Contra Bentham: Ethical Information Policy in the PanopticEon

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Abstract

The article addresses the problem of surveillance within the framework of ethical information policy. Jeremy Bentham's plan for a panoptic penitentiary is subjected to forensic analysis, using primary as well as published sources. The panopticon, it is argued, remains a key model of contemporary and emergent surveillance, as foil rather than exemplar. Michel Foucault's influential reading of Bentham is defended against recent detractors in the field of surveillance studies. A new descriptor, the PanopticEon, is then introduced for the surveillance-infested age into which the world has entered. The argument concludes with brief reflections on strategies for maintaining privacy as an indispensable component of the good information society.

Introduction

Jeremy Bentham's concept of the 'panopticon', while nowhere near as infamous as George Orwell's 'big brother' or J.R.R. Tolkien's 'dark lord', is becoming a common framework for understanding social reality. Originating as a plan for a model prison, its theme of subjects behaving correctly because they feel that they are being monitored although not entirely sure by whom or exactly at what point, seems to catch an increasingly salient dimension of ordinary human experience. So one would think that Bentham (1748-1832) and Michel Foucault (1926-1984), the thinker responsible for digging Bentham's penal writings out of obscurity and converting 'panopticism' into a wholesale critique of modernity/postmodernity, would be central to the academic study of surveillance. Among specialists, experts in the new field of surveillance studies, however, they are now considered almost obsolete. Titles have started appearing along the lines of 'Beyond Bentham' and 'Post-Panopticism', and 'panopticon' has been replaced by an ever-widening array of clever neologisms, such as 'synopticon', 'banopticon' and 'panspectrum'. Apparently, the Bentham-

Foucault panopticon no longer registers what is most significant in emerging forms of social control. Indeed, it has been suggested that 'the very mention of the term in [surveillance studies] conferences immediately leads scholars to roll their eyes in boredom' (Caluya 2010, 621)!

It is this pointed discussion, a scholarly one but also far more than that, that I should like to enter here, by making a case for the enduring utility of the concept of panopticism. The article begins by identifying what Bentham actually wrote, using primary sources housed at University College London and expertly curated by the Bentham Project[1]. As well as being interesting in their own right, these texts and diagrams, it will be argued, amply justify Foucault's negative reading of Bentham. I will then contend that panopticism as Foucault construes it remains the best way to understand the problem of information technology-enabled surveillance in general, and that of ongoing political securitisation in particular. Finally, I shall seek to defend the venerable value of privacy against those who insinuate that it too is moribund. I maintain that privacy is the safest antidote to the panopticon, and that it must continue as the key weapon in the struggle for an ethical information policy in the twenty-first century.

The Panopticon Papers

It is fascinating to trace the panopticon's evolution in the corpus of the Bentham Papers at University College London (UCL), the institution to which Bentham also donated his corpse. Beginning with simple doodles (UC cxix. 124) [**insert figure 1**], bedecked by the slogan 'Mercy, Justice, Vigilance' and in one case by a quotation from Psalm 139 ('Thou are about my path, and about my bed: and spiest out all my ways...'), they progressed to detailed technical drawings (UC cxv. 44, cxix. 121, and cxix. 122, viewable at UCL Special Collections Digital Gallery) [**insert figures 2, 3 and 4**]. As is well-known, Bentham's supposedly perfect penitentiary, to be located not far from the Houses of Parliament, was envisaged as a circular, annular construction, with cells on the circumference for the prisoners, an inspector's lodge in the centre, galleries next to the inspector's lodge for sub-inspectors, brick walls between cells to prevent corruption-by-communication, bars on the

front of the cells so that nothing the prisoner does escapes notice, venetian blinds on the windows of the inspection lodge and galleries so that prisoners could not see what was going on in the interior and have no means of knowing when they are being watched, and, crucially, the cells lit up at all times.

The central idea of the panopticon was 'the inspection-principle', a point made evident from the contents and indeed title of the slim volume, actually just a series of letters to a friend, that Bentham published on the topic, *Panopticon; or The Inspection-House* (1995 [1787]). Elsewhere, reference can be found to the 'central-inspection principle' (UC cl. 377) and the 'tutelary principle of inspection' (UC cxvi. 272). It was thus a method for the control of prisoners and their moral reformation by means of supervision. This, and here is perhaps our first unpleasant surprise, included public viewing. Anyone was able to visit and view the inmates from the safety of the central inspection tower; with an inner London location, a good turnout could be expected; and they would be charged for admission (UC cxix. 269).

Moreover, the panopticon was not only for miscreants. Bentham also claimed that his model, which he had originally borrowed from his brother Samuel, a naval inspector, applied equally to schools, hospitals, factories and other innocent institutions (1995 [1787], 33). 'What would you say,' he gushed, 'if by the gradual adoption and diversified application of this single principle, you should see a new scene of things spread itself over the face of civilized society? – morals reformed, health preserved, industry invigorated, instruction diffused, public burthens lightened, economy seated as it were upon a rock, the gordian knot of the poor-laws not cut but untied—all by a simple idea in architecture?' (Bentham 1995 [1787], 95).

Bentham was thus an ardent champion of the panopticon; here the relation is quite the reverse of Orwell/big brother. But we must ask: should he have been? There is a catalogue of immediate problems with it. Promoted as an improvement on both 'transportation' and the notorious 'hulks' (prison-ships floating on the Thames) of the day, the whole idea was still essentially draconian. Their heads shaven (this would happen to female convicts too), wearing bizarre clothes such as shirts with one sleeve shorter than the other, and their crimes carved accusingly on the front of their lonely cells, Bentham devised a truly punitive confinement. Listing his prison's putative merits, he boasts: '1. absence of Drunkenness [even the gritty consolation of tobacco was to be denied, as is increasingly the case in 'progressive' institutions today] and Gaming [i.e., cards, etc] total 2. Religious exercise constant...In case of a second offence Panopticon for life would incapacitate for any third' (UC cxvi. 272). Existing prisons were not successful because of 'the want of compleatness

[*sic*] in the plan of separation' and because they failed to add to total separation 'occupation, profitable or at least innocent, to fill up the mind with useful ideas or at least innocent ones, and by that repletion to exclude mischievous ones' (UC cxvi. 606). So he condemns any slippage from a totalitarian system, lamenting for example that the central-inspection principle was applied only 'partially', hence 'disadvantageously', to the 'Edinburgh Penitentiary House', a semi-circular gaol constructed by some Bentham-influenced Scots (UC cxlix. 190. See figure 5) **[insert figure 5]**.

One would have thought that this self-evidently controversial, arguably crazy plan, which was Bentham's life-project, would have been consciously grounded in his utilitarian philosophy, the system of thought that he argued had superceded religion as well as all previous schools of ethics. However, it was difficult to find anything in the primary sources, either published or unpublished, that could properly be called a justification. His *Rationale of Punishment* (Bentham 1830) was a substantial work, but it seems to contain little explicit rationale for the panopticon and in any case it only appeared in 1830, over 40 years after the *Letters*. Given that people's welfare as well as the public purse were at stake, Bentham was morally obliged to show from the start exactly how his plan would lead to the utilitarian goal of 'the greatest happiness of the greatest number'. Instead we encounter a remarkably cavalier approach. For example, Bentham's consequentialist justification for the solitary confinement he originally promoted, was contained (as far as I could find) in one throwaway anecdote, namely: 'it has more than once happened to myself to be in the same room for a considerable time together, and I cannot say I ever found any bad consequence from it' (quoted in Semple 1993, 123). Eventually, after negative feedback from prominent prison reformer John Howard, he allowed to up to six inmates per cell—but thereby, surely, nullified much of what passed for the rationale of the whole scheme.

There is much more that must be said against Bentham (see also Steadman 2007). Indeed, if there was ever 'nonsense on stilts' (an insult Bentham was in the habit of firing at others), it was surely this panopticon penitentiary. It was architecturally absurd: light struggled to reach the centre; there was nowhere for the warden to live; prisoners had better views of other cells than the staff; and there was no escape in the event of a fire or a riot (Bentham had belatedly to design-in a secret tunnel). It was politically unwise too, not least because everyone except Bentham knows that it is relatively expensive to construct circular buildings; for that reason he quietly changed the shape to a polygon, in some long-winded *Postscripts* to the *Letters* (1995 [1791]), but thereby again blunted his original 'perfect' vision. Above all, it was ethically unsound because it was based on systematic deception and

manipulation, and without even the support of the thin theory of the good that is utilitarianism. Any decent moralist could have told Bentham that people are reformed by good leadership, by candid and constructive interpersonal communications, not by devious mechanistic contrivances.

Among the assorted delights of the Panopticon Papers is an amusing letter to the *Morning Chronicle* signed by 'A Lover of Spectacles'. The letter praises the panopticon as 'a prison constructed on the principles of optics', comparing its author to [eminent astronomer] William Herschel, being like 'a man having a glass before his heart, through which you may peep'; it recommends that the inspection principle be applied also 'in private houses as an effectual bar against all concealment, and [thereby to] tend more than any thing yet invented to banish that scoundrel Secrecy out of the world' (UC cxviii. 450). Since the epistle is dated April 1st, 1799, it is probably an April Fool jest, but Bentham was arguably so delusional that it is not impossible that he wrote it himself, and in all earnestness. As surveillance theorist David Lyon has observed, 'Bentham's hubris knew no limits' (1994, 207). Indeed, Bentham seems perhaps to have seen himself as the 'Pantocrator', lord of all, an ancient designation for Jesus Christ. What else can be the implication of his synopsis of the inspection principle: 'Effet immediat de ce principe sur tous les membres de l'establishment conviction qu'ils vivent et qu'ils agissent incessamment sus l'inspection parfaite d'un homme interessé a toute leur conduite' (UC cxvii. 117) [The immediate effect of this principle on every member of the establishment is the conviction that they live and act incessantly under the perfect inspection of a man interested in all their conduct]? Panoptic is ultimately a *theological* category; most theologians would probably advise that that is what it should remain (cf. Stoddart 2010).

In true Greek-tragedy style, there was a sorry ending to it all. Bentham's prison, despite its enshrinement in the Penitentiary Act of 1794, was never built, and its author spent the last part of his life crying foul and claiming exceptional financial compensation. And here is a final shocking fact about his 20-year obsession: he had been from the start out to make money for himself, planning to force the inmates to work for 14 hours a day and selling (albeit the prisoner-proletarians themselves would supposedly enjoy a share of the surplus value) their produce. This is confirmed in a begging letter to the 'Lords Commissioners of the Treasury' for 'recompense' for 'the erection of a Penitentiary House or Houses for confining and employing convicts' , where he whines that Prime Minister William Pitt (no less) backed his plan 'on or about [*sic*] the 23rd of January 1791' (UC xviii. 1). Seven years later, we discover in a file curiously titled 'Rose's Tergiversations' a letter to treasury official George

Rose complaining that 'while others are proving their loyalty by their affluence, I, who have nothing left but loyalty, am reduced to shut up my House (the residence of the family for three and thirty years), fortunate in finding a Brother's [i.e. Samuel] to take refuge in' (UC cxx. 120); elsewhere, he even resorts to dubious hypotheticals, such as citing the profits of private prisons in the United States, as part of his final claim for compensation in 1818 (UC cxxii. 489). So Bentham is actually not only the father of the panopticon but also among those responsible for that modern-day abomination, the private prison. And he did very well for himself. While his unconscionable demand for £689,062.11s. was refused, he did eventually extract £23,779. 3s. from the government (Semple 1993, 280-281). This left him one of the richest men in England, and the public, which all along he claimed to be championing, *pro tanto* impoverished. His inner conviction that the panoptic penitentiary would have been economical had it been built remained—fortunately, one suspects, for Bentham—unfalsifiable, in Popper's acerbic sense.

Panopticism and Contemporary Surveillance

All this is of great importance, because Bentham's ideas proved seminal. Bentham, Foucault observed, 'is more important for the understanding of our society than Kant and Hegel' (quoted in Brunon-Ernst 2012, 1); more particularly, the panopticon was an 'event in the history of the human mind' (N. H. Julius quoted in Foucault 1991, 216). Let us revisit Foucault's until recently definitive reading of Bentham, to see what he said and then consider why the sophisticated have turned their backs on it. The main source is the virtuoso chapter entitled 'Panopticism' in Foucault's book *Discipline and Punish: The Birth of the Prison* (1991, first published 1977), the English translation of his *Surveiller et Punir* (first published 1975). (*Surveil and Punish* would, one thinks, have been the better title.)

Foucault explained that the panopticon was about 'permanent visibility'; in this sense it was the precise opposite of the dungeon, which plunged prisoners into darkness (Foucault 1991, 201). But while it was designed to supercede dungeons, it is still a 'cruel, ingenious cage' (Foucault 1991, 205). There were no chains and manacles, but captivity was no less complete; indeed, it was more so. The panopticon, as Foucault puts it (1991, 204), 'functions as a kind of laboratory of power'. Encasing a new, insidious, impersonal, automatic form of control, it marks a change from the expensive, spectacular economy of power of the past. Its speciality is the deployment of 'anonymous instruments of power,' exercised through 'hierarchical surveillance, continuous registration, perpetual assessment and classification'

(Foucault 1991, 220). The panopticon is concerned with imprisoning the mind, not just the body, in a way that dungeons never could. Thus, it works through normalisation, inducing inmates to internalise the rules and thereby control themselves. It facilitates 'an inspecting gaze', as Foucault famously expressed the matter in *Power/Knowledge* (1980, 155), 'a gaze which each individual under its weight will end by interiorising to the point that he is his own overseer'. Prisoners become, in effect, their own gaolers; a penological form of 'hey presto!'

In itself, this would be an extraordinary contribution to penal and criminological theory, but hardly warrant Foucault's reference to the panopticon as a veritable 'Columbus's egg', a continental-scale intellectual achievement that seems obvious only after its discovery (Foucault 1980, 148). Foucault grasped the true significance of Bentham's ambition for the application of the panopticon to other social institutions. In fact, this spread beyond those mentioned by Bentham to Victorian libraries (Black 2001); a relatively recent example is the University of Glasgow Library's Round Reading Room **[insert figure 6]**. It even reached places of popular entertainment well beyond the circuit of 'institutions', such as the Britannia Panopticon music hall in Glasgow, still putting on the occasional show (Bowers 2014) **[insert figure 7]**. But Foucault realised also that panopticism was destined not only to annex particular social locations but to be applied to the operation of society *as a totality*. Hence the generic term 'panopticism'.

The panopticon, as Foucault (1991, 205) put it, is a 'diagram of a mechanism of power reduced to its ideal form; its functioning, abstracted from any obstacle, resistance or friction, must be represented as a pure architectural and optical system: it is in fact a political technology that may and must be detached from any specific use'. It thus reveals a macrolevel *political* reality, 'the disciplinary society' (Foucault 1991, 209), i.e. what we call today the surveillance society. 'We are much less Greeks than we believe', Foucault suggested provocatively, 'we [not prisoners, but ordinary people] are neither in the amphitheatre, nor on the stage, but in the panoptic machine, invested by its effects of power, which we bring to ourselves since we are part of its mechanism' (Foucault 1991, 217). Crucially, this is true of citizens in modern democracies, not just in authoritarian regimes. Indeed, the panopticon, Foucault would write in *The Birth of Biopolitics* (quoted in Laval 2012, 55), 'is the very formula of a *liberal* government' (italics added).

These are momentous insights by any standards. Yet, as already intimated, many leading scholars are now discarding what for sake of referential ease I shall call 'BenthamFoucault' (BF for short) as a prism through which to see social reality. This is the main agenda, for example, of the milestone collection *Theorizing Surveillance: The*

Panopticon and Beyond (Lyon 2006). Kevin Haggerty (2006, 24), a much-cited authority, concedes in his spirited chapter, 'Demolish the Panopticon', that 'the Panopticon has stood for sinister manifestations of power/knowledge'; however, its dominance as a 'scholarly model', he thinks, has now become 'oppressive'. It has indeed been the 'paradigm' of surveillance studies, in the Kuhnian 'normal science' sense, but it is one that he, Haggerty (2006, 24), should like to see overthrown. Other eminent scholars have come to more or less to the same conclusion about BF (e.g. Bauman and Lyon 2013; Green 1999; Lyon 2006).

In another development, a French school of thought attempts a rear-guard manoeuvre to save B *from* F. Anne Brunon-Ernst's recent edited collection *Beyond Foucault: New Perspectives on Bentham's Panopticon*, the work of scholars associated with the Centre Bentham in Paris, a continental equivalent of the Bentham Project, is devoted to showing 'ways in which Bentham's Panopticon can be construed as post-panoptical' (Brunon-Ernst 2012, 12). However, it is truly difficult, in light of the primary sources, at least those in London, to deny that Bentham was a panopticist, a believer in panopticism, absolutely in Foucault's negative, dystopian sense. Such rear-guard actions seem futile.

While there are one or two outliers (e.g. Caluya 2010), the mainstream sophisticated view is thus that panopticism is no longer an inadequate explanatory principle, because it does not capture what is most in need of acknowledgement in post-industrial, postmodern surveillance. What are these qualities, then? Typical forms of critique are as follows. Leo Bogard advocates post-panopticism on the grounds that the panopticon was about a delimited, static space of a prison, but modern surveillance is deterritorialised and mobile; it is about networked systems of surveillance, with much less of a subject-object dichotomy (Bogard 2006, 97, 102). Another major line of criticism is that its model of the captive surveilled by the central captor does not pick up increasingly common situations where people *want* to be surveilled. For example, Hille Koskela argues in an article about 'the other side of surveillance' that, unlike surveillance cameras, webcams are not at all after the Bentham pattern; they are closer to synopticism, the watching of the few by the many rather than the many by the few, and they are premised on 'deliberate exposure of the self'; in effect, completely reversing the power-visibility relation as Foucault delineated it (Koskela 2006, 176). Bart Simon probes even more deeply when he suggests that surveillance is no longer taking place just at the level of visual and other perceptual sense data involving, in Lockean language, 'secondary properties'; rather, emergent surveillance consists in the control of 'primary qualities', namely, time and space. In other words, major complexification is required; BF is obsolete; we need 'theory recall' (Simon 2005, 14).

Now I do not at all wish to deny these or any other analytical or synthetic advances that might have been achieved, but I think that it would be a serious error to abandon the core panoptic model. Do not all the new variants—those mentioned in my Introduction, but also Omnicon, Superpanopticon, Ego-panopticon, NeoconOpticon, Pedagopticon, Catopticon, and of course Neo-Panopticon, and so on—actually testify to the continuing relevance of the root concept? The axial intuition, about being trapped by exposure and of being unsure who or what is surveilling us, remains valid. Indeed, although it was beyond the historical horizon for Bentham and (just) for Foucault, the panopticon is an *increasingly* accurate model of the role of information technology (IT) in society. Closed circuit television, satellites, drones, Facebook Beacon, Google Street View, Microsoft Outlook: these and innumerable other applications of IT cannot be understood otherwise. It is the *principle* of the panopticon, *panopticism*, that is enduring, not specific concretions such as penitentiary architecture or a revamped poor-house. Panopticism still explains much of our behaviour today, when we walk, when we drive, offline and online, at school and at work—if not yet entirely at home (except when online, or an insect-drone hovers at the window).

That is the nature of the information society, the negative, to pursue optical imagery, of its shiny image. And the vital rights of privacy, of human autonomy and dignity, in such a society, are thrown into relief by the panopticon in a way that remains conceptually and discursively indispensable. Thus Bentham is still our prophet, or rather anti-prophet, one whose message we must heed, so long as it is read, as it were, back-to-front. We have, like it or not, entered the age that he prefigured, the (if I may be permitted my own neologism) PanopticEon.

There is a real danger too that a post-panoptical turn in surveillance studies, if it is ratified, will expose the heroic foot-soldiers in the struggle against surveillance abuses, particularly in the primary domain of political surveillance. Since the Edward Snowden revelations, there can be no denying that the relationship between the individual and the state has become again the main battle-ground, as of course it always was in classical political science. What Snowden put beyond doubt, and therefore 'plausible deniability', is that since 9/11 everyone, friend and foe, is being watched, that the secret services are in actual fact what Bentham was only in his megalomaniacal dreams, 'like a great Spider seated in ye Center of yr. [*sic*] Panopticon' (William Wilberforce, letter to Bentham, quoted in Semple 1993, 264). Official suspicion has moved from the margins of society to the mainstream, from the small number of actual or potential deviants to the whole population, the Great Society itself.

This is the real Kuhnian paradigm shift, a switching from presumption of innocence to presumption of guilt, from good society to bad society. We are now inside a *political culture* of surveillance; and this is fundamentally new, at least in the so-called free world. Whether entirely fairly or not, it is inevitably redolent of totalitarianism, of 'your papers please' (Los 2006; Marx 2012). It is also fundamentally unethical, indeed monstrous, structurally comparable to the decision to indulge in area ('carpet') bombing instead of targeted strikes, surely one of the greatest moral catastrophes of the second world war and one that was governmentally 'justified' by similar technocratic arguments.

We still need to cite the panopticon. Heather Brooke, a prominent freedom of information campaigner, was a member of a British Royal United Services committee set up by the deputy prime minister of the United Kingdom to review Britain's intelligence practices post-Snowden, one of several such sudden exercises in official soul-searching (Wood and Wright 2015). One of the principal bones of contention has been mass or 'bulk' surveillance, specifically the automatic wholesale capture of electronic data of many kinds, and the unavoidable question of whether such constitutes a privacy breach. The authorities, including some former spy-chiefs on the committee, maintained that this is not the case until human analysts look at the data dumps. Brooke argued to the contrary that privacy is engaged at point of collection, and appears to have won that important point. 'In bulk collection', she wrote in the *Guardian* (2015), 'the potential exists for anyone to be watched at any time. One of the red herrings put our way was that GCHQ [Government Communications Headquarters] does not conduct mass surveillance because it does not read everyone's email. What was not mentioned is that GCHQ might intercept and store large quantities of it, as the Amnesty [International] case [its conversations were found on GCHQ computers] demonstrates.' Her article continues:

> The point of Jeremy Bentham's Panopticon wasn't that everyone was actually watched at all times, it was that they could all potentially be watched. It is the possibility of omnipotent surveillance that acts as a chilling effect on any behaviour that potentially offends the state or the powers that be. For those who commit acts of journalism or legal advocacy that directly challenge state power, the risks in such a society are great.

There is some evidence that her advocacy has paid off. As I write (June 2016), the Investigatory Powers Bill is making its stately and unstoppable way through the British Houses of Parliament. While it does not embody all of Brooke's principles—it is still nicknamed the 'Snooper's Charter' by its opponents— it would certainly have been been a

worse bill had it not been informed by committees such as the one on which she sat; and bulk powers specifically have been to some extent tamed, at least according to one former director of GCHQ, writing in *Wired* (Omand 2016). The point is that the panopticon remains a vital reference-point in the rhetorical battle against mass surveillance, and political technology generally, in what Armand Mattelart (2010) aptly calls 'the securitarian order'. For journalists and everyday readers, a postmodern guide-book notes, 'it matters little that many in the academic world of surveillance studies have moved on from Foucault' (Horne and Maly 2014, 24). BF is theoretically dead then; but in the real world, long live BF!

Conclusion: Preserving Privacy in the PanopticEon

In this final section, I want very briefly to address the more existential question of what we today should be doing to arrest the intensifying process of 'transforming the "information society" into the "surveillance society"' (Raab *et al.* 1996, 295). Here too opinion divides, even more so. At one end of the scale there is survivalism, 'getting off the grid' altogether, and neo-Luddism, the deliberate sabotage of computers and telecommunications, as practiced by some exponents of hacking. There is no future in such negative paths. A much more moderate and defensible type of direct action, however, is obfuscation, small acts of refusal to comply when faced with illegitimate demands for information. That intrusive tracking software 'rolled out' by human resources after a hurried pseudo-consultation, that insistence by the budget airline or the dentist on the handover of your mobile phone number: it would be helpful if more people resisted daily power-grabs of these kinds.

However, no individualistic method is the real answer. Instead of low-level guerrilla warfare, which everyone knows must in the end be lost, we as a citizenry need to collectively hold up our heads and openly call out the adversary. The panopticisation of society is a political problem, an aspect of the normative crisis of the information society (Duff 2012), so it demands a commensurate response. What is required, therefore, is the development of an appropriate *politics* of information and its operationalisation in the public forum, promoting thereby ethical norms and practice and, where necessary, prompting the heavy hands of regulation and law.

Some experts suggest that, even if desirable, this is no longer a viable strategy. Haggerty and Ericson (2000) argue in an influential paper that surveillance is now so pervasive and multifaceted that it—what they call the 'surveillant assemblage'—cannot even

be properly identified, much less officially dealt with. 'As it is multiple, unstable and lacks discernible boundaries or responsible governmental departments', they deduce, 'the surveillant assemblage cannot be dismantled by prohibiting a particularly unpalatable technology'. 'Struggles against particular manifestations of surveillance', they continue (Haggerty and Ericson 2000, 609) 'as important as they might be, are akin to efforts to keep the ocean's tide back with a broom'. Conventional, constitutional politics simply cannot avail. Bogard worries along similar lines that despite surveillance's being largely framed post-Foucault as 'a power/knowledge relation', i.e. *not* merely as a legal issue, *resistance* to surveillance has been couched in purely legal terms, 'as if the power of the law were not itself fully invested in surveillance, or as if political institutions that are themselves fully operationalized by surveillance could somehow effectively regulate it' (Bogard 2006, 98). And, the critique continues, where there have been apparently progressive measures, these have not actually worked. In European Union member states, for example, we have the European Data Directive, hailed by some as the 'de facto global standard' of privacy legislation (Braman 2004, 120). Yet according to privacy pressure groups, even this legal behemoth has been of limited use in resisting the spread of most forms of surveillance.

Fatalism, however, is unwarranted, and unworthy of a democratic and scientific epoch. It is not as if we have been bewitched. Surveillance is always a result of human decisions, whether by the state and the public sector, or by businesses or else by private individuals. It might be multifaceted but it is not an indeterminate or mysterious entity, and should not be venerated as such. It can and should like every other issue be subjected to opinion- and will-formation in the political public sphere of well-organised societies, and combated by all the legitimate means available. In particular, surveillance must be countered by a robust politics of privacy, a value that, despite its growing number of critics in the surveillance studies community, continues to inspire both pressure groups and the general public (Bennett 2008; Bennett 2011). We need to define privacy, demonstrate its value, plot its coordinates, and patrol its boundaries. We need to be clear about precisely what its inalienable core is, and what its negotiable periphery; that is, develop an up-to-date casuistry showing where it must be preserved, and where it can bow to countervailing considerations of openness or national security or the right to know.

In short, we need to work out a theory and practice of post-industrial privacy, but it must be one informed by the lessons of history. Only an ethical principle will suffice to counter the potent force of panopticism and its army of 'zealous Panoptician[s]', a phrase that Bentham was not ashamed to embrace (quoted in Semple 1993, 237). It may not be necessary

to go as far as Karl Marx, who called Bentham the 'arch-philistine' (quoted in Crimmins 2015), but if the analysis in this paper has been correct, a progressive politics of privacy needs to begin by being *contra* Bentham. Let us not forget the big picture. We are at a crucial point in history, and the choices that we make now will shape the social structures inside which our descendants will have to abide. A new world is forming around us, is already half-built. Its foundations need to be firmly laid, in terms not just of technical standards but of ethical values. Privacy is not the only relevant value, but it is arguably the most important, and it is certainly the one most likely to be buried under the rapidly-rising superstructure of a global information/surveillance society. 'I have sown the seed', Bentham once scrawled in his atrocious handwriting, 'but the harvest, I fear, is for another age' (quoted in Semple 1993, 38). We now know that that age is the one in which we find ourselves: the PanopticEon.

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