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## Testing the Democratic Credibility of an NSA (No Secrets Allowed) Government

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## **Introduction**

Globalization is a complex, historically-driven process. At its most basic understanding, globalization can be seen as the shrinking of the world's real and virtual boundaries (Eitzen & Zinn, 2009). It is characterized by greater ease of access to physical locations throughout the world and an increased level of integration by the world's corporate and political leaders (Hebron & Stack, 2011; Eitzen & Zinn, 2009). As ease of access to other countries continues to increase, borders can be said to dissolve. One dimension in which this has particularly been the case is with regard to telecommunications. Telecommunications occur when information and/or conversations are being shared across vast distances through the use of electronic devices (Shapley, 1977). Examples of telecommunications include e-mailing, phone calls, radioing, and any other form of communication that uses electronic signals. The essential characteristic of these communications is that they are done at a distance and, because of globalization, can include more than one country (Shapley, 1977). Since these communications can affect multiple nations, the government has expressed an interest in monitoring the information that is shared using them.

In explaining their interest, government representatives have stated reasons of national security and monitoring criminal activities (Eddlam, 2013). Since this necessarily means that governments will be monitoring activities that are not yet illegal (and may never be illegal) there is a necessary contradiction with democratic rights. With this in mind, globalization can be said to threaten the integrity of democracy with the introduction of new intelligence-gathering organizations that have been created in order to keep up with the rapidly shrinking virtual world. The integrity of democracy has been threatened through their invention because there has not been the transparency required of a democratic government in these organizations, because their

increased presence has resulted in the breaching the human rights of American citizens, and because the government's actions in relation to these organizations have been contradictory to the ideals of democracy. Before addressing these main points, it is important to first understand what type of democracy will be hereafter discussed.

Democracy at its most fundamental level is the rule by and for the people – the equal representation of the wishes of each individual person within a sovereign state (Macpherson, 1965). For reasons of simplicity and availability of research, this paper will focus on the liberal democracy practiced in the United States. Liberal democracy exists where the political system of democracy is combined with the attributes of liberalism (Macpherson, 1965; Fichtelberg, 2006). A democratic society will include free elections, the rule of law, and the ability to choose between multiple different political parties (Marable, 2009; Rose, 2009). Liberal attributes relate to human and civil rights as well as political freedoms (Macpherson, 1965). Liberal societies allow citizens the freedom to vote (or not) for whichever political party they may choose. In many liberal democratic societies, these rights are drawn from codified legislation and especially constitutions that dictate what the fundamental rights of citizens are that must be respected (Rose, 2009). It is assumed that through exercising these rights, citizens will be appropriately represented by the individuals they elect to govern them and to produce legislation that will accurately represent the desires of the majority (Rose, 2009). The way that an elected government behaves in its everyday functions, as well as under special circumstances as in times of war or likewise, should always take into account the needs of their citizens and respect the rule of the majority. Additionally, it is important for a democratic government to have transparency as one of their guiding principles so that their citizens can remain informed about

what is happening in their society. At least, the aforementioned characteristics are what a liberal democracy should ideally adhere to.

Although these remain the ideals of liberal democracy, globalization has created a problematic situation in which the rights guaranteed to citizens of the United States are not being extended to them by their government. In an effort to be proactive rather than reactive against possible international, criminal attacks, the American government has been increasingly surveilling the actions of their citizens (as well as citizens of other countries that have any known association with the United States) without consent both virtually and in real life (Eddlam, 2013). In order to have a solid understanding of the type of surveillance this situation entails, it is important to be aware of the relevant Sociological theories related to the topic.

## **Theory**

A model of surveillance that coincides with the current situation was first addressed by Jeremy Bentham in his description of the panoptic prison system. A panoptic prison system is created when prison cells encircle a central watch station (Miller & Miller, 1987). Within the watch station (or observatory) is a group of guards that may be watching any given prisoner at any time (Miller & Miller, 1987). The intriguing aspect of this system is that, since the prisoners are not aware of when they are actually being watched, they are self-conscious of the fact that they *could* be observed at any given time (Miller & Miller, 1987). As a result, they use self-control at all times even when they do not actually have anyone watching them. It is a system that has been developed so well that prisoners moderate their own behaviour rather than needing a guard to be physically present in order to do so (Miller & Miller, 1987).

Michel Foucault built on Bentham's theory in the 1960s in describing the way that society is controlled by an unseen, ever-present power. The panoptic system of discipline did not

exclusively apply to the prison system. Rather, it could be seen in schools, shopping malls, and all other aspects of social life. Foucault describes this type of society as the “disciplinary society” (Caluya, 2010). Essentially the idea is that there are always members of societies and surveillance cameras that could be monitoring anyone’s behaviour at any given time (Caluya, 2010). In the twenty-first century, Foucault’s work may actually be more widely applicable than it has been in the past to the United States because of globalization and technological advancements. The feeling that an individual is constantly being watched in the public realm is extended to the private realm through governmental surveillance of phone and internet usage (Caluya, 2010). Citizens who once had sanctuary from constantly having to be self-aware of all actions have now lost this “privilege” in the name of “proactive” policing. Although these methods may be considered beneficial by some in that they have the potential to reduce crime, they are being utilized in a way that is not consistent with the aforementioned ideals of democracy. These methods of domestic surveillance that have just been described are highly invasive and do not allow the American public to have the level of privacy that they were once accustomed to. Although Foucault’s work related to panopticism was not written in this century, its core ideas are still highly applicable to this day beyond what he had theorized at the time. In particular, they can help to explain how the government’s arguably unnecessary and invasive surveillance of citizens infringes on their democratically codified rights.

### **Human Rights Violations**

Since human and civil rights are fundamentally important to a democratic system, violation of these rights can be said to be undemocratic (Shapley, 1977). The most obviously applicable federal legislation with regard to domestic surveillance is that which details citizens’ fourth amendment rights under the United States Bill of Rights. The fourth amendment of The

Bill of Rights states that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...” (U.S. Const. amend. IV). It is known loosely as the right that upholds a reasonable expectation of privacy, ensuring that personal property cannot be rifled through or taken as evidence without just cause. Additionally these privacy rights are granted by the Universal Declaration of Human Rights of 1948, which the United States supports, in Article 12 where it is stated that, “[n]o one shall be subjected to arbitrary interference with [their] privacy, family, home, or correspondence... Everyone has the right to protection against such attacks.” This Article, as endorsed by the United States, clearly expresses that American organizations should not lawfully be allowed to obtain personal information through data surveillance in ordinary circumstances. These laws, as democratically approved, clearly show that the majority of the American population is not okay with unnecessary collection of their personal information, and therefore it should be illegal for the government to engage in this behaviour.

Through these examples of legislation it is clear that the United States has agreed to protect the rights of their citizens. Unfortunately, what this indicates in theory has not always translated to reality. American citizens’ rights to privacy have been violated time and time again, yet the American government claims that it has been for a good reason. In order to justify a breach of citizens’ fourth amendment rights, the President of the United States has to believe that there is a genuine emergency situation where there is a threat to national security (Seamon, 2007). Claiming that there is a threat to national security is not an unusual tactic governments employ to gain support for policies. Putting focus on “terrorism” and “national security” diverts attention from other pressing matters and rallies support for the government (Collins, 2002). Immediately after the terrorist attacks of September 11<sup>th</sup>, 2001, then-President George W. Bush

could arguably have been justified in his decision to breach his country's fourth amendment rights by violating the privacy of American citizens in order to secure his nation against threats to national security (Lyon, 2004). These terrorist attacks were the first time that the United States had been under attack on their own territory and so claiming an emergency situation would make sense (Chomsky, 2001). Of course, by the very definition of what an "emergency situation" is, now-President Barack Obama cannot be justified in clinging to his excuse of national security reasons in allowing the continued invasion of privacy for American citizens (Seamon, 2007). An emergency situation is not one that spans a period of thirteen years, which is the amount of time that has passed since the aforementioned terrorist attacks occurred. Even if the threat of a possible future terrorist attack does still exist, it is certainly not an emergency situation that calls for the immediate suspension of American's fourth amendment privacy rights. The truly confusing aspect of this situation, then, is figuring out why the American population continues to allow their freedoms to be infringed. Under the adversarial idea of "innocent until proven guilty", it would appear that the idea of domestic surveillance goes against the very nature of American political and legal ideology.

It is largely through the use of doublespeak (language used to intentionally distort the actual meaning of what is being said) that the government continues their domestic surveillance without mass uprisings (Allahar, 2011). The government employs these tactics to promote their own ideologies – their systems of beliefs that are emotionally charged and shape the way that they view the world (Allahar, 1998). Using doublespeak adheres to the ideology of, "what the country doesn't know won't hurt them". When the government prevents citizens from having a true understanding of the types of surveillance that actually occur, it is far easier to obtain their misguided consent (Allahar, 2011). For example, using the term "classified information" to

describe information that the American government does not want the public to know about is a type of doublespeak because it creates a distortion between what is being said and what is truly meant. There are multiple definitions for the word “classified” and the term sounds far more sophisticated and less controversial than referring to information as “secret”. Another example of related doublespeak is calling domestic surveillance and spying techniques “gathering intelligence”. This relabeling of the term makes the practice seem as though it has no downside. Most people in America would assumedly agree that it is better to have intelligence than the alternative whereas there would be a much more heated debate as to the validity of “spying on American citizens”.

### **Transparency**

Having these rights codified and available for all citizens to see lends itself to one of the most important aspects of a liberal democratic government – transparency. Transparency is achieved when the ongoing actions of the government are made publicly available (Moore, 2011). Behaviours are not hidden and the government is not allowed to go against the laws that are democratically enforced. Contrary to the second essential aspect of a democratic government, transparency, the American government has used transnational crime as an excuse to engage in domestic surveillance of their citizens without even informing the population that these actions were being taken. Perhaps the most controversial organization with regard to gathering data on American citizens through domestic surveillance is the National Security Agency (NSA). The NSA was official formed in 1952 as an organization that would be responsible for aspects of national security related to communications (Seamon, 2007). Originally the mandate of the NSA states that the organization was exclusively created to engage in foreign surveillance. This original mandate is what the public was made aware of and what they believed that the NSA’s



task-description entailed (Seamon, 2007). The turning point for the NSA's transparency was after the terrorist attacks of September 11<sup>th</sup>, 2001. Prior to these terrorist attacks there was no evidence that the NSA engaged in domestic surveillance. After the bombing of 9/11 occurred, the NSA began using their state of the art technologies to focus on electronic communications between American citizens on their home soil (Seamon, 2007). The American public was not initially made aware that the NSA was actually engaging in mass surveillance on their domestic communications. It was not until a former-employee of the NSA, Edward Snowden, illegally released thousands of classified records that the public was made aware that they were being watched (Baker, 2013).

Since the American government was not willing to make what the NSA was up to publicly accessible, Edward Snowden took it upon himself to reveal their unconstitutional behaviour (Baker, 2013; Tucker, 2013). Edward Snowden is an American who was formerly employed by the Central Intelligence Agency (CIA) as well as the NSA for his work with computer intelligence and security. His job description while working for the NSA required that he seek out new ways for the government to hack into communications around the world that were done through the Internet and by phone (Tucker, 2013). Although extremely dangerous for him to do so and at great personal loss, Snowden made the decision to leak "classified" NSA documents to the American public in order that they could be aware of the amount of domestic surveillance that they were and are subject to every day (Baker, 2013; Tucker, 2013). As an American citizen and a major proponent of democracy, Snowden believed that it should be up to the American public to decide democratically what level of government surveillance was acceptable and what amount of invasion into their privacy they would be willing to accept (Tucker, 2013). Snowden did not believe that the level of transparency that had been in the NSA

since the terrorist attacks of September 11<sup>th</sup>, 2001, adhered to the ideals of democracy and it was as a result of this that he jeopardized his own life in order to expose the undemocratic activities of the NSA.

In a press conference at the beginning of 2014, President Barack Obama has stated that he recognizes a need for there to be “concrete and substantial reforms” with regard to intelligence gathering (Obama, 2014). In particular, Obama stated that the government needed to provide greater transparency in their surveillance activities and that he is personally confident that they will be able to create a plan that addresses and remedies the civil liberties concerns of U.S. citizens (Obama, 2014). As great as this sounds, it is important to bear in mind that the NSA has had express permission from the federal government of collect intelligence through domestic surveillance practices for the past thirteen years. If Edward Snowden had not leaked information about the NSA’s behaviours to the public, there is no way of knowing whether President Obama or the NSA would have ever come clean about their undemocratic practices. The fact that President Obama has recognized the need for reform indicates that he knew wrongdoings were occurring and that he allowed these to occur without considering how undemocratic the practices have been.

### **Government’s Actions**

Another fundamental question to ask with regard to domestic surveillance is what the government could possibly be doing with so much stored data. Upon filtering through the everyday, mundane conversations of the American public, they must decide which people’s conversations are potentially those of terrorists and why it might be necessary to maintain a record of all past telecommunications. Beyond the previously mentioned issues that domestic surveillance has in being compatible with democracy (failing to provide transparency and

infringing on human rights) issues of illegality have arisen with regard to how collected “intelligence” has been used and to whom it has been given.

One troubling example of this is the exchange that occurred between the NSA and the Israeli Sigint National Unit (ISNU). A deal was struck between the two organizations where the NSA provided the Israeli intelligence with raw, unfiltered data about American citizens (Hanley, 2013). In our post-industrial world, the ability to trade information and knowledge has become of utmost importance (Allahar & Côté, 1998). Because of this, these are the things that the NSA has been trading. Although the explicit purpose of the trade of information was not intended to be delivering American citizens’ information on a silver platter, this was unfortunately a secondary function of the deal. In an effort to “protect” the fourth amendment rights of American citizens, the NSA and the ISNU signed a Memorandum of Understanding that explicitly details the terms of the two intelligence agencies’ agreement (Hanley, 2013).

Under the Memorandum of Understanding, Israel is not allowed to use any information provided by the NSA to intentionally target any U.S. citizen, to intercept American communications, or to, in any other way, use the information that the NSA has been providing to the Israeli intelligence to negatively affect U.S. citizens (Hanley, 2013). Unfortunately, Memoranda of Understanding are not always legally binding documents and this particular one would be substantially more credible if it did not explicitly state in the final section of its stated purpose that, “[the] agreement is not intended to create any legally enforceable rights and shall not be construed to be either an international agreement or a legally binding instrument according to international law” (Hanley, 2013). Essentially what this clause indicates is that this agreement is an understanding that these two countries have reached, but neither country is legally obligated to uphold their end of the agreement should they change their intentions.

Therefore, not only has the NSA undemocratically decided to spy on American citizens, they have also decided to trade the collected intelligence from domestic surveillance with other countries without forming any legally binding agreement that the traded information cannot be used against U.S. citizens. Although it would be nice to be able to say that this was an isolated occurrence, it is stated within the Memorandum of Understanding between the NSA and the ISNU that the NSA also has other similar agreements with Australia, Canada, New Zealand, and the United Kingdom and that, because of the vast amount of data that the NSA has about citizens of these six countries, the “requirements” of the ISNU to treat data about U.S. citizens with discretion should also be extended to citizens of these other countries (Hanley, 2013).

Actions like these on the part of the government not only discredit the way that their “democratic” political system operates, they also perpetuate a “culture of mistrust” among their citizens (Elshtain, 1993). Because democracy is the literal representation of the people, it is important that American citizens continue to have faith in their political leaders. A culture of mistrust is created the the government experiences a scandal (Elshtain, 1993). In this instance, if it were widely known that the personal information of U.S. citizens was being shared with countries around the world it could easily result in Americans no longer trusting their government. When this happens, civic participation in society decreases and people become cynical about the government (Elshtain, 1993). True democracy requires the active participation of all members of a society and for people to care about having their opinions heard (Elshtain, 1993). With this in mind, the creation of mistrust by the NSA (and federal government) by sharing personal information about U.S. citizens clearly demonstrates how the United States’ government was not acting in a way conducive to a true democracy. Eventually if the mistrust continued, it would be possible that the democratic system could fail altogether and all

individuals in society would begin to pursue their own personal interests at the expense of those around them (Elashtain, 1993).

### **Closing Remarks**

A common argument in favour of the NSA's actions regarding domestic surveillance is that citizens who are not doing anything wrong can only benefit through being surveilled. They do not see a downside to the American government collecting data through monitoring their phone calls and electronic correspondence. This paper sought neither to side with or against the idea of constant domestic surveillance. Rather, the intent of this paper was to show that the government's actions as a product of both globalization and the terrorist attacks of September 11<sup>th</sup>, 2001 have been undemocratic. If American citizens are to agree that the government should be able to infringe upon their fourth amendment rights in favour of the "greater good" of protecting national security – that is certainly their prerogative. However, in a liberal democratic society where the will of the people is meant to be representation by way of majority vote and proper, fair representation, this is a decision that should be made democratically and with the public's fully-informed opinions accurately represented.

Recognizing the flaws of a political system is an important step along the road toward fixing these problems. In the case of the democratic political system of the United States, the problem that seems to exist is whether domestic surveillance, as implemented by the NSA, is an undemocratic behaviour or not. Because of limitations related to time, money, and access to important sources of information (personal connections, classified information, etc.), this paper cannot exhaustively demonstrate whether the actions of the government and the NSA have been undemocratic. There are necessary restrictions on human and civil rights in democratic societies that are meant to operate for the "greater good" and it is possible that this has been the case in

reference to domestic surveillance. However, based on the publicly available research, this paper has provided evidence for the argument that the NSA's decision to engage in domestic surveillance without the public's knowledge did not comply with the ideals of democracy. This behaviour was counter to the ideal that a liberal democratic government needs to be transparent in its operations and was contradictory to the democratically created privacy laws. Not only were these privacy laws ignored and human rights infringed upon, but the actions of the employees of the government and especially the NSA have been undemocratic themselves by acting in ways that would be illegal for any other common American citizen. Because of these facts, it can confidently be said that the domestic surveillance utilized by the NSA and the American government has been undemocratic and even, at times, illegal. Perhaps the best way to end this discussion is with a quote from 1755 by one of the founding fathers of the United States – Benjamin Franklin. Franklin exclaims that, “[t]hey that can give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety” (Dinh, 2002). It may not wise for American citizens to give up their essential liberties to the collective population since this could likely result in a worse situation than they started with. As the debate between the values of privacy as compared to “national security” continues to unfold, it will be important to stay conscious of the fact that the two ideas are not mutually exclusive and that they are each valuable in their own right.

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U.S. Constitution, amend. I § IV.