

that under no circumstances at all can a judge secure information from a witness that is relevant to a case in his court, then, one should reject this second objection to the above pro-surveillance argument.

SURVEILLANCE, PRIVACY, AND AUTONOMY

The two most obvious and immediate objections to the above pro-surveillance argument can thus be met. However, it still faces two more. The first of these is based on the claim that such a surveillance system would violate the privacy of those subjected to it. The second is based on the claim that it would illegitimately compromise their autonomy.²⁶

Both of these objections have been leveled by Stanley and Steinhardt against the increase in surveillance in the United States under the administration of George W. Bush. According to Stanley and Steinhardt, both “Privacy and liberty in the United States are at risk,” as it is “at risk of turning into a Surveillance Society.”²⁷ As was noted above in discussing the consequentialist understanding of claim (ii) in response to the objection that a system of State surveillance of the type outlined above could be abused, the worries that Stanley and Steinhardt express would be legitimate ones in certain political contexts—including that which they are explicitly addressing. However, were the system of surveillance that is outlined above to be installed in a State that would be unlikely to abuse it, neither of their objections would be sound.

The objection that constant State surveillance would violate the privacy of those subject to it rests on a failure to acknowledge the legitimate limits of the proposed surveillance. On the system of surveillance argued for above the State would only be permitted to access the information that its surveillance devices gather *when it is morally permissible for it to do so*. As such, the State’s use of such a surveillance system would not enable it justly to access any more information than it is morally permitted to access already. This point is not reiterated to defend the system of State surveillance advocated above on the grounds that it

would not violate the privacy of its citizens any more than this is violated already. Rather, it has been reiterated to provide the basis for a *stronger* defense of this system of State surveillance: *that it would not violate the citizens’ privacy at all*.

To develop this strong defense of the system of State surveillance advocated above it must be recognized that privacy is both a relative notion and a normative notion. A certain item of information is private *relative to* a certain person, if that person cannot *legitimately* (a normative concept) require that that item of information be disclosed to her.²⁸ For example, my use of the checking account that I share with my wife is not private with respect to her, for she can legitimately require that I disclose my use of it to her. However, it is private with respect to my colleagues, who cannot legitimately require that I disclose my use of it to them. Similarly, the examination score of a student in my class is not private with respect to the student, since she can legitimately require its disclosure, but it is private with respect to my wife, who cannot. Given, then, that privacy is both a *relative* notion and a *normative* notion, and since, according to the pro-surveillance argument above, the agents of the State can only access those items of information that they are morally permitted to access, it is clear that the above pro-surveillance argument does not justify the violation of the privacy of the State’s citizens. According to that argument, the only time at which the State could permissibly access information about actions or events would be when it was morally permitted to do so; that is, when it could *legitimately* require that this information be disclosed to it. This being so, under the system of State surveillance argued for above, the State could only access information that is *not* private relative to it. Thus, in accessing such information the State would not violate the privacy of its citizens.²⁹

Just as constant and universal State surveillance of the sort argued for above would not violate the privacy of the persons subject to it, nor would it compromise their autonomy—although it is easy to see why one might think that it would. In 1984 Oceania’s citizens adjusted their behavior when they were in the presence of telescreens to