2022

Introduction: Privacy Studies, Surveillance Law

Scott Skinner-Thompson
University of Colorado Law School

Surveillance & Society

Dialogue | Introduction: Privacy Studies, Surveillance Law

Scott Skinner-Thompson

University of Colorado Law School, USA
Scott.SkinnerThompson@Colorado.edu

Abstract

This Dialogue section examines perspectives on how privacy law scholarship and surveillance scholarship can be further enriched with more critical reflection and discussion between the disciplines and includes valuable contributions from thought leaders in each field.

Surveillance studies and privacy law have synergies. And shortcomings. With roots in the social sciences, surveillance studies scholars do critical work documenting (historically, quantitatively, or qualitatively) how surveillance systems negatively impact people in their day-to-day lives. With their doctrinal pedigree, privacy law scholars are often focused on law and policy solutions to violations of personal privacy. Both disciplines draw from philosophical traditions to theorize how surveillance systems contribute to social control and subjugation. And while there are, of course, examples of privacy law and surveillance studies scholars drawing from each other and collaborating with each other, the potential symbiosis of these two related disciplines seem underutilized in their shared goals of combatting surveillance abuses (Cohen 2015) and enhancing the lived experiences of the marginalized communities who are often disproportionately impacted by surveillance systems and policies (e.g., Browne 2015; Bridges 2017; Skinner-Thompson 2021). To different degrees, they also suffer from shared limitations, often overlooking insights from other disciplines such as critical race studies, queer/trans studies, political theory, and geography, among others.

In this Dialogue Section, we invited scholars from both fields to discuss how our scholarship might benefit from additional cross-pollination and enrichment, potentially strengthening our work and its impact (but see, e.g., Benjamin 2019; Eubanks 2018). As initial provocations, but without limitation, we were interested in reflections on how these fields' disciplinary orientations constrain inquiry or intervention. To what extent does privacy law fixate too heavily on extraordinary or outlier cases, without attention to on-the-ground impacts of surveillance networks? Conversely, would surveillance studies as a discipline achieve greater impact if it gave more attention to pragmatic solutions? What are the specific theoretical insights that ought to receive greater attention in each discipline?

The four contributions to this Dialogue Section responded to these questions in thoughtful and creative ways, challenging us to think big, read more, write less, and, when we do write, write generatively—not just in opposition. That is, they urge us to not just say something but do something with the incredible privilege that comes with being an academic.

Skinner-Thompson, Scott. 2022. Introduction: Privacy Studies, Surveillance Law. *Surveillance & Society* 20 (3): 294-296.
https://ojs.library.queensu.ca/index.php/surveillance-and-society/index | ISSN: 1477-7487

First, Daniel Susser (2022) challenges scholars concerned with the impact of the "data-driven order" to move beyond important, but insufficient, critiques of data harms. For Susser, while both surveillance studies and privacy scholars do indispensable work identifying the risks of data collection and surveillance, too often we stop short of offering a positive vision of the role of data in facilitating the good life. Susser suspects that part of this disinclination stems from law's entrenched fidelity to negative views of law's role in people's lives (preventing government from causing harm, rather than positively facilitating good) and critical scholars' reluctance toward normative prescription, notwithstanding their recognition that individual subjectivity is produced, not just limited, by surveillance. Susser inspirationally calls on us to harness the concept of production to recognize that we have the ability to world-make through positive visions or imaginaries of the role of data in our lives.

Second, and relatedly, Lisa Austin (2022) underscores the degree to which privacy law has been far too narrow—and late—in terms of the surveillance problems it tries to solve. Using the Canadian government's access to millions of mobile phones in the midst of the COVID-19 pandemic as a jumping off point, Austin underscores how privacy law and data regulation often do little to limit surveillance so long as the information at issue is, at least formally and in theory, personally de-identifiable. But the narrow focus on de-identification doubles down on liberal notions of selfhood (cf. Cohen 2012) while distracting from broader questions of social legibility. For Austin, legibility involves "making some aspect of the social 'visible' in order to govern," and that legibility—a tool of governance—is focused not just on individual units, but groups as well. And, indeed, the definition of a data unit goes a long way in world making. The unit of data is not a given, but helps productively create the world, including identities. As such, Austin calls on us to think creatively about "who decides" what units are relevant in the first instance, moving beyond just trying to limit linking of data units to individuals after the fact through de-identification.

Third, Maša Galič (2022) concretizes much of the shortcomings also underscored by Austin and Susser by focusing on so-called "smart cities." Galič notes that such cities—urban areas where data is collected through public-private partnerships from myriad sources, including individuals and their devices, and then used to govern resources and space—are often defended as legitimate because they, purportedly, do not identify individuals. But as Galič powerfully underscores, even if not targeted at specific individuals, the surveillance of public space with different data sources contributes to the homogeneity of the public square through a securitizing logic that indirectly manipulates people to comply with social norms. For Galič, too, privacy law and surveillance scholars should not over rely on de-identification as the lynchpin for determining whether the deployment of a particular surveillance logic is legitimate or not.

The Dialogue closes with a delightful contribution from Bert-Jaap Koops (2022) that challenges us, in essence, to be scholars, not just writers. Koops humorously but gravely underscores that professors of all varieties, but privacy and surveillance scholars no less, have succumbed to the publish or perish mantra at great cost to academic disciplines as well as the social efforts to solve the problems we care about. Koops challenges us to sit with the preexisting literature on privacy and surveillance, and related disciplines. It is one of the many luxuries of academia and one we should re-embrace. In particular, I would add that privacy scholars and surveillance scholars engage far too little with critical race and queer studies literatures, which contain manifold insights on the subtle but important ways that identities are rendered, controlled, and subordinated by administrative and carceral systems of surveillance (e.g., hooks 1989; Lorde 1984; Spade 2011; Stanley 2021). Read Koops' charming piece, put your pen down, and consider the ways in which we might use our time and our pedestals to not just reduce narrow harms (as important as that harm reduction may be) but actively facilitate the good life, particularly for those suffering most acutely.

References

Austin, Lisa. 2022. From Privacy to Social Legibility. *Surveillance & Society* 20 (3): 302-305.
Benjamin, Ruha. 2019. *Race After Technology: Abolitionist Tools for the New Jim Code*. Cambridge, UK: Polity.
Bridges, Khiara M. 2017. *The Poverty of Privacy Rights*. Stanford, CA: Stanford University Press.
Browne, Simone. 2015. *Dark Matters: On the Surveillance of Blackness*. Durham, NC: Duke University Press.

Cohen, Julie E. 2012. *Configuring the Networked Self*. New Haven, CT: Yale University Press.
———. 2015. Studying Law Studying Surveillance. *Surveillance & Society* 13 (1): 91–101.
Eubanks, Virginia. 2018. *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor.* New York: St. Martin's Press.
Galič, Maša. 2022. Smart Cities as "Big Brother Only to the Masses": The Limits of Personal Privacy and Personal Surveillance. *Surveillance & Society* 20 (3): 306-311.
hooks, bell. 1989. *Talking Back: Thinking Feminist, Thinking Black*. Boston, MA: South End Press.
Koops, Bert-Jaap. 2022. Goodbye to Publications, or Confessions of a Privacy Law Scholar. *Surveillance & Society* 20 (3): 312-316.
Lorde, Audre. 1984. *Sister Outsider*. Trumansburg, NY: Crossing Press.
Skinner-Thompson, Scott. 2021. *Privacy at the Margins*. Cambridge, UK: Cambridge University Press.
Spade, Dean. 2011. *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law*. Boston, MA: South End Press.
Stanley, Eric A. 2021. *Atmospheres of Violence: Structuring Antagonism and the Trans/Queer Ungovernable*. Durham, NC: Duke University Press.
Susser, Daniel. 2022. Data and the Good? *Surveillance & Society* 20 (3): 297-301.