shut down the Internet in their countries in an attempt to stifle dissent. 18 In China there has been an ongoing battle between the government and activist groups over government monitoring and censorship of the Internet. 19

Even in a democracy, there is always the danger that surveillance can be used as a means of control. In the United States, for example, where freedom is such an important part of the national ethos, the FBI, the CIA, the National Security Agency (NSA) and the armed forces have frequently kept dossiers on dissidents. The NSA from 1952 to 1974 kept files on about 75,000 Americans, including civil rights and antiwar activists, and even members of Congress. During the Vietnam war, the CIA's Operation Chaos collected data on over 300,000 Americans. 20 Since then the NSA has had an ongoing program to monitor electronic communications, both in the U.S. and abroad, which has led to constant battles with individuals and groups who have sought to protect the privacy of those communications through encryption and other technologies. 21

Some of the most famous incidents of surveillance of dissidents, of course, occurred during the Nixon administration in the early 1970s. For example, when Daniel Ellsberg was suspected of leaking the Pentagon Papers, an internal critique of government conduct of the Vietnam war, Nixon's agents broke into the office of Ellsberg's psychiatrist and stole his records. 22 And it was a bungled attempt at surveillance of Nixon's political opposition, as well as illegal use of tax returns from the IRS, that ultimately brought down the Nixon administration. 23 More recently, during the 1996 presidential campaign, it was revealed that the Clinton White House had access to the FBI investigative records of over 300 Republicans who had served in the Reagan and Bush administrations. The Clinton administration claimed it was all a mistake caused by using an out-of-date list of White House staff, while the challenger Bob Dole accused them of compiling an "enemies list." >sup>24 Whatever the motivation, the head of the FBI termed the use of the files "egregious violations of privacy." 25

Since the 9/11 terrorist attacks in 2001, there has been even greater urgency in the government's efforts to monitor the activities and communications of people, both foreigners and its own citizens, in order to identify and prevent terrorist threats. The Patriot Act, passed less than two months after 9/11, greatly expanded the government's authority to intercept electronic communications, such as emails and phone calls, including those of U.S. citizens. As a result government agencies have been building the technological and organizational capabilities to monitor the activities and communications of their own citizens. For example, Wired magazine revealed in a recent report how the National Security Agency

has transformed itself into the largest, most covert, and potentially most intrusive intelligence agency ever created. In the process—and for the first time since Watergate and the other scandals of the Nixon administration—the NSA has turned its surveillance apparatus on the US and its citizens. It has established listening posts throughout the nation to collect and sift through billions of email messages and phone calls, whether they originate within the country or overseas. It has created a supercomputer of almost unimaginable speed to look for patterns and unscramble codes. Finally, the agency has begun building a place to store all the trillions of words and thoughts and whispers captured in its electronic net. And, of course, it's all being done in secret. To those on the inside, the old adage that NSA stands for Never Say Anything applies more than ever. 26

The FBI, the Drug Enforcement Agency and the Department of Homeland Security also have many programs to monitor citizens in general, not just those who are under suspicion. These efforts include sifting through media references, 27 tracking chatter on social networks, 28 and monitoring peoples' movements through license plate scanners 29 and video cameras. 30

The mere knowledge that American citizens could be the subjects of surveillance can in itself have a chilling effect on political freedom. "Now it is much more difficult than it once was to dismiss the possibility that one's phone is being tapped, or that one's tax returns may be used for unfriendly political purposes, or that one's life has become the subject of a CIA file. The realization that these activities might take place, whether they really do or not in any particular instance, has potentially destructive effects on the openness of social systems to innovation and dissent." 31

At times the government in the United States has gone beyond surveillance and intimidation and has used the data gathered as a basis for overt oppression. One of the most blatant examples is the internment of over 100,000 Japanese Americans, most of them American citizens, during World War II. The Justice Department used data from the Census Bureau to identify residential areas where there were large concentrations of Japanese Americans, and the army was sent in to round them up. They were taken away from their homes and held in concentration camps for the duration of the war. 32

Governments do need information, including personal information, to govern effectively and to protect the security of their citizens. But citizens also need protection from the overzealous or malicious use of that information, especially by governments that, in this age, have enormous bureaucratic and technological power to gather and use the information.

#### The Right to Privacy is a fundamental tenet of a democratic society

**UN News Centre 13** – United Nations News Centre (“General Assembly backs right to privacy in digital age,” December 19th, 2013, <http://www.un.org/apps/news/story.asp?NewsID=46780#.Va1e7vlViko)BC>

19 December 2013 – Deeply concerned that electronic surveillance, interception of digital communications and collection of personal data may negatively impact human rights, the United Nations General Assembly has adopted a consensus resolution strongly backing the right to privacy, calling on all countries take measures to end activities that violate this fundamental “tenet of a democratic society.”

By a text entitled “Right to privacy in the digital age,” the Assembly weighed in on the emerging issue, underscoring that the right to privacy is a human right and affirming, for the first time, that the same rights people have offline must also be protected online. It called on States to “respect and protect the right to privacy, including in the context of digital communication.”

The measure, crafted by Brazil and Germany, was among the more than 65 texts recommended by the Assembly’s Third Committee (Social, Humanitarian and Cultural) yesterday on a range of issues relating mainly to human rights, social development and crime prevention.

Noting that while concerns about public security may justify the gathering and protection of certain sensitive information, the text states that governments must ensure full compliance with their obligations under international human rights law. It calls on States to establish or maintain existing independent, effective domestic oversight capable of ensuring transparency, as appropriate, and accountability for surveillance and/or interception of communications and the collection of personal data.

The resolution also requests the UN High Commissioner for Human Rights, Navi Pillay, to submit a report on the protection and promotion of the right to privacy in the context of domestic and extraterritorial surveillance and/or interception of digital communications and the collection of personal data, including on a mass scale, to the Geneva-based Human Rights Council at its 27th session and to the Assembly at its 69th session.

Earlier in the year, Ms. Pillay spotlighted the right to privacy, using the case of United States citizen Edward Snowden to illustrate the urgent need to protect individuals who reveal human rights violations.

“Snowden's case has shown the need to protect persons disclosing information on matters that have implications for human rights, as well as the importance of ensuring respect for the right to privacy,” she said, adding that national legal systems must ensure avenues for individuals disclosing violations of human rights to express their concern without fear of reprisals.

“The right to privacy, the right to access to information and freedom of expression are closely linked. The public has the democratic right to take part in the public affairs and this right cannot be effectively exercised by solely relying on authorized information.”

Mr. Snowden is a former National Security Agency contractor in the US who has been charged with leaking details of several secret mass electronic surveillance programmes to the press. He fled the country this past spring after the news broke, and according to media reports, he is currently in Russia.

Ms. Pillay noted at the time that while concerns about national security and criminal activity may justify the exceptional and narrowly-tailored use of surveillance programmes, “surveillance without adequate safeguards to protect the right to privacy actually risk impacting negatively on the enjoyment of human rights and fundamental freedoms.”

She also recalled that Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights state that no one shall be subjected to arbitrary interference with one's privacy, family, home or correspondence, and that everyone has the right to the protection of the law against such interference or attacks.

“People need to be confident that their private communications are not being unduly scrutinized by the State,” she said.

#### privacy is key to self-identity and value to life

Sadowski 13 [Jathan, "Why Does Privacy Matter? One Scholar's Answer", 2/26/13, The Atlantic, www.theatlantic.com/technology/archive/2013/02/why-does-privacy-matter-one-scholars-answer/273521/] // SKY

Our privacy is now at risk in unprecedented ways, but, sadly, the legal system is lagging behind the pace of innovation. Indeed, the last major privacy law, the Electronic Communications Privacy Act, was passed in 1986! While an update to the law -- spurred on by the General Petraeus scandal -- is in the works, it only aims to add some more protection to electronic communication like emails. This still does not shield our privacy from other, possibly nefarious, ways that our data can be collected and put to use. Some legislators would much rather not have legal restrictions that could, as Rep. Marsha Blackburn stated in an op-ed, "threaten the lifeblood of the Internet: data." Consider Rep. Blackburn's remarks during an April 2010 Congressional hearing: "[A]nd what happens when you follow the European privacy model and take information out of the information economy? ... Revenues fall, innovation stalls and you lose out to innovators who choose to work elsewhere."

Even though the practices of many companies such as Facebook are legal, there is something disconcerting about them. Privacy should have a deeper purpose than the one ascribed to it by those who treat it as a currency to be traded for innovation, which in many circumstances seems to actually mean corporate interests. To protect our privacy, we need a better understanding of its purpose and why it is valuable.

That's where Georgetown University law professor Julie E. Cohen comes in. In a forthcoming article for the Harvard Law Review, she lays out a strong argument that addresses the titular concern "What Privacy Is For." Her approach is fresh, and as technology critic Evgeny Morozov rightly tweeted, she wrote "the best paper on privacy theory you'll get to read this year." (He was referring to 2012.)

At bottom, Cohen's argument criticizes the dominant position held by theorists and legislators who treat privacy as just an instrument used to advance some other principle or value, such as liberty, inaccessibility, or control. Framed this way, privacy is relegated to one of many defenses we have from things like another person's prying eyes, or Facebook's recent attempts to ramp up its use of facial-recognition software and collect further data about us without our explicit consent. As long as the principle in question can be protected through **some other method**, or if privacy gets in the way of a different desirable goal like innovation, it is no longer useful and can be disregarded.

Cohen doesn't think we should treat privacy as a dispensable instrument. To the contrary, she argues privacy is irreducible to a "fixed condition or attribute (such as seclusion or control) whose boundaries can be crisply delineated by the application of deductive logic. Privacy is shorthand for breathing room to engage in the process of ... self-development."

What Cohen means is that since life and contexts are always changing, privacy cannot be reductively conceived as one specific type of thing. It is better understood as an important buffer that gives us space to develop an identity that is somewhat separate from the surveillance, judgment, and values of our society and culture. Privacy is crucial for helping us manage all of these pressures -- pressures that shape the type of person we are -- and for "creating spaces for play and the work of self-[development]." Cohen argues that this self-development allows us to discover what type of society we want and what we should do to get there, both factors that are key to living a fulfilled life.

Woodrow Hartzog and Evan Selinger make similar arguments in a recent article on the value of "obscurity." When structural constraints prevent unwanted parties from getting to your data, obscurity protections are in play. These protections go beyond preventing companies from exploiting our information for their financial gain. They safeguard democratic societies by furthering "autonomy, self-fulfillment, socialization, and relative freedom from the abuse of power."

In light of these considerations, what's really at stake in a feature like Facebook's rumored location-tracking app? You might think it is a good idea to willfully hand over your data in exchange for personalized coupons or promotions, or to broadcast your location to friends. But consumption -- perusing a store and buying stuff -- and quiet, alone time are both important parts of how we define ourselves. If how we do that becomes subject to ever-present monitoring it can, if even unconsciously, change our behaviors and self-perception.

In this sense, we will be developing an identity that is absent of privacy and subject to surveillance; we must decide if we really want to live in a society that treats every action as a data point to be analyzed and traded like currency. The more we allow for constant tracking, the more difficult it becomes to change the way that technologies are used to encroach on our lives.

Privacy is not just something we enjoy. It is something that is necessary for us to: develop who we are; form an identity that is not dictated by the social conditions that directly or indirectly influence our thinking, decisions, and behaviors; and decide what type of society we want to live in. Whether we like it or not constant data collection about everything we do -- like the kind conducted by Facebook and an increasing number of other companies -- shapes and produces our actions. We are different people when under surveillance than we are when enjoying some privacy. And Cohen's argument illuminates how the breathing room provided by privacy is essential to being a complete, fulfilled person.

#### Privacy abuse violates liberty and deprives us of our personal agency – the longer we go without resisting pushes us towards tyranny

Schneier 6 – the CTO of Counterpane Internet Security and the author of Beyond Fear: Thinking Sensibly About Security in an Uncertain World (5/18/2006, Bruce, Wired, “The Eternal Value of Privacy”, [http://archive.ps-xaf.de/2009/ps-xaf.de/docs/The\_Eternal\_Value\_of\_Privacy.pdf //](http://archive.ps-xaf.de/2009/ps-xaf.de/docs/The_Eternal_Value_of_Privacy.pdf%20/) SM)

The most common retort against privacy advocates -- by those in favor of ID checks, cameras, databases, data mining and other wholesale surveillance measures -- is this line: "If you aren't doing anything wrong, what do you have to hide?" Some clever answers: "If I'm not doing anything wrong, then you have no cause to watch me." "Because the government gets to define what's wrong, and they keep changing the definition." "Because you might do something wrong with my information." My problem with quips like these -- as right as they are -- is that they accept the premise that privacy is about hiding a wrong. It's not. Privacy is an inherent human right, and a requirement for maintaining the human condition with dignity and respect. Two proverbs say it best: Quis custodiet custodes ipsos? ("Who watches the watchers?") and "Absolute power corrupts absolutely." Cardinal Richelieu understood the value of surveillance when he famously said, "If one would give me six lines written by the hand of the most honest man, I would find something in them to have him hanged." Watch someone long enough, and you'll find something to arrest -- or just blackmail -- with. Privacy is important because without it, surveillance information will be abused: to peep, to sell to marketers and to spy on political enemies -- whoever they happen to be at the time. Privacy protects us from abuses by those in power, even if we're doing nothing wrong at the time of surveillance. We do nothing wrong when we make love or go to the bathroom. We are not deliberately hiding anything when we seek out private places for reflection or conversation. We keep private journals, sing in the privacy of the shower, and write letters to secret lovers and then burn them. Privacy is a basic human need. A future in which privacy would face constant assault was so alien to the framers of the Constitution that it never occurred to them to call out privacy as an explicit right. Privacy was inherent to the nobility of their being and their cause. Of course being watched in your own home was unreasonable. Watching at all was an act so unseemly as to be inconceivable among gentlemen in their day. You watched convicted criminals, not free citizens. You ruled your own home. It's intrinsic to the concept of liberty. For if we are observed in all matters, we are constantly under threat of correction, judgment, criticism, even plagiarism of our own uniqueness. We become children, fettered under watchful eyes, constantly fearful that -- either now or in the uncertain future -- patterns we leave behind will be brought back to implicate us, by whatever authority has now become focused upon our once-private and innocent acts. We lose our individuality, because everything we do is observable and recordable. How many of us have paused during conversation in the past four-and-a-half years, suddenly aware that we might be eavesdropped on? Probably it was a phone conversation, although maybe it was an e-mail or instantmessage exchange or a conversation in a public place. Maybe the topic was terrorism, or politics, or Islam. We stop suddenly, momentarily afraid that our words might be taken out of context, then we laugh at our paranoia and go on. But our demeanor has changed, and our words are subtly altered. This is the loss of freedom we face when our privacy is taken from us. This is life in former East Germany, or life in Saddam Hussein's Iraq. And it's our future as we allow an ever-intrusive eye into our personal, private lives. Too many wrongly characterize the debate as "security versus privacy." The real choice is liberty versus control. Tyranny, whether it arises under threat of foreign physical attack or under constant domestic authoritative scrutiny, is still tyranny. Liberty requires security without intrusion, security plus privacy. Widespread police surveillance is the very definition of a police state. And that's why we should champion privacy even when we have nothing to hide.

### Freedom of Movement

#### ALPR violates the right to free movement

SKOUSEN 2015 (Joel, Strategic Relocation Blog, “ANOTHER DOMESTIC SURVEILLANCE SCANDAL EMERGES,” Jan 30, http://www.strategicrelocationblog.com/blog/another-domestic-surveillance-scandal-emerges)

The NSA isn’t the only out-of-control government agency expanding its surveillance dragnet Americans found out this week—the DEA is tracking everyone’s vehicular movements using license plate trackers all in the name of fighting drugs. Even local police are getting in on the license plate data as I will detail this week. Americans value their privacy only a little less than their freedom of movement without checkpoints and pass controls, but these and other freedoms are quickly eroding away as almost every government agency quietly usurps more power every year. Worse, none of this was authorized by Congress. The DEA did this on its own, even as it now claims that such programs were terminated. How can we trust anything government says anymore? We know better than to accept the government’s superficial excuses again.

#### Our freedom of movement is a basic human liberty protected by the Fifth Amendment

Thomson 13(Wendy, professor @ McGill University, “Air travel is a right”, TSA News, 1/3/13, <http://tsanewsblog.com/8414/news/air-travel-is-a-right/)//dtang>

The Judge also sent a strong message as to the hurdle the DOJ would have to overcome regarding air travel: “The right to travel here and abroad is an important constitutional right. To deny this right to a citizen . . . based on inaccurate information without an effective means of redress would unconstitutionally burden the right to travel. While the Constitution does not ordinarily agree the right to travel by any particular form of transportation, given that other forms of travel usually remain possible, the fact remains that for international travel, air transport in these modern times is practically the only form of transportation, travel by ship being prohibitively expensive or so it will be presumed at the pleading stage.” This isn’t exactly new, as so eloquently stated in Kent v. Dulles (1958): “The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment. So much is conceded by the Solicitor General. In Anglo-Saxon law, that right was emerging at least as early as the Magna Carta. Three Human Rights in the Constitution of 1787 (1956), 171-181, 187 et seq., shows how deeply engrained in our history this freedom of movement is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.”

#### The Fifth Amendment is key to freedom

Postell 7 (Joseph, phD, Assistant Professor of Political Science at the University of Colorado at Colorado Springs, 12/14, “Securing Liberty: The Purpose and Importance of the Bill of Rights”, <http://www.heritage.org/research/reports/2007/12/securing-liberty-the-purpose-and-importance-of-the-bill-of-rights)//dtang>

There is one final question to be answered: Even if Madison believed that a bill of rights could be framed--as ours surely was--with the intent of preventing the implication of powers not granted to the government by the Constitution, what benefit could be gained by it? Was it not Madison who argued most forcefully that we cannot trust in parchment barriers? The answer is that Madison indeed thought ambition would counteract ambition, to "oblige the government to control itself" This was the idea of checks and balances. But it does not explain how the Founders proposed to safeguard individual liberty from tyranny of the majority, rather than tyranny of the rulers over the ruled. The safeguard of individual liberty, Madison reasoned, must lie with the people themselves. It is the people who must be responsible for defending their liberties. And a bill of rights, Madison and his colleagues finally concluded, might support public understanding and knowledge of individual liberty that would assist citizens in the task of defending their liberties. A bill of rights, they saw, could serve the noble purpose of public education and edification. As Madison confided to Jefferson, "The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion." From this view, our first 10 amendments are still important today, in their text and substance, beyond their legal effect. They still call upon us to study them for the sake of knowing our liberties and defending them from all encroachments. Although these amendments may be nothing more than "parchment barriers," they can still provide a bulwark against encroachments on our rights. For as Hamilton wrote in Federalist 84, the security of liberty, "whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government. And here, after all...must we seek for the only solid basis of all our rights."

#### Liberty is an a-priori impact

McMilian 11 (Marlene, “Does Liberty REALLY Matter?”, Why Liberty Matters, 2011, http://www.whylibertymatters.com/)//dtang

This is a crucial time for our Liberty. We have recently witnessed the biggest economic disruption in the history of the world, and almost instantly seen the United States Constitution eroded in a way that threatens every Liberty we have so long taken for granted. The time for vigilance of our Liberty has become even more important. Liberty is a powerful concept. It affects everything that happens to you and every choice you have the ability to make. It affects the way you raise your children, the place you live, the daily freedoms you do or do not have, and your ability to fulfill your God-given Kingdom purpose. Liberty affects everything and everyone. Every decision you make either leads you toward greater liberty or toward bondage. What is Liberty? “Liberty is the opportunity to make a choice to assume responsibility and accept the consequences.” Liberty is a God-given idea placed within the heart of all peoples. As the people in this Nation have looked to civil government as their source, we have lost many of our essential Liberties. Liberty entails responsibility. You cannot be dependent on someone else and free at the same time. Control follows money. He who pays controls. If you want to pick the restaurant for dinner, just say you are buying and everyone will be happy to eat where you are paying. Some believe that the civil government owes them. They want the handouts without any strings attached, yet all government money comes with strings attached. This entitlement mentality takes away a person’s freedom to determine their own destiny. Whoever controls the money controls everything else. If you want to control your own destiny, then you must control your own money and not be dependent on anyone else. Taking from the rich and giving to the poor is considered normal in our society. However, government redistribution of wealth is a fundamental belief of communism. Therefore, it cannot be a principle of Liberty. The instability of recent days is a clarion call for everyone to get informed about Liberty. Most Americans would tell you they are still free. And even though we still have more freedom than most countries of the world, we have exchanged many of our Constitutionally-guaranteed Liberties for the illusion of safety and protection.

#### The Constitution checks arbitrary power—the impact is value to life

Napolitano 4 (Andrew, “How the Government Breaks the Law”, CATO Policy Report, http://www.cato.org/sites/cato.org/files/serials/files/policy-report/2004/11/cpr-26n6-1.pdf)

Ultimately, the fate of American liberty is in the hands of American voters. Though we are less free with every tick of the clock, most of us still believe that the government is supposed to serve the people—fairly, not selectively. There are some surprisingly direct ways to address the excesses I’ve described. First, Congress and the state legislatures should enact legislation that simply requires the police, all other law enforcement personnel, and everyone who works for or is an agent of the government to be governed by, subject to, and required to comply with all the laws. That would eliminate virtually all entrapment, and it would enhance respect for the law. If the police are required to obey the same laws as the rest of us, our respect for them and for the laws they enforce would dramatically increase, and their jobs would become easier. In short, it would be against the law to break the law. Second, Congress and the state legislatures should make it easier to sue the federal and state governments for monetary damages when they violate our constitutional liberties. The federal government and many states have rendered themselves immune (called “sovereign immunity”) from such lawsuits if the lawsuit attacks the exercise of discretion by government employees. That is nonsense. You can sue your neighbor for negligence if his car runs over your garden or your dog. You can sue your physician if he leaves a scalpel in your belly. You should be able to sue the local police, state police, and the FBI under the same legal theories if they torment you, prevent you from speaking freely, bribe witnesses to testify against you, steal your property, or break the law in order to convict you. If the Constitution is enforced selectively, according to the contemporary wants and needs of the government, we will continue to see public trials in some cities and secret trials in others; free speech suppressed on inexplicable whims; police targeting the weak and killing the innocent; and government lying to its citizens, stealing their property, tricking them into criminal acts, bribing its witnesses against them, making a mockery of legal reasoning, and breaking the laws in order to enforce them. This is not the type of government we, the people, have authorized to exist, and it is not the type of government that we should tolerate. We can do better. If government crimes are not checked, our Constitution will be meaningless, and our attempts to understand it, enforce it, and rely on it will be chaotic.

### Second Amendment

#### ALPR technology violates our most precious rights—second amendment rights

ACLU 15- (American Civil Liberties Union, internally citing DEA documents, “Washington: DEA Planned to Monitor Gun Show Attendees With License Plate Readers, New Emails Reveal”, Plus Media Solutions, Lexis)//WK

The Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives collaborated on plans to monitor gun show attendees using automatic license plate readers, according to a newly disclosed DEA email obtained by the ACLU through the Freedom of Information Act. The April 2009 email states that “DEA Phoenix Division Office is working closely with ATF on attacking the guns going to [redacted] and the gun shows, to include programs/operation with LPRs at the gun shows.” The government redacted the rest of the email, but when we received this document we concluded that these agencies used license plate readers to collect information about law-abiding citizens attending gun shows. An automatic license plate reader cannot distinguish between people transporting illegal guns and those transporting legal guns, or no guns at all; it only documents the presence of any car driving to the event. Mere attendance at a gun show, it appeared, would have been enough to have one's presence noted in a DEA database. Responding to inquiries about the document, the DEA said that the monitoring of gun shows was merely a proposal and was never implemented. We were certainly glad to hear them say this, as we had rationally, based on the scrap of information left unredacted in the document, concluded that gun show monitoring was underway. After all, this would not be the first time that the government has used automatic license plate readers to target the constitutionally protected right to assemble. In 2009, the Virginia State Police, in collaboration with the Secret Service, recorded the license plates of vehicles attending President Obama’s inauguration, as well as campaign rallies for Obama and vice presidential candidate Sarah Palin. And unfortunately our security agencies — yesterday and today — have shown a pattern of engaging in systematic surveillance of peaceful assembly. The DEA’s statement alleviates some concerns, but if the program was cancelled, why didn’t we get any documents reflecting that decision in response to our FOIA request? The agency should now release such documents, and also create and release a written policy that it will not target First Amendment-protected activity in the future. While in general we have not opposed the use of ALPRs for their stated purpose of checking plates against "hot lists" of known or suspected lawbreakers — provided the data on everyone else is not retained — we have serious concerns about using the technology in a way that is specifically targeted at people exercising their constitutionally protected rights. In 2012, the ACLU filed public records requests in 38 states and Washington, D.C. seeking information about the use of automatic license plate readers. Our July 2013 report, You Are Being Tracked, summarized our findings. But the ACLU also filed FOIA requests with federal agencies, including the DEA. Automatic license plate readers must not be used to collect information on lawful activity — whether it be peacefully assembling for lawful purposes, or driving on the nation's highways. Without strong regulations and greater transparency, this new technology will only increase the threat of illegitimate government surveillance.

### Drones

#### ALPR cameras spillover to drone usage—leads to wider invasion of privacy

Saranya et al. 15- BE in the Department of Electrical and Electronics Engineering, Indira Institute of Engineering and Technology, Affiliated to Anna University Chennai, India (C, “Recent trends of drones in the field of defense”, International Journal of Electrical and Appliances Vol.1, ISSUE-1, Feb-2015, http://www.fieldgroup.in/IJEA/ISSUE1FEB2015/IJEA019.pdf)//WK

The Katz test rests on the assumption that this hypothetical reasonable person has a well developed and stable set of privacy expectations. But technology can change those expectations. Dramatic technological change may lead to periods in which popular expectations are in flux and may ultimately produce significant changes in popular attitudes. New technology may provide increased convenience or security at the expense of privacy, and many people may find the tradeoff worthwhile. And even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves to this development as inevitable.107 The crucial question, then, is whether drones have the potential to be significantly more invasive than traditional surveillance technologies such as manned aircraft or lowpowered cameras— technologies that have been upheld in previous cases. In this vein, some have asked whether using sophisticated digital platforms on a drone is any different from attaching the same instrument to a lamppost or traditional aircraft.108 Take, for example, the tracking of license plates. Currently, many states and municipalities employ automatic license plate readers (ALPRs), which are usually mounted on police vehicles or stationary objects along the streets, to take a snapshot of a license plate as a car drives by, and store this information in a large database for possible later use by law enforcement.109 It is alleged that these devices can be used to track a person’s movements when police aggregate the data from a multitude of ALPR stations.110 A majority of the reviewing federal circuit courts have held that a person has no reasonable expectation of privacy in his license plate number.111 However, it appears that no federal court has addressed the constitutionality of the use of ALPRs (whether attached to a drone, manned vehicle, or a stationary device), as opposed to plate numbers collected by a human observer. Nonetheless, the question remains whether attaching an ALPR—or any similar sophisticated technology—to a drone would alter the constitutionality of its use by law enforcement. Some say yes, arguing that the sophistication of drone technology in and of itself “present[s] a unique threat to privacy.”112 Drones are smaller, can fly longer, and can be built more cheaply than traditional aircraft. For instance, defense firm Lockheed Martin’s Stalker—a small, electrically powered drone—can be recharged from the ground using a laser.113 It now has a flight time of more than 48 hours. As this technology advances, it is reported that The UAV is brought to the desired location. Using Radio Control it is made to hover. Using the remote control it is made to maneuvered throughout the desired area and if there is any presence of explosive materials the module detects its presence and locates the position of the explosive material and sends the location to the display unit using the GPS transmitter. Based on this location manual disarming or disposal of the explosive can be achieved. Hence contributing to the better security. By using software(APM planner) we can send the UAV to the desired location without any manual operations. Fig.10 shows the input and output signal of the throttle by using APM mission planner software. Figure 11 shows the throttle response of motors 1,3,5 and 7. Similarly Fig 12 132 52 shows the throttle response of motors of 2,4,6 and 8. There are various factors which are to be considered for designing the system. The materials used for the making of frame depend mainly on strength, weight and cost. We are using 1’x1’ aluminum square tubes because its light weight and less cost. The select ion of the BLDC motors depends on the thrust required. The size of propellers also play an important part in producing the thrust. The Fig 3 shows the plot of thrust v/s propeller speed for two different lengths of propellers. Hence the selection of propellers should be done keeping in mind the thrust required. By combining the BLDC and the propeller we can obtain the required thrust. The frame can be constructed in three different ways namely octo +, octo X, octo V8 configuration. We are using V8 configuration as its construction is simple and other devices can be easily placed when compared to other frame types where separate facilities have to be made in order to place different devices. The calibration should be done properly without disturbance in controller. If there is any change the controlling gets difficult and UAV may get crashed. the calibration of the directions in UAV main board.

### General Solvency Advocate/Privacy Impact

#### License plate monitoring allows total government knowledge of people’s lives – the aff is key to solve

Kopstein 2/12 – a cyberculture journalist and researcher from New York City. His work focuses on Internet law and disorder, surveillance and government secrecy. (2015, Joshua, Al-Jazeera America, “Your location data is your life, and police want it all”, [http://america.aljazeera.com/opinions/2015/2/your-location-data-is-your-life-and-police-want-it-all.html //](http://america.aljazeera.com/opinions/2015/2/your-location-data-is-your-life-and-police-want-it-all.html%20//) SM)

In the ongoing debate about government surveillance, officials often describe mass data collection as an innocuous or even banal activity. In 2012, news reports revealed how automatic license plate readers (ALPRs) mounted to police cars, lampposts and highway overpasses are tracking millions of vehicle movements daily, capturing geotagged and time-stamped photos of motorists as they traverse the nation’s roadways. But authorities claimed that because license plate photos aren’t “personally identifiable,” collecting them helps catch criminals and dole out speeding tickets without infringing on people’s privacy. Further, police argued, Americans do not have a reasonable expectation of privacy when driving on public roads. It’s an argument that suggests anything you do in public is fair game for surveillance — and that there’s no difference between a police officer writing down your license plate number and a camera capturing it automatically. These arguments don’t stand up to scrutiny: License plates are purposefully linked to Americans’ identities, and data about their location over time can provide a remarkably clear picture of a person’s private activities, interests and associations. But as of last week, we know that not only has the Drug Enforcement Agency been spying on millions of drivers for years as part of a plan to build a nationwide vehicle tracking system but also that its ALPR database routinely captures photos of vehicles’ occupants in addition to plates. That’s a feature, not a bug. According to DEA documents obtained by the American Civil Liberties Union through a Freedom of Information Act request, the cameras capture “vehicle license plate numbers (front and/or rear), photos of visible vehicle occupants [redacted] and a front and rear overall view of the vehicle.” The database stores “up to 10 photos per vehicle transaction, including four occupant photos.” Altogether, the documents suggest Americans are already in the grips of a system designed to record and catalog their every move without any suspicion of wrongdoing. Anonymous no more ALPRs are already used in virtually every major U.S. city, with some systems boasting the ability to capture up to 1,800 plates per minute. Worse, most agencies still do not have policies governing how long these photos may be retained. Depending on who stores them, it can be anywhere from 48 hours to five years, sometimes even indefinitely. Private companies are helping fill in the gaps, offering law enforcement agencies access to their massive license plate databases under strict nondisclosure agreements. The largest, held by California-based Vigilant Solutions, boasts more than 2 billion vehicle movement records. According to a Vigilant press release from December, its database uses facial recognition to identify drivers and passengers who appear in license plate photos. That data feeds into the Federal Bureau of Investigation’s nationwide facial recognition database, which sometime this year is expected to amass as many as 52 million face images. In concert, these technologies function completely counter to our normal conceptions of public space. A system that automatically tracks the movements of millions of Americans without any suspicion is not about stopping crime; it’s about tracking everyone so that laws can be retroactively and selectively enforced. In an age in which police seize hundreds of millions of dollars in cash and property from motorists without any charge or reason, the implications are consequential and chilling. In 2012, the same year ALPRs first made major headlines, the Supreme Court ruled that police must obtain a warrant before monitoring a suspect’s vehicle with a GPS tracking device. Many saw this as a victory against the normalization of unwarranted police tracking, but in practice it was hardly a deterrent. That’s because at issue was not the tracking itself but the physical placement of a tracking device on the suspect’s car, which the court ruled constituted trespass under the Fourth Amendment. Location data isn’t some hazy abstraction of your life; it is your life, and the government has no business recording it without a warrant. Thus police were left with countless other ways of tracking Americans’ movements — in bulk, without any suspicion of crime and without having to be physically present. For example, because of a 1986 data privacy law that exempts data held by third parties from Fourth Amendment protection, cops may conduct so-called tower dumps to access the time-stamped location data of all devices connected to carrier-controlled cellphone towers. Police also use stingray cellphone interceptors, secretive devices that retrieve the locations, unique identifiers and text messages of every phone in range by mimicking the signal of a legitimate cell tower. As if that weren’t enough, federal agents have been mounting stingrays on planes to widen their data dragnets. When authorities use these technologies under the excuse that you have no reasonable expectation of privacy in public, they are also asserting that you have no reasonable expectation of anonymity. There is a huge difference between the two, and it’s crucial to recognize just how radical a departure their practices are from how we traditionally move and communicate in public space. For the purpose of this argument, I’m defining privacy as the ability to conceal communications, movements and transactions and anonymity as the ability to remain unidentified in the course of those activities. Achieving the first in a public space is much harder than the latter. Anyone nearby can see or hear what another person is saying or doing. But we take for granted that we can walk or drive down the street without being identified. In large cities, we have always strolled through crowded streets, confident that no one can infer anything about us beyond what our physical appearance and mannerisms suggest. But when our streets are polluted with license plate scanners and face recognition cameras, this normative dynamic is perverted. When everyone is identified, each individual wears his past and present actions like a jacket for authorities (or anyone with the right set of sensors) to see and scrutinize. A need for interventions Privacy advocates anticipated this growing invasiveness, and some have made efforts to resist it. In 2012, countersurveillance artist Adam Harvey designed Face Dazzle, a makeup scheme that confuses face detection algorithms, making wearers effectively invisible to machines — with the ironic side effect of making them much more visible to humans. Other projects such as noPhoto have tried to do the same for ALPRs, obscuring plates by triggering a bright flash when the traffic camera’s red light is detected. Policy solutions are needed — specifically, a federal ban or limit on data retention for ALPRs and facial recognition, measured in hours or days rather than months or years, and a warrant requirement for accessing that data. Members of Congress should pass a recently proposed bill that would prevent police from accessing stored emails and location data without a warrant. Without these precautions, we are headed toward a future in which a transparent citizenry is subject to the rule of opaque and unaccountable law enforcement. Our movements will be monitored, and our past actions will collapse into the present the moment we walk outside. The appeals court that heard the GPS tracking case said it best (PDF): A person who knows all of another’s travels can deduce whether (s)he is a weekly churchgoer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups — and not just one such fact about a person, but all such facts. Location data isn’t some hazy abstraction of your life; it is your life, and the government has no business recording it without a warrant.

### Federal Action Key

#### Curtailing ALPR is critical to prevent escalating violations of civil liberties—federal action is key

THE GUARDIAN 2015 (Millions of cars tracked across US in 'massive' real-time DEA spy program, Jan 27, http://www.theguardian.com/world/2015/jan/27/millions-of-cars-tracked-across-us-in-massive-real-time-spying-program)

The United States government is tracking the movement of vehicles around the country in a clandestine intelligence-gathering programme that has been condemned as a further official exercise to build a database on people’s lives.

The Drug Enforcement Administration was monitoring license plates on a “massive” scale, giving rise to “major civil liberties concerns”, the American Civil Liberties Union said on Monday night, citing DEA documents obtained under freedom of information.

“This story highlights yet another way government security agencies are seeking to quietly amplify their powers using new technologies,” Jay Stanley, a senior policy analyst with ACLU, told the Guardian.

“On this as on so many surveillance issues, we can take action, put in place some common sense limits or sit back and let our society be transformed into a place we won’t recognize – or probably much like.”

The advocacy group said the DEA records it obtained from the justice department were heavily redacted and incomplete.

“These records do, however, offer documentation that this program is a major DEA initiative that has the potential to track our movements around the country. With its jurisdiction and its finances, the federal government is uniquely positioned to create a centralized repository of all drivers’ movements across the country — and the DEA seems to be moving toward doing just that.”

If license plate readers continued to proliferate without restriction and the DEA held license plate reader data for extended periods the agency would soon possess a detailed and invasive depiction of people’s lives, the ACLU said, especially if combined with other surveillance data such as bulk phone records or information gleaned by the US Marshals Service using aircraft that mimic cellphone towers.

“Data-mining the information, an unproven law enforcement technique that the DEA has begun to use here, only exacerbates these concerns, potentially tagging people as criminals without due process,” the ACLU warned.

### Congress—Congress Mechanism

#### Congress solves best—only legislation can prevent abuses with future technology

Miller 15- Creighton University School of Law (Jordan, “NEW AGE TRACKING TECHNOLOGIES IN THE POST-UNITED STATES V. JONES ENVIRONMENT: THE NEED FOR MODEL LEGISLATION”, 48 Creighton L. Rev. 553, Lexis)//WK

As the above discussions of technology, the ruling in United States v. Jones, n240 and the implementation and obstacles to invoking Jones demonstrated, a legislative solution presents several advantages in regulating tracking searches. First, even assuming that Justice Sotomayor provides a fifth vote for protecting prolonged searches, the cert process is slow and unpredictable. Vehicle problems typical of Fourth Amendment search cases only aggravate the delay before the United States Supreme Court revisits this issue. Second, the fact-intensive [\*592] nature of Fourth Amendment claims tends to limit their holdings such that they do not always apply to new technology in the way that a statutory scheme could. As a corollary to this point, when newly developed technology falls outside the legislative scheme, it is likely that the legislature will move to amend the existing provisions faster than the United States Supreme Court will receive and accept a case involving each new technology. Third, the enactment of legislation need not be accompanied by a Davis v. United States n241-based lag in implementation nor would its protections need to be plagued by issues of standing. Legislative protection of Fourth Amendment rights against the use of new technology is not a foreign concept. Within the scope of wire and telephone communications data, Congress passed legislation establishing a warrant process for obtaining such data from phone carriers. n242 This legislation created a legislative warrant requirement where no constitutional requirement existed. n243 A legislative scheme exceeding announced constitutional protections is also warranted in response to increasingly prevalent tracking searches. Several states passed legislation restricting the use of GPS tracking devices and/or requiring law enforcement to obtain a warrant when conducting tracking searches. n244 While most of these statutes focus on installation-based tracking searches, they, combined with the federal wired and telephonic data statute, provide a strong starting point for proposing model uniform legislation. n245 Key issues the statute needs to address include what form of tracking requires a warrant, when a search becomes "prolonged" necessitating a warrant, the standard for obtaining a warrant, the scope of the warrant as it relates to the person(s) and object(s) against whom evidence gathered can be used, jurisdictional and territorial limitations of the warrant, durational [\*593] limitations of the warrant, and the court through which to obtain a warrant.

#### Legislative action solve ALPR privacy violations best—creates clear restrictions on compilation of data without creating broader precedent

Gutierrez-Alm 15- Winthrop & Weinstine, Associate Attorney (Jessica, “The Privacies of Life: Automatic License Plate Recognition is Unconstitutional Under the Mosaic Theory of Fourth Amendment Privacy Law”, Hamline Law Review: Vol. 38: Iss. 1, Article 5, <http://digitalcommons.hamline.edu/cgi/viewcontent.cgi?article=1054&context=hlr)//WK>

Legislative action may be a more direct way of combating the privacy implications of widespread ALPR data collection than adoption of the mosaic theory of Fourth Amendment privacy.253 Since the issue arises not in the use of the systems, but in the compilation of data collected by the systems, restriction on how the data is compiled would solve the problem without the need to expand privacy protections.254 As Justice Alito stated in Jones, “[i]n circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative.”255 Many jurisdictions keep ALPR data on file for months or years, which alone may be enough to violate reasonable privacy interests. Once that data is transferred to another agency or third-party data bank, there is no limit on the length of time that the information may be retained.256 However, if there were restrictions in place on the length of time that all state and federal agencies, as well as third-party companies, can keep ALPR data, the database would not present the detailed image of private life that years’ worth of data has the potential to do.257 Restrictions such as those imposed by the State of Maine, which identify ALPR data as confidential and limit the retention time to 21 days should be enacted for every jurisdiction, agency, and company that uses the technology or compiles the results.258 Since ALPR data is intermittently collected, unlike the continuity of GPS data, 21 days would likely not rise to the level of a Fourth Amendment violation.259 With only 21 days of data, there would likely be few data points recorded, even if the vehicle was spotted once during every trip. 260 Admittedly, 21 days seems a somewhat arbitrary line to draw. Establishing the point at which the data should be deleted, that is, the point at which the sum of ALPR location data on a person infringes the person’s privacy rights, is not easily determined. 261 Maine’s 21 day limitation might be an appropriate distinction, but perhaps the data should be kept longer for more in-depth police investigations. 262 Or, with the expanding use of ALPR systems, and therefore the more frequent data points obtained on each journey a driver takes, perhaps the limit should be shortened to seven days or 14 days.263 Since ALPR data is intermittent, rather than constant like GPS data, perhaps ALPR is best limited by the number of data points collected on a single license plate.264 Justices Alito and Sotomayor suggested in Jones that the line would be difficult to draw with respect to GPS data.265 They agreed, however, “the line was surely crossed” at four weeks of surveillance. 266 Regardless of where the line is drawn with ALPR data, the most direct protection of the privacy interest in the mosaic of a driver’s long-term location data would be through legislative action.267

#### Congress solves and avoids any harms on law enforcement—strict warrant requirements solve privacy concerns

Hanna 14- a Notes & Comments Editor and mentor for the Associate Editors the Rutgers Computer and Technology Law Journal, Rutgers Law School (Sam, “The Future of Big Brother Government: Orwellian Surveillance of Vehicular Travels Has Arrived”, Rutgers Law School, <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=sam_hanna)//WK>

Nonetheless, though at least five Supreme Court Justices appear to agree that tracking one’s automobile travels for four weeks constitutes a search, there is no reason to wait until the constitutional issue reaches the Court again. The United States Constitution sets the minimal protections against government agents, but state or federal legislatures are free to expand protection to privacy and property. In several ways, the legislature is perhaps even more capable at achieving this purpose than the judiciary when technology threatens privacy. “In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.”137 Despite the potentially devastating effects to individual privacy that would result if ALPR devices become a ubiquitous presence in our communities, the solution is straightforward: impose legislative restrictions on the collection, storage, and dissemination of vehicular geolocation data. However, for the legislation to be effective, it is essential that it balance two distinct competing interests. The legislation must be meticulously crafted to: (1) permit law enforcement to employ ALPR devices for its valuable crime solving capabilities (i.e., observational comparison) and (2) draw effective boundaries to ensure it is not used as a tool for conducting indiscriminate and ubiquitous surveillance. Considering the drastic difference a poorly versus well drafted statute can have, 138 Congress should take the initiative to craft federal legislation that will properly balance the competing private and public policy concerns. Because there is currently federal legislation regulating the use of privacy threatening technology, 139 Congress is very likely within its legislative capacity to regulate the use of ALPR devices. For instance, the Electronic Communications Privacy Act is a federal law that currently governs the use of wiretapping and electronic eavesdropping. 140 Senator Patrick Leahy proposed an amendment to this Act, entitled the Electronic Communications Privacy Amendments Act of 2011 (ECPAA), which provides that, unless a warrant based upon probable cause is obtained, “no governmental entity may access or use an electronic communications device to acquire geolocation information.” 141 If enacted, the ECPAA bill would greatly circumscribe law enforcement’s ability to use ALPR’s geolocation memory feature and, thus, prevent this device from being used indiscriminately by police as a tool for mass surveillance of vehicular travels. As mentioned, the ECPAA permits the government to use a geolocation acquiring device only upon procurement of a search warrant based upon probable cause. 142 However, an exigency exception to the search warrant requirement exists if there are grounds to believe that a search warrant could be obtained, but the acquisition of a warrant is made impracticable due to an emergency that involves: (a) immediate danger of death or serious bodily injury to any person; (b) conspiratorial activities illustrative of organized crime; or (c) an immediate threat to national security. 143 Nonetheless, this warrant exception is limited because, “not later than 48 hours after the activity to acquire the geolocation information has occurred,” the government must seek a warrant.144 If a warrant is not obtained, use of the device to acquire geolocation information must terminate immediately once the earlier of any of the following occur: (a) the information sought is obtained; (b) the application for the warrant is denied; or (c) 48 hours have elapsed since the activity to acquire the geolocation information commenced.145 If the government fails to comply with these provisions, no information or evidence derived from the use of a geolocation information acquiring device may be entered into evidence or otherwise disclosed in any trial nor may it be disclosed in any other manner, without the person’s consent. 146

#### ALPR’s invade American privacy and track all of your movements – Congress is key to solve

Farivar 15 – Senior Business Editor for ArsTechnica (3/15/2015, Cyrus, ArsTechnica, “Cops are freaked out that Congress may impose license plate reader limits”, <http://arstechnica.com/tech-policy/2015/03/cops-are-freaked-out-that-congress-may-impose-license-plate-reader-limits/> // SM)

"The fact is, ALPR systems collect sensitive location information on millions of innocent Americans and, in many cases, retain that data for years or even indefinitely," Jennifer Lynch, an attorney with the Electronic Frontier Foundation, told Ars by e-mail. "99.8 percent of the vehicles recorded by license plate readers are never involved in criminal activity or even vehicle registration issues. It is fully appropriate for Congress and state legislatures to investigate and place limits on this privacy-invasive technology." Mike Katz-Lacabe, a privacy activist in San Leandro, California, who famously shared photos that his city's police had taken of him and his daughters exiting their own car on their own driveway, told Ars by e-mail that the letter is a bit disingenuous. "While it is technically correct that license plate readers do not track people in real time, it does track vehicles," he wrote. "Most of the time, that means you are tracking the person to whom the car is registered. It’s the equivalent of stating that the stingray isn’t used to track people, it’s used to track a specific phone." "The data is described as anonymous, but it’s trivial to take the data from a license plate reader and associate it with a person," he continued. "In fact, in some photos, you can identify the driver—as with a photo of me that was captured by a license plate reader as I exited my car in my driveway. And the longer this data is kept, the more this data reveals about individuals and the intimate details of their lives." Similarly, Kade Crockford, of the American Civil Liberties Union of Massachusetts, who has studied the use of ALPRs for years, concurred. "Right now, police and private companies across the nation are compiling massive databases containing the driving location histories of millions of people accused of no crime," she said by e-mail. "This is the problem congress needs to regulate, and it's therefore not surprising that the police fail to mention it."

### Courts—Tricky Court Mechanism

#### Court rulings are inevitable on the question of aggregate data collection—it’s just a question of whether ALPR is included in the ruling—that’s key to place restrictions on advanced surveillance technology

Gutierrez-Alm 15- Winthrop & Weinstine, Associate Attorney (Jessica, “The Privacies of Life: Automatic License Plate Recognition is Unconstitutional Under the Mosaic Theory of Fourth Amendment Privacy Law”, Hamline Law Review: Vol. 38: Iss. 1, Article 5, <http://digitalcommons.hamline.edu/cgi/viewcontent.cgi?article=1054&context=hlr)//WK>

Although the act of capturing license plate data and locations in public places does not by itself violate the Fourth Amendment, the compilation, storage, and referencing of that data collected over the longterm is a search within the meaning of the Fourth Amendment under the mosaic analysis put forth in Maynard. 268 Application of the mosaic theory permits the compiled ALPR data to be considered as a whole. 269 The aggregated data satisfies both the subjective and objective expectations of privacy of the Katz Fourth Amendment analysis. 270 When Maynard was affirmed sub nom. in Jones, the majority refused to accept the theory, but five justices in concurring opinions expressed a willingness to adopt the theory.271 The Court is set for a future 5-4 decision in favor of a reasonable expectation of privacy in aggregated location data.272 Given the current state of Fourth Amendment jurisprudence and the lack of data compilation restrictions, new surveillance technologies such as GPS and ALPR demand application of the mosaic theory.273 Failure to do so will inevitably lead to inconsistent findings and a strained understanding of reasonable privacy expectations.274 Alternatively, or perhaps additionally for further precaution, legislatures need to step in and restrict the length of time that ALPR data may be retained.275 It is only through these devices that former Chief Justice Rehnquist’s balance between citizens’ privacy and the state’s safety can be achieved.

#### The inclusion of ALPR data on that ruling is uniquely key—otherwise rulings on mosaic theory will only ban individual GPS tracking devices, not broader technical systems of surveillance

Hanna 14- a Notes & Comments Editor and mentor for the Associate Editors the Rutgers Computer and Technology Law Journal, Rutgers Law School (Sam, “The Future of Big Brother Government: Orwellian Surveillance of Vehicular Travels Has Arrived”, Rutgers Law School, <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=sam_hanna)//WK>

The advent of ALPR technology makes learning the past and present location of thousands, or even millions, of vehicles completely possible and easily achievable.93 As of 2009, police departments nationwide have increasingly affixed ALPR cameras to their police cruisers. 94 In addition to the mobile ALPR devices, stationary ALPR cameras can be installed on street signs, street lights, highway overpasses, buildings, and so on to photograph passing automobiles and, thus, keep an indefinite record of each time any vehicle travels past that stationary point. 95 Installing enough of these fixed cameras strategically in a community, combined with the tracking information collected from mobile devices on police cruisers, can comprehensively facilitate mass surveillance of the vehicular travels of an entire community. Moreover, because ALPR is capable of retaining this geolocation tracking data indefinitely for subsequent observation,96 police can use the device’s memory to observe past travels and, hence, predict future movements of any vehicle, deduce intimate details of a person’s life and relationships, and learn many of a person’s daily routine and habits. 97 The unbridled and unregulated use of this tool advances the same “dragnet type [of] law enforcement practices” fictionalized by Knotts, supra, 98 and makes the “worst-case Orwellian society” feared of by Sparks, supra,99 wholly feasible. Allowing the government to implement the use of ALPR in this way threatens fundamental Fourth Amendment values and dismantles historically accepted expectations of privacy. B. Why governmental use of ALPR to accrue and retrieve prolonged geolocation information on vehicle movements should be held unconstitutional by the Supreme Court. It is imperative that the Supreme Court finally determine the constitutionality of compiling the vehicular travel history and present locations of individuals not suspected of unlawful activity. United States v. Jones, a companion case of Maynard, supra, is the most recent Supreme Court case likely to provide guiding federal precedent on this issue. 101 In Jones, the FBI procured a search warrant authorizing the installation of a tracking device on the defendant’s vehicle.102 However, the FBI agents installed the device on the vehicle a day after the warrant expired and outside of the issuing court's jurisdiction, rendering it invalid. 103 Nonetheless, over the next 28 days, the device produced over 2,000 pages of data tracking the vehicle’s movements, which connected defendant to an alleged conspirators' stash house that contained $850,000 in currency and 97 kilograms of cocaine.104 Jones motioned to suppress all evidence obtained in violation of the Fourth Amendment. 105 As mentioned in the Maynard discussion, supra, 106 the District of Columbia Court of Appeals ruled in favor of Jones and Maynard, co-conspirators, finding that the nearly month long tracking of his vehicle was unconstitutional absent a valid search warrant. 107 The Supreme Court of the United States granted certiorari to determine the Fourth Amendment issue.108 Though the Supreme Court found that the government’s warrantless actions in Jones amounted to a search, it did so by applying antiquated common law trespass jurisprudence, rather than the Katz expectation of privacy test, supra. 109 Justice Scalia, writing for the Court, focused on the fact that, by installing the GPS tracking device on the undercarriage of defendant’s vehicle, the government trespassed on defendant’s property. 110 According to Justice Scalia, this conduct amounted to “physically occup[ying] private property for the purpose of obtaining information.”111 Consequently, because “such a physical intrusion would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted,” Justice Scalia held that “the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a ‘search.’”112 By deciding the case using trespass jurisprudence, which was applicable before the Katz test, Justice Scalia did not overturn the Katz test, but merely wanted to clarify that “the Katz reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test.”113 In essence, instead of holding that the prolonged tracking of a vehicle’s travels is unconstitutional because it violates a reasonable expectation of privacy, Justice Scalia merely made it unlawful for the government to physically install a tracking device on one’s property without a valid warrant.114 This holding, however, provides the government a loophole to accomplish the same evil. For instance, what if the police did not affix a GPS tracking device on defendant’s vehicle and were able to track his automobile travels using a more sophisticated tracking method (i.e., ALPR cameras)? Pursuant to Justice Scalia’s opinion, this tech savvy method of tracking one’s automobile travels would be permissible under Jones because it does not require a physical trespass on the vehicle. This loophole renders Justice Scalia’s holding inexcusably shortsighted and incapable of protecting against modern methods of government surveillance. If the same end (compiling weeksworth of tracking data on a person’s automobile travels) is achievable using a more technologically advanced means, should the mere absence of a physical trespass to obtain the same information be the determinative factor of whether one may assert a violation of his Fourth Amendment right to privacy? To answer this, consider why the Supreme Court, in Katz v. United States, transcended the trespassory test in favor of adopting the modern expectation of privacy test. 115 The Katz test provides Fourth Amendment protection based on “a legitimate expectation of privacy in the invaded space,” 116 not merely on “the presence or absence of a physical intrusion into any given enclosure.”117 If Katz did not transcend the trespassory test, the Court would not have found a search occurred when the government placed a recording device on the outside of a telephone booth because the booth did not belong to the defendant and, thus, there could not be a showing of trespass on private property.118 However, the Court recognized that placing the recording device on the booth to replay a person’s telephone conversation violated an expectation of privacy that most individuals expect existed in the booth, and this expectation is what the Court believed ought to be protected by the Fourth Amendment, not the existence or absence of a physical trespass. 119 The Court explained, “once it is recognized that the Fourth Amendment protects people-and not simply ‘areas’-against unreasonable searches and seizures it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure.”120 Accounting for these concerns, Justice Alito criticized Justice Scalia’s opinion as being “unwise” and “highly artificial” for applying “18th century tort law” to a “21stcentury surveillance technique.” 121 Justice Alito recognized: the Court’s reasoning largely disregards what is really important (the use of a GPS for the purpose of long-term tracking) and instead attaches great significance to something that most would view as relatively minor (attaching to the bottom of a car a small, light object that does not interfere in any way with the car's operation).122 In light of this deficiency, Justice Alito believed that the question presented in Jones should be answered by applying the Katz test to determine whether defendant’s reasonable expectation of privacy was violated by the four week government surveillance of his vehicle’s movements.123 Accordingly, [u]nder this approach, relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable. But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period.124 Justice Sotomayor, in a separate concurring opinion, illuminated why long term government surveillance of vehicular travels violates a reasonable expectation of privacy.125 Like several other courts,126 Justice Sotomayor noted that “GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.”127 For instance: [d]isclosed in [GPS] data ... will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-thehour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on.128 This information is even more intrusive when “[t]he Government can store such records and efficiently mine them for information years into the future.”129 Hence, Justice Sotomayor opined that long term tracking of a person’s vehicular travels breaches an expectation of privacy the Fourth Amendment exists to protect. 130 In sum, the concurring opinions of Justice Alito and Sotomayor provide two persuasive reasons why Justice Scalia’s decision to apply the trespassory test undermines modern-day surveillance methods. First, the “trespassory test may provide little guidance” to “novel modes of surveillance that do not depend upon a physical invasion on property.”131 Second, because “the Fourth Amendment protects people, not places,”132 the appropriate test should be to “ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on.”133 Justices Alito and Sotomayor have already answered in the negative.

### Courts—Grounds

#### Ruling ALPR unconstitutional on the grounds of mosaic theory is crucial to overall privacy protection—lack of clarity leaves ambiguity and loopholes

Gutierrez-Alm 15- Winthrop & Weinstine, Associate Attorney (Jessica, “The Privacies of Life: Automatic License Plate Recognition is Unconstitutional Under the Mosaic Theory of Fourth Amendment Privacy Law”, Hamline Law Review: Vol. 38: Iss. 1, Article 5, <http://digitalcommons.hamline.edu/cgi/viewcontent.cgi?article=1054&context=hlr)//WK>

ALPR systems collect the GPS coordinates of each license plate they encounter. 189 The information is obtained quietly, without the vehicle driver’s knowledge, and without a warrant.190 Each data point is sent to law enforcement agents individually, but more importantly, the data points are compiled together in databases that are maintained for varying lengths of time.191 Thus, as with the location data obtained by GPS tracking devices that are attached to vehicles, Fourth Amendment privacy is implicated by the use of ALPR systems.192 As with GPS practices, it is the long-term collection of data that crosses the privacy threshold of reasonable expectations.193 Shortterm location information likely does not infringe on the driver’s reasonable expectation of privacy, because it is an established concept in Fourth Amendment jurisprudence that a person’s whereabouts are public. 194 However, a person’s whereabouts, recorded and tracked over a long period of time, reveal much about the privacies of life.195 Under the Katz analysis, there is both a subjective and objective expectation of privacy in such longterm collection of a person’s otherwise public location data, as documented by ALPR systems, which thus equates to a Fourth Amendment search.196 1. The Subjective Element: A Mosaic of ALPR Data Satisfies the Probabilistic Model of the Subjective Expectation of Privacy Looking first to the subjective element, it is difficult to display an intent to keep one’s whereabouts private when that information is public by nature.197 To overcome this requirement of an outward display in the privacy interest in GPS data, the Maynard court and Jones concurring justices looked both to the mosaic theory of data compilation and Orin Kerr’s probabilistic model of the subjective element. 198 The opinions found that although a stranger could easily observe a person’s location at any given time, it is highly unlikely that the same stranger could or would observe every movement over a four-week period.199 Therefore, a subjective expectation of privacy was present in the aggregate of location data over that period.200 Similarly, there is a subjective expectation of privacy in the accumulation of several data points collected and compiled by ALPR systems over time.201 Although the ALPR data points are generally intermittent, rather than the constant 24-hour surveillance provided by GPS, the likelihood that a stranger could or would collect a driver’s intermittent location points over a period of months or years—depending on how long ALPR data is retained in each jurisdiction—is highly unlikely.202 This highlights a distinction between the privacy implications of GPS data and ALPR data.203 GPS tracking provides constant, uninterrupted monitoring of an individual’s whereabouts.204 Location data picked up by ALPR systems, however, are intermittent and are collected only when a person drives within range of an ALPR camera, or when a cruiser-mounted camera passes by another vehicle.205 As a result, one month of GPS data is likely more invasive and includes more data points than one month of accumulated ALPR data. 206 Crossing the privacy threshold by creating a spectrum of data unlikely observable by a stranger would require a longer accumulation of ALPR data than of GPS data. 207 Though with several months or even years of ALPR data that is either compiled in a single jurisdiction or combined by a national agency, the subjective element will be met through the probabilistic model.208 It is beyond reasonable expectation that a person could or would intermittently observe a person’s whereabouts over months or years.209 Thus, the subjective element of the Katz analysis is met with application of Orin Kerr’s probabilistic model, as applied in Maynard and the Jones concurrences.210 Of course the more troublesome element of the Katz analysis is the objective, requiring an evaluation of what society (and the Court) is prepared to accept as a reasonable expectation of privacy.211 2. The Objective Element: Presumptions Weighing Against a Finding of a Reasonable Expectation of Privacy are Overcome when ALPR Data is Compiled into a Mosaic It has been established that there is no reasonable expectation of privacy in a person’s whereabouts in public.212 The Maynard court and Jones concurrences both recognized this point.213 Knotts held that the public nature of a person’s location on public roads precludes any privacy interest.214 Karo highlighted this point by indicating that the threshold to the home divides what is generally public and private information.215 Similar to the GPS data collected in Knotts and Maynard/Jones, ALPR data can only be collected in public places due to the cameras’ locations on police cruisers and at stationary points on public roads.216 As with GPS data, there is therefore an initial presumption that the public location data collected by ALPR systems is not subject to a reasonable expectation of privacy; something extra must be shown to evince reasonable expectation.217 The Supreme Court’s surveillance technology jurisprudence suggests a second initial presumption: surveillance technology is used only to enhance police officers’ natural surveillance capabilities and does not provide extrasensory abilities.218 The Court stated in Knotts that a few GPS data points do not amount to a Fourth Amendment search because, when used in that way, the technology only enhances police officers’ natural surveillance capabilities. 219 Maynard, and later the Jones concurrences, seemed to confirm this concept, as each court distinguished the facts of Knotts, differentiating the GPS data collected on Jones because it was more extensive.220 When an ALPR system only captures a person’s license plate at a few locations, the technology is only enhancing police officers’ ability to observe the vehicle and run the license plate against hotlists manually.221 To overcome this presumption of a mere ability enhancing technology, a criminal defendant arguing invasion of Fourth Amendment rights would need to show that the technology produced information that would not otherwise be obtainable without the technology.222 Both presumptions are overcome when a vast quantity of information is collected and compiled together into a mosaic.223 As Justice Ginsburg articulated in the Maynard majority opinion, ongoing GPS surveillance reveals much about a person’s private life.224 Despite the public nature inherent in driving on public roads, a person does not reasonably expect each of his movements from place to place over the course of days, weeks, or months to be tracked.225 As stated above, ALPR data is, on its face, less invasive than GPS data because it is not continuous.226 However, as the use of ALPR systems grows throughout the nation, the probability of a single license plate being captured by a surveillance unit at least once during every journey increases.227 While ALPR technology may not on its face have the capability of painting as clear a picture of private life as GPS tracking does, private habits would still be apparent in the collection of several ALPR data points. 228 Additionally, ALPR data can be easily collected and compiled for a longer period of time than GPS data, because the system does not focus on an individual person and does not require the maintenance of an ongoing GPS device on an individual’s vehicle.229 Extensive ALPR databases that could reveal more information than the twenty-eight days of GPS tracking in Jones are already in existence. 230 Law enforcement agencies’ compilation and sharing of ALPR data is creating data banks of private information.231 It is this long-term portrayal of habits and patterns revealed over time that imposes a reasonable expectation of privacy and encroaches into the territory of the extra-sensory. Additionally, the fact that ALPR systems simultaneously collect location data on the entire driving population furthers the argument for its extrasensory capabilities. 232 This sets ALPR data apart from most other surveillance technologies, including GPS devices, which monitor one targeted person.233 The Maynard court and Justice Alito’s Jones concurrence focused on the distinction between short-term and long-term GPS monitoring to find an extrasensory ability in the collection of GPS data.234 Long-term GPS surveillance approaches the extrasensory because, although a law enforcement officer could physically track a suspect for hours or days, it is highly unlikely that he could track the suspect consistently for twenty-eight days.235 Similarly, one ALPR camera arguably does the same work as an efficient police officer in a parked cruiser, copying down every license plate number she sees. 236 However, it would be nearly impossible for police officers to simultaneously copy down all license plate numbers they encounter, and then compile the information into a large database, charting each license plate’s movements.237 Even if this system of manually observing and running every license plate were a physical possibility, it certainly could not be sustained for any length of time, because it would require the officers’ full attention.238 The vast amount of comprehensive information collected by ALPR systems sets it apart as an extrasensory technology that more easily infringes on Fourth Amendment rights than those technologies that have been deemed as only enhancing officers’ capabilities. Thus, like GPS device data, it is the mosaic of ALPR data points that overcomes the presumptions of no privacy in public places and that it is only an enhancing technology. 239 The mosaic theory of Fourth Amendment analysis presented in Maynard and endorsed by the concurring opinions in Jones must be employed in the consideration of ALPR data in order to demonstrate a reasonable expectation of privacy.240 Although the Supreme Court majority was unwilling to accept the theory as a basis for the GPS analysis in the Jones decision, policy dictates that the mosaic theory should be adopted for Fourth Amendment analysis of ALPR data.241 B. Policy Dictates that the Mosaic Theory Should be Applied as a Basis for Fourth Amendment Privacy Analysis in the Case of ALPR Data The Supreme Court avoided taking up the issue of long-term technological surveillance in Knotts and Jones. 242 Despite the availability of the mosaic concept, the Court seems reluctant to expand the Fourth Amendment’s privacy protection so broadly. 243 However, ALPR data collection practices encroach more broadly on the public’s sense of privacy than does GPS tracking because, unlike GPS devices, ALPR cameras capture location data indiscriminately on each license plate they encounter.244 The unfettered use of surveillance tactics on the general public calls for a heightened level of privacy protection.245 As Justice Sotomayor stated in her Jones concurrence, allowing the government to collect “a substantial quantum of intimate information about any person” may “alter the relationship between citizen and government in a way that is inimical to democratic society.” 246 If the Court is unwilling to find a reasonable expectation of privacy in the long-term collection of a person’s whereabouts, a precedent may be set that there is no reasonable expectation of privacy in anything conducted outside the home.247 Additionally, as Justice Alito pointed out in his Jones concurrence, not recognizing a reasonable expectation of privacy in a mosaic of location data would lead to inconsistent privacy infringement outcomes. 248 For example, since Jones confirmed that the physical trespass analysis of Fourth Amendment law is still valid, a mere few hours of GPS tracking may be considered a Fourth Amendment infringement if the officer physically touched the defendant’s car while installing the tracking device.249 However, without the mosaic theory’s application to ALPR data collection, five years’ worth of documentation of a defendant’s travels across the country, as collected by various enforcement agencies and then compiled into one database, would not be an infringement of the right to privacy because no physical trespass was involved. 250 The inconsistency demonstrates that technology creates the need for expanding concepts of law.251 Application of the mosaic theory to Fourth Amendment privacy law would protect the type of privacy implication inherent in modern surveillance practices.252

### A2: Status Quo Solves

#### Status quo policy ignores the invasiveness of the NLPR program

**Gilbert 1-30-15** – Executive Director of ACLU Vermont (Allen, “Asset Forfeiture Bill Hits Senate Floor This Week,” ACLU Vermont, January 30th, 2015, <https://acluvt.org/blog/2015/01/30/dea-using-alprs-to-track-drivers/)BC>

The Drug Enforcement Administration has initiated a massive national license plate reader program with major civil liberties concerns but disclosed very few details, according to new DEA documents obtained by the ACLU through the Freedom of Information Act. The DEA is currently operating a National License Plate Recognition initiative that connects DEA license plate readers with those of other law enforcement agencies around the country.

A Washington Post headline [proclaimed](http://www.washingtonpost.com/world/national-security/dhs-cancels-national-license-plate-tracking-plan/2014/02/19/a4c3ef2e-99b4-11e3-b931-0204122c514b_story.html)in February 2014 that the Department of Homeland Security had cancelled its “national license-plate tracking plan,” but all that was ended was one Immigrations and Customs Enforcement solicitation for proposals. In fact, a government-run national license plate tracking program already exists, housed within the DEA. (That’s in addition to the corporate license plate tracking database run by [Vigilant Solutions](https://www.aclu.org/blog/technology-and-liberty-national-security-immigrants-rights/setting-record-straight-dhs-and), holding billions of records about our movements.) Since its inception in 2008, [the DEA has provided limited information to the public](https://www.aclu.org/blog/technology-and-liberty-criminal-law-reform/dea-recording-americans-movements-highways-creating)on the program’s goals, capabilities and policies. Information has [trickled out](https://www.aclu.org/blog/technology-and-liberty-criminal-law-reform/dea-recording-americans-movements-highways-creating) over the years, in testimony [here](http://www.dea.gov/pr/speeches-testimony/2012-2009/ct050609.pdf) [or](http://www.dea.gov/pr/speeches-testimony/2012-2009/110331_testimony.pdf) [there](http://utahlegislature.granicus.com/MediaPlayer.php?view_id=&clip_id=1416&meta_id=55828). But far too little is still known about this program.

In 2012, the ACLU filed public records requests in 38 states and Washington, D.C. seeking information about the use of automatic license plate readers. Our July 2013 report, [You Are Being Tracked](https://www.aclu.org/alpr), summarized our findings with regard to state and local law enforcement agencies, finding that the technology was being rapidly adopted, all too often with little attention paid to the privacy risks of this powerful technology. But in addition to filing public records requests with state agencies, the ACLU also filed FOIA requests with federal agencies, including the DEA.

The new DEA records that we received are heavily redacted and incomplete, but they provide the most complete documentation of the DEA’s database to date. For example, the DEA has previously testified that its license plate reader program began at the southwest border crossings, and that the agency planned to gradually increase its reach; we now know more about to where it has grown. The DEA had previously suggested that “other sources” would be able to feed data into the database; we now know about some of the types of agencies collaborating with the DEA.

The documents uncovered by our FOIA request provide additional details, but their usefulness is limited by the DEA’s decision to provide only documents that are undated or years old. If the DEA’s collection of location information is as extensive as the agency has suggested in its limited comments to legislatures, the public deserves a more complete and comprehensive explanation than the smattering of records we have obtained can provide.

These records do, however, offer documentation that this program is a major DEA initiative that has the potential to track our movements around the country. With its jurisdiction and its finances, the federal government is uniquely positioned to create a centralized repository of all drivers’ movements across the country — and the DEA seems to be moving toward doing just that. If license plate readers continue to proliferate without restriction and the DEA holds license plate reader data for extended periods of time, the agency will soon possess a detailed and invasive depiction of our lives (particularly if combined with other data about individuals collected by the government, such as the DEA’s recently revealed[bulk phone records program](https://www.aclu.org/blog/national-security/dea-discloses-bulk-surveillance-americans-international-phone-calls), or cell phone information gleaned from U.S. Marshals Service’s [cell site simulator-equipped aircraft](http://www.wsj.com/articles/americans-cellphones-targeted-in-secret-u-s-spy-program-1415917533)). Data-mining the information, an unproven law enforcement technique that the DEA has begun to use here, only exacerbates these concerns, potentially tagging people as criminals without due process

#### The Fleming Amendment was insufficient – not permanent and no complete ban

Boehm 14 – a reporter for Watchdog.org and former bureau chief for Pennsylvania Independent (6/18/2014, Eric, Watchdog.org, “Automatic license plate scanners ‘just like’ NSA surveillance, congressman says”, <http://watchdog.org/155127/license-plate-scanner-ban/> // SM)

Even so, Fleming’s amendment was adopted in a 254-172 vote. It’s unclear whether cutting off federal funding for license plate scanners will actually dent their growing popularity in American police departments. Congress already banned the use of federal funds for red light camera programs in 2012, but the amendment would expand that ban to include speed cameras and license plate scanning technology. Even without federal money, red light camera programs have proliferated. More than 500 municipalities in the country use the devices, according to the Insurance Institute for Highway Safety. Nine states have banned the use of red light cameras, and others have unsuccessfully tried to enact bans— against the wishes of law enforcement groups and lobbyists for the camera companies. Meanwhile, police departments have expanded the use of automated license plate readers and will probably continue to do so. In a national survey by the Police Executive Research Forum, 71 percent of police agencies reported using license plate reader technology; 85 percent said they planned to increase usage. But like all technology, scanners aren’t flawless: A Kansas man, his pregnant wife in a car with him, was greeted by the business end of a police officer’s gun during a traffic stop in April. The automatic license plate scanner in the officer’s cruiser had mistakenly read a “7” on the license plate as a “2.” The federal bill would not prevent police departments from using federal funds to buy those devices, but it would ban departments from indefinitely storing the information gathered from automatic license plate readers. The ban would last only until Congress has to reauthorize transportation spending and would only affect funding provided by the federal Department of Transportation.

### A2: Just Cars

#### ALPR includes photos of individuals—the program has been massively underestimated

THE GUARDIAN 2015 (DEA using license-plate readers to take photos of US drivers, documents reveal, Feb 5, http://www.theguardian.com/world/2015/feb/05/aclu-dea-documents-spy-program-millions-drivers-passengers)

The Drug Enforcement Administration (DEA) is using license-plate reader technology to photograph motorists and passengers in the US as part of an official exercise to build a database on people’s lives.

According to DEA documents published on Thursday by the American Civil Liberties Union (ACLU), the agency is capturing images of occupants in the front and rear seats of vehicles in a programme that monitors Americans’ travel patterns on a wider scale than previously thought.

The disclosure follows the ACLU’s revelation last week about the potential scale of a DEA database containing the data of millions of drivers, which kindled renewed concern about government surveillance.

The latest published internal DEA communications, obtained under the Freedom of Information Act, show that automated license plate scanners, known as ALPRs, record images of human beings as well as license plates.

A document from 2009 said the programme could provide “the requester” with images that “may include vehicle license plate numbers (front and/or rear), photos of visible vehicle occupants [redacted] and a front and rear overall view of the vehicle”.

A document from 2011 said the DEA’s system had the ability to store “up to 10 photos per vehicle transaction including 4 occupant photos”.

The documents confirmed that license plate scanners did not always focus just on license plates, the ACLU said on Thursday: “Occupant photos are not an occasional, accidental byproduct of the technology, but one that is intentionally being cultivated.”

Photographing people inside cars was especially concerning in an age of face-recognition analytics since federal agencies would be “even more sure of exactly who they are surveilling”, the advocacy group said.

#### The DEA tracks the occupants as well – internal documents prove

Kopstein 2/12 – a cyberculture journalist and researcher from New York City. His work focuses on Internet law and disorder, surveillance and government secrecy. (2015, Joshua, Al-Jazeera America, “Your location data is your life, and police want it all”, [http://america.aljazeera.com/opinions/2015/2/your-location-data-is-your-life-and-police-want-it-all.html //](http://america.aljazeera.com/opinions/2015/2/your-location-data-is-your-life-and-police-want-it-all.html%20//) SM)

These arguments don’t stand up to scrutiny: License plates are purposefully linked to Americans’ identities, and data about their location over time can provide a remarkably clear picture of a person’s private activities, interests and associations. But as of last week, we know that not only has the Drug Enforcement Agency been spying on millions of drivers for years as part of a plan to build a nationwide vehicle tracking system but also that its ALPR database routinely captures photos of vehicles’ occupants in addition to plates. That’s a feature, not a bug. According to DEA documents obtained by the American Civil Liberties Union through a Freedom of Information Act request, the cameras capture “vehicle license plate numbers (front and/or rear), photos of visible vehicle occupants [redacted] and a front and rear overall view of the vehicle.” The database stores “up to 10 photos per vehicle transaction, including four occupant photos.” Altogether, the documents suggest Americans are already in the grips of a system designed to record and catalog their every move without any suspicion of wrongdoing.

### A2: Temporary

#### No policies governing retention times – pictures can be retained indefinitely

Kopstein 2/12 – a cyberculture journalist and researcher from New York City. His work focuses on Internet law and disorder, surveillance and government secrecy. (2015, Joshua, Al-Jazeera America, “Your location data is your life, and police want it all”, [http://america.aljazeera.com/opinions/2015/2/your-location-data-is-your-life-and-police-want-it-all.html //](http://america.aljazeera.com/opinions/2015/2/your-location-data-is-your-life-and-police-want-it-all.html%20//) SM)

ALPRs are already used in virtually every major U.S. city, with some systems boasting the ability to capture up to 1,800 plates per minute. Worse, most agencies still do not have policies governing how long these photos may be retained. Depending on who stores them, it can be anywhere from 48 hours to five years, sometimes even indefinitely.

### A2: States = Util

#### Public officials are bound by the same morality—the alternative is a collapse of all responsibility

NAGEL 1979(Thomas, Philosopher, Mortal Questions, p 89-90)

Both of these sources of public morality generate limits to what a public official may do in the conduct of his office, even if he is serving institutional interests. It is easy to forget about those limits, for three reasons. First, restrictions against the use of public power for private gain can seem like a moral cushion that insulates whatever else is done officially from moral reproach. Second, the fact that the holder of a public office takes on an obligation to a particular group may foster the idea that he is obliged not to consider anything except the interest of that group. Third, the impersonal morality of public institutions, and the moral specialization that inevitably arises given the complexity of public actions, lead naturally to the establishment of many roles whose terms of reference are primarily consequentialist. Lack of attention to the context that is necessary to make these roles legitimate can lead to a rejection of all limits on the means thought to be justified by ever greater ends. I have argued that these are all errors. It is important to remember that they are *moral* views: the opinion that in certain conditions a certain type of conduct is permissible has to be criticized and defended by moral argument. Let me return finally to the individuals who occupy public roles. Even if public morality is not substantively derivable from private, it applies to individuals. If one of them takes on a public role, he accepts certain limitations on what he may do. As with any obligation, this step involves a risk that he will be required to act in ways incompatible with other obligations or principles that he accepts. Sometimes he will have to act anyway. But sometimes, if he can remember them, he will see that the limits imposed by public morality itself are being transgressed, and he is being asked to carry out a judicial murder or a war of unjust aggression. At this point there is no substitute for refusal and, if possible, resistance. Despite the impersonal character of public morality and its complex application to institutions in which responsibility is partly absorbed by the moral defects of the institution through which he acts; but the plausibility of that excuse is inversely proportional to the power and independence of the actor. Unfortunately this is not reflected in our treatment of former public servants who have often done far worse than take bribes.

### A2: Nuke War Bad

#### Nuclear war impacts are too simplistic—we can’t predict how a nuclear war would start or how to avoid it—the probability of taking the correct action is so low that it’s equally likely to cause the war in the first place

MARTEL AND SAVAGE 1986 (William and Paul, Strategic Nuclear War: What the Superpowers Target and Why, p. 50-51)

Nuclear war is perhaps the single most pressing issue in modern times, outranking by a considerable margin concerns about domestic and other international problems. This is entirely proper, for nuclear war threatens to destroy the fabric of modern civilization without regard for the millions who will die a horrible, if not quick, death. Because nuclear war is such a common theme in contemporary thinking, many specialists and non-specialists alike, have speculated about the origins of a nuclear war: who might start it, how it might be started, and most important, why it might begin in the first place. To these and other questions, analysts have posed a variety of answers, most of which we have found to be based on scenarios and assumptions that, in plain language, are just too simplistic or are based on an improbable set of circumstances to provide satisfactory solutions to the question of how such a war might begin. We can never know unambiguously how a nuclear war will start. After all, if we could imagine realistically how a nuclear war might begin, then it is only logical to assume that, armed with such knowledge, a nuclear holocaust could be averted from the start. In this sense, so many of the popular scenarios of nuclear war offer the public, and clearly decision-makers, the fleeting (and false) illusion of thinking that, armed with this “knowledge” of the future, they can avert armageddon. This is a dangerous illusion that should be dispelled, for the “causes” (if you will) of a nuclear war will be a series of nearly transcendent political, military, and psychological factors that are so elusive and fleeting, or perhaps based on such essentially accidental or unexpected events that any planning will be essentially irrelevant. Indeed, there is the prospect that, if the superpowers ever move to the brink of nuclear war, they will do so probably thinking that, by their very actions, they will be able to avoid such a suicidal conflict. War, in this sense, might be upon the superpowers quite literally before they know what has happened. The event, quite possibly, may present itself *de novo* despite our best intellectual and emotional efforts to understand, not to mention sidestep, the maelstrom without being pulled by cataclysmic political and military currents into the war.

### A2: Solves Crime

#### Plate cameras aren’t key to crime fighting – they only create immense privacy concerns

Lord 4/5 – Reporter on the project team at the Pittsburgh Post-Gazette, focused on data, privacy and security. (2015, Rich, Pittsburgh Post-Gazette, “Recording license plates can help solve crimes. But what becomes of all that data?”, [http://www.post-gazette.com/local/region/2015/04/05/license-plate-recognition-homeland-security-privacy-data/stories/201504030307 //](http://www.post-gazette.com/local/region/2015/04/05/license-plate-recognition-homeland-security-privacy-data/stories/201504030307%20//) SM)

“If you come into the city and commit a crime,” he said, “they will find you.” “It would be nice to know that a known drug dealer has just entered your municipality, and your officer can monitor what they’re doing,” said Jason Miller, owner of Surveillance Group Inc., an Avalon-based contractor that installs the systems. It’s not always that easy. For instance, when a spate of robberies spooked businesses in Regent Square, Mr. Zappala helped Edgewood and Swissvale to install a camera and license plate recognition system. The chiefs of those municipalities said they ended up solving the robberies through traditional, cooperative policing, and haven’t made much use of the plate camera since. Still, the plate camera remains posted, sending a stream of letters, numbers, dates and times to Surveillance Group’s server. To the ACLU, that illustrates the inexorable creep of untethered surveillance. “It’s so rare that once you start using a technology, you stop using it, especially when it kind of runs in the background,” said Sara Rose, a staff attorney with the ACLU of Pennsylvania. “Collecting the data, without a good reason to do so, when you’re not using it, creates significant privacy concerns.” Baldwin Borough, which has had a plate camera since 2011, was sensitive to civil liberties concerns from the beginning, according to Chief Mike Scott. The borough’s system reveals stolen cars and suspended licenses, but doesn’t automatically record vehicle locations and only holds data for 30 days.

### A2: Politics DA

#### Congressional action isn’t necessary—it’s an agency program established with no Congressional authorization

SKOUSEN 2015 (Joel, Strategic Relocation Blog, “ANOTHER DOMESTIC SURVEILLANCE SCANDAL EMERGES,” Jan 30, http://www.strategicrelocationblog.com/blog/another-domestic-surveillance-scandal-emerges)

The NSA isn’t the only out-of-control government agency expanding its surveillance dragnet Americans found out this week—the DEA is tracking everyone’s vehicular movements using license plate trackers all in the name of fighting drugs. Even local police are getting in on the license plate data as I will detail this week. Americans value their privacy only a little less than their freedom of movement without checkpoints and pass controls, but these and other freedoms are quickly eroding away as almost every government agency quietly usurps more power every year. Worse, none of this was authorized by Congress. The DEA did this on its own, even as it now claims that such programs were terminated. How can we trust anything government says anymore? We know better than to accept the government’s superficial excuses again.

#### Leahy likes the plan

THE GUARDIAN 2015 (Millions of cars tracked across US in 'massive' real-time DEA spy program, Jan 27, http://www.theguardian.com/world/2015/jan/27/millions-of-cars-tracked-across-us-in-massive-real-time-spying-program)

But the database’s expansion “thoughout the United States”, as one DEA email put it, worried Senator Patrick Leahy, who sits on the Senate judiciary committee.

“The fact that this intrusive technology is potentially being used to expand the reach of the government’s asset forfeiture efforts is of even greater concern,’’ he told the Wall Street Journal.

Leahy called for additional accountability and said Americans should not have to fear that “their locations and movements are constantly being tracked and stored in a massive government database”.

#### Leahy likes the plan

BARRETT 2015 (Devlin, writer for WSJ, “U.S. Spies on Millions of Cars,” Wall Street Journal, Jan 26, reprinted on http://theconservativetreehouse.com/2015/01/27/wsj-report-u-s-spies-on-millions-of-cars-aligns-with-our-20132014-maryland-mcac-hub-research/)

Sen. Patrick Leahy, senior Democrat on the Senate Judiciary Committee, said the government’s use of license-plate readers “raises significant privacy concerns. The fact that this intrusive technology is potentially being used to expand the reach of the government’s asset-forfeiture efforts is of even greater concern.’’

The senator called for “additional accountability’’ and said Americans shouldn’t have to fear ”their locations and movements are constantly being tracked and stored in a massive government database.’’

#### Everyone likes the plan

THE GUARDIAN 2015 (“DEA plan to track drivers went much wider, new documents reveal,” Jan 29, http://www.theguardian.com/us-news/2015/jan/29/us-plan-track-car-drivers-documents)

The license-plate readers have fed hundreds of millions of records about motorists into a national database, the first round of ACLU documents show. If license plate readers, also known as LPRs, continued to proliferate without restriction, and the DEA held ldata for extended periods, the agency would soon possess a detailed and invasive depiction of people’s lives, the ACLU has warned.

Officials have publicly acknowledged they track vehicles near the Mexican border to combat drug trafficking.

According to DEA documents, the primary goal of the program was to seize cars, cash and other assets belonging to criminals. However, the database’s expansion “throughout the United States”, as one email put it, also widened law enforcers’ capacity for asset forfeiture.

The revelation that asset forfeiture was linked to mass surveillance could unite progressives and conservatives, Olson said. “At some point left and right come together.”

#### Plan’s popular – previous bills prove

Boehm 14 – a reporter for Watchdog.org and former bureau chief for Pennsylvania Independent (6/18/2014, Eric, Watchdog.org, “Automatic license plate scanners ‘just like’ NSA surveillance, congressman says”, <http://watchdog.org/155127/license-plate-scanner-ban/> // SM)

John Fleming sees plenty of parallels between police departments’ use of automatic license plate scanning technology and widespread electronic surveillance by the National Security Agency. Both intrude on the privacy of innocent civilians who are neither suspected nor charged with a crime, all without civilians’ knowledge or consent. Both allow law enforcement to build a database of information about Americans’ everyday activities, again without legal authority or consent. And both are supported by federal taxpayer dollars taken from the wallets of the very individuals now subject to these new forms of surveillance. KEEPING AN EYE OUT: More police departments are using automatic license plate scanners, but Congress is moving to cut off federal funding for those programs if they store license plate data for long periods of time. Fleming, a Republican congressman from Louisiana, might not be able to do much about the NSA, but he’s championing an effort to ban police departments from using federal grants to buy license plate scanners. An amendment added this week to an omnibus transportation bill working its way through Congress would also ban the use of federal money to help kick-start red light camera programs, speed enforcement cameras and other forms of municipal-level electronic surveillance. Speaking on the floor of the House, Fleming compared the scanners used by many police departments to the so-called “meta-data” — data consisting of phone numbers called and the duration of calls but not the actual voice content — collected by the NSA. “Just like phone meta-data, this geo-location data with time stamps can be used to reconstruct intimate details of our lives, who we visit, where we worship, from whom we seek counseling, and how we might legally and legitimately protest the actions of our own government,” Fleming said. Fleming’s fears are not unfounded: The ACLU found that state police in Virginia tracked the license plates of people who attended political rallies for Barack Obama and Sarah Palin in 2009. On a more personal level, Watchdog.org’s Katie Watson discovered in April that police in Alexandria, Va., captured and saved 16 photos of her license plate over the previous six months. Police say the scanners help officers more quickly assess the potential danger of pulling someone over: Were they simply speeding or do they have a history of violent behavior, too? Law enforcement agencies argue that maintaining records from license plate scanners can help solve crimes more quickly, regardless of potential constitutional violations needed to achieve that goal. Stricter rules are needed to tell police how long they can keep data obtained from scanners, said John Bowman, spokesman for the National Motorists Association, which opposes the use of scanners because of privacy violations. “If the information isn’t immediately relevant to a crime, then there is no reason to keep it and it should be immediately deleted,” Bowman said. Fleming said many states don’t have rules for how long license plate data can be kept, and he wants to start a debate about the proper role for such technology. States and local governments may still buy license plate scanning technology on their own, but the federal government should not use tax dollars to subsidize those costs, Fleming said. JUST A SIMPLE MISTAKE: Police in Prairie Village, Kan., learned first hand that license plate scanners can make mistakes. U.S. Rep. Tom Latham, R-Iowa, was the only member of Congress to speak against Fleming’s proposal. On the House floor, Latham said he worried about the unintended consequences of banning federal funding for license plate scanners – a move that would potentially put toll roads using similar devices in violation of the law. “It simply will also have a lot of wide unanticipated operational impacts across all of the programs in this bill,” Latham said. Even so, Fleming’s amendment was adopted in a 254-172 vote. It’s unclear whether cutting off federal funding for license plate scanners will actually dent their growing popularity in American police departments. Congress already banned the use of federal funds for red light camera programs in 2012, but the amendment would expand that ban to include speed cameras and license plate scanning technology.

#### Leahy, Grassley, and other senior lawmakers support the plan

Laughland and Carroll 1/29 – Laughland is a senior reporter for Guardian. Carroll is a US west coast correspondent based in Los Angeles (2015, Oliver and Rory, The Guardian, “DEA plan to track drivers went much wider, new documents reveal”, [http://www.theguardian.com/us-news/2015/jan/29/us-plan-track-car-drivers-documents //](http://www.theguardian.com/us-news/2015/jan/29/us-plan-track-car-drivers-documents%20/) SM)

Federal agencies tried to use vehicle license-plate readers to track the travel patterns of Americans on a much wider scale than previously thought, with new documents showing the technology was proposed for use to monitor public meetings. The American Civil Liberties Union released more documents this week revealing for the first time the potential scale of a massive database containing the data of millions of drivers, logged from automatic license plate readers around the US. As President Obama’s nominee for attorney general prepared for a second day of confirmation hearings in Washington, senior lawmakers also called on the US Justice Department to show “greater transparency and oversight”. Further documents released by the ACLU on Wednesday show that Drug Enforcement Administration (DEA) officials in Phoenix planned on “working closely” with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to monitor public gun shows with the automatic technology in 2009. Although the DEA has said the proposal was not acted upon, the revelations raise questions about how much further the secret vehicle surveillance extends, which other federal bodies are involved and which other groups may have been targeted. “The broad thrust of the DEA is to spread its program broadly and catch data and travel patterns on a massive scale,” Jay Stanley, a senior policy analyst with ACLU, told the Guardian. “This could be a really amazing level of surveillance that we’ve not seen before in this country.” The ACLU warned that the buildup of a vehicle surveillance database, the existence of which first surfaced on Monday, stemmed from the DEA’s appetite for asset forfeiture, a controversial practice of seizing possessions at traffic stops and vehicle pullovers if agents suspect they are criminal proceeds. Outgoing US attorney general Eric Holder opened a review into federal asset forfeiture earlier this month. Critics said the proposed reform merely “nibbled” at the problem. “I think that a number of people would have questions about how the Department of Justice manages its asset forfeiture program,” Loretta Lynch, Holder’s would-be replacement, said before a Senate confirmation hearing on Wednesday. In a letter to Holder on Wednesday, senators Chuck Grassley and Patrick Leahy wrote that they “remain concerned that government programs that track citizens’ movements, see inside homes and collect data from the phones of innocent Americans raise serious privacy concerns.”

#### Fleming likes the plan

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John Fleming sees plenty of parallels between police departments’ use of automatic license plate scanning technology and widespread electronic surveillance by the National Security Agency. Both intrude on the privacy of innocent civilians who are neither suspected nor charged with a crime, all without civilians’ knowledge or consent. Both allow law enforcement to build a database of information about Americans’ everyday activities, again without legal authority or consent. And both are supported by federal taxpayer dollars taken from the wallets of the very individuals now subject to these new forms of surveillance. Fleming, a Republican congressman from Louisiana, might not be able to do much about the NSA, but he’s championing an effort to ban police departments from using federal grants to buy license plate scanners. An amendment added this week to an omnibus transportation bill working its way through Congress would also ban the use of federal money to help kick-start red light camera programs, speed enforcement cameras and other forms of municipal-level electronic surveillance. Speaking on the floor of the House, Fleming compared the scanners used by many police departments to the so-called “meta-data” — data consisting of phone numbers called and the duration of calls but not the actual voice content — collected by the NSA. “Just like phone meta-data, this geo-location data with time stamps can be used to reconstruct intimate details of our lives, who we visit, where we worship, from whom we seek counseling, and how we might legally and legitimately protest the actions of our own government,” Fleming said.

#### He’s influential in Congress

Alford 7/14 – the publisher-editor of LaPolitics.com/LaPolitics Weekly (2015, Jeremy, Daily World, “Louisiana’s DC clout shaky at best”, <http://www.dailyworld.com/story/opinion/columnists/2015/07/14/louisianas-dc-clout-shaky-best/30155465/> // SM)

There’s already a long line forming up to run for the U.S. Senate in 2016, with most suggesting they would back out if Vitter runs for re-election. The crowd currently includes Congressmen Charles Boustany and John Fleming, who are both aggressively raising money and assembling their teams, as well as Treasurer John Kennedy, who will have the money to compete and is the most popular official in Louisiana based on recent polling. If Vitter is defeated this fall, it will only be because the electorate soured on his political brand, creating a stink that will certainly follow him into the next election cycle. That could be enough to keep Boustany and Fleming on the ballot. And if Vitter wins, you better believe the two congressmen will tee it up. If that happens, Boustany, an increasingly powerful voice on the tax-writing Ways and Means Committee, and Fleming, an important player in the lower chamber’s conservative wing and a natural resources subcommittee chair, will have to give up their House seats. Some influence would naturally carry over to the Senate, but only one can win — neither is always a possibility too.

### A2: Forfeiture DA—Offense

#### Asset forfeiture is unjust

DUNN 2014 (Kyla, “Reining in forfeiture: common sense reform in the war on drugs,” http://www.pbs.org/wgbh/pages/frontline/shows/drugs/special/forfeiture.html)

According to a report prepared for the Senate Judiciary Committee, at least 90 percent of the property that the federal government seeks to forfeit is pursued through civil asset forfeiture. And although forfeiture is intended as punishment for illegal activity, over 80% of the people whose property is seized under civil law are never even charged with a crime according to one study of over 500 federal cases by the Pittsburgh Press. For this reason, critics say, the system can run roughshod over the rights of innocent property owners--and fail to distinguish them from the guilty.

#### Asset forfeiture flips the burden of proof on victims – it’s unjust

Byas 5/19 – reporter for the New American (2015, Steve, New American, “Civil Asset Forfeiture About More Than Fighting Drugs”, [http://www.thenewamerican.com/usnews/constitution/item/20900-civil-asset-forfeiture-about-more-than-fighting-drugs //](http://www.thenewamerican.com/usnews/constitution/item/20900-civil-asset-forfeiture-about-more-than-fighting-drugs%20//) SM)

The seizure last year of $107,702 from North Carolina convenience store owner Lyndon McClellan is an example that civil asset forfeiture is not just about "fighting drug cartels"; it is a disrespect by the government for private property, and it turns the burden of proof from the government to the person accused of a crime. McClellan has been told that he will get his money back from the IRS — eventually, although his lawyer said it could take months. The IRS seized all the money in the bank account of McClellan's L & M Convenience Mart in Fairmont, North Carolina, and accused him of committing "structuring violations," though he was never charged with any crime. It seems that McClellan had made many cash deposits of less than $10,000 into the store's bank account. Under federal law, all deposits of more than $10,000 must be reported to the IRS. Since many money-laundering operations and drug traffickers skirt the law by making deposits under $10,000, this has become a crime. Most law-abiding Americans are unaware of such a law, assuming that making deposits into their own bank account violates no law. Government officials do not actually have to prove any guilty intent by the person making the deposits; they simply work off assumptions. In McClellan's case, while the government has dismissed the case against him and stated that it will eventually return all his money, he is left with legal fees and expenses that the government has no intention of paying. Increasingly, innocent American citizens are faced with the dilemma of either fighting the government seizure of their assets (which would most likely cost more than the amount seized) or simply letting the government keep the money. The problem of civil assset forfeiture is now so serious that the Canadian government has warned its citizens not to carry cash into the United States, because U.S. officials do not presume innocence, but rather guilt when it comes to the money. And this is not about pocket change. Over $2.5 billion has already been confiscated from Canadians traveling inside the United States. Americans are often perplexed when they hear of civil forfeiture's flipped burden of proof because they were taught that in our legal system the accused is presumed innocent until proven guilty. Under civil asset forfeiture, however, it is the property, not the person, that is seized — which explains why the cases have odd names such as The United States of America vs. $100,000 in Cash. Once the property is seized, its owner must prove innocence before the property is returned. Under the Equitable Sharing Program, property seized can even be used to buy food and drinks at government conferences. According to the Washington Post, there have been more than 60,000 cash seizures on highways and elsewhere since 9/11, without search warrants or indictments. Local and state law enforcement also uses civil asset forfeiture as a significant revenue stream. The Post reports, Police agencies have used hundreds of millions of dollars taken from Americans under federal civil forfeiture laws in recent years to by guns, armored cars and electronic surveillance gear. They have also spent money on luxury vehicles [and] travel.

#### Asset forfeiture is theft—it’s done for financial reasons rather than law enforcement

DUNN 2014 (Kyla, “Reining in forfeiture: common sense reform in the war on drugs,” http://www.pbs.org/wgbh/pages/frontline/shows/drugs/special/forfeiture.html)

This potential for abuse is compounded by the strong financial incentive that law enforcement has to make seizures--since they benefit directly from forfeited property. It was the passage of the Comprehensive Crime Control Act of 1984, part of the Reagan-era ramp-up in the war on drugs, that first made this possible. At a federal level, the law established two new forfeiture funds: one at the U.S. Department of Justice, which gets revenue from forfeitures done by agencies like the Drug Enforcement Agency and the Federal Bureau of Investigation, and another now run by the U.S. Treasury, which gets revenue from agencies like Customs and the Coast Guard. These funds could now be used for forfeiture-related expenses, payments to informants, prison building, equipment purchase, and other general law enforcement purposes.

But equally important, local law enforcement would now get a piece of the pie. Within the 1984 Act was a provision for so-called "equitable sharing", which allows local law enforcement agencies to receive a portion of the net proceeds of forfeitures they help make under federal law--and under current policy, that can be up to 80%. Previously, seized assets had been handed over to the federal government in their entirety.

Immediately following passage of the Act, federal forfeitures increased dramatically. The amount of revenue deposited into the Department of Justice Assets Forfeiture Fund, for example, soared from $27 million in 1985 to $644 million in 1991--a more than twenty-fold increase. And as forfeitures increased, so did the amount of money flowing back to state and local law enforcement through equitable sharing.

Some say that because of the resulting windfall, state and local law enforcement has become as **addicted to forfeiture** as an addict is to drugs--making property seizure no longer a means to an end, but an **end in itself**. In 1999 alone, approximately $300 million of the $957 million that the Treasury and Justice Department funds took in went back to the state and local departments that helped with the seizures. And since 1986, the Department of Justice's equitable sharing program has distributed over $2 billion in cash and property. Additional revenue comes from forfeitures done under state law, which adds to the total intake. According to a study by the Bureau of Justice Statistics, state and local law enforcement reported receiving a total of over $700 million in drug-related asset forfeiture revenue in 1997 alone--with some departments single-handedly taking in several million dollars for their own use.

#### Forfeiture shifts operations away from high-level traffickers

WILLIAMS et al. 2010 (Marian R. Williams, Ph.D. Jefferson E. Holcomb, Ph.D. Tomislav V. Kovandzic, Ph.D. Scott Bullock, “Policing for profit: the abuse of civil asset forfeiture,” March, https://www.ij.org/part-i-policing-for-profit-2#\_edn7)

And criminal justice professor Mitchell Miller and Lance Selva found that police supervisors were keenly aware of the financial benefit of engaging in forfeiture activities and frequently made operational decisions to maximize perceived financial rewards.[38] They report observing “many such cases in which the operational goal was profit rather than the incarceration of drug offenders. The pursuit of profit clearly influenced policies on case selection.”[39]

An example of how law enforcement maintains its “addiction” to forfeiture funds is the practice of “reverse stings,” in which police pose as drug sellers rather than buyers.[40] Forfeiture advocates’ claims of “preventing crime and putting major offenders away” are inconsistent with practices such as reverse stings because they target relatively low-level, non-trafficking drug offenders who are subject to less severe criminal penalties than those arrested for drug sales and do not affect drug supply. Instead, law enforcement targets buyers rather than sellers because buyers tend to have more cash on hand subject to forfeiture.[41]

Indeed, evidence indicates that a significant percentage of state and local forfeiture actions are initiated against suspected low- to moderate-level offenders, especially low-level drug offenders, rather than the high-level targets that forfeiture advocates claim to be aiming for.[42]

#### Civil asset forfeiture bad—creates over-enforcement which infringes rights

Bridy 14- Alan G. Shepard Professor of Law, University of Idaho College of Law (Annemarie, “CARPE OMNIA: Civil Forfeiture in the War on Drugs and the War on Piracy”, Arizona State Law Journal, http://arizonastatelawjournal.org/wp-content/uploads/2015/01/Bridy\_Final.pdf)//WK

As the money rolled in, criticism of the civil forfeiture system and its stinting of due process mounted. Writing in 1991, Tamara Piety called federal civil forfeiture a “legal juggernaut, crushing every due process claim thrown in its path.”74 Three years later, the Cato Institute’s Roger Pilon referred to it with irony as an addiction for law enforcement, which had come to rely on forfeited assets to augment shrinking budgets in an era of smaller government.75 Given the open reliance of law enforcement on revenue derived from civil forfeitures, property rights advocates and other critics adopted the phrase “policing for profit” to convey the perversity of the incentives created for law enforcement agencies by the National Assets Seizure and Forfeiture Fund.76 Bruce Benson and David Rasmussen described the self-funding mechanism Congress designed for the federal civil forfeiture system as a form of “predatory public finance.”77 One driver of the acceleration in civil forfeitures during the mid-1980s and 1990s was a provision in the CCCA establishing an “equitable sharing” program by means of which state and local authorities were incentivized to assist in the enforcement of federal drug laws.78 Through equitable sharing, non-federal law enforcement agencies can keep up to 80% of the value of the assets they seize under federal law.79 To give some sense of the impact of equitable sharing on participation in the federal forfeiture system by nonfederal law enforcement agencies, over 90% of police departments in jurisdictions serving populations of 50,000 or more and over 90% of sheriff’s departments serving populations of 250,000 or more received federal drug asset forfeiture funds in 1990.80 Following the introduction of equitable sharing, civil forfeiture became a mainstay for state and local law enforcement agencies. Critics argued, with statistics to back them up, that equitable sharing led to over-enforcement in the area of drug crime and under-enforcement in other areas.

#### Civil Forfeiture assets are wasted

**Douglas-Bowers** **3-10-15** – writer for Occupy.com (Devon, “CASH COPS: HOW CIVIL FORFEITURE ENRICHED U.S. LAW ENFORCEMENT,” Occupy.com, March 10th, 2015, <http://www.occupy.com/article/cash-cops-how-civil-forfeiture-enriched-us-law-enforcement)BC>

In 2013, Vice reported that a district attorney in Georgia used the funds to “to buy football tickets and home furnishings,” whereas “officers in Bal Harbor, Florida, took trips to LA and Vegas and rented luxury cars, and other DAs and police chiefs have bought everything from tanning salons to booze for parties.”

The Washington Post also reported that police are using the funds to militarize themselves, buying an array of items such as “Humvees, automatic weapons, gas grenades, night-vision scopes and sniper gear. Many departments acquired electronic surveillance equipment, including automated license-plate readers and systems that track cellphones.” And this spending is on top of the military surplus gear police receive from the Pentagon.

While there is a federal force to ensure that funds are used appropriately, it's wildly understaffed; the Justice Department has about 15 employees assigned to oversee compliance, with some five employees responsible for reviewing thousands of annual reports. Essentially, then, police are free to spend the money they gain from civil forfeitures on anything they want, without fear of punishment.

#### Forfeiture fuels wasteful police spending and money laundering for cartels

Sibilla 7/10 – Communications associate with the Institute for Justice. He writes about cutting-edge constitutional issues including those involving the First Amendment, economic liberty, property rights and other individual liberties.(2015, Nick, “Florida Cops Laundered Millions For Drug Cartels, Failed To Make A Single Arrest”, <http://www.forbes.com/sites/instituteforjustice/2015/07/10/florida-cops-laundered-millions-for-drug-cartels-failed-to-make-a-single-arrest/> // SM)

Posing as money launderers, police in Bal Harbour and Glades County, Fla. laundered a staggering $71.5 million for drug cartels in an undercover sting operation, according to an in-depth investigation by The Miami Herald. With fake identities, undercover officers made deals to pick up cash from criminal organizations in cities across the country. Agents then delivered the money to Miami-Dade storefronts and even wired cash to banks overseas in China and Panama. After laundering the cash, police would skim a three percent commission fee, ultimately generating $2.4 million for themselves. “If you think of all the money that’s made from drugs, at some point it has to be cleaned up and become legit,” remarked Finn Selander, a former DEA agent and a member of Law Enforcement Against Prohibition. But unless proper precautions are taken, sting operations can “backfire” and “come back and bite you in the proverbial ass.” Together, the Bal Harbour Police Department and the Glades County Sheriff’s Office formed the Tri-County Task Force, which, despite the name, consisted of only two agencies. From 2010 to 2012, the task force passed on information and tips to federal agencies that led to the government seizing almost $30 million. Yet the undercover unit laundered over $70 million for drug cartels—more than twice as much as what was actually taken off the streets. Notably, the Tri-County Task Force never made a single arrest. The task force countered that assertion, claiming they passed on intelligence that led to over 200 arrests made by other agencies. But a representative from the DEA said, “There’s no way we can validate those numbers. We have no idea what they are basing those numbers on.” Tellingly, “the task force did not document the names of the 200 people who were arrested,” according to The Miami Herald. Thanks to the commissions from money laundering, the task force could indulge in a lavish lifestyle. Officers enjoyed $1,000 dinners at restaurants in the Miami area, and spent $116,000 on airfare and first-class flights and nearly $60,000 for hotel accommodations, including stays at the Bellagio and the Mandalay Bay in Las Vegas and El San Juan Resort & Casino in Puerto Rico. Police also spent over $100,000 on iPads, computers, laptops and other electronics, bought a new Jeep Grand Cherokee for $42,012 and even purchased $25,000 worth of weaponry, including FN P90 submachine guns. (Bal Harbour, a seaside village of 2,500 residents known for having the nation’s top sales-generating mall, reported just one violent crime in 2012.) Initially, to gain seed capital to conduct the sting operations, Bal Harbour tapped into equitable sharing, a federal asset forfeiture program. Under equitable sharing, cash, cars and real estate can all be forfeited to the government if there is an alleged nexus between criminal activity and the property involved, though criminal convictions or indictments are not necessary. As Michael Sallah, the investigative reporter at the Herald who broke the story, noted, “The Tri-County Task Force’s entire sting operation could not have existed without the DOJ’s Equitable Sharing program.” In fact, Duane Pottorff, the chief of law enforcement at the Glades County Sheriff’s Office, was remarkably candid about his agency’s motivations in joining the task force: “We thought this was a chance to bring in more revenue.” “Forfeiture money allowed us to have resources that normally we wouldn’t have,” including “patrol cars, vests, guns for the deputies, ammunition, all this, the training room, the training equipment is all paid with forfeiture funds,” he added.

#### Forfeiture contributes to police militarization – causes violent protest suppression, Ferguson proves

Jany 14 – Minneapolis reporter (8/26/2014, Libor, Star Tribune, “Drug war asset forfeitures draw scrutiny”, <http://www.startribune.com/drug-war-asset-forfeitures-draw-scrutiny/272760391/> // SM)

But more concerning for police reform advocates is how that forfeiture money is being spent, particularly whether it’s being used to buy the types of military-style weapons increasingly fa­vored across the country in police departments big and small. In the wake of the police shooting of an unarmed black teenager in a St. Louis suburb earli­er this month, the militarization of police departments has come under fresh scrutiny, said Teresa Nelson, legal director of the American Civil Liberties Union of Minnesota. “What we’re seeing with the militarization is basically the grant program where the military is sending [decommissioned] materials to the local police departments,” Nelson said. “To the extent there’s a connection it is in the acquisition of additional equipment by police departments. “I think there’s definitely a connection: How much of that is regular equipment vs. militarized equipment?” Nelson add­ed. The task force ranked behind only the State Patrol (1,007), Minneapolis Police Department (311) and the state Department of Natural Resources (271) in the number of “forfeiture incidents” with 210, ac­cord­ing to the Minnesota Office of the State Auditor, which releases an annual report on criminal forfeitures. Lee McGrath, executive director of Minnesota’s chapter of the Institute for Justice, a libertarian public-interest law firm, said the proc­ess needs further reform. But he add­ed that a recently passed state law requiring a criminal conviction before a person’s possessions can be seized was a good start. The new law went into effect on Aug. 1. “Forfeiture does give police a perverse incentive to go after better cars, things that will give them more money … we call it ‘policing for profit,’ ” Nelson said. “Given that forfeiture is a steady money stream by departments, it certainly can have an impact on the types of equipment that they chose to purchase with it.” She said there also needs to be more transparency in how the forfeiture money is allocated. She is particularly concerned that the mon­ey will be spent to buy military-style weapons and vehicles such as those used by police officers in Ferguson, Mo., in a series of attempts to quell the rioting that arose after the shooting of 18-year-old Michael Brown by a police officer on Aug. 9.

#### Civil asset forfeiture disproportionately affects minorities

**Douglas-Bowers** **3-10-15**  – writer for Occupy.com (Devon, “CASH COPS: HOW CIVIL FORFEITURE ENRICHED U.S. LAW ENFORCEMENT,” Occupy.com, March 10th, 2015, http://www.occupy.com/article/cash-cops-how-civil-forfeiture-enriched-us-law-enforcement)BC

Besides the previously noted conflict of interest and burden of proof issues, there are also other major problems with civil forfeiture – notably, the disproportionate racial impact and harm it causes to innocent people.

In 2012, Vanita Gupta, the ACLU deputy legal director, was involved in a settlement of several civil forfeiture cases in Texas in which mainly black and Latino drivers were pulled over, many times without justification, and had their assets seized by police. Gupta noted that civil forfeiture laws “invite racial profiling” and “incentivize police agencies to engage in unconstitutional behavior in order to fund themselves off the backs of low-income motorists, most of whom lack the means to fight back, without any hard evidence of criminal activity. It is no way to run our justice system.”

Furthermore, in 2014, the Meiklejohn Civil Liberties Institute reported reported that civil forfeiture laws “routinely amount to de facto racial discrimination, as law enforcement officials routinely target low-income people of color, seizing their assets.” It quoted the ACLU as saying that “asset forfeiture practices often go hand-in-hand with racial profiling and disproportionally impact low-income African-American or Hispanic people who the police decide look suspicious and for whom the arcane process of trying to get one’s property back is an expensive challenge.” Thus, like many aspects of the criminal justice system, civil forfeiture disproportionately impacts minorities.

#### civil forfeiture incentivizes racial profiling

ICERD 14 ["ICERD Shadow Report: De Facto Racial Discrimination Resulting from Civil Asset Forfeiture Laws", Meiklejohn Civil Liberties Institute, mcli.org/wp-content/uploads/2012/05/David\_Nelson\_ICERD.pdf] // SKY

Vanita Gupta of the American Civil Liberties Union (ACLU) has noted that hundreds of state and federal laws that authorize authorities to seize a person's property where the property in question is believed to have been obtained illegally are disproportionately being enforced against people-of-color. 2 Sarah Stillman, in an article for The New Yorker, further points out that many of these laws allow seizures to take place even when the property's owner has neither been charged with nor convicted of any wrongdoing. In these situations, the suspicion, by itself, that the property was obtained illegally is said to be sufficient justification for its seizure. Stillman goes on to say that these laws were established to assist law enforcement agencies in their fight against crime, especially organized crime, by enabling departments to supplement their budgets by taking money and other items from drug dealers and other criminals.3

However, many departments have come to rely on the money that they receive from these civil asset forfeiture laws recently, giving rise to corruption. These laws routinely amount to de facto racial discrimination, as law enforcement officials routinely target low-income people of color, seizing their assets.

Property seizure is not in itself controversial; property is often seized after a person has been convicted of a crime. However, because these laws are civil rather than criminal, property owners do not possess the same protections that they would otherwise have. In these cases, charges are brought against the property, not against the owner. This is why seizures are permitted in cases where the owner has not been charged with any wrongdoing; the relevant question is thought to be whether or not the property is the byproduct of wrongdoing.

This line of reasoning, however, often produces disastrous effects. Law enforcement officials will often pull drivers over for minor traffic violations, such as driving in the left lane without passing, and then justify a search of the driver's vehicle by stating that marijuana was smelled on the driver. If something valuable is found in the car, like a large amount of cash, the law enforcement officials feel justified in seizing it even when the search has produced no signs of drugs or wrongdoing. In some cases, law enforcement officials feel that their suspicion—which, again, can be based on nothing more than claiming to have smelled marijuana on someone—entitles them to take any item found in the vehicle that they believe to have been obtained illegally, including such items as pillows and iPods.

It is difficult for property owners to challenge a seizure. In many cases, fighting for one's property is discouraged, and in some cases it even requires the property owner to pay for the right to do so. Owners who wish to contest often find that the cost of hiring a lawyer far exceeds the value of their seized goods. For example, Washington, D.C. charges up to twenty-five hundred dollars simply for the right to challenge a police seizure in court, which can take months or even years to resolve.

This creates what is often called policing for profit. The U.S. Department of Justice reported that for the year ending on September 30, 2012, civil asset net forfeitures amounted to $4.2 billion, up from $1.7 billion the previous year. The American Civil Liberties Union (ACLU) reports, "Asset forfeiture practices often go hand-in-hand with racial profiling and disproportionally impact low-income African-American or Hispanic people who the police decide look suspicious and for whom the arcane process of trying to get one's property back is an expensive challenge." These low-income people prove to be easy targets for law enforcement officials. Sarah Stillman says that, "in Hunt County, Texas, [she] found officers scoring personal bonuses of up to twenty-six thousand dollars a year, straight from the forfeiture fund." Because the seizure of one's property is justified by a mere suspicion, a suspicion that need not be backed up by any evidence whatsoever, and law enforcement official stand to profit from taking another’s assets, these laws very often have disastrous consequences.

#### civil forfeiture disproportionately affects minorities who don’t even have access to legal help

Lava and Solon 13 [Jesse and Sarah, "When Did 'To Serve & Protect' Become 'To Seize & Profit?'", The Nation, 10/29/13, www.thenation.com/article/when-did-serve-protect-become-seize-profit/] // SKY

Money that cops generate from such seizures bankroll their departments, and sometimes even fund their own salaries. That gives police a strong incentive to abuse civil asset forfeiture laws, search people unconstitutionally, engage in racial profiling and over-enforce minor offenses, needlessly increasing people’s contact with the criminal justice system. The more they seize, the better off their departments are. Sometimes law enforcement officials seize a car knowing that they’ll be able to drive that very car on the job. Victims often fear being jailed if they don’t hand over their assets. And if they want to challenge the seizure, they rarely have a right to an attorney and often cannot afford one, must navigate complex proceedings and often bear the burden of proving their innocence in order to get their property back.

Something is deeply wrong here. When incentives are this out of whack, abuse ensues—encouraging law enforcement to put profit above public safety. Police in Pittsburgh used asset forfeiture cash to buy nearly $10,000 in Gatorade. In just one month, cops from Bal Harbor, Florida, dropped $23,704 on trips with first-class flights and luxury car rentals. And the Milwaukee County Sheriff’s office used civil asset forfeiture funds to buy nine flat-screen TVs for $8,200, and two Segways for $14,500.

These stories seem almost comical until you consider the people picking up the tab, who are disproportionately racial minorities. Consider the case of an African-American man driving from Virginia Beach to Wilmington, Delaware:

He was stopped by police on June 16, 1998, while driving from Virginia Beach to Wilmington, Delaware. The police officer who stopped him claimed that a taillight was out, which was untrue. Once stopped, the officer subjected him to a search by a drug dog, claiming that he “looked like a drug dealer.” The officers asked him if he was carrying drugs, guns or money. He replied that he had $3,500 in cash. The officer seized the money, claiming that it must be the proceeds of drug dealing…The gentleman was never charged with a crime.

The man never got his money back.

### A2: Forfeiture DA—Defense

#### Civil Asset Forfeiture is inevitable – recent IRS actions prove

**Dewan 14** – national economy reporter and national correspondent for the New York Times (Shaila, “Law Lets I.R.S. Seize Accounts on Suspicion, No Crime Required,” New York Times, October 25th, 2014, <http://www.nytimes.com/2014/10/26/us/law-lets-irs-seize-accounts-on-suspicion-no-crime-required.html?_r=1>)BC

ARNOLDS PARK, Iowa — For almost 40 years, Carole Hinders has dished out Mexican specialties at her modest cash-only restaurant. For just as long, she deposited the earnings at a small bank branch a block away — until last year, when two tax agents knocked on her door and informed her that they had seized her checking account, almost $33,000.

The Internal Revenue Service agents did not accuse Ms. Hinders of money laundering or cheating on her taxes — in fact, she has not been charged with any crime. Instead, the money was seized solely because she had deposited less than $10,000 at a time, which they viewed as an attempt to avoid triggering a required government report.

“How can this happen?” Ms. Hinders said in a recent interview. “Who takes your money before they prove that you’ve done anything wrong with it?”

The federal government does.

Using a law designed to catch drug traffickers, racketeers and terrorists by tracking their cash, the government has gone after run-of-the-mill business owners and wage earners without so much as an allegation that they have committed serious crimes. The government can take the money without ever filing a criminal complaint, and the owners are left to prove they are innocent. Many give up.

The I.R.S. seized almost $33,000 from Ms. Hinders. Credit Angela Jimenez for The New York Times

“They’re going after people who are really not criminals,” said David Smith, a former federal prosecutor who is now a forfeiture expert and lawyer in Virginia. “They’re middle-class citizens who have never had any trouble with the law.”

On Thursday, in response to questions from The New York Times, the I.R.S. announced that it would curtail the practice, focusing instead on cases where the money is believed to have been acquired illegally or seizure is deemed justified by “exceptional circumstances.”

Richard Weber, the chief of Criminal Investigation at the I.R.S., said in a written statement, “This policy update will ensure that C.I. continues to focus our limited investigative resources on identifying and investigating violations within our jurisdiction that closely align with C.I.'s mission and key priorities.” He added that making deposits under $10,000 to evade reporting requirements, called structuring, is still a crime whether the money is from legal or illegal sources. The new policy will not apply to past seizures.

The I.R.S. is one of several federal agencies that pursue such cases and then refer them to the Justice Department. The Justice Department does not track the total number of cases pursued, the amount of money seized or how many of the cases were related to other crimes, said Peter Carr, a spokesman.

But the Institute for Justice, a Washington-based public interest law firm that is seeking to reform civil forfeiture practices, analyzed structuring data from the I.R.S., which made 639 seizures in 2012, up from 114 in 2005. Only one in five was prosecuted as a criminal structuring case.

The practice has swept up dairy farmers in Maryland, an Army sergeant in Virginia saving for his children’s college education and Ms. Hinders, 67, who has borrowed money, strained her credit cards and taken out a second mortgage to keep her restaurant going.

Their money was seized under an increasingly controversial area of law known as civil asset forfeiture, which allows law enforcement agents to take property they suspect of being tied to crime even if no criminal charges are filed. Law enforcement agencies get to keep a share of whatever is forfeited.

Critics say this incentive has led to the creation of a law enforcement dragnet, with more than 100 multiagency task forces combing through bank reports, looking for accounts to seize. Under the Bank Secrecy Act, banks and other financial institutions must report cash deposits greater than $10,000. But since many criminals are aware of that requirement, banks also are supposed to report any suspicious transactions, including deposit patterns below $10,000. Last year, banks filed more than 700,000 suspicious activity reports. Owners who are caught up in structuring cases often cannot afford to fight. The median amount seized by the I.R.S. was $34,000, according to the Institute for Justice analysis, while legal costs can easily mount to $20,000 or more.

There is nothing illegal about depositing less than $10,000cash unless it is done specifically to evade the reporting requirement. But often a mere bank statement is enough for investigators to obtain a seizure warrant. In one Long Island case, the police submitted almost a year’s worth of daily deposits by a business, ranging from $5,550 to $9,910. The officer wrote in his warrant affidavit that based on his training and experience, the pattern “is consistent with structuring.” The government seized $447,000 from the business, a cash-intensive candy and cigarette distributor that has been run by one family for 27 years.

There are often legitimate business reasons for keeping deposits below $10,000, said Larry Salzman, a lawyer with the Institute for Justice who is representing Ms. Hinders and the Long Island family pro bono. For example, he said, a grocery store owner in Fraser, Mich., had an insurance policy that covered only up to $10,000 cash. When he neared the limit, he would make a deposit.

Ms. Hinders said that she did not know about the reporting requirement and that for decades, she thought she had been doing everyone a favor.

Jeff Hirsch, an owner of Bi-County Distributors on Long Island. The government seized $447,000 from the business, a candy and cigarette distributor run by one family for 27 years. Credit Bryan Thomas for The New York Times

“My mom had told me if you keep your deposits under $10,000, the bank avoids paperwork,” she said. “I didn’t actually think it had anything to do with the I.R.S.”

In May 2012, the bank branch Ms. Hinders used was acquired by Northwest Banker. JoLynn Van Steenwyk, the fraud and security manager for Northwest, said she could not discuss individual clients, but explained that the bank did not have access to past account histories after it acquired Ms. Hinders’s branch.

Banks are not permitted to advise customers that their deposit habits may be illegal or educate them about structuring unless they ask, in which case they are given a federal pamphlet, Ms. Van Steenwyk said. “We’re not allowed to tell them anything,” she said.

#### Reforms prove that civil forfeiture is inevitable

**Douglas-Bowers** **3-10-15** – writer for Occupy.com (Devon, “CASH COPS: HOW CIVIL FORFEITURE ENRICHED U.S. LAW ENFORCEMENT,” Occupy.com, March 10th, 2015, http://www.occupy.com/article/cash-cops-how-civil-forfeiture-enriched-us-law-enforcement)BC

Civil forfeiture is a major issue that's recently gotten into the news, notably due to Attorney General Eric Holder's change to the controversial police action of seizing people's property. Unfortunately, Holder’s actions, while laudable, won't stop the massive damage that has already been done – and may very well continue the problem. Because although the media has finally begun to talk about the issue, we still haven’t been presented with a full scope of civil forfeiture: what it is and what it means.

To understand forfeiture, one must go back to colonial America. The idea of civil forfeiture comes directly from the British; early forfeiture law “refers to the power of a court over an item of real or personal property.” This could include land, in which the court would decide who owned a piece of land, or marriage, where the courts would have the authority to terminate a marriage.

Originally, in rem jurisdiction was “incorporated into American customs and admiralty laws governing the seizure of ships for crimes of piracy, treason and smuggling in the early days of the Republic, and during the American Civil War." It was later formalized in 1966 “in the Supplemental Rules for Certain Admiralty and Maritime Claims which apply to our civil forfeiture cases.” So the United States has always had some type of civil forfeiture law.

The situation changed, however, when President Nixon announced the War on Drugs and began to use civil forfeiture as an instrument of law enforcement. Author Montgomery Sibley notes that, as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress strengthened civil forfeiture as a means of confiscating illegal substances and the means by which they are manufactured and distributed. In 1978, Congress amended the law to authorize the seizure and forfeiture of the proceeds of illegal drug transactions as well.

Under Nixon, the Continuing Criminal Enterprise statute was also enacted, targeting repeat offenders of lucrative drug trafficking. Meanwhile, an important side effect of the Control Act was that it not only allowed police to seize private property being used in a crime – it also made clear that the owner of said property had to prove the property in question was not being used as part of a crime.

In other words, when it comes to proving that someone's property isn’t being used for criminal purposes, the burden of proof is on the owner, not the police. This creates a situation where the police can essentially confiscate someone’s belongings, allege that the items are being used to further a crime, and the owner must somehow prove that the allegation is false – something that can be extremely difficult to do.

In 1984, under President Ronald Reagan, further changes were made under the Comprehensive Crime Control Act with regards to funds attained from civil forfeiture. Two new forfeiture funds were federally created, “one at the U.S. Department of Justice, which gets revenue from forfeitures done by agencies like the Drug Enforcement Agency and the Federal Bureau of Investigation, and another now run by the U.S. Treasury, which gets revenue from agencies like Customs and the Coast Guard."

As PBS reported, "these funds could now be used for forfeiture-related expenses, payments to informants, prison building, equipment purchase, and other general law enforcement purposes.”

However, there was a major change in that local law enforcement this time would also get to have their share of the pie. “Within the 1984 Act was a provision for so-called ‘equitable sharing,’ which allows local law enforcement agencies to receive a portion of the net proceeds of forfeitures they help make under federal law.”

As soon as this occurred, America saw a massive increase in the amount of civil forfeitures carried out by federal agents between 1989 and 1999, when the value of civil forfeiture recoveries nearly doubled from $285,000,039 to $535,767,852 – a 187% increase in only 10 years. And the numbers only grew as time went on.

In 2012, $4.6 billion was acquired via civil forfeiture, compared to a decade earlier, in 2002, when the amount seized was just $322,246,408. The increase of over 1,400% reveals a major cash cow for law enforcement.

There was an attempt to reform civil forfeiture through the Civil Asset Forfeiture Reform Act of 2000. This included several changes most notably in regards to poor or impoverished defendants, where the new law ordered courts to issue the defendant a lawyer “when the property in question is a primary residence,” as well as to pay the lawyer regardless of the outcome of the case, whereas before, defendants had to essentially defend themselves.

In addition, the issue of burden of proof changed as the government now had to "establish, by a preponderance of the evidence, that the property [was] subject to forfeiture,” where previously the government could seize property solely on probable cause. Put simply, in order to seize property, the government now had not just to present evidence, but to present evidence “based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.”

With that reform, it was no longer enough to say there was a possibility that the evidence could have been used in a crime. However, the law didn't deal with the problem that the burden of proof was on the property owner, nor did it deal with the conflict of interest in which the government could seize property and sell it – using the money to fund its own operations. Because the pressing question still remains: how exactly do police use the funds they've gained from civil forfeitures?

#### State and local law enforcement make civil asset forfeiture inevitable

**Douglas-Bowers** **3-10-15** – writer for Occupy.com (Devon, “CASH COPS: HOW CIVIL FORFEITURE ENRICHED U.S. LAW ENFORCEMENT,” Occupy.com, March 10th, 2015, http://www.occupy.com/article/cash-cops-how-civil-forfeiture-enriched-us-law-enforcement)BC

While many might argue that the civil forfeiture game has changed due to recent actions taken by AG Holder, unfortunately very little actually has. As Vox reported in January: "Holder's order only curtails ‘adoptions’ that are requested through the federal program by a local or state police department working on its own. It still allows local and state police to seize and keep assets when working with federal authorities on an investigation, and when the property is linked to public safety concerns — such as illegal firearms, ammunition, and explosives."

Thus, civil forfeitures continue unabated for the most part. This data analysis revealed that “only about a quarter—25.6 percent—of properties seized under equitable sharing were federal ‘adoptions’ of properties seized by state or local law enforcement, the kind of seizures the new policy targets” and that “of the nearly $6.8 billion in cash and property seized under equitable sharing from 2008 to 2013, adoptions accounted for just 8.7 percent.” Put simply: local and state law enforcement can still engage in civil forfeiture and make large amounts of money off it.

To make things worse, incoming Attorney General Loretta Lynch appears undisturbed by the current state of civil forfeiture, since she “has used civil asset forfeiture in more than 120 cases, raking in some $113 million for federal and local coffers,” and even calling it a “wonderful tool.”

There have been attempts at reform. But both of them – the Civil Asset Forfeiture Reform Act of 2014, and the Fifth Amendment Integrity Restoration Act, which “would protect the rights of citizens and restore the Fifth Amendment’s role in seizing property without due process of law,” died in Congress. In the meantime, it seems that cops and the government will continue to cash in on the property of U.S. citizens.

#### License plates are not key to DEA civil asset forfeiture and state laws can’t solve

**Ingraham 5-11-15** – writes about politics, drug policy and all things data. He previously worked at the Brookings Institution and the Pew Research Center (Christopher, “How the DEA took a young man’s life savings without ever charging him with a crime,” The Washington Post, May 11th, 2015, http://www.washingtonpost.com/blogs/wonkblog/wp/2015/05/11/how-the-dea-took-a-young-mans-life-savings-without-ever-charging-him-of-a-crime/)BC

Joseph Rivers was hoping to hit it big. According to the Albuquerque Journal, the aspiring businessman from just outside of Detroit had pulled together $16,000 in seed money to fulfill a lifetime dream of starting a music video company. Last month, Rivers took the first step in that voyage, saying goodbye to the family and friends who had supported him at home and boarding an Amtrak train headed for Los Angeles.

He never made it. From the Albuquerque Journal:

A DEA agent boarded the train at the Albuquerque Amtrak station and began asking various passengers, including Rivers, where they were going and why. When Rivers replied that he was headed to LA to make a music video, the agent asked to search his bags. Rivers complied.

The agent found Rivers's cash, still in a bank envelope. He explained why he had it: He was starting a business in California, and he'd had trouble in the past withdrawing large sums of money from out-of-state banks.

The agents didn't believe him, according to the article. They said they thought the money was involved in some sort of drug activity. Rivers let them call his mother back home to corroborate the story. They didn't believe her, either.

The agents found nothing in Rivers's belongings that indicated that he was involved with the drug trade: no drugs, no guns. They didn't arrest him or charge him with a crime. But they took his cash anyway, every last cent, under the authority of the Justice Department's civil asset forfeiture program.

[How to keep the DEA from taking all your cash]

Rivers's life savings represent just a drop in the Justice Department's multibillion-dollar civil asset forfeiture bucket. Rivers has retained a lawyer in the hope of getting at least some of his money back. Rivers says he suspects he may have been singled out for a search because he was the only black person on that part of the train.

There is no presumption of innocence under civil asset forfeiture laws. Rather, law enforcement officers only need to have a suspicion -- in practice, often a vague one -- that a person is involved with illegal activity in order to seize their property. On the highway, for instance, police may cite things like tinted windows, air fresheners or trash in the car, according to a Washington Post investigation last year.

The DEA declined to comment in detail to the Albuquerque Journal's Joline Guierrez Krueger, though it did say that Rivers was not targeted because of his race. The Albuquerque DEA office did not immediately respond to a request by The Washington Post for more information about the case.

[Police intelligence targets cash: Reports on drivers, training by firm fueled law enforcement aggressiveness]

Once property has been seized, the burden of proof falls on the defendant to get it back -- even if the cops ultimately never charge them with a crime. "We don’t have to prove that the person is guilty," an Albuquerque DEA agent told the Journal. "It’s that the money is presumed to be guilty."

The practice has proven to be controversial. Earlier this year, then-U.S. Attorney General Eric Holder announced measures restricting the use of some types of civil asset forfeiture. But as the Institute for Justice noted in a February report, these changes only affect a small percentage of forfeitures initiated by local law enforcement agencies, not federal ones like the DEA. About 90 percent of Justice Department seizures won't be affected at all.

Asset forfeiture is lucrative for the DEA. According to their latest notification of seized goods, updated Monday, agents have seized well over $38 million dollars' worth of cash and goods from people in the first few months of this year. Some of the goods may be directly related to ongoing criminal investigations, but most of them are not.

For instance, in fiscal year 2014 Justice Department agencies made a total of $3.9 billion in civil asset seizures, versus only $679 million in criminal asset seizures. In most years since 2008, civil asset forfeitures have accounted for the lion's share of total seizures.

[Holder announces new limits on civil asset forfeitures]

The Obama administration has generally pushed forward on criminal justice reform. Under Holder, who recently resigned as attorney general, the Justice Department took a hands-off approach to state-level marijuana laws, changed its drug sentencing policies and issued new rules to curb racial profiling.

But asset forfeiture has not been targeted much for reform. Asset forfeitures have more than doubled during President Obama's tenure, a Washington Post analysis found last year. The DEA, meanwhile, has been skeptical of the administration's agenda, openly opposing sentencing reforms and marijuana reforms, and defying Congressional bills meant to curb DEA raids on medical marijuana dispensaries.

But with DEA administrator Michele Leonhart stepping down this month under a cloud of controversy, Obama may name a successor who will aim the agency in a different direction.

The irony of Rivers's case is that five days before his money was seized, New Mexico's governor signed into law a bill abolishing civil asset forfeiture in that state. The bill passed unanimously in New Mexico's House and Senate, a sign of the widespread opposition to the practice.

But New Mexico's law only affects state law enforcement officials. As a result, in New Mexico -- and everywhere else, for that matter -- DEA agents will be able to board your train, ask you where you're going and take all your cash if they don't like your story, all without ever charging you with a crime

#### Asset forfeiture is inevitable – delegation away to the ATF proves the DEA is not key

**Bates 2-25-15** – policy analyst with Cato’s Project on Criminal Justice (Adam, “Quiet Change Expands ATF Power to Seize Property,” Cato Institute, February 25th, 2015, http://www.cato.org/blog/quiet-change-expands-atf-power-seize-property)BC

\*\*\*Note: ATF=Bureau of Alcohol, Tobacco, Firearms, and Explosives

A quick glance at the [Federal Register](http://www.gpo.gov/fdsys/pkg/FR-2015-02-25/pdf/FR-2015-02-25.pdf) (Vol. 80, No. 37, p. 9987-88) today reveals that Attorney General Eric Holder, who earned [cautious](http://www.washingtonpost.com/news/the-watch/wp/2015/01/20/how-much-civil-asset-forfeiture-will-holders-new-policy-actually-prevent/) praise last month for a [small reform](http://endforfeiture.com/wp-content/uploads/2015/02/HolderPolicyChangeImpactOnePager-ijlogo.pdf) to the federal equitable sharing program, has now delegated authority to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to seize and “administratively forfeit” property involved in suspected drug offenses.  Holder temporarily delegated this authority to the ATF on a trial basis in 2013, and today made the delegation permanent while lauding the ATF for seizing more than $19.3 million from Americans during the trial period.

Historically, when the ATF uncovered contraband subject to forfeiture under drug statutes, it was required to either refer the property to the DEA for administrative forfeiture proceedings or to a U.S. Attorney in order to initiate a judicial forfeiture action.  Under today’s change, the ATF will now be authorized to seize property related to alleged drug offenses and initiate administrative forfeiture proceedings all on its own.

The DOJ claims this rule change doesn’t affect individual rights (and was thus exempt from the notice and comment requirements of the Administrative Procedure Act) and that the change is simply an effort to streamline the federal government’s forfeiture process.  Those who now stand more likely to have their property taken without even a criminal charge may beg to differ.

Further, the department claims that forcing the ATF to go through a judicial process in order to seize property requires too much time and money.  Whereas an “uncontested administrative forfeiture can be perfected in 60-90 days for minimal cost […] the costs associated with judicial forfeiture can amount to hundreds or thousands of dollars and the judicial process generally can take anywhere from 6 months to years.”  In other words, affording judicial process to Americans suspected of engaging in criminal activity takes too long and costs too much.

Note that the above quote speaks of an “uncontested” forfeiture.  This refers to a situation in which the property owner fails to engage the byzantine process for recovering their property. Defenders of civil asset forfeiture often claim that such failures to contest amount to admissions of guilt, but there is substantial evidence that many victims of civil asset forfeiture simply lack the time, resources, and legal knowledge to [fight the bottomless resources](http://www.newyorker.com/magazine/2013/08/12/taken) of government to get their property back.  This is especially true when it comes to the War on Drugs, within which the bulk of civil forfeiture targets are poor, lack legal education, and lack access to attorneys and other avenues to vindicate their rights.  There are also troubling [examples](http://www.ij.org/long-island-forfeiture) of the government simply never initiating proceedings against the stolen property and thus never giving the owners a chance to “contest” anything at all.

At a time when Attorney General Holder himself has acknowledged the need for asset forfeiture reform, the authorization to take the property of American citizens should be shrinking, not expanding. A country that spoke itself into existence with assertions of the rights to life, liberty, and property can ill afford yet another government agency with the power to seize your property without so much as a criminal charge.

#### Asset forfeiture is being abused and violates privacy

Sallah et al. 14 (Michael Sallah, investigations editor and reporter. Robert O'Harrow Jr., reporter with the investigative unit of The Washington Post, Steven Rich, database editor for the investigations unit at The Washington Post. Gabe Silverman, Emmy-award winning video journalist for The Washington Post, Emily Chow, designer, developer and visual storyteller, Ted Mellnik, explores and analyzes data and maps for graphics, stories and interactives, Sept 6, “Stop and Seize,” http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/)//dtang

After the terror attacks on Sept. 11, 2001, the government called on police to become the eyes and ears of homeland security on America’s highways. Local officers, county deputies and state troopers were encouraged to act more aggressively in searching for suspicious people, drugs and other contraband. The departments of Homeland Security and Justice spent millions on police training. The effort succeeded, but it had an impact that has been largely hidden from public view: the spread of an aggressive brand of policing that has spurred the seizure of hundreds of millions of dollars in cash from motorists and others not charged with crimes, a Washington Post investigation found. Thousands of people have been forced to fight legal battles that can last more than a year to get their money back. Stop and Seize: In recent years, thousands of people have had cash confiscated by police without being charged with crimes. The Post looks at the police culture behind the seizures and the people who were forced to fight the government to get their money back. Part 2: One training firm started a private intelligence-sharing network and helped shape law enforcement nationwide. Part 3: Motorists caught up in the seizures talk about the experience and the legal battles that sometimes took more than a year. Part 4: Police agencies nationwide routinely buy vehicles and weapons with money and property seized under federal civil forfeiture law from people who were not charged with a crime. Part 5: Highway seizure in Iowa fuels debate about asset-forfeiture laws. Part 6: D.C. police plan for future seizure proceeds years in advance in city budget documents. Chat transcript​: The reporters behind “Stop and Seize” answered your readers’ about the investigative series. Behind the rise in seizures is a little-known cottage industry of private police-training firms that teach the techniques of “highway interdiction” to departments across the country. One of those firms created a private intelligence network known as Black Asphalt Electronic Networking & Notification System that enabled police nationwide to share detailed reports about American motorists — criminals and the innocent alike — including their Social Security numbers, addresses and identifying tattoos, as well as hunches about which drivers to stop. Many of the reports have been funneled to federal agencies and fusion centers as part of the government’s burgeoning law enforcement intelligence systems — despite warnings from state and federal authorities that the information could violate privacy and constitutional protections. A thriving subculture of road officers on the network now competes to see who can seize the most cash and contraband, describing their exploits in the network’s chat rooms and sharing “trophy shots” of money and drugs. Some police advocate highway interdiction as a way of raising revenue for cash-strapped municipalities. “All of our home towns are sitting on a tax-liberating gold mine,” Deputy Ron Hain of Kane County, Ill., wrote in a self-published book under a pseudonym. Hain is a marketing specialist for Desert Snow, a leading interdiction training firm based in Guthrie, Okla., whose founders also created Black Asphalt. Hain’s book calls for “turning our police forces into present-day Robin Hoods.” Cash seizures can be made under state or federal civil law. One of the primary ways police departments are able to seize money and share in the proceeds at the federal level is through a long-standing Justice Department civil asset forfeiture program known as Equitable Sharing. Asset forfeiture is an extraordinarily powerful law enforcement tool that allows the government to take cash and property without pressing criminal charges and then requires the owners to prove their possessions were legally acquired. The practice has been controversial since its inception at the height of the drug war more than three decades ago, and its abuses have been the subject of journalistic exposés and congressional hearings. But unexplored until now is the role of the federal government and the private police trainers in encouraging officers to target cash on the nation’s highways since 9/11.

#### Civil assets forfeiture is unconstitutional – relies on outdated ideas of the law

Leef 14 (George, contributor @ Forbes, Sept 12, “Time For Civil Asset Forfeiture Laws To Meet The Same Fate As Jim Crow”, http://www.forbes.com/sites/georgeleef/2014/09/12/time-for-civil-asset-forfeiture-laws-to-meet-the-same-fate-as-jim-crow/)//dtang

One of the greatest political philosophers, Frederic Bastiat, wrote that the law should exist to protect life, liberty, and property, but unfortunately is often perverted into a means of “legal plunder.” In other words, the law is used to legitimize the use of force to deprive people of their wealth. A recent Washington Post article Stop and Seize shines a light on actions by police that perfectly exemplify the sort of abuse Monsieur Bastiat warned about. In it, readers learn how police forces across the country exploit civil asset forfeiture laws to deprive hapless, innocent people of cash and other property. What civil asset forfeiture amounts to is seizing property from someone on suspicion that it was in some way connected with a crime. The individual need not ever be convicted or even charged, but won’t get the property back without going through legal procedures which place the burden of proving innocence on him. Just to cite one of many cases given in the Post’s story, consider the plight of Mandrel Stuart, “a 35-year old African American owner of a small barbecue restaurant in Staunton, VA was stunned when police took $17,550 from him during a stop in 2012 for a minor traffic infraction on I-66 in Fairfax. He rejected a settlement with the government for half of his money and demanded a jury trial. He eventually got his money back, but lost his business because he didn’t have the cash to pay his overhead.” Even in the few states where state law effectively shields citizens against expropriation (and if you’re wondering, the Institute for Justice’s study Policing for Profit, grades the states on that; only Maine, North Dakota, and Vermont are very good), police can avail themselves of a federal program known as Equitable Sharing. Between the federal law and state laws that make forfeiture easy and lucrative, we have a horrible incentive for government officials (and not just police) to enrich themselves at the expense of honest people who can’t fight the system. Officials say that civil asset forfeitures help them fight crime and the drug war in particular. Whether or not that is true is beside the point when innocent people are deprived of property without due process of law. Those who enforce the law must be constrained by the rule of law. But are the seizures under civil asset forfeiture laws a violation of due process? That was put before the Supreme Court in the 1996 case Bennis v. Michigan. That case arose when John Bennis was arrested for a tryst with a prostitute in a car that was jointly owned with his wife, Tina. Contending that the car was “guilty” too, the police seized it. Was Tina Bennis entitled to get her car back, or had the state justly deprived of her property? By 5-4, the Court held that the seizure was not unconstitutional; that taking away Tina’s right to the vehicle did not violate her rights under the 5th and 14th Amendments. Chief Justice Rehnquist’s majority opinion rested on the claimed fact that at the time the Constitution was adopted, civil asset forfeiture laws were in existence, and therefore they must not be permissible today. Justices Stevens, Kennedy, Breyer, and Souter dissented, arguing that the majority’s history was off point and the palpable injustice of taking Mrs. Bennis’ car from her because her husband had used it in his misdemeanor was constitutionally intolerable. In this sharp analysis of Bennis, Professors Don Boudreaux and Adam Pritchard pointed out that in our early history, civil asset forfeiture had only been used when it was unlikely that the wrongdoer could ever be brought into a court’s jurisdiction. “Not until Prohibition – long after the Constitution was adopted – did government generally wield civil forfeiture against people who could easily be criminally prosecuted,” they write. The case, in short, was wrongly decided. We might think of Bennis as the conservatives’ Kelo. Kelo v. New London was the abominable decision in which the liberal bloc (led by Justice Stevens) gave the green light to governments to use eminent domain for their purposes, transferring property from the existing owner to some other owner who would, presumably, use it for a “better” use. (That is to say, one that would bring in more tax revenue for the politicians.) Bennis was an abominable decision by the conservative bloc (although joined by Justice Ginsburg), giving the green light to government officials to squeeze lots of wealth out of innocent people to pad their budgets. Bad precedents both. One of the worst cities for civil asset forfeiture is Philadelphia, where, as we read in this Philadelphia Inquirer story, officials file thousands of forfeiture petitions yearly, confiscating some $6 million in cash and property. One of the disturbing cases related in the piece is that of the Sourovelis family. They were evicted from their home because their son had been arrested for selling $40 worth of illegal drugs outside of the house. But because he lived there, the house was fair game for seizure. It’s Bennis on steroids. Mr. and Mrs. Sourovelis have been through a regulatory nightmare trying to get their property back. That has entailed numerous trips to a “courtroom” where no independent judge is in charge, but only city prosecutors. Years ago, a state judge in Pennsylvania called the civil asset forfeiture process there “state-sanctioned theft” and it has steadily grown worse. This summer, the Institute for Justice filed a class-action suit in federal court seeking to end Philadelphia’s abusive and unfair system. (You can read about the case and its background, including details about the seizure of the Sourovelis home, at EndForfeiture.com.) With the generally pro-government power Washington Post and the consistently pro-liberty Institute for Justice both attacking civil asset forfeiture, perhaps we’re at a turning point. With any luck, the Philadelphia suit or another challenging civil asset forfeiture will eventually wind up on the Supreme Court’s docket, giving the justices an opportunity to overrule Bennis and restore the integrity of the Fifth Amendment. Also, bills have been introduced in Congress to defang the federal government’s civil asset forfeiture viper, Senator Paul’s S.2644 and Representative Walberg’s H.R. 5212. Whether either bill will even get a committee hearing, however, is doubtful.

### A2: War on Drugs

#### The NLPR doesn’t solve contraband transport

**Gilbert 1-30-15** – Executive Director of ACLU Vermont (Allen, “Asset Forfeiture Bill Hits Senate Floor This Week,” ACLU Vermont, January 30th, 2015, <https://acluvt.org/blog/2015/01/30/dea-using-alprs-to-track-drivers/)BC>

The unredacted parts of the documents and [news reports](http://arstechnica.com/tech-policy/2012/07/dea-installs-license-plate-recognition-devices-near-southwest-border/)suggest that the DEA [recently changed](https://www.aclu.org/files/assets/Pages%20from%2030908-30929%202013.09.30%20-%20DEA%20Response.pdf#page=2) its retention policy to [six](https://www.aclu.org/files/assets/Pages%20from%2030930-30958%202013.05.31%20-%20Bulk%20Cash%20Combined-4.pdf)months for non-hit data. While this is an improvement from previous statements of DEA retention policy, it is still far too long. The government should not collect or retain information revealing the movements of millions of people accused of no crime. But even that long retention period is only meaningful if it comes with strict rules limiting data use, sharing, and access. Like its retention policy, the DEA should make these policies public.

The DEA says that the National License Plate Recognition Initiative targets roadways that the agency believes are commonly used for contraband transport. But it’s not clear what this means or what it is based on. Every highway in the United States must be regularly used for contraband transport. Is the DEA using this undefined mandate to [target](https://www.aclu.org/blog/racial-justice-criminal-law-reform/boston-police-have-racially-biased-policing-problem-and)[people](http://www.aclu-il.org/traffic-stop-data-shows-persistent-patterns-of-racial-bias-according-to-new-report/) of color? Without more information from the DEA, we have no idea.

One DEA [document](https://www.aclu.org/files/assets/Pages%20from%2030877-30889%202013.07.31%20-%20DEA%20Response.pdf)references steps needed to ensure the program meets its goals, “of which asset forfeiture is primary.” Asset forfeiture has been in the news a lot lately, criticized as a [widely abused law enforcement tactic](https://www.aclu.org/criminal-law-reform/civil-asset-forfeiture) that doesn’t advance public safety but simply enriches police and federal agencies.

#### Civil forfeiture has no effect on drug war—supply based penalties fail

Foldvary 12- Research Fellow at The Independent Institute and Associate Director of the Civil Society Institute at Santa Clara University, where he teaches economics. He obtained his Ph.D. from George Mason University (Fred, “The Foreign Economic Effect of the U.S. War on Drugs”, 91 Or. L. Rev. 1129, HeinOnline)//WK

Hence, a demand-side policy of educating people to avoid illegal drugs, plus propaganda on the bad effects, may be effective in reducing the quantity consumed; however, the supply-side policy of reducing production and importation is bound to fail, as its initial effect is mainly to drive up the cost of provision and the price paid by the users. Punishing the production and sale of drugs acts like a tax on supply, raising the cost of production.4 Subsequently, successful evasion may restore the previous supply, and successful "marketing" of addictive substances can then increase demand, which induces a greater quantity supplied.5 The supplyreduction efforts may also alter the quality of the drugs, such as to increase the potency per volume.6 Such. effects are easily illustrated. Despite the escalation of the War on Drugs during the 1980s, including foreign operations, illicit drugs were more readily available and cheaper in 1989 than at the beginning of the Reagan presidency in 1981 .7 Domestically, the well-publicized confiscations and destruction of marijuana and other illegal drugs, and the imprisonment of dealers and users, has had little effect on supply-even with harsh policies such as civil asset forfeiture. With asset forfeiture, property-mainly real estate and automobilesassociated 'with suspected crime is confiscated without any 8 compensation. Civil forfeiture does not require that the property owner be convicted of a crime because legally, the property itself has violated the law.9 -Civil asset forfeiture derives from the concept of "deodand" in old English law.10 But even these strong prosecutorial tools seem to have had little deterrent effect on illegal drug suppliers. Domestically, the War on Drugs has greatly expanded the reach and power of federal, state, and local police powers, and along with it, increased theft and prison populations.

#### ALPR can’t solve the War on Drugs and undermines privacy

**Read 1-27-15** – covers technology, social media, advertising, legal issues, and other auto industry topics for High Gear Media (Richard, “DEA Is Spying On Millions Of U.S. Drivers With License Plate Readers,” The Washington Post, Janurary 27th, 2015, http://www.washingtonpost.com/cars/dea-is-spying-on-millions-of-us-drivers-with-license-plate-readers/2015/01/27/96cb42c6-a644-11e4-a162-121d06ca77f1\_story.html)BC

For years, the DEA has been using license plate readers, or LPRs, to track the the movement of automobiles in cities and states across the country. In doing so, the agency's goal is to keep an eye on drug dealers in the hopes of catching them in the act of breaking the law. That, in a nutshell, it what counts as a comprehensive strategy in the DEA's much-hyped War on Drugs.

There are, of course, at least four problems with the DEA's approach to the War on Drugs and surveillance:

1. The War on Drugs isn't winnable. As a federal initiative, the War on Drugs officially began with President Nixon in 1971. Over the past 44 years, the DEA has had markedly few victories. Some argue that the legalization of recreational marijuana in states like Colorado and Washington may finally achieve some of the things that the DEA has been hoping for -- though ironically, the DEA remains opposed to legalization efforts.

2. The War on Drugs can't end. As we've learned all-too-well over the past decade or so, waging war against a concept (e.g. the War on Terror) or a faceless, borderless state (e.g. the Taliban, ISIS) rarely reaches a well-defined point where we can confidently say, "Mission accomplished!" The War on Drugs is just as ambiguous -- if not moreso, because there's so much gray area. And so, it's doomed to continue until federal bigwigs 86 it.

3. The War on Drugs has eroded privacy protections. Technology and war go hand in hand -- that's why so many high-tech innovations, including the internet you're using right now -- began as military projects. And while we'd never say that the War on Drugs is the sole reason for our changing definition of "privacy", there's no denying that it's given government agencies more authority to eavesdrop on our phone calls, read our emails, and track our driving habits.

4. There are no best-practices in place for LPR users to follow. Some cities and towns wipe the hard drives associated with their LPRs every six months, others do it every year or two, others not at all. As a result, motorists are subject to a patchwork of policies, some of which afford little to no privacy at all.

#### ALPR cannot solve the War on Drugs – privacy outweighs

**Friedersdorf 1-27-15** – staff writer at *The Atlantic*, where he focuses on politics and national affairs (Conor, “The DEA Is Spying on Millions of Cars All Over the U.S.,” *The Atlantic,* January 27th, 2015, http://www.theatlantic.com/politics/archive/2015/01/the-dea-is-spying-on-millions-of-cars/384864/)BC

The DEA will obviously continue to lose the War on Drugs.

We've traded our freedom to drive around without being tracked for next to nothing. Those who would cede essential liberty for the promise of security may deserve neither, but ceding it for the promise of a drug-free America is just delusional. The federal government could imprison every recreational drug user in America and it still couldn't win the drug war because, among other things, the federal government can't even prevent heavy drug use within the federal prison system.

Even if the DEA spied on millions of Americans' phone calls it still wouldn't be able to win the War on Drugs, which I know because the DEA was also doing exactly that.

Not that the DEA thinks this is about winning the drug war so much as perpetuating itself. The Wall Street Journal writes, "One email written in 2010 said the primary purpose of the program was asset forfeiture—a controversial practice in which law-enforcement agencies seize cars, cash and other valuables from suspected criminals."

The ACLU, which exposed large swaths of this program by doggedly filing Freedom of Information Act requests, put out a statement that aptly articulates why the government's actions here are so wrong. Said Jay Stanley, a senior policy analyst, collecting location information about Americans not suspected of any crimes "raises very serious privacy questions. It’s unconscionable that technology with such far-reaching potential would be deployed in such secrecy. People might disagree about exactly how we should use such powerful surveillance technologies, but it should be democratically decided, it shouldn’t be done in secret.’’

Unfortunately, leaders in the U.S. law enforcement community feel that they're justified in secretly adopting sweeping new methods with huge civil-liberties implications.

Their behavior is an affront to self-government.

#### War on drugs bad— causes cartel violence, instability, and crime

Foldvary 12- Research Fellow at The Independent Institute and Associate Director of the Civil Society Institute at Santa Clara University, where he teaches economics. He obtained his Ph.D. from George Mason University (Fred, “The Foreign Economic Effect of the U.S. War on Drugs”, 91 Or. L. Rev. 1129, HeinOnline)//WK

First, the War on Drugs has contributed to the creation of violent cartels abroad. Since the substances that are illegal in the United States are also illegal in the Latin American countries where the drugs are produced, the prohibition induces organized crime, just as alcohol prohibition in the United States induced organized crime.' The illegality prevents normal competition by advertising, so the alternative is the use of force. Since the drug dealers are already criminals, the added threat of prosecution for theft and murder provides little extra deterrent. Additionally, the cartelization is territorial, which induces wars among the cartels for the control of space. Moreover, since the cartels do not pay rent or property taxes, their costs involve the costs of the violence, rather the normal carrying cost of rentals and mortgages. One could call the gains from controlling territory a "drug rent." Second, the U.S. War on Drugs has exacerbated already-existing rebellions. Insurrections have occurred in Latin American countries such as Peru, Colombia, and Guatemala.14 Illegal drugs are a source of funds, and since the rebels are already outside the law, the drug prohibition provides no deterrence. As stated by Pablo Dreyfus, "waging counterinsurgency operations and drug law enforcement are two very different matters that have to be treated separately.... [I]nvolving the armed forces in drug law enforcement only worsensthe problem by facilitating the spread of corruption in the armed forces." Third, U.S. regulation of foreign manufacturing has caused druglord imperialism. For the territorial entities, expanding the controlled territory provides more room to hide, greater areas for production, and more secure transit. Fourth, the War on Drugs is responsible for the creation of underground states. Since territory is conquered and defended by force, the drug tyrants seek more powerful weapons, and then their power rivals that of the recognized government. 1 6 Territorially organized crime becomes an alternative state, collecting revenues via protection rackets and kidnaping in addition to the sale of drugs.1 The territorial drug-based regimes become different from recognized governments in degree rather than in kind, since the governments recognized as legitimate also use force to impose costs and control territory. Moreover, organized crime thrives on prohibition. Many people do not believe in the justice of the prohibition, and they feel a desire to do what is forbidden: drink alcohol, smoke marijuana, gamble, swim nude, or hire a prostitute. These strong demands provide a profit opportunity for organized crime in providing alcohol, illegal drugs, gambling venues, and prostitution.

### A2: Rights Malthus

#### Authoritarianism guarantees nuclear war—short circuits deterrence

Holdorf 2010 (Polly Holdorf, graduate of the University of Denver’s Josef Korbel School of International Studies, MA in International Security and a BA in International Studies, “Limited Nuclear War in the 21st Century”, http://csis.org/files/publication/110916\_Holdorf.pdf)

There are four specific objectives that nuclear-armed regional adversaries might seek to achieve through the use of nuclear weapons.14 They might seek to deter the United States from intervening in a conflict or projecting military power into the region by threatening escalation. If the United States is not deterred by threats of escalation, the adversary might consider using its nuclear weapons to limit or defeat U.S. military operations. The adversary might seek to intimidate U.S. allies or friends within the region, or to split regional political coalitions apart. Certainly the adversary would attempt to limit U.S. objectives in the confrontation and try to dissuade the United States from seeking to impose regime change. For authoritarian or despotic leaders, nuclear weapons may be seen as a means of survival. These types of leaders may be preoccupied with the survival not just of their regimes, but of their own personal survival. Regional adversaries facing a confrontation with the United States would know beyond any doubt that they faced an opponent with vastly superior military forces and resources. Adversarial leaders may not be prepared to face the disastrous consequences of a military defeat, particularly one that would result in their removal from power. Such leaders may feel that their only hope for survival would be to attempt to stave off, or at least delay, a defeat by employing a nuclear weapon against U.S. forces. It is also possible that an adversary, knowing that it cannot and will not prevail, may wish to “go out with a bang”; or they may wish to be remembered as the leader who stood up to the United States by utilizing nuclear weapons. A number of factors exist that could serve as catalysts for future nuclear use. Latent conflicts within a regional setting could ignite and nuclear threats may be signaled by one or both sides in order to influence the opposing states’ actions. A nuclear state on the verge of losing a conventional war might employ its nuclear weapons in order to avert defeat. Small nuclear states which harbor feelings of isolation (such as North Korea) could perceive the actions of others as threatening and therefore be intimidated into employing nuclear weapons as a means to protect their interests. Traditional means of deterrence may not work the same way between small states as they did with the United States and the Soviet Union during the Cold War. Strategic discourse between two small nuclear-armed states may be lacking, thus elevating the prospect for the collapse of deterrence at the regional level. Small nuclear states may have flawed or incomplete intelligence regarding their relative positions in a conflict. A misperception regarding an adversary’s intentions could compel a country to conduct a preemptive strike on the opponent’s nuclear arsenal or conventional military forces. There is also the possibility that a small nuclear-armed state may have a deficient command and control structure, increasing the risk of an accidental or unauthorized nuclear launch.15 The use of nuclear weapons in a regional setting could support a range of objectives including coercion, war termination, regime preservation or even revenge.16 Some states could view the use of nuclear weapons as a means-of-last-resort, while others may view them as the only viable means to alter the status quo or to remedy a deteriorating regional security situation.17 In some circumstances a state may view the use of nuclear weapons as the best, or the “least bad,”18 option available to them. The fear of regime change may be a compelling reason for a nuclear-armed regional adversary to consider employing nuclear weapons during a conflict. For leaders who are concerned about their ability to remain in power in the event of a war with a superiorly armed adversary, nuclear weapons could be viewed as a valuable tool to have in their arsenal. “If an attack by a U.S.-led coalition would pose a significant threat to your regime and your nation cannot afford conventional forces capable of deterring or defeating such an attack, you may regard nuclear weapons as the answer.”19 One can be certain that the overthrow of the Taliban in 2001 and Saddam Hussein in 2003 are still very fresh, particularly in the minds of the Iranian and North Korean regimes. These regimes are also aware that they have been identified as security threats to the United States.

#### Standard of living in the world is increasing even as the population grows exponentially – malthus was highkey wrong

O’ Neill 9 (Brendan, editor of Spiked, served as a visiting fellow and columnist with the Australian libertarian think-tank, the Centre for Independent Studies,[11] as well as being a keynote speaker for the pro-Israel advocacy organisation StandWithUs, 11-19, “Too many people? No, too many Malthusians”, http://www.spiked-online.com/newsite/article/7723#.VamZcflViko)//dtang

In the year 200 AD, there were approximately 180million human beings on the planet Earth. And at that time a Christian philosopher called Tertullian argued: ‘We are burdensome to the world, the resources are scarcely adequate for us… already nature does not sustain us.’ In other words, there were too many people for the planet to cope with and we were bleeding Mother Nature dry. Well today, nearly 180million people live in the Eastern Half of the United States alone, in the 26 states that lie to the east of the Mississippi River. And far from facing hunger or destitution, many of these people – especially the 1.7million who live on the tiny island of Manhattan – have quite nice lives. In the early 1800s, there were approximately 980million human beings on the planet Earth. One of them was the population scaremonger Thomas Malthus, who argued that if too many more people were born then ‘premature death would visit mankind’ – there would be food shortages, ‘epidemics, pestilence and plagues’, which would ‘sweep off tens of thousands [of people]’. Well today, more than the entire world population of Malthus’s era now lives in China alone: there are 1.3billion human beings in China. And far from facing pestilence, plagues and starvation, the living standards of many Chinese have improved immensely over the past few decades. In 1949 life expectancy in China was 36.5 years; today it is 73.4 years. In 1978 China had 193 cities; today it has 655 cities. Over the past 30 years, China has raised a further 235million of its citizens out of absolute poverty – a remarkable historic leap forward for humanity. In 1971 there were approximately 3.6billion human beings on the planet Earth. And at that time Paul Ehrlich, a patron of the Optimum Population Trust and author of a book called The Population Bomb, wrote about his ‘shocking’ visit to New Delhi in India. He said: ‘The streets seemed alive with people. People eating, people washing, people sleeping. People visiting, arguing, screaming. People thrusting their hands through the taxi window, begging. People defecating and urinating. People clinging to buses. People herding animals. People, people, people, people. As we moved slowly through the mob, [we wondered] would we ever get to our hotel…?’ You’ll be pleased to know that Paul Ehrlich did make it to his hotel, through the mob of strange brown people shitting in the streets, and he later wrote in his book that as a result of overpopulation ‘hundreds of millions of people will starve to death’. He said India couldn’t possibly feed all its people and would experience some kind of collapse around 1980. Well today, the world population is almost double what it was in 1971 – then it was 3.6billion, today it is 6.7billion – and while there are still social problems of poverty and malnutrition, hundreds of millions of people are not starving to death. As for India, she is doing quite well for herself. When Ehrlich was writing in 1971 there were 550million people in India; today there are 1.1billion. Yes there’s still poverty, but Indians are not starving; in fact India has made some important economic and social leaps forward and both life expectancy and living standards have improved in that vast nation. What this potted history of population scaremongering ought to demonstrate is this: Malthusians are always wrong about everything. The extent of their wrongness cannot be overstated. They have continually claimed that too many people will lead to increased hunger and destitution, yet the precise opposite has happened: world population has risen exponentially over the past 40 years and in the same period a great many people’s living standards and life expectancies have improved enormously. Even in the Third World there has been improvement – not nearly enough, of course, but improvement nonetheless. The lesson of history seems to be that more and more people are a good thing; more and more minds to think and hands to create have made new cities, more resources, more things, and seem to have given rise to healthier and wealthier societies. Yet despite this evidence, the population scaremongers always draw exactly the opposite conclusion. Never has there been a political movement that has got things so spectacularly wrong time and time again yet which keeps on rearing its ugly head and saying: ‘This time it’s definitely going to happen! This time overpopulation is definitely going to cause social and political breakdown!’ There is a reason Malthusians are always wrong. It isn’t because they’re stupid… well, it might be a little bit because they’re stupid. But more fundamentally it is because, while they present their views as fact-based and scientific, in reality they are driven by a deeply held misanthropy that continually overlooks mankind’s ability to overcome problems and create new worlds. The language used to justify population scaremongering has changed dramatically over the centuries. In the time of Malthus in the eighteenth century the main concern was with the fecundity of poor people. In the early twentieth century there was a racial and eugenic streak to population-reduction arguments. Today they have adopted environmentalist language to justify their demands for population reduction. The fact that the presentational arguments can change so fundamentally over time, while the core belief in ‘too many people’ remains the same, really shows that this is a prejudicial outlook in search of a social or scientific justification; it is prejudice looking around for the latest trendy ideas to clothe itself in. And that is why the population scaremongers have been wrong over and over again: because behind the new language they adopt every few decades, they are really driven by narrow-mindedness, by disdain for mankind’s breakthroughs, by wilful ignorance of humanity’s ability to shape its surroundings and its future. The first mistake Malthusians always make is to underestimate how society can change to embrace more and more people. They make the schoolboy scientific error of imagining that population is the only variable, the only thing that grows and grows, while everything else – including society, progress and discovery – stays roughly the same. That is why Malthus was wrong: he thought an overpopulated planet would run out of food because he could not foresee how the industrial revolution would massively transform society and have an historic impact on how we produce and transport food and many other things. Population is not the only variable – mankind’s vision, growth, his ability to rethink and tackle problems: they are variables, too. The second mistake Malthusians always make is to imagine that resources are fixed, finite things that will inevitably run out. They don’t recognise that what we consider to be a resource changes over time, depending on how advanced society is. That is why the Christian Tertullian was wrong in 200 AD when he said ‘the resources are scarcely adequate for us’. Because back then pretty much the only resources were animals, plants and various metals. Tertullian could not imagine that, in the future, the oceans, oil and uranium would become resources, too. The nature of resources changes as society changes – what we consider to be a resource today might not be one in the future, because other, better, more easily-exploited resources will hopefully be discovered or created. Today’s cult of the finite, the discussion of the planet as a larder of scarce resources that human beings are using up, really speaks to finite thinking, to a lack of future-oriented imagination. And the third and main mistake Malthusians always make is to underestimate the genius of mankind. Population scaremongering springs from a fundamentally warped view of human beings as simply consumers, simply the users of resources, simply the destroyers of things, as a kind of ‘plague’ on poor Mother Nature, when in fact human beings are first and foremost producers, the discoverers and creators of resources, the makers of things and the makers of history. Malthusians insultingly refer to newborn babies as ‘another mouth to feed’, when in the real world another human being is another mind that can think, another pair of hands that can work, and another person who has needs and desires that ought to be met. We don’t merely use up finite resources; we create infinite ideas and possibilities. The 6.7billion people on Earth have not raped and destroyed this planet, we have humanised it. And given half a chance – given a serious commitment to overcoming poverty and to pursuing progress – we would humanise it even further. Just as you wouldn’t listen to that guy who wears a placard saying ‘The End of the World is Nigh’ if he walked up to you and said ‘this time it really is nigh’, so you shouldn’t listen to the always-wrong Malthusians. Instead, join spiked in opposing the population panickers.

#### The apocalypse is not coming – every single statistical measure proves – don’t let their misinformed rhetoric justify repressive policies

Lomborg 13 (Bjorn is an adjunct professor at the Copenhagen Business School and directs the Copenhagen Consensus Center. He is the author of The Skeptical Environmentalist, Cool It, and most recently How Much Have Global Problems Cost the World?, 6/26, “The Limits of Panic”, http://www.slate.com/articles/business/project\_syndicate/2013/06/climate\_panic\_ecological\_collapse\_is\_not\_upon\_us\_and\_we\_haven\_t\_run\_out.html)//dtang

The genius of The Limits to Growth was to fuse these worries with fears of running out of stuff. We were doomed, because too many people would consume too much. Even if our ingenuity bought us some time, we would end up killing the planet and ourselves with pollution. The only hope was to stop economic growth itself, cut consumption, recycle, and force people to have fewer children, stabilizing society at a significantly poorer level. That message still resonates today, though it was spectacularly wrong. For example, the authors of The Limits to Growth predicted that before 2013, the world would have run out of aluminum, copper, gold, lead, mercury, molybdenum, natural gas, oil, silver, tin, tungsten, and zinc. Instead, despite recent increases, commodity prices have generally fallen to about a third of their level 150 years ago. Technological innovations have replaced mercury in batteries, dental fillings, and thermometers: Mercury consumption is down 98 percent and, by 2000, the price was down 90 percent. More broadly, since 1946, supplies of copper, aluminum, iron, and zinc have outstripped consumption, owing to the discovery of additional reserves and new technologies to extract them economically. Similarly, oil and natural gas were to run out in 1990 and 1992, respectively; today, reserves of both are larger than they were in 1970, although we consume dramatically more. Within the past six years, shale gas alone has doubled potential gas resources in the United States and halved the price. As for economic collapse, the Intergovernmental Panel on Climate Change estimates that global GDP per capita will increase 14-fold over this century and 24-fold in the developing world. The Limits of Growth got it so wrong because its authors overlooked the greatest resource of all: our own resourcefulness. Population growth has been slowing since the late 1960s. Food supply has not collapsed (1.5 billion hectares of arable land are being used, but another 2.7 billion hectares are in reserve). Malnourishment has dropped by more than half, from 35 percent of the world’s population to under 16 percent. Nor are we choking on pollution. Whereas the Club of Rome imagined an idyllic past with no particulate air pollution and happy farmers, and a future strangled by belching smokestacks, reality is entirely the reverse. In 1900, when the global human population was 1.5 billion, almost 3 million people – roughly one in 500—died each year from air pollution, mostly from wretched indoor air. Today, the risk has receded to one death per 2,000 people. While pollution still kills more people than malaria does, the mortality rate is falling, not rising. Nonetheless, the mindset nurtured by The Limits to Growth continues to shape popular and elite thinking. Consider recycling, which is often just a feel-good gesture with little environmental benefit and significant cost. Paper, for example, typically comes from sustainable forests, not rainforests. The processing and government subsidies associated with recycling yield lower-quality paper to save a resource that is not threatened. Likewise, fears of overpopulation framed self-destructive policies, such as China’s one-child policy and forced sterilization in India. And, while pesticides and other pollutants were seen to kill off perhaps half of humanity, well-regulated pesticides cause about 20 deaths each year in the U.S., whereas they have significant upsides in creating cheaper and more plentiful food. Indeed, reliance solely on organic farming—a movement inspired by the pesticide fear—would cost more than $100 billion annually in the U.S. At 16 percent lower efficiency, current output would require another 65 million acres of farmland—an area more than half the size of California. Higher prices would reduce consumption of fruits and vegetables, causing myriad adverse health effects (including tens of thousands of additional cancer deaths per year). Obsession with doom-and-gloom scenarios distracts us from the real global threats. Poverty is one of the greatest killers of all, while easily curable diseases still claim 15 million lives every year–25 percent of all deaths. The solution is economic growth. When lifted out of poverty, most people can afford to avoid infectious diseases. China has pulled more than 680 million people out of poverty in the last three decades, leading a worldwide poverty decline of almost 1 billion people. This has created massive improvements in health, longevity, and quality of life. The four decades since The Limits of Growth have shown that we need more of it, not less. An expansion of trade, with estimated benefits exceeding $100 trillion annually toward the end of the century, would do thousands of times more good than timid feel-good policies that result from fear-mongering. But that requires abandoning an anti-growth mentality and using our enormous potential to create a brighter future.

#### Eco-authoritarianism fails to solve – real world proves

Shahar 6-1-15 (Dan, 6-1, phD student in the University of Arizona's Department of Philosophy and a fellow at the Arizona Center for the Philosophy of Freedom, “Rejecting Eco-Authoritarianism, Again”, http://www.erica.demon.co.uk/EV/papers/Shahar.pdf)//dtang

In its own way, the early Eco-Authoritarian position made a certain amount of sense: if it were true that an ecological crisis was being caused by excessive autonomy, that democratic market liberal societies would systematically fail to generate the constraints necessary to avoid the crisis, and that authoritarian governments would be able to keep societies away from catastrophe through enlightened central planning, then the relative appeal of authoritarianism would be clear.21 The problem with this position, however, was its crucial assumption that authoritarian governments would actually be able to generate better outcomes through central planning. This premise was quickly challenged in the academic literature by critics who argued that authoritarian governments would be hard-pressed to cope successfully with their vastly increased size and complexity while also navigating difficult ecological challenges.22 But the biggest blows to early Eco-Authoritarianism came from the failure of real-world experiments with centralized authoritarianism around the world. With the disintegration of the Soviet Union and thoroughgoing economic reform of the People’s Republic of China, it became increasingly untenable in any area of discourse to advocate centralized authoritarianism as a solution to any problem, never mind one requiring highly complex, efficient, and coordinated actions by public agents. Within a few years, pessimism about the prospects for comprehensive central planning entered into discussions of Eco-Authoritarianism through the work of critics like John Dryzek, Robert Paehlke, and Doulas Torgerson,23 as well as that of some of the former Eco-Authoritarians themselves. In a 1991 update to his Inquiry into the Human Prospect, Robert Heilbroner admitted to his and others’ “failure to appreciate fully the difficulties of running a centrally planned economy,”24 and suggested that any feasible way forward would probably have to include some form of market organization.25 William Ophuls also distanced himself from his earlier authoritarian claims, writing in 1992 that: …given the appalling record of the administrative state in this century, the better solution is to be found in the other direction. We need a form of government that is effective in obliging humankind to live with its ecological means but that does not require us to erect an ecological Leviathan (which, as many of my critics rightly pointed out, simply would not work in the long run).26 By the close of the millennium, it was abundantly clear that the inherent problems with authoritarian central planning had rendered the Eco-Authoritarian arguments of the 1970s defunct. John Dryzek eulogized, “the discourse never really got past the simplistic draconian authoritarianism of the 1970s survivalists.”27 Meanwhile, Andrew Dobson shrugged off the view as primarily an aberration from “the early days of the contemporary environmental movement.” 28 If the ecological crisis were to admit of a solution, it would apparently have to come from some other source than the one identified by Heilbroner and Ophuls.

#### Authoritarian politics fails and democratic checks prove that it’s not inevitable – political deliberation via democracy solves the impact

Shahar 6-1-15 (Dan, 6-1, phD student in the University of Arizona's Department of Philosophy and a fellow at the Arizona Center for the Philosophy of Freedom, “Rejecting Eco-Authoritarianism, Again”, http://www.erica.demon.co.uk/EV/papers/Shahar.pdf)//dtang

The good news for Eco-Authoritarians’ position is that when pursued consistently, political repression does seem to work quite well at achieving its purposes: suppressive, uncompromising authoritarian regimes have demonstrated an often-terrifying ability to insulate themselves from the wills of their constituents. However, such regimes have also been notoriously incapable of formulating and implementing policies to actually make their nations better-off. I contend that this fact should not surprise us: suppressive, uncompromising authoritarian regimes face serious challenges that more open, politically sensitive administrations do not. For one thing, an absence of free and open public discourse makes it easy for administrators to get locked into narrow, rigid ways of thinking that impede their ability to make good decisions. A fearful and uninvolved citizenry is also not likely to provide the sort of honest, informative, and critical feedback that would enable administrators to calibrate policies to the details of local circumstances, detect their own mistakes, and catch misbehaving officials who undermine the pursuit of public goals. Thus bureaucrats who are insulated from public opinion through the naked exercise of state coercion may quickly find themselves operating in a bubble, making it difficult to formulate and implement good policies regardless of their own personal virtues as administrators. It is partly for this reason that some real-world authoritarian regimes have recently been moving in the direction of greater interaction with the public rather than less. In 2002, Larry Diamond memorably hailed an “unprecedented growth in the number of regimes that are neither clearly democratic nor conventionally authoritarian,” noting that while many nations have embraced certain avenues for public participation in politics, they have not gone so far as to adopt the full raft of reforms normally associated with liberal democracy including “not only democratic elections but solid protection of civil liberties under a strong rule of law.”68 Such “hybrid” regimes have become particularly prevalent in Southeast Asia, leading some commentators to suggest that these structures may represent not “halfway houses”69 between authoritarianism and liberal democracy but rather genuine political alternatives of their own.70 Although these movements toward public inclusion have been driven in part by popular and international demands for democratization, one should not overlook an increasing recognition by authoritarian governments that state agendas may be better promoted by fostering citizen involvement rather than excluding it. For example, as Elizabeth Economy has argued at length, the People’s Republic of China has deliberately become increasingly dependent on efforts by non-governmental organizations, local constituencies, and the media to ensure the successful formulation and implementation of its environmental policies, particularly on matters of ecological conservation, urban renewal, and pollution prevention. 71 She writes: China’s leaders have allowed the establishment of genuine NGOs, encouranged aggressive media attention to environmental issues, and sanctioned independent legal activities to protect the environment, partly to compensate for the weakness of its formal environmental protection apparatus. Grassroots NGOs have sprung up in many regions of the country to address issues as varied as the fate of the Tibetan antelope, the deterioration of China’s largest freshwater lakes, and mounting urban refuse. And nonprofit legal centers have emerged to wage class action warfare on behalf of farmers and others whose livelihood and health have suffered from pollution from local factories.72 As Maria Francesch-Huidobro has recently chronicled, the Republic of Signapore has also been making progressively more room for civil society in the shaping of the nation’s environmental governance. 73 These trends reinforce the suggestion discussed in section IV that today’s most effective democratic regimes can trace much of their success to the constructive impacts of citizen participation in political processes. Although it remains to be seen whether so-called “hybrid” regimes will be able to match the administrative efficacy of the world’s best-performing democracies, it nevertheless seems fair to suppose for the sake of discussion that authoritarian governments may eventually be able to achieve a very high level of state effectiveness through increased inclusion of citizens into the political process. If this is to be the case, however, it will only come alongside a commitment to abstain from the sorts of suppressive, uncompromising state tactics that would make possible the sort of administrative immunity that Eco-Authoritarians applaud. A government that quashes dissent and ruthlessly imposes its will on its citizens will never be able to foster the kinds of open discursive environments upon which modern authoritarian states have increasingly come to rely for effective policy-making. In practice, then, it seems that authoritarian regimes have to choose between the immunity from public demands extolled by Eco-Authoritarians and the well-functioning civil society that makes possible the high level of administrative efficacy that Eco-Authoritarians see as necessary to address an environmental crisis.

#### Democracy is key to solving the environment – multiple historical examples prove

Chen 13 (Vincent, Center for Democracy, Development, and the Rule of Law, Stanford University, May, “Democracy and the Environment”, http://cddrl.fsi.stanford.edu/sites/default/files/Vincent\_Chen.pdf)//dtang

At first glance, it seems intuitive that democratic institutions benefit overall environmental policymaking and performance. From an environmentalist’s perspective, the causal mechanism is straightforward: public interest is better represented in democratic systems, and since environmental protection is largely in the public’s interest, democracy yields better protection of the environment. In fact, the modern environmental movement commenced when scientific and public awareness of the negative effects of economic development on the biosphere increased substantially (Kane 1993). The contemporary wave of environmental movement since Rachel Carson demonstrates how the affirmation of political and civil rights empowers interest groups, which of course includes environmentally minded ones, in their capacity both to disseminate information to the public and to keep the government in check regarding its environmental performances. This causal link relies on two key democratic characteristics: freedom of information and vertical accountability. Unlike autocratic regimes, democracies are generally less likely to abuse environmentalists’ rights or suppress their criticisms, thus allowing information to flow freely to the public at large and aid more transparent policy debates (Payne 1995). The protection of free speech, as well as other individual liberties, allows for mass media, activists, as well as relevant scholarly experts to combine forces and monitor environmental degradation and publicize their findings (Payne 1995). Since better informed agents are more likely to respond to environmental issues, one could argue that basic political rights may be the cornerstone of environmental protection (Kane 1993; Q. Li and Reuveny 2006). In fact, Kane (1993) argued that human dependence on environmental quality is such that it should be treated as a dimension of human rights, and that any violation of human rights may naturally bring about environmental degradation. As such, individual and group freedoms that constitute “the right to know” are crucial features that distinguish democracies from autocracies when facing environmental degradation. On the other hand, vertical accountability, most commonly exercised through the ballot box, forces politicians to consider government action in order to avoid replacement. The causal effect of public opinion is relatively well established and 11 policy changes are shown to be in accordance with the direction favored by mass opinion (Payne 1995). With widely available information and channels of effective political accountability, democratic governments may outperform autocratic regimes in maintaining and improving environmental quality. A number of historical observations concur this argument. The apartheid system in South Africa is a good example of how insufficient assurance of political rights may affect environmental quality. Faced by decreasing oil imports from countries opposing the apartheid, the South African government was forced to rely more on traditional coal-fired power generation in the 1980s. Extensive use of coal severely threated South Africa’s air quality and resulted in acid rain. Durning (1990) suggested that the unprotected political rights of South Africans harmed the environment and impeded any improvement. The apartheid regime silenced those most directly affected by hazardous environmental practices, and, with little public demand, the government naturally failed to monitor or report severe consequences. Similarly, in the post World War II-era between 1945 and 1989, Stalinist leaders of Eastern Europe's centrally planned economies pursued programs of rapid industrialization and placed little emphasis on the environment. Schultz and Crockett (1990) argued that increasing health threats and the degradation of natural resources placed environmental problems at the forefront of public interest, and the reform of individual rights was key to the reversal of the negative environmental consequences of four decades of Cold War industrialization. Payne (1995) echoed this observation and pointed out that the rather inferior environmental record of the Soviet Union and its satellite states was only ameliorated when “Mikhail Gorbachev instituted glasnost’ and [as] democratization allowed greater expression of ecological concerns.” Similarly, recent improvements of China’s chronic air pollution again highlight the crucial role of political rights 12 and public scrutiny in mitigating environmental degradation. Amid growing international attention after years of domestic discontent towards the government’s opaque and inactive responses to the nation’s hazardous air quality, recent developments show signs of the administration finally responding to public outcry (G. (Associated P. Wong and Bodeen 2013; Watt 2013; Lim and Wee 2013)

#### Our studies are the most comprehensive and find a positive relationship b/t democracy and the environment

Chen 13 (Vincent, Center for Democracy, Development, and the Rule of Law, Stanford University, May, “Democracy and the Environment”, <http://cddrl.fsi.stanford.edu/sites/default/files/Vincent_Chen.pdf)//dtang>

My hybrid approach improves on the existing literature in several ways: First, the large-N analysis uses a comprehensive environmental indicator that encompasses a wide range of environmental quality measures, as opposed to a single one. Second, this paper aims to explore the antecedent factors linking democracy and the environment. My hypothesis implies that democracy is a necessary yet insufficient prerequisite for better environmental protection, and the positive relationship between democracy and the environment is two-pronged. In other words, there may be certain intermediate complexities in the causal link between democracy and environmental quality. Thus, I look beyond a scalar distinction between different levels of democracies, and distinguish countries further with governance features that directly influence public policy outcomes. The inclusion of these governance features provides a more comprehensive description of the polity, and allows me to differentiate countries with similar democratic levels in a more granular scale. Lastly, the case study on Taiwan provides a real world example that further sheds light on the causal link between governance and environmental quality. I find that the level of democracy has a strong positive relationship with environmental quality when controlling for developmental level, population density, industry structure, and a country’s geographical location in the world. This relationship is robust and holds true consistently across varying time horizons. Furthermore, I find that democratic level has a particularly pronounced effect on human-health related environmental performance when compared to other environmental issues of relatively less substantial anthropocentric concerns. In sum, the hypothesized causal link between democracy and environmental protection is supported because citizens are naturally more responsive to health-threatening environmental problems and democratic institutions allow for their concerns to translate into a governmental response. This finding is consistent with the observations drawn from the evolution of Taiwan’s environmental movement. The case study also reveals a number of antecedent variables that allowed or will allow Taiwan’s democratization to lead to environmental protection efforts. My findings contribute to the literature by identifying pragmatic steps to aid developing democracies in realizing the full potential impact democratic institutions may have on enhancing environmental quality. The conclusion of my paper will hopefully shed light on the environmental implications of democracy in a challenging time for both sustainable development and democracy promotion on a global scale. Budding democracies would be able to use such insights to build political institutions that facilitate efforts in both preventing environmental degradation and further developing their democracies. On the other hand, government agencies and civil societies may also take advantage of such understanding and streamline their efforts of democracy promotion and environmental protection at home and abroad.

### A2: T—Preventative Intent

#### The aff has clear security intent – prevents drug-related crimes

Wheeling 1/27 – Editorial Fellow at Pacific Standard. Bachelor’s degree in behavioral neuroscience and a master’s in science journalism. (2015, Kate, Pacific Standard, “Why Is the DEA Tracking License Plates?”, [http://www.psmag.com/nature-and-technology/the-dea-is-tracking-license-plate //](http://www.psmag.com/nature-and-technology/the-dea-is-tracking-license-plate%20//) SM)

A license plate tracking program run by the Drug Enforcement Administration, which was publicly launched to combat drug-related crimes along the borders, has been privately expanded throughout the United States. The Wall Street Journal reports that the database program, which began in 2008, initially tracked cars only in border states to monitor the movement of drug money and contraband. Now, states throughout the U.S. are feeding information into the system: The DEA program collects data about vehicle movements, including time, direction and location, from high-tech cameras placed strategically on major highways. Many devices also record visual images of drivers and passengers, which are sometimes clear enough for investigators to confirm identities, according to DEA documents and people familiar with the program. The documents show that the DEA also uses license-plate readers operated by state, local and federal law-enforcement agencies to feed into its own network and create a far-reaching, constantly updating database of electronic eyes scanning traffic on the roads to steer police toward suspects.