

they note, “the only thing that is keeping the government from trolling through all this traffic are software instructions written by the government itself.”²⁰ Similarly, they note that under the PATRIOT Act the FBI need not show any probable cause (or even reasonable suspicion of criminal activity) to gain access to “individuals’ financial records, medical histories, Internet usage, travel patterns, or ... other records”—a situation that is ripe for abuse.²¹ It must be admitted that, in practice, a system of constant State surveillance *is* likely to be abused to some extent.²² However, if one adopts a rights-based understanding of claim (ii) above (i.e., if one holds that such a system of State surveillance is permissible as it does not in itself violate persons’ moral rights), the theoretical force of this objection can be rebutted. On such an understanding of claim (ii) one could first note that this abuse-based objection gets its force from the view that such abuse would violate persons’ moral rights. The proponent of a rights-based understanding of claim (ii) would certainly agree with this underlying view and would join with its advocates in condemning such abuse. However, the rights theorist who was in favor of such a system of State surveillance would also note that the condemnation of the *abuse* of State surveillance is not to condemn State surveillance *itself*. To condemn the use of *x* for the purposes of *y*, where *y* violates persons’ rights (e.g., to privacy or autonomy), is *not* also to condemn the use of *x* for the purposes of *z*, where *z* does *not* violate persons’ rights. Thus, a rights theorist who was a proponent of State surveillance could argue that to offer the possibility of abuse as an objection to constant State surveillance is to confuse the moral status of different possible uses of such surveillance. This is not, of course, either to downplay the badness of any abuse that might take place or to avoid the question of what practical measures should be imposed to attempt to minimize it. However, it is important to note that to object to a system of surveillance on the grounds that it could be abused is not to object to the surveillance itself, unless one believes (and can show) that the abuse in question would necessarily occur.

If one adopts a consequentialist understanding of claim (ii), however, defending the use of

constant State surveillance against this objection is more difficult. This is because the likelihood of such abuse together with the likelihood of such abuse causing harm must be weighed against the benefits (as outlined above) that such a system is likely to provide. And, given that such a system has not yet been implemented, such a weighing and balancing of its relative costs and benefits will be difficult to assess with certainty. As such, then, the moral legitimacy of such a system would depend upon the political context in which it was proposed. If there is good reason to believe that little harm will accrue from the abuse of such a system of surveillance and there is reason to believe that it would bring important benefits to the citizens of the State in which it is installed, the possibility of its abuse should not deter consequentialists from endorsing the above pro-surveillance argument. Thus, it seems that installing a system of State surveillance in a State that possessed little power, a State that was too weak to exercise its power, or a State that had strict limits placed upon its power *and* that adhered to them would be justified on a consequentialist understanding of claim (ii). However, installing a system of State surveillance in a State that possessed considerable power over its citizens, that was strong enough to exercise such power, or that either had little restraints imposed upon it in its dealing with its citizens, or that had such restraints but frequently failed to adhere to them would be unlikely to be justified on a consequentialist understanding of claim (ii).²³

Compelling Testimony Is Morally Impermissible

Both the rights theorists and the consequentialists who support the introduction of a system of constant State surveillance can thus meet the objection that such a system might be abused—although it should be noted that the consequentialist’s response is such that the imposition of such a system would not be justified in some States. What, then, of the second objection that those who support the introduction of such a system of State surveillance are faced with: that it is not morally permissible for the agents of the State