

circumstances, it should also be morally permissible for them to secure this information through the use of surveillance devices. Constant State surveillance is thus no different in principle than the current system of subpoenaing witnesses. Moreover, the State's use of such surveillance would be morally *preferable* to the subpoenaing of witnesses. It would, for example, avoid the need to impose costs on those who would otherwise be called as witnesses, and it would result in the provision of more accurate information. There are, of course, practical concerns that must be addressed before any such State surveillance system is put in place. But since, as has been argued in this paper, there is no *principled* reason to oppose such a system, but there is reason to endorse it, once worries about the possibility of such a system surveillance being abused are laid to rest the road would be clear for its introduction. Big Brother would then indeed be watching over us. But, unless one has criminal tendencies, this should be a cause for relief, rather than concern.³⁶

NOTES

1. George Orwell, 1984 (London: Seeker and Warburg, 1987), 119.
2. Ibid., 123.
3. I thank an anonymous referee for pressing me on this point.
4. Note, however, that owing to the possibility that a constant and universal system of State surveillance will be subject to abuse it will be easier to justify such a system if one adopts a rights-based approach to ethics than if one adopts a consequentialist approach. This is discussed more fully below.
5. At least, if one accept a plausible version of consequentialism, such that human well-being is the good to be maximized.
6. A further clarification is also in order. Since claim (ii) can be accepted by both rights theorists and consequentialists, the fact that the arguments for the view that a system of State surveillance is morally preferable to the absence of such a system are based on the good consequences that such a system would have does not preclude rights theorists from accepting these arguments. A rights theorist could endorse such consequentialist reasoning, provided that such a system of State surveillance would respect those moral rights that she believes that persons possess.
7. That Anglo-American common law recognizes these exemptions to personal privacy was noted by Warren and Brandeis in their seminal article "The right to privacy [The implicit made explicit]," in Ferdinand D. Schoeman, ed., *Philosophical Dimensions of Privacy: An Anthology* (Cambridge, Cambridge University Press, 1984), 78, 88–89. Warren's and Brandeis's approval of, and lack of defense of, such exemptions indicates both that they found them to be morally permissible, and also that they assumed (as it is also assumed in the arguments in this paper) that this view would be so widely accepted as to need no defense.
8. Although the claim that, under certain circumstances, judges are morally permitted to compel witnesses to testify and to permit law enforcement agencies to monitor suspects is innocuous, the question of under what circumstances such compulsion and surveillance is morally permissible is a contentious one. As will be noted below, however, the arguments in this paper rest only on the innocuous view *that in some circumstances* such compulsion and surveillance is morally permissible, and not on any substantive claims concerning *when* such information gathering is morally permissible.
9. See, for example, Robert J. Araujo, "International Tribunals and Rules of Evidence: The Case for Respecting and Preserving the 'Priest-Penitent' Privilege Under International Law," *American University International Law Review* 15 (2000): 639–666.
10. See, for example, Jean V. McHale, "Medical Confidentiality and Legal Privilege," *Journal of Applied Philosophy* 11, no. 2(1994): 241–242.
11. See, for example, Paul R. Rice, "Attorney-Client Privilege: The Eroding Concept of Confidentiality Should Be Abolished," *Duke Law Journal* 47 (1998): 853–898, and John R. Przymyszny, "Public Assault on the Attorney-Client Privilege: Ramifications of *Baker v. Doe*," *Georgetown Journal of Legal Ethics* 3 (1989): 351.
12. See, for example, Alan Meisel, "Confidentiality and Rape Counseling—Privacy vs. the Right to a Fair Trial," *Hastings Center Report* 11 (1981): 5–7.
13. See, for example, both Mark R. Wicclair, "A Shield Privilege for Reporters vs. the Administration of Justice and the Right to a Fair Trial: Is There a Conflict?," *Business and Professional Ethics Journal* 4 (1985): 1–14, and Richard P. Cunningham, "Commentary on Wicclair's: A Shield Privilege for Reporters vs. the Administration of Justice