

The Effect of Government Surveillance on Social Progress

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“Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear. ” -- Harry Truman

Introduction

Intensive surveillance by government agencies can effectively stop (or hinder) the chance of social and political change. The status quo has been set and history has shown near-perfect success of infiltration and destruction of political and social movements by a number of surveillance tactics and programs. United States history demonstrates the positive social effects that certain radical political groups have caused despite government intrusion. With increasing technology and access to information, the government has and continues to more effectively monitor radical political and social groups while discouraging and halting free political participation of its citizens as a result of the “chilling effect”. Without free political participation social change becomes impossible. In order for a democracy to move forward it needs free ideology and radical movements to challenge the system and force social change.

Not only does extensive government surveillance discourage political participation through the “chilling effect” – it also presents ethical violations. Under the ethical frameworks of duty-based, utilitarian, and rights-based theories, the conduct of government surveillance of the past and present is unethical. From duty and rights-based theories government surveillance practices violate legal and social regulations of American society. Under utilitarian theory, government surveillance takes away the ability to change and progress what the citizens believe to be the greatest good for society.

The Chilling Effect

In United States law, the “chilling effect” refers to the stifling effect that vague or overbroad laws may have on legitimate speech and activity typically protected by the First Amendment¹. Theoretically, the “chilling effect” has a dramatic repercussion on citizens’ willingness to freely express their beliefs and opinions. In past U.S. history the “chilling effect” has been used in court cases as evidence against certain government surveillance tactics. In the Supreme Court case *Socialist Workers Party v. Attorney General of U.S.*, the “chilling effect” was used as a basis for getting a preliminary injunction brought against the FBI.

“The applicants argue that a stay is necessary to protect the First Amendment speech and association rights of those planning to attend the YSA convention.

Surveillance and other forms of monitoring, they claim, will chill free participation and debate, and may even discourage some from attending the convention altogether. Beyond this, the applicants allege that the FBI has admitted that its agents or informants intend to participate in the convention debate posing as bona fide YSA members². This 'double agent' activity, the applicants claim, will result in the “corruption of the democratic process” and consequent irreparable harm to the applicants and others who would participate in the convention¹.”

Although the effect of FBI surveillance and participation in Communist party activities was apparent, the Supreme Court ruled in favor of the FBI. “In weighing the nature of the planned investigative activity, the justification for that activity, and the claimed First Amendment infringement in this case, the Court of Appeals determined that the balance of the equities tipped in favor of the Government and that a preliminary injunction was therefore improper³.” This case demonstrates an example of the “chilling effect” as a result of FBI surveillance, while also showing these tactics and related effects on free speech being condoned by the U.S. government.

In recent years the “chilling effect” has taken on a much larger role in American society, not only through increased government surveillance deterring political participation, but through a broad range of social functions as well. Simple examples will show that social internet networks such as MySpace.com and The Facebook are having detrimental effects to people’s willingness to present information about themselves or their views. Some users of these networks have lost jobs or have been forced to censor what they publish in fear of what ramifications it may have on their job status or future wellbeing. In January, an undisclosed number of student-athletes were dismissed from the University of Colorado track team after posting indecent pictures of themselves on Facebook⁴. The enormous amount of voluntary and involuntary personal information that can be tracked and monitored in today’s information age is causing people to give into the “chilling effect” in both political and social arenas. In all aspects of life, citizens of the U.S. are trying to fit the surveillance system rather than try to change or influence it. Once the people give into the system and refuse to participate or rebel out of fear of self incrimination then all hope of social progress is lost.

Current Climate in the U.S.

The government has the ultimate responsibility of procuring the safety of its citizens and upholding the values this country was founded upon. The argument we intend to layout is that while the government is concerned with the cease of any social and political change in opposition to its current agenda, this also inhibits the chance of further positive social and political climate change. Through certain tactics and surveillance, our government has the power to halt any social change while it is still in the ideological phase. The following points are composed of recent and post-9/11 incidents and programs the Bush administration has partaken in:

- Recently, the FBI admitted to surveilling mosques in nine cities nationwide, along with acknowledgement of keeping certain individuals of Muslim-descent (in the U.S.) under extreme surveillance. Agents have defended the programs, claiming certain mosques have provided them with lists of members⁵;

- The government is currently seeking to revamp its entire surveillance initiative, revising the process of getting warrants from the secretive Foreign National Surveillance Act (FISA) court to investigate suspected terrorists, spies, and other national security threats. The administration also wants new provisions in place to ease surveillance of people suspected of spreading weapons of mass destruction internationally. Among other tools available now: the government can break into homes, hotel rooms and cars to install hidden cameras and devices, as well as search drawers, luggage, or computer hard drives⁶;
- It has been revealed that the FBI used ‘national-security letters’ to scrutinize the financial and travel data, as well as telephone logs of thousands of U.S. citizens and residents. In March, a U.S. Justice Department report detailed the “widespread and serious misuse” of these letters since the inception of the Patriot Act. Between 2003 and 2005, the FBI issued more than 140,000 national-security letters, many of which involved people with no obvious ties to terrorism⁷;
- In 2006, it was revealed that President Bush signed a secret order in 2002 which authorized the National Security Agency (NSA) to eavesdrop on U.S. citizens and foreign nationals within the United States – despite past legal prohibitions against similar domestic spying. The NSA has monitored the e-mail, phones, and other communications of thousands of individuals without warrants⁸;
- In 2004, the Justice Department subpoenaed records from colleges and universities around the country relating to peaceful on-campus meetings between local anti-war activists and scholars⁵;
- In 2004, a University of Arizona sophomore was forbidden to attend a Social Security forum with President Bush due to a t-shirt that read, “Don’t be a smart [image of a donkey, the Democratic Party symbol]. UA Democrats.” The young man returned to the event with a different shirt yet was still refused entry as he had been placed on a list of people banned from the event and labeled as a “potential risk⁹”;
- In 2003, the New York City Police Department questioned multiple arrestees who had been detained at anti-war demonstrations. Various types of information were stored in a government database;
- Also in 2003, media reports surfaced accusing the FBI of collecting extensive information on the anti-war movement in search of “extremists”;
- Chicago Police infiltrated five protest groups in early 2002. Information pertaining to the case has been limited, along with that regarding the known surveillance tactics which were used⁵.

Hunting down and weeding out individuals who disagree with the current administrative policy has become familiar practice. In an issue closer to home, Colorado GOP staffers ejected three people from a taxpayer-funded town hall meeting in 2005 that George W. Bush was attending in Denver, under the belief that they may be protesting. The three individuals were thrown out for behaving suspiciously while at their vehicle, which had a bumper sticker stating, “No More Blood For Oil.” The White House has

refused to comment on the situation due to pending investigations. Two of the individuals who were thrown out, Leslie Weise and Alex Young, have filed a federal lawsuit against the GOP committee because they claim they were told to leave “because of their political views and that the White House had a policy of ejecting dissenters from the president’s appearance¹⁰.” It was later revealed that the men who approached these three individuals were wearing an earpieces and wires, navy blue suits and lapels similar to that of Secret Service agents. The Secret Service denied that their agents were involved in the ejection – they claimed the Republican host committee forced them out⁹.

Whether these individuals were targeted by government agents or local GOP members is irrelevant. These citizens did not interrupt the event and certainly did not break any rules or laws by having an anti-war bumper sticker on their vehicle. This incident, among the many others presented, represent the strong hand our government yields in mandating its current agenda and status quo. To comprehend such acts of the present day, one must understand the history and ethical implications that are deeply rooted behind government-run surveillance. In the following pages, we will discuss the many events, programs, and key figures that have built and led government infiltration to where it stands today.

“Those who sacrifice freedom for liberty deserve neither” -- Benjamin Franklin¹¹

The J. Edgar Hoover Era

John Edgar Hoover (born: January 1, 1895; deceased: May 2, 1972) was the director and founder of the U.S. Federal Bureau of Investigation (FBI). He remained director for nearly five decades and until his death at the age of 77. During his tenure, Hoover was highly regarded by the U.S. public as a prominent figure in American democracy. Only in the years since his death, many allegations have surfaced and tarnished his image. His career endured eight different presidential administrations, including the Great Depression, World War II, the Korean War, the Cold War, and Vietnam. It is because of Hoover's long and controversial reign that FBI directors are now limited to ten-year terms. Hoover has frequently been charged with exceeding and abusing his position of authority. He was known to have investigated groups and certain individuals due to their political beliefs rather than suspected criminal activity. The FBI first conducted extralegal activities such as burglaries and illegal wiretaps under his command.

In 1956, Hoover was becoming increasingly frustrated by Supreme Court decisions that limited the Justice Department's ability to prosecute Communists. At this time he formalized a covert "dirty tricks" program under the name COINTELPRO, or Counter Intelligence Program. COINTELPRO was a program operated by the U.S. Federal Bureau of Investigation with the intent to investigate and destroy organizations that were considered to have politically radical elements. While covert operations were incorporated throughout the FBI history, COINTELPRO is known to have been most active from 1956-1971, targeting non-violent civil rights groups such as Martin Luther King and the Southern Christian Leadership Conference (SCLC). Other leftist political movements that were infiltrated include, most notably, the Black Panther Party (BPP) and the American Indian Movement (AIM), among others¹².

The main goal of COINTELPRO was to “expose, disrupt, misdirect, discredit, or otherwise neutralize” the activities of these groups and their leaders. Some of the main components of COINTELPRO included infiltration, psychological warfare from the outside, harassment through the legal system, along with extralegal force and violence. The FBI also incorporated “black bag jobs” into the program, which were warrant-less entries targeted against certain groups, most notably the BPP. The program remained top secret until a burglary by a group of left-wing radicals in 1971. The Citizens’ Commission to Investigate the FBI uncovered and removed several thousand files and passed them on to news agencies with the intentions to have them published. Many refused to publish the information and within months, Director Hoover declared that COINTELPRO was over and that future operations would be handled on a case-by-case and need-to-know basis¹³.

In 1976, a major investigation into COINTELPRO was undertaken by the Select Committee to Study Governmental Operations with Respect to Intelligence Activities of the U.S. Senate, which was commonly referred to as the “Church Committee” due to its chairman, Senator Frank Church of Idaho. This Committee documented the entire history of the FBI being used for the purpose of political repression – dating as far back as World War I, when they were accountable for gathering ‘anarchists and revolutionaries’ for deportation – and building from the mid 1930s up until 1976. In a Final Report to the Select Committee, COINTELPRO was reprimanded with no uncertain charges:

“Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that.. .the Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence¹³.”

To this day, millions of documents remain unreleased and many of the released documents are entirely censored by the government.

A Further Look into COINTELPRO

After COINTELPRO was implemented to monitor the Communist Party in the U.S., Hoover decided to use these operations to investigate his concern that the Communist Party had infiltrated Black political organizations. This began an investigation on Black civil rights leader Dr. Martin Luther King, Jr. FBI surveillance of King began in 1957 and became more involved as his civil rights activities expanded and gained supporters, including an increasing number of agents assigned to monitor and disrupt the movement. By the end of 1963 COINTELPRO had expanded to cover Black activities and was known as the Black Hate COINTELPRO. During this time the FBI was monitoring not just King, but the Congress of Racial Equality, the Student Non-violent Coordinating Committee, the NAACP, and a number of other groups¹⁴.

However, King was targeted as a main threat and was the focus of much investigation. In January 1963 Hoover wrote several memos which stated that King was associating with communists, and by the following spring was officially listed as a communist in the FBI Reserve Index. In October 1963, Attorney General Robert F. Kennedy approved the use of wiretaps against King, in addition to the hidden-

microphone surveillance that was also being used without Kennedy's approval. These tactics were used for almost two years and were expanded to monitor King even more intensely. Stating that it was a "matter of national security" the FBI was allowed to place taps in the King home, the headquarters of the Southern Christian Leadership Conference in Atlanta and New York, as well as motel rooms in L.A., Atlantic City, Washington, D.C., Milwaukee, Honolulu, Detroit, Sacramento, and Savannah¹⁴. In a document written by FBI counterintelligence specialist Charles D. Brennan in September 1963, the reason for the measures of surveillance taken was that the amount of support the civil rights movement had gained over the past five years made it a clear threat to "the established order" of the U.S.¹⁵.

The surveillance was sanctioned for the sole purpose of determining how King had connections with the Communist Party USA; however, the information that was attained was used by the FBI to try to discredit him through a series of defamation attacks. The FBI monitored roughly five thousand of King's phone calls over the years, but the surveillance revealed nothing about national security or communist infiltration. In 1964 the FBI made a composite tape of recordings from different hotel rooms that allegedly contained information about King's sexual affairs. The tape was sanitized so as not to be traced back to the FBI, and was sent to King's wife along with a note stating that the tape would not be made public if King committed suicide¹⁴.

Around the same time period, other political groups were being investigated by the FBI in ongoing counter-intelligence efforts. The Bureau began surveillance on the Nation of Islam and their leader, Elijah Muhammad. This surveillance was warranted because the FBI said that Nation of Islam members "disavow allegiance to the United States" and "are taught not to obey the laws of the United States." Wiretap surveillance on Muhammad's home in Chicago began in 1957, and when he purchased a home in Arizona in 1961, multiple wiretaps and microphones were installed there¹⁴.

Malcolm X was one of the principle lieutenants of the Nation of Islam, but broke away in March of 1964 to establish a separate church called the Muslim Mosque, Inc., as well as a political Black organization called the Organization of Afro-American Unity. When this occurred the FBI became concerned about alliances between these groups and other influential groups. They undertook COINTELPRO actions to try to block alliances with white radical groups such as the Socialist Workers Party. At least 2,300 pages of material had been collected on him at the time of his assassination in February 1965. His assassination was stated to have been committed by former colleagues as a result of his splitting from the Nation of Islam. However in a memo written in 1969 the Chicago SAC stated that this factionalism had "been developed" by the FBI in hopes of squashing the movement. Four days after the assassination of Malcolm X, the FBI removed him from their security index. No one has ever been held legally responsible for the assassination, but one FBI agent wrote that he considered the murder to be a model for successful counterintelligence operations¹⁵.

Ethical Frameworks

Under utilitarian, duty-based, and rights-based ethical theories the act of heavy government surveillance policy is an ethical violation. From a utilitarian perspective, one must look at the consequences of an action, and determine which consequence would be the most desirable for the greatest number of people involved. In this case, the government is not acting in line with what is the greatest good for the greatest number.

The greatest good is allowing a society to have the ability to freely participate and change the system in order to adhere to what is best for the people. By limiting radical political groups the government can effectively take away this ability. In taking the ability to change and progress away from the people in a democratic system the government violates the greatest good for the greatest number. The use of government surveillance to hinder radical movements is causing a “chilling effect” on political participation and results in an obstruction of social progress. The consequences of these government actions are undesirable, the actions are considered to be unethical under utilitarian or consequence-based theory.

The duty-based and rights-based theories also show extreme surveillance to be an ethical violation. From a duty-based, or deontological perspective, heavy government surveillance is an ethical violation because it does not treat people in a universal or impartial way. Immanuel Kant, one of the most famous and influential deontological theorists, claimed that actions are unethical if they conflict with the idea that all people are free and rational beings. He stated that everyone has a duty to stop such unethical acts and promote freedom and rationality. Furthermore he stated that rules should only be applied if they are universal and impartial. Acts of government surveillance are often carried out with heavy biases against certain types of groups and ideologies, such as the civil rights or communist groups. In addition, using surveillance tactics against certain groups and individuals goes against the idea that people are free and capable of making their own decisions, and implies that people need to be monitored and controlled. Certain types of monitoring and controlling are necessary in any society, but in a democratic society when the control tactics goes as far to limit the effect the people can have on their own society then the system is not only undemocratic ,but unethical as well.

The surveillance bias towards particular groups also violates several rules and regulations stated in our countries legal doctrines. Rights-based theory states that an action is unethical if it goes against rights that have been given through contract or law. Surveillance practices of the FBI and other government groups have shown to violate several laws and the rights that have been given to citizens by the government, such as freedom of speech, freedom of assembly, protection against illegal searches, and many more. In order to be ethical under a rights-based theory a democratic government must follow the laws and regulations set forth by the people’s elected government agents. Past and present government surveillance tactics violate these principles and are therefore unethical.

“One does not establish a dictatorship in order to safeguard a revolution; one makes a revolution in order to establish a dictatorship.”

-- George Orwell¹⁶

Legal Implications

Our democratic system is built on the people’s participation in politics. This participation is most commonly practiced by voting in government elections and identifying with a major political party. Although these types of political participation are the most practiced and socially accepted they are not the only form of participation the system is built on. As outlined in Amendment I of the U.S. Constitution Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances¹⁷. Based on these laws the people of our country can speak out, challenge, and criticize the government as they see fit without fear of persecution. The theory behind this system is to allow for free and unaltered participation in the government by the people so that the laws and discourse of the country reflect that of the people's beliefs. For this legal system to function properly the free participation of the people must be protected. Although our society generally chooses to believe this to be true, U.S. historical evidence shows the contrary. Each radical social movement in the U.S. has posed a general threat to the government administration of that time. From a present day perspective some of these movements brought about positive social change. Aside from the moral value of each radical movement, the government agencies of their times determine what to be in the best interest of the country and exude enormous surveillance and propaganda tactics for or against them.

At the time of the civil rights movements the FBI classified pro-black groups as threats to national security. Despite these past classifications, these groups made a large positive impact on our countries values and laws. As a result of these "threats to national security" citizens of our country can now expect to be treated equally under the law and not endure unjust policies based on race. At the basis of all social change there is an opposition to the norm or majority. In the case of the civil rights movement the norm was a predominately racist society with national laws and regulations to perpetuate the racist system. Despite the efforts of government agencies to curb the radical groups and halt the social progress being made the people were able to assemble and cause radical reformations to take place in legal and social aspects of the country.

It can be said that although the FBI and government tried to curb the Civil Rights movement the social change did occur and the theory of free political participation was upheld. Although it is true that the government ultimately failed in stopping the movement and societal change, they did not have the same technology that is available today. During the civil rights movement the FBI used basic surveillance technology including wire taps, bugged rooms, stake outs and propaganda. Today technology is advancing at a quicker rate than we can make use of it. The government now has technology and the access to information far greater than that of the 1960's and can use it however they see fit. If not kept in check the government surveillance can lead to a system in which social change brought about by the people becomes impossible.

Conclusion

Demonstrated by the history in our country each government administration has used every resource they have in order to pursue the values and goals of their administration. As technology increases, so does the power of the government to monitor citizens, infiltrate groups, control information, and further push their view of what is best for the society. In an age of data mining, satellite surveillance, RFID chips, vast social networks, and an overall state of heightened security there is almost no limit to the capabilities of the government and its surveillance. We can assume based on historical facts that the government is currently monitoring to the best of their ability all radical groups in the country as well as the world. With current technology it's also safe to assume that this surveillance and group monitoring is much more effective than in the past and could possibly end radical political influence before it starts. Coupled with increased technology there has been a decrease of freedom in our legal system with war

time laws such as the Patriot Act limiting fundamental rights and legal discourse outlined in the U.S. constitution. The system is moving away from free political participation and towards an information influenced police state.

The U.S. legal system is based on change and adaptability. A historical example of this is the change in role the U.S. legal system took on in the nineteenth century. “An instrumental perspective of law did not simply emerge as a response to new economic forces in the nineteenth century. Rather, judges began to use law in order to encourage social change even in areas where they had previously refrained from doing so. It was not until the nineteenth century that the common law took on its innovating and transforming role in American society¹⁸.” Examples such as this show that the legal system has always played its part in influencing societal change since the early days of this country, but conversely the U.S. society members have also influenced changes to the legal system. The changes and innovation of U.S. law have consistently been influenced by social movements. The labor movements, civil rights movements, and feminist movements have all challenged the government of their time and as a result moved the U.S. towards a more equal and just society.

As the power and technology of the government increases today so do the chances of any kind of societal change being halted. “Social movements are not distinct and self-contained; rather, they grow from and give birth to other movements, work in coalition with other movements, and influence each other indirectly through their effects on the larger cultural and political environment¹⁹.” If the government can monitor and stop one major movement they can influence and deter the masses from further radical ideology. In this lies the ethical violation.

Under utilitarian, duty-based, and rights-based ethical theories the act of heavy government surveillance policy is an ethical violation. From a utilitarian perspective the government is not acting in line with what is the greatest good for the greatest number. The greatest good is allowing a society to have the ability to freely participate and change the system in order to adhere to what is best for the people. By limiting radical political groups the government can effectively take away this ability. In taking the ability to change and progress away from the people the government violates the greatest good for the greatest number.

The duty-based and rights-based theories also show extreme surveillance to be an ethical violation. These theories examine how government surveillance is carried out and the ethical and legal violations that are inherent in the practices. From a duty-based perspective, heavy government surveillance is an ethical violation because it does not treat people in a universal or impartial way. It is often carried out with heavy biases against certain types of groups and ideologies. Not only is the surveillance bias towards particular groups but it also violates several rules and regulations stated in our countries legal doctrines. Surveillance practices of the FBI and other government groups have shown to violate several laws and the rights of the group participants. This type of surveillance discourse causes it to be an ethical violation.

The democratic system needs free political participation and radical movements in order to progress. History has shown the positive effects radical groups have played in the progression of American society through out U.S. history. If the unethical practices of government surveillance are not kept in check into the future, the ideologies of freedom of speech and the power of the people will be lost forever.

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