> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights, and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.[27]

One can concur completely with Brandeis and still want something more, an argument that, in conjunction with Brandeis's superb defense of our spiritual nature, feelings, intellect, beliefs, thoughts, emotions and sensations, raises the stakes by making privacy a more social and political issue.

There is a pragmatic political reason for this as well: privacy as a purely individual issue has limited resonance. Many citizens of Tampa welcomed the new CCTV cameras, and most simply didn't care either way. Likewise, very few AOL subscribers protest the company's ready cooperation with law enforcement.[28] The logic of such passivity is simple: if you don't have anything to hide, why be concerned? This commonsense argument is rarely engaged because it is, in fact, quite hard to counter at the level of everyday experience.

The rest of this book, through historical narrative and description, seeks to complicate and repoliticize the question of privacy. Here "the right to be let alone" and the value of personal autonomy are not assumed a priori, not addressed simply at the level of the individual. Instead, I explore the problem of surveillance through its connections to the larger social issues of inequality, violence, state power, and collective political action.

POWER AND KNOWLEDGE

Brandeis's dissent in *Olmstead* was by no means the last word on surveillance. In fact, the whole debate underwent a massive transformation with the intervention of Michel Foucault beginning in the mid–1960s. The curious and

concerned have been examining the pieces from his demolition job ever since. In Foucault's wake we see that routine surveillance is clearly bound up with political repression, but that it *also* has a "generative" function, helping to elicit and construct politically useful forms of knowledge and behavior.

In short, surveillance instills discipline by forcing self-regulation. Constant surveillance brings forth loyal citizens, trained soldiers, obedient patients, productive workers, and docile, useful bodies. External observation recruits us to monitor and police ourselves: we confess, count calories, open our doors to the Census long form, sign our *real* names on hotel registers, pay our taxes, reel off our Social Security numbers and dates of birth. The entire edifice of modern life is built as much upon the primacy of files, record keeping, and everyday surveillance as it is upon nature and labor.[29]

It is also clear that the knowledge produced by formal observation can justify a wide range of interventions from the intrusive but well-meaning to outright persecution and physical punishment. Once identified and understood, the deviant can be helped, redirected, segregated, imprisoned, or destroyed by doctors, psychiatrists, superintendents, social workers, managers, or police agents.

Foucault's epistemologically relativist argument holds that moral and cultural categories like "madness" or "criminality" are not simply "discovered" and accurately named by science so much as they are *built* by the political and scientific practice and discourses. This is not to say that madness is "unreal," but rather that its reality and cultural meaning are always socially constructed. In other words, whatever biology madness involves, it is also always bound up with, and never appears outside of, the matrix of culture and historically specific forms of knowledge. Hearing voices in one society may be seen as religious insight, while in another it becomes reason for institutionalization. Surveillance thus serves as a "generative" force, one that defines who is an insider and who is an outsider.

FROM THE THEATER OF ATROCITY

For Foucault, the politics of surveillance were bound up with the emergence of modern methods of medicine, psychiatry, and statecraft. He sketched this point most famously by contrasting a quintessential image of

premodern power, the spectacular ritual of public torture in the *ancien régime*, with the cold precision of modern power in the form of a youth reformatory.

It begins in the first pages of *Discipline and Punish* with a harrowing, archival account of the long, slow death of Robert François Damiens, who had attempted to stab Louis XV in 1757. The court's instructions were detailed: "The flesh will be torn from his breasts, arms, thighs and calves with red hot pincers, his right hand. . . burnt with sulphur, and on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulphur melted together and then his body drawn and quartered by four horses."[30] According to Foucault: "Power in this instance was essentially a right of seizure: of things, time, bodies, and ultimately life itself; it culminated in the privilege to seize hold of life in order to surpass it."[31] This type of public execution may seem like a fairly definitive expression of state force, but Foucault argued that it was also wasteful, and dangerously inefficient. Public torture and execution relied heavily on the role of the crowd for its ceremonial and symbolic impact. Such events were political theater and "the people" were its audience. But to some extent this public ceremony distributed power to the spectators, who in turn might choose to rewrite the intended script in very disruptive ways. The crowds at public executions sometimes rebelled, attacking the scaffold to free or kill the prisoner, and in other ways acted to negate or usurp the power of the king. To avoid such political meltdowns, execution and punishment became increasingly invisible, professionalized, and restrained.

DISCIPLINE AND SURVEILLANCE

Foucault's account of classical brutality—the display of "sovereign power"—contrasts strongly with an example of "disciplinary power" from the late 1830s, less than a century after the brutal public execution of Damiens. From the gallows we cut to the super-regimented daily timetable from the "House of young prisoners in Paris"—a classic reform school. The schedule begins rigorously: "*Rising.* At the first drum-roll, the prisoner must rise and dress in silence, as the supervisor opens the cell door. At the second drum-roll, they must be dressed and make their beds. At the third,

they must line up and proceed to the chapel for morning prayer. There is a five-minute interval between each drum-roll."[32] Here we see power, the ability to control phenomena, appear not as spectacularly vicious theater, but as a meticulously measured regimentation of time, space, and the human body. Furthermore, the operation of power is now hidden within a house of detention rather than displayed for heuristic political effect before an excitable crowd. This progression, away from traditional repression toward "disciplinary power," is about organizing and harnessing the forces of life; thus Foucault writes of "bio-power." And at the center of this type of regulation is routine surveillance. "Discipline produces subjected and practiced, 'docile' bodies. Discipline increases the force of the body (in economic terms of utility) and diminishes these same forces of the body (in political terms of obedience)"[33] People become more useful as they become more obedient.

During this modernization of social control, the ancient art of torture and confession morphed into the modern methods of surveillance, investigation, and interrogation by which judicial, medical, and moral "truth" can be retrieved from the interior workings of the modern subject. From the new practices emerged the modern "soul"—a political object that displaces the body as the central point of power's leverage. Now interior thoughts, emotions, and patterns become "the effect and instrument of a political anatomy: the soul is the prison of the body."[34]

THE PANOPTICON: SURVEILLANCE AS IDEA TYPE

For Foucault the paradigmatic example of this surveillance-based discipline was the panopticon—an architectural phantasm springing from the twisted imagination of Jeremy Bentham, the utilitarian philosopher whose preserved corpse still sits in a cupboard at the University of London. In Bentham's work, the panopticon is a circular prison in which illuminated cells are watched from a central observation tower. In a panopticon, prisoners know they could be watched at all times and are thus forced to "internalize the gaze" of the overseers and police themselves. For Foucault this became "the diagram of a mechanism of power reduced to its ideal form,"

the perfect cage in which surveillance harnesses the captive to play the role of both ward and warden.

There is one more element in the story. If domination, control, and bureaucratic organization are ubiquitous, then so too are the counterforces of resistance, protest, sabotage, non-cooperation, and liberty. The hidden history of this sort of resistance is perhaps best captured in Peter Linebaugh and Marcus Rediker's *Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic*.[35] They show how the state and modern methods of control are produced in the forge of constant political struggle. Everyday surveillance in American has a similar history, having developed through the dialectical tension between resistance and regulation.