



Opinion. Workplace Surveillance 'is' Unethical and Unfair.*

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Abstract

This piece argues that workplace surveillance is unethical and unfair using the work of Emmanuel Levinas. Such a move is indeed necessary for the possibility of ethics to *happen* when we monitor and surveil, rather than merely being considered when we talk about, or judge, monitoring and surveillance practices.

Introduction

In this paper I want to argue that workplace surveillance is unethical and unfair using the work of Emmanuel Levinas — in particular his notion of ethics and the relationship between ethics and politics. Initially, this may sound rather unproductive and limiting. However, I hope to show that this move is indeed necessary for the possibility of ethics to *happen* when we monitor and surveil, rather than merely being *considered* when we talk about, or judge, monitoring and surveillance practices. When referring to workplace surveillance I mean the multiplicity of formal and informal practices of monitoring and recording aspects of an individual or groups' behaviour 'at work' for the purposes of judging these as appropriate or inappropriate; as productive or unproductive; as desirable or undesirable; and so forth.

Levinas, Ethics and Politics

For Levinas the 'force', or rather the gravity, of ethics lies in the irreducibility of the Other (*Autrui*)² facing me — irreducible beyond all categories of good and evil, as well as beyond the force of reason, even reasonable reason (Levinas, 1993: 35). The Other is infinitely more (and less) than any attempt by the category or rule to render it equal. For Levinas the Other is an absolute and irreducible singular that shatters and overflows all categories, concepts and themes that the 'well meaning' ethical reason may bring to domesticate it for the purposes of ethical justification and argument.

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² Levinas uses *autrui* (other with a capital 'O') as apposed to *autre* (other) to signal the Other as proper noun, as a radically singular Other. I will also use it in this manner here.

Ethics, for Levinas, is not the setting up of rules or codes that tell us how we ought to conduct ourselves towards others, as suggested for example in the notion of ‘applied ethics’. Neither is it the intellectual and philosophical debate about the validity or legitimacy of one set of principles for deducing these rules over and above another — such as for example utilitarianism as opposed to consequentialism. For Levinas these debates, and the rules derived from them, are preceded by, and based on, an *undeclared*, radical and violent act, of already reducing the possibility of ethics to the domain of ontology and epistemology, thereby rendering it powerless. In particular reducing our infinite responsibility towards the Other facing us to a system of rules and categories for the purposes of ethical calculation, justification and decision-making. The utilitarian and the consequentialist may respond by suggesting that the purpose of this ‘founding’ of ethics on reason is to give ethics force — such as the ‘un-forced force of the better argument’ in Habermas’ discourse ethics (1998: 37), for example. Without such ‘foundational’ force, they argue, it would be impossible to unmask evil. We will, they argue, be forever stuck in a relativistic impossibility of not being able to make judgements about good and evil, right and wrong, the justified and the unjustified, etc. However, this ‘founding’ move does not acknowledge the fact that the making of the ‘better argument’, the force of reason, takes place in a space already configured by relations of power (as argued by Foucault, 1977). Thus, paradoxically, the force of the better argument turns out to be the very vehicle for the ongoing justification and perpetuation of violence towards the power-less. Furthermore, while this epistemological reduction — of ethics to the domain of reason — remains undeclared we can make eloquent and convincing ‘ethical’ arguments to test prospective employees for AIDS, to make ‘unproductive’ employees redundant, and to withhold compensation from ‘under performing’ employees.

If Levinas is right that ethics cannot be based on codes, categories or reason, however reasonable these are. If, indeed, the force or gravity of ethics is the absolute singularity of the Other, then Levinas needs to give an account of how such an ethics is possible; where is its origin if not in reasonable reason? To this question, Levinas’ answer is simple: ethics happens when we *encounter* the other as Other. This encounter (if we can call it an encounter) with the Other disturbs us, overturns the certainty of our categories and reasons—maybe we missed the point, got it wrong, did not understand? However, this radical unsettling by the Other is not itself a category, reason or justification. I do not become unsettled because I suddenly realised an error in my judgement or a flaw in my argument. I become unsettled because the Other perturbs me in the very original source of my reasoning—in the ‘I’ that have always and already taken the place ‘in the sun’ of the Other. In claiming to justify and reason the ‘I’ have already, from the start, usurped the Other—even in the well intentioned attempt to defend the rights of some against the claims of others. Thus, Levinas claims that we encounter the Other, as a radical disturbance of the horizon of consciousness itself, rather than as an instance within it. He uses the familiar event of a doorbell ringing to disturb my work, my thoughts, but when I open the door, there is nobody there (within the horizon of consciousness). Was there nobody there? Did I imagine it? I have no memory, I cannot recall. The absolute Other — the ‘infinity’ in his words — does not move in the temporal horizon of conscious being. Its presence “does not simply lead to the past but is the very passing toward a past more

remote than any past and any future which still are set in my [ego] time..." (Levinas, 1996a: 63). Just when I settle back into my thoughts the doorbell rings again, and again, and again, obsessively — but there is never some body there.

For Levinas, the founding of ethics in reason attempts — and fails — to ‘cover over’ this incessant unsettling proximity of the Other — what Levinas calls the ‘face’ of the Other. Often we try and settle it, or cover it over, by admitting that “maybe this time we got it wrong”, or “this is a really an exceptional case”, or “this particular case is unprecedented”, and so forth. However in every attempt to justify, and settle the exceptions, there is always and already the obsessive ‘ringing of the doorbell’—the disturbing face of the absolute singular, incessantly undermining every attempt to justify, to finally deal with ‘exceptional cases’ and to render equal that which can never be compared (Levinas, 1996b: 80-81). The face of the Other is *wholly* exceptional, this is its disturbing force.

How do I encounter the Other in the flow of everyday life? The face solicits me through its expression (Levinas, 1969 [1961]: 201). However, its expression does not provide me with knowledge (of pain, or hurt, or anger for instance). It is not a signifier that signifies something other than itself. It is a solicitation, an invitation, and more precisely a visitation. It is not an invitation to know but to encounter. The face expresses, solicits me, in speaking — in Levinas’ words ‘the epiphany of a face is wholly language.’ In speaking there is always excess, a surplus, that overflows the content of what is being said (‘the saying’ in Levinas’ words) that expresses the other as Other. This surplus is extraordinary. The difference that sustains the ongoing speaking towards each Other, the conversation, is not a difference of knowledge — facts to be exchanged — but rather an absolute difference between two singulars (Levinas, 1986 [1998]: 146). It is exactly this absolute difference that ‘grounds’ a conversation and turns it into an ethical encounter rather than the mere giving of a command, or a mere exchange of facts. This ground is an ethical ground in which ‘every language as an exchange of verbal signs refers already to this primordial word of honor.’ The ‘saying’ of speaking uncovers the one that speaks. Not as an instance in an argument or a justification but as a singular, an exception. This is why we hold as sacred the right of the victims and the accused to speak — to say their say—in court. It is in the nakedness and uncoveredness of their speaking that the certainty and apparentness of the legal argument becomes unsettled again — this is the possibility for ethics to happen (or not). The force of the Other is fragile, not secure at all.

Workplace surveillance and the Other

Surveillance in its operation renders the Other faceless and speechless. The very logic of surveillance suggests the operation of power ‘at a distance’ — both physically and institutionally. In its rhetoric at least, it is the faceless collective through its representative (the manager, police officer, doctor) that is monitoring the individual. Moreover, in its operation surveillance is not just a general ‘staring’ at the world; it is always with a purpose, i.e. to make some judgement about the one being monitored. Its logic starts with a category and ends with a judgement relative to that category (productivity, criminality,

clinical condition, etc.). But more, in the subsequent encounter (if it happens) the monitoring data, re-produces and legitimises, by its very nature, the currency of what is possible to bring up or not. The only legitimate exchange is in terms of the ‘facts’ (outcome of the monitoring process). Through this move the ‘otherness’ of the Other, the exceptional, is neatly bracketed and ‘covered over’. As such the monitoring reveals the Other as “that which they really are” — productive or not, performing or not, deserving or not? It seems that the ethical paradox of rendering the Other present through the monitoring data is that the possibility for speaking — encountering the Other — is exactly circumvented by the argument that it is ‘fair and just’ that all are rendered equal by the objectivity of the data, and treated *only* in terms of that. In this way the voice of the Other becomes silenced in the supposedly ‘just’ economy of the category and the rule. As such we (the violators) feel justified — we merely applied the rules to the facts presented, as any reasonable person would have done.

We may be reasonable, even fair, but are we ethical? No, says Levinas, the ethical demands that we encounter the other as a face, to let the other explain him or herself, to let him or her speak, to allow them to question the validity of our judgements, again, and again and again. But where will it end? Nowhere, it is infinite, responds Levinas, nothing less, nothing more. Without this infinite responsibility ethics will lose its gravity. It is only in our being ‘hostage’ to the Other that the possibility of ethics exists. But this is just one part of the Levinasian ethics. If we step back from the unsettling gravity of the face we realise that *every* other is also a face to be encountered — indeed, multiplicities of faces surround us. Ethics is impossible.

For Levinas ethics also immediately and simultaneously include politics — the “third” in his language. With the entry of the “third” the radical asymmetry of the ethical becomes mediated by the question of justice — the equality of all. The face of the Other obsesses me *both* in its refusal to be contained (rendered equal) and its recalling of the always already equal claim of all Others weighing down on me in this particular face before me. In the words of Critchley (1999: 226-7):

Thus my ethical relation to the Other is an unequal, asymmetrical relation to a height that cannot be comprehended, but which, *at the same time*, opens onto a relation to the third and to humanity as a whole – that is, to a symmetrical community of equals. This simultaneity of ethics and politics gives a doubling quality to all discourse...the community has a double structure; it is a community of equals which is at the same time based on the inegalitarian moment of the ethical relation.

It is exactly this simultaneous presence of the Other *and* all other Others that gives birth to the question of justice. However, the urgency of justice is not an ‘equality *in* the law’ but an ‘equality *before* the law’ which is an urgency born out of the radical asymmetry of *every* ethical relation. Without such a prior radical asymmetry the claim of the Other can always in principle become determined and codified into a calculation. Thus, for Levinas, justice has its standard, its force, in proximity of the face of the Other. Levinas (1991(1974): 159) asserts: “justice remains justice only, in a society where there is no

distinction between those close and those far off, but in which there also remains the impossibility of passing by the closest. The equality of all is born by my inequality, the surplus of my duties over my rights. The forgetting of self moves justice”.

In justice we are compelled to ‘compare the incomparable’. In the practice of everyday institutional life we are continuously placed in a position where we need to make judgements about others or be judged ourselves. We need to do this in order to make decisions about all sorts of things necessary for institutions and society to function. In the interest of justice we also need to develop rules (laws, regulations and guidelines) to ensure that all faces ‘speak’ equally, that there is “no distinction between those close and those far off” — especially those who cannot speak because the very structure of the economic system excluded them from the start. We are not only talking about the so-called ‘stakeholders’. The notion of stakeholder already presumes a political judgement of who is worthy of consideration and who not. In justice everybody is always already a ‘stakeholder’ equally deserving of consideration. Thus, we find ourselves in an impossible situation. We need the rules, the equal monitoring of all, in the interest of justice, yet when applying these to every particular instance (the singular here before me) we realise that we are comparing the incomparable. This employee is more (or less than) suggested by the data. These measurements or observations are just part of the picture — and not even the right part. In the face of each individual’s circumstances (the very singularity of the singular) the rules and measurements seems like a caricature, devoid of legitimacy. However, when we attempt to suspend the rule (start to make exceptions) we become acutely aware of the equally valid exceptional claim of every other Other, not here before us. Ethics and justice are impossible. Workplace surveillance is neither ethical nor fair.

If we take Levinas’ impossible ethics and justice as our guide then we may quite rightly ask: “what does this mean for workplace surveillance practices?” Here are some suggestions:

- a. In the interest of ethics we need to suspend the judgements implied by the monitoring data, we need to walk the further mile to get the ‘whole’ picture. We need to treat as suspicious every possible judgement rendered by the data. We need to insist that the ‘monitored’ are allowed to speak, to explain themselves in their own terms. We must remain open to the possibility that we probably will get it wrong.
- b. In the interest of justice we must compare and judge while remaining suspicious of every comparison. We need to continue to allow the silent voices to speak. Who has become excluded in the comparison and why?
- c. Workplace surveillance is not a ‘solvable’ ethical problem. There is no ideal balance or compromise between ethics and justice. We will always get it wrong. There is no final moral argument or position that could settle it ‘once and for all’. This is not a defeat but rather the opening up of an ethical space for encountering the Other in our scrutiny, questioning and reflection.

- d. Finally, we need to accept that ethics and justice is frail and that we cannot give it force by reducing it to categories, reason and argument. These will fail, as they will become the very resources to be seized for the purpose of justification by the power-full against the power-less in the moment of judgement and decision, thereby violating the Other (ethics) as well as the 'third' (justice) not present.³

One may respond and suggest that these demands are impossible. Yes, the ethics of surveillance is impossible and that is its force. It is this that will unsettle the certainty of our comparisons and judgements and then maybe, just maybe, ethics will happen. I am suggesting, with Levinas, that the working out of ethics and justice in everyday workplace surveillance practices starts by accepting that they are unethical and unfair, from the start, as such. It is exactly with such radical position that its possibility begins rather than ends.

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³ Also refer to the excellent paper by Davis Lyon on the ethics of surveillance in *Ethics and Information Technology*. He also draws on the work of Levinas for his argument.

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