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From Surveillance to Toutveillance: Evaluating the Social Impacts of Different Monitoring Paradigms

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ABSTRACT

This article explores the evolution and impacts of different monitoring paradigms: traditional surveillance, sousveillance, and toutveillance. Traditional surveillance, characterized by hierarchical observation from an authoritative entity, often results in power imbalances, privacy invasion, and social inequality. In response, sousveillance—monitoring by individuals of those in power—emerges as a countermeasure, aiming to democratize oversight but still facing legal and ethical challenges. Toutveillance, which promotes mutual monitoring among all parties, is presented as a potential solution to these issues, leveraging technology such as body cameras to enhance transparency, accountability, and reduce discriminatory practices. The article argues that while each paradigm has its merits and limitations, toutveillance offers a more balanced approach to address the complexities of modern surveillance, privacy concerns, and social justice.

Key words: Surveillance; Sousveillance; Toutveillance; Privacy; Ethical issues; Data protection; Social impacts

Introduction

Surveillance is a subject that has gained a lot of traction among philosophers and legal scholars over the past decade. Its popularity stems from its controversy. For years, regulators across the globe have endeavoured to devise a set of legal boundaries in an attempt to strike a balance between one's right to privacy and interests of national security. Few succeeded. A report of EU Citizens' rights and Constitutional Affair Policy Affairs reveals that the operations of PRISM, FISA, and the National Security Agency, as well as US surveillance programmes, jeopardise the basic rights of EU residents to privacy and data protection.[1]

What is more, the latest disclosures of mass surveillance programmes show the ever-expanding reach and capabilities of contemporary surveillance technology, which are becoming more and more sophisticated.[2] The technological developments and ethical issues surrounding conventional surveillance gave birth to new concepts within surveillance studies. Specifically, two terms, namely "sousveillance" and "toutveillance" attracted increasing scholar attention. These two terms are distinguished from conventional surveillance on the basis of "modes/direction of censorship". While surveillance means "to watch from above"[3] and presents a hierarchical authority structure, sousveillance demonstrates the opposite, which "sous" means "under" or "below" or "from below."[4] In contrast, toutveilance is distinguished from the other two from the preposition "tout", the French word for "whole", "all" or

[1] Didier Bigo and others, 'Mass Surveillance Of Personal Data By EU Member States And Its Compatibility With EU Law' (2013),2.
[2] J. K Petersen, *Handbook Of Surveillance Technologies* (3rd edn, Routledge 2012), 55.
[3] Steve Mann, Jason Nolan and Barry Wellman, 'Sousveillance: Inventing And Using Wearable Computing Devices For Data Collection In Surveillance Environments.' (2003) 1 Surveillance & Society, 331-334.
[4] ibid.

"every".[5] It emphasises on the *mutual censorship* between the observer and the observed.

This essay will first zoom in to the definition of conventional surveillance and issues that it gives rise to It will then respectively demonstrate whether sousveillance or toutveillance mitigate these issues and produce social benefits, creating a better world, "a world with higher social benefits and equality".

Surveillance and its Purposes

To identify possible contributions of sousveillance and toutveillance to a better world, it is useful to explore the definition of conventional surveillance and what purposes it intends to serve. Macnish suggests surveillance entails a "close and constant" attention to another person.[6]Such attention sustains over time and might occur at a specific location such as "payment café"[7] It should be noted here that "person" does not refer to one random individual but an entity in particular for a specific purpose. The surveillance can take place in many forms (e.g., human intelligence, computer software and machines) through different means (e.g., CCTV, recording and photo).

At a theoretical level, Michael Foucault's *Discipline and Punish*[8] is frequently cited as an argument in support of the prevalent use of surveillance on citizens.[9] Foucault observes that towards the end of the 18th century, the harsh public punishment was no longer being utilised in the US. Most punishments were administered in prison, behind closed doors, and authorities made an increased effort to control and rehabilitate criminals via the use of schedules and other interventions, such as

5 Mary D Fan, Camera Power: Proof, Policing, Privacy, And Audiovisual Big Data (Cambridge University Press 2019), 8.

6 Kevin Macnish, 'An Eye For An Eye: Proportionality And Surveillance' (2014) 18 Ethical Theory and Moral Practice, 529.

7 ibid.

8 Michel Foucault, Discipline And Punish: The Birth Of The Prison (1st edn, Penguin 1991), 3.

9 ibid, 104.

educational programmes.[10] Following this observation, Foucault claims that the growth of disciplinary authority started in the late nineteenth century with Jeremy Bentham's innovative design of the prison-alike institution known as the panopticon.[11] An observation tower stood in the centre, and jail cells were placed around it in such a manner that the inmates might be under surveillance at any moment, but they were unable to determine whether or not they were under observation. [12]For the purpose of maintaining self-monitoring, prisoners were compelled to discipline themselves as a result of being exposed to constant surveillance or as a result of being submitted to disciplinary power.[13]Furthermore, Foucault believes that the use of disciplinary power should and has been extended to all areas of society for a better society.[14] It is not just in prisons that disciplinary power (monitoring) is used to keep control over people, as is often believed. Not only are criminals subject to disciplinary punishment, but so are other members of the community.

The truth is that disciplinary power, namely surveillance, is becoming more widespread throughout society, and everyone is subjected to the reach of this authority. [15]Using closed-circuit television in public areas is one of the most visible examples of this practice. Although disciplinary power is used in schools – via the use of computerised registers and reports – it is also seen in action in the workplace – through the deployment of performance monitoring systems. We may even see it in our own lives – for example, both pregnancy and childbirth are carefully monitored by healthcare professionals and social workers, but the vast majority of us accept this as normal practise. As for his own position, Vagle believes that most people follow

10ibid, 170.

11 James Bernauer and Michael Mahon, 'The Ethics Of Michel Foucault' [1994] The Cambridge Companion to Foucault, 141-145.

12 ibid.

13 ibid; See also Lisa Downing, 'The Cambridge Introduction To Michel Foucault', 66-80.

14 Jane McKay and Dean Garratt, 'Participationasgovernmentality? The Effect Of Disciplinary Technologies At The Interface Of Service Users And Providers, Families And The State' (2013) 28 Journal of Education Policy, 733-740.

15 ibid.

the rules because they are aware that they are being watched — they limit their own behaviour out of fear that they will become the wrong type of person, such as a failed student, an unproductive worker, a terrible mother, or an obese person.[16] Significant empirical studies show that people under video surveillance tend to perform better or change their behaviours.[17]

With regard to the practicalities of surveillance, Cole believes that the surveillance systems are a necessary and beneficial infrastructure that modern societies must have in order to monitor individuals and afford rights, rewards, and proper punishment.[18] For instance, police surveillance is required for organised crime in order to help to prevent crimes such as drug trafficking, murder, and expropriation from occurring.[19]

Ethical and Practical Issues Surrounding Conventional Surveillance

At its core, the hierarchical nature of conventional surveillance entails a power imbalance between the observer and the observed. What is more, even the most frequent and well-intentioned monitoring techniques, as Bedoya points out, involve a power dynamic that too often swings from advantageous to harmful. [20]Although police patrols improve public safety, stop-and-frisk programmes have been proven to facilitate racial profiling.[21] In the same vein, health data may be used to combat illness and prevent epidemics, but it can also be used to deny marginalised people government services.[22] These are common surveillance scenarios, and they all entail the use or misuse of authority.

16 Jeffrey Vagle and others, 'Surveillance Is Still About Power - Just Security' (Just Security, 2013) <https://www.justsecurity.org/29240/surveillance-power/> accessed 10 July 2021.

17 See Clive Norris and Gary Armstrong, The Maximum Surveillance Society (Berg 1999); Clive Norris and Michael McCahill, 'CCTV: Beyond Penal Modernism?' (2005) 46 The British Journal of Criminology and Mark Cole, 'Signage And Surveillance: Interrogating The Textual Context Of CCTV In The UK' (2004) 2 Surveillance & Society.

18 ibid, Cole (17), 431.

19 Macnish (n 6), 530.

20 Alvaro Bedoya, 'What The FBI'S Surveillance Of Martin Luther King Tells Us About The Modern Spy Era' (Slate Magazine, 2016) <https://slate.com/technology/2016/01/what-the-fbis-surveillance-of-martin-luther-king-says-about-modern-spying.html> accessed 14 July 2021.

21 ibid.

22 ibid.

To be worse, Bedoya observes that conventional surveillance also amplifies the social and racial inequality.[23] The suburbs do not have widespread stop-and-frisk programmes. Only some government programmes need mandatory drug testing, despite the fact that virtually everyone receives these benefits in some way or another. [24]Airport security seldom picks people with Anglo-Saxon or northern European names at random for "additional screening processes."[25] These instances demonstrate the presence of a structural monitoring system whose weight is felt by certain segments of the population while others are free to disregard it.

One of the most controversial aspects of conventional surveillance is its implications on one's privacy. David Lyon states that we are "witnessing the end of privacy" with massive growth and extensive use of surveillance systems. [26] There is some truth to his concern. O'Harrow asserts that surveillance programmes and systems are ubiquitous. [27]There are fewer and fewer places that such systems are unable to monitor, record and trace every individual's behaviour and daily activities.[28] Regan echoes this and adds that the importance of privacy is underscored by the massive rise in monitoring technology in the workplace and in law enforcement. [29]In addition to being gathered and retrieved, data are now analysed, searched, mined, recombined, and traded inside and between commercial and governmental organisations.[30] Personal privacy information thus is exposed and widely circulated. Additionally, surveillance puts the subject of the gaze in disadvantaged position since she is often unaware that she is being observed, resulting in an asymmetrical allocation of power.

23 Alvaro Bedoya, 'The Color Of Surveillance' (Thehill.com, 2016) <https://thehill.com/opinion/op-ed/264710-racial-surveillance-has-a-long-history> accessed 25 July 2021.
24 ibid.
25 ibid.
26 David Lyon, 'Surveillance, Power, And Everyday Life' [2009] Oxford Handbooks Online, 19.
27 Robert O'Harrow, No Place To Hide (Free Press 2006), 34.
28 Priscilla M Regan, Legislating Privacy (The Univ of North Carolina Press 2009), 115 -124.
29 ibid.
30 ibid.

The right to privacy and anonymity in public is "instrumentally linked with limiting government authority," according to the European Court of Human Rights. [31]In order to achieve a balance between the competing interests, it is necessary to put in place measures that allow people either to fight this interference or to have “the power to demand non-intervention in the first place.”[32]

One of the most persuasive arguments in favour of installing video monitoring is the assumption that it will have a deterrent impact. Surveillance, in the strictest and most literal sense, does not necessarily result in a reduction in crime. It does the inverse. It has not been proved that deterrence works, despite assertions made by the police, private security firms, and video technology businesses. Because crime rates and other indicators used to assess deterrence vary significantly following the installation of video surveillance systems, there may be more evidence that cameras have little or no deterrent impact than previously thought. It is only in certain places, such as parking garages, that deterrence may be accomplished at its finest. According to a 2005 study from the University of Leicester, video monitoring reduced car theft from parking garages, but did nothing to prevent stealing or other illegal activity on city streets and in open places such as parks. [33]In August 2007, municipal officials in London, United Kingdom, expressed disappointment that the city's many cameras were not contributing to crime reduction. In March 2008, a brutal rape took place in a New York housing complex that had more than two hundred cameras installed. As a result, current research indicates that cameras usually fail to prevent the actions that people dread the most, such as bombings and beatings, and that they are only helpful in criminal trials if the video can be used to demonstrate guilt. The use of cameras is

31 Carlos Affonso Souza and others, 'From Privacy To Data Protection: The Road Ahead For The Inter-American System Of Human Rights' (2020) 25 The International Journal of Human Rights, 150.
32 ibid.
33 'Faqs | The Surveillance Studies Centre' (Sscqueens.org, 2021) <https://www.sscqueens.org/projects/scan/faqs> accessed 1 August 2021.

not the ideal choice if individuals who want to install them in certain locations are unable to give a clear justification for their installation. At best, cameras will provide mixed results, and at worst, they will have little or no effect on security. Mann and Ferenbok also believe that monitoring may contribute to or exacerbate specific types of crime, elevate criminal activity to the level of corruption, or enable corruption inside the same system it is supposed to monitor.[34]

Sousveillance and A better Word?

The term “souveillance” was first mentioned in Jason Nolan, Steve Mann, and Barry Wellman’s article in 2003. [35]In this piece, they describe their experiments with the use of wearable video-recording devices and the projection of the recordings in public places, as well as the filming of facilities and workers of shops that record consumers themselves. Mann and his colleagues refer to these actions as sousveillance, since they intentionally call attention to the fact that they are being recorded and "record the recorders," and they assert that they are different from and in opposition to traditional surveillance. In other words, sousveillance has been investigated as a counter-narrative to surveillance in order to better explain some of the social advances that networked mobile, portable, and wearable computing are facilitating.[36]

Mann and his colleagues, however, make barely a few efforts to explain their "neologism". The creation of a contrast with traditional methods of monitoring and observation is the closest they get to a definition.[37] As mentioned earlier, Mann and his colleagues also pointed to the imbalance of power struggle between the authority and people – “organisations observe people” in the conventional surveillance.[38] They

34 Steve Mann and Joseph Ferenbok, 'New Media And The Power Politics Of Sousveillance In A Surveillance-Dominated World.' (2013) 11 Surveillance & Society, 25 -26.

35 Steve Mann, Jason Nolan and Barry Wellman (n 3).

36 ibid.

37 ibid.

38 Frej Klem Thomsen, 'The Concepts Of Surveillance And Sousveillance: A Critical Analysis' (2019) 58 Social Science Information, 709.

suggest that one solution to resolve this imbalance is to equip individuals with devices and channels which could in turn observe and monitor the authority. This form of "inverse panopticon"[39] from bottom to up is labelled with "sousveillance".[40] Examples of sousveillance includes "citizens photographing police officers"[41], "civilians taking pictures of local officials"[42], and "taxi passengers taking photo of the drivers"[43], to name a few.

Based on the above definition and examples, Frej Thomsen argues that the world would be a better place with further 'sousveillance' if sousveillance is more "morally valuable and permissible".[44]Surveillance refers more particularly to those in a superior and powerful position to observe those in an inferior position. An iconic example is the surveillance from the oppressor to the oppressed. It is less morally permissible and valuable because it violates the right to privacy and derives one's freedom. Sousveillance, on the other hand, is normally from the oppressed to the oppressor. Citizens filming police brutality, for instance, is widely acknowledged to be a morally valuable and permissible censorship. However, arguably it is not completely accurate to state that sousveillance is always more morally valuable. This proposition fails to comprehend that the moral value of one's action comes from the *action* itself, not the f*ormat/category* of such action. Macnish provides a compelling example to counter this argument.[45] The case is as follows:

> A group of motorbike drivers take pictures using their phones whenever they pass a traffic speed camera. These images are then to a Facebook page for

39 ibid.

40 Steve Mann, Jason Nolan and Barry Wellman (n 3).

41 ibid,

42 ibid.

43 ibid.

44 Thomsen (n 37).

45 Kevin Macnish, The Ethics Of Surveillance (1st edn, Routledge 2017), 30.

other drivers to see. This alerts other members of the group to the presence of those speed cameras and enables them to devise strategies to avoid them.[46]

Emanuel de Bellis and others contend that the purpose of traffic lights is to impose a deterrence against speeding which its social costs are much higher than its social benefits.[47] Thus, with the distribution of traffic lights, the world is a better place because they bring tremendous benefits to society. In this sense, potential rewards/benefits of traffic lights are sabotaged by the action of motorists' photographing which Thomsen deems as a behaviour of sousveillance.[48] The posting and spread of the photos instead imposes a social cost, worsening the world. In this case, a behaviour which is considered as sousveillance is morally bad.

Another argument in support of the view that the world will become a better place with further sousveillance is that sousveillance re-strikes a balance between the authority and the civilians and indirectly mitigates the privacy concerns raised in the conventional surveillance. For instance, Bennett argues that citizens can utilise the means of sousveillance as "privacy self-defence" and to hold police responsible in order to fight back against the "Big Brother".[49] By exposing the police under public scrutiny and raising officers' knowledge that their acts may be recorded, this "ever-widening gaze of the public" has the potential to create deterrence. The aim is to make police ponder on their actions, which may lead to a "increase in internal monitoring of

46 As a side note, posting the position of speed cameras on social media platforms is illegal in England and Wales. See more at Luke Chillingsworth, 'Drivers Who Post Images Of Speed Cameras On Facebook And Twitter Could Face £1,000 Fine' (Express.co.uk, 2021) <https://www.express.co.uk/life-style/cars/1407461/driving-law-fine-speed-camera-social-media-rule> accessed 21 July 2021.

47 Emanuel de Bellis and others, 'Blind Haste: As Light Decreases, Speeding Increases' (2018) 13 PLOS ONE, 20.

48 Thomsen (n 4), 710.

49 Colin J Bennett, 'In Defense Of Privacy: The Concept And The Regime' (2011) 8 Surveillance & Society, 486.

its behaviours and legal compliance," which could have positive long-term consequences.[50]

As mentioned earlier, one frequently cited issue of conventional surveillance is the control of privacy data. It is often believed that if the generated data are or will be in the hands of a private person or organisation, the actions are surveillance. [51]On the other hand, if it is publicly accessible, the acts are sousveillance. Given this, Ganascia believes sousveillance creates a more equal place by having information accessible to the public.[52] This is achieved through Individuals exchanging personal data and anonymous records produced by automated equipment, such as security camera systems, video surveillance and CCTV. The problem with this argument is that it builds upon the wrong assumptions – it rules out the possibility that data that were collected by the surveillance systems can also be open and shared. Thomson gives a vivid example[53]:

> A poor, socially isolated immigrant stakes out a wealthy, well-connected Hollywood celebrity's vacation location in the hopes of taking photos of the celebrity and selling them to tabloid media.

In this case, the entire purpose of this paparazzi is to take photos that can be publicly disseminated in tabloid media. Moreover, more legislation reforms have taken place to guard individual right to control privacy data. For example, the Freedom of Information Act 2000 in the United Kingdom "creates a right of access to information

50 ibid.

51 Thomsen (n 4), 712.

52 Jean-Gabriel Ganascia, 'The Generalized Sousveillance Society' (2010) 49 Social Science Information, 490.

53 Thomsen (n 4), 713.

kept by public bodies, subject to exemptions." [54] The concepts and rights outlined in this Act have encouraged openness and enabled for the use of CCTV video recordings as evidence in criminal cases.

One issue to consider when it comes to sousveillance's social costs is the lack of assurance that people who record the police/authority would be protected, as well as the danger of being prosecuted if they do so.[55]Additional constitutional concerns are being raised "regarding what right individuals should have to capture and distribute information about government behaviour and the state's power to ban recordings by private citizens" [56] as a result of the fast evolving area of technology. Newell suggests that "citizens remain at significant risk when choosing whether to take out their smartphone and film the events happening around them," [57] since there is no agreement across governments on the subject.

Indeed, laws regarding recording police differ by states. People (more likely in totalist regimes) may be afraid of being prosecuted and punished. [58]As a result, this impairs the purpose of sousveillance systems to rebalance the power struggle within conventional surveillance. It allows "abusive behaviour to go unchecked and possibly undetected by those in a position to rectify wrongs or give justice to the abused." [59] Michael suggests that if the citizen does record the events, they have several options for what to do with the footage:

(1) turn it over to the police and risk prosecution;

54 The Freedom of Information Act 2000 c. 36.

55 Mir Adnan Ali and Steve Mann, 'The Inevitability Of The Transition From A Surveillance-Society To A Veillance-Society: Moral And Economic Grounding For Sousveillance' [2013] EEE International Symposium on Technology and Society (ISTAS): Social Implications of Wearable Computing and Augmediated Reality in Everyday Life, 246.

56 ibid.

57 Bryce Clayton Newell, 'Context, Visibility, And Control: Police Work And The Contested Objectivity Of Bystander Video' (2018) 21 New Media & Society, 65.

58 For more information, please see Helen Davidson, 'Wuhan Covid Citizen Journalist Jailed For Four Years In China's Christmas Crackdown' (the Guardian, 2020) <https://www.theguardian.com/world/2020/dec/28/wuhan-citizen-journalist-jailed-for-four-years-in-chinas-christmas-crackdown> accessed 26 July 2021.

59 Katina Michael, 'Sousveillance: Implications For Privacy, Security, Trust, And The Law.' (2015) 4 IEEE Consumer Electronics Magazine, 93.

(2) post it on the Internet and risk prosecution;

(3) destroy the footage and risk being charged with unlawful destruction of evidence and obstruction of justice; or

(4) keep it and risk prosecution.

As a result, the ambiguity surrounding citizens' capacity to record puts people in a precarious position, forcing them to weigh their rights and justice against the danger of being prosecuted and allowing injustice to go unpunished. And it is understandable that a lot of citizens chose not to exercise his/her right of sousveillance. This is because when choosing whether or not to record, in the split-second the incident is happening, the benefits and drawbacks of sousveillance, such as accountability, transparency, use as evidence, danger of prosecution, and third-party privacy concerns, must all be weighed. Accordingly, in order for further sousveillance to yield the maximum social benefits, our legal systems shall afford protection towards citizens who wish to exercise their capability.

Toutveillance and a Better Place?

In contrast to conventional surveillance and sousveillance, toutveillance produces a more neutral and mutual censorship – a version of "veillance" that all groups can watch and monitor each other.[60] With the prevalence of toutveillance practice, we would encounter a contemporary world where everyone (including common is motivated to record to dispute or control the narrative of the events. Fan contends that toutveillance system or tools may be a protective and powerful tactic to address and mitigate the privacy concerns and power imbalance in the conventional surveillance.[61] A series of Fan's articles focus on how the big data, cultural changes and new

60 Mary D Fan, 'Democratizing Proof: Pooling Public And Police Body-Camera Videos' [2018] 96 N.C. L. Rev. 1639, 1647.
61 ibid.

technology are resolving the age-old problem of racial discrimination and policing brutality without compromising citizens' right to privacy and control of personal data. She uses body cameras as an example to illustrate how toutveillance system can mitigate racial profiling.[62]

One way that body camera video can create a better world is that its data may be used by courts, civilian bodies, and police agencies to improve police oversight. Body cameras allow everyone to see what happens in daily interactions that may never result in a court case such as a citizen complaint, or a formal report. Most rules mandate activation during routine police enforcement operations including stop and frisks, searches, and service calls. Transparency is shown through recordings. As mentioned earlier, statistics from New York stop and frisk programmes showed that blacks and Hispanics are more likely than whites to be stopped and frisked after adjusting for precinct and rates of crime commission.[63] The likelihood of discovering contraband or making an arrest is lower when targeting young minority males. Despite long-standing debate, many jurisdictions lack statistics on the use of stop and frisk authority without a court order or consent decree. [64] In addition to "stop and frisk" programmes, a long list of academics, reformers, and activists have grappled with one of America's most difficult and painful issues - the heightened risk of death in police encounters for minorities. Sharad Goel''s study shows that in communities with racial and economic inequality and greater minority concentrations, use of force is much more frequent.[65] White police subconsciously utilise race as a signal and proxy for dangerousness. This unfortunately increases the likelihood of lethal force and errors.

62 Mary D. Fan, 'Body Cameras, Big Data, And Police Accountability' (2018) 43 Law & Social Inquiry, 1236-1256.

63 Brad Smith and Malcolm Holmes, 'Police Use Of Excessive Force In Minority Communities' (2014) 61 Social Problems, 83–104.

64 Sharad Goel and others, 'Combatting Police Discrimination In The Age Of Big Data' (2017) 20 New Criminal Law Review, 181–232.

65 ibid.

Putting body cams on the police may allow for better monitoring of these hitherto hidden interactions. They accompany police into daily situations when defence lawyers and courts lack data. Similar to one justification for conventional surveillance, the aim with body cams is that individuals would behave better when they realise that they are being filmed. The approach is a mobile technology-assisted update on Jeremy Bentham's idea of using a watchtower to induce virtuous conduct.[66] Besides this advantage, with body cams in place, it also creates the capability to evaluate pictures gathered over time and in many interactions. Since machine learning is being used to automate video analysis in motion, searches will soon be possible based on voice tone, language preference, face scanning, and other factors. Besides this, forensic searches with geographical and temporal localisation will become more reliable than self-report/citizen reporting.

In addition to serve as a deterrence for both police and citizens, data collected by body cameras may improve police early warning and crime detection systems. Alpert and Walker suggest that such devices help civilian oversight bodies to identify crime activities, trends, and suspicious practices.[67] Rather than depend on community members to report issues, automated analyses of body camera data may identify possible issues even if they are too scared or distrustful to do so. This addresses citizens' unwillingness to report and exercise their capability to watch under the sousveillance model. Programs may identify cops who are ready to escalate via harsh remarks. Counselling, instruction, and warnings may help avoid further damage to the community and the officer's career. The data-driven approach to intervention also helps with internal monitoring and discipline. One of the main concerns of line-level

66 Fan (n 61),1237.

67 Geoffrey P. Alpert and Samuel Walker, 'Police Accountability And Early Warning Systems: Developing Policies And Programs' (2000) 2 Criminology and Criminal Justice, 59–72.

officers and their unions is supervisor harassment. Data-driven automated techniques allow for more objective intervention choices. Audio-visual evidence may also be used to resolve disputes about credibility.

The data may also help courts look beyond transactional myopia to frame rules and decide cases based on systemic realities. The fact remains that judges are not sociologists, psychologists, or statisticians — especially when the data is used to challenge a discretionary decision.[68] But even the Supreme Court is swayed by whether a disputed police conduct is common or unusual.[69] In *Hudson v. Michigan*[70], Justice Anthony Kennedy, left open the option of reviewing and modifying regulations and remedies if statistics on a recurrent issue emerge.

However, it is admitted that the utilisation and efficacy of a toutveillance system is not guaranteed. For instance, the success of a toutveillance system hinges largely on police's willingness to use the footage as the evidence. It is said that a transactional mindset dominates the criminal process, which involves case-by-case inquiry and adjudication. As a result, use of body cameras data is not always guaranteed.

Moreover, there is a big difference between data importation and collection at a single case or the officer level and data disclosure at the aggregate level. For example, data may indicate a small violation of police codes such as chewing gum or removing a cap. This does not justify nickel and diming police at an incident level. Yet, if body cameras and big data are being used together, it may show potentially significant trends and behaviours, which will be Besides this, what constitutes a minor or severe

68 See United States v. Armstrong, 517, 456 (1996); United States v. Olvis, 97 F.3d. 739, 746 (4th Cir. 1996)).

69 Atwater v. Lago Vista, 532 U.S. 318 (2001).

70 547 U.S. 586, 604 (2006).

infringement of police policy is very subjective. For example, intensifying rather than de-escalating interactions to increase the likelihood of use of force may be a significant issue for harm prevention, even if the officer perceives it as a minor violation in a particular instance. Aggregated data may show problems such as targeting minorities for revenue-generating stop and fines, escalated interactions via unpleasant and aggressive conduct, or variations in the use of physical or verbal forcefulness by race of the community member encountered. After controlling for possible variables like as violation severity and location, a new research utilising computational linguistic methods on 183 hours of Oakland police body camera footage revealed significant evidence that officers were less courteous to black people stopped.[71] This indicates that body camera data need to be aggregated and analysed as a group of big data, not an individual or separate perspective to fully understand and exploit their potential for public benefit.

Some police departments are laying the groundwork for this possibility. Approximately half of the departments in the sample required regular supervisor inspection of a sample of recordings and/or allowed audits of recordings for compliance.[72]In this way, body camera data may help improve accountability and identify possible problems before they do damage. It is also essential to safeguard police from "nickel and diming" and to get buy-in. Provisions shielding officers from minor infractions while enabling frequent examination of aggregated data or a sample of data may accomplish this purpose. Several departments that allow or even demand supervisor inspection of recordings also shield minor infractions from disciplinary action. Several agencies are developing human resource capabilities and processes to

71 Jessica VanSack, 'Storage Costs Cloud Police Cam Issue' (GovTech, 2015) <https://www.govtech.com/public-safety/storage-costs-cloud-police-cam-issue.html> accessed 3 August 2021.
72 Fan (n 61),1237.

fully use body camera data. For example, the Atlanta Police Department employs a compliance administrator "charged with performing audits of BWC video, generating reports, and ensuring accountability and compliance".[73] The Lexington Police Department has developed a strategy for using body cameras to identify and prevent crime.[74]

Finally, it is essential to differentiate between police accountability data mining and data mining that infringes on public privacy. Even the ACLU acknowledges the difference between public monitoring and tracking and internal and external investigations of police misconduct.[75] The ACLU supports police accountability and supervision via cop cameras. This technology must not be used to spy on or monitor the public. Since the recordings will be created, police agencies must strictly regulate their usage. In addition to internal and external investigations of misbehaviour, police should be permitted to utilise recordings to help solve crimes.

Moreover, Fan also suggests that the costs of implementing such a toutveilance system will dimmish as technology advances.[76] Even in the early days of the body camera revolution, enormous data is being collected. Body cameras may either be used to produce more leads and evidence for prosecution by exponentially increasing the number of surveillance cameras on the streets or to create new pathways for solving long-burning issues. Time, technology, and competition among storage providers should alleviate cost concerns. Many major technology firms are entering the sector with new products and methods to decrease data storage costs. To fully use the power of body cameras, regulations must go beyond their evidential value in court

73 ibid.

74 ibid.

75 ibid.

76 Mary D. Fan, 'Body Cameras, Big Data, And Police Accountability' (2018) 43 Law & Social Inquiry.

and use aggregated data to identify and avoid harmful behaviours and enhance harm prevention.

It may not be as simple as it seems to implement toutveillance. As previously stated in the section on Sousveillance, given the current condition of the law and regulations, many people are uneasy and apprehensive about using their right to record the authorities in their own communities. Apart from that, many proponents of surveillance systems contend that data specialists and soft engineers will have difficulty obtaining enough body camera video to create a system of "mutual censorship." The reason for this is that a toutveillance system is dependent on machine learning and huge quantities of field data. As a result, in order to make a toutveillance system feasible, a disclosure model as well as technology-enhanced/driven laws that strike a balance between legitimate privacy concerns and substantial public interests are required.

Conclusion

It is admitted that Michael Foucault's justification for conventional surveillance systems. Ample evidence and empirical studies indicate that people do behave differently with oversight and sometimes even perform better. However, this benefit does not come without a cost. Individual's right to privacy and control of private data are at stake. The power imbalance between the observer and the observed gives rise to oppression, brutality on civilians and silence of truth. Given these unpleasant ramifications, other forms of veillance are investigated. The two main ones are (1) sousveillance and (2) toutveillance. This essay argues that the latter delivers a more neutral balance among all groups in society and promises a better place.

Undeniably, a sousveillance system does address some issues exposed in a conventional surveillance system. For instance, a bottom-up approach of censorship allows individuals to self-defend unreasonable surveillance from the authority and it also plays a role in monitoring governmental responsibilities and holding governments accountable. However, this is far from perfect. The sousveillance system does not deliver all purposes as its supporters claimed. For instance, it does not offer a more morally valuable form of censorship and some of its activities still pose social costs. One of the biggest concerns within a sousveillance system is that under the current legislative framework, citizens are not fully protected to film police or the authorities. There is a high risk that they might be prosecuted for exercising their capability of taking a picture or filming.

Under Fan's narrative of the toutveillance system, toutveillance promises to achieve a more mutually beneficial system. She uses the body camera case to illustrate the advantages of implementing such system to reduce the racial profiling. This essay finds the argument compelling as it fills in the gaps in the criminal investigation, evidence collection and court hearings. Moreover, it integrates with new technologies and embraces technological advancements. However, paradoxically the viability of a toutveillance system also largely hinges on the technology itself. High costs and limited technological capabilities limits the potential of a toutveillance system and the social benefits it is able to generate to some extent.

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