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Democracy is watching you: from panopticism to the Security State

A democracia está de olho: do panopticismo ao estado de segurança

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ABSTRACT

The essay that the reader is holding in his hands is an attempt to understand the extent to which, in the present-day, we are watching the return of a visibility, exposure and surveillance system that a utilitarian author like Jeremy Bentham baptized of Panopticon, or "place where everything is seen". In fact, the pinnacle of the "information society", and the present scenario of widespread surveillance intensified by the establishment of Security State post-September 11th, has implications in the practices of control over individuals on a daily basis, what Deleuze calls "societies of control" at the same time it contributes to the frontiers dilution between the public sphere and the private sphere. In this sense, we consider it is important to do a review on "disciplinary societies" surveillance and the control of "biopower" theorized by Michel Foucault to

RESUMO

O ensaio que o leitor tem em mãos é uma tentativa de compreender a medida em que, hoje em dia, estamos vendo o retorno a um sistema de vigilância, visibilidade e exposição que um autor utilitarista como Jeremy Bentham batizou de Panóptico ou "lugar onde tudo é visto". Na verdade, o auge da "sociedade da informação", e o cenário atual de vigilância generalizada intensificada pelo estabelecimento de um Estado de Segurança após o 11 de Setembro, tem implicações nas práticas de controle sobre os indivíduos em uma base diária, o que Deleuze chama de "sociedade de controle", ao mesmo tempo em que contribui para a diluição das fronteiras entre a esfera pública e a esfera privada. Neste sentido, consideramos que é importante se fazer um comentário sobre "sociedades disciplinares", vigilância e o controle de "biopoder" teorizado por Michel Foucault para entender,

subsequently realize how new surveillance technologies increase, exponentially, the subjects' transparency.

KEYWORDS: Surveillance Society. Panopticon. BioPower. Security State.

posteriormente, como as novas tecnologias de vigilância aumentam, exponencialmente, a transparência dos sujeitos.

PALAVRAS-CHAVE: Sociedade da vigilância. Panóptico. Biopoder. Segurança.

The Surveillance Society

“Asleep or awake, working or eating, indoors or out of doors, in the bath or in bed – no escape. Nothing was your own except the few cubic centimetres inside your skull.”

George Orwell

In the famous novel by George Orwell, Oceania citizens had little or no chance of escaping the “eye of power”. Big brother invaded the interstices of the individuals' intimacy, observing and noting every behaviour models, whether they were public or private. Any movement was closely watched and citizens had no way of knowing whether or not they were being spied upon. The Big Brother regime accumulated as much information as possible about the individuals and their contact with these surveillance practices was part of their everyday life. In fact, the dystopian masterpiece *Nineteen Eighty-four* (1948) is one of the main metaphors of a society where the observation, classification and storage of behaviours have become a routine and systematic activity. Obviously, Orwell had no way of

predicting the increasing development of technologies, but his speculative novel about the future defects highlights, precisely, the fundamental role of information in the bureaucratic governments. Orwell's dystopia consists of a warning about the progressive advances of digital technology by anticipating their consequent effects on invasion of individuals' privacy, despite the literary and fictional nature of his work.

As a matter of fact, thinking in terms of a "surveillance society" (Marx, 1985) means exposing the daily encounters with bureaucratic activity and with the desire for efficiency, control and coordination of the gigantic security systems that underpin the modern world. Currently, surveillance is a daily practice that involves individuals without these realizing it. Formerly, the domestic sphere was thought of as the private sphere by excellence, a place where others could not intrude¹. However, the present surveillance means to invade almost all spaces and the visibility forms an unavoidable component of any social life. Supervision became routine during the 20th century (Lyon, 2002, p. 2) and visibility began to prefigure a social and political issue in a way that Orwell, Weber, Taylor or Henry Ford could not imagine². From the generic point of view, surveillance is defined as a *purposeful, routine, systematic and focused* activity (Murakami, 2006, p. 5), used to *manage* people and populations. Nowadays, individuals are on a daily basis with a wider *global, decentralized and unnoticeable* control increased, to a large extent, after the attacks of September 11th. The existing surveillance has been reinforced in crucial points and several countries approved laws that allow unprecedented levels of control and policing. It is a new *pan optos*, a vigilant observation that sees and records everything.

Otherwise, it has been a long time since the surveillance overflowed into the entertainment world. For example, if we think in *reality shows* that emphasize everyday life and offer the viewer individuals' subjective and idiosyncratic experiences, which

the famous Big Brother program is a main example. *I'm watching you!* exclaims the current culture of surveillance. As observation and visualization becomes a central instrument of surveillance, lighting and sharing individuals' intimacy sphere, the society becomes an eye with several *big brothers* that isolate and inspect the individual, converting him into an observation and examination object. In contemporary societies, panopticon decentralized and in fact, we seem not to be able to escape from its observing eyes.

The emerging devices of visibility and panopticism

An in-depth study about the prominence of surveillance culture, especially regarding the historical relationship between power and visibility, but also with today relationship between exposure in public and the emerging devices of observation and control, must necessarily be related to the new forms of individuals' *discipline* and *transparency*. Let's focus, for example, on the optical dimension of contemporary societies, that is, on the fact that a large part of the social actions articulate around the vision and their corollaries. As a matter of fact, the contemporary public sphere tends to the visibility, to attitudes observation and judgment, to the *advertising of the subjective particularities*. In a public sphere which is defined by observation, by a social tangle guided by the principle "They see me, therefore I exist", as showed by Daniel Innerarity (2004, p. 134), individuals convert themselves into objects of the eye, into beings subject to each other's look. This excessive visibility, which is a characteristic of contemporary society, subjects individuals to a permanent state of control, surveillance and exposure.

As it is known, the surveillance society genesis was strikingly described by Michel Foucault in his work *Discipline and Punish* (1975). Jeremy Bentham's Panopticon, the basis of *societies of discipline*, is the architectural figure that allows the correlation

between visibility, exposure and control. An architectural model applied by Bentham to prisons but that, according to Foucault, goes for schools, hospitals, factories and even “places of correction”. It refers to a well-known architectural composition: in the peripheries, the structure is built in a ring shape, while in the centre; there is a central tower with large windows that open onto the inside of the ring. The peripheral structure is divided into cells that cross the entire width of the building. Each cell has two windows, one that gives to the interior of the building, corresponding to the central tower windows, and another, which gives to the outside, and that allows light to pass through the cell from one side to the other. Simply put a watchman or an observer in the central tower and close an individual in each cell. Due to the light that passes through the two windows, from the central tower, it is possible to control any gesture made in the cells in the periphery. This way, the watchman can see without, however, being seen, this way, visibility becomes a “trap” (Prior, 2011, p. 383). More than imprisoning the body, the panoptic machine aims at its visibility, allowing a continuous and inevitable exposure.

Michel Foucault sought to analyse the 17th and early 18th centuries ideal project of “disciplinary societies”. A type of societies based on subjection methods of the individual’s bodies applied in large “closure places”. They respect a multiplicity of processes and detailed techniques of application on the body that result in a “political anatomy”, of disseminated localisation and in a certain “microphysics of power”. According to Foucault, the body is the object of a power mechanism based on a policy of coercion aimed at individuals’ obedience and utility. Discipline increases the body forces in terms of economic benefit, and simultaneously decreases the body forces in terms of political obedience. As stated by the author: “these methods that enable the thorough control of the body’s operations and ensure the constant subjection of its forces, imposing them a docility-utility relationship, is what you might call disciplines”

(Foucault, 2009, p. 141). The disciplinary society anatomy is applied for the political process of the panoptism, “a centralized look” that subjects the individuals’ body to the principle of total visibility. More than a technical program, the panopticon constitutes the societal paradigm from the 17th and 18th centuries. Indeed, the panoptic machine enables a state of constant visibility, ensuring, in a way, the “automatic functioning of power”. As the individual never knows if he is being watched, he must assume that he can be observed, especially because he experiences a continuous state of visibility. Control is achieved by the constant feeling of the presence of an invisible eye, the “eye of power”. By being subject to an unverifiable surveillance process, individuals must behave as if they were being watched at all time, avoiding any behaviour that can exceed the norm. In this way, by awakening in individuals a feeling of behaviours constant inspection and observation, the panopticism model vertiginously approaches, from the divine ubiquity³, manufacturing the “homogeneous effects of power”.

Consequently, the automation of these homogeneous effects of power negates the deviant behaviour, discourages the possibility of falling into transgression. The power automates itself and makes individuals, who are aware that they might be being watched, control and watch themselves. The *panopticon* claims itself as an ideal societal organisation model, an efficient and spontaneous application program and guarantor of order. Its purpose is to control deviation, to control behaviours that, because of being deviant from the norm, shall be corrected, and shall be “normalized”. Nevertheless, this normalization is done in a “docile” way, that is, not so much by the use of force as by the use of the “dressage”. Let’s think, for example, in the brilliant Stanley Kubrick’s film *A Clockwork Orange*, and in how the delinquent Alexander de Large is monitored and “returned” to society, through a process of (re)education and examination, the Ludovico technique. By taming individuals, allowing the (re)adequacy

of their behaviours, discipline has a productive effect, because it “manufacture” and “exercises” subjects to adopt behaviours that meet the wishes of the power structure. As we see, discipline exercises on the subject’s body, and the panoptic is the discrete machine that allows the power productivity, a disciplinary society paradigm in force in the 17th century.

However, in the mid-18th century a new form of power centred on biological phenomena which can be controlled appeared. A new technology that is not directed to the individual in his uniqueness, but that is directed to the men’s multiplicity, to the “body-species”. As Foucault stresses: “we have a first power seizure upon the body made in the individualisation register and a second power seizure that is not individualizing, but, if you want, standardised, and which is no longer done in the direction of man-body but of man-kind” (Foucault, 2006, p. 259). Through the biopolitics paradigm, the disciplines are elevated to another level, because the techniques used aim now to ensure the population body control. Deep down, it is not about exploring the individuals’ body in order to develop their skills, or to correct their abnormalities, but a power system that seeks the control and the regulation of biological phenomena. It is in this sense that phenomena such as birth rate, mortality, average life expectancy, disability or biological disabilities become part of the control exercised by the biopolitics paradigm. Biopower aim is the regularization of all human life aspects, a paradigm where the *bios* and politics intertwine. At first, through the manufacturing of docile bodies by the discipline of the panopticon, and, subsequently, by biological phenomena regulation, biopower imposes its control over the social body. So the biopolitics is a more advanced state of relationship between the power and the body, addressed to the men’s multiplicity. Let’s see how, in the words of the author, bio-power operates:

“

It is, above all, to establish regulatory mechanisms that, in this global population with its random field, will be able to establish a balance, keep an average, establish some sort of homeostasis, ensure compensation, in short, install security mechanisms around this random inherent in a population of living beings, optimize, if you want a State of life.”
(Foucault, 2006, p. 262)

From Michel Foucault’s perspective, population as a “multiple body” that must be regulated is characterized by randomness and unpredictability of biological phenomena as the birth rate, mortality or public health. The regulatory mechanisms of knowledge and power intervention have the competence to predict, determine and modify each phenomenon in order to minimize contingencies inherent in a population body. The notion of population, the randomness and unpredictability of biological phenomena and the prediction and anticipation of the power intervention mechanisms are the three defining elements of biopower. While the disciplinary paradigm of panopticon seeks to intervene on the individual body with the purpose of extracting from him the maximum benefit, biopower tries to regulate population body and the inherent biological phenomena. The aim is to establish a society of normalisation, a “security technology” which aims to avoid anything that might be unusual, exceptional, unexpected. From the panoptic training machine of the body to achieve the soul education, Foucault moves to another paradigm, the biopolitics and his societies of security project.

The new control according to Gilles Deleuze

The genius of Foucault's proposal is part of the analysis of the first organized system of control techniques, a first major paradigm of individuals' lives regularization. Disciplines inaugurated a surveillance system which was subsequently perfected by biopower. Nevertheless, the approach taken by Michel Foucault is still far from today's surveillance scenario resulting from technological evolution. In *PostScriptum on Control Societies*, Gilles Deleuze analyses, precisely, the devices basis of digital surveillance that are the foundation of the current Security State. The author believes that the principle of enclosure was replaced by the principle of flexible control. In the French philosopher's words:

“

This is a generalized crisis of all means of closure, prison, hospital, school, family. The family is an 'interior' in crisis as any other interior: school professional, etc. The competent ministers have not stopped announcing reforms supposedly necessary. Reforming school, reforming industry, hospital, armed forces, prison; but everyone knows that these institutions are running out in the longer or shorter term. It is only about managing their agony and keeping people busy, until the installation of the new forces that are already knocking at the door. The control societies are in the process of replacing the disciplinary societies.” (Deleuze, 2003, p. 240)

The scenario analysed by Deleuze results from a “mutation of capitalism”, a capitalism that no longer focuses on the pursuit of *capital gains* by the logic resulting from maximizing sales and reducing costs of production, but in *marketing*. In this

dispersive system, “where the factory gave its place to the company”, marketing becomes a control instrument whose “numerical language” is the cipher. It is the same cipher that registers each individual’s position, tastes, preferences, virtual tours, his undulating state or even his own state of mind. The individuals’ location in space and time, as well as their activities coordination depends on the interaction of human beings with technological devices that are increasingly autonomous. As David Lyon observes, “the new surveillance is there, no coups or revolutions” (Lyon, 1995, p. 82).

In this new milestone of capitalism, where “smart marketing” acquires preponderance, the undifferentiated mass of individuals gave rise to groups of consumers with specific characteristics. That’s why the key to new smart marketing is rooted in information and in the data accumulation on the individual’s characteristics as a consumer. Through a selection of informative profiles, databases exclude groups considered at risk and include informative profiles whose characteristics are approaching the audience of potential consumers. Thus, cyberspace works as a parallel world where all of us have an invisible profile before the real world. A profile that becomes visible through the look the electronic window allows. Surveillance made possible by the advent of new technologies makes, in fact, individuals visible in a way that Bentham couldn’t predict. Technology transcends space and dissolves time because the past can be, at any time, summoned by small devices that record and memorise the events. In post-panoptic, the databases collect, separate, organise and store more and more information on the individuals’ everyday activities. “Smart marketing” that Deleuze tells us about explores the digital media interactive capacity to monitor in detail the advertising commercial that offers to the consumer’s eyes. The economic model that covers companies like Google or Facebook and, more recently, the wide variety of mobile applications for *tablets* and *smartphones*, is based on “interactive advertising” (Andrejevic, 2012, p. 91) and in collecting detailed information about the

user, his behaviour and his preferences, on platforms and generalized data centres. Nevertheless, in addition to the companies, police and security entities, both public and private, increasingly rely on digital surveillance equipment. It is precisely in this sense that David Lyon applies the expression “ubiquitous surveillance” or omnipresent. The development of mediated communication networks has improved and expanded exponentially the data monitoring on the individual, that is, the collection and storage of information without users’ knowledge or consent that have economic or security value. As David Lyon observes, our way of life in contemporary times is full of surveillance practices that are a product of the so-called “information society” (Lyon, 2009, p. 5), practices that transcend space, distance or physical barriers and, concomitantly, contribute to a certain phagocytosis of both public and private.

As we see, the distinction between public life and private life dissolves as the States and corporations collect, process, classify and store personal data, ignoring old limits. The inspector of the central tower seems to have been replaced by a multiplicity of inspectors as Marshall McLuhan rightly states:

“

[...] now there are ways to keep everyone under surveillance. Wherever you are in the world, you can be subject to surveillance. Observing people and recording their movements became one of the main occupations of the humanity. This is how many businesses are managed. All companies have great espionage departments. It is called public relations and audience research, and they work day and night. Watching the partner became the main business of humanity.” (McLuhan, 2009)

Surveillance as biopower

“L’État qui garantit la sécurité est un État qui est obligé d’intervenir dans tous les cas où la trame de la vie quotidienne est trouée par un événement singulier, exceptionnel.”

Michel Foucault

Maybe it’s not at all unreasonable to assert that contemporary democracies are now called surveillance societies, a type of societies where the visibility was an essential component and where, on the other hand, the idea of privacy becomes increasingly an obsolete idea. As we saw earlier, biopolitics inaugurated *gouvernementalité* that was perfected by the technology advent. In this paradigm, the databases constitute the heart of the new control technologies. They are the convergent point of contemporary surveillance, a materialisation of *biopower*, the *Security State* foundation.

Currently, biopower is permanently active in the regularization of all aspects of everyday life. Surveillance is no longer just a characteristic of the liberal governments by means of control over the market and the population, observing and classifying individuals. It is also a form of regularization of unpredictability and randomness of our time. Hence Foucault’s concepts of biopower and *gouvernementalité* are so important in our analysis. In fact, it seems indubitable that anticipatory and statistical dimension of biopolitics was at the base of the current assumptions of the Security State, a State that aims to safety through anticipation and prediction of risks, covering the entire social life. According to Michel Foucault, one of the characteristic aspects of biopower has to do with the fact that the regulatory mechanisms of *knowledge* and intervention of *power* begin to be based on a system of global measures, of statistical prevision, forecasting and anticipation. The aim is to know the phenomena in a global

way, whether in the stimulation or birth control or in the forecast and exclusion of risks and possible crimes. This is a second adaptation that focuses on population, biological or bio-sociological phenomena, much more difficult than surveillance and dressage of the panopticon discipline. By the way, as underlines Foucault in the *History of Sexuality*:

“

The disciplines of the body and the regulations of the population constituted the two poles around which the organization of power over life was deployed. The setting up, in the course of the classical age, of this great bipolar technology-anatomic and biological, individualizing and specifying, directed toward the performances of the body, with attention to the processes of life characterized a power whose highest function was perhaps no longer to kill, but to invest life through and through.”
(Foucault, 1994a, p. 142)

Thus, biopower is a technology that seeks to control, and if necessary change, the probability to set security in relation to their internal dangers. The basic assumption is that the power focuses on population and, in this context; the policy is, above all, a set of predictive, anticipation and regulation techniques of biological phenomena. Different from the panopticon discipline, practiced on predetermined individuals, Foucault’s security conception is a sort of “contingency economy” that focuses on “mass population phenomenon.” This is not a dressage work on the individual detail but, on the contrary, it is about acting by means of balancing and regulating global mechanisms, seeking to control public events that can produce a “living mass”. A technology that aims, therefore, not by an individual dressage but by the overall

balance, something like a homeostasis: the set security in relation to their internal dangers (Foucault, 2006, p. 265). Biopower, characteristic of societies of security, integrates and complements the panopticon discipline without, however, cancelling it. That's why societies of security seem to be as an ever-present eye, an "eye of power" that makes us forget that we are being watched. The post-panoptic transcends the big means of closure space and its own physical barriers, but the purpose remains the same: the individuals' knowledge and converting these into "objects" of observation and monitoring the political body.

Effectively, the Security State sets up a deft and subtle power that seeks to eliminate things, people and behaviours considered incidental or dangerous. As Foucault notes, this is a deal that the State offers to the population ensuring them security. If someone is sick, the State responds with social security. If someone loses his job, the State offers the unemployment benefit. Was there a giant wave? The State creates a solidarity fund. Do delinquents proliferate? The State guarantees their recovery through good police surveillance (Foucault, 1994b, p. 385). We see how the Security State is a State prepared to intervene in all natural and exceptional cases of everyday life, a wise and interventionist power, a settlement power which consists of "make live and let die" (Foucault, 2006, p. 263). In fact, and contrary to what it is possible to read in some literature on the subject, the disciplines matrix and the regulations principle do not constitute two independent theories in Foucault's thought, but two operating modes and application of knowledge/power. On one hand, there is the dressage and the disciplinary adjustment of bodies. A pole focused on the body as machine aimed at the growth of its skills, its forces extortion and the parallel growth of its docility and usefulness. On the other hand, there is the adjustment of population and of the biological phenomena using biopower techniques of normalization. A pole crossed by the living mechanics and that focuses on the body-species.

Foucault's interest lies, precisely, in the power of *gouvernementalité*, in the power of the Government order regarding the *subjectivism of human beings*. An interest that takes root precisely in the rise of fascist regimes and the large military dictatorships, as well as the geopolitical strategies of the great powers in the Cold War period. In fact, the *gouvernementalité* interests in the population and the prediction, anticipation and regulation techniques of biological phenomena, allows us to understand and explore the relevance of biopower in the modern surveillance practices. In this context, the vigilance on the human body and the control of its movement emerges as a population reassuring political technology in a complex and uncertain context where the safety of the set became the top priority (Ceyhan, 2012, p. 38). In times of "randomness" and "uncertainty", biopower as a security technique is considered by political authorities as a way to reassure population. By the way, as Foucault underlines: "see how ready we are (the State) to protect you as soon as something exceptional and extraordinary happens [...] we have all the means to intervene in case of need" (Foucault, 1994b, p. 385).

Democracy is watching you: Security State

"Sitting at my desk I could spy on any person, you or your accountant, a judge or even the President, since he had an e-mail address."

Edward Snowden

From our perspective, the current dialectic of control must be framed in a political security context that developed during the period of the cold war and that reached its apogee after the September 11th attacks. According to the historian Arthur M.

Schlesinger, John F. Kennedy's former adviser, the expression "national security" has emerged in the period that preceded Cold War (Mattelart, 2009, p. 67), encoded in the legal framework from 1947, shortly after the *National Security Act* creation by Harry S. Truman's administration. The aim was clear: to allow the armed forces articulation (Army, Navy and Air Force), of internal and external policy, and enable a constant progress in terms of research and applied science. In a way, the *National Security Act* corresponds to intelligence services re-foundation, establishing the *National Security Council* (NSC), and replacing the *Central Intelligence Group* (GIG), created by Truman after Pearl Harbor attacks, by the *Central Intelligence Agency*, commonly known as CIA. The control devices have passed, then, to be politically and legally justified under the aegis of "national security", a realistic concept from a political point of view, encompassing and ambiguous, that does not need to be critically justified because it refers to the State salvation, the classical *salus reipublicae*. In 1952, Harry Truman starts the last piece of this gigantic control device: the *Armed Forces Security Agency* later designated as *National Security Agency* (NSA), the largest control and espionage agency that the world has ever known. It was, precisely, the NSA that created the first planetary system of wiretaps and data interception, a pioneering monitoring programme of information flows, the technological spy named Echelon.

In fact, we know that a major part of the Allied forces success during the Second World War was due to the spying practice and the consequent encryption processes. Obtaining information about the enemy location, as well as the decoding of that information, allowed access to military messages leaving the enemy more vulnerable. However, at the end of the Second World War there was a Union of Soviet Socialist Republics increasingly threatening, which eventually contribute to the outbreak of a new conflict, the Cold War. The intelligence agencies created during the Second World

War had a new enemy that justified the electronic and espionage advancement. It was in this context that Echelon was born, a global surveillance system that captures and analyses virtually all phone calls, faxes, emails and messages via telex sent from and to anywhere around the world. Echelon is explored together with governmental organisations from England, Canada, New Zealand and Australia. All the involved organisations are linked under the UK-USA (United Kingdom/United States of America), an agreement signed in 1948 and which contents and text still remain secret. The UKUSA had its roots in BRUSA COMINT Alliance, formed in the beginning of WWII in order to spy on communications. Let us hold on Oswald Winter's³ explanation on Echelon Anatomy:

“

The Echelon system has a very simple design: interception stations positioned all over the world capture all the communications traffic capture via satellite, microwaves, cellular and optical fibre, and then this information is processed through the immeasurable capabilities of the NSA computers, including sophisticated voice-recognition programs and optical character recognition (OCR), through which research is carried out of words or phrases in code (known as the «Dictionary» Echelon) that will lead computers to mark the message for recording and transcription for future analysis. Intelligence analysts in each of their “listening stations» maintain separate lists of keywords to analyse any conversation or document marked by the system, which is then sent to the headquarters of the intelligence agency that ordered the interception.” (Winter, 2002, p. 139-140)

Echelon activity only becomes possible due to a wide network created by the UKUSA community and that comprises Earth intercept stations, espionage ships and secret satellites that allow access to a vast communications network. Almost nothing escapes to Echelon “electronic pulse”. While the NSA facilities cover communications signals of the two American continents, the Government Communications Headquarters from England (GCHQ) monitors Europe, Africa and Russia at the West of the Ural Mountains, while the Australian Defence Security Directorate (DSD) is responsible for the Southeast Asia regions, the South West Pacific and East Indian Ocean. The Communication Security of Canada (CSE) and the Government Communications Security Bureau in General of New Zealand (GCSB), are responsible for additional communications interceptions from Russia, America and North of Europe, and collections in the South Pacific, respectively.

Indeed, much of Echelon power lies in its ability to decipher, filter, examine and encode all the messages collected by several surveillance systems. After being examined, the messages are placed in selective categories for further more detailed analysis by the secret service agents of the several collection units. In the case of the NSA, it is the largest mathematicians and cryptographers employer who seek to decipher the codes of foreign communications, among others. Subsequently, the messages are analysed by linguists to be reviewed and examined in more than 100 languages. The cryptanalysis of messages depends on the operation of massive computer systems equipped with voice-recognition devices, optical character recognition and electronic signals. The system examines, meticulously, huge amounts of text looking for encrypted keywords based on quite complex algorithmic criteria. Echelon processes millions of messages per hour, but only the “target” keywords are retained for analysis. A four-digit code is assigned, which represents the source or subject of the message, to every message marked by the system. After being decoded and translated, messages are compiled and

classified as follows: MORAY for secret contents, SPOKE for contents even more secret than MORAY, UMBRA for ultra-secret contents, GAMMA for Russian interceptions and DRUID for secret information sent to non UK-USA parts. Well, if it is a fact that technology and surveillance of this planetary system of eavesdropping has allowed to intercept attempts of terrorist attacks in various parts of the globe, the problem arises when the participating secret service agencies turn the Echelon eyes and ears for the attainment of political aims. The temptation to use the capacity of this espionage network as a tool of political “anticipation” and “repression” is quite strong, not surprisingly; there have been several incidents of internal espionage. Mike Frost, a former Canadian spy, tells us how, in 1983, Margaret Thatcher made a request in order that two of her own Ministers were subject to the Echelon surveillance for suspicion of disloyal behaviour. Another example is the one that involves Nixon’s Presidential assistant, John Ehrlichman, when he accounts in his own memoirs, *Witness to Power: The Nixon Years*, that Henry Kissinger used the NSA to access messages from the Secretary of State William Rogers and that used them to convince President Richard Nixon of William Rogers’ incompetence. (Winter, 2002, p. 164-168). On the other hand, organizations such as Amnesty International, Greenpeace and even Christian priests were under Echelon surveillance, as some former GCHQ employees told. The availability of a surveillance electronic apparatus increasingly complex, allows that a kind of technology, which should serve to ensure the citizens’ safety, will either be at the service of private interests that hold the power, or at the service of that power maintenance. Nevertheless, the Echelon does not concern, just for being at the service of domestic politics control. With the Soviet Empire collapse intelligence agencies had to justify Echelon subsistence in time, by redefining its mission. The solution was to include in the notion of “national security” economic, trade and business concerns, that is, the concept fitted into espionage practice in more restricted contexts, in peripheral

powers or micropowers, in Foucault's terminology. It turns out that, in many cases, companies that benefit from this type of espionage are the same ones that helped the NSA to create the electronic body of Echelon. Promiscuity turns out to be so much that sometimes the information captured by the system is used to remove commercial competitors of these companies, companies that often are the monetary source of Republican and Democratic parties.

Echelon is a 20th century product, what Reg Whitaker calls "intelligence services century" (Whitaker, 1999, p. 15-16). Indeed, the systematic and intentional acquisition of information, its classification, analysis and protection, endows the democratic system of an increasingly lethal capacity: the espionage technique. The democratic States, with the purpose of scrupulously protecting their prerogatives, created surveillance and national security systems that have become a key element to survival and power maintenance. Echelon is perhaps the best example of how democracy comes into contradiction with itself. The derogation of Law is done at the expense of the prevalence of the need to safeguard safety on the right to privacy and private life. In this case, what justifies the right violation to private property is the need to ensure the nation security. *Lex specialis derogat generali*, but the question arises when the particular law that should be the exception, elevates to the condition of rule, specifically in the sense of regularity. Traditionally, the State reason is defined as a decision or a temporary action of political power that derogates from common Law. However, regarding this specific case of *salus rei publicae* – Echelon network – the permanent surveillance behaviour that suspends and transgresses the established law rule to the private property reservation, derogating it in the name of security *necessità*, shows that this non temporary derogation of Law, suspends the legal norm and it becomes, not an exception action, but a regular behaviour legitimized by political power. Thus we see that at present the appeal to State reason, on behalf of security

“necessity”, no longer carries a temporary derogation from the Law, but rather a permanent derogation from the legal norm which ensures the protection of citizens’ private property. The traditional suspension of Law to deal with a crisis situation, suspension, that was always and naturally temporary, becomes not a cyclical action of political power (at least not in this case), but rather a regular action that keeps on “permanent suspension” the legal norm which ensures the citizens’ private property right.

Aware of the problems caused by the electronic spy, the European Parliament decided, on July 5th, 2000, to constitute a temporary committee to examine this gigantic apparatus of surveillance. About a year later, the committee proceeded to the report project evaluation and concluded that “there are no doubts about the existence of a global system for intercepting communications that operates under the UKUSA agreement, admitting that the system or parts thereof had, at least for a while, the code name “Echelon”.⁵ In about 200 pages that make up the report, you can read that this interception system comprises a threat to privacy and to the global economy and it should not be just seen on the basis of the powerful surveillance system that it represents, “but also by the fact that it operates in a space that is almost outside the law” (2001, p. 13-14). As the wiretaps system of international communications does not affect, in most cases, the inhabitants of the country itself, the concerned person does not have any form of national legal protection, getting entirely at this system mercy.

In this context, it becomes essential to point out that the private life protection is enshrined in numerous international law conventions, namely: article 17 of the International Covenant on Civil and Political Rights signed in 1966 by the United Nations; Article 7 of the Charter of Fundamental Rights of the European Union that not only asserts the respect for private and family life as, also, respect for communications;

paragraph 1 of article 8 of the European Convention on Human Rights; Article 6 of the Treaty on European Union. Consequently, the European Court of Human Rights stressed that “a secret surveillance system designed to ensure the national security holds *per se* the risk to make impracticable or even destroy the democratic system under the pretext of defending it, that’s the reason why more appropriate and more effective guarantees are required to prevent such misuse of powers”. Effectively, European Parliament considered that the legitimate activities of the intelligence and security services are only in accordance with the fundamental rights if there are sufficient control systems and other guarantees against any and all abuses. The report adds that although the United States are not contracting parties in the Convention on Human Rights, Member-States may not “circumvent the obligations, that this one imposes on them, by allowing intelligence services of other countries subjected to less stringent provisions to operate on their territory” (2001, p. 13). Thus, it should be noted that the public control of power becomes absolutely necessary at a time when technical instruments that States have let know what all their citizens do. As the ideal of the powerful has always been to “see without being seen,” the issue relates to the difficulty of not being possible at present to communicate at long distance in a confidentiality climate.

As we have noted, the political context that developed during the cold war, and which we revisited, reflects the *security pact* and the double game of *discipline* and *regulation* technologies described by Michel Foucault. Nevertheless, the security measures activated after the September 11th attacks have established a new geopolitical *gouvernementalité* that intensified the dilution of the boundaries between public and private. In fact, the “War to terror” has strengthened the paradigm of security control through the implementation of techno-security surveillance measures which passed from exception to rule. From the panoptic conception of the body discipline

dressage, we went to a biopolitics paradigm of societal control increasingly intrusive in individuals' private space. After the attacks on the Twin Towers, a security geopolitical imperative has intensified, and whose main priority is the national security, the citizens' protection in face of all that, as anticipated Foucault, can be "uncertain", "unpredictable", "harmful" or "risky" (Foucault, 1994b, p. 385). The signature, by the Bush administration in October 2001, of the *USA Patriot Act*⁶ proves that surveillance today is increasingly visible and, at the same time, unverifiable. The legal framework of the *USA Patriot Act* enables the NSA to access to telephone calls and messages contents, emails, conversations in chats, search history and other digital footprints of companies like Microsoft, Google, Skype, Facebook, Apple or Youtube, as well as medical, financial and professionals records of US and foreign citizens. According to what CIA former analyst Edward Snowden confessed, the NSA has built an infrastructure that allows it to intercept data and communications in a discretionary form. Snowden's revelations to *The Washington Post* and *The Guardian* newspapers exposed the existence of the Prism program, a secret system of cyber-surveillance, allowing the NSA to collect and store, in real time, emails, internet searches, phone records, photos, passwords and credit cards. The system is the result of collusion between the NSA and the biggest companies on the Internet, allowing the NSA to enter directly into their servers, by accessing not only to metadata, but also the content of the intercepted communications⁷. According to documents from the own NSA, that the French newspaper *Le Monde* had access, the American security services accessed in a "systematic" way to thousands of French citizens' records, a fact that led the own Foreign Affairs Minister to note that "this kind of practices that undermine the private life are totally unacceptable between partners". The journal says that the NSA intercepted in a period of 30 days, 70, 3 million French citizens telephone data⁸, this after the German magazine *Der Spiegel* revealed that the European Union is one of the main targets of espionage programs of the United States,

noting that the U.S. security services are especially attentive to matters of foreign policy, international trade and economic stability of the European Union and, above all, Germany⁹.

As we can see, the legal framework created post-September 11th launched, in fact, the foundations of systemic and systematic elimination of civil liberties as the right to the privacy of private life under the security pact aegis¹⁰. It is a technological and statistical *gouvernementalité*, which according to Giorgio Agamben, introduced “an empty space of law”, a zone of anomy where all legal determinations are permanently on hold, a zone where “the very distinction between public and private is disabled” (Agamben, 2003, p. 86). The author rightly argues that the state of exception, as a fundamental political structure, arises in our time increasingly in the foreground and tends, eventually, to become a rule (Agamben, 1998, p. 29).

Michel Foucault has highlighted the political anatomy surveillance of human body put to work during the 18th century and, subsequently, the biopolitics of human species who settled at the end of that same century. Nevertheless, the population management and their behaviours through a security technology, a sort of “silent surveillance”, became the new *gouvernementalité* which reinforces biopolitics nature of today’s surveillance. In this context, large Internet companies such as Google, Facebook, Apple or Microsoft, became the most powerful tool of biopolitical surveillance because they collect, process, classify and store a large volume of information about the behaviour pattern of individuals’ public and private life, information that allows the State security agencies to properly manage the population’s lives.

The population management in terms of security, “guess the dangers and avoid them”¹¹, as written by Luís Vaz de Camões, became the main priority of States, which, as we have seen, enhances the biopolitics component of the current surveillance society. ●

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NOTES

- ¹ For the Greeks, the sphere of the domestic order should not be shared, precisely because it does not concern the community, the sphere of *koinos*, the visible. In this sense, private refers to the personal, what is proper to man in its uniqueness, to a place where others cannot intrude. The private sphere was, thus, the sphere of the domestic order, the concealment and hiding, by contrast with the public sphere where citizens “presented themselves” before their peers. On the concepts of private and public in the Hellenic civilization *vide*, peculiarly, Hannah Arendt, *The Human Condition*.
- ² In Max Weber’s view, surveillance can be viewed as a social and bureaucratic control towards an efficient administration. On the other hand, we know how the essence of Taylorism was based on the application of the labour division principle developed by Adam Smith, a principle of scientific management which controlled the movements of workers and streamlined production modes. Henri Ford himself, dissatisfied with surveillance and control carried out inside of his factories, created a department to investigate the private conduct of their workers, the so-called “Sociological Department”.
- ³ In 1984 Big Brother got the complete control through a similar strategy. The inhabitants of Oceania lived thinking that every move they made was being watched by Big Brother, precisely because the inhabitants had no way to see whether or not they were being watched by the police psychic. Big Brother got complete control by combining certainty and uncertainty.
- ⁴ Oswald Winter served in the CIA between 1965 and 1985. He was head of ITAC in NATO and, in the army, amounted to major-general.
- ⁵ See the European Parliament Report dated from July 11th, 2001 about *The existence of a global system for the interception of private and commercial communications (ECHELON interception system)*.
- ⁶ *Uniting and strengthening america by providing appropriate tools required to intercept and obstruct terrorism*.
- ⁷ The Guardian, “NSA Prism program taps in to user data of Apple, Google and others”. <<http://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data?guni=Article:in%20body%20link>>.
- ⁸ <http://www.lemonde.fr/technologies/article/2013/10/21/comment-la-nsa-espionne-la-france_3499758_651865.html>.
- ⁹ <<http://www.publico.pt/mundo/noticia/uniao-europeia-e-alvo-prioritario-da-espionagem-norteamericana-1602758>>.

¹⁰ It should be noted that the existence of the Prism was readily justified by the White House spokesperson, John Earnest, underlined “that the President’s number one priority is the safety of the United States”. <<http://www.publico.pt/mundo/noticia/espionagem-dos-eua-tem-acesso-directo-a-informacao-de-utilizadores-da-internet-1596718>>.

¹¹ “Guess the dangers and avoid them”. The Canto VIII of *The Lusiads* is the motto that currently figures in the arms of Strategic Defence Information Services (SIED).

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