

surveillance devices, and (ii) that in some cases it is permissible for the State to secure information about past events. As it stands, however, it is not clear whether (ii) is the claim that the State's acquisition of information respects a person's moral rights (e.g., to privacy or autonomy), or the claim that in some cases the consequences of securing such information justify the State's acquisition of it. That is, it is not clear whether this argument is one that would be acceptable to a rights theorist, or only to a consequentialist.³ This unclarity can be dispelled once it is recognized that the argument presented here is compatible with *both* a rights-based and a consequentialist approach to ethics.⁴ This argument is acceptable to a rights theorist because, as will be argued below, when the State is morally permitted to access information it will not violate anyone's rights in so doing. If the arguments below are sound, then claim (ii) will be true if one accepts a rights-based approach to ethics. This argument is also acceptable to consequentialists, who could also accept claim (ii).⁵ For a consequentialist to accept (ii) it must be the case that there is at least *one* time at which it is clear that the consequences justify the State's acquisition of information about a certain past event. And, as will be argued below, such a situation is simple to envisage. As such, the argument of this paper is amenable to both rights theorists and consequentialists alike.⁶

SURVEILLANCE AND TESTIMONY

Despite appearances, then, the conclusion that there is no principled reason why a State should not place all of its citizens under constant surveillance is by no means a radical one. It is merely an extrapolation of the widely accepted view that, under certain circumstances, it is morally permissible for agents of the State to secure information about past events. It is, for example, widely accepted that it is morally permissible for judges to subpoena witnesses to require them to disclose information. It is also widely accepted that it is morally permissible for judges to permit law enforcement agencies to install surveillance devices to monitor the activities of persons they

suspect of criminal activity, provided that such agencies demonstrate that they have probable cause for their suspicions.⁷ The claim that it is morally permissible for agents of the State to secure information about past events is thus innocuous.⁸ Moreover, if it is morally permissible for agents of the State to secure information about past events through the subpoenaing of witnesses or the use of surveillance devices, then there should be no moral bar to their gaining such information through securing access to records of past events that might have been generated by preexisting surveillance devices. (Provided, of course, that in securing such information the agents of the State are subject to the same restrictions on their powers that are in place with respect to their subpoenaing of witnesses or the placing of suspects under surveillance.)

However, that it is morally permissible for agents of the State to secure access to information about past events that has been gathered through the use of surveillance devices does not show that it is morally permissible for the State to place its citizens under constant surveillance. To reach this further conclusion it must first be noted that it cannot (typically) be known in advance what information it would be morally permissible for the agents of the State to have access to. Instead, one can only use hindsight to determine what events it would be morally permissible for them to access information about. For example, it could not have been predicted that knowledge of the actions performed by Billy Nolan Lovelady, a worker at the Texas Square Book Depository in Dallas on 22nd November, 1963, would be relevant to assessing who assassinated the president of the United States. However, the defenders of Lee Harvey Oswald (who was accused of this assassination) claimed that at the time of the shooting Oswald was standing unarmed in the doorway of the Texas Square Book Depository and produced a photograph purporting to prove this. Once this had occurred, knowledge of Lovelady's actions became relevant in showing that the man in the photograph who was claimed to be Oswald was actually Lovelady. In this situation, then, it was morally permissible for agents of the State to take steps to secure information about Lovelady's