



Universiteit
Leiden
The Netherlands

**Comparison of liberal and neo-republican perspectives on the
problematization of mass surveillance regarding its freedom-inhibiting
capacity.**

Hornánová, Debora

Citation

Hornánová, D. (2024). *Comparison of liberal and neo-republican perspectives on the
problematization of mass surveillance regarding its freedom-inhibiting capacity.*

Version: Not Applicable (or Unknown)

License: [License to inclusion and publication of a Bachelor or Master Thesis, 2023](#)

Downloaded from: <https://hdl.handle.net/1887/3714908>

Note: To cite this publication please use the final published version (if applicable).

Bachelor Thesis
B.Sc. International Relations and Organizations

Comparison of liberal and neo-republican perspectives on the problematization of mass surveillance regarding its freedom-inhibiting capacity.

Debora Horňanová
Student number: 3177637
Supervisor: Dr. Marco Verschoor
Embargo statement: (A) Public
21.12.2023
Word count: 7,012

TABLE OF CONTENTS

Introduction	1
Liberal View	3
Liberalism on Freedom: Freedom as Non-Interference.....	3
Liberalism on Mass Surveillance: Significance of Privacy	4
Neo-Republican View	6
Neo-Republicanism on Freedom: Freedom as Non-Domination.....	6
Neo-Republicanism on Mass Surveillance: Privacy as Antipower.....	9
Critical Comparison Account: Liberalism and Neo-Republicanism on Mass Surveillance	12
How to Be Free When the State is Watching?	14
Conclusion	18
Bibliography	20

Introduction

The revelations of unprecedented mass surveillance from both the US and UK intelligence services in recent years have cultivated an increase in the academic and policy-making interest in how mass surveillance can be justified and regulated. Mass surveillance is not a new phenomenon originating in the twenty-first century. For a long time, mass surveillance has represented one of the main features of authoritarian regimes with the aim of controlling autocratic societies and suppressing political dissent. Some examples of countries that applied these measures have been the People's Republic of China, the Soviet Union, the German Democratic Republic, and North Korea (Dunnage, 2016, pp. 119-121). In the past decades, states' capacity to monitor citizens' lives on a massive scale has increased; the common excuse for the mass surveillance application follows national security concerns while the citizens' privacy concerns appear to be more of an inconvenient obstacle. The rise of technologies has enabled sophisticated AI and facial recognition tools to be integrated into surveillance systems, creating even more questions concerning their legitimacy, use, and related legislation (Dunghy, 2023). Following the pandemic concerns, mass surveillance use was justified by referring to mitigating the spread of the virus. The most notable example of this is the People's Republic of China where the use of surveilling technology has been justified by referring to the protection of national security and public health interests. In the long run, justifying mass surveillance has opened the door to its more frequent use, making the use of surveillance one of the main aspects of a digitally repressive governance model nowadays (Poetranto, 2021).

Modern communications technology makes mass surveillance an accessible instrument for governments to track citizens' lives. In modern mass surveillance programs, large amounts of citizens' data are collected, intruding on their right to privacy. The existence of the massive scale of the collected data is unprecedented which pushed academics to answer the questions about the appropriate use of surveillance and its impact on citizens. These questions include the possibly differing impact on one's freedom in the sense of information capture and storage and access to this information (Solove, 2006, p. 490). The criticism of government mass surveillance often revolves around the erosion of privacy accompanied by concerns about newly created vulnerabilities in the monitored subjects. Because mass surveillance creates an unequal position between the observer and the observed, surveillance is seen as a threat to democracy and the

integrity of the public sphere (Goold, 2010, p. 44). Nowadays, the ever-increasing use of mass surveillance makes the debate on the use of mass surveillance and its legitimacy academically meaningful. Scholars have already started reviewing how mass surveillance breaches informational privacy and autonomy in the digital sphere, often coming to different perspectives on the justifications for the use of surveillance.

In this paper, the notion of privacy is used to identify why privacy is important for one's freedom. Privacy (or the lack thereof) is often easily identifiable when experienced but often difficult to define. The definitions of what privacy entails can be grouped into three, not mutually exclusive categories: (1) privacy as blocking access of others to a person and his personal realm; (2) privacy as control over personal information; and (3) privacy as freedom from judgment or scrutiny by others (Introna, 1997, pp. 261-262). It can be understood as the right to be let alone, meaning that the right to privacy entitles one to exclude others from watching, utilizing, and invading his personal realm. It assures the person to have control over knowledge about oneself. The loss of control over own information leaves the person vulnerable to the outside world's scrutiny and judgment. This makes the person naturally inclined to value their own privacy.

The research question is how mass surveillance restricts freedom from neo-republican and liberal points of view, concluding with the decision of which perspective is more persuasive. Liberals emphasize freedom from interference while neo-republicans adhere to freedom from domination. This poses the debate around the question if mass surveillance's constricting ability on one's freedom is better captured as interfering activity in people's lives or as domination through the possibility to arbitrarily interfere in others' lives. To answer this question, mass surveillance is problematized from both perspectives, depicting ways in which mass surveillance constricts one's freedom.

Following the main research question, the sub-questions that will guide the answer to this question are as follows: How is freedom conceptualized from liberal and neo-republican perspectives? How is mass surveillance problematized from liberal and neo-republican perspectives? The following sections first focus on the liberal and then on the neo-republican perspective. The emphasis is on the philosophical conceptualization of different ways people can become unfree when being surveilled. The last section is dedicated to a critical account that analyzes what perspective is more suitable to assess the freedom-inhibiting capacity of mass surveillance, and why, followed by a

section on how an individual's freedom can be preserved under a surveillance regime. The thesis ends with a conclusion, answering the main research question and noting the implications and limitations of this paper.

Liberal View

Liberalism on Freedom: Freedom as Non-Interference

To better understand the stance of liberalism on mass surveillance regarding its freedom-inhibiting capabilities, it is first important to clarify how liberals conceptualize freedom. The basis for the contemporary work of political philosophy of the liberal tradition is Berlin's (1969) conception of negative liberty. Negative liberty delineates the area in which a person can act unobstructed by others. If a person is prevented from doing something by another person, his/her freedom is obstructed. Therefore, liberals are commonly characterized by adhering to the idea of freedom as non-interference, often called "liberty from".

Non-interference is the opposite of coercion. Coercion implies the deliberate interference of other people within the area in which I could otherwise act. The wider the area of non-interference by others, the wider my freedom. The interference of others can be direct or indirect, with or without the intention of doing so. The sense of privacy itself can be derived from the conception of freedom, i.e., the area of personal relationships. Acknowledging that a person should have a frontier of private life that should not be interfered with by others marks the fact that the liberty of some must depend on the restraint of others (p. 36).

The strong emphasis in liberalism on negative liberty is based on two main objections with regard to the positive counterpart. First, the inclusion of positive liberty opens the door for the possibility of justification of tyranny. The justification of coercion of some people over others in the name of reason and/or achieving "higher freedom" can pose a disguise for the goal of a tyrannical entity to interfere with the character development and life plans of others. Second, if freedom is construed as rational self-mastery, trying to be freer, a person may end up giving up their real desires instead of removing restraints that prevent the realization of these desires. This points to the human nature inclined to avoid actions that are likely to lead toward failure, choosing not to strive for anything that cannot be certainly obtained (pp. 45-46). These two arguments against the inclusion of positive liberty are often referred to as "the tyranny argument" and "the inner citadel argument",

respectively. This paper conceptualizes freedom on its negative grounds. Following the traditional liberal perspective, positive freedom is excluded from the analysis of how mass surveillance constricts one's freedom.

Liberalism on Mass Surveillance: Significance of Privacy

Being negatively free means being able to act unobstructed by others, marking the absence of interference by others. In the traditional liberal view, the value of privacy has its source in specifically liberal ideas defending the right of an individual against the claims of collectivity as such. Mass surveillance is characterized by the creation of large quantities of collected data, leading to the debate about whether the surveillance reduces the privacy of those who are subjected to surveillance. These concerns question the existence of the collected data and human access to this data (Königs, 2022, pp. 2-3). Freedom as non-interference is traditionally either seen as a formal freedom, observed by most right-wing liberals, or as a freedom associated with state involvement, observed mostly by left-wing liberals. Generally, freedom understood as freedom from interference protects individuals from interfering third parties, having in mind the concrete and actual state of affairs rather than abstract relations (van der Sloot, 2017, p. 546).

There are growing concerns over what exactly can be monitored about the person due to technological advances. Despite the technological "unobtrusive" presence, these devices can monitor person's location, physiological functions, spending history, Internet history, and many more. Following the liberal perspective stating that a person is free as long as s/he is able to act unobstructed by others, mass surveillance must act as an external obstacle for individuals to cause unfreedom. The starting point of these concerns is the collection of great amounts of data on others which potentially reduces people's privacy. Having privacy means having control over your information. Fried (1984, pp. 210-211) labeled this control as an aspect of personal liberty. He specified that being able to grant or deny access to own information is what means to have privacy. People themselves must decide if they want to share private information about their lives and themselves to which outsiders should not normally have access. Therefore, privacy enables individuals to give others the intimacy of sharing private information while deciding on the extent of this shared information. Eventually, the decisions about the amount of shared information regulate the "degrees" of friendships. Considering that love and friendship are valuable aspects of our lives, privacy is thus valuable as well.

In Fried's (1968, p. 477) essay on the importance of privacy for an individual, he emphasized that without privacy the most fundamental relations of love, friendship, respect, and trust cannot be conceived. He labeled privacy as a precondition for the possibility of these relationships. By making the necessity of privacy a context for these relations, any threats to an individual's privacy then seem to threaten the very integrity of persons. To use Fried's words, privacy is the necessary "atmosphere" in which these relations can take place (p. 478). This follows the understanding of familiar and affectionate relations as relations being built on a common conception of basic entitlements and duties of persons in regard to each other. To create fulfilling relationships between lovers and friends, the people involved must mutually relinquish rights in favor of new, shared interests that are mutually understood by them as the expressions of their relationship. They choose the intimacy of sharing information about one's actions, beliefs, and emotions. It creates an actively reciprocal relationship of support and relinquishment of rights as a voluntary gift by one another in private (p. 481). Entering into these relations of mutual trust should be based on the personal decision of all involved individuals who enjoy and accord to each other a certain measure of privacy, contrary to the possibility of involuntarily sharing personal information about oneself that is recorded by surveilling devices.

Privacy is therefore intuitively closely implicated in the notions of respect, love, friendship, and trust. If our privacy is threatened, our ability to create such relationships dissipates, making us unfree in choosing with whom we share our own information. To sum up, despite the "unobtrusive" presence of surveillance technologies, mass surveillance does block something meaningful for an individual. More specifically, it blocks the ability of persons to create meaningful relationships of love, trust, and friendships with each other, thus obstructing one's freedom.

Related to this, Rachels (1975, p. 326) makes a point about how our choice of how much we want to share with others creates distinctions between the different relationships such as individual to a spouse, colleague, boss, priest, teacher, therapist, and so on. Again, as these relationships are valued by the person, the value of privacy and the decisions regarding particular information sharing is valuable as well. This point emphasizes that privacy is not just important for the creation of relationships with people in general but also for creating differentiating relationships according to own preferences and choices. The decisions about how much information is shared with

different people essentially inform these people about what conclusions they shall make about the closeness of relationships with others. Mass surveillance blocks the possibility of choosing who should know what information about myself, obstructing not just my choice in creating relationships with others but also the possibility of creating different types of relationships with various people.

Privacy also has a more defensive function for an individual's freedom. People who wish to say or do something that is either unpopular or unconventional risk a backlash from others. In a situation where all actions and words are public, the notion of public disapproval and/or tangible retaliation from society would obstruct individuals from doing or saying anything that they would not choose to say or do outside a close group of friends (Fried, 1968, pp. 483-484). Being surveilled causes individuals' words and acts to be public, making people careful about their actions and words. Therefore, mass surveillance acts as an obstacle for them, blocking them from openly speaking their minds and doing as they wish.

Neo-Republican View

Neo-Republicanism on Freedom: Freedom as Non-Domination

The neo-republican perspective conceptualizes freedom as non-domination. Person A is dominated by person B to the extent that person B has the capacity to arbitrarily interfere with choices that person A can make. This interference must involve an intentional attempt to worsen person A's situation of choice. The possible behaviors that might constitute an interference are coercion of the body, coercion of the will, or manipulation. All interfering behaviors either alter the expected payoffs assigned to the changed options or assume control over which outcomes will result from which options, influencing the actual payoffs of these choices. Such interference can take on various forms: the option can be withdrawn by someone; the options are made to appear less attractive (possibly with attaching sanctions); or the options can be misrepresented, causing the lack of a proper understanding of the options (Pettit, 1996, pp. 578-579).

Neo-republicans' idea of freedom as non-domination is often referred to as a "third concept of liberty". The basis for its conceptualization comes from the Roman juridical distinction between the free citizen and the slave in which a person can be unfree even when s/he is not interfered with. This is because a person is unfree as long as s/he is subjected to the arbitrary will of another,

disregarding the actual interference of the dominator as the only way to cause unfreedom. The arbitrariness of interference implies that the only stop on the dominator's inflicting interference is the dominator's own unchecked choice and their own judgment (p. 581). Thus, the person who is dominated by another is dependent upon the dominator's will. The degrees of the power of the dominator might differ, the dominator might not even plan on interfering, but as long as the power can be arbitrarily exercised by the dominator, the subject experiences domination and thus unfreedom.

Oppositely, free agents have control over the powers that interfere with them while at the same time are protected from being subjected to the arbitrary will of others who have the capacity to interfere. To secure non-domination in practice, it is required to have an institutional structure, i.e., antipower, that represents a form of control of a person regarding their own destiny. Antipower allows the subject to enjoy non-interference, not in virtue of any accident or contingency. It gives the subject the capacity to command non-interference, thus reducing the intensity and the extent of the domination of some by others by maximizing the range over which undominated choice is enjoyed. To do so, we can give the powerless protection against the resources of the powerful, regulate the use of resources of the powerful, and give the powerless new, empowering resources of their own (pp. 589-592).

In some of his works, Pettit (2012, p. 50) replaces the concept of arbitrariness with the idea of control. A person is dominated by another agent or agency in a certain choice over which they have no control while the agent or agency has the power to interfere in it. As long as a person can influence the exercise of the interference, they are not dominated by others. This illustrates how interference does not immediately constitute domination. An example of such is the act of constitutional authority such as police force or judges. This is because they do not interfere at will and with impunity. Instead, they practice non-dominating interference due to the constraining constitutional arrangements that are set up in order to avoid misuse of power by these authorities. These agents or agencies can exercise interference only under constitutionally determined conditions. Similarly, if they exercise power in certain areas of discretion, their actions are subject to appeal and review, marking the fact that they do not exercise power without impunity (Pettit, 1996, pp. 586-587).

To realize non-domination in practice, two directions of powers must be recognized as conceptually and practically distinct. There are vertical and horizontal powers of the state and government that both must ensure non-domination together, cultivating “social justice” (Pettit, 1999, pp. 51-79). First, agents have horizontal powers, i.e., governmental institutions, that are used to ensure non-domination between citizens. Horizontal domination happens when the citizens are exposed to arbitrary interference from other citizens. Second, vertical powers, i.e., the state, should ensure that citizens are protected from internal and external violence. Pettit recognizes the fact that the state can be a source of domination. This would be called vertical domination which takes place when citizens lack ultimate control over the interfering actions of the government. The absence of either vertical or horizontal domination is equal to political legitimacy and justice (pp. 24-25). To sum up, the non-domination of both vertical and horizontal powers requires institutional structures that secure its realization in practice.

Questions about one’s range of choices and the practical viability of their selection can guide the discussion about what it means to be non-dominated: having control over the powers that are interfering and being protected from subjugation to the arbitrary will of other agents who have the capacity to interfere. This is best illustrated by Pettit (2012, pp. 60-64) who explains that a slave is dominated even without interference, simply by being aware of his dependence upon the arbitrary power of his owner. He is not free to choose his actions. This type of shaping of others’ behavior by non-invasive means can be illustrated elsewhere as well. Pettit’s eyeball test serves the purpose of distinguishing the intimidated agent from an un-dominated one. The truly free agent does not ingratiate himself to people and can look others in the eye irrespective of their institutional positions (pp. 84-85).

Participation in political life is a crucial aspect for republicans. In Pettit’s (1997) works on republicanism, political participation is instrumentally valuable, for it is through political processes that individuals can achieve their freedom. To secure freedom, a person must participate in the processes that create their constraints. As mentioned before, when power is exercised over a person who took part in the decision-making of these exercises, domination does not take place. For the state’s interference to be non-dominating, the participatory duty of the citizens is thus significant. This duty however does not extend any further than the election of representatives. Therefore, to create a non-dominating society, representatives must take a proper account of the interests of

those whom they represent while citizens must be prepared to oppose those representatives' decisions that fail to track their interests (Pettit, 2006, p. 309). In other words, citizens can realize the ideal of self-government and enjoy non-domination through participation in the decision-making processes that generate the rules that regulate their conduct. This is opposed to liberal conduct that is much less demanding for its citizens. From a liberal perspective, involvement in political life and supporting liberal institutions is not a necessity for freedom but a virtuous act (Roberts, 2014, pp. 327-328).

Neo-Republicanism on Mass Surveillance: Privacy as Antipower

The topic of surveillance as a source of domination is not properly addressed by the major neo-republican works in general. Most of the works that follow neo-republican theory and scrutinize these topics do so by focusing on the topics of privacy, big data, and surveillance. Neo-republicanism rejects the liberal principle that unfreedom originates only from coercive interference. The literature regarding surveillance and neo-republicanism concerns itself with how power can shape behavior through non-invasive means. For example, how power positions influence one's behavior is observed in Pettit's eyeball test. This behavioral change can be analyzed as the "conduct of conduct" responsible for the promotion of the autonomous "responsibilization" of agents. This illustrates how surveillance does not direct an action by restricting viable choices. Instead, it compels choice by directing a person to choose a less risky outcome. Since the person knows that somebody is watching his actions, his actions will reflect these fears, making the person choose to not do anything that would result in punishment and/or interference from others (Hoye & Monaghan, 2015, pp. 349-350).

Following the republican concern for non-domination, privacy is valuable because it can protect citizens from possible domination. Losing one's privacy may lead to circumstances in which others are capable of wielding dominating power on an arbitrary basis. Since mass surveillance poses a risk to one's privacy, the ability of governments to use mass surveillance to interfere with their citizens' choices constitutes domination. Roberts (2014, pp. 329-330) identified three possible types of arbitrary interference from which privacy protects citizens. These types of interference are (1) the act of replacing one's options by attaching sanctions to them; (2) the act of removing one's options; and (3) the act of misrepresenting one's options through manipulation. Mass surveillance allows any agent who has access to the gathered information to arbitrarily interfere

with monitored subjects in their choices. This is because the gathered information provides the agent with the necessary knowledge about their daily life, revealing possible ways to manipulate and/or persuade them when needed. One of the examples of such behavior is the targeted marketing used by corporations to increase their profits (Richards, 2013).

Surveillance activity discloses the direction of people's choices, making it easy for outsiders to know what they are planning to do. This causes vulnerability that can be exploited. People's options can be replaced, meaning to substitute an option with a less attractive alternative. This causes the person to not choose the alternative and instead choose some other option that the dominating agent would prefer for them to choose. One common way to create less attractive options is by attaching sanctions to them. The circumstances in which the loss of privacy leads to the removal of certain options are not hard to come by either. In mass surveillance settings, the disclosure of information about an individual can lead to being 'blacklisted' in recruitment processes. The disclosed information provides employers with a dominating position over their potential employees when choosing who is suitable to work in the company. This describes a situation in which employers have the power to remove the option of being recruited for potential employees. Similarly, a state can also remove certain options for its citizens through the criminalization of certain activities. When such interference is arbitrary, the interference constitutes a form of domination (Roberts, 2014, pp. 330-331).

These three types of domination that can happen when privacy is breached reveal the importance of privacy, which is its antipower capacity. It is a form of protective power that broadens the range over which undominated choice is enjoyed for individuals. In circumstances where the loss of privacy is not followed by any interference, republicans explore the relationship between privacy and negative freedom using the idea of domination. A person can assume a dominating control over another even when there is no attempt to interfere directly in the choices made by another. Pettit (2012, p. 60) describes this exercise of control as invigilation of a subject's choices. To invigilate one's choices means to let others choose as they wish and not to interfere, but still be ready to step in and block the choices if they do not accord with the dominating agent's preferences as to how others should choose. When an individual becomes aware of such situation, it can lead to intimidation, enhancing the effect of invigilation by giving the individual reason to be cautious about his own choices. Even if those who acquire the information about others have no interest in

using it for their own ends, as explained above, they still possess dominating power. This is because they have the power to arbitrarily interfere in the choices of others who cannot control this interference (p. 62). They acquire dominating power over them regardless of their own motivations or dispositions. This highlights the republican concern for any unchecked inequality in power that is created by the loss of privacy when surveillance takes place.

The inequality in power between the agents is a result of the loss of privacy. That means that surveillance activity is harmful regardless of whether or not the subjects are aware that others are watching or acquiring information about them. Knowing one's sensitive and personal information opens the possibility of manipulating or coercing them in the direction the dominating agent finds more desirable or removing their options entirely. Since the subjects have no power over such circumstances, they are entirely at the mercy of their dominators' arbitrary will. Therefore, the acquisition of personal information exposes individuals to certain risks. More specifically, it opens ways for governments to retain domination and expand their power and for corporations to expand their power over their employees and possibly over consumers through various promotional advertisements (Moore, 2007, pp. 823-824).

Critical Comparison Account: Liberalism and Neo-Republicanism on Mass Surveillance

Considering possible adverse effects of mass surveillance on one's freedom, this section compares the freedom-inhibiting capacity of surveillance on an individual from both liberal and neo-republican perspectives. Both perspectives would agree that there is something inherently wrong with mass surveillance. In the context of mass surveillance, liberals focus on the actual interference in citizens' lives while neo-republicans, on the other hand, focus on the domination of citizens by the state. From the liberal perspective, it can be problematized that one's freedom is constricted because mass surveillance poses an obstacle to doing or saying anything controversial outside of a close group of friends. Furthermore, it blocks the possibility of creating meaningful relationships by interfering with people's ability to create various types of relationships with others based on their preferences and choices. This is because citizens cannot control the amount and type of information they want to share with others. From the neo-republican perspective, the main imposition on freedom coming from mass surveillance is how it creates dominating circumstances in which states can arbitrarily interfere with their citizens' choices. Having lost privacy, people are vulnerable to three types of arbitrary interference from the dominating states. These include replacement, removal, and misrepresentation of one's options. The sole capacity of the state to arbitrarily interfere matters, not just the actual interfering consequences as in the liberal perspective. In that context, privacy acts as an antipower structure that protects individuals from domination.

Mass surveillance is likely to reveal more about the monitored individuals than desired. The data that is harvested from mass surveilling activities include the number and nature of our relationships, the state of our finances, our political views, religion, sexual orientation, life plans, and many more. The more that is known, the greater the likelihood of interference in the subject's decision-making and way of life. Following the revelations of mass surveillance in Western democracies in 2013, it was revealed that intelligence agencies were capable of assessing and collecting the content of millions of emails, conversations on social networking sites, telephone calls, internet browsing histories, and much more (Roberts, 2014, p. 335). All of these breached citizens' privacy, marking that both perspectives can account for the freedom-inhibiting capacities of mass surveillance. These examples however also point to the states' capabilities to monitor their citizens without citizens being explicitly informed about it.

The main problem with mass surveillance is that even if it does not take place, the mere capacity of states to perform mass surveillance is problematic. From the neo-republican perspective, to be free means to have control over the interfering powers and to be protected from being subjected to the arbitrary will of others who have the capacity to interfere (Pettit, 1996). That means that the possibility of states subjecting their citizens to mass surveillance and thus making them vulnerable to arbitrary interference makes citizens unfree. States dominate their citizens because citizens are at their goodwill that they will not choose to implement mass surveillance if they see fit. Therefore, the fact that states have capacities for mass surveillance is enough for citizens to be dominated.

Even if the citizens do not have full information about the capabilities of their state, the pure intuition of being under surveillance is enough to be dominated (p. 61). It is even more effective when the citizens do not fully understand their state's capabilities to monitor them. It makes them intimidated because they are never sure if the state will interfere with them once they do not act in the way the state wants them to. Following the historical examples of mass surveillance and how the monitored citizens were not aware of being surveilled makes this point meaningful. In the example of mass surveillance exercised by the Western intelligence agencies, citizens were dominated by the state's invigilation of their choices – choosing not to interfere with their citizens unless they did not choose in accordance with the state's preferences (Pettit, 2012).

These points make the neo-republican account better equipped to analyze the freedom-inhibiting capacity of mass surveillance because their account makes it possible to identify and analyze the unfreedom that originates even before mass surveillance is implemented in reality. This is because they mark the mere capacity of states to practice mass surveillance as problematic. This result follows the ever-increasing capacity of states to mass surveil noted by historical examples in both autocratic and democratic states. Contrary to this, liberals cannot account for the unfreedom originating from the states' capacity to mass surveil because their mere capacity does not constitute any interference in citizens' lives.

Mass surveillance is harmful because it creates unequal power relations between the state and citizens based on the nature of how mass surveillance works. It puts citizens in a position to be arbitrarily interfered with. The dominating presence of the state vis-à-vis its citizens is described as vertical domination (Pettit, 1999). As mentioned before, to create a non-dominating society, there must be antipower institutional structures set up in place in order for the state to not dominate

its citizens. These structures avoid situations in which citizens lack control over the interfering actions and domination of the state. More specifically, in this case, actions originating from practicing mass surveillance. The mere fact that surveillance takes place puts the state in a position to have the ability to use the collected information to interfere with its citizens' choices, pointing out the fact that the use of mass surveillance should be reduced as much as possible. The possible ways to remedy this are to find ways to restrict arbitrary interference of states and to possibly create non-dominating mass surveillance, which are both reviewed below.

How to Be Free When the State is Watching?

It was already discussed how privacy acts as an antipower structure that shields citizens from domination in society, limiting the possibility of the state being capable of interfering in the citizens' choices. This means that to keep freedom means to remove any instrument that would breach one's privacy. One way to do this is to reject the use of mass surveillance entirely because mass surveillance provides the observer with power over the observed. This solution is however not practically viable due to the already existing capacity of states to surveil their citizens. Instead, we can review the question of whether citizens could avoid domination by the state when being surveilled, and if so, how.

To avoid the domination of citizens, we can set up institutions that get rid of certain forms of domination without putting any new forms of domination in their place. These institutions are described as promoting antipower and they work in a way that actively defeats the three conditions for subjugation: Agents (1) having the capacity to interfere (2) with impunity and at will (3) in certain choices of others. Antipower represents the form of control of an individual regarding their own life. The main constituting issue of domination is the difference in effective resources (e.g., physical, cultural, financial, legal, etc.) between the dominating agent and the one being dominated. Antipower targets this issue by compensating for these resource imbalances. To do so, strategies include giving the powerless protection against the resources of the powerful, regulating the use of the resources of the powerful, and giving empowering resources to the powerless (Pettit, 1996, pp. 578, 588-590).

Pettit labeled the most important aspect of the protective antipower institutions, more specifically, of the protective rule of law, the criminal justice system. Its main feature of deterring others from

interference is reflected by consequences that arise when someone breaks the law. This institution can target unwanted mass surveillance that goes beyond the determined and protective laws and norms of society. This way the citizens are protected by laws that prescribe what the state can and cannot do, marking any transgressions of the state against its citizens not with impunity. Just as judges and police forces are under review when exercising their power in certain areas, the state's practice of mass surveillance must undergo scrutiny from other actors who are capable of punishing the state when necessary. In the democratic structures, this would follow the checks and balances between the agents. This practice punishes the unwanted arbitrary interference of the state against its citizens when it is not adequate. The threat of punishment for the state's faulty actions should act as a deterring feature that protects citizens from the state's unwanted interference.

Another way to promote antipower is to maximize the range of an undominated choice. It would look like a scheme of self-protection for citizens in the surveillance context by requiring their consent to the surveillance mode. This would mean that if the person does not wish to be monitored, they have a say in deciding that. Having the option to refuse the exercise of mass surveillance against citizens indicates their control over the state's actions against them. Having control over the powers that are capable of interfering would indicate they are not dominated. We can also balance the information gathering and access between the people and the surveilling actor, avoiding the acquiring power of the state over the citizens. This can be done by empowering citizens with reciprocal surveillance and granting oversight with legal mechanisms that ensure effective guarantees against abuse of the surveilled information. Reciprocal surveillance assures gathering information about the surveilling actor, granting the same power that the surveilling states wield against citizens (Newell, 2014, p. 520). Citizens would be empowered by having the same type of power to arbitrarily interfere as states have when states do not wield their power adequately when exercising mass surveillance. Theoretically speaking, the situation in which both actors can arbitrarily interfere when the other agent is not wielding its power adequately would neutralize the resulting domination on either side. To sum up, maintaining greater checks on the exercise of state powers can remove the possible subjugation of citizens and promote individual liberty.

To remedy the dominating position of the state, we can also turn to the political participation of citizens in decision-making processes leading toward the use of mass surveillance. This is

because political participation draws back the power from the observer to the one being observed. In this sense, political participation is instrumentally valuable, for it is through political processes that individuals can achieve their freedom (Pettit, 1997). People become self-governing when they participate in processes that generate the rules and norms that regulate their conduct. Political participation also allows citizens to develop a proper understanding of the laws and institutions that influence them while determining the content of the laws (Lovett & Pettit, 2009, p. 15). Because they themselves define the boundary between the public and private spheres by engaging in deliberative political processes, they exercise control over privacy-interfering conduct coming from the state if there is one. To sum up, as long as citizens determine the rules about the use of mass surveillance, resulting mass surveillance activity does not originate in the arbitrary exercise of the state's power, marking no domination of citizens.

Following the reasoning of Pettit's accounts, mass surveillance does not have to constitute unfreedom if it tracks the common interests of the citizens. For a state to exercise arbitrary power against its citizens, the power must be exercised in a way that tracks the power-wielder's (i.e., the state's) welfare or worldview. If it tracks the welfare and worldview of the public (i.e., the citizens), the exercise of the power is non-arbitrary (Pettit, 1997, p. 56). These interests however must be *common* interests of the citizens, not "sectional" or "factional" interests of the common entity. This points to two implications. First, it relates to the significance of the deliberative political processes for they should be able to formulate and justify the common interests arising from the use of mass surveillance. When the procedures that determine these outcomes are fair, recognizing the equal statuses of the citizens and providing them with equal opportunities for success, implementing mass surveillance would not constitute unfreedom. This implication is however partly idealistic, considering the need for a society's general unanimity in decision-making processes. Regarding this, Shapiro (2012, p. 327) claims that Pettit's confidence that the losers of the deliberative processes will accept the legitimacy of their defeats is a matter of faith, opening Pettit's assumption about this for disagreement. Second, if mass surveillance is implemented in a way that still follows the citizens' interests, citizens are not dominated by the state. In that case, being surveilled must be in the citizens' interests, marking the possibility of the state's interference originating from monitoring as being publicly desirable. When the state interferes, it would not be to intentionally worsen citizens' situation for its own sake, but for the welfare of the citizens. This however begs the question if it is possible to properly differentiate

between the welfare and worldview of the state and its citizens, considering their intertwined nature and mutually self-constituting effect. Furthermore, it questions the way to identify the true interests of citizens, especially in circumstances where citizens do not agree that the resulting punishments and/or interferences from mass surveilling activities are for their own good. Answering these questions is outside of the scope of this paper and thus it is not developed further.

Conclusion

The research question of this thesis is: How is mass surveillance problematized from the liberal and neo-republican perspectives, and which one is better suited to account for the freedom-inhibiting effects of mass surveillance? The accounts of liberalism and neo-republicanism traditionally focus on the contribution of privacy to individual freedom. Surveillance on a mass scale means that people's information gets collected and stored, potentially disrupting one's privacy. The result of the discussion is that neo-republicans are better suited for capturing the negative implications of mass surveillance. This is because they can question the position between citizens and states even before mass surveillance takes place when trying to avoid domination. Following the historical evidence of mass surveillance activities, they can formulate an account in which the sole capacity of states to mass surveil their citizens is problematic.

To avoid the freedom-inhibiting effects of mass surveillance, republicans can turn to the empowerment of citizens under surveillance with a robust constitutional structure and/or effective guarantees against abuse of information. This is done by setting up antipower institutions that protect citizens from unwanted interference by other actors. Another solution includes affirming citizens' political participation in deliberative decision-making processes that result in conduct-regulating measures. Lastly, designing mass surveillance in a way that tracks the interests of the public and not of the states can avoid domination.

The main limitation of this paper concerns the multifaceted types of mass surveillance technology ranging from audio and video monitoring, GPS tracking, computer surveillance, social media surveillance, financial surveillance, and biometric surveillance. These diverse possibilities of how to track one's life open numerous options and views on how one's freedom is impacted and constricted, possibly offering a more nuanced view of freedom-inhibiting mass surveillance from both liberal and neo-republican views. This paper only focuses on the mainstream views on mass surveillance covering the most traditional problems with privacy-invasive mass surveillance.

In the face of the ever-increasing use of mass surveillance, the societal implications of this work point to the importance of minimizing mass surveillance activity due to its natural freedom-inhibiting properties. Taking into consideration the oftentimes missing proper justifications for surveillance and the common inadequacy of real-world political structures to empower those who are monitored, mass surveillance is a threat to individual freedom. The sheer presence of mass

surveillance's freedom-inhibiting nature and its disposition to make citizens vulnerable to unwanted interference from the state and domination in society should warn against adopting mass surveilling technologies as a norm. The academic implications of this paper point to the fact that neo-republicans are better equipped to capture the constriction of freedom resulting from mass surveillance than liberals are. This is because they can formulate how states' capacity to mass surveil is itself problematic. Following the multitude of possible surveillance instruments, future research could analyze how neo-republicanism problematizes the myriad types of surveillance methods vis-à-vis individual freedom. In the face of the current progressive advancements in surveillance technology, the research in that direction would be both meaningful and academically relevant.

Bibliography

- Berlin, I. (1969). *Two concepts of liberty. Four essays on liberty*. Oxford, England: Oxford University Press.
- Dunnage, J. (2016). Policing and surveillance. In P. Corner & J.-H. Lim (Eds.), *The Palgrave Handbook of Mass Dictatorship* (pp. 119-130). Palgrave Macmillan.
- Dunghy, G. (2023). Surveillance in modern society: where next? *IFNEC INSIDER*. Retrieved from <https://www.ifsecglobal.com/video-surveillance/surveillance-in-modern-society-where-next/>
- Fried, C. (1968). Privacy. *The Yale Law Journal*, 77(3), 475-493.
- Fried, C. (1984). Privacy: A moral analysis. In F. D. Schoeman (Ed.), *Philosophical Dimension of Privacy: An Anthology* (pp. 203-222). Cambridge: Cambridge University Press.
- Goold, B. (2010). How much surveillance is too much? Some thoughts on surveillance, democracy, and the political value of privacy. In D. W. Schartum (Ed.), *Overvaaking i en rettstaat* (pp. 38-48). Bergen: Fagbokforlaget.
- Hoye, J. M., & Monaghan, J. (2015). Surveillance, freedom and the republic. *European Journal of Political Theory*, 17(3), 343-363. doi: 10.1177/1474885115608783
- Introna, L. D. (1997). Privacy and the computer: Why we need privacy in the information society. *Metaphilosophy*, 28(3), 259-275.
- Königs, P. (2022). Government surveillance, privacy, and legitimacy. *Philosophy & Technology*, 35(8), 1-22. doi: 10.1007/s13347-022-00503-9
- Lovett, F., & Pettit, P. (2009). Neorepublicanism: A normative and institutional research program. *Annual Review of Political Science*, 12, 11-19. doi: 10.1146/annurev.polisci.12.040907.120952
- Moore, A. D. (2007). Toward informational privacy rights. *San Diego Law Review*, 44(809).
- Newell, B. C. (2014). The massive metadata machine: Liberty, power, and secret mass surveillance in the U.S. and Europe. *A Journal of Law and Policy for Information Society*, 10(2), 481-522.
- Pettit, P. (1996). Freedom as antipower. *Ethics*, 106(3), 576-604.
- Pettit, P. (1997). *Republicanism: A theory of Freedom and government*. Oxford, England: Oxford University Press.
- Pettit, P. (2006). Democracy, national and international. *The Monist*, 89, 301-324.

- Pettit, P. (2012). *On the people's terms: A Republican philosophy of democracy*. Cambridge: Cambridge University Press.
- Poetranto, I. (2021). Intrusive surveillance after the coronavirus pandemic. *Carnegie Endowment for International Peace*. Retrieved from <https://carnegieendowment.org/2021/10/19/intrusive-surveillance-after-coronavirus-pandemic-pub-85509>
- Rachels, J. (1975). Why privacy is important. *Philosophy and Public Affairs*, 4(4), 323-333.
- Richards, N. M. (2013). The dangers of surveillance. *Harvard Law Review*, 126, 1934-1965.
- Roberts, A. (2014). A republican account of the value of privacy. *European Journal of Political Theory*, 14(3), 320-344. doi: 10.1177/1474885114533262
- Shapiro, I. (2012). On non-domination. *The University of Toronto Law Journal*, 62(3), 293-335.
- Solove, D. J. (2006). A taxonomy of privacy. *University of Pennsylvania Law Review*, 154(3), 477-564. doi: 10.2307/40041279
- Van der Sloot, B. (2017). A new approach to the right to privacy, or how the European Court of Human Rights embraced the non-domination principle. *Computer Law & Security Review*, 34(2018), 539-549.