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### Surveillance and democracy

*Sympathies and antagonisms*

Ball, K.; Bellanova, R.; Webster, W.

#### DOI

[10.4324/9781315638355-1](https://doi.org/10.4324/9781315638355-1)

#### Publication date

2019

#### Document Version

Final published version

#### Published in

Surveillance and Democracy in Europe

[Link to publication](#)

#### Citation for published version (APA):

Ball, K., Bellanova, R., & Webster, W. (2019). Surveillance and democracy: Sympathies and antagonisms. In K. Ball, & W. Webster (Eds.), *Surveillance and Democracy in Europe* (pp. 1-15). (Routledge Studies in Surveillance). Routledge. <https://doi.org/10.4324/9781315638355-1>

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# 1 **Surveillance and democracy**

## Sympathies and antagonisms

*Kirstie Ball, Rocco Bellanova and William Webster*

This book examines surveillance practices through a participatory theory lens. It considers cases of three different surveillance practices across Europe: Automatic Number Plate Recognition (ANPR), credit scoring and Neighbourhood Watch. Each practice implicates a wide array of individuals, groups and organisations, laws, technologies, and social, cultural and political processes. Our purpose is to consider what is produced by the application of a participatory lens to the analysis of these arrangements. We consider which phenomena are newly foregrounded in the analysis. We consider the levels of analysis that become significant when a participatory lens is applied and we consider the types of conceptual framing and methodological thinking necessary to produce such an analysis. In conducting the analysis we show that issues of institutional boundary porosity become important; that a consideration of rights from first principles and an awareness of the consequences and harms of surveillance practices are crucial for different parties to realise their vested interests in surveillance practices. In examining the multiple levels of analysis suggested by studies of participation, we shed new light on the problems posed by surveillance, the identity politics that surround it and the institutional conditions of possibility for alternatives.

In making this excursion there is one position that we are keen to avoid. It is tempting to start from a normative position where the term “participation” has positive connotations and is seen as a “good thing” which empowers citizens, and where the term “surveillance” is seen as something threatening that may limit fundamental human rights. This is, of course, far too simplistic: each has enabling and constraining potentials; each exhibits opportunities as well as challenges. Instead, we start by acknowledging that surveillant relations and participatory relations denote two spaces of power relations which shape the worlds in which people live. At times their norms and practices intersect, at others they are co-joined and evolve together and they can also be counter-posed and antagonistic.

The complex nature of participation becomes clear when one considers the number of senses in which the term is used. Participation can be a method, a

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process and an end in itself: a state or situation for which to strive. In everyday terms participation can have narrow or broad connotations. In an online, or “onlife” (Floridi, 2015) society, screen-based interfaces provide services that often demand two-way interaction. Such services not only provide information to the user, they also take information from the user to inform the development of the service. The user participates in service development by providing data. The word participation is used here in a very narrow sense. Such services have, however, facilitated wider forms of participation as well, from flash-mobs to protests.

When looking at participation from a political perspective, the term covers questions of representability, inclusion, exclusion and responsabilisation. Participation is by definition core to the very idea of democracy – that citizens participate in the decision-making process which determines the allocation of resources in society. This can take place via a range of mechanisms, from voting, to contributing to public debates, or being directly consulted about public policy and services. When it comes to bottom-up, citizen-initiated initiatives, participation relates to a sense of being included, of multiple voices and viewpoints being heard. More political-economical uses of the term would refer more to having a stake or interest in a particular process. In its idealised form, participation is the lifeblood of the demos and a vibrant democracy will have an informed and engaged citizenry.

From a cultural perspective, the term invokes different interpretations. In the Netherlands, for instance, participation has been used recently to denote a time of a retracting government, pushing responsibilities for public services back onto citizens with the rubric of promoting a participatory society.<sup>1</sup> The term participation in this case has been used in a newspeak-like manner, masking its true and opposite meanings. To participate in this sense means citizens have to rely less on government and to do more on their own. In social science, the term participation is used to describe a field of methods in different strands of social science research, under the header participatory methods (Whyte, 1991; Tolman and Brydon-Miller, 2001). One of the main foundational principles of these methods is inclusion of stakeholders in a particular scientific, technological or organisational practice, with the aim to democratise that practice. Undoubtedly, the term participation is closely linked to how societies are organised politically and democratically. It appears to refer to inclusivity, plurality of voice and ways in which multiple interest groups interact to co-shape their worlds. It is closely allied to configurations of political-economic power and also implies a longer-term or continuous process within a democratic society, rather than, for example, a discrete moment such as voting. Participation is something one does multiple times, or maybe even constantly: to be a citizen is to participate.

Crucially, participation is a concept which may enliven debates about surveillance as it challenges both the opacity of surveillance processes and the way in which surveillance processes concentrate power. The multiple intersections between surveillance and participation deserve empirical attention.

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Until the emergence of social media, participation was an issue rarely addressed in studies of surveillance and in practice was limited to the user-centred design of new technology. Concepts such as “lateral surveillance” (Andrejevic, 2004) or “synopticism” (Mathiesen, 1997) widened the research focus beyond the top-down forms of surveillance. However, before the use of online platforms became an everyday activity, citizens’ participation in surveillance was considered marginal. Surveillance itself is now organised as participatory, either directly or indirectly, as millions of people around the world choose to share personal information on interactive web platforms (Bruno, 2012). This information is exploited for marketing insight and in some countries is mandated by law to be made available to law enforcement and national security services. Beyond social media, however, participation and surveillance are already entangled, as the three practices presented in this book will demonstrate.

#### **Participation and surveillance: a contemporary analysis**

Contemporary digital transformations are affecting the way in which both surveillance and participation are constructed, with profound implications for both. A number of authors have already examined this relationship (for example, Haggerty and Samatas, 2010; Huysmans, 2014). We acknowledge the contribution of and build upon these analyses. In particular we draw on Huysmans’s (2014) argument that democracy becomes “at stake” as security policies threaten to hollow out human rights, compromise privacy and out-flank rights to question, challenge and scrutinise. The problematic intersection between surveillance and democracy arises when surveillance becomes the means to get things done and – in Huysmans’s terms – enacts the limits of democratic processes and institutions.

Surveillance and democracy enact each other’s limits in a number of ways. The first is the way in which surveillance practices can compromise democratic rights (Wright and Raab, 2014). While surveillance practices can act as gatekeepers to manage risk, the sifting and sorting of populations inherent in surveillance practices can endanger rights, opportunities and life chances because of its distributive justice consequences. Surveillance techniques can distribute access to resources throughout the population, but the decision criteria driving these distributions – particularly if they are automated – are quite opaque and difficult to challenge (Haggerty and Samatas, 2010). Surveillance techniques and technologies tend to develop in the commercial realm, in response to commercially sensitive issues that are not subject to public scrutiny or political debate, so are not always as publicly accountable as they might be. Consequently, regulatory issues are not always fully considered during the development of surveillance technology even though excessive surveillance can compromise privacy by exposing individuals and their lives in great detail. Surveillance works as organisations of different types gather, store process and analyse digital data. Organisations which

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surveil, both public and private, find themselves the reluctant guarantors of data protection and privacy rights, among other things, by virtue of the fact that they collect and analyse information about people and phenomena of interest.

The second is the way in which surveillance practices can simultaneously underpin and undermine democratic processes. Surveillance capacity runs through the information infrastructures which, for example, help to target welfare at the most needy, facilitate democratic participation through voting and distribute public resources efficiently. Surveillant security measures are established in order to protect democratic institutions so the stability and security which are required for a modern democracy to function – and in which citizens may participate – can be generated. Yet surveillance can erode the institutional trust required for democratic governance. Fear of having one's opinions, movements or activities monitored can quash debate within targeted groups in both authoritarian, post-authoritarian and in democratic societies.

Third, surveillance also affects the nature of participation in different spheres of life, liberating some and constraining others. Within the domain of traffic enforcement ANPR delimits the mobility of those associated with a suspicious vehicle or who are recorded as being of interest to a police investigation. Within the domain of consumption, the financial surveillance of creditworthiness and the surveillance of consumer loyalty delimits who may participate in the consumption of various goods and services. In the peer-to-peer world of Neighbourhood Watch, identity politics spring into life to determine who is welcome and accepted in different neighbourhoods and who attracts suspicion. As citizens and consumers become more aware of how their actions and communications are monitored, surveillance can alter the forms and nature of public participation in all sorts of arenas.

It is not, therefore, a novel idea to suggest that modern society is a surveillance society, where surveillance, facilitated by information and communication technologies (ICT), is increasingly embedded in social structures and practices and is consequently shaping everyday life (Lyon, 2001). But it is novel to examine how intersections between surveillance and participation force the question as to who is participating in the status quo, on what basis and with what effect. A number of recent developments exemplify these points.

*The electoral process.* New ICT is changing the way that elections are fought and the ways in which citizens engage and participate in the democratic system. Controversy has arisen in elections where mass datasets govern who may participate (Bennett, 2015). Voter relationship management has emerged as a means by which political parties may target messages at different sections of the electorate. Russia has allegedly used social media to shape public debates around the US presidential election and the UK's referendum vote to leave the European Union ("Brexit").<sup>2</sup>

*The increasing frequency of data breaches and the paltry sanctions regime.* A recent National Audit Office report in the UK (2016) reported that the 17 largest

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government departments were responsible for 17,000 data breaches in a calendar year, of which only 14 were considered significant enough to report to the UK Information Commissioner's Office (ICO). Allied to this, the ICO reports fines totalling £3.2 million in 2016 for data protection law violations.<sup>3</sup> These reports highlight an ongoing struggle between those creating and using (and losing) data and those responsible for governing its use.

*The emergence of post-Snowden legislation.* Following the revelations by Edward Snowden that a number of governments have introduced new legislation to enhance their surveillance powers, new statutory measures have been implemented in a number of countries, including China, Russia, the UK, the USA, Turkey, Ethiopia and Poland. These measures have extended state access to private data through back doors and the mandatory sharing of encryption keys. They have also given authority for excessive data retention and relaxed state spying and data protection laws. In 2014 the European Union Court of Justice declared the "data retention directive" invalid, which compelled all communication service providers to store location and traffic data concerning their customers, so to permit, upon request, access by law enforcement authorities. Yet, national governments and the European Commission have done little to bring their legislation in line with the judgment or to provide clear rules about the storage of communications metadata.<sup>4</sup> In 2017 the Italian government allowed companies to store metadata for six years, which is three times the maximum allowed by the data retention directive. By contrast the UK's Investigatory Powers Act demands storage for one year only.<sup>5</sup>

*Ubiquitous computing, artificial intelligence (AI) and the internet of things.* Contemporary surveillance is ingrained in a number of everyday technologies, including smartphones, internet routers, social media, cars, as well as in practices associated with eGovernment, smart cities and big data. Citizens leave extensive data trails as they go about their everyday business. Much of this is personal data used by private companies for commercial purposes, and it is difficult for users to uncover who or what is exploiting their data and within which regulatory regime they are entitled to claim protection. Furthermore, the resilience and security of "ubiquitous computing" devices have, on occasion, been called into question. The life-threatening consequences of hacking of cars, fridges and insulin pumps has caused particular alarm, and has prompted calls for security and privacy to be considered much earlier in the device design process.<sup>6</sup>

*Opaque automation processes.* The rise in technological capacity and sophistication has led to opaque computerised processes which determine surveillance practices, product offerings and service outcomes (Degli Esposti, 2014). Practices associated with "big data" or data analytics rely on complex computer programming and algorithms which are impossible for most people to comprehend (Andrejevic and Gates, 2014). Indeed, the outputs of some machine learning algorithms cannot be predicted by their designers, merely interpreted post hoc (Kitchin, 2014). If computer scientists cannot explain the

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likely results of algorithmic surveillance, then how can other social actors and institutions ensure that these algorithms do not have inbuilt biases? How may they be held to account where they determine life chances (Pasquale, 2015)?

### **The participatory lens**

The approach taken in this book is to utilise a participatory lens to analyse the consequences of the harm and controversies caused by surveillance practices. The book features five interlocking notions which will shape its arguments and form the basis for its conclusions. The first is that surveillance practices are nuanced, even banal, as they take place at multiple levels and configure relations of power between watching and watched actors (Bellanova et al., 2010). The second is that surveillance is an organising principle embedded within the processes which enable everyday activities to take place. It has become part of the way things get done and accordingly imparts benefits and opportunities as well as harmful consequences. The third is that surveillance practices and participatory practices have co-evolved and in many ways are inseparable, sometimes existing in tension and at other times in harmony. The fourth is that a focus on surveillance controversies enables the analyst to reveal traces of this co-relation and to understand how it plays out. The fifth, and final theme, is that a multi-level analytical focus on surveillance controversies and their consequences also enables closer judgement to be made about the relative desirability of surveillance practices and the relative robustness of participatory processes that intersect with it. These themes are explored in three empirical cases described later in this chapter.

The participatory lens that we deploy in this book rests on the diverse and complementary ways in which participation as a concept is mobilised in the political science and public administration literatures. Although it has always been a core concept and practice underpinning modern democracies, it takes a variety of forms. In the representative democratic system participation could be understood as being limited to voting in elections and referenda. Citizens vote for representatives who are responsible for executing decisions and allocating scarce resources on the public's behalf and with its formal legitimate authority. There has also been scope to contribute to public discourse about public policy and services in a wider sense. From the 1970s onwards there was considerable interest in complementary forms of participation and engagement, including mechanisms for consultation and ways of garnering public opinion. Debate has arisen over which form of participation promoted true citizen empowerment and which has borne only lip service to such an idea. Some participatory theorists concluded that direct democracy only occurred where citizens were directly involved in decision making. In recent years there has been a resurgence of interest in participatory mechanisms that can be realised through new ICTs, be it voting via mobile phones, discussion forums or mining social media to gauge public opinion. Questions here revolve around the type of participation that ICT engenders. It is evident that participatory theorists see

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participation as a “good thing” and healthy for democracy because it provides for an active citizenry and legitimises decisions and democratic institutions. A number of pertinent concerns, however, have arisen.

One such concern is how to maximise engagement and how to engage all citizens effectively. This is because the effectiveness of participation depends on who is engaging, with whom, for what purposes and under what rationale. Another is that in practice participatory processes are not neutral, they are spaces where vested interests are at play and where power is exercised. When surveillance practices are viewed through participatory lens, we can see whose interests are bound up in the surveillance process and which stakeholders are at play. Many participating actors have a stake, or vested interest, in the way that surveillance unfolds. Yet its routinisation and ubiquity rarely trouble these interests overtly. How are these interests represented, and how are harms remedied? What is consensually an acceptable surveillance practice? How might those mechanisms of influence be enacted, and by whom? Because of the unequal power distribution between stakeholders, there are differences in who can demand transparency, in other words, who has access to which resources and networks to render a surveillance practice transparent and accountable to their satisfaction. Moreover the design of the surveillance practice may diffuse its controversial aspects and marginalise contestation. And there are, of course, dynamics in whether or not the watched can ever negotiate the terms of surveillance practices with watchers. This raises the question of whether the power of surveillance can be interrogated or challenged by the notions and practices of participation, whether the vested interests influential in facilitating participation are at odds with or complementary to the vested interested embodied in surveillance power.

#### **Research design and method**

The book focuses on one theoretical question and three sub-questions. The primary focus concerns whether and how surveillance and democracy can enact each others’ limits. The three sub-questions concern: first, whether there is evidence that surveillance practices are harming privacy, other rights and delimiting participation opportunities; second, the extent to which surveillance practice can be held accountable and rendered transparent to stakeholders, including the citizenry; and finally, the extent to which they can be co-determined. The questions are addressed through the analysis of three empirical case studies of surveillance practices undertaken in 11 European countries: Automatic Number Plate Recognition, credit scoring and Neighbourhood Watch. Taken together the case studies represent incidences of state-citizen, corporation-consumer, and peer-to-peer surveillance.

#### ***Automatic Number Plate Recognition***

ANPR is a surveillance practice in which digital closed-circuit television (CCTV) cameras capture images of vehicle registration plates. These images



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are then matched to government vehicle licensing and other databases which contain information pertaining to the ownership of the vehicle, whether it is insured or whether it has been marked as suspicious in any police investigation. ANPR is also used to administer car parking and road toll charges. Users of ANPR are thus not only public bodies such as the police, city and regional municipalities and national government agencies, but also private companies that compare images from the cameras with their own customer databases. Fixed or mobile cameras can be used as part of an ANPR system and it can be deployed in an overt or covert way, depending on the legal regulation under which it is deployed. In Chapter 4 we explore how ANPR is used in the UK, Slovakia, Germany and Belgium.

### ***Credit scoring***

Credit scoring is a surveillance practice whereby financial services companies that are lending money calculate the “creditworthiness” of their customer. A customer’s credit score helps to determine whether a loan should be made and the interest rate that is offered. Credit scores are derived from statistical and data-mining techniques and are primarily concerned with historical information. Here we focus on credit scoring in relation to consumer, rather than business finance, because credit scoring decisions tend to be automated and human decisions seem to be the exception (which is not always the case in business finance). In contrast with its origins, credit scoring based on non-automated human decisions is treated as highly biased because it depends on the subjective know-how and experience of the credit manager. In Chapter 5 we explore credit scoring regimes in the UK, Norway, Italy, Hungary and Austria.

### ***Neighbourhood Watch***

Neighbourhood Watch is conceptualised as a “horizontal surveillance practice” where citizens watch each other. In the Anglo-American tradition, Neighbourhood Watch comprises informally organised local neighbourhood groups looking out for all kinds of wrongdoing, in the spirit of community safety and to assist law enforcement agencies. However, in Austria, Germany and Spain these kinds of social practices signify the local spying that took place in fascist or authoritarian totalitarian regimes of the past. In this case study we explore the operation of “Neighbourhood Watch-style” schemes in Austria, Germany, Spain and the UK.

### **Surveillance, participation and controversies**

The case studies focus on the incidences of controversy which arose as a result of the different surveillance practices. In a comprehensive analysis, Wright and Raab (2014) identify, with examples, the categories of harm which arise

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as a result of intensified surveillance. Their analysis covers the data protection principles and incorporates 6's (1998) and Solove's (2007) categories of harm.<sup>7</sup> Crucially, however, Wright and Raab (2014) extend their analysis to incorporate other human rights harms which stem from surveillance such as a right to dignity, to be let alone, to anonymity, including the right to express one's views anonymously, to autonomy, freedom of thought and action without being surveilled, to individuality and uniqueness of identity, to assemble or associate with others without being surveilled, to confidentiality and secrecy of communications, to travel and not to be subject to price discrimination based on privacy preferences. Framing their analysis in the language of rights, Wright and Raab (2014) infer that democratic institutions hold the key to developing effective remedies to such harms.

The analysis presented in this book acknowledges the importance of a comprehensive taxonomy of surveillance harms but seeks to go beyond it in its analysis. The empirical chapters set out to explore where harms have been documented in relation to three surveillance practices and, crucially, to highlight where democratic institutions have intersected with surveillance as a result. In order to accomplish this analytical turn, we make two arguments. The first is to note that, drawing on Wright and Raab (2014), harms do not occur in a vacuum. They are produced by intersections of laws, institutions, stakeholders and their vested interests. The second is to note that, drawing on Sewell and Barker's (2006) observations of workplace surveillance, there are moments when surveillance is rendered acceptable by negotiation and there are others where it is not. These moments of acceptance, they argue, are when surveillance facilitates and intersects with more benevolent, caring processes in the workplace (for example, where it is deployed to ensure health and safety). The moments when it is not acceptable by negotiation occur where surveillance facilitates or intersects with more exacting control, and thereby causes controversy and resistance (for example, where it is deployed to police the intensification of work rates). Sewell and Barker's insightful analysis draws attention to three phenomena. First, they signal the competing agendas and interests which are highlighted by moments of controversy in the emergence of different surveillance practices. Second, they acknowledge the centrality of negotiation in the emergence of surveillance practices. Third, they suggest that the destabilisations which follow controversy offer opportunities to renegotiate, and potentially opportunities to participate in such negotiations. It is the examination of these participatory or renegotiation opportunities which enables participation to act as a sensitising concept which critiques surveillance practices as they unfold.

While we consider controversies a privileged entry point to explore the intersections between surveillance and participation, it is important to acknowledge that we do not carry out a fully fledged controversy analysis. The field of Science and Technology Studies has focused on scientific and technological controversies for a long time. In doing so, such studies develop or embrace a "symmetrical approach" (Sismondo, 2010: 121), where the

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study of diverse positions and alternative solutions offers the possibility to tackle processes that otherwise appear unavoidable or obvious. “Controversy analysis” is also becoming a field of study. It scrutinises public contestations of current topics and attempts to map how public debates unfold. In its traditional form, detailed trajectories of argumentation over topical issues are mapped (e.g. van Eemeren and Gartsen, 2008), and in its digital form digital methods map and intervene in controversial issues in online discussion settings (e.g. Marres, 2015).

As Venturini (2010: 262) notes, “controversies begin when actors discover that they cannot ignore each other and controversies end when actors manage to work out a solid compromise to live together”. From this perspective, we can see how controversies presuppose specific forms of participation, characterised by the possibility to express disagreement and to negotiate a “solid compromise to live together” (ibid.). In other words, controversies and their negotiations become the hallmarks of functioning democratic systems, where participation indicates that a public has emerged in relation to a perceived governmental issue (Dewey, 1991 [1927]; Marres, 2007). However, when we focus on everyday established surveillance practices, controversies become less easy to identify. This is because dodging controversy, i.e. formally recognising disagreement, is a key objective for the most powerful stakeholders. Indeed, the success of many surveillant actors is the naturalisation of their practices as part of the status quo. For this reason, focusing on compromises and negotiations may become a useful way to grasp past, silenced or prevented controversies. The research can investigate what is considered to be at stake and what is considered to be an acceptable status quo, or at least a status quo that does not generate public disagreement and secures participation in the surveillance practice. Hence, this book draws on an important insight from these literatures, in that they argue that a focus on controversies, negotiations and compromises enables different actors, their positions and their interests in an issue to be understood (cf. Callon et al., 2009). It permits us to explore the diverse entanglements between surveillance and participation, as well as to identify different ways of understanding and organising participation.

### **An exercise in collective research and multiple authorship**

The research presented in this volume was conducted collectively by a pan-European team of researchers. A note should be made on its authorship: the two lead editors and selective collaborators have contributed the theoretical material and have synthesised the case study data. However, because the case studies themselves were created and authored by a Europe-wide team of researchers, Chapters 3, 4, 5 and 6 feature multiple authors:

Chapter three was compiled by Kirstie Ball from contributions by Rocco Bellanova, Stine Bergersen, Wolfgang Bonß, J. Peter Burgess, Alessia Ceresa, Sebastien Dahm, Daniel Fischer, Chiara Fonio, Michael Friedewald, Gemma Galdon-Clavell, Antonella Galetta, Kerstin Goos, Richard Jones, Reinhard

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Kreissl, Jaro Krieger-Lamina, Erik Lastic, Charles Leleux, Alexander Neumann, Clive Norris, Walter Peissl, Charles Raab, Robert Rothmann, Keith Spiller, Ivan Szekely, Beatrix Vissy, William Webster and Nils Zurawski.

Chapter four was compiled by Kirstie Ball from contributions by Sebastien Dahm, Michael Friedewald, Antonella Galetta, Kerstin Goos, Richard Jones, Erik Lastic, Clive Norris, Charles Raab and Keith Spiller.

Chapter five was compiled by Kirstie Ball with contributions by Rocco Bellanova, Stine Bergersen, J. Peter Burgess, Alessia Ceresa, Chiara Fonio, Jaro Krieger-Lamina, Walter Peissl, Robert Rothmann, Keith Spiller, Ivan Szekely, Beatrix Vissy.

Chapter six, compiled by Kirstie Ball from contributions by Wolfgang Bonß, Daniel Fischer, Gemma Galdon-Clavell, Reinhard Kreissl, Charles Leleux, Alexander Neumann, Keith Spiller, William Webster and Nils Zurawski.

Indeed, the whole work presents the collective endeavours of an international team who collaborated constructively for three years. This volume is one of many products of a three-year European Framework 7-funded project called “Increasing Resilience in Surveillance Societies”-

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This volume is one of many products of a three-year European Framework 7-funded project called “Increasing Resilience in Surveillance Societies” (IRISS) (see also, for example Norris et al., 2017). The project was funded under the Social Sciences and Humanities (SSH) workstream of the EU’s Framework 7 programme. It was conceived by William Webster and Reinhard Kreissl in response to a call which emerged from the heightened interest in the “Surveillance Society” that arose across Europe in the mid-2000s. The whole project aimed to map the intersection of surveillance and democracy, drawing on the then fashionable concept of resilience to determine how democracy may be made more resilient in the face of ever more pervasive surveillance systems. The research presented here is the output of one of the work packages, which was led by Kirstie Ball.

The case studies were identified at the project’s outset and a detailed case study protocol was produced to guide the researchers as they collected their data. The researchers gathered primary and secondary information from key informants, publicly available documents, corporate reports, Freedom of

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Information (FOI) requests, academic sources and the media. Further information about the sources consulted can be found in Appendix 1. Each researcher produced a 5,000-word report which documented their main findings in English, alongside a range of supplementary materials and raw data. The work package leader analysed the data by examining stakeholder responses to the controversies in order to trace the intersections between surveillance practices and elements of democratic process. The analysis was then written into a preliminary report submitted to the European Commission in June 2015. The current volume represents a substantial reworking of that report with additional theoretical reflections. While there will have been legal, policy and practice developments in the cases themselves since the data were collected, the data as they stand inform the development of a theoretical encounter between participatory theory and surveillance studies.

### **Structure of the book**

The book has seven chapters including this one. Chapter 2 advances the analytical framework against which the cases will be evaluated. It draws on and combines theories of surveillance and of democracy, with a key focus on participation. The chapter draws on surveillance theory to elucidate the significance of each focal case as a surveillance practice. It will establish, at a theoretical level, the nature of surveillance and its tendency to non-transparency and harm, as well as highlighting the points of intersection between surveillance theory and democratic theory. The problematic intersection between surveillance and democracy arises when surveillance is framed as a means to get things done. Surveillance is an organising process (Lyon et al., 2012) the emergence of which was co-terminous with that of the modern bureaucracy. Surveillance embodies many of the desirable aspects of organising: upward and downward information flow, feedback loops, and it can create transparency and accountability by making the actions of individuals and organisations more visible. However, the ability to wield surveillance capacity is to possess great power. The form a surveillance society takes will depend upon how that power is wielded and the extent to which it is scrutinised and open to critique. In the post-9/11 world, for example, as surveillance became the means by which security was done and security practices became simultaneously exceptional and diffused into everyday life, the limits of democracy and its rights frameworks were challenged by this state of affairs. As suspicion is now to be found, traced and pre-empted in everyday acts, what then happens to everyday democratic practices and active citizenship? Furthermore, with the blurring of public and private in the provision of security, the public accountability of security practices is more difficult to ascertain. Chapter 2 considers how the participatory lens may be used to problematise and interrogate this state of affairs and others like it.

Chapter 2 also sets out the three-layer analytical lens which utilises participatory theory to understand the levels, types, implications and opportunities

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for participation in and engagement with surveillance practices.<sup>8</sup> The essence of this approach is to account for the formal and informal processes and mechanisms that facilitate participation in contemporary democratic settings. This analysis is multi-layered in that it seeks explicitly to examine participation at the formal institutional level, amongst stakeholders at the organisational level and amongst citizens at the grass-roots level. Such an approach highlights the ways that participation takes place and what this participation means for those involved. In doing so, it also allows us to understand the nature of participation in a surveillance society and whether the emergence of surveillance as a way of organising has implications for citizen engagement and the functioning of democratic processes. At the heart of this analytical approach is the nexus where surveillance and democracy collide. Both explicitly concern power relations and how influence and control are exerted, and both are evolving together in subtle and significant ways. The issue, then, is how to comprehend this evolution and whether enhanced levels and types of participation would lead to a more effective democracy and more accountable surveillance practices.

Chapter 3 outlines the three different surveillance practices upon which the book will focus. The chapter will be split into three sections, each one devoted to each practice. The “mechanics” of the practice will be introduced and a detailed analysis of the stakeholders involved in each will be presented. The three case studies – ANPR, credit scoring and Neighbourhood Watch – were chosen because they represent different institutional surveillant relationships: between citizens and the state (ANPR), citizens and the private sector (credit scoring), and citizens and each other (Neighbourhood Watch). The next three chapters explore the evolution of these surveillance practices and how their development takes place within a democratic setting, and how this setting responds to and shapes these practices.

Chapter 4 reveals how ANPR has been introduced in a number of European countries for a range of purposes, including road safety, road charging and traffic management. It has provoked harms and controversies across all of the countries involved in the study. Evidence is presented to suggest that use of ANPR has circumvented and breached the rule of law, compromised rights and raised privacy issues. In the least-regulated country, the UK, it had been found to affect detrimentally the right to protest and had deliberately been deployed in a racist way by police in Birmingham following Project Champion. However, the situation in Slovakia extended the harms resulting from a surveillance practice. In an effort to avoid the economic losses imposed by road tolls, Slovakian truck drivers had taken to driving on smaller roads and affecting the quality of life for the villages which were located on those roads. In the ANPR case, with the exception of Germany, very low engagement of the public was evident because of a lack of consistent regulation and signage, low levels of general media coverage and low engagement of data protection regulators with the practice. In relation to ANPR, in respect

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of its very significant harms we observed different levels of governance which lagged behind technological capabilities.

Chapter 5 sets out the widespread use of credit scoring across Europe. It reveals how credit scoring has provoked harms and controversies in the case study countries. The harms associated with credit scoring primarily relate to administrative matters and highlight how this form of surveillance is explicitly part of a management process. Administrative errors were the cause of some harms but evidence was also uncovered of bank and legal staff abusing their position in relation to this sensitive financial data (Austria, Hungary). This was significant in Hungary which operates a centralised credit blacklist from which it is very difficult to get removed. In the UK some organisations exploited it to facilitate the lending of money to customers who could ill afford it and were financially illiterate. Overall this points to a problem with transparency and with the operation of the rule of law in relation to credit scoring (Italy, Hungary, Austria). The distributive justice aspects of credit scoring and its ability to delimit economic prosperity were noted in the UK and Norwegian cases particularly. With the exception of Norway and the UK, there was minimal public engagement and low awareness of the practice. A key concern with credit scoring is the public's limited awareness of and access to their own credit scoring data. While this is widely available in the UK and Norway, this is not the case in Austria, Italy and Hungary.

Chapter 6 examines Neighbourhood Watch practices in a number of European countries and establishes a huge variance in practice due primarily to historical contexts and social and political norms. In the case of Neighbourhood Watch, privacy was a relatively minor issue associated with the schemes' use of online and social media. The cultural and social significance of surveillance was far more powerful and generated strong sentiment towards it as a community safety idea (Austria, Germany, Spain). In these cases surveillance processes became controversial because as well as creating unhelpful links with the past, it was feared that they would present opportunities for extremists of all political colours. In the German and Spanish cases the presence of Neighbourhood Watch-like organisations stigmatised particular spaces and focused on victimising those who were perceived as "other" at that moment. It also challenged policing authorities who, at a community level, tread a fine line between too little or too much intervention, leading to a rise in feelings of security if crime appears to be increasing. Neighbourhood Watch is a special case in that, with the exception of the UK, it has developed outside the remit of law enforcement institutions. In an attempt to create community safety its harms stem from frustration with the "other" and insecurities in relation to community policing. The British example, with minimal regulation and a caring focus, shows how Neighbourhood Watch can succeed without the deep levels of mistrust and unpleasant associations which stem from authoritarian pasts. The community reaction to Neighbourhood Watch in Austria, Germany and Spain represents how those societies have become resilient to the surveillance they suffered at the hands of authoritarian and fascist governments.

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Chapter 7 reviews the empirical work presented in Chapters 4–6 and makes some final comments on the participatory theory analysis. We find that many of the institutions which practice surveillance across Europe are unaware of the harmful consequences of their surveillant actions and it is therefore evident that democratic processes designed to facilitate participation and debate are insufficiently engaged. In this respect, there is a democratic void with debate and analysis about the consequences and implications of surveillance stunted. In this final chapter, we conclude that in order to make the relationship between surveillance practice and democratic process more constructive, a more nuanced consideration of participation, transparency and oversight in relation to surveillance practice needs to take place. The chapter highlights how a participatory lens offers a new analytical language to foreground some of these issues. We argue that our analysis, which begins with the premises that surveillance constitutes everyday life and is inseparable from democratic processes, enables strong judgements to be made about the way surveillance and democracy co-evolve. This volume, by identifying clearly the various spaces for democratic reflection and participation, provides opportunities to consider how progressive decisions about the regulation of surveillance policy and practice can be made. As a final chapter, it will also consider the limitations of the work presented as well as an agenda for future research in this area.

**Notes**

- 1 The so-called “*participatie-samenleving*”.
- 2 [www.theguardian.com/world/2018/jan/10/russian-influence-brexit-vote-detail-us-senate-report](http://www.theguardian.com/world/2018/jan/10/russian-influence-brexit-vote-detail-us-senate-report) accessed 21 January 2018.
- 3 [www.independent.co.uk/news/business/news/uk-data-privacy-breach-fines-2016-over-3-million-pwc-a7764846.html](http://www.independent.co.uk/news/business/news/uk-data-privacy-breach-fines-2016-over-3-million-pwc-a7764846.html) accessed 11 November 2017.
- 4 <http://fra.europa.eu/en/theme/information-society-privacy-and-data-protection/data-retention>
- 5 [www.liberties.eu/en/news/italy-new-data-retention-law-threatens-right-to-privacy/13543](http://www.liberties.eu/en/news/italy-new-data-retention-law-threatens-right-to-privacy/13543)
- 6 [www.iotforall.com/5-worst-iot-hacking-vulnerabilities/](http://www.iotforall.com/5-worst-iot-hacking-vulnerabilities/) accessed 11 November 2017.
- 7 6 (1998) identified the following harms: risks of injustice (significant inaccuracy; unjust inference; function creep; reversal of the presumption of innocence); risks to personal control over collection of personal information (excessive or unjustified surveillance; collection of data without the consent of the data subject; denial of access to the means of protecting oneself from any of these risks); and risks to dignity by exposure or embarrassment (absence of transparency; physical intrusion into space; absence of anonymity; unnecessary or unjustified disclosure, or disclosure without consent). Solove’s (2007) harms include “four basic groups of harmful activities” involving information: collection (surveillance; interrogation); processing (aggregation; identification; insecurity; secondary use exclusion); dissemination (breach of confidentiality; disclosure; exposure; increased accessibility; blackmail; appropriation; distortion); and invasion (intrusion; decisional interference).
- 8 See for example, Pateman, 1975; Parry et al., 1992.