LIVING IN SURVEILLANCE SOCIETIES (LISS): CONFERENCE 3

"THE STATE OF SURVEILLANCE"

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DOCTORAL SCHOOL ABSTRACTS

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1. BASIL CUPA, University of Zurich (Switzerland)

Trojan Horse Resurrected–On the Legality of the Use of Government Spyware.

In October 2011, a hacker group accused the German government of using a Trojan horse program that iscapable of spying on email accounts, listening in on internet telephone calls, and even logging keystrokesor activating webcams. After a few days of public shock, it became clear hat not only the German intelligence and security services made use of such practices, but so did their counterparts in Austria, Switzerland, and The Netherlands.The crucial question within this affair, which puts constitutional democracy and the rule of law to the test, is whether the use of government spyware was legal. Under German Law, since 2008, there is a fundamental right to digital privacy that entails the confidentiality and integrity of IT systems and therefore in principle protects the individual from sting operations. In Switzerland, for example, the legal setting is somewhat morecomplex because fundamental rights protection is fragmented and has to be derived from a variety of national and international norms. In both cases, the rightful use of Trojan horse programs would require the existence of both a substantial public interest as well as a clear and precise legal basis allowing investigation. Regrettably, neither of the two requirements are indisputably fulfilled. Some scholars argue that solely the fight against terrorism constitutes a sufficient public interest, while others claim the combat of extremism or organised crime to be a substantial interest as well. Furthermore, German and Swiss law have in common that possible legal bases do not address the use of Trojan horse programs specifically. General rules, such as those on telephone tapping, turn out to be too abstract and are only partially applicable. Hence,they are too weak to justify interference with fundamental rights.In consequence, the individual is–without his knowledge–confronted with illegal government action,which calls for public control and reparation.

2. MARISA N. FASSI, International Program in Law and Society "Renato Treves" (Italy)

Everyday Surveillance and Resistance: Infringement Code and Sex Workers in Córdoba-Argentina.

This paper looks at the experiences of sex workers to resist everyday's over-policing and abuses by the Police in Córdoba-Argentina. It shows the shift from individual to collective resistance in correlation with the different models of control displayed by the Police under the vague and ambiguous norms of the Infringement Code.

The Infringement Code is one of the main tools that argentinean Police has been using to govern and control vulnerable population, and can be considered as one of the main governmental techniques for expanding the Criminal State. This parallel criminal system lacks of constitutional guarantees, which allows it to co-exist with the incorporation of Human Right treaties and more specific and expansive constitutional guarantees.

In this sense, it becomes relevant to look closer to perceptions and actual experiences of individual or collective resistance to everyday surveillance by means of the Infringement Code. As the experience of this group of sex workers shows, legal discourses become both the field of legitimation of power and resistance.

This paper will be divided in three parts. First, it will explore the implications of surveillance by means of the Infringement Code and the paradoxical co-existence with a Human Rights' based constitutional system. Second, it will show the complexity of everyday resistance to over-policing in the experience of sex workers. Lastly, it will reflect on the interplay of surveillance and resistance focusing on legal discourses and perceptions..

3. LOUISE NØRGAARD GLUD, Information and Media Studies, Aarhus University (Denmark)

Mapping as Monitoring Strategy in Ghettoes

In my PhD I will conduct a mapping that enables inhabitants in the largest ghetto in Denmark to connect experiences and actions to their location. This mapping is part of a participatory design process where the aim is to create a map app that can be used in an urban planning process for this area. In relation to this I'm interested in the following questions:

• How is mapping as a monitoring method negotiated in practice?

• How can these negotiations be made visible in maps?

• How can this be used to engage residents in planning processes in marginalized urban areas?

Using a material-semiotic approach inspired by Actor-Network Theory (Latour and Hermant 1998; Latour 2005) I will investigate these questions by using the mapping as an experiment to start negotiations and render visible the translations between different actors e.g. the inhabitants, the map and the built environment. This will make it possible to trace processes where the inhabitants' descriptions are translated into design. Focusing on the negotiation of the technology opens the project towards investigating user-involving qualities in the mapping. Here I will use theories from

participatory design that makes it possible to plan and conduct a mapping that combines democracy and creativity (Kanstrup and Christiansen 2006) and which stresses that the design is a social process where citizenship is practices (Brandt 2006; Botero and Saad-Sulonen 2010).

4. KEVIN MACNISH, University of Leeds (UK)

Whose Business Is It? Authority and Surveillance

Despite recent growth in public and commercial surveillance there has been little written on the normative ethics of surveillance. Sociologist David Lyon has proposed three categories of concern, while another sociologist, Gary Marx, suggests that there are at least twenty-nine. In neither case are these categories defined or defended philosophically, and any underlying coherence or ethical theory is notably lacking. This research therefore attempts to establish the missing ethical norms for surveillance. To achieve this I am drawing on the cross-disciplinary just war tradition, which is itself informed by philosophy, theology and international relations theory (in each of which I have a masters degree).

The just war tradition clearly separates means from ends, and raises pertinent questions such as authority, intent and cause, each of which are relevant to determining the ethics of surveillance. Furthermore, while principles such as proportionality, discrimination and necessity are recognized as relevant to the ethics of surveillance by the UK Regulation of Investigatory Powers Act (2000), there is little writing on the philosophical nature of each outside the just war tradition. As such we can profitably draw upon that tradition to inform the debate regarding ethically acceptable surveillance, and in some cases are forced to turn to it for a more complete understanding of our terms. This tradition thus provides a rich, relevant and long-lived discourse on which to found an ethics of surveillance.

5. MARIA HELEN MURPHY, University College Cork (Ireland)

Emerging privacy questions and new surveillance methods – can the approach of the European Court of Human Rights provide national parliaments with an effective road-map for regulation?

Decisions of the European Court of Human Rights in surveillance cases have led to legislative reform across the Council of Europe. Changes include the reform of Article 100 of the French Code of Criminal Procedure, Spanish legislation providing a legal basis for telecommunications interception, and the UK Parliament passing the Interception of Communications Act 1985. While Ireland has avoided Strasbourg scrutiny of its surveillance regime, the ECHR has played a clear role in the formulation of Irish surveillance legislation, as evidenced by the approach of the government in formulating and debating surveillance regulation.

In spite of change, there is cause to suspect that the legislative requirements may not add up to effective privacy protection. My paper takes as a case study, the role of Convention jurisprudence in forming a rights-compliant surveillance regime for the investigative use of GPS tracking devices. The Irish Criminal Justice (Surveillance) Act 2009, which establishes a separate regime for the use of tracking devices, is particularly relevant.

The increasing pervasiveness of tracking devices in police investigation necessitates effective regulation of the technology. However, the control of GPS tracking devices raises conceptual difficulties, particularly around the right to privacy in public places. While the US Supreme Court recently chose to skirt the novel privacy issues raised by GPS tracking devices, and instead decide the case on property rights grounds,1 Convention jurisprudence would appear poised to offer a sensible solution to this question. Surveillance in the public domain can be a violation of the Article 8 ECHR privacy right "once any systematic or permanent record comes into existence of … material from the public domain." Following this reasoning, the use of GPS tracking devices is a clear Convention interference. However, as seen from the decision of the Court in Uzun v. Germany,2 Strasbourg considers GPS tracking less intrusive than other forms of surveillance and not deserving of the "minimum safeguards" as established in the interception of communications case-law. My paper considers the role the Convention can play in regulating this emerging privacy concern, and suggests an improved path that national legislators should take.

6. FILIPE SANTOS, Research Centre for the Social Sciences in University of Minho (Portugal)

The dissemination and popularization of surveillance technologies: Five case studies of criminal cases

Mediatised criminal cases generate privileged opportunities for the public to analyse the criminal justice system. However, these cases are seldom representative of routine criminal investigations or judicial proceedings. The inquisitorial characteristics of some justice systems often clash with the adversarial narratives of the media. The media contribute to the collective production of symbols and exercise influence on the representations of individuals, particularly on subjects that are more distant from their daily experiences and knowledge.

Previous studies about the social construction of representations about forensic science indicate that some of the media's discourses about criminal cases reveal exaggerated beliefs and expectations that science and technology will provide rapid and definitive answers that will lead to their solution.

Through the discussion of the selection of five mediatised criminal cases in the context of a doctoral project to be developed in Portugal, I will address some of the impacts that the use of forensic science had in their resolution, while reflecting on the media's cultural framework of reference in their coverage. I argue that the media construction of glorified images of some surveillance technologies as crime fighting technologies might facilitate the introduction and deepening of surveillance.

7. PHILIP SCHÜTZ, Fraunhofer Institute for Systems and Innovation Research (Germany)

A comparison of data protection authorities in selected EU Member States

Data protection authorities (DPAs)1 are one of the key actors not only when it comes to the execution of privacy and data protection policies but also in terms of awareness raising, consultancy and networking. Since they comprise the spearhead of regulators in the field of privacy and data protection regulation, assigned competencies as well as features such as their independence from the private as well as public/political sector become of the utmost importance.

The EU Data Protection Directive 95/46/EC, which passed the European parliament in 1995 after years of intense negotiations, represents the first international binding and most comprehensive framework of regulations on the protection of personal data worldwide. Although the Directive foresees certain key tasks for DPAs and specifically states that they "shall act with complete independence in exercising the functions entrusted to them" (Directive 95/46/EC, art. 28, para. 1), Member States were given a certain degree of latitude in transposing the provisions into national legislation.

That is why the actual role of DPAs as well as their independent status vary to some extent significantly from country to country. Embedded in a dissertation project that is dedicated to a comparative analysis of DPAs, this contribution wants to identify and discuss these formal and de facto differences, also shedding light on the latest findings including field research in the United Kingdom that was sponsored by a Short Term Scientific Mission of LiSS COST Action.

8. AIKATERINI YIANNOUKAKOU, University of Macedonia (Greece)

Electronic Government: Legal Aspects & Applications

My doctoral thesis discusses the subject of the legislation that governs the full scale implementation of electronic government and the transformation of the public administration's infrastructure to a more citizen-friendly one. The primary target of the thesis is to present the transfer of European Union's legislation to Greek national law with a distinctive reference to personal data and the citizens' right to access government information. In parallel, a comparative analysis of the legislative history that formed the existing statutory and regulatory framework of United States, European Union and Greece is illustrated.

The first part of the thesis includes a general introduction to electronic government defining its characteristics, pointing out its prons and cons, and marking the transformation of the public sector's functions by the introduction of Information & Communication Technologies (ICTs) and modern business models. The second part refers to the legislation framework of United States related to electronic government adopted since the first Clinton Administration in 1992 and onwards with references to earlier laws, where it is considered as necessary, as well as examples of good and/or bad practices of implementation.

Following to the third part, I refer to the most prominent EU legislation adopted by European Commission regarding electronic government and the introduction of ICTs for enabling the optimization of European citizens' life and economic growth as being envisioned in Information Society layout and materialized via a number of Directives and Action Plans.

The last part is being composed by the delineation of the Greek legislative status quo regarding electronic government, and especially how EU legislation has transcribed to Greek legislation and regulation commencing from the White Paper "The Greek Strategy for an Information Society: A Tool for Employment, Development and Quality of Life" in 1995 and reaching the newly institutionalised Law 3979/2011 on Electronic Government along with commentary on whether the Greek legislation has evolved enough to encompass all the needed measures and make the necessary arrangements in order to enable the modernization of public administration and the introduction of Greece into the electronic government era. Finally, there is an evaluation of the legal progress Greece has

made so far on the issue of electronic government comparing to the rest of EU Member-States and the United States.