Personal Rights in the Age of Omnipresent Cameras

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George Orwell once observed that "the ages in which the dominant weapon is expensive or difficult to make will tend to be ages of despotism, whereas when the dominant weapon is cheap and simple, the common people have a chance." Tanks and battleships, he suggested, are "inherently tyrannical weapons," while weapons like rifles, muskets, and long-bows "are inherently democratic."

Orwell, writing in 1945 in the wake of the Spanish Civil War and World War II, was understandably focused on weapons, but his point may apply to all kinds of technologies. The photocopy machine, for example, was a tool for freedom in the old U.S.S.R., where it was used to produce underground dissident literature, or *Samizdat*.

As we watch the explosion of technology around us, it is worth asking whether our new devices will be more like tanks, or long-bows—whether they will shift power towards large institutions such as government agencies and big corporations, or whether they will empower individuals.

> Will new technological devices shift power towards large institutions such as government agencies and big corporations, or will they empower individuals?

The record so far is mixed.

One of the most striking changes we are living through is the permeation of our lives with cameras, which month by month are becoming cheaper, more powerful, and more omnipresent in our lives. For the first time in history, nearly everyone carries a video camera with them in their pocket nearly everywhere they go. People are mounting cameras on their bicycle helmets, on their car dashboards, and on the outside of their property. Google is marketing Glass to wear on one's face, and the police are increasingly adopting body-worn video cameras. And there are the cameras that may soon be flying over our heads mounted on drones.

Of course, the effects of particular tools and technologies on freedom are not always predetermined—often they are contested. Police departments around the nation are increasingly installing their own cameras, often networked together in ways that allow people to be tracked and recorded across wide areas. This conveys significant power—not only to crack down on violations both serious and petty, but also to abuse surveillance for political or personal purposes. Perhaps most significantly, it casts a chilling shadow of police power over all activities that take place under the cameras' gaze. Then there are the more specialized uses of cameras, such as license plate recognition and tracking systems, and even such things as cameras on trash trucks to record what people throw away in their garbage and recycling bins.

But cameras are also being used by individuals in ways that empower them. People are using their own cameras to record the police in order to protect against abuse, or at least seek justice when it takes place. Some police officers have been fighting back by trying to stop such recording—ordering cessations of recording, intimidating, harassing, or even arresting people for taking photos, or seizing memory chips or cameras. The ACLU has successfully fought back against such behavior through numerous lawsuits around the country.

Another technology is police body-worn video cameras, which are far more ambiguous in their effects. Depending on the precise rules governing their deployment, they have the potential to serve as

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a significant check on police power—or they could become just another form of government surveillance. Similarly, drones are likely to be contested as well, with both individuals and government agents trying to use the technology to increase their power. There is already a lot of pent-up demand among police departments for this cheap aerial surveillance technology—but at the same time, the technology has sparked widespread concern about privacy, including proposed regulations in 43 state legislatures, 8 of which passed such rules into law. Citizens are also beginning to use drones, as they do cellphone cameras, to watch over government. Drones have been used by protesters around the world to record the actions of riot police at demonstrations, for example, and by environmentalists and journalists. But some security experts are already starting to express concern over the possibility of unmanned aircraft being used in terror attacks – which raises the question of whether government will seek a monopoly over the new technology by citing fears of the potential for misuse.

As these battles over camera use move forward, the law will be a crucial battleground. Currently, outside of a few private areas where people have a "reasonable expectation of privacy," such as bathrooms and changing rooms, the law imposes few if any restrictions on photography—and, as the ACLU's police cases have shown, the courts have broadly found a First Amendment right to photograph things visible from a public area.

We are currently transitioning toward a new set of societal expectations surrounding video surveillance. The old expectation was that any given event would not be photographed. In this mindset we hear people exclaim in wonderment when an incident, like the beating of Rodney King, "happens to" get caught on camera. That is rapidly being replaced by a new mindset in which the default expectation is that something taking place in public *will* be recorded. Thus you often hear expressions of disappointment when a disputed or dramatic public event is NOT caught on video.

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There will inevitably be some chilling effects on people's behavior simply because of the predominance of distributed private cameras—but pervasive, centralized, government-run surveillance would be far worse. In a world where private cameras are everywhere, most of the security benefits of government-run camera systems can be achieved by simply having the police collect private footage from decentralized sources after the fact when an incident occurs. This is what happened after the Boston Marathon. There is less and less reason for the government to be building centralized surveillance centers, which bring along the dangers and chilling effects of "Big Brother."

In the end, we'd like to see a world where citizens are free to photograph their government, but the government does not routinely record the activities of citizens without individualized suspicion of wrongdoing.

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