

Book Review

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Setting the Watch. Privacy and the Ethics of CCTV Surveillance

by Beatrice von Silva-Tarouca Larsen

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In 2012, the US Supreme Court ruled (*United States v. Jones* 565 U.S. 2012) that the police violated the Constitution when they placed a Global Positioning System tracking device on a suspect's car and monitored its movements for 28 days. A set of overlapping opinions in the case collectively suggested that a majority of the Justices were prepared to apply broad privacy principles to bring the Fourth Amendment's ban on unreasonable searches into the digital age, when law enforcement officials can gather extensive information without ever entering an individual's home or vehicle. In debating the rationale for the decision, Justices were divided, with the majority saying the problem was the placement (or setting) of the device on private property. Moreover, five justices also discussed their discomfort with the government's use of or access to various modern technologies, including video surveillance in public places, automatic toll collection systems on highways, devices that allow motorists to signal for roadside assistance, location data from cell phone towers and records kept by online merchants.

Setting the Watch comes to give answers to such kind of privacy issues, which are necessarily growing in a digital era. Technology makes the process of *setting the watch* a significantly more relevant element of analysis. In her book, Beatrice von Silva-Tarouca Larsen examines in depth the core concept of privacy in public space. By dealing with CCTV's impact on privacy interests in public space, the author analyses a range of legal and ethical issues around the conflict between public interests in implementing public CCTV on the one hand and claims relating to an individual's privacy interests on the other. Through her very well-written book, she shows the reader how in our society the demands for knowledge and control to advance public welfare often conflict with the private interests of the individual in relation to their secrecy, seclusion and anonymity (p. 12).

Mainly using a liberal and fundamental rights perspective, the book criticises the widespread growth of public CCTV in recent decades. The author also presents a set of empirical studies showing that CCTV is ineffective in preventing crime. In her well-shaped rationale, she argues that CCTV should be restricted to the most crime prone areas, should show verifiable effective outcomes, and should be subject to more strict regulation. But most importantly the author argues for the existence of a right to anonymity in public places and that most of the time, CCTV constitutes an unnecessary violation of such a right. In doing so, she proposes a set of spatial and normative boundaries and reveals the moral dimensions of the conventions of the so-called 'civil inattention'.

As the author states at the outset, her *Setting the Watch* is based upon Andrew von Hirsch's conception of privacy in public space. In her first chapter, she summarises and develops von Hirsch's 'three circle theory' and proposes the need to define a right to anonymity in the public space. Certainly, Andrew von Hirsch's concepts of privacy and anonymity have a dominant influence on her book. In fact, it could be said that her book is a thorough development of von Hirsch's brilliant chapter 'The Ethics of Public

Television Surveillance' in *Ethical and Social Perspectives on Situational Crime Prevention* (von Hirsch, Garland, and Wakefield 2000). Seen from certain critical perspectives, the book tends to emphasise the lack of verification of the impact of CCTV on crime prevention and exaggerate the impact on individuals. Accordingly, many might be sceptical of the author's claim in her Preface that 'being watched by millions of cameras as we go about in public does something to us and it makes us change how we behave'. However, as the author argues, while populist perceptions can be taken into consideration, just because some do not mind being observed all the time does not make CCTV non-intrusive from a normative point of view. The problem is that she also uses empirical arguments to restrict the use of CCTV; so, it could be said, her normative and empirical arguments should answer normative and empirical objections. In some way Law and Political Sciences perspectives have languages and foundations that are difficult to harmonise.

In this sense her utilitarian arguments that supposedly come to support her rationale could be considered problematic when looked at in relation to some other public interests. At this point one should ask if the normative and empirical planes are really such separate worlds. Moving beyond a solely legalistic viewpoint and relying throughout the text on a strong normative or deontological perspective, her utilitarian arguments are based on a claim of CCTV's inefficacy in preventing crime and on the supposed high impact on individuals' privacy interests and concerns, when both line of arguments are far from proven to date. Despite her view that 'crime prevention relates to the interest in security, not to the interest in feeling secure' and therefore crime prevention should be based on a rational understanding of risk, not on subjective anxieties (p. 126), in fact, such subjective interests continue to be of public interest. In this sense, von Silva-Tarouca Larsen's dismissal that fear of crime will not play a role and be a factor in balancing opposing interests is improbable. Here a reference to Webster's 2009 contribution in *Surveillance & Society* is useful, in which he concludes that a 'policy perspective' approach to understanding the CCTV revolution is illuminating as it highlights the complex intertwined interactions between government, policy-makers, the media and other stakeholders, and that CCTV does not necessarily have to 'work' if it meets other purposes.

Setting this aside, the legal-ethical approach she develops and her deep definition of privacy and its boundaries are noteworthy. Despite the large body of literature on privacy issues, until von Hirsch's contribution, and now its further development in *Setting the Privacy*, there has been no such detailed description of the ethical foundation of the privacy concept in the public space. Moreover, through *Setting the Watch* one is introduced to or can better understand the philosophical concept of privacy that underpins it.

In conclusion, *Setting the Watch* builds the argument that there should be a right to privacy, which extends to anonymity in public space, and that public CCTV can be a threat to that right. Through a well-developed rationale, it also sets out some principles for more effective governance of CCTV. Here the author advocates that the implementation of public CCTV schemes should be conditional upon a comprehensively documented and significant criminal threat. Before such a statement some might ask why minor incivilities and other crimes should be excluded from the ambit of CCTV at the expense of focussing upon only narrow street crimes. Once again the author supports her assertions through rational and empirical evidence related to crime prevention in the strictest sense. However, she fails to state that: (i) other public interests might be relevant (especially fear of crime); (ii) we do not have evidence of incivilities reduction through CCTV systems; (iii) and the alleged impact on civil rights cannot be assumed only because CCTV systems are in operation. Also, by her own logic, it could also be required that the potential risk of violation of privacy interests by public officers should also be empirically proven. Finally, some ex ante requirements seem adequate and proportional in terms of practising good governance. In this regard, the author could

have made reference to the governance experiences in this field of Spain and France, two of the very few countries where use of CCTV has to pass a process of prior authorisation, whereby all applications to install police-monitored CCTV have to be approved by an independent Commission of Guarantees.