

# Is there a Cabin in the Woods? Reflections on Mass Surveillance and Human Rights

Written by Benjamin J. Muller

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BENJAMIN J. MULLER, DEC 21 2014

When teaching university students about contemporary surveillance and society, I am inevitably asked: “Doesn’t knowing all this just make you want to go live in a cabin in the woods?” The short answer: absolutely. As Julian Assange noted in a recent *New York Times* editorial, we now live in a world where George Orwell’s *1984* has gone from relatively prescient to completely prosaic. In some sense, Orwell’s telescreen totalitarianism is a mild, nearly desirable version of our contemporary circumstances. Thanks to people like Assange vis-a-vis *Wikileaks* and former NSA contractor Edward Snowden’s “revelations,” we have an increasingly rich, but nonetheless dark, picture of the breadth of mass surveillance, often state-sponsored, which certainly has a tendency to be overwhelming to many of us. What is more, the extent to which our categories of understanding often fail to resonate with contemporary situations and circumstances regularly leads us to throw our hands up in failure and disgust and run towards that mythical cabin in that woods. Although daunting, issues of mass surveillance and human rights are far too important an issue to bypass in such a defeatist manner; rather, we must consider seriously to what extent we can continue to grapple with these issues, and how to do so, with our given tools and categories of understanding.

I am not the first to comment on these issues. Most notably, Elspeth Guild has adeptly engaged the impact of mass surveillance on human rights. In her May 2014 article, Guild outlines the key issues that arise in terms mass surveillance and human rights: First, the basic right to personal privacy; and second, the duty of the state to protect personal privacy.<sup>[1]</sup> It’s worth noting that this particular construction of privacy as a right has far greater resonance in the context of the European Union, with far more robust personal data legislation and so on, whereas both the United States and Canada have vague references to things like privacy, operating as more of a concept and claim open to judicial interpretation. In the US, even the 1<sup>st</sup> and 4<sup>th</sup> amendment to the Constitution do not refer explicitly to privacy; similarly, section 8 of the Canadian Charter of Rights and Freedoms makes reference to privacy-like claims. As such, privacy operates as more of a concept and claim and not a direct right, beholden to the interpretation of the courts. Certainly the revelations from Snowden vis-a-vis journalist Glenn Greenwald and the vast array of documents from Assange’s *Wikileaks* tell a story that not only indicates the state’s failure to sufficiently protect the personal privacy of its citizens, but indict the state for the complicity in mass surveillance often of a particularly arbitrary nature. If anything ever contested the persistent question “If I have nothing to hide then I have nothing to fear” – a sentiment regularly raised by supporters of state surveillance – then the revelations from the past few years emphasizing the arbitrariness of state-sponsored surveillance have certainly called such attitudes into serious question. However, these concerns also problematize our categories of understanding. Considering the deep reliance on information and communication technologies, does the notion of “privacy” still resonate in the ways it has historically? (Among many others, see the work of Colin Bennett (2010) and Daniel Solove (2013) on contrasting notions of privacy.) Taking account of our digital personas or data doubles, one might also ask questions about “body drift” and the extent to which the concept of human and the post-human are in flux, and whether particular accounts of human rights are anachronistic in light of these changes. Certainly, as noted earlier, the notions of rights and privacy are not always natural bedfellows. As such, simply unpacking the concepts of mass surveillance and human rights in the contemporary context will take us some distance in reflecting on critical questions and challenges we face.

Mass surveillance refers to a less targeted, *indiscriminate* surveillance of society: the sort of broad capture of data referred to by Edward Snowden in particular through programs such as XKeyscore and others. As longstanding

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research in surveillance studies, particularly the work of David Lyon, has argued persuasively, whether targeted or not, the outcome of surveillance is “social sorting.” Based on primarily digital data collected through closed-circuit television (CCTV) cameras, credit and debit purchases, travel patterns, and so on, sorting occurs that contributes to differential levels of access and mobility. Hiring decisions, passport and trusted traveler status, access to financial credit, product promotions, even post-secondary enrolment, among many other areas, are regularly informed by the surveilled data and act as material manifestations of social sorting. While a cause célèbre like that of Maher Arar is generally well known, other incidents of surveillance and information-sharing with obvious negative implications vis-à-vis social sorting are less well known. Most notably, in November 2013, Ellen Richardson was denied entry to the United States by US Customs and Border Protection (CBP). According to US CBP, Richardson was denied entry because she was hospitalized for clinical depression in June 2012. Aside from the range of details associated with the case, in much the same way as the Arar situation, Canadians’ suspicions were piqued as one wondered how US CBP was privy to personal psychological and health information of a Canadian citizen (not to mention how said information was subsequently used to deny entry to a legitimate passport-carrying Canadian citizen).

In this obvious case, differential access and claims to privacy protection are called into serious question, placing human rights squarely in the middle of such debates about surveillance. The history of the border and migration has often had a close relationship to the management of the population in terms of keeping the “sick bodies” from the “healthy bodies.” In order to clarify the discussion and highlight the associated problems with mass surveillance and human rights, the specific expectations and concerns related to the rights and responsibilities of the individual, and the state, require attention.

Questions of mass surveillance are often tied up in discourses of technology and privacy. As in many instances, technological innovation far outpaced our engagements with the ethical and political concerns associated with surveillance. The very nature of the so-called “Snowden revelations” indicated an element of surprise and disbelief across society, both in terms of the level and extent of the surveillance, the active role of national governments, and international collaboration and coordination, vis-a-vis the so-called “Five Eyes.” Drawing on what in light of these developments might be considered anachronistic accounts of state and citizenship (indeed, notions of privacy themselves are often believed to be anachronistic in and of themselves in the digital age), we cling, at least historically, to notions of the state as the protector. Perhaps less than a nanny, but an entity through which we gain citizenship and the accompanying package of rights, claims, and responsibilities, many of which are bound up in liberal discourses of rights (and of what is human). The evolution of human rights through the 18th and 19th centuries culminated in the Universal Declaration of Human Rights in the mid-20th century. Throughout this evolution, the notion of human rights was not simply a discourse of entitlement, but also of responsibility on the part of the nation state, to protect and extend said rights to its citizens, among which, personal privacy has always been central. State-sponsored mass surveillance and the collusion among states to indiscriminately share information on citizens seriously calls these principles into question. As such, we might indeed find ourselves searching for the cabin in the woods.

When students and others ask me whether researching mass surveillance leads me to long for some cabin in the woods, the cabin I think about is Henry David Thoreau’s, as described in *Walden*. More infamous among social scientists for his essay “On Civil Disobedience,” Thoreau’s *Walden* is a sort of pamphlet on how to live. In the case of his cabin in the woods, rather than a place to hide, it is a place of openness and sharing. Thoreau refused to lock the cabin, leaving it open for others to stay, to share in his goods and food. So why raise this vision of Thoreau’s *Walden* here? While contemporary issues associated with mass surveillance and human rights might elicit reclusive responses, the mythical cabin in the woods might be a vision of openness and hospitality, which are impulses that directly challenge the discourses that underscore the tendencies towards increasing surveillance. Governed by a desire to try and anticipate all threats, prevent and preempt dangers, and securitize everything, contemporary impulses to surveil everything are connected to visions of an overwhelming proliferation of threats and dangers. Moves to securitize nearly all forms of mobility and otherness are opposed to notions of hospitality, acceptance, and understanding, or the sentiment found in Bennett’s work, which is to support your neighbors’ claims to privacy as if they were your own.

## Notes

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NB: I wish to express my thanks for the invitation from E-IR editor Mike Di Gregorio to submit this piece, and my sincere appreciation for comments I received on an earlier draft of this from Thomas N. Cooke. This is part of a mutually beneficial ongoing conversation Tom and I have about privacy, security, and the digital age.

<sup>[1]</sup> Guild and others explore these issues in a deeper, theoretically rich academic analysis in the June 2014 issue of the journal *International Political Sociology*, Vol. 8, No. 2. Most notably in Z. Bauman, D. Bigo, P. Esteves, E. Guild, V. Jabri, D. Lyon and R. B. J. Walker, "After Snowden: Rethinking the Impact of Surveillance," pp. 121-144.

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## About the author:

**Benjamin J. Muller** is currently on sabbatical and is Visiting Scholar at Confluentcenter for Creative Inquiry at the University of Arizona in Tucson, AZ. He is Associate Professor of Political Science at King's University College and faculty affiliate in Centre for American Studies at Western University in London, Ontario, Canada. He was a contributing author to the collaborative text *Transparent Lives: Surveillance in Canada*, Athabasca University Press, 2014.