

# Can Privacy Augment Security?

Scott Forsyth

## I. Introduction

From George Orwell's *Big Brother* to Michel Foucault's disciplinary society, the 20th century was filled with imagery of a future in which autocratic states used surveillance systems to shape the behaviour of entire societies. As surveillance technologies analogous to these visions have begun to emerge, states have justified the implementation of them in the name of "national security" or just "security". An address delivered by Barack Obama provides a salient example of this when, in the wake of the media frenzy surrounding the revelations of the National Security Agency's vast surveillance systems, he advised that "you cannot have 100 percent security and also then have 100 percent privacy and zero inconvenience" [1]. State actors and those with a vested interest in bolstering the national surveillance apparatus often present this diametric opposition of privacy and security as a priori knowledge in political debates. While it is true that there are instances in which security and privacy are negatively correlated, this is not always the case.

This essay will argue that another relationship between security and privacy exists that is imperative to consider in the context of the expanding state surveillance apparatus: privacy can also *augment* individual and national security. This will be demonstrated through an examination of three diverse cases in which issues of security, privacy, and surveillance intersect.

## II. Case One: Sex Offender Registries

Sex offender registries are surveillance systems that store information on people convicted of sex crimes. The information stored usually includes demographic information, photographs of the offenders, known residences, workplace locations, and the details of their criminal offences [2].

The goal of these surveillance systems is to keep members of the public safe from becoming victims of sex crimes by monitoring sexual offenders who are not incarcerated. Since the mid twentieth century, registries have been increasingly implemented by governments worldwide, often in response to public uproars surrounding particularly gruesome cases of violent sex crimes. Sex offender registries can be categorized as either public or private registries. Private registries, such as Canada's national registry and Ontario's registry, are only accessible to law enforcement [3], [4]. Public registries, like California's sex offender registry, are also accessible to the general public to search [5]. Those in favour of public registries are of the belief that not only should law enforcement have access to the registries to prevent crime: Community members are thought to be important in preventing sexual offending as well. Do these registries actually make us safer?

The short answer: sort-of. Despite claims by law enforcement organizations like the RCMP that the registries are "a vital step in fighting crime of a sexual nature" [3], empirical research finds the answer to be more nuanced. Social scientists have employed a wide range of methods, including statistical analyses of large data sets of sexual offenders and qualitative examination of individual sex crimes, and have found that the registries do not reduce the recidivism of offenders on the list, but do reduce first time sexual offences by acting as a deterrent to would be offenders [2], [6], [7], [8]. That is to say that both public and private registries are ineffective in stopping future crimes committed by those on the list, but function as an effective scare tactic to prevent would be offenders from committing sex crimes.

Furthermore, sex offenders on the public registries have *increased* recidivism rates as compared to sex offenders not placed on a registry [6]. While the cause for this is not totally

understood, research has indicated some possible reasons. Offenders on the public registry face stigmatization, verbal and physical harassment from their communities [9], [10], are less likely to complete rehabilitation and therapy programs as a consequence [11], and it is postulated that being placed on a registry decreases the utility of interacting with legal social institutions, and instead makes criminal activity more attractive [6]. What this demonstrates is that while surveillance systems can be an effective tactic in molding behaviour, we should be careful with their implementation. Sex offender registries can scare off people from becoming first time offenders, but the negative effects of being placed on a public registry can increase recidivism of those on the registry. The private registry is an effective compromise between either extreme of the public registry and no registry system. It deters future offenders and protects the privacy of registered offenders. Thus, while some surveillance is still appropriate in this case, the registries that allow for less surveillance by restricting their usage to police forces are most effective in reinforcing security.

### **III. Case Two: Bankruptcy Legislation**

It is by no coincidence that insolvency laws have developed around the world in disparate societies. In their absence, debtors can find themselves trapped in possession of exponentially increasing loans and an inability to ever earn enough money to pay their creditors because of state and corporate surveillance apparatuses which prevent the sufficiently indebted from securing capital to invest in education or the ownership of the means of economic production (e.g. investing in the stock market) required to achieve a sufficient amount of money necessary to pay back their creditors. This is because the surveillance apparatuses designed to assess whether to grant capital to individuals and businesses keep track of past financial activities,

based on the logic that “past actions provide a good indication of future behaviour” [12:38], and thus the debtors face obvious barriers to obtaining capital. It is in the interest of the debtors, creditors, and states to have in place a bankruptcy system that provides the indebted with a “fresh start” in exchange for allowing creditors to obtain some of the capital owed to them from the indebted [12]. The debtors can establish fresh interactions with socioeconomic institutions, creditors can obtain some of what is owed to them in an efficient manner, and the state will receive more tax revenue from the former debtors and the creditors. Bankruptcy legislation is particularly important for individual, corporate, and state security in recessions and depressions by mitigating the negative effects of the losses in economic productivity [13].

As a case in point of the value societies have placed on allowing financial restarts, consider the United State’s bankruptcy system, which is perhaps more closely aligned to the above conceptual framework than any other state. Not only are individuals forgiven of their debt after a bankruptcy, but the Fair Credit Reporting Act (1971) requires that, after a certain period of time, information on the bankruptcy itself is removed from an individual’s credit report [12]. Indeed, David Skeel’s book on the history of bankruptcy in the United States notes that “No one wants to wind up in bankruptcy, of course, but many U.S. debtors treat it as a means to another, healthier end, not the End” [14:1]. Societies have placed a value on collective forgetfulness by way of relinquishing individuals and businesses from surveillance of their debts. And for this, national and individual security is strengthened through a stronger and more resilient economy.

#### **IV. Case Three: Military Anonymity**

While in the previous two cases privacy was particularly beneficial for the downtrodden, let us briefly consider one more example which demonstrates the state’s value of privacy for its own

security. Media surveillance of the military during conflict situations is dangerous. Forces hostile to a state's military could potentially use images and videos that visibly depict military personnel disseminated in print and digital media to target them, their family, or their friends. Because of this, Canada's military has strict guidelines that prevent media from filming most military personnel in sensitive conflict areas [15]. Ironically, In May 2015, a scandal arose when the Prime Minister's Office (PMO) media team published promotional photographs and videos of Stephen Harper interacting with Canadian military personnel in Kuwait and Iraq who could be identified from the images [15]. Subsequently, the images and videos were removed from the PMO's website and Rob Nicol, the PMO's director of communications, admitted they broke protocol meant to protect troops [15]. Evidently, restricting surveillance is not only in the interest of individuals. Privacy is also imperative to the state and its military security.

## V. Conclusion

The three cases illustrate that privacy can improve the social and economic outcomes for an array of agents in society: the former criminals, the potential victims of crime, the indebted, the creditors, the state, and its military. When these agents do better, state and individual security is strengthened by reducing crime, bolstering economic activity, and protecting the military. The lesson here is that we must be critical when claims are made that surveillance regimes will increase security. This is not always the case.

## References

- [1] British Broadcasting Corporation. “Barack Obama Defends US Surveillance Tactics”. Internet: <http://www.bbc.com/news/world-us-canada-22820711> June 8, 2013 [May 10, 2015].
- [2] A. Agan. “Sex Offender Registries: Fear without Function?”. *Journal of Law and Economics*. vol. 54, pp. 207-239, Feb. 2011.
- [3] Royal Canadian Mounted Police. “National Sex Offender Registry”. Internet: <http://www.rcmp-grc.gc.ca/tops-opst/bs-sc/nsor-rnds/index-eng.htm> Mar. 3, 2015 [May 20, 2015].
- [4] Ontario Ministry of Community Safety and Correctional Services. “Ontario Sex Offender Registry”. Internet: [http://www.mcses.jus.gov.on.ca/english/police\\_serv/sor/sor.html](http://www.mcses.jus.gov.on.ca/english/police_serv/sor/sor.html) May 2, 2012 [May 10, 2015].
- [5] J. Levenson and L. Cotter. “The effect of Megan’s law on sex offender reintegration”. *Journal of Contemporary Criminal Justice*. vol. 21, pp. 49-66, Feb. 2005.
- [6] J. Prescott and J. Rockoff. “Do Sex Offender Registration and Notification Laws Affect Criminal Behaviour?”. *Journal of Law and Economics*. vol. 54, pp. 161-206, Feb. 2011.
- [7] J. Sandler, N. Freeman, and K. Socia. “Does a watched pot boil? A time-series analysis of New York State’s sex offender registration and notification law”. *Psychology, Public Policy, and Law*. vol. 14, pp. 284-302, Nov. 2008.
- [8] A. Petrosino and C. Petrosino. “The Public Safety Potential of Megan’s Law in Massachusetts: An Assessment From a Sample of Criminal Sexual Psychopaths”. *Crime & Delinquency*. vol. 45, pp. 140-158, Jan 1999.

- [9] R. Prentky. "Community notification and constructive risk reduction". *Journal of Interpersonal Violence*, vol. 11, pp. 295-298, Jun. 1996.
- [10] R. Tewksbury. "Collateral Consequences of Sex Offender Registration". *Journal of Contemporary Criminal Justice*, vol. 21, pp. 67-81, Feb. 2005.
- [11] M. Olver, K. Stockdale, and J. Wormith. "A Meta-Analysis of Predictors of Offender Treatment Attrition and its Relationship to Recidivism". *Journal of Consulting and Clinical Psychology*, vol. 79, pp. 6-21, Feb. 2011.
- [12] J. Blanchette and D. Johnson. "Data Retention and the Panoptic Society: The Social Benefits of Forgetfulness". *The Information Society*, vol. 18, pp. 33-45, 2002.
- [13] W. Dobbie and J. Song. "Debt Relief and Debtor Outcomes: Measuring the Effects of Consumer Bankruptcy Protection". National Bureau of Economic Research., Cambridge, MI, Rep. 20520, 2014.
- [14] D. Skeel. *Debt's Dominion: A History of Bankruptcy Law in America*. Princeton, NJ: Princeton University Press, 2001.
- [15] T. Parry. "Stephen Harper's media team admits Iraq, Kuwait, videos a security risk". Internet:  
<http://www.cbc.ca/news/politics/stephen-harper-s-media-team-admits-iraq-kuwait-videos-a-security-risk-1.3061298> May 5, 2015 [May 15, 2015].