

Introduction

Whistleblowing, the Snowden affair, the Chinese Social Credit System, *Black Mirror*, prison designs, the newly introduced Police Law in North-Rhine Westphalia or even Google as an unregulated data giant all have something to add to our understanding of transparency. Transparency is a concept that has been approached by surveillance theory and studies on privacy since the emergence of the field along with Bentham's development of the Panopticon¹. By establishing a framework where surveillance is regarded as an omnipresent disciplinary tool, Bentham, together with Foucault's ensuing re-appropriation of the concept, established the blueprints of a continuously evolving theory that has caught the interest of many scholars. Some, such as Deleuze, Haggerty and Ericson or Zuboff have preferred to develop their thinking by stepping away from the Panoptic logic for they reproached its statism. Most of their research is thus dedicated to emphasising the dynamics of surveillance. Most scholars, like Albrechtslund, Andrejevic, Jansson or Lyon, have preferred to keep, yet modify panoptic features and adapt them to their own conceptualisation of surveillance, participatory/lateral surveillance being just one example here. Therefore, their intention was to modernise the field due to the development of social media as a new, and quite powerful, means of surveillance. Indeed, the emergence of social media is what gives transparency its significant topicality. This is why, over a period of several months, eight students participating in the MaRBL programme "Transparency in Perspective" have developed seven unique research projects, which are all linked to the major topics of surveillance and privacy. Numerous individual as well as group meetings, countless hours of intensive reading, debating and summarizing, and differing theoretical as well as practical approaches have resulted in the following seven contributions to this volume.

Maria Czabanowska examines various media framing and (de)legitimization techniques used by British newspaper editorials in relation to the NSA Snowden revelations of 2013 about the global surveillance activities of the CIA and other intelligence agencies. The study sheds light on the differences in the narratives of the newspapers based on their core political ideologies. Czabanowska sought to answer how these media outlets aimed at shaping readers' minds by either claiming that mass-surveillance interferes with people's fundamental freedoms and challenges interstate relations or by ensuring security and protectionism against external threats. Using a critical discourse analysis, the corpus used for the analysis includes ninety articles, consisting of thirty per newspaper. The frames were identified using Entman's (1993; 2005) definitions of media framing, which are then explained using the (de)legitimation techniques by Van Leuwen and Wodak (1999). The study links to that of Rick and Ganapini which provides another perspective on whistleblowers and surveillance transparency.

Cecilia Ivardi Ganapini and Johanna Rick provide another perspective on the subject of whistleblowing by looking at transparency from a European angle. With the global digital developments, scandals regarding the wrongdoings of national as well as international governments increasingly aroused attention. While the internet facilitated this "blowing the whistle" the parties accused of wrongdoings, particularly states, retaliate quite harshly against whistleblowers. Hence, the EU proposed a directive offering protection to such whistleblowers in April 2018. The two authors start from the question of why no earlier legislation had been proposed, considering big whistleblowing scandals such as the Snowden affair emerged already in 2013. To solve this puzzle, they researched the complex and entangled way a current topic reaches the EU policy agenda. Taking Kingdon's (year) multiple-streams model and applying

¹ All references to authors can be found in B  at's article.

it to several legal texts and news outlets, interferences are drawn to delineate the facets and timeline of the rise of whistleblowers protection on the EU agenda.

While Ganapini's and Rick's research is dedicated to the development of EU policies that are directed against the practice of whistleblowing, Jonas Bradtke focusses on controversial counterterrorist policy in Germany. The relationship between privacy and security appears to be one of the grand dichotomies of western thought. How much privacy a citizen is willing – and should be willing – to sacrifice for the sake of privacy has been long debated. Bradtke devotes his attention to the newly introduced Police Law in North-Rhine Westphalia (PolG NRW). He employs a rather unique political science approach in the form of a taxonomy. In a careful manner, Bradtke categorises and evaluates sections of the newly introduced bill in North-Rhine Westphalia. He was concerned to know how privacy is perceived throughout the newly introduced law and whether that definition is at odds with citizens' perception of privacy. His work identifies potentially harmful activities for personal privacy within the PolG NRW and chases back shortcomings to an incomplete understanding of privacy.

A directly experienceable form of the broader phenomenon of transparency is physical surveillance. Maximilian Grönegräs examines how architecture can be employed in order to monitor humans and gain control over their behaviour. The author focusses on the architectural example of the prison, which is designed in fundamentally different ways in Germany and the United States (US). With the aim of finding out to what extent German prison architecture can serve as a model for the improvement of prison architecture in the US, the author conducts an international comparison between the two countries. He closely considers the German perspective on prison design by interviewing three architects, who either have been or still are responsible for undertaking structural changes within two different German prisons. Among the main findings of Grönegräs' research is the observation that in both Germany and the US prison architecture is primarily determined by the country's respective dominant political and societal values. While Germany attempts to reduce the architectural surveillance of prisoners and increase their chances of becoming valuable members of society, US prisons deprive inmates of the majority of their former rights as citizens and allow their exploitation as a source of cheap labour.

Just like Grönegräs, Emma Béat takes up the subject of physical surveillance by making use of a novel approach. Wishing to explore the relationship between academic writings on surveillance and elements of popular culture that concern themselves with the modern dimension of surveillance, Béat used the opportunity offered by the MaRBL programme to illustrate such relationship in a creative and pedagogical way. To do so, she prepared an audio-guide companion to *Nosedive*, one of the most illustrative episodes of *Black Mirror* pertaining to surveillance theories. This episode displays what appears to be fertile ground for the illustration of surveillance theories as it unfolds in a general atmosphere where the norm is to watch, as much as being watched. Béat's paper, in the form of a written reflective note, is thus dedicated to the emphasis of this project's academic and societal relevance through the display of a thorough literature review on the field of surveillance theory, as well as the methodological logic behind the project.

A real-life example of the societal surveillance mechanism, which Béat sees in *Nosedive*, can be found in the Chinese Social Credit System. The system even made headlines in the West for being a "Black Mirror episode come true". Nadja Aldendorff's contribution examines this fascinating political experiment while looking at the relationship between public sentiment and modern surveillance technology. In 2014, the Chinese government launched an initiative for the construction of a Social Credit System (SCS) by 2020. Chinese citizens would be ranked and blacklisted according to their behaviour on- and offline with

the goal of improving the sincerity and behaviour of citizens. The inspiration for this research stems from the surprising fact that the majority of the Chinese public supported the initiative. Through a variety of sources, from translated government documents to tabloid articles, this paper explains the functioning of the SCS and the causes for the positive public reaction. In doing so, the study adds to our understanding of new surveillance technologies, the design processes behind the SCS as well as Chinese public opinion. Moreover, it addresses an important question in surveillance theory, namely why people at times willingly submit to certain forms of surveillance and perceive it as beneficial to society.

As the introduction of this volume has already suggested, transparency often seems to come at a cost; namely the loss of privacy and increased surveillance. Especially in the private sector, this assumption has become part of the public consciousness. "Google", as the most vivid example, is not only associated with a globally successful search engine but also carries the reputation of an unregulated data-mining giant. Therefore, it is important to examine closely such companies, their origin, growth and eventually their relationship with our data. The research by Julian Schäfer takes the Google company as a case study and, for the first time, puts its development into the larger frame of the large technical system approach developed by Thomas Hughes (year). This theoretical approach provides insights into the extraordinary significance of voluntarily provided data for Google's existence and additionally evaluates the perception of momentum which Google has acquired in the last two decades.

The authors of this volume would like to give special thanks to Prof. dr. Sally Wyatt, who has been the coordinator of this MaRBLe project. Her extensive knowledge and experience in the field of science and technology studies have enabled her to offer her students deeper insights into the fascinating topic of transparency, than any of them ever had the chance to gain before. The great chemistry and productivity this MaRBLe group was able to work with could only develop due to Wyatt's patience, kindness and interest in each student's individual ideas.

(De)Legitimizing Surveillance Revelations through the Media Lenses: Critical Discourse Analysis of the British Newspapers on the 2013 NSA Disclosures

Maria Czabanowska¹

ABSTRACT

This research interprets and explains how and why the British newspapers such as: *The Guardian*, the *Daily Mail* and *The Independent*, have (de)legitimized the NSA Snowden revelations of 2013. The study uses a critical discourse analysis to understand what media framing techniques are used by the media sources and how can they be explained by looking at the core ideologies and news values of the newspapers. The corpus used for the analysis includes ninety articles in total, consisting of thirty per newspaper. The frames are identified using Entman's (1993; 2005) definitions of media framing. They are then explained using the (de)legitimation techniques by Van Leuwen and Wodak (1999) in a comparative manner. The analysis reveals that *The Guardian* focuses on deligitimising surveillance and justifying their decision to cooperate with Edward Snowden on the basis of legality, public interest, morality and power abuse. The *Daily Mail* legitimises surveillance using arguments concerning security, counterterrorism and citizen protection while concentrating on Snowden's personal life, love, lifestyle and character. *The Independent* follows an informative narrative to raise awareness about the scandal through a politically autonomous stance. It allows the readership to shape their opinion on the subject by presenting them with contra and pro surveillance arguments.

1. Introduction

Mobile social media and advanced technologies make people experience an increase in mass surveillance and a violation of their privacy. Such events as the 9/11 in the USA, the 7/7 in the UK and the Snowden NSA revelations contributed to the rapid increase of the media discourse concerning surveillance technologies and tactics utilized worldwide both in the UK and internationally (Bernard-Wills, 2011). Edward Snowden, a former CIA employee, earned a status of a 'whistleblower' after releasing information about mass-surveillance programs run by NSA and the 'Five Eyes' Intelligence Alliance, consisting of Australia, NZ, the USA, the UK and Canada, to selected media sources. The story swiftly gained worldwide attention and the topics regarding surveillance, personal privacy and security threats were extensively covered by the media.

While analysing all media coverage concerning the Snowden affair, it is vital to obtain a holistic perspective about the scandal. This research narrows it down and presents a CDA of the British newspaper coverage on the issue. As noted by Fowler (1991), journalistic discourse is representative of the facts about a story, however, the linguistic discursive can be reflected in ideologies, values or beliefs of the newspaper editorials and the information provided is limited to the access to reliable sources and documents (p. 10-13). Such strategies are used to influence the target audience, therefore it is vital to examine how surveillance-related issues are represented, opposed or justified in various news media outlets (Branum & Charteris-Black, 2015). A deficient media coverage would not succeed in highlighting

¹ Maria Czabanowska received a bachelor degree in European Studies at Maastricht University in 2019. At the moment she is a trainee at an HR management consulting firm, KennedyFitch. Contact: maria.czabanowska@outlook.com.

the mass surveillance practices as pressing concerns on a global scale and would not be able to stimulate public debate on that matter therefore media uses various discourses to influence the audience and appeal to their values and ideologies.

Previous research indicated a clear gap in the media analysis of Snowden's revelations, therefore the objective of this research is to explore and explain how and why the British newspapers have (de)legitimized the NSA Snowden revelations of 2013. This is done by scrutinising ninety articles from newspapers that differ in their core ideology including: *The Guardian* (liberal), *Daily Mail* (conservative) and *The Independent* (centrist). The framework of (de)legitimization strategies established by Van Leeuwen and Wodak (1999) is applied to the analysis of the selected articles from each of the newspapers. Furthermore, the theory of media framing is used to identify reoccurring themes within the articles from each newspaper, which can be linked to their ideology.

The study begins with a literature review, which outlines the ideologies and values of the media and the existing surveillance and NSA revelations research. Following, it presents the analytical framework with definitions and explanations of media framing, sourcing, ideologies and the (de)legitimation techniques. Then, the study explains the methodology and the CDA. Next, it shows the findings and the analysis of three newspapers and explains the identified frames using excerpts from the articles. Lastly, it discusses the results in light of the literature review and presents a summative conclusion.

2. Literature Review

2.1. Ideologies and values of the media

Following a normative view, the media is regarded as a fourth estate² fulfilling the tasks of democracy through informing citizens and shaping public discourse. As the fourth estate, a media system is expected to hold governmental, judiciary, and executive powers to be accountable. According to the Habermasian (1989) ideal of a discursive public sphere, the media should enable rational discussions. Yet, the media constitute a platform in which different actors and content compete for interpretative dominance of the media discourse. The resulting media discourse does not necessarily reproduce public opinion or real-world events but may present biased interpretations toward elite due to certain power constellations (Hackett, 1984; Klein & Maccoby, 1954; Strömbäck, 2008).

Some scholars claim that access to information on national security issues by the media is restricted. Therefore, it is more difficult for the media to maintain its role of a watchdog in this field (McGarrity, 2011; Hefroy-Milscher, 2015). Hefroy-Milscher (2015) mentions the barriers that journalists encounter when trying to function as a 'fourth estate' when it comes to reporting on salient events and refers to the 'journalist-source relationship' (p. 257). The author challenges the role of the media as an 'agenda-setter' and calls it 'agenda silencing' especially when it concerns intelligence-related events. The author further claims that "the purpose of media coverage is to communicate and legitimise silences orchestrated by state, legal, or intelligence censorship" and to report on "what other media know, rather than publicising new facts" (ibid.).

Ideologies and values are key motivators for newspapers to tell a story with a particular twist, to evoke specific reactions from the targeted audience and to understand the world through an explanatory

² The other three estates in democracy are the legislative, the executive and the judiciary.

lens. O'Neill and Harcup (2010) tentatively propose ten news values that newspapers use to choose their stories which include: "the power elite, celebrity, entertainment, surprise, bad news, good news, magnitude, relevance, follow-up and newspaper agenda" (p. 279). Nevertheless, these values only play a role when addressing a specific audience and adhering to what they wish to view. Van Dijk (2001) defines an ideology as "beliefs shared by groups" and claims that ideologies are not always negative, because they can "serve to establish or maintain social dominance, as well as to organize dissidence and opposition" (p. 14). Consequently, ideologies help newspapers to organise their thoughts and tell a story through a desired angle.

Nevertheless, Fowler (1991) states that "values are in the language already, independent of the journalist and of the reader", which shows that an ideology "is already imprinted in the available discourse" (p. 41-42). Hence, it is an inevitable result of writing. Fowler (1991) further notes that "perception and understanding involve the active deployment of mental schemes and processing strategies" that are known to the reader prior to processing an article (p. 43). This tacit knowledge enriches the readership with the ability to understand and perceive a story through a personalised lens.

All of the aforementioned aspects are significant elements for conducting a CDA of newspapers. While carefully scrutinising the articles, the values, ideologies, target audience and the presumed bias of an editorial have been considered. Understanding how these factors help journalists in producing relevant news material can further explain their linguistic choices and the style of their narrative. This research takes these aspects into consideration both when identifying the frames present in the newspaper articles and the (de)legitimisation techniques employed.

2.2. Surveillance and Snowden revelations research

It is important to note that research analysing the media discourse concerning the Snowden revelations is only beginning to appear. Commonly, the object of research is more personal and focuses rather on individual journalists or personalities, such as Glenn Greenwald (Rice, 2015; Salter, 2015) or Edward Snowden himself (Branum & Charteris-Black, 2015; McLeod and Shah, 2014; Schulze, 2015). For example, Di Salvo and Negro (2015) analysed four international newspaper outlets (*New York Times*, *The Guardian*, *The People's Daily*, *The South China Morning Post*) and discovered that they are all consistent in framing Snowden as a 'whistleblower'. Di Salvo and Negro (2015) also mention that research containing an analysis of newspapers from differing countries implies the "consideration of the limits of comparing different journalistic cultures and media systems, which inevitably affect the practice of journalism and editorial choices" (p. 816). This means that the samples used in an analysis are not representative of the entire journalistic culture, but they highlight a solid part of it.

Barnard-Wills (2011) highlights the increase in technology and surveillance-related media coverage in the UK and finds that the media discourse mainly varies from limiting personal liberty to reducing criminality. Foucault (2007) considers surveillance to be a tool for security and a state power to protect the population. Branum and Charteris-Black (2015) examine three major UK newspaper outlets: *The Guardian*, *The Sun* and the *Daily Mail* and look at how they report on the Snowden revelations. Their claim is that the written articles are biased in accordance with the editorial's ideology, target audience and news values. *The Guardian* reports on surveillance revelations. It describes surveillance as deceptive, extensive and implies that it presents risks for democracy and lawfulness. The main narrative follows legal, moral, and public-support arguments to justify the narrative of the authors. The *Daily Mail*

reports on Snowden on a more personal basis, referring to his living situation and personal life. These articles mostly remain neutral in their narrative, giving recommendations rather than opinions (Branum & Charteris-Black, 2015, p. 210). *The Sun* takes on a protectionist stance towards the UK and its government, trying to legitimise surveillance.

Jie Qin (2015) uncovers how social media frames the Snowden revelations in comparison to traditional journalism through the use of semantic network analysis. He found that social media users associate Snowden's case with "whistle-blowers, bipartisan issues, and personal privacy issues", whereas journalists from established editorials associate it with "issues of national security and international relations" (p. 175-176). Furthermore, Qin (2015) found that media frames on social media and legacy news differ with respect to word selection and salience. Word selection is a selective use of keywords and carefully crafted hashtags to appeal to the audience (p. 174) while word salience means that "the degree of centrality of a word suggests the importance of the word in the network" (p. 175).

3. Analytical Framework

3.1. Media research: framing, sourcing and ideologies

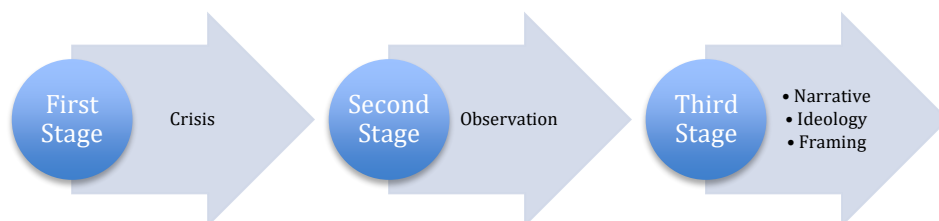
In order to understand how a newspaper's ideology or values impact the way the information is presented to a viewer, this research uses the theory of media framing. Entman (2004) defines this technique as "selecting and highlighting some facets of events or issues, and making connections among them so as to promote a particular interpretation, evaluation, and/or solution" (p. 5). The media manipulates the way people receive and interpret socio-political issues through media framing, which successfully shifts or focuses the audience's attention to particular details, phrases, events or issues, in order to limit or shape the reader's understanding of a specific subject matter (Gamson & Modigliani, 1987). Frames are applied by the media in "the presence or absence of certain keywords, stock phrases, stereotyped images, sources of information, and sentences that provide thematically reinforcing clusters of facts or judgments" (Entman, 1993, p. 52). Therefore, frames create a context to a problem, offer a possible interpretation, suggest a way of coping with it and adapt the narrative to fit the source ideology or set of values. Insofar, as the rhetorical devices used differ, the most common ones used in newspaper articles are metaphors, analogies, stereotypes, inferences, references to history and priming (cognitive associations already present in a person's mind) (ibid.). Many problems can be framed, but the most common ones are situations, attributes, choices, actions, issues, responsibility and news (Hallahan, 1999).

Sourcing is an important aspect of framing, as the sources used by the media are driving forces for ensuring legitimacy, credibility, trustworthiness and reliability to the readers (Gandy, 2015). Nevertheless, the selection of sources used by authors can reflect a form of bias, which deviates them from rational argumentation and persuasion. Instead, they engage in coercive techniques to influence the tone and direction of the presented information (Greenberg & Hier, 2009, p. 465). Sourcing is especially significant in surveillance and security news coverage, as media outlets often have direct access to secretive information from state officials or other authoritative sources.

The model of the Stages of Media Reporting (Figure 1) resonates with the actual analytical sequence used in this research. It starts with the crisis situation or scandal (the Snowden revelations), followed by the observation based on the analysis of the media discourse presented by newspaper articles, leading to identifying the specific narrative based on the ideologies represented by media

providers through framing. This model is a useful tool for understanding the course of events during media reporting and identifying what phenomena lead to what results.

Figure 1: Stages of Media Reporting



Source: Based on Herfroy-Mischler (2015)

Framing was selected as an analytical method, as it is relevant for examining newspaper articles using the CDA. This method is especially useful when the topic of analysis (NSA revelations) can be interpreted and viewed in different ways, depending on the source, which in this case is a newspaper editorial (Chong & Druckman, 2007). The following chapter elaborates on the (de)legitimization techniques used to identify the frames present in the newspapers.

3.2. (De)legitimization techniques

This research focuses on identifying legitimization techniques used in the newspaper articles to legitimise or delegitimise surveillance. These techniques are then applied and connected to possible frames related to the Snowden revelations. The framework on legitimization used in this study is based on Van Leeuwen's and Wodak's (1999), van Dijk's (2005) and Van Leeuwen's (2007) semantic multimodal approach. The approach has been effectively applied in similar studies concerning surveillance legitimisation by the news, broadcasting media, the government or in general, using legitimisation techniques in political sciences research (see Barnard-Wills, 2009; Schulze, 2015; Lischka, 2017; Reyes, 2011; Tiainen 2017). This approach specifies four legitimisation categories that can be observed in discursive practices including: (1) authorisation (2) rationalisation, (3) moral evaluation and (4) mythopoesis (Van Leeuwen & Wodak, 1999).

Van Leeuwen (2007) defines these categories in the following way: (1) authorisation is "legitimation by reference to the authority of tradition, custom and law, and persons in whom institutional authority of some kind is vested", (2) rationalisation is "legitimation by reference to the goals and uses of institutionalized social action, and to the knowledge society has constructed to endow them with cognitive validity", (3) moral evaluation is "legitimation by (often very oblique) reference to value systems" and (4) mythopoesis is "legitimation conveyed through narratives whose outcomes reward legitimate actions and punish non-legitimate actions" (p. 92). Furthermore, van Dijk (2005) explains the strategy of positive and negative self-presentation used in biased accounts of scandals (p. 373). The author notes that such tactics are used in favour of the writer's ideology or interest. They are often applied to (de)emphasise the good or bad aspects of cases involving 'Us versus Them', hence

“blaming negative situations and events on opponents or on the Others (immigrants, terrorists, youths, etc.)” (ibid.).

Berger et al. (1998) stipulate that legitimisation can be viewed as “a process by which cultural accounts from a larger social framework in which a social entity is nested are constructed to explain and support the existence of that social entity, whether that entity be a group, a structure of inequality, a position of authority or a social practice” (p. 380). Van Leeuwen (2007) adds to this and claims that legitimisation focuses on the ‘Why’, thus “Why should we do this? And Why should we do this in this way?” (p. 93). Furthermore, using legitimacy in discourse can have powerful effects on a larger scale. This is because discourse, which delegitimises certain actions can lead to the disempowerment and loss of privileges, which were used to meet objectives, especially in institutions (Reus-Smit, 2007, p. 161-162).

The semantic categories of legitimisation are applied to the identified frames used by the selected newspaper editorials from the newspapers including: *The Guardian*, *The Independent* and the *Daily Mail*. The articles from each news source are analysed, key themes and frames are identified, the information is summarised and key quotes are collected. Then, the visible frames are examined in light of the legitimisation and de-legitimisation arguments.

4. Methodology

The study assumes a critical discourse analysis approach. CDA is an analytical method, which “studies language use in speech and writing as a form of ‘social practice’” that is socially constructed and conditioned in cultural, ideological and historical context. It shows a “dialectical relationship between a discursive event and the situation(s) or social structure(s), which frame it” (Fairclough & Wodak, 1997, p. 271-280). In summary, Fairclough and Wodak (1997) state that CDA addresses social problems and discursive power relations, dominance and inequality and the way they are reproduced (p. 258). CDA proved to be a useful method in combination with the study of legitimisation techniques (see Wodak, 2001, p. 2) and analysis of media discourse (see Fairclough, 1995).

Based on the chosen approach and methodology, social constructivism is a paradigmatic approach, which fits with this research the most. Guba and Lincoln (1994) explain social constructivism and state that knowledge is a product of social interaction, interpretation and understanding and that the creation of knowledge can vary based on social, political, cultural, economic, ethnic and gender factors (p. 113). These constructions are subject to continuous revision in different contexts, where consensus can be built (ibid.).

In order to get a holistic perspective on how the British newspapers framed the NSA revelation, three newspaper sources representing a different political ideology were selected and served as units of analysis. *The Guardian* was chosen, as it represents a left-wing, liberal ideology, the *Daily Mail* was selected as a right-wing, conservative newspaper and *The Independent* as a centrist one. *The Guardian* is crucial for this analysis, as it was the first newspaper to publish the information regarding NSA leaks. It is critical of surveillance and is protective of its reasoning why disclosing Snowden’s findings to the world was a right thing to do. The *Daily Mail* assumes a neutral standpoint, ignores whether surveillance should be portrayed as good or bad, and employs a descriptive narrative of the NSA revelations, focusing more on Edward Snowden’s individual life, motifs and reasons to initiate the scandal. *The*

Independent is a centrist newspaper which attempts to portray unbiased opinions usually showing different perspectives.

The articles from the aforementioned newspapers were identified using the LexisNexis database. The following keywords were applied during the search: Edward Snowden, NSA, surveillance and 'whistle-blower'. The articles were included if they fell into the timeframe from 5th June 2013 (when *The Guardian* published the first article regarding the leaks) until 1st August, 2013 (Edward Snowden was granted asylum in Russia). The timeframe focuses on the summer of 2013, which was the period when the information about NSA revelations was leaked for the first time by Edward Snowden, and when media attention was high. The LexisNexis (Lexis Uni) search, using the timeframe and the specified keywords showed 34 articles for *The Guardian*, 36 for the *Daily Mail* and 32 articles for *The Independent*. After careful screening of the titles, 30 most relevant articles were selected for each newspaper, making a total of 90 articles used in the analysis. The duplications of the articles were disregarded and not included in the study. Articles on stories irrelevant to the search, for example about people holding the same surname as Snowden or unrelated subjects were omitted as well.

The analysis included four steps: (1) deductively identifying the framing techniques used by the newspapers, based on their ideology and news values (see Table 1), (2) linking the identified frames with the (de)legitimation techniques such as authorization, rationalization, moral evaluation and mythopoesis, which are defined in Chapter 3.2., (3) detecting the frames and illustrating them by excerpts and keywords used by the authors of the articles, (4) searching for overlaps between the frames and the techniques to justify how the newspapers either legitimised or delegitimized surveillance. Table 1 presents the codebook used for the selection of newspaper articles and analysis. Furthermore, the (de)legitimation techniques are applied to the newspaper articles only if they are clearly identifiable in the text. For example: one newspaper may be only using legitimization through (1) authorization and (3) moral evaluation and the other strategies such as: (2) rationalization and (4) mythopoesis may not feature in the discourse.

Table 1: Codebook for the selection of newspaper articles (based on Saraisky, 2016)

News Source	1. <i>The Guardian</i> 2. <i>Daily Mail</i> 3. <i>The Independent</i>
Timeframe (format: day/month/year)	05/06/2013 until 01/08/2013
Topics addressed	- Edward Snowden - NSA Revelations 2013 - Surveillance revelations 2013
Keywords	NSA revelations, Edward Snowden, surveillance, whistleblower, security, privacy
Expected Frames	- Infringement of security and privacy - Morality - Legality and Lawfulness - Democratic values
(De)legitimation	(1) Authorisation

techniques (see definitions in Chapter 3.2.)	(2) Rationalisation
	(3) Moral evaluation
	(4) Mythopoesis

5. Findings and Analysis

After the analysis of the articles, the following frames were identified per newspaper. *The Guardian* used: lawfulness and public interest, protectionism of Edward Snowden and power abuse and morality. The *Daily Mail* used: minimizing the impact of Snowden's disclosures, justifying surveillance, Snowden's personal life and discrediting other newspapers. *The Independent* used: an informative narrative, impartiality and protectionism of Snowden.

5.1. The Guardian

On June 5th, 2013 *The Guardian* was the official newspaper to side with the 'whistleblower' Edward Snowden and publish the information about the NSA revelations. The newspaper helped justify why surveillance is dangerous and poses a threat to democracy and privacy of people. The news values and ideology of the editorial were clearly represented during the initial publication of the story. Their narrative defended the decision to disclose the information to the world. The leaked documents from the American intelligence agencies showed how citizens, politicians, United Nations (UN) officials, the European Union (EU), private businesses and authorities were under extensive surveillance. *The Guardian* revealed three main programs used for global surveillance including: Prism and XKeyscore³.

The corpus includes thirty articles written by thirty different journalists. The most common frames used by *The Guardian* were: lawfulness and public interest (Table 2), protectionism of Edward Snowden (Table 3) and power abuse and morality (Table 4). These frames are illustrated by the excerpts. When linking these frames with the (de)legitimisation strategies of Van Leeuwen and Wodak (1999), we can conclude that *The Guardian* was legitimising its decision to publish the report about NSA surveillance programs and delegitimising government surveillance through the use of strategies such as: (1) authorisation, (2) rationalisation, (3) moral evaluation and (4) mythopoesis. The observations about these findings are described below.

a. Lawfulness and public interest

Table 2: Illustration of 'lawfulness and public interest'

1. "The recent revelations by another whistleblower, Edward Snowden, accused the court of breaking the fourth amendment to the US constitution. This entitles Americans "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures". The operative word, as so often, is unreasonable." (2013, July 10, *The Guardian*),

³ Other programs used for global surveillance were: ECHELON, Carnivore, Dishfire, Stone Ghost, Tempora, Stingray, DCSN, Fairview, Pinwale, RAMPART-A, SORM, Boundless Informant, Frenchelon, MYSTIC and Bullrun.

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2. "US civil libertarians are seeking to confront the assault on the fourth amendment, possibly before the proper supreme court. Britain has only a foreign secretary assuring it that Snowden is talking nonsense. Privacy International is seeking a legal challenge to the data-scooping of NSA and GCHQ. The government has refused to let such a case come before a public court." (2013, July 10, *The Guardian*),

 3. "A top secret US National Security Agency programme allows analysts to search with no prior authorisation through vast databases containing emails, online chats and the browsing histories of millions of individuals, according to documents provided by whistleblower Edward Snowden." (2013, August 1, *The Guardian*),

 4. "Pressure is growing on the White House to explain whether there was effective congressional oversight of the programs revealed by Snowden." (2013, June 10, *The Guardian*).
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The Guardian's first identifiable frame is lawfulness and public interest. The journalists justify their reasons for publishing the information about the mass-surveillance espionage by referring to the freedom of press and speech and ensuring that it is in the interest of the public to learn about how their privacy is infringed and how their information is extensively used by the government. The newspaper creates a narrative about legality of the surveillance programmes by making references to the US Constitution, the Bill of Rights (the First and the Fourth Amendment), FISA (US Foreign Surveillance Court), democracy, freedom, liberty and transparency. The authors refer to the Constitution, which is America's supreme law that outlines the structure of the government and fundamental laws that shall always be adhered to. There is also a frequent mention of the Bill of Rights, especially the First Amendment, which ensures the freedom of speech and the freedom of press and the Fourth Amendment that safeguards the right to security and privacy against unreasonable searches and seizures. *The Guardian* aims at appealing to the public by making them aware of their fundamental rights and tries to raise awareness about the fact that the surveillance programs are unjust, unconstitutional and not transparent.

This frame manipulates the audience into delegitimising surveillance on the basis of legality, thus appealing to the public interest and fundamental rights. The (de)legitimation techniques from Van Leeuwen (2007) which fit this narrative are: (1) authorisation, (3) moral evaluation and (4) mythopoesis. As seen in Table 2, *The Guardian* uses mythopoesis to delegitimise surveillance by creating a narrative that makes it non-legitimate. Quote 3 reads that NSA acted without prior authorisation or supervision and it was interfering with internet activities of millions of US and non-US citizens (e-mails, online chats, browsing history etc.). Quote 4 symbolises that there was no effective 'congressional oversight' of the espionage. Through this narrative, the public is informed about what areas of their lives were affected by the NSA revelations. *The Guardian* also uses authorisation to delegitimise surveillance by referring to the supreme law, questioning the constitutionality of the intelligence programs and emphasizing that the fundamental rights of the citizens from the US and other countries shall be respected. In quote 4, the NSA scandal is referred to as an 'assault' on the fundamental rights of American citizens and beyond, and a serious 'legal challenge'. Furthermore, all four quotes delegitimise

surveillance through moral evaluation, showing government corruption, which causes distrust and controls citizens by closely monitoring their actions.

b. Protectionism of Edward Snowden

Table 3: Illustration of 'protectionism of Edward Snowden'

1.	"The reason why a loyal ex-soldier broke cover was not to aid an enemy. It was to inform a friend, his own country. He was simply outraged by the lies told to Congress by his bosses about NSA operations. As Harvard's Stephen Walt said, Snowden was performing a public service in drawing attention to a "poorly supervised and probably unconstitutional" activity" (2013, July 10, <i>The Guardian</i>),
2.	"It was a life that, in his own words, Snowden decided to "sacrifice" in order to reveal the extent and reach of US surveillance techniques" (2013, June 12, <i>The Guardian</i>),
3.	"Any charges against him should be ones to which it is possible to mount a public interest defence (...) It must be for a civilian jury to decide whether Mr Snowden's actions are more troubling and significant than the documents and practices which he has exposed. Mr Snowden must be able to come in from the cold. And America must do more to help make that happen." (2013, July 3, <i>The Guardian</i>),
4.	"As nurse in the A&E department, Donnelly spent years insisting that there were serious problems at Stafford Hospital before they eventually came to light. I don't know the Snowden case, but I think that if anybody has genuine concerns that are in the public interest, then they are duty-bound to raise them. If you're a nurse, especially, it's part of your professional code of conduct to speak up if you see things that are not right." (2013, June 11, <i>The Guardian</i>).

The second frame covered by *The Guardian* is protectionism of Snowden. It legitimises Snowden's disclosures, calling him a national hero and delegitimises the US reaction towards him. The newspaper also normalises his actions by claiming that it is a right of a worker to disclose unjust and immoral actions in their workplace. Instead of calling him a traitor or a criminal, he is framed as a public servant, loyal ex-soldier and someone acting in favour of morality, lawfulness and good democracy.

This frame fits with (2) rationalisation and (4) mythopoesis. Snowden's actions are rationalised and legitimised to make the readership think that his actions were thoughtful and intelligent, which automatically increases his authority during the scandal. The 'whistleblower's leaks are also declared as a normal and natural thing to do (Van Leeuwen, 2007). Quotes 1, 2 and 4 state that Snowden protected his country and his friends and that it was his 'duty' and a 'public service' to reveal the lies told to the world about the NSA operations by his bosses. Quote 4 compares Snowden's actions to a story of a nurse working for the Stafford Hospital normalising them by claiming that it is in line with the 'code of conduct', which makes an employee 'duty-bound' to raise concerns about corrupted workforce.

Furthermore, Quote 3 refers to the charges against Snowden and pushes Americans to help protect the life that he sacrificed for his nation and for the world. *The Guardian* compares the gravity of Snowden's disclosures to the surveillance operations carried out by government intelligence services and makes the public deliberate on what really is worse: the surveillance or alleged wrongdoing of Snowden.

c. Power abuse and morality

Table 4: Illustration of 'power abuse and morality'

1. "It's the stuff of conspiracy theorist fantasies. But these abuses of power are real and are playing out on the front pages of America's papers every day." (June 15, 2013, <i>The Guardian</i>),
2. "US intelligence chiefs conceded in a heated Senate hearing yesterday that their programme to collect phone records of millions of Americans was not their "most important tool" in countering terrorism, as they had previously claimed" (August 1, 2013, <i>The Guardian</i>),
3. "XKeyscore, the documents say, is the NSA's widest reaching system developing intelligence from computer networks (...) One presentation claims the program covers "nearly everything a typical user does on the internet", including the content of emails, websites visited, and searches, as well as their metadata. (...) Analysts can also use XKeyscore and other NSA systems to obtain real-time interception of an individual's internet activity" (2013, August 1, <i>The Guardian</i>),
4. "The surveillance both described took place in an environment where the legal framework was ill-defined, the targets nebulous and accountability inadequate. They were fishing expeditions, anticipating wrongdoing regardless of the evidence, and an invasion of privacy entirely disproportionate to the threat" (2013, June 24, <i>The Guardian</i>).

Through power abuse and morality, *The Guardian* aims to show that the programs used for the NSA operations were too extensive, intrusive and able to track back anyone's traces left on the internet. Quote 1 indicates that the surveillance programs are actually the fantasies of the conspiracy theorists come true, featuring on the front pages of all American papers. In this way, *The Guardian* emphasises the importance of the problem and demonstrates its scale. Quote 2 shows that the US intelligence abused their powers and acted disproportionately to the threat. They collected phone records and internet data from millions of Americans and beyond. While on one hand, the intelligence officials claimed that the surveillance activities were the main tool for counterterrorism, on the other hand they diminished their importance. Quote 3 extends the previous argument by providing insights into what was monitored by XKeyscore and other NSA programs including emails, websites, search history and metadata. This narrative again aims at informing the audience about the risk of the government interfering with people's privacy in an unethical and abusive way. Furthermore, the words used by *The*

Guardian in quote 4, such as: ill-defined, nebulous, inadequate, wrongdoing and disproportionate show how the newspaper wants to discredit the American legal framework that it operates within.

The (de)legitimation techniques applicable to this frame are (1) authorisation, (3) moral evaluation and (4) mythopoesis. *The Guardian* delegitimises surveillance by referring to the abuse of power by the intelligence authorities and the US government by making a reference to the authority of persons vested with institutional powers. Furthermore, it uses moral evaluation to trigger the reader's mind to believe that it is wrong to have their privacy extensively interfered with, without prior authorisation. Lastly, mythopoesis is used to "punish non-legitimate actions" (Van Leeuwen, 2007, p. 92), which in this case are the surveillance programs (XKeyscore and Prism).

5.2. Daily Mail

The *Daily Mail* is a middle-market, tabloid newspaper (compact page size) with focus on entertainment. The corpus selected for the analysis consists of thirty articles, written by twenty-nine different journalists. Most of the topics include: insights into Snowden's personal life, his love life and family, his political asylum, WikiLeaks, negative opinions about other newspapers, surveillance and stories about people involved in the NSA revelations.

The identified frames include: minimizing the impact of Snowden's disclosures, justification of surveillance, personal life of Snowden and discrediting other newspapers. The (de)legitimising techniques that are visible through the frames are (1) authorisation, (2) rationalisation, (3) moral evaluation and (4) mythopoesis.

a. Minimizing the impact of Snowden's disclosures

Table 5: Illustration of 'minimizing the impact of Snowden's disclosures'

1.	"I'm afraid his choice of friends has shaken my confidence. And I also have to confess that his notably undetailed revelations, so sensationally presented by The Guardian newspaper, have often left me unmoved. Many of them seem so unsurprising that it is hard to understand what General Keith Alexander, director of America's National Security Agency, can have meant when he said that Snowden's disclosures have caused irreversible and significant damage to our country and its allies'. Really?" (2013, July 4, <i>Daily Mail</i>),
2.	"Mr Snowden is guilty of having betrayed his country, even if his revelations are much less spectacular than The Guardian has claimed. Mr Assange's generally more explosive revelations have almost certainly done the United States much more damage." (2013, July 4, <i>Daily Mail</i>),
3.	"Because so many of Snowden's allegations are both generalised and not very shocking, he is unlike Julian Assange in this regard I find it difficult to believe that he has caused the U.S. untold harm. All the time, as an ex-CIA employee he is undoubtedly guilty of a breach of trust" (2013, July 4, <i>Daily Mail</i>),

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4. "His next barrage of revelations induced a So what?' response in me, and I suspect many others. Nonetheless, The Guardian worked itself into a high old frenzy over his suggestion that the British Government has monitored some friendly countries before international summits which it hosted in 2009" (2013, July 4, *Daily Mail*).
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The first frame used by the *Daily Mail* is used to minimize the impact of Snowden's disclosures, making them seem unimportant and unsurprising. The words used in the quotes presented in Table 5, such as: undetailed revelations, unsurprising, 'Really?', less spectacular, damage, not very shocking and 'So What?' undermine the importance of what Snowden revealed to the world. The newspaper tries to make the audience believe that what the NSA and the 'Five Eyes' Intelligence Alliance did is insignificant and they should not be shocked or affected by it, because it is 'normal'.

The authors try to emphasise the fact that Snowden caused an irreversible damage to the US and its allies resulting in less trust and transparency among them. *Daily Mail* highlights that Snowden has betrayed his nation and his workplace, breached their trust and caused unnecessary damage. This evokes feelings of patriotism, loyalty and disbelief in the readers' eyes due to the fact that Snowden acted against America and disregarded the code of conduct of NSA in his work.

The *Daily Mail* uses mythopoesis technique according to Van Leeuwen and Wodak's (1999) classification. The journalists try to delegitimise and punish Snowden's actions claiming that they betrayed America and his workplace and caused unnecessary harm. Furthermore, the tabloid legitimises and normalises surveillance by making it sound unimportant and minimises its shock-value. This can be explained by the conservative ideology of the newspaper. Throughout all articles, the surveillance is viewed as an act in favour of the citizens, protecting them and the country from terrorism and harmful actions. This is further explained in the next chapter.

b. Justifying surveillance

Table 6: Illustration of 'justifying surveillance'

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1. "We have experienced an extremely busy period in intelligence and diplomacy in the last three years. The growing and diffuse nature of threats from terrorists, criminals or espionage has only increased the importance of the intelligence relationship with the United States. This was particularly the case in the run to the Olympics. Our activity to counter terrorism intensified and rose to a peak in the summer of last year" (2013, June 11, *Daily Mail*),
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2. "Intelligence obtained from a secret US eavesdropping operation helped prevent terror attacks at the 2012 Olympics, it was revealed yesterday" (2013, June 11, *Daily Mail*),
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3. "I am relieved that we have had the nous to do to others what they are undoubtedly doing to us. If our security services weren't trying to find out the private thoughts of other key governments before important international meetings, they would be failing in their duty" (2013, June 18, *Daily Mail*),
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4. "We should have nothing but pride in the unique and indispensable intelligence-sharing relationship between Britain and the United States. In some countries secret intelligence is used to control people – in ours, it only exists to protect their freedoms. We should remember that terrorists plan to harm us in secret, criminal networks plan to steal from us in secret, foreign intelligence agencies plot to spy on us in secret and new weapons systems are devised in secret" (2013, June 28, *Daily Mail*).
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The second frame justifies surveillance and stresses its importance to the target audience. The newspaper triggers the imagination of the public by recalling the growing threat of terrorism, criminal activities and espionage (quote 1). It emphasises that powerful intelligence agencies are necessary to prevent terrorism. The 2012 Olympics are shown as an example of how the US intelligence services helped counteract terrorism (quotes 1 and 2).

In quote 3, the author tries to provoke the reader by saying that other countries also spy and act unjust to America, thus it is important to monitor other governments and beware of their intentions and plans. Quote 4 stresses that Americans should be proud of the surveillance systems used by the US and the UK, as they are unique and indispensable. The author claims that it is done for the protection of people's fundamental freedoms, counterterrorism, preventing foreign intelligence from spying and identifying new weapon systems.

Here, two techniques are used: (1) authorisation and (2) rationalisation. The *Daily Mail* legitimises surveillance by referring to the US and British intelligence services as authoritative, rational and acting in the public's interest to minimise harm and external threats. Furthermore, it rationalises NSA's surveillance programs by showing that they were carefully calculated and thought-through.

c. Personal life of Snowden

Table 7: Illustration of 'personal life of Snowden'

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1. "Holed up in a luxury Hong Kong hotel room but happy to brag about how he delivered one of the biggest intelligence leaks in US history, Edward Snowden is one of a new breed of whistleblower (2013, June 11, *Daily Mail*),
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2. "Young, naïve, idealistic and not short on self-righteousness, like Manning he clearly believes that government misbehaviour is sufficient justification to break the law and intelligence world codes of conduct" (2013, June 11, *Daily Mail*),
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3. "In case anyone questions his motives – and there are many doing that in the US – he insists he has given up a very comfortable life including a salary of around 130, 000 pounds, a blonde girlfriend with whom he shared a house in Hawaii, a promising career and a family he loves" (2013, June 11, *Daily Mail*),
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4. "On her blog, Miss Mills, a 28-year-old former ballerina, writes: My world has opened and closed
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all at once. Leaving me lost at sea without a compass" (2013, June 12, *Daily Mail*),

5. Title "The pole dancer left behind" (2013, June 12, *Daily Mail*).

The third frame focuses on emphasising Snowden's personal life, dwelling on his past, present and future. The journalists mention his girlfriend, Lindsay Mills, and her sentiments over her boyfriend's disclosures. Her blog, profession and hobbies are featured and her character seems to be used in the stories to invoke feelings of sensitivity and empathy. It is because Snowden kept his plans secretive and left her alone once the revelations were published by *The Guardian* and *The Washington Post* to escape and seek asylum. She is framed as a ballerina, pole dancer and blond girlfriend who was abandoned by her loved one.

Quotes 1 and 3 present Snowden's 'lavish lifestyle' and luxury, mentioning the hotels he stayed at, the places he travelled to and his salary. This creates an imagery of hypocrisy that Snowden cares more about his personal comfort than the impact of his disclosures. The newspaper calls Snowden "young, naïve, idealistic and not short on self-righteousness" (quote 2), which undermines him, questions his reliability, credibility and authority. Personalisation is a key element of this frame, as the news source focuses more extensively on Snowden's privacy rather than the context of the revelations, recommendations and implications.

Here, (3) moral evaluation and (2) rationalisation are used. Moral evaluation is evident when looking at the narrative about Snowden's girlfriend. His revelations are delegitimised because he disregarded Lindsay leaving her "lost at sea without a compass" (quote 4). Furthermore, the newspaper stresses that Snowden should not "break the law and intelligence world codes of conduct" (quote 1) just because of government misbehaviour. Moreover, Snowden's actions are delegitimised through reference to his self-righteous and naïve personality.

d. Discrediting other newspapers

Table 8: Illustration of 'discrediting other newspapers'

1. "But The Guardian believes it always knows better as in the case of the ex-CIA operative, Edward Snowden, another former employee of the American government who feels justified in shouting official secrets from the rooftops, though most of his revelations' are either unsurprising or exaggerated" (2013, August 1, *Daily Mail*),

2. Title "Shock horror! Britain spies on other nations: The Guardian, which rightly attacks the hacking of private phones – but glories in betraying Britain" (2013, June 18, *Daily Mail*),

3. "Whatever The Guardian, with its head in the clouds, may believe, the British government has an obligation to protect this country's strategic and economic interests in a world in which foreign governments are ruthlessly pursuing theirs" (2013, June 18, *Daily Mail*),

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4. "Even the BBC, which normally treats *The Guardian* as its house journal and guiding star, has so far not followed up the paper's latest overblown revelations with as much enthusiasm as might have been expected. Perhaps the Corporation can see that this is a story which tells us far more about *The Guardian* than anything else" (2013, June 18, *Daily Mail*).
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The *Daily Mail*'s narrative also focuses on discrediting other newspapers, especially *The Guardian*. Words and phrases used to describe *The Guardian* are: "head in the clouds", "it always knows better" and "glories in betraying Britain" (quote 1, 2 and 3). The *Daily Mail* tries to impose its ideology and values on the audience. It inflicts their view that *The Guardian* betrayed Britain, by revealing the surveillance operations carried out by the US and other countries to the world. For example, quote 2 presents a title of an article, which frames *The Guardian* as a traitor to Britain, who glories in their victory of disclosing official secrets to the public.

The *Daily Mail* deliberately refers to *The Guardian* as a delusional news source and claims that the British government has a duty to be a guardian of its country's "strategic and economic interests" (quote 3), especially when other countries act selfishly and ruthlessly protect their own interests. Furthermore, a reference to the BBC is made, which supposedly considers *The Guardian* as "its house journal and guiding star" (quote 4). The *Daily Mail* emphasises that "even" the BBC did not react enthusiastically about *The Guardian* revealing the NSA secrets, as was expected of the broadcasting station. This was done to criticise its decision to publish the incriminating information and support the 'whistleblower'.

The (de)legitimisation techniques used are (1) authorisation and (4) mythopoesis. The *Daily Mail* legitimises surveillance through authorisation by saying that even though *The Guardian* can be viewed as a reliable newspaper, they should not have published the information about the revelations, as it betrays Britain. This shows the newspaper's ideology, which is in support of intelligence operations, because it is seen as an action favourable to the country's security. Furthermore, mythopoesis is used to punish *The Guardian*'s non-legitimate action through language. The *Daily Mail* writes that publishing such sensitive information is unjust and wrong, therefore it emphasises it by referring to what other news sources think.

5.3. The Independent

The corpus from *The Independent*, a politically autonomous online tabloid consists of 30 articles written by eighteen different authors. It is evident that the newspaper tries to be impartial and contextualise the stories that it covers. It focuses on the representation of accurate facts, quotes and the course of events. The main topics covered in the corpus are: the political asylum of Snowden, descriptive narrative of what happened, explanation of what the NSA is, the impact of the revelations on other countries, trade, negotiations and external relations. The newspaper aims to inform the public about Snowden's possibilities and quotes officials and other involved authorities.

The main frames identified are: an informative narrative, impartiality and protectionism of Snowden. The (de)legitimisation techniques that can be applied are (1) authorisation and (2) rationalisation.

a. Informative narrative

Table 9: Illustration of 'informative narrative'

1.	"NSA's sheer size, the vast financial resources at its disposal, and its capacity to surreptitiously gain access to the most sensitive and heavily protected electronic communications of friends and foes alike is both breath-taking and frightening. With more than 30,000 military and civilian personnel, half of them military servicemen, and an annual budget now estimated by intelligence community insiders at more than \$10bn, NSA is by far the largest, and arguably the most powerful, agency in the US intelligence community" (2013, June 14, <i>The Independent</i>),
2.	"The EU and the US began talks yesterday that could lead to the biggest trade agreement in history, covering half of world economic output and 20 per cent of foreign direct investment. It is vital the undertaking is not undermined by the row over revelations that the National Security Agency, America's electronic surveillance operation, has been spying in Europe" (2013, July 9, <i>The Independent</i>),
3.	"The potential rewards of a transatlantic trade deal are huge. The talks – which both sides over-optimistically believe can be wrapped up in 18 months – seek to eliminate remaining barriers currently imposed by both the US and the EU, and to recognise each side's industrial standards. An agreement could add \$100bn to annual growth and lead to millions of new jobs on both sides of the Atlantic" (2013, July 9, <i>The Independent</i>).

The Independent tends to raise awareness about the problem or crisis and aims to inform the target audience about the necessary facts and figures. For example, in quote 1, the author of the article describes what the NSA is, how powerful it is, what resources it has (financial and military). This allows the readers to formulate their opinion about what kind of organisation they are dealing with. Quote 2 refers to the EU-US talks about the trade agreement and mentions that if successful, it could be "the biggest trade agreement in history, covering half of the world economic output and 20 per cent of foreign direct investment". This shows that *The Independent* tries to inform its audience how the leakages could affect the US' external relations and agreements with other countries, which again contributes to the informative narrative of the newspaper. Quote 3 further describes the benefits of the transatlantic trade deal and mentions how it would bring \$100 billion to the annual growth of the country and create new employment possibilities. Such a descriptive narrative allows the readers to shape their own opinion about the issue.

b. Impartiality

Table 10: Illustration of 'impartiality'

1.	"The European Union signalled its own disquiet at some of what has been learned from Mr
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Snowden, notably at the Prism programme that monitors traffic such as chat, emails and photos that pass through giant US internet firms like Google and Apple, popular with European users. But an opinion poll by the Pew Research Centre found 62 per cent of Americans think it's more important for the US government to do all it can to prevent terror attacks than worry about personal privacy" (2013, June 12, *The Independent*),

2. "Edward Snowden presents Moscow with an intriguing dilemma. On the one hand, his subversion of surveillance techniques and his role as a whistleblower go against everything that Russian President Vladimir Putin and the clique of former KGB officers around him stand for. On the other hand, of course, his leaks are aimed against the US, and thus a chorus of Russian officials who would find a Russian whistleblower doing the same thing repulsive has been lining up to praise Mr Snowden" (2013, July 2, *The Independent*),
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3. "Mr Snowden's whereabouts have created diplomatic tension alongside the intrigue, after Washington revoked his passport after he left Hong Kong. A White House spokesman said the US expected Russia to send him back, and registered strong objections with China and Hong Kong for letting him go." (2013, June 25, *The Independent*).
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Throughout almost all articles, it is evident that *The Independent* does not take sides and tries to present the story as it really is showing it from different perspectives. Such a linguistic tactic allows the readers to formulate their own opinions about the issue. For example, quote 1 refers to the discontent of the EU about the Prism programme, which monitors the internet activities of users of Google and Apple. However, it also mentions an opinion poll, wherein "62 per cent of Americans" believe that surveillance is just and effective in preventing terrorist attacks. Quote 2 also shows two sides of a story through the use of phrases such as "an intriguing dilemma", "on the one hand" and "on the other hand". The aforementioned quote refers to what impact Snowden's disclosures had on Russia. Furthermore, quote 3 shows that *The Independent* tries to avoid presenting its own opinion, imposing their ideology and views on the reader and instead, aims at quoting what other people said. This is done to allow the reader to have an interpretative freedom for the news item.

In this frame, none of the (de)legitimisation techniques can be applied. It is because impartiality of *The Independent* is a technique of the editorial in itself, which aims at reinforcing its goal of being politically autonomous and unbiased.

c. Protectionism of Snowden

Table 11: Illustration of 'protectionism of Snowden'

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1. "In 2003 he enlisted in the US Army, intending to fight in the Iraq War, but was discharged after breaking both legs in an accident during a Special Forces training programme. Snowden said he wanted to fight in Iraq because he felt an obligation to "help free people from oppression", but that "most of the people training us seemed pumped up about killing Arabs, not helping anyone" (2013, June 10, *The Independent*),
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2. "As Mr Snowden, 30, prepared to spend his 10th night at the airport yesterday, he was dealing with outright rejections from Brazil and India. Finland, Ireland, Austria, Norway and Spain said requests for asylum have to be made in person on their territories to be considered." (2013, July 3, *The Independent*),

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3. "Whistleblowers might be thought to be in a different category: how can their presence "be detrimental to the public good" unless that means (which it doesn't) causing embarrassment to America?" (2013, June 25, *The Independent*),
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The Independent paints Snowden in a good light and focuses on his political asylum. Quote 1 mentions Snowden's history in the US Army and his good faith to "help free people from oppression" during the Iraq War. This creates a positive imagery of Snowden and indicates that he always tried to be righteous, helpful and moral, but was often surrounded by others, who broke the rules or misbehaved. This is suggested in the sentence "most of the people training us seemed pumped up about killing Arabs, not helping anyone" (quote 1). Quotes 2 and 3 focus on Snowden's asylum and extradition. Quote 2 stresses the 'whistleblower's' struggles in being rejected from Brazil and India and his difficulty in obtaining the asylum from Austria, Spain, Finland, Ireland and Norway. It also highlights that Snowden spent ten nights at the airport waiting for asylum, which invokes feelings of pity and sympathy in the reader's mind. In quote 3, *The Independent* tries to prove that 'whistleblowers' are not detrimental to the public good and should not be considered an embarrassment for their country. This frame has a different effect than the previous two frames because it intends to show that 'whistleblowers' should not be treated as outcasts in the society, that their disclosures should be valued or learned from and that they should obtain a certain level of protection to reduce their struggles, for example, in seeking asylum.

Here, the surveillance is delegitimised by legitimising Snowden's revelations and showing that he should not be mistreated because of his actions. Snowden's disclosures are rationalised and normalised by the newspaper, which notes that 'whistleblowers' should not be punished for disclosing secretive information to the public. Furthermore, Snowden's revelations are legitimised through mythopoesis, because *The Independent* tries to show his struggles of finding asylum.

6. Discussion

The results of this research show that the newspapers (de)legitimise the NSA revelations using different framing techniques. *The Guardian* uses: lawfulness and public interest, protectionism of Edward Snowden and power abuse and morality. In case of the *Daily Mail*, minimizing the impact of Snowden's disclosures, justifying surveillance, Snowden's personal life and discrediting other newspapers serve as leading tactics. Conversely, *The Independent* incorporates an informative narrative, impartiality and protectionism of Snowden to form its narrative and influence the public.

The findings from this study show a noteworthy overlap with the results from earlier research on the topic of surveillance. Parallel frames and (de)legitimation techniques were used across studies which scrutinised the reactions of the different countries to the NSA operations including Germany (Schulze, 2015), Finland (Tiainen, 2017) and NZ (Kuehn, 2018). Similarly, these frames feature in the

research of distinctive media sources such as Twitter and UK broadcasting news (Qin, 2015; Lischka, 2017).

The study resonates with the Habermasian (1989) claim that media should encourage public debate, as it functions as a fourth estate in democracy. It also proves that the public has to be cautious in understanding and constructing the meaning based on the interpretations given by the media, as they may be biased, which is highlighted by Klein and Maccoby (1954) and Hackett (1984). Echoing Hefroy-Milscher (2015) it seems that the content of the media coverage illustrated by the excerpts from the newspapers proves that in many cases the media communicate silence, hiding important facts, which is comfortable to the state. Instead, they publicize substitute, less important, often private information to stimulate public interest and attract the target audience. It is in line with what O'Neill and Harcup (2010) say, that newspapers present stories centered around polarized eye-catching topics, important personalities and their lives, instead of focusing on what really matters.

Ideologies, values and beliefs of newspapers play a substantial role in their discursive narratives. The study seems to prove that each newspaper tells the same story through a different lens, focusing on distinctive aspects of it and narrating it with varying political angles. The results of this study are in line with Fowler (1991) who confirms that the linguistic discursive of editorials is affected not only by their ideologies, but also by access to reliable sources (p. 10-13). Since journalists rely on official sources for their storylines, "those in positions of social and political power have considerable ability to influence what is covered in the news" (McChesney, 2000, p. 49 in Harcup, 2003, p. 361) which is reflected in this analysis. *The Guardian* cooperated with Snowden, hence it obtained the richest corpus of information from the official documents. *The Daily Mail* focused on Snowden's private life, 'gossip' and demeaning other media, which indicates its lack of access to reliable sources. *The Independent* collected data from diverse sources to form a holistic perspective on the topic. Consequently, a reader with no prior knowledge about the problem could interpret the storyline substantially differently depending on what newspaper they read. Entman's (1993) definition of framing is useful, because the frames provide the context to the scandal, offer an interpretation and propose a way to cope with it.

The (de)legitimation techniques by Van Leeuwen and Wodak (1999) prove to be an effective instrument to explain how the NSA revelations were framed by the newspapers and to understand the arguments of the journalists. It is worth noting that the legitimising arguments which rationalise surveillance as a means for counterterrorism are also linked to "moral evaluation of public security", as stated by Lischka (2017, p. 678). This reasoning is also in line with Foucault (2007) who claims that surveillance is a tool of the state to protect its citizens. The delegitimising arguments highlighted in this study centre around the moral evaluation of core values such as: democracy, freedom of press, transparency, public interest and liberty which are important for the wellbeing of the citizens in democratic states.

Although this research is informative, there are several limitations to this study. While aiming at assuring triangulation of different analytical techniques by combining two analytical frameworks, media framing and (de)legitimation techniques, a balance between an in-depth analysis of the corpus of the articles and understanding the debates about the use of the frameworks constituted a challenge. Furthermore, the analysis identified more frames and themes, which would be interesting additions to the results, however, the content would be less concise, less structured and longer. Other themes visible in all three newspapers involved referring to the worldwide reactions to the scandal, quoting responses of individual countries and focusing on individual politicians or supranational bodies, such as the EU or

the UN. It would be interesting to analyse the US-EU relations post-Snowden or examine the government reactions to the crisis, as done for Germany by Schulze (2015). Furthermore, using a different database for the article search, for example Factiva⁴, might have disclosed other or more articles than LexisNexis.

7. Conclusion

While this study attempts to propose the explanation of how and why the Snowden revelations were (de)legitimised by the British newspapers, the question still remains how this scandal was presented and discussed by leading media in other countries. To expand this field, more news sources such as radio, television and other newspapers could be analysed, and the reactions of other countries to the disclosures could be studied. Blogs could give insights from a wider authorship than solely journalists and editors, and a social media analysis, although not representative of the whole population, could present the public discourse on the scandal.

This research sheds light on how newspapers narrate and frame surveillance, in the context of the NSA revelations of 2013. The Snowden's case can serve as a precedent to understand and interpret future scandals and their representation in the media. Nevertheless, the discourse about surveillance should be expanded and more informative. On the one hand, it should present information on how surveillance poses threats to democracy, interferes with people's fundamental freedoms and challenges interstate relations. On the other hand, it should provide arguments on why surveillance may be beneficial for security and protectionist purposes. Through an informative and explanatory narrative, the reader can form an independent opinion and perspective on the issue.

In conclusion, the analytical framework and methodology employed in this study can be used by other researchers investigating the power of media in shaping the understanding of contemporary events and phenomena. Furthermore, the results can be used as a way to comparatively examine the responses of other countries to the NSA scandal with the reactions of the British press.

⁴ See the database at: <https://www.dowjones.com/products/factiva/>.

8. Annex

Table 12: List of newspaper articles from *The Guardian*

Author(s)	Publication Date	Title and URL
Dan Roberts and Spencer Ackermans	June 10, 2013	"US lawmakers call for review of Patriot Act after NSA surveillance revelations" https://www.theguardian.com/world/2013/jun/10/patriot-act-nsa-surveillance-review
Alan Travis and Dan Roberts	June 11, 2013	"Europe demands answers from Obama over surveillance by US" https://www.theguardian.com/world/2013/jun/11/real-victims-nsa-surveillance
Leo Benedictus, Leo Hickman and Richard Norton-Taylor	June 11, 2013	"Edward Snowden and whistleblowers: 'The truth sets you free'" https://www.theguardian.com/world/2013/jun/10/whistle-blowers-snowden-truth-sets-free
Ewen MacAskill, Tania Branigan	June 12, 2013	"Edward Snowden vows not to 'hide from justice' amid new hacking claims" https://www.theguardian.com/world/2013/jun/12/edward-snowden-us-extradition-fight
Alan Travis, Spencer Ackerman, Paul Lewis	June 12, 2013	"Europe warns US: you must respect the privacy of our citizens" https://www.theguardian.com/world/2013/jun/11/europe-us-privacy
Seumas Milne	June 12, 2013	"NSA and GCHQ: mass surveillance is about power as much as privacy" https://www.theguardian.com/commentisfree/2013/jun/11/surveillance-about-power-as-much-as-privacy
Stuart Jeffries	June 12, 2013	"Internet anonymity is the height of chic" https://www.theguardian.com/technology/2013/jun/12/internet-anonymity-chic-google-hidden
Paul Lewis	June 12, 2013	"Edward Snowden's girlfriend Lindsay Mills: At the moment I feel alone" https://www.theguardian.com/world/2013/jun/11/edward-snowden-lindsay-mills-guardian
Glenn Greenwald	June 14, 2013	"Edward Snowden's worst fear has not been realised – thankfully"

		https://www.theguardian.com/commentisfree/2013/jun/14/edward-snowden-worst-fear-not-realised
Paul Harris	June 15, 2013	"I have watched Barack Obama transform into the security president" https://www.theguardian.com/world/2013/jun/15/broken-promise-barack-obama
Ewen MacAskill, Nick Davies, Nick Hopkins, Julian Borger and James Ball	June 16, 2013	"UK intelligence agencies planned to spy on Commonwealth summit delegates" https://www.theguardian.com/world/2013/jun/16/uk-intelligence-agencies-spy-commonwealth-delegates
Ewen MacAskill, Nick Davies, Nick Hopkins, Julian Borger and James Ball	June 17, 2013	"GCHQ intercepted foreign politicians' communications at G20 summits" https://www.theguardian.com/uk/2013/jun/16/gchq-intercepted-communications-g20-summits
Ewen MacAskill, Nick Davies, Nick Hopkins, Julian Borger and James Ball	June 17, 2013	"G20 summit: NSA targeted Russian president Medvedev in London" https://www.theguardian.com/world/2013/jun/16/nsa-dmitry-medvedev-g20-summit
Tania Branigan	June 18, 2013	"Edward Snowden flatly denies Chinese spy claims" https://www.theguardian.com/world/2013/jun/17/edward-snowden-rubbishes-chinese-spy
Josh Halliday	June 18, 2013	"MoD serves news outlets with D notice over surveillance leaks" https://www.theguardian.com/world/2013/jun/17/defence-d-bbc-media-censor-surveillance-security
Julian Borger, Luke Harding, Miriam Elder, David Smith	June 18, 2013	"G20 summits: Russia and Turkey react with fury to spying revelations" https://www.theguardian.com/world/2013/jun/17/turkey-russia-g20-spying-gchq
Kate Connolly	June 19, 2013	"Barack Obama: NSA is not rifling through ordinary people's emails" https://www.theguardian.com/world/2013/jun/19/barack-obama-nsa-people-emails

Simon Jenkins	June 19, 2013	"Britain's response to the NSA story? Back off and shut up" https://www.theguardian.com/commentisfree/2013/jun/19/uk-response-to-nsa-story-back-off-shut-up
Tania Branigan, Miriam Elder and Nick Hopkins	June 24, 2013	"Whistleblower Snowden escapes arrest in Hong Kong thanks to US errors" https://www.theguardian.com/world/2013/jun/23/edward-snowden-gchq
Tania Branigan, Miriam Elder and Nick Hopkins	June 24, 2013	"Edward Snowden: diplomatic storm swirls as whistleblower seeks asylum in Ecuador" https://www.theguardian.com/world/2013/jun/23/edward-snowden-escape-moscow-ecuador
Editorial	June 24, 2013	"GCHQ taps fibre-optic cables for secret access to world's communications" https://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa
Ian Traynor	June 30, 2013	"Berlin accuses Washington of cold war tactics over snooping" https://www.theguardian.com/world/2013/jun/30/berlin-washington-cold-war
Ewen MacAskill and Julian Borger	June 30, 2013	"New NSA leaks show how US is bugging its European allies" https://www.theguardian.com/world/2013/jun/30/nsa-leaks-us-bugging-european-allies
Jürgen Trittin	July 2, 2013	"Edward Snowden deserves shelter in Germany" https://www.theguardian.com/commentisfree/2013/jul/02/edward-snowden-shelter-in-germany
Ian Traynor and Dan Roberts	July 2, 2013	"Barack Obama seeks to limit EU fallout over US spying claims" https://www.theguardian.com/world/2013/jul/01/barack-obama-eu-fallout-us-spying-claims
Dan Roberts	July 3, 2013	"Bolivian president's jet rerouted amid suspicions Edward Snowden on board"

		https://www.theguardian.com/world/2013/jul/03/edward-snowden-bolivia-plane-vienna
Editorial	July 3, 2013	"Edward Snowden: A whistleblower, not a spy" https://www.theguardian.com/commentisfree/2013/jul/02/edward-snowden-whistleblower-not-spy
Simon Jenkins	July 10, 2013	"Even La Carré's latest fiction can't do justice to Snowden" https://www.theguardian.com/commentisfree/2013/jul/09/le-carre-snowden-fiction-truth
Glenn Greenwald	July 31, 2013	"XKeyscore: NSA tool collects 'nearly everything a user does on the internet' https://www.theguardian.com/world/2013/jul/31/nsa-top-secret-program-online-data
Spencer Ackerman and Paul Lewis	July 31, 2013	"US senators rail against intelligence disclosures over NSA practices" https://www.theguardian.com/world/2013/jul/31/us-senate-intelligence-officials-nsa

Table 13: List of newspaper articles from the *Daily Mail*

Author(s)	Publication Date	Title and URL
Steve Nolan	June 8, 2013	"Revealed: Google and Facebook DID allow NSA access to data and were in talks to set up 'spying rooms' despite denials by Zuckerberg and Page over PRISM project" https://www.dailymail.co.uk/news/article-2337863/PRISM-Google-Facebook-DID-allow-NSA-access-data-talks-set-spying-rooms-despite-denials-Zuckerberg-Page-controversial-project.html
Ian Drury and Martin Robinson	June 9, 2013	"US senators demand 'traitor' NSA whistleblower be extradited from Hong Kong to face trial in America after he reveals why he exposed online spy scandal" https://www.dailymail.co.uk/news/article-2338534/Edward-Snowden-speaks-NSA-contractor-leaked-details-surveillance-scheme-reveals-himself.html
Matt Blake, Martin Robinson and Ian Drury	June 10, 2013	"Paranoid worker who blew whistle on US internet snooping flees his Hong Kong hotel room: America's most wanted on the run as he reveals how he lined the door

		<p>with pillows for fear of eavesdroppers”</p> <p>https://www.dailymail.co.uk/news/article-2338817/NSA-whistle-blower-Edward-Snowden-reveals-lines-door-pillows-fear-eavesdroppers.html</p>
Hayley Peterson	June 10, 2013	<p>“NSA whistleblower first approached the Washington Post with his leaks but the newspaper refused to comply with his publishing demands”</p> <p>https://www.dailymail.co.uk/news/article-2338944/NSA-whistleblower-Edward-Snowden-approached-Washington-Post-leaks-newspaper-refused-comply-publishing-demands.html</p>
Ian Drury and Martin Robinson	June 10, 2013	<p>“FBI visits Edward Snowden’s parents in Pennsylvania as NSA whistleblower flees 5-star hotel and goes on run in Hong Kong”</p> <p>https://www.dailymail.co.uk/news/article-2338917/Edward-Snowden-Lawmakers-demand-NSA-whistleblower-extradited-Hong-Kong-face-trial-U-S.html</p>
Lydia Warren	June 10, 2013	<p>“How did a high school drop-out become entrusted with the government’s biggest secrets?”</p> <p>https://www.dailymail.co.uk/news/article-2338884/Edward-Snowden-How-did-high-school-drop-entrusted-governments-biggest-secrets.html</p>
Daily Mail Reporter	June 10, 2013	<p>“‘He can blow my whistle!’ NSA whistleblower Edward Snowden becomes overnight sex symbol as the internet brands him ‘geek hot’”</p> <p>https://www.dailymail.co.uk/news/article-2339054/He-blow-whistle-NSA-whistleblower-Edward-Snowden-overnight-sex-symbol-internet-brands-geek-hot.html</p>
Ian Drury and Jill Reilly	June 11, 2013	<p>“Now Russia set to offer whistleblower asylum: Putin considers giving Edward Snowden refuge as NSA leaker vanishes in Hong Kong”</p> <p>https://www.dailymail.co.uk/news/article-2339329/Russia-hints-Putin-grant-political-asylum-whistleblower-Edward-Snowden-NSA-leaker-vanishes-Hong-Kong.html</p>
David Martosko	June 11, 2013	<p>“Poll: Massive opinion swing shows most Democrats criticized Bush-era NSA surveillance, but now love Obama’s version”</p> <p>https://www.dailymail.co.uk/news/article-2339514/Poll-</p>

		Massive-opinion-swing-shows-Democrats-criticized-Bush-era-NSA-surveillance-love-Obamas-version.html
Tim Shipman	June 11, 2013	<p>"Our online spying deal with US 'prevented Olympic terror strike"</p> <p>https://www.dailymail.co.uk/news/article-2338886/Our-online-spying-deal-US-prevented-Olympic-terror-strike-says-Hague-defends-collaboration-GCHQ-NSA.html</p>
Tom Leonard	June 11, 2013	<p>"College drop-out who gave away his country's secrets"</p> <p>https://www.dailymail.co.uk/news/article-2339268/Edward-Snowden-IT-geek-Americas-wanted.html</p>
Keith Gladdis and Will Stewart	June 11, 2013	<p>"Boehner brands Edward snowden 'a traitor' as the U.S. government 'prepares to charge whistleblower for leaking secrets'"</p> <p>https://www.dailymail.co.uk/news/article-2339563/Boehner-brands-Edward-Snowden-traitor-U-S-government-prepares-charge-whistleblower-leaking-secrets.html</p>
Jill Reilly	June 14, 2013	<p>"Whistleblower Edward Snowden smuggled out secrets with an everyday thumb drive banned from NSA offices"</p> <p>https://www.dailymail.co.uk/news/article-2341451/Whistleblower-Edward-Snowden-smuggled-secrets-everyday-thumb-drive-banned-NSA-offices.html</p>
Stephen Glover	June 18, 2013	<p>"Shock horror! Britain spies on other nations: The Guardian rightly attacks the hacking of private phones but glories in betraying Britain by revealing our state secrets"</p> <p>https://www.dailymail.co.uk/debate/article-2343416/STEPHEN-GLOVER-Shock-horror-Britain-spies-nations-The-Guardian-rightly-attacks-hacking-private-phones--glories-betraying-Britain-revealing-State-secrets.html</p>
Keith Gladdis and Will Stewart	June 23, 2013	<p>"Fugitive U.S spy heads to Ecuador with Assange's ex: CIA whistleblower seeks asylum after fleeing Hong Kong for Russia"</p> <p>https://www.dailymail.co.uk/news/article-2347057/Edward-Snowden-seeks-asylum-Ecuador-Assanges-ex-fleeing-Hong-Kong-Russia.html</p>
Tom Leonard	June 26, 2013	<p>"He wouldn't want her with him, knowing he will always be an outcast: Father of Edward Snowden's pole-dancer girlfriend says she 'is hiding out with friends' and not with NSA whistleblower"</p>

		https://www.dailymail.co.uk/news/article-2348763/Father-Edward-Snowdens-pole-dancer-girlfriend-says-hiding-friends.html
Gerri Peev	June 27, 2013	<p>"Hague defends spies who 'protect us' after Germany's attack on surveillance techniques follows leak by Edward Snowden"</p> <p>https://www.dailymail.co.uk/news/article-2349267/Hague-defends-spies-protect-Germanys-attack-surveillance-techniques-follows-leak-Edward-Snowden.html</p>
Geoffrey Levy	June 28, 2013	<p>"The public school girl who fell for Assange then went on the run with the world's most wanted man"</p> <p>https://www.dailymail.co.uk/news/article-2351364/The-public-school-girl-fell-Julian-Assange-went-run-world-s-wanted-man.html</p>
Richard Littlejohn	June 28, 2013	<p>"World War II Wikileaks style"</p> <p>https://www.dailymail.co.uk/debate/article-2350217/RICHARD-LITTLEJOHN-World-War-II--WikiLeaks-style.html</p>
Mail Foreign Service	July 1, 2013	<p>"German fury over U.S. spies after it's revealed that American agency bugs HALF A BILLION calls and emails every month"</p> <p>https://www.dailymail.co.uk/news/article-2352114/German-fury-US-snooping-half-billion-calls-emails-month.html</p>
Tom Leonard and Jason Groves	July 1, 2013	<p>"So the US is spying on France...Quelle Surprise!"</p> <p>https://www.dailymail.co.uk/news/article-2353182/So-US-spying-France--quelle-surprise-Holland-threatens-torpedo-vital-trade-talks-snooping-revelations.html</p>
Stephen Glover	July 3, 2013	<p>"Assange and Snowden heroes? No, they're just hypocrites and moral cowards"</p> <p>https://www.dailymail.co.uk/debate/article-2355132/STEPHEN-GLOVER-Assange-Snowden-heroes-No-theyre-just-hypocrites-moral-cowards.html</p>
Peter Allen	July 4, 2013	<p>"Hypocrisy of Hollande's fury over Snowden revelations as it's revealed French intelligence services spy on public's phone calls, emails and social media"</p> <p>https://www.dailymail.co.uk/news/article-</p>

		2356178/Hollandes-hypocrisy-Edward-Snowden-revelations-revealed-French-intelligence-services-spy-illegally.html
Laurie Kamens and AP Reporter	July 7, 2013	<p>"Venezuela is Snowden's last chance warns Russia as Kremlin grows increasingly anxious to get rid of NSA whistleblower"</p> <p>https://www.dailymail.co.uk/news/article-2357814/Venezuela-Edward-Snowdens-LAST-CHANCE-warns-Russia.html</p>
Reuters Reporter and Daily Mail Reporter	July 8, 2013	<p>"Snowden says NSA 'in bed' with most Western states as Brasil also complains about surveillance by U.S. spy agencies"</p> <p>https://www.dailymail.co.uk/news/article-2358002/Edward-Snowden-says-NSA-bed-Western-states.html</p>
Anna Edwards, Sean O'Hare and Anthony Bond	July 9, 2013	<p>"Runaway spy Edward Snowden 'has not yet formally accepted asylum in Venezuela' WikiLeaks reveals"</p> <p>https://www.dailymail.co.uk/news/article-2358872/Runaway-spy-Edward-Snowden-formally-accepted-asylum-Venezuela-WikiLeaks-reveals.html</p>
Matt Chorley	July 17, 2013	<p>"British spies did not use US Prism programme to get round UK law, intelligence watchdog rules"</p> <p>https://www.dailymail.co.uk/news/article-2366726/British-spies-did-NOT-use-US-Prism-programme-round-UK-law-intelligence-watchdog-rules.html</p>
Matt Chorley	July 17, 2013	<p>"British spies did NOT use US Prism programme to get round UK law, intelligence watchdog rules"</p> <p>https://www.dailymail.co.uk/news/article-2366726/British-spies-did-NOT-use-US-Prism-programme-round-UK-law-intelligence-watchdog-rules.html</p>
Hugo Gye	August 1, 2013	<p>"Snowden finally leaves Moscow airport after Russia grants him asylum in the country for one year"</p> <p>https://www.dailymail.co.uk/news/article-2382495/Snowden-finally-leaves-Moscow-airport-Russia-grants-asylum-country-year.html</p>
Stephen Glover	August 1, 2013	<p>"As Bradley Manning is sent t jail, I'm sure his left-qing puppet masters won't lose a wink of sleep"</p> <p>https://www.dailymail.co.uk/columnists/article-2382130/STEPHEN-GLOVER-As-Bradley-Manning-sent-jail-Im-sure-left-wing-puppet-masters-wont-lose-wink-sleep.html</p>

Table 14: List of newspaper articles from *The Independent*

Author(s)	Publication Date	Title and URL
Charlotte Philby	June 10, 2013	"The Tor system: Welcome to the dark internet where you can search in secret" https://www.independent.co.uk/news/media/online/the-tor-system-welcome-to-the-dark-internet-where-you-can-search-in-secret-8651364.html
Tim Walker	June 10, 2013	"NSA contractor Edward Snowden braces for backlash after turning whistleblower on US data-mining operation" https://tmq2.wordpress.com/2013/06/09/nsa-prism-gate-whistleblower-revealed/
Kim Sengupta	June 11, 2013	"'We try to collect everything and hang on to it forever': US intelligence agencies' cosy relationship with academia and business may be hard to unwind" https://www.independent.co.uk/news/uk/home-news/we-try-to-collect-everything-and-hang-on-to-it-forever-us-intelligence-agencies-cosy-relationship-8652934.html
Sofia Mitra-Thakur and Tim Walker	June 11, 2013	"Julian Assange praises whistleblower Edward Snowden who faces extradition from Hong Kong back to US over NSA Prism revelations" https://www.independent.co.uk/news/world/americas/julian-assange-praises-whistleblower-edward-snowden-who-faces-extradition-from-hong-kong-back-to-us-8651375.html
David Usborne	June 11, 2013	"Washington rages at 'traitor' Edward Snowden as NSA faces fire over protection of secrets" https://www.independent.co.uk/independentplus/washington-rages-at-traitor-edward-snowden-as-nsa-faces-fire-over-protection-of-secrets-8654455.html
Nikhil Kumar	June 11, 2013	"Edward Snowden profile: The secretive life of America's most wanted man" https://www.independent.co.uk/news/world/europe/flight-su150-from-moscow-arrives-in-cuba-without-edward-snowden-but-ecuador-confirms-nsa-8670308.html
David Usborne	June 13, 2013	"Russia grants NSA PRISM whistleblower Edward Snowden a year's asylum" https://www.independent.co.uk/news/world/europe/russia-grants-nsa-prism-whistleblower-edward-snowden-a-years-asylum-8741940.html
Matthew M Aid	June 14, 2013	"Inside the NSA: Peeling back the curtain on America's

		intelligence agency” https://www.independent.co.uk/news/world/americas/inside-the-nsa-peeling-back-the-curtain-on-americas-intelligence-agency-8658016.html
Geoffrey Robertson	June 15, 2013	“Theresa May wants to avoid embarrassment over Edward Snowden rather than uphold the law” https://www.independent.co.uk/voices/comment/theresa-may-wants-to-avoid-embarrassment-over-edward-snowden-rather-than-uphold-the-law-8659783.html
Nigel Morris	June 15, 2013	“Prism revelations: Home Office warns airlines not to fly NSA whistleblower Edward Snowden to Britain” https://www.independent.co.uk/news/uk/home-news/prism-revelations-home-office-warns-airlines-not-to-fly-nsa-whistleblower-edward-snowden-to-britain-8658633.html
Sanchez Manning	June 17, 2013	“‘More leaks are on the way’ says Prism programme whistleblower Edward Snowden” https://www.independent.co.uk/news/world/asia/more-leaks-are-on-the-way-says-prism-programme-whistleblower-edward-snowden-8662595.html
Nigel Morris	June 22, 2013	“Operation Tempora: GCHQ in fresh snooping row as it eavesdrops on phones and the internet” https://www.independent.co.uk/news/uk/politics/operation-tempora-gchq-in-fresh-snooping-row-as-it-eavesdrops-on-phones-and-the-internet-8669137.html
David Usborne	June 24, 2013	“Hong Kong risks US anger by giving Snowden clean exit” https://www.independent.co.uk/news/world/asia/hong-kong-risks-us-anger-by-giving-snowden-clean-exit-8670260.html
James Cusick	June 25, 2013	“Prism, privacy, and the tragic triumph of the Nixon doctrine” https://www.independent.co.uk/voices/comment/prism-privacy-and-the-tragic-triumph-of-the-nixon-doctrine-8672988.html
Shaun Walker	June 25, 2013	“Flight SUI50 from Moscow arrives in Cuba without Edward Snowden – but Ecuador confirms NSA whistleblower is seeking asylum” https://www.independent.co.uk/news/world/europe/flight-su150-from-moscow-arrives-in-cuba-without-edward-snowden-but-ecuador-confirms-nsa-8670308.html

Shaun Walker	June 26, 2013	<p>"Vladimir Putin confirms Edward Snowden is still in Moscow airport and blocks US extradition demands as Venezuela says it would consider asylum request"</p> <p>https://www.independent.co.uk/news/world/politics/vladimir-putin-confirms-edward-snowden-is-still-in-moscow-airport-and-blocks-us-extradition-demands-8672580.html</p>
Shaun Walker	July 1, 2013	<p>"NSA whistleblower Edward Snowden is a gift to Russia"</p> <p>https://www.independent.co.uk/voices/comment/nsa-whistleblower-edward-snowden-is-a-gift-to-russia-8682472.html</p>
Tony Paterson	July 1, 2013	<p>"Germany prepares to charge UK and US intelligence over fresh bugging allegations"</p> <p>https://www.independent.co.uk/news/world/europe/germany-prepares-to-charge-uk-and-us-intelligence-over-fresh-bugging-allegations-8680249.html</p>
Shaun Walker and Heather Saul	July 3, 2013	<p>"Edward Snowden saga: Bolivia accuses Europe of 'kidnapping' Bolivian President in forcing Evo Morales' plane to land in Vienna"</p> <p>https://www.independent.co.uk/news/world/americas/edward-snowden-saga-bolivia-accuses-europe-of-kidnapping-bolivian-president-in-forcing-evo-morales-8682610.html</p>
Charlotte McDonald-Gibson	July 4, 2013	<p>"Bolivia says European nations 'kidnapped' Evo Morales in hunt for NSA whistleblower Edward Snowden"</p> <p>https://www.independent.co.uk/news/world/europe/bolivia-says-european-nations-kidnapped-evo-morales-in-hunt-for-nsa-whistleblower-edward-snowden-8686124.html</p>
Mary Dejevsky	July 5, 2013	<p>"Britain should not share its intelligence with the US"</p> <p>https://www.independent.co.uk/voices/comment/britain-should-not-share-its-intelligence-with-the-us-8687739.html</p>
Charlotte McDonald-Gibson	July 5, 2013	<p>"Latin America in row over Bolivia jet"</p> <p>https://www.independent.co.uk/news/world/americas/latin-america-in-row-over-bolivia-jet-8691181.html</p>
Charlotte McDonald-Gibson	July 5, 2013	<p>"Bolivian president, Evo Morales, rails against 'North American imperialism'"</p> <p>https://www.independent.co.uk/independentplus/bolivian-president-evo-morales-rails-against-north-american-imperialism-8686004.html</p>
Tony Paterson	July 7, 2013	<p>"NSA 'in bed' with German intelligence says US whistleblower Edward Snowden – and GCHQ operates a 'full take' data monitoring system"</p> <p>https://www.independent.co.uk/news/world/europe/nsa-in-</p>

		bed-with-german-intelligence-says-us-whistleblower-edward-snowden-and-gchq-operates-a-full-8693793.html
Editorial	July 9, 2013	<p>"Trade trumps the Snowden row: the potential rewards of transatlantic trade deal are huge"</p> <p>https://www.independent.co.uk/voices/editorials/trade-trumps-the-snowden-row-8695910.html</p>
Shaun Walker	July 13, 2013	<p>"Edward Snowden 'yet to seek' Russia asylum as NSA whistleblower emerges from hiding"</p> <p>https://www.independent.co.uk/news/world/politics/edward-snowden-yet-to-seek-russia-asylum-as-nsa-whistleblower-emerges-from-hiding-8706199.html</p>
James Cusick	July 15, 2013	<p>"GCHQ spying programme: Spy watchdog 'is understaffed and totally ineffective"</p> <p>https://www.independent.co.uk/news/uk/home-news/gchq-spying-programme-spy-watchdog-is-understaffed-and-totally-ineffective-8708231.html</p>
David Osborne	July 19, 2013	<p>"Judge refuses motion to drop Bradley Manning 'aiding enemy' charges"</p> <p>https://www.independent.co.uk/news/world/americas/judge-refuses-motion-to-drop-bradley-manning-aiding-enemy-charges-8717573.html</p>
David Osborne	July 25, 2013	<p>"Bradley Manning trial: Wikileaks whistleblower is a 'gleeful, grinning' traitor, says prosecutor"</p> <p>https://www.independent.co.uk/news/world/americas/bradley-manning-trial-wikileaks-whistleblower-is-a-gleeful-grinning-traitor-says-prosecutor-8732541.html</p>
Shaun Walker	July 25, 2013	<p>"Edward Snowden latest: NSA whistleblower will stay in Moscow airport, says lawyer"</p> <p>https://www.independent.co.uk/news/world/americas/edward-snowden-latest-nsa-whistleblower-will-stay-in-moscow-airport-says-lawyer-8730004.html</p>

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Blowing the Whistle in the EU: A Policy Analysis of the Agenda-Setting of the Proposal for a Whistleblowers Protection Directive

Cecilia Ivardi Ganapini, Johanna Rick¹

ABSTRACT

Scandals concerning wrongdoings of multinational corporations and governments are inescapable in the news. "Blowing the whistle" on these is often constrained out of fear of retaliation, which is why in April 2018, a Directive to assure protection to whistleblowers was proposed. Tracing the origins of the process is complicated because there are several actors operating in a multilevel polity. Hence, Kingdon's multiple-streams model is applied to legislative texts and several news outlets, and inferences are drawn to describe the facets of the rise of whistleblowers protection on the EU agenda. This paper finds that the Greens Parliamentary group became a policy initiator after being urged by Transparency International to act. The Greens justified the need to act with old arguments, which however acquired momentum only when the political climate soothed after the scandals of LuxLeaks and Panama Papers.

1. Introduction

Public opinion was completely divided over Julian Assange's innocence or guilt when, on 11 April 2019, he was forcibly removed from the Ecuadorian embassy in London and jailed at Belmarsh High-Security prison over a bail breach. Assange is the founder of Wikileaks, an online platform containing confidential or restricted files from governments, private companies or other entities ("What is Wikileaks", 2015). Some considered Assange a hero for having revealed, among others, "the horrors of war carried out in our name by the US, NATO forces [in Iraq and Afghanistan (n.d.a.)]" (Da Silva Marques, 2019, para. 6) and condemned his imprisonment in "Britain's Guantanamo Bay" as an assault on freedom of the press (Winterman, 2004). Others, however, pointed to his activity as an "uncritical and enthusiastic laundromat for Russian intelligence [...] publishing material with little or no newsworthiness but calculated to undermine American interests" ("Julian Assange: journalistic hero", 2019, para. 9). What followed, on 23 May 2019, was the filing of 17 charges by the United States (US) Justice Department which accused Assange of violating the Espionage Act by leaking classified military and diplomatic documents ("Julian Assange in the Ecuadorian embassy", 2019).

¹ Cecilia Ivardi Ganapini received a bachelor degree in European Studies at Maastricht University in 2019. At the moment she takes a Master in Political Economy of Europe at the London School of Economics and Political Science. Contact: cecilia.ivardiganapini@gmail.com;
Johanna Rick received a bachelor degree in European Studies at Maastricht University in 2019. At the moment she takes a Master in International Relations and Diplomacy at Leiden University. Contact: rickjohanna@gmail.com.

Usually, someone who "reports (within the organisation concerned or to an outside authority) or discloses (to the public) information on a wrongdoing obtained in a work-related context", is considered a whistleblower (European Commission [EC], 2018a, p. 1). Whistleblowing has two defining properties, namely the release of information is deliberate and it happens through unconventional ways because normal disclosure channels are not available (Jubb, 1999). It goes beyond the scope of this research to establish whether Assange is a whistleblower or not, and to decide on his innocence or guilt. However, to understand and develop informed opinions on current issues such as Assange's arrest, it is useful to understand the underlying legal framework and its interpretation.

Blowing the whistle is problematic, most importantly because one fears retaliation. This is why the European Union (EU) perceives the lack of adequate whistleblower protection as having potentially negative effects on public interests. It also infringes upon human rights such as freedom of expression and of the media, which is the context for the proposal of a Whistleblower Protection Directive (hereby: the Directive) on 23 April 2018 (EC, 2018c). Several recent scandals such as Dieselgate, Luxleaks, the Panama Papers and Cambridge Analytica could have hinted to a need for whistleblower protection to ensure the safe uncovering of unlawful activities (EC, 2018c, para. 1). Ensuring such safeguard is not easy, as whistleblowing is framed differently across the Member States of the EU (e.g. Schulze, 2015), and the legal framework is so fragmented that only four EU countries had "acceptable" levels of whistleblowers protection in 2013 (Transparency International [TI], 2013). In this multifaceted atmosphere, relating the Directive to specific events and establishing causation is extremely problematic. To understand how agenda-setting and real-world events interplayed in this instance, Kingdon's model (1983) is a useful tool. In short, the model concerns actors recognising problems, generating policy proposals to induce changes, and engaging in political activities such as lobbying. The model is used to answer the question: How did whistleblowing protection rise on the agenda of the EU?

This topic contributes to the academic debate first but not only because research on it is lacking. For one, the EC proposed the Directive just a year before this paper was started, which means the initiative is extremely recent and this work is relatively innovative. In addition, whistleblowing has increased as a phenomenon with technological developments such as the open internet and the existence of specific channels for reporting. Second, although thanks to social media people are more aware than ever of what surrounds them, research on whistleblowing protection is less focused on the EU than it is on the US. Third, pre-decision processes remain relatively unexplored territory, probably also because of the need for a case-by-case approach (Kingdon, 1983, p. 1).

"Agenda" indicates a list of subjects to which officials give serious attention at a given time. The "given time" in this case is from 2013, when a call for action was first voiced by the European Parliament (EP), until 2018, when the EC proposed the Directive. Although this study does not have predictive aims, interpreting the reasons behind the composition of the agenda is crucial for understanding policy-making processes, as the agenda determines what will be subject to decision-making and the terms by which it is discussed (Princen, 2010). The underlying logic can serve as an analytical tool and be applied to other initiatives for greater transparency, hence this research can serve as a support for the average citizen's understanding of the functioning of the EU, the democratic accountability of which is not to be taken for granted (Follesdal and Hix, 2006).

In order to achieve this, this paper first reviews the concept of whistleblowing and the literature on the issue of whistleblowers protection in different legal systems. Second, it details the theoretical framework utilised to understand the phenomenon, the Kingdon model. Third, the paper is divided into three

sections, one for each part that the theoretical model suggests, namely the problem, political and policy streams and then brings them together in the discussion of the policy window. Fourth, a conclusion is drawn on the process of agenda-setting in the case of the Directive and avenues for further research are suggested.

2. Different Views on Whistleblowers Protection Frameworks

This section reviews the literature concerned with whistleblowers, first from an ethical perspective and then from a legal standpoint. The academic literature concerned with whistleblowing often incurs into problems when trying to define it, as some see whistleblowers as "traitorous violators of organizational loyalty norms" and others perceive them as "heroic defenders of values considered to be more important than company loyalty" (Rothschild and Miethe, 1999). Definitions also vary according to the discipline. In business ethics, whistleblowing is seen as dissent in response to an ethical dilemma, namely the one between loyalty to the targeted organization and loyalty to one's self and system of values. This ethical tension is predominant in the discussion and leads some scholars to differentiate professional morality from ethics. Although some consider ethics and morality as synonyms, Bouville (2008) understands ethics as a general way of discerning wrong from right, which however is not exclusive in the sense that two things can be right at the same time. By contrast, morality is a side of ethics which is supposed to guide men's lives and therefore provides for mutually exclusive alternatives (Williams, 1985). Hence, because whistleblowing pertains to the sphere of morality, it needs no justification, rendering whistleblowers "saints of secular culture" (Grant, 2002). Nevertheless, other scholars conceptualise whistleblowing as an activity which goes against the ethical duty of loyalty to the organization (Larmer, 1992). The need for an ethical rationale is not only a requisite for blowing the whistle but is also needed to cope with the consequences of blowing the whistle. In this regard, several studies (Glazer and Glazer, 1989; Gunsalus, 1998; Jos, Tompkins and Hays, 1989; Rothschild and Miethe, 1999) showed that even when whistleblowing is acknowledged to be for the public good, it hinders possibilities to have a later career, a stable financial situation and a family life and leads to victimization. In this regard, the public good is considered to be served when "malfeasance is made known to affected parties and government agencies are able to take appropriate corrective action" (Callahan, Dworkin and Lewis, 2004, p. 905). In sum, this paper understands whistleblowing as a moral activity in the sense that it defends the public interest over the interest of private parties and considers that this is the moral grounds conceived by the EU, in order to protect this activity.

Whistleblowing is also seen as a control mechanism that specific administrative structures have to protect or reward. Because the scope of the Directive concerns protection exclusively, what follows is an account of the studies dealing with the legal protection of whistleblowing. Legal scholarship diverges around the ethical faultline between those who regard the public interests as sufficient reasons to justify the exposition of often confidential information and those who fear umbrella impunities for corporate espionage. The legal framework differentiates between private sector whistleblowing, where an employee reports any corporate misbehaviour internally or externally, and which is less high-profile than the public sector one. This is because corporate structures facilitate the hiding of wrongdoings and corporations can dismiss the reporter more easily than in the public sector, where the pressure for taking action is higher. Partly due to the lack of media attention, private sector whistleblowing is less protected than the public sector one. Nonetheless, it is more frequent, as one-third of a sample companies interviewed by the Organisation for Economic Co-operation and Development (OECD) in 2015 had no written policy to protect

whistleblowing, while 84% of the public ones did (OECD, 2016, p. 12; EC, 2018b). In addition, since public whistleblowing concerns misconduct of the government, such cases usually generate higher media attention, as can be seen in the case of Edward Snowden in 2013, who revealed classified information of the global mass surveillance programme of the US National Security Agency (NSA) (Salvo, 2016).

Whistleblower protection in the EU diverged severely between the Member States before the adoption of the Directive “with some countries, such as Ireland, having good laws and other countries, such as Cyprus, having practically none” (TI, 2018). One of the countries with “adequate” protection for whistleblowers is the UK, with its Public Interest Disclosure Act (PIDA). This law’s novelty stems from the fact that it covers both private and public sector whistleblowing (Worth, 2013). It is exemplary in that other states have used it as a model for their own legislation and scholars even abstracted a three-tiered model from it to assess the different legislations on the theme (Vandekerckhove, 2010). In the first tier of the model, the information does not leave the organization since reporting is internal to the superior or to the relevant department. Should this be ineffective, the whistleblower informs an agent acting on behalf of civil society in the second tier. This takes the information regarding malpractice out of the company and thus already functions as a deterrent, as the reporter fears retaliation. If this agent fails to rectify the situation and does not take appropriate action, the third tier is invoked, which involves informing the public. This three-tiered model aims to establish that companies and organisations are not immediately publicly accountable for any misbehaviour, but this occurs only if they fail to respond to internally raised concerns (Vandekerckhove, 2010).

Using such models, several scholars have addressed the protection granted in specific countries such as Japan (Coney and Coney, 2016) or the US, specifically through the Sarbanes-Oxley Act of 2002, and even argue that the latter represents the highest form of protection granted to whistleblowers across the globe (Nyrreröd and Spagnolo, 2018). This is because the US goes beyond granting protection and even secures financial incentives as rewards for whistleblowing in key regulatory areas such as federal procurement and tax enforcement. This element is not present neither in the Directive nor in the legislation of the best-performing countries in the EU (Worth, 2013; Wolfe et al, 2014), which, as was already mentioned, exclusively focus on protection. Concerning Europe, despite the lack of scholarly research on the Directive at hand, there is a consistent body of literature that details the whistleblower protection legislation in place in the different Member States, and the internal differences which are likely to create disparities in implementation (e.g. Vandekerckhove, 2010). Several reasons can account for Member States reluctance to regulate the matter at the European level. For instance, since especially public whistleblowing could reveal sensitive government information of the Member States, it can be assumed that the national governments hesitate to harmonise their legislation in this area (Worth, 2013). Because of this, Vandekerckhove (2010) argued that Europe could remain a place of diverse policy-making, yet with a common foundation. By contrast, researchers from organizations such as TI, call for a common framework to protect whistleblowers within companies, which could be used to offer protection also to journalists, whose investigative activities have proved deadly in some recent instances (Nyrreröd and Spagnolo, 2018). This fragmented context offers some primary elements useful to understand the circumstances surrounding the Directive. Nevertheless, because these laws and concepts are not necessarily recent, understanding why the Directive was proposed at the time it was is puzzling. In other words, although the need for it seems pressing, from the scholarly perspective it is not intuitive that the issue arose on the agenda in 2013. This is the gap in the literature that this paper aims to fill, through a policy study that uses a comprehensive theoretical framework, which is detailed in the next chapter.

3. Theoretical Framework

This chapter describes the analytical tools used to develop the policy analysis.

3.1 Kingdon's Model: A Revolution in Policy Analysis

Kingdon's streams model is the theoretical and methodological foundation of this paper. The core assumption of the model is that "public policy is not one single actor's brainchild", even within one case study and because of this, attempting to pinpoint a single origin for policy formation is vain (Barzelay and Gallego, 2006, p.71). This is because ideas can come from anywhere and usually do not have only one origin, thus trying to trace them back only gives rise to an infinite regression. Another reason why it is futile to try to trace the birth of ideas is that nobody leads anybody else in the development of policies, as it is a combination of factors that is responsible for the movement of an issue onto the agenda. From a theoretical perspective, this model is extremely innovative as it tries to go beyond the usual political science preoccupation with pressure and influence. By contrast, Kingdon captures "the fluidity of policymaking and the role played by chance and human creativity" (Natali, 2004, p. 1078), and the key idea that ambiguity is an indispensable part of the policy process (e.g. Zahariadis, 2008), which make the model suitable to investigate the research question. Although Kingdon (1983) developed the framework in relation to the healthcare system in the US, he borrowed some key concepts from EU scholars such as Haas (1968) and consequently there exists an "almost uncanny resemblance between this description of US policymaking and the perceptions of key actors in the EU policy process" (Richardson, 2006, p. 190) and can be employed to study the EU.

The model potentially criticises the policy networks approach. The latter envisages sets of formal and informal linkages between governmental and informal actors, which render the actors ultimately interdependent and posits that policy emerges from the interactions between them (Rhodes, 2008). By contrast, Kingdon's multiple-streams model allows for more freedom and does not explicitly attribute developments to specific actors. The model also opposes the traditional idea of the policy cycle. This reflects the birth and development of policies through the following phases: agenda setting, analysis of the policy issue, formulation of policy solutions, decision-making to adopt a certain solution, implementation of the chosen policy and evaluation of the policy (Howard, 2005). Although the phase of the policy cycle to which this research would generally pertain is agenda-setting, the strength of the model lies in the idea that the reality of policy-making cannot be perfectly encapsulated in predefined chronological phases. Therefore, the focus of the paper is still the way in which particular subjects become the focus of the attention of policy-makers (Kingdon, 1983, p. 3) but when it refers to agenda-setting, it does not restrict itself to traditional agenda-setting, but encompasses also parts of other phases such as policy formulation. Furthermore, because of the multi-layered policy processes and the numerous interactions between EU institutions, there is not one single agenda but as many different agendas as there are EU institutions, which may even overlap (Princen, 2010, p. 109). In this research, the focus is on how protection for reporting persons was incorporated into a proposal for a Directive, and because the EC has the exclusive right to make legislative proposals, the EC's agenda is deemed to be the most relevant unit of analysis, although it is necessary to refer to other actors' agendas for a complete account of the phenomenon.

3.2 The substance of the model

The substance of the model consists of the processes by which issues come into prominence. Kingdon (1983) discusses a crisis (problem recognition), a process of gradual accumulation of knowledge and perspectives among specialists (generation of policy proposals) and events such as shifts in public opinion, elections, lobbying campaigns and changes in administration (political occurrences). Problem recognition produces the problem stream, which consists of problem perceptions among policymakers, while the policy stream originates from the generation of policy proposals, which consists of proposals for government action. Then, the political events are captured in the political stream. Although it may be counterintuitive, the three streams develop independently from each other, which concretely means that solutions develop independently from problems. Nevertheless, even Kingdon admits that the process is never completely random and some sort of pattern emerges within each stream and within the couplings of problems with solutions (Richardson, 2006, p. 19).

Despite this, the streams have only a descriptive function, as the real explanatory tool is the temporal conjunction of the three separate sub-processes (Barzelay and Gallego, 2006). This can bring the streams together in a policy window, which corresponds to the moment when an issue moves to the top of the political agenda. The policy window usually opens in the problem or in the politics streams and constitutes a trigger that determines the way issues are debated. For instance, the Madrid and London bombings in 2004 and 2005 were policy windows for a new way to conceive and debate terrorism (Ackrill, Kay and Zahariadis, 2013). This explains why a certain policy may appear as a solution to very different problems. For instance, the EU Tobacco Products Directive, with a rather visible impact of EU legislation in a citizen's every life, requires a 75% health warning labelling on the product. The policy solution of a 75% marking has been re-used various times, such as in the Single Use Plastic Directive, which requires the same label detailing the wrong disposal of plastic products. In this case, the policy idea had developed independently from the plastics pollution problem, but was coupled with it when the situation became favourable.

Kingdon's argument is that each of the streams can serve as an impetus or a constraint for an issue to rise on the agenda. To achieve this, the key actors can exploit the conjunction as an impetus, thereby boosting a subject higher on the agenda, or as a constraint, meaning that consideration for the subject diminishes. Concretely, when a suitable problem arises and a policy window opens, a policy entrepreneur is the person or the organisation who couples the three streams together and crafts meaning within the seemingly-chaotic context, because he/she is willing to invest their resources in return for future policies they favour. Policy entrepreneurs can be both inside and outside the EU, and while those inside are central but have less control over the alternatives that are considered and their implementation, those outside include interest groups, researchers, academics, consultants and media. Although the line between inside and outside actors might be difficult to draw, a distinction that is extremely meaningful is that between visible and hidden groups. Since the visible ones receive significant more press and public attention than the hidden ones, they have a different effect because evident actors have a say on the agenda while hidden ones decide on the alternatives.

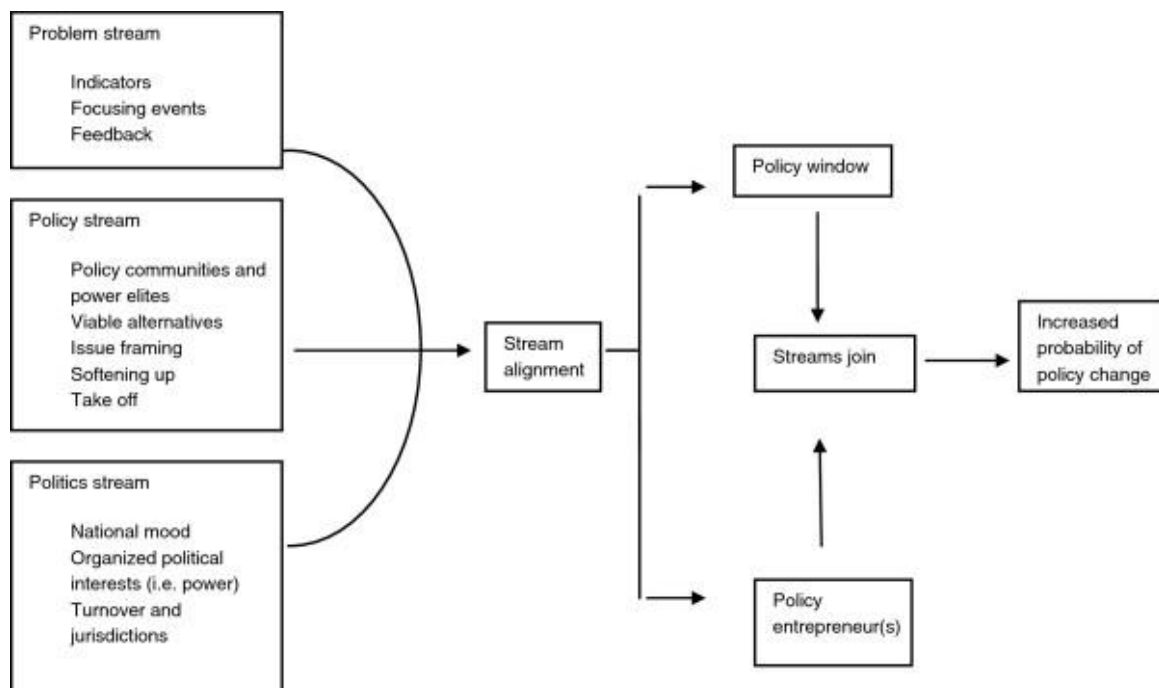


Figure 1: own graph detailing the model based on Kingdon (1983)

4. Methodology

This chapter details the methodology of the research. First, the three streams of the model are operationalized. Second, the actors involved in agenda setting are described. Third, an outlook on the sources utilised for the analysis is offered, in order to ensure transparency and replicability.

4.1 Operationalization: How to Apply the Model in the EU?

This section operationalises the streams detailed in the theoretical framework by detailing their constitutive elements in this case study and hence provides the necessary context for the analysis section.

The problem stream consists of the means by which officials learn about a problem that is seen as "public" in the sense that government action is needed to resolve it (Béland and Howlett, 2016, p. 222). According to Kingdon (1983), three elements constitute it: first, indicators, which are studies that show that there is a problem. They may take the shape of routine monitoring by governmental and nongovernmental agencies or of specific researches on a particular phenomenon. It is important to notice that it is not the indicators themselves but rather their interpretation that composes the problem stream. Although the interpretation of the indicators is subjective and hence difficult to study, it is usually when the study attests changes or large magnitude of the unit of analysis, that policymakers interpret it as evidence of a problem (p.91). Second, in the problem stream, there are focusing events, which are crises or powerful symbols that draw the attention of the policymakers to conditions. They rarely have permanent effects unless they contribute to indicate the problem more firmly or reinforce a pre-existing perception of it. The notion of focusing events seems to be fitting when dealing with whistleblower laws, which have often arisen in response to scandals, public health scares or environmental disasters (Worth, 2013). For instance, the PIDA English law, known as the strongest

European legislation on the matter, was passed after a series of costly disasters between 1980 and 1990 among which Britain's worst peacetime maritime disaster, the Herald of Free Enterprise ferry sank, due to a "disease of sloppiness" by the naval company (UK Department of Transport, 1987). Third, the problem stream is also composed of feedback about the operation of existing programs. Feedback brings problems to the attention of policymakers in case the implementation does not square with legislative or higher administrative intent, or stated goals are not attained. However, the notion of feedback does not seem to apply in the case of whistleblowers protection because there has never been any program tackling the issue at a European level, unless in specific sectors like financial services, transport safety and environmental protection.

The problem stream is not only composed of these three elements. It is essential to understand but the way conditions become defined as problems, which happens if conditions violate important values, if they are compared with other countries or if they are placed into a problem category. Likewise, problems can also fade when they become defined as conditions, such as for instance when policymakers think they solved them or if budget constraints occur. Last but not least, the recognition of a problem is not always sufficient to make a subject rise on the policy agenda, but it still seems true, that linking a proposal to a problem that is perceived as real and important, enhances that proposal's prospects for moving up on the agenda (Kingdon, 1983, p.115). At the same, a large part of the responsibility for doing so lies within the policy entrepreneurs, who may highlight indicators or act in a certain way to focus attention on one problem.

By contrast, the political stream is composed of the factors that constitute the broader environment, which act as powerful agenda setters. This stream was originally described by Kingdon (1983) by referring to national mood and elections in the US, and it usually concerns only clearly visible actors (p.199). Considering the peculiarities of EU politics, which are unlike the characteristics of national politics, this stream seems to revolve cyclically around the time of the European elections and the renewal of the EC (Borras and Radaelli, 2011, p. 475). Furthermore, the activity of the lobbies in Brussels and the partisan balance of power in the EP constitute a peculiarity of the EU political stream which must be taken into account (Ackrill et al., 2013).

The policy stream constitutes the way in which policy ideas survive the selection process of the relevant policy community and thus can become solutions to future problems (Kingdon, 2011). Ideas for policies are proposed by "circulating papers, publishing articles, holding hearings, presenting testimony, and drafting and pushing legislative proposals" but while many ideas are being presented, most of them fail to survive the selection process (p. 116). To achieve this, the policy community and particularly policy entrepreneurs are crucial. Policy entrepreneurs are not necessarily part of the policy communities but are invested in their policy ideas, due to personal interests and also because they believe in the rightfulness of their ideas (Kingdon, 2011). Kingdon compares the development of policy to evolutionary selection, in that since public administration does not act quickly and needs time to calculate the political costs and benefits, the subject matter needs to be kept alive through debates, reports, draft bills. In order to survive, policy ideas need to be technically feasible and value conform. This selection process leads to a list of policy ideas, which generates awareness of the problem and causes a bandwagon effect where policy-makers rally behind one idea.

Opportunities for a policy to be implemented are usually slight and rare. An open policy window is an opportunity for advocates to push their solutions or attention to their special problems which are opened by events in either the problem or the political stream. The scarcity and the short duration of the

opening of a policy window create a powerful magnet for problems and proposals. When a window opens, people concerned with particular problems see the open window as their opportunity to address or even solve these problems, and the open window becomes the opportunity for the complete linkage of problems, proposals and politics. Particularly crucial is the linkage of the solution to either the problem or politics stream, which is usually followed by an attempt to join all three elements, knowing that the chances for enactment of the policy are considerably enhanced if the circle is completed.

4.2 The Actors: Who is Involved?

Keeping in mind that within a policy subsystem, actors can be aggregated into advocacy coalitions composed of people from various organizations who act in accordance with each other (Sabatier, 1988), it is relevant to detail the main actors involved in this policy process.

The first inside and evident actor is the EC, who proposed the Directive in the first place. The EC is the EU's executive arm, and it is endowed with the exclusive right of legislative initiative. The EC is divided into departments concerned with specific policy areas, known as Directorates-General (DGs). In this case, although there are different policy areas identified by the different DGs, the concerned one is mainly the DG for Justice and Home Affairs, which is responsible for EU policy on justice, consumer rights and gender equality. This is quite apparent from the text of the Directive, which clearly states that this is the policy area concerned, namely the "lack of effective whistleblower protection can also impair the enforcement of EU law [...] whistleblowing is a means of feeding national and EU enforcement systems with information leading to effective detection, investigation and prosecution in breaches of Union rules" (EC, 2018a, p.1).

In addition, the EP, another inside and evident actor, had pushed intensively for action to be taken. The EP is the only directly-elected institution of the EU, and it acts as a co-legislator with the Council. Although it cannot formally propose legislation, it is often the case that the reports produced by its committees stir the work of the other institutions. For that reason, the contribution of the EP is officially acknowledged in the Directive, which refers to the EP resolution of 24 October 2017 on "Legitimate measures to protect whistleblowers acting in the public interest and its resolution of January 2017 on the role of whistleblowers in the protection of the EU's financial interests" (EC, 2018a). However, the first call to action from the EP dates to 2013, and no acknowledgement of this is present in the Directive. The encouragement from the EP was not limited to the Recommendations on actions and initiatives to be taken (EP, 2013), but also transferred to an Anti-Corruption Pledge signed by 502 MEPs that committed themselves to promote transparency throughout the next EP mandate. Specifically, they assured they would promote "initiatives and legislation that will provide effective protection to whistleblowers in the public, private and non-profit sectors" (TI, 2013, p. 1).

Special attention must be paid to one political group within the EP, namely the Greens and European Free Alliance (Greens/EFA). Although still inside, this actor is less evident than the Parliament as a whole, as it is a small transnational group consisting of the European Greens and of various regionalist parties representing progressive interests. Following the NSA scandal and media storm surrounding Edward Snowden, the Greens/EFA fraction in the EP called for protection of whistleblowers and nominated Snowden for the Sakharov prize, the EU freedom of thought prize (Greens/EFA, 2013). Another key player pushing for harmonised EU legislation on the topic of whistleblower protection was the non-governmental organisation TI. TI was founded 1993 in Germany and functions as an umbrella organisation for numerous national chapters, all focused on combating corruption (TI, n.d.). TI is the

only outside group which this paper focuses on, because of its extreme significance in pushing whistleblowers' protection on the EP's agenda.

4.3 Data and Sources

The main method of this research is document analysis, which allows the application of the theoretical framework as has been detailed in the above section. The primary sources that are analysed are the proposal for the Directive for whistleblowers protection and other official statements issued by the EU (publicly available on their website and/or blogs). In addition, other sources that are employed are publicly available European news outlets, like euronews.com and Euractiv.com. For information on the treatment of international whistleblowers such as Assange and Snowden, international news outlets like the NY Times and The Economist were evaluated. It must be noted that the research is on purpose not limited to a case study of some countries but aims to give a European perspective, which is why the focus was not on the interpretation of national media. This is motivated by the fact that the EC depicts itself as a unitary body, and it does not disclose the different opinions of its individual members, but only communicates its final output as a shared decision of all Member States. For this reason, it would also prove technically very difficult to discern the opinions of the different Member States within the Commission during the negotiations. Nevertheless, some national news outlets like the BBC and L'Espresso are sometimes used to fill the gaps that the European news leaves, but always assuring that they do not reflect any national bias, which should facilitate replicability and allow greater transparency.

5. Analysis

This section is devoted to the analysis of the whistleblower Directive according to the Kingdon model. For this reason, it is divided into as many sections as are the parts of the model, namely first the problem stream, second the political stream, third the policy stream and fourth the policy window.

5.1 Problem stream: Why is there a Problem?

The problem stream is constituted by indicators and focusing events. Indicators consist of both European and international pushes to the implementation of whistleblowers' protection. Among the European ones, the Directive recalls Council's Recommendation (2014)⁷ and Resolution 2171 of the Parliamentary Assembly of the Council of Europe (CoE). Concerning the international standards to which they refer, the 2004 UNCAC, the G20 Anti-Corruption Action Plan and the OECD Report on "Committing to Effective Whistleblower Protection" are mentioned (United Nations [UN], 2004; OECD, 2016; OECD, 2018). It remains uncertain whether they were all endowed with the same importance by the EC, which seems doubtful, especially considering the relatively old nature of some indicators, such as the UN Convention which dates from 2004. For this reason, not all of them can confidently be seen as having been interpreted as indicators by the EC.

The Directive explicitly recognises the importance of the Second Annual Colloquium on Fundamental Rights (ACFR), held in Brussels on 17-18 November 2016. This event took the shape of a roundtable discussion between institutional, academic, media and civil society representatives on "Media pluralism and democracy". In particular, Session IIb of the meeting dealt with "Whistleblowers and investigative journalism" (EC, 2016b), and consisted of a discussion around the legal gaps on the protection of whistleblowers against retaliation. The participants in particular expressed concern for the

impact that surveillance on journalists' communications has on privacy and safety of reporters. They suggested to learn how to train journalists to use technology in order to be able to communicate while protecting their privacy and creating mechanisms to enable anonymous whistleblowing (EC, 2016b, p.1). During the discussion, several studies were mentioned to function as a basis to assess the magnitude of the problem, such as the 2013 report of TI (Worth, 2013). In the report it is stated that only four EU countries had, at the time of writing, advanced legal frameworks to protect whistleblowers, which means they included "comprehensive or near-comprehensive provisions or whistleblowers who work in the private and/or public sector" (Worth, 2013, p. 9) and among those who have partial protection, several were deemed to contain loopholes, which delivers a discouraging picture of lacking political will to ensure whistleblowers' protection (Worth, 2013, p. 5).

The outcome of the Colloquium was stated by the EU Justice Commissioner Věra Jourová to be the launch of

a broad public consultation inviting the input of all relevant stakeholders on what EU level can do to strengthen the protection of whistleblowers. We are looking at different options – this doesn't mean it will be the Directive you are calling for, but we want to find the best solution (EC, 2016a).

This was deemed to be relevant in light of the Eurobarometer 2017, to which 80% of the respondents replied that they did not report corruption they had experienced (EC, 2017a, p. 96) and three quarters of the respondents mentioned lack of protection for those who report corruption as a factor motivating the choice (p.101), an answer that did not significantly change since the last survey. The Directive explicitly recognised the Eurobarometer as an indicator of the magnitude that underreporting whistleblowers can have, together with the results of its public consultation and an economic study mandated by the EC that estimated the monetary loss from a lack of whistleblowers protection to be between EUR 5.8 and EUR 9.6 billion every year in public procurement alone (EC, 2017b; McGuinn, Rossi and Fernandes, 2017). In addition to these, the Colloquium itself seems to have represented an event where relevant indicators became known to the Commission, although the focus of it was exclusively on whistleblowing in journalism. The conclusion drawn from these indicators is that there is a strong case, not least an economic one, for regulating whistleblowers protection at the EU level.

At the same time, the Directive recounts other actors for having determined the rise of the problem to the attention of the EC, namely the Council with its Conclusions on tax transparency of 11 October 2016, together with civil society organizations and trade unions. The most explicit of these contributions seems to be that of TI, which namely called the European Union to "submit a legislative proposal establishing an effective and comprehensive European Whistleblower Protection Programme in the public and private sectors" (Worth, 2013, p.22). In doing so it also directly quotes the EP's call for action that had already been submitted in 2013, which indeed focused on the improvement of whistleblowers protection especially in the area of journalism (EP, 2013). It had also established internationally accepted guidelines to strengthen whistleblower protection in countries that had signed the UNCAC. This hints at TI's character of policy entrepreneur because they seem to have pushed for increased whistleblowers protection and to have also been those who influenced the EP in the first place.

Regarding focusing events, the EU was clearly influenced in passing this legislation by international scandals such as the Snowden revelations, which had enormous political importance everywhere in the world. However, to identify specific causations is challenging. The Snowden

revelations seem to have had resonance within the EU in light of the EP's Committee on Civil Liberties report issued on 21 February 2014 which contained a motion for an "EP Resolution on the US NSA surveillance programme [...] and its impact on EU citizens' fundamental rights" (EP, 2014a). The report wishes to draw the attention to the fact that the lack thereof brings a "chilling effect on media" and on whistleblowers, which should have the crucial role to ensure democratic accountability and whose freedom to act is not protected enough in this surveillance society. Hence, the Snowden affair was used to highlight the gravity of the problem, which had persisted since 2013, when the first call to action had been voiced.

By contrast, different news outlets argued that diverse scandals had the role of focusing events. Although it is argued in the next chapter that the LuxLeaks scandal had special importance for the development of the events, it did not seem to work as a proper focusing event. Nevertheless, one should not forget to acknowledge events such as LuxLeaks, the Panama Papers and the Cambridge Analytica scandals, that shone a light on the condition of whistleblowers and pushed the EP to push for increased protection (Dalby and Bowers, 2019). In conclusion, despite the Directive acknowledging several European and international guidelines for the protection of whistleblowers, the ACFR seems to have been the crucial event where indicators such as the estimation of the economic benefits of whistleblower protection in public procurement, the Eurobarometer 2017 and its public consultation, became known to policy-makers, albeit in the field of journalism. The Snowden revelations seem to have corroborated the idea of a pre-existing problem, which had become known in 2013 after the call to action from the EP. The following section investigates the reasons why action was not taken expeditiously.

5.2 Political stream: How is the Political Atmosphere?

This section deals with the political stream in a chronological way (for a clear overview of the timeline refer to Annex 1). A first observation is that the EC had rejected the 2013 call for action from the EP with the argument that it was only willing to include a provision for internal whistleblowing (Nielsen, 2013). The reasons for this are the crucial focus of this section. The most relevant political event that occurred in the chosen time frame were the European elections leading to the election of the Juncker Commission as a successor after the Barroso II Commission. This means that the first call to action in 2013 was directed to the outgoing Commission, which was substituted merely 6 months after having received the invitation to act. One could deduce that the outgoing Commission did not have enough time to start this legislative proposal, which is reasonable enough when realising that not only would they have had to draft it but also to have it voted by the EP and the Council to make sure it passed. Thus, it is rational to hypothesise that the feasible responsibility to provide for whistleblowers protection fell on the Juncker Commission. However, the latter did not act promptly and waited until 2018 to take up the proposal of the EP. This is puzzling especially considering that among Juncker's priorities, number 7 was "an area of justice and fundamental rights based on mutual trust". Although not explicitly mentioning the protection of whistleblowers as an objective, this priority does refer to the policy area that covers whistleblowers protection (EP, 2014b). Hence, the question one now needs to ask is how was the Juncker Commission convinced to insert whistleblowers protection on the agenda?

In November 2014, the LuxLeaks scandal emerged and personally involved the then-President of the EC, Jean-Claude Juncker. Luxleaks concerned the leak by the International Consortium of Investigative Journalists of an archive of 28000 documents provided by two employees of PriceWaterhouseCoopers (PWC), Antoine Deltour and Raphaël Halet (Barbière, 2017). These revealed

secret agreements known as "tax rulings" between 340 multinational corporations, including PepsiCo INC and Deutsche Bank AG, and Luxembourg, which allowed the former to pay less than 1% taxes in Luxembourg (Bowers, 2019b). The conclusion drawn from these leaks was that Luxembourg was a major European centre of corporate tax avoidance (Biondani and Sisti, 2018). There were calls to the then-new competition Commissioner Margrethe Vestager to act, but she declined immediate action and instead stated that the Commission considered the Luxleaks documents as "market information" and hoped they would lead to a common consolidated corporate tax base being supported throughout the EU (Bowers, 2019a; Jacobsen, 2014).

The Luxleaks scandal was an uncomfortable occurrence for the then-new Commission President Jean-Claude Juncker who had served as Prime Minister of Luxembourg from 1995 to 2013 and as its Minister for Finances from 1989 to 2009. It was calculated that only between 2002 and 2010, his country had received 220 billion dollars through the uncovered illicit tax avoidance practices (Biondani and Sisti, 2018), thereby implicitly presuming his involvement. At first not releasing any comments on the leak, Juncker soon defended the tax practices in Luxembourg saying they were "normal practices in 22 MS and conform with EU law, provided that the benefits are applied in a non-discriminatory manner" (Jacobsen, 2014). Although admitting having played an active role in courting multinational corporations, he always stated to have done so in respect of fiscal law and stated to be offended by the accusations (Bowers, 2019a). Nevertheless, a following wave of scepticism on Juncker's fitness to work in the interest of Europe caused the right wing Eurogroup in the EP to start a petition for a no-confidence vote, after a similar initiative by the left-wing groups had failed. However, Juncker comfortably survived the no-confidence vote as the European People's Party and the Socialists & Democrats did not support it (Biondani and Sisti, 2018).

It is important, because of the focus of this research, to investigate what happened to the whistleblowers of the Luxleaks issue, as it is an indication of the level of whistleblower protection in place and the extent to which the Commission reacted to it. Deltour tried to fit the criteria of the Trade Secrets Directive, which had at the time not yet been implemented by the Luxembourgish government. The Trade Secrets Directive states in paragraph 20 that "the measures, procedures and remedies provided for in this Directive should not restrict whistleblowing activity [...] [and] should not extend to cases in which disclosure of a trade secret serves the public interest" (EP and Council of the EU, 2016). However, he was not recognised to fit them, which revealed the inadequacy of EU law to cover whistleblowers protection. He was however recognised as a whistleblower by Luxembourg's highest court and therefore acquitted. The same treatment was granted to Edouard Perrin, the journalist that published the information. This was not the case for the other PWC employee who had blown the whistle, namely Halet, who received a 1000 euro fine after judgement from the same Court ("Luxleaks whistleblower Antoine", 2018). Vestager said in a 2016 interview that "everyone should thank both the whistleblower and the investigative journalists" (Valero, 2016). This shows that the whistleblowers involved in the Luxleaks scandal did not receive adequate protection, much less so from EU law.

This was not the end for Juncker, who was also called to testify in an investigation on the Panama Papers on May 30, 2017. The Panama Papers scandal involved the leaking of two and a half terabytes of leaked data on legal and illegal transactions made by heads of governments, drug dealers and banks that all used Panama as their offshore financial heaven (Gotev, 2017). Juncker was asked to appear in front of an investigative committee, tasked with understanding if breaches of EU law had occurred as a consequence of the leaked activities. He was investigated because the new leaks still

concerned the Luxleaks, and he was found to again not have committed any irregularity. He restated that the credibility of the Commission should have been measured by the work of the Commission and not been based on the work carried out in the name of one country's government ("Panama Papers: Juncker", 2017). As a reaction, one may believe that Juncker had desired to work intensively on reducing corporate tax evasion at the EU level to show his disfavour towards these illicit practices (Bassot and Hiller, 2018, p. 16).

5.3 Policy stream: Development of the EU whistleblower policy

The policy stream examines the survival and development of policy ideas, which may be solutions for a problem not yet acknowledged by policy-makers but of importance to policy entrepreneurs, who invest time and resources in them. As the chapter on the problem stream demonstrated, various studies have been published with regards to whistleblower protection, which is important because while presenting the problem they also often offer policy ideas.

Whistleblower protection is mentioned as a necessity in Chapter III Art. 33 of the UNCAC, which was signed in 2003 by the EU. The achievement status of the UNCAC is evaluated by the Implementation Review Group (IRG), which meets at least once a year in Vienna, where the UN Office on Drugs and Crime is situated. In May 2013, the IRG met to discuss the implementation status of Chapter III and discussed a submission by TI which proposed international principles for whistleblower legislation in countries that had signed the UNCAC (Heimann, Dell and Bathory, 2013). TI presented their findings during a panel discussion and recommended more detailed country reports about the implementation as well as an observer status for NGOs who can provide technical assistance. The IRG followed this call and urged UNCAC Member States to take further action in order to enhance and harmonise whistleblower legislation (Implementation Review Group of the United Nations Convention against Corruption, 2013). They voiced the need for anonymous reporting available to citizens as well as for protection in "labour and administrative laws" (Heimann et al., 2013, p. 12).

This call was heard by the EP, which called on the EC to propose enhanced legislation to protect both private and public whistleblowers in its October 2013 Resolution on organised crime and money laundering (EP, 2013). It requested "effective and comprehensive legislation" to be proposed before the end of 2013, which included a whistleblower protection programme, particularly for cases of financial corruption. Nevertheless, the policy ideas were not yet defined, and it was TI which started developing clear policy ideas by publishing an assessment report on the level of legislative protection for whistleblowing in the EU Member States, identifying political, economic and social issues able to hinder whistleblowing (Worth, 2013). They urge the Commission to listen to the EP and again requested more consultation with civil society organisations (p.22). Furthermore, TI called for "accessible, reliable and safe channels to report wrongdoing", protection from retaliation as well as mechanisms to translate the reporting into reforms of inadequate policies and behaviours for both public and private employees (p. 22). They gave a rather broad definition of those employees including also volunteers, interns and former employees and listed various disclosures that need to be protected besides the obvious miscarriage of justice such as dangers to public health and environment and also mismanagement. Interestingly, TI urged the EC to follow the 2013 call by the EP for legislation and mentioned internal whistleblower protection for the EU institutions.

Indeed, starting in January 2014 all EU institutions were required to implement their own whistleblowing rules. In her initial inquiry, the European Ombudsman, Emily O'Reilly, requested

information regarding the progress of adopting the internal rules. The Commission replied that they already adopted binding guidelines in 2012 and that they “consulted two external organisations with expert knowledge and had also held discussions with staff representatives” (O’Reilly, 2015). Ending the inquiry in February 2015, the European Ombudsman discovered that most EU institutions, amongst them the Commission, had failed to implement the requested rules. The internal protection for whistleblowers is based on the EU Staff Regulations and requires the whistleblowers, unlike in the UNCAC and TI, to turn to their supervisor or the European Anti-Fraud Office, thus not allowing for anonymous reporting.

In the wake of the NSA scandal and Snowden’s revelation, the EP issued another report in February 2014 on the US surveillance of the EU Member States and the impact on citizen’s rights. Again, the report calls on the Commission to look into comprehensive EU-wide whistleblower protection, this time including journalists, and also mentions the potential expansion of the protection to other EU competences, particularly mentioning the field of intelligence (EP, 2014b). The report also calls on Member States to ensure that national legislation allows for disclosure of “corruption, criminal offences, breaches of a legal obligation, miscarriages of justice and abuse of authority”, but unlike the TI report from 2013 does not include dangers to public safety and environment. The report was accompanied by an explanatory statement, describing the public debate on mass surveillance and reasons why the EU should or should not act. It also lists the five reasons for the EU not to act on whistleblower protection, which are: lack of competence, since national intelligence and security are national competence; potential danger of informing terrorist groups if leaked documents are investigated; lack of legitimacy for the whistleblower; the need for a working relationship between the EU and the US; the presumption of good governments that act with democratic standards as a matter of principle. As can be seen, these are various strong arguments to be made against EU-wide legislation to protect reporting persons and a potential lack of ability due to missing legal basis (EP, 2014b), which partly help to explain the delay in passing the Directive.

Soon after the aforementioned EU report, potential legislation ideas to protect whistleblowers again came to the attention in Brussels. The Council of Europe, an international organisation aiming at promoting human rights, which includes the EU Member States but also other European states as well as Russia, published a recommendation for legislation to protect whistleblowing in the public and private sphere in April 2014. This aimed predominantly at achieving greater legal unity in the 47 Member States, and that is why the recommendation includes clear policy principles to guide the drafting of legislation (Council of Europe, 2014). This policy picked up the ideas of the TI 2013 report, including interns, volunteers and former as well as prospective employees in both the public and private sector. Moreover, they defined the channels of reporting mentioned by TI: allowing for internal reports within the organisations, reports to supervisory bodies and last also to the public. These channels strongly resemble the ones in the PIDA English legislation for the protection of whistleblowers, and since the UK is a member in the Council, it is likely that their model for reporting channels was overtaken. Also, they maintained the principle of anonymous reporting from the UNCAC and TI 2013 report. Altogether, the policy recommendation of the Council of Europe (CoE) adopts most ideas of the TI 2013 report, thus allowing them to survive for a longer period (CoE, 2014).

TI continued to publish reports about citizen’s approval of whistleblowers in 2015 (Gorbanova, 2015). Following a period without new policy proposals, the Greens/EFA group in the EP sent a letter to Commission president Juncker in May 2016. Stating that the EP had been calling for legislation over the

past decade while the Commission had remained inactive, the Greens/EFA presented a draft Directive for whistleblower protection across Europe, thus bypassing the EC as policy initiator (Greens/EFA, 2016a). In the draft Directive, “recent evaluations of the status of whistleblower protection” are mentioned as a reason to act, hinting at the reports by TI. The Directive proposal also presents several legal bases, which are necessary for any EU legislative action, and that the Commission used to defend its inaction by claiming whistleblower legislation was outside of the EU’s competences (Reda, April 23 2018). Moreover, even the title of the Greens/EFA Directive announces both private and public employees to be included, including former workers and volunteers. Similarly to the CoE policy recommendation, they included various channels of reporting, including social media. In their list of potential disclosures that should be protected under the Directive, the Greens/EFA also incorporate prospective harms to the public interest. Their Directive would also encompass “honest mistake” reporting and like the TI policy recommendation would allow the identity of the reporting persons to be confidential (Greens/EFA, 2016b). The principle of full protection in case of error had survived since the TI report and the CoE recommendation which mentions that protection “should not be lost solely on the basis that the individual making the report or disclosure was mistaken” (CoE, 2014).

In February 2017 the EP adopted a resolution on “Legitimate measures to protect whistleblowers acting in the public interest”, where it again called for a horizontal legislative proposal. The Committee on Legal Affairs (JURI) followed this up in October 2017 with an own-initiative report on legislative measures protecting whistleblowers, calling for adopting current international standards. The report also voices the need for a broad definition of “whistleblower” to “cover as many scenarios as possible” (again both private and public sector employees) and the creation of an EU agency to coordinate the reports of whistleblowers (EP, 2019). JURI also aims to broaden the range of to be disclosed acts, including all breaches in the public interests, thus including the request of the TI 2013 report for broad lists of disclosures. They stress that anonymous reporting could encourage the sharing of information otherwise kept secret and cover whistleblowers in honest mistake (EP, 2017).

Finally, on 23 April 2018, the Commission proposed an EU-wide Directive to protect whistleblowers. Julia Reda, a member of the Greens/EFA, the group that proposed the draft Directive already in 2016, claimed that the final Commission proposal included many key points of their draft (Reda, 2019). The two proposals share major principles; however, the Commission proposal holds the Council of Europe recommendation of 2014 as part of the framework in their final proposal and also refers to the work of TI (EC, 2018a). The overall reluctance of the Commission regarding whistleblower protection can be seen in the choice of the legal instrument to be a directive, which constitutes the least intrusive legal instrument the EU can make use of. This is because it sets minimum targets to implement by the Member States but leaves the means to do so to their own discretion. This further corroborates the idea that despite the survival of policy ideas, the implementation of the latter proved difficult and the Member States were somewhat reluctant. In conclusion, the existence of different solutions emerging at different points in time has been shown, and some in-depth analysis devoted to the ideas that survived throughout the years. However, this alone cannot account for the relation between them all.

5.4 Wrapping it all up: the policy window

The policy window examines how a particular stream can constrain or instigate agenda setting, offering an opportunity for the streams to come together at a particular time when a pressing problem is linked to an existing policy solution. Evaluating the problem, political and policy stream reveals that the

window opened in the political stream, causing the specific timing that put whistleblower protection on the agenda of the EC. In general, studies promoting the need for whistleblower protection as well as scandals to focus the policy-maker's attention were continuously present, just like the ideas for a policy to protect whistleblowing, which however became more defined throughout the years. TI, persistently put it on the agenda of the EP, and caused the first call to action being issued by the EP in 2013. Because of the survival of TI's ideas, TI is acknowledged to be the primary policy entrepreneur around this issue. At this time when the first call for action was issued, the main area concerned by the provision was journalism, as main indicators such as the study "Estimating the economic benefits of whistleblower protection in public procurement" were made public at the ACFR's session on investigative journalism. Thanks to the focusing event of the Snowden Revelations, the attention of the EP was kept on the issue, and led to the production of the EP Resolution on the US NSA surveillance, which was the instance when the EP proposed that the whistleblower programme would extend to areas other than journalism, including intelligence. At this point, the Luxleaks scandal personally involved Jean-Claude Juncker, the head of the EC, and stalled the procedures for implementation of the whistleblowers protection programme because the DG Justice and Home Affairs of the EC could not propose the policy without further compromising its President, who was also called to testify in 2017 for potential involvement in the Panama Papers leak. While the scandals delayed the adoption of a policy, the development of policy ideas on the one hand slowed down. On the other hand, some ideas survived and may have benefitted from a "calmer" period to stabilise in the minds of policymakers. Supported by the CoE, which basically reintroduced the same ideas of the 2013 TI report, the Greens/EFA took the courage to become in their turn policy entrepreneurs and proposed a draft Directive in 2016. Then, the decision to pass an EU law to protect whistleblowers on 30 May 2017 was when the political scenario had turned favourable for Juncker, on behalf of the EC, to pass the legislation containing policy ideas that had survived the selection process of the policy stream, namely the ideas that had been present since the first TI report, such as the protection of whistleblowers in both the private and public sphere and the safeguarding of reporters also in cases of honest mistakes. The streams came together in 2018, which also coincided with the Facebook–Cambridge Analytica data scandal and thus allowed the EU to seem to take immediate action with regards to it. The existence of a policy window is confirmed by the way the EP voted for the Directive: 591 votes in favour, 29 against and 33 abstentions. The large majority of favourable opinions confirms that the context was finally, in 2018, favourable to the coupling of the Greens/EFA's draft legislation to the problem of whistleblowing protection.

Conclusion

While this paper is being written in June 2019, Julian Assange is sitting in Her Majesty's Prison Belmarsh in London, charged with 17 counts of violating the 1917 US Espionage Act, which add to his prior hacking-related charges brought by Northern Virginia. An official of the Justice Department's National Security Division said that the US government "takes seriously the role of journalists in our democracy and [...] It is not and has never been the department's policy to target them for reporting" but argues that Assange is not a journalist (Savage, 2019 May 23). Exactly such roundabout argumentation to imprison whistleblowers for their reporting and thereby discouraging further whistleblowing is the reason behind the proposal of an EU Whistleblower Protection Directive.

Freedom of expression and reporting is essential for any democracy and is also enshrined in the EU Charter of Fundamental Rights. Fragmented legislation between EU Member States alone would

usually lead to Commission action in order to allow a smooth and effective working of EU policies. However, in this case it took 5 years for the initial call to be followed by action by the EP on the final proposal. Such a time gap is unusual, in particular when one recounts the media attention given to the issue due to various scandals such as the Lux Leaks and the Snowden affair. This research analysed the reasons why whistleblower protection only rose to the agenda of the EC in 2018. In order to do so, we first examined the academic literature regarding whistleblower protection in the EU, showing that the legal landscape was far from harmonised, thus offering a chance for the EC to act. Using the Kingdon model to independently analyse the problem, politics and policy stream allowed for an in-depth investigation of the development of the policy window. The analysis reveals that lacking whistleblower protection was perceived as a problem through the entire time frame due to various studies and scandals to grab the attention of policy-makers. Policy ideas for the final legislation existed since the early 2010s following the Snowden Scandal and survived thanks to the efforts of the EP, particularly the Greens/EFA as well as TI. Thus, leaving the politics stream to prevent an earlier proposal, the research demonstrates that the involvement of the then newly-elected Commission president Juncker in the Lux Leaks and the following Panama Papers scandal caused the proposal to be delayed. The proposal of the Directive “on the protection of persons reporting on breaches of Union law” in April 2018 coincided with the Cambridge Analytica scandal, presenting the EC with an appropriate moment to react. By selecting this theory, however, this thesis also adopts the limitations inherent in it such as the assumption that the convergence of the streams inevitably leads to a policy window. Another limitation is that the model has explanatory but no predictive power. It helps understand why the policy change occurred, but it would not have allowed, when applied to the facts preceding the proposal of the Directive, to anticipate it. Other authors have tried to modify it to the extent that it would gain predictive power. Although for the purposes of this paper this has not been deemed to be necessary because the objective was mainly to uncover the dynamics that delayed a swift reaction to the calls from the EP from the EC.

On a more general note, due to the confidentiality of the internal workings of the EC, it is challenging to retrace the exact steps taken in the development of the Directive. Instead, this research is only offering a possible explanation on why the EC decided to propose the legislation in 2018 based on observable events without an actual insight into the responsible Commission DG Justice. Hence, it could be argued that this research is biased towards events that have been cherry-picked for the problem, political or policy stream and thus the development of the examined legislation. Since the Commission proposal named the context of the legislation as well as results from stakeholder consultation, the research followed the given references and thereby attempted to nuance the inherent selection bias. Moreover, without making such educated guesses on the internal workings of the EU Commission and EU policy-making in general, no academic research could be done due to the culture of confidentiality prevalent in Brussels. To present a more substantiated picture, further research could aim to gain a behind-the-scenes look by interviewing members of the concerned Directorate-General Justice. This paper decided against such a rather individual approach and is instead interested in the chains of events enabling issues to rise to the agenda and thereby providing a more overarching picture, which shows that this policy proposal was not straightforward but required a long time. Due to the confidentiality and the “Brussels Bubble”, EU policies often seem nebulous, therefore making it important to see how legislation develops and crucial to discover if EU institutions are preventing policy making in public interests due to external factors. Further research could corroborate (or disprove) these findings by

conducting a policy-analysis of the implementation of the same Directive and verifying the Member States' attitude towards the problem.

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How is Privacy perceived in German Police Law? Rethinking Counterterrorist Policy in North-Rhine Westphalia.

Jonas Bradtke¹

ABSTRACT

By December 2018, Germany's biggest state, North-Rhine Westphalia (NRW) introduced its revised police law (PolG NRW). The PolG NRW enables previously forbidden surveillance practices to combat terrorism in Germany. Discussion surrounding the PolG NRW revolved around surveillance practices enabled through the law. By using a privacy taxonomy, developed by Daniel J. Solove (2010) this thesis has categorised, analysed and evaluated six sections of the PolG NRW with regards to infringements upon privacy. This thesis (1) identifies potentially harmful activities for personal privacy within the PolG NRW and (2) chases back shortcomings to an incomplete understanding of privacy. Thereby, this thesis suggests that future policy crafting must consider processes that follow the collection of information as potentially harmful activities. By limiting privacy risks to information gathering, activities that belong to information processing and distribution remain largely unregulated, putting the individual at serious risk.

1. Introduction

The distinction between the public sphere and the private sphere has been one of the grand dichotomies of western thought since the classical antiquity (Papathanassopoulos, 2015). Aristotle already distinguished between the *polis* (the public sphere of political activity) and *oikos* (the private sphere associated with family and domestic life). The modern understanding of privacy is rooted in the Enlightenment, more specifically in the writings of Thomas Hobbes and John Locke (Regan, 1995). Later, Jürgen Habermas distinguished between the *lifeworld* (intimacy and family) and the *public sphere* (communicative networks that enable private persons to take part in culture and the formation of public opinion) (Papathanassopoulos, 2015). To some, privacy is physical space (see: Aristotle); to some the privacy is a sphere of information that is largely detached from physical locales (see: Thompson, 2010). Different understandings of privacy have shaped citizenship, politics and society in liberal democracies in the west (see: EU Commission: GDPR, 2018). Hence, privacy is understood differently according to various theories and disciplines. In a changing social, cultural and technological background, privacy appears not as a static concept, but rather has a dynamic component (Papathanassopoulos, 2015).

After the attack on the two World Trade Centres in 2001, global terrorism has increasingly threatened the security of liberal democracies in the west. In order to combat terrorism, western governments have continuously expanded – and invested in – surveillance practices (Lyon, 2001; Turnage, 2007 et al). The PRISM programme, leaked by Edward Snowden in 2013 comes to mind. These developments caused scholars, journalists as well as politicians to debate whether expanding counterterrorist surveillance acts as a threat to privacy rights (Lyon, 2001, Turnage, 2007, Solove, 2010

¹ Jonas Bradtke received a bachelor degree in Arts & Culture at Maastricht University in 2019. At the moment he pursues a Master in History at the Heinrich Heine University in Düsseldorf, Germany. Contact: Jonas.bradtke@outlook.de

et al). In return, an old question came up again: what exactly is privacy? What exactly is hurt by state surveillance?

1.1 PoIG NRW

By December 2018, Germany's biggest state, North-Rhine Westphalia (NRW) introduced a revised police law (PoIG NRW). The PoIG NRW enables previously forbidden surveillance practices to combat terrorism in Germany. A similar, even stricter law has been introduced in Bavaria in 2018, causing approximately 30,000 to 40,000 people to protest against it (Schnell, 2018). When proposed in NRW, an initial draft, proposed in summer of 2018 was deemed 'anti-constitutional' (WDR, 2018). Among others the police labour union voiced their concerns regarding vague terminology that allows a too broad interpretation of certain sections (Polizeigewerkschaft NRW, 2018). The initial draft was revised and finally introduced by December of 2018. Under revision of SPD the law was announced to be corrected and labelled an important step to fight terrorism in Germany. Activists and scholars remained critical about the bill (Gusy, 2018; Amnesty International, 2018).

The PoIG NRW has attracted extensive media coverage (see: WDR, 2018; Süddeutsche Zeitung, 2018) but received very little scholarly attention by legal scholars (see: Gusy, 2018). In both cases, focus of the discussion was on *surveillance practices* enabled through the law. This paper, however, argues that the central problem of the PoIG NRW roots in an incomplete *comprehension of privacy*. The adoption of the PoIG NRW raises important questions about how privacy is perceived in counterterrorist initiatives. An imminent security threat often trumps privacy concerns, since risks often appear distant and blurry (Solove, 2010). But why is that the case? Why does privacy appear to be at odds with security in case of counterterrorist initiatives such as the PoIG NRW? If a scholarly notion of privacy forms different attitudes towards privacy, so does a policy in case of the PoIG NRW. In order to grasp privacy issues it is of crucial importance to come to clear terms with what exactly the notion of privacy is that Germany employs. Although it remains of crucial importance to study surveillance practices, this thesis argues to consider that certain conceptions of privacy enables and facilitates problematic activities of surveillance. Thus, this thesis will devote its attention to the pressing question: how is privacy perceived in the PoIG NRW?

I will show that identified issues of the PoIG NRW can be traced back to a narrow and incomplete understanding of privacy in both (1) the PoIG NRW as well as (2) the constitutional limitations placed upon surveillance practices that ought to protect the private sphere of the citizen. For future policy crafting, I will thereby suggest to consider a variety of issues that have not yet been legally recognised by Germany as privacy threats

The first chapter of this thesis discusses different scholarly attempts made to conceptualise privacy. It is crucial to first establish on behalf of which criteria I will evaluate the PoIG NRW. I will do so by borrowing from Daniel J. Solove's 'Understanding Privacy'(2010). Throughout his book Solove (2010) provides a concise, yet thorough overview over the most important conceptualisations of privacy. The second chapter introduces the theoretical framework of choice for this paper. Chapter two both (1) explains and justifies the usage of a privacy taxonomy to evaluate the policy at hand as well as (2) provide insight into inclusionary as well as exclusionary mechanisms that determined the content of the case study. In the third chapter of this work, I will devote my attention to the PoIG NRW as well as constitutional limits placed upon surveillance practices by the German Constitution. Afterwards, chapter four introduces the contents of the chosen case study. Following, chapter five applies the previously

established taxonomy of privacy to the case study to both identify the conception of privacy employed throughout the PolG NRW and its shortcomings. Finally, chapter six presents the results of my analysis.

2. Privacy, a Concept in Disarray

2.1 Focus and Selection of Theories

Before diving into the review of scholarly work it must be acknowledged that this review comes with certain limitations. One could fill entire books about the discussion surrounding privacy from the dawn of western civilisation. Hence, a complete, ground-up discussion of accounts made greatly extends the scope of this thesis. This chapter will borrow from the work of Daniel J. Solove (2010). Solove did not only provide a highly valuable account on how privacy has been conceptualised but also developed a highly useful analytical framework to consider infringement upon privacy. Chapter two will discuss the analytical framework in greater detail.

It is of crucial importance to both explore present theories and their shortcomings as well as to settle on a general understanding of privacy that allows me to work out the understanding of privacy employed by the PolG NRW. Scholars like Taylor (2017) have recognised that ‘the concept of privacy is difficult to define because it is exasperatingly vague and evanescent, often meaning strikingly different things to different people’ (Taylor, 2017, p. 4). Traditionally, philosophers, jurists, sociologists and scholars of other disciplines have attempted to locate essential elements of privacy common to the aspects of life that we deem private (Solove, 2010). Naturally, conceptualisations that have been worked out greatly differ in reasoning and conclusion. In order to judge on the perception of privacy employed by the PolG NRW it is first important to settle on behalf of which criteria this thesis will speak about the concept of privacy. The conducted scholarly work can be broadly divided into 5 theories. After reviewing these theories, this chapter will work out a general model that allows me to recognise what different models of privacy focus on and value.

I: Privacy is the Right to be let Alone

Privacy as a ‘right to be let alone’ is perhaps the oldest and most famous formulation of a right to privacy. It was first expressed in a legal article from 1890 by Samuel Warren and Louis Brandeis. They argue for the legal recognition of a right to privacy in light of new technological developments that were posing a threat to privacy. By 1890, the first commercial cameras allowed everyone, not just professionals to capture pictures (Solove, 2010). The sensationalised press could invade precincts of private and domestic life. Hence, Warren and Brandeis proposed a common law that secure to each individual the right of determining to what extent his or her thought, sentiments and emotions shall be communicated to others (Solove, 2010). By 1890 common law could only protect from defamation, which would protect the reputation. A law of privacy, on the other hand, would protect the individual from ‘injury to the feelings’ (Solove, 2010, p. 16).

Although convincing at first glance, their account on privacy comes with serious limitations. Privacy is viewed as a type of immunity and exclusion. If privacy is merely being left alone, any human interaction could be labelled a violation of personal privacy (Solove, 2010). Additionally, both Warren and Brandeis never formulated what privacy *essentially* is. Hence, privacy as the right to be let alone appears too general to use as an analytical tool for my case study.

II: Privacy is Limited Access to the Self

The first theory of privacy illustrated that this thesis is in need of a more detailed, yet generally applicable approach on privacy. Perhaps viewing privacy as 'limited access to the self' is a more fruitful approach. This conception of privacy details the ability to shield oneself from unwanted access by others. Scholars have labelled it a more sophisticated version of the right to be let alone (see: Solove, 2010). The 'limited access theory' incorporates freedom from government interference as well as intrusions by the press and others. What it does better than the previous theory is that it extends privacy beyond merely being apart from others. Hence, scholars like O'Brien (1981) consider a variety of agents that could possibly infringe upon people's privacy. Nevertheless, this approach does not describe which matters are private, only that one should be able to independently decide to disclose or not to disclose information. A right to privacy as 'limited access to the self', entitles the individual to exclude others from (a) watching, (b) utilizing, (c) invading one's private realm (Solove, 2010).

While this approach certainly provides more detail about what kind of activities are harmful to individual privacy, it never defines what matters are private. Additionally, it is not clarified which degree of access constitutes a privacy violation. These shortcomings were addressed by scholars like Ruth Gavison (2012) in an attempt to modify the limited access theory. Gavison expanded that limited access consists of (1) secrecy, (2) anonymity, and (3) solitude (Solove, 2010). Daniel Solove (2010) rightfully pointed out that even if one would expand the limited access theory, it restricts privacy to matters of withdrawal (solitude) and concealment (secrecy, anonymity). Additionally, invasions into private affairs such as harassment and nuisance "and the governments involvement in decision regarding one's body, health, sexual conduct, and family life" are excluded as harmful activities in this theory (Solove, 2010, p. 21).

III: Privacy is a Derivative Right

The latter two theories argue that privacy is rather a form of self-interested economic behaviour, concealing harmful facts about oneself for one's own gain. However, both theories fail to either define (1) what content constitutes a private matter or (2) what privacy really is. Per Thompson (1975), the right to privacy is composed out of a subset of other rights. Hence, it is derivative, i.e. 'not standalone, but rather part of a cluster of rights which make up a general right' (Taylor, p. 5, 2017). The rights in the cluster do not have a lot in common. Nevertheless, they share that they relate to privacy. Thompsons notion of privacy is illustrated through thought experiments which are meant to exemplify the interconnectedness of the cluster of rights. For example, Thompson identifies property rights to intersect with the right to privacy. After all, personal information is personal property. Hence, to illegally acquire information is both harming property rights and, in return, privacy rights. Thompson presents a useful switch of focus: away from abstract theoretical interests towards activities that harm privacy. However, it is implied that all concerns of privacy, thus, must be grounded on other, derivative, rights. Nevertheless the interest identified by the author remains singular. If privacy is derivatively protected, the interest must also be scattered. Hence, Thompson's approach does achieve to incorporate the variety of understandings of privacy but limits itself with only possible singular interest in privacy. Thompson rightfully acknowledges that her model is not a definitive conceptualization, but rather a simplification worth having. But what if there is a pure interest behind privacy that does not ground on existing property rights?

IV: Privacy is Control

Andrei Marmor (2015) conducted a thought experiment to get closer to what interest constitutes privacy. Marmor envisions a global panopticon where everything is there for anyone to see, hear or smell. If a transition into such a world would happen without harming other, derivative rights one would still not want to live in such a society. Hence, there must be a distinctive interest which underlies privacy rights that does not ground on other rights. The interest is precisely to keep certain facts about oneself hidden from other people, in order to have *control* about how others view us (Taylor, 2017). A control interest acts strong enough to ground an interest in privacy without intersecting with derivative rights, as per Thompson (1975). Nevertheless, focusing on control implies secrecy. Marmor's focus on secrecy fails to recognise that individuals want to keep things private from some people but not from others. Control theory, as per Marmor, emphasizes on limitless disclosure. However, sometimes we do not desire complete secrecy but rather confidentiality, which consists of sharing the information with a select group of trusted people (Solove, 2010). Additionally, not all activities we deem private occur behind closed doors. These activities and sentiments are not secrets but we still view them as private matters, e.g. the books we read, the product we buy. All in all, the secrecy theory views privacy as opposed to publicity, which does not apply to all private matters.

V: Privacy is Power

In a similar vein, Lever (2013) and De Bruin (2010) identified that an interest to prevent power inequalities must lie at the heart of privacy concerns. An individual who has acquired information over another individual is likely to stand in a position of power over that individual. Naturally, the individual at stake has no interest in this. Blackmailing, for example, provides the extortioner with sufficient power over the individual at stake to demand certain things. Even further, others having information might also compromise autonomy. After all, being able to make choices independently – free from manipulation of others – is probably the most important precondition of an autonomous life (Taylor, 2017). Knowledge that someone has information will already set back the individual's interests. The thought that a certain agent, or entity, might interfere will cause one to make measure to pre-empt this, at great cost to one's autonomy. Lever (2013) and De Bruin (2010) have made important contributions to the impact of privacy violations on autonomy and behaviour in a democratic society. The authors provide valuable insight on the consequences of privacy infringements on autonomy and deliberative capabilities. However, grounding privacy interest on power appears to be not sufficient to conceptualise privacy. Similar to Marmor's theory (2015) the work of Lever (2013) and De Bruin (2010) boils down to a control interest. While privacy invasions certainly enable the invader with substantial power, control theory again fails to define which kind of information can act as powerful when used against the individual. Thus, any information can act as powerful. Hence, the most interpersonal contact in society would constitute a privacy invasion. However, we are frequently seen and heard by others without perceiving this as even the slightest invasion of privacy (Solove, 2010).

2.2 A Switch of Focus

Traditional approaches of privacy often are presented either too narrowly or too vaguely. Existing research often regards privacy as a 'unitary concept with a uniform value that is unvarying across different situations' (Solove, p.8, 2010). All scholars that have been discussed refer to intersecting or

underlying interests that, when harmed, harm privacy rights. However, debating interests appears to either paint a too narrow picture which excludes other important interests or a too broad picture, which presents itself too generally to apply it to the case study of this thesis. Hence, the traditional way to locate the essential, core characteristic of privacy appears to be insufficient for the task of this thesis.

The previous sections have illustrated that although privacy is seen as the 'heart of our liberty' it is still very much a concept in disarray. Different conceptions often clash, causing privacy problems to not be well articulated. As Robert Post put it: 'privacy is so complex, so entangled in competing and contradictory dimensions, so engorged with various and distinct meanings that I sometimes despair whether it can be useful at all' (Solove, p. 2, 2010). Perhaps one should switch the focus entirely when conceptualizing privacy.

Borrowing from Ludwig Wittgenstein's notion of 'family resemblances', Daniel J. Solove (2010), professor of law at the Washington University law school, characterised privacy to be a concept without single common characteristics. Yet, it draws from a common pool of similar elements. This is very much connected to the purpose of privacy rights. When a state legally protects privacy, the state protects its citizens against disruptions to certain activities. A privacy invasion interferes with the integrity of certain activities and even destroys or inhibits some activities. Thus, privacy's value emerges not from itself, but from the activities it protects. This approach situates itself rather close to Thompson's (1975). Both theories steer away from underlying interest and focus on harmful activities that might hurt privacy. Both argue that privacy involves a cluster of protections against a group of different but related problems. Yet, Solove (2010) manages to incorporate a variety of activities, while Thompson limits herself to only derivative legal rights. Solove suggests that privacy should be conceptualised by focusing on the specific types of disruption rather than locating a common denominator of these activities. Focusing on a multitude of potentially harmful activities allows Solove's framework to move the discussion surrounding privacy from the vague term of privacy toward specific activities that pose privacy problems. These problems impede valuable activities that society wants to protect, and therefore society devises ways to address these problems. Because Solove's model allows one to analyse privacy issues from activities rather than core interests, it presents itself sufficient to apply to the PoIG NRW, to analyse what kind of activities are permitted and protected. The following chapter will further develop Solove's framework.

3. Methodology

As suggested in chapter one, it might be best to not focus so much on the core interest behind privacy, but rather to identify when privacy is at stake to get to the root of privacy problems. Daniel J. Solove (2010) has done so by developing a taxonomy to assess and categorise policies on behalf of privacy invasions.

3.1 A Taxonomy of Privacy

All taxonomies are generalisations based upon a certain focus. Solove's taxonomy aims to aid the crafting of law and policy (Solove, 2010). Within policy analysis, employing a taxonomy is a rather unusual tool. Most policy categorisation is done by typology. Typologies have long been used in political science, since they allow to conceptually separate a given set of items multidimensionally. A taxonomy, on the other hand, classifies items on the basis of empirically observable and measurable characteristics

(Smith, 2002). At first glance, empirical qualities of policies are not immediately apparent. Nevertheless, a number of scholars have suggested that employing a taxonomy might bear the possibility to discuss morality policies, i.e. policies that strike up debates grounded on values (Smith, 2002; Marradi, 1990). Even though empirically observing policy might appear odd to some, policy is a social construction and, thus, rooted in individual perceptions. Ideology, for example, is a mental construct that is routinely measured and accepted to have predictive qualities (Smith, 2002). Hence, employing a taxonomy allows me to have a multi-dimensional model of classification to test the case study.

The model begins with the *data subject*, i.e. the individual whose life is most directly affected by the activities classified in the taxonomy. Various entities (other people, businesses and the government) *collect information* from the data subject. Information collection acts as the first of four stages in Solove's taxonomy. For every stage, Solove details a number of harmful activities that belong to said cluster. In case of the first stage, Solove identified (1) surveillance, i.e. the watching, listening or recording of an individual's activities and (2) interrogation, i.e. the questioning or probing for information, to be harmful activities.

Those who collected the data, to which I shall refer to as the *data holders*, then *process the information*. In practice, processing details the storing, combining, manipulating and using of data. Information processing acts as the second stage of the taxonomy. Harmful activities in this cluster are (1) aggregation, i.e. the combination of various pieces of data about a person, (2) identification, i.e. linking information to particular individuals, (3) insecurity, i.e. carelessness in protecting stored information from leaks and improper access, (4) secondary use, i.e. use of collected information for a different purpose than intended without consent of the data subject and (5) exclusion, i.e. the failure to allow the data subject to know about the data that others have about himself or herself and its handling and use.

Finally, information is disseminated, i.e. the data holders transfer the information to others or release the information. Identified harmful activities in this cluster are: (1) breach of confidentiality, i.e. breaking a promise to keep personal information confidential, (2) disclosure, i.e. revelation of truthful information about a person that affects the way others will judge the data subject's reputation, (3) exposure, i.e., revealing another's nudity, grief or bodily functions, (4) Increased accessibility, i.e. amplifying the accessibility of information, (5) blackmail, i.e. the threat to disclose information, (6) appropriation, i.e. the use of the data subjects identity to serve another's aims and interests, (7) distortion, i.e. disseminating false or misleading information about individuals. Fig. 1 visually illustrates the process covered by the taxonomy.

This process has to be understood to chronologically illustrate the data moving further away from the data subjects control. These three stages (collection, processing, dissemination) act as three categories in Solove's taxonomy that each contain a number of potentially harmful activities (see: Fig. 1). Invasions acts as a fourth activity and include infringements directly on the data subjects privacy. Instead of progressing away from the data subject, invasions progress towards the individual. The taxonomy acts as a bottom-up description on the kinds of privacy problems that are addressed in discussions surrounding privacy law, constitutions and guidelines (Solove, 2010). The following section details the content of the case study to which the taxonomy will be applied.

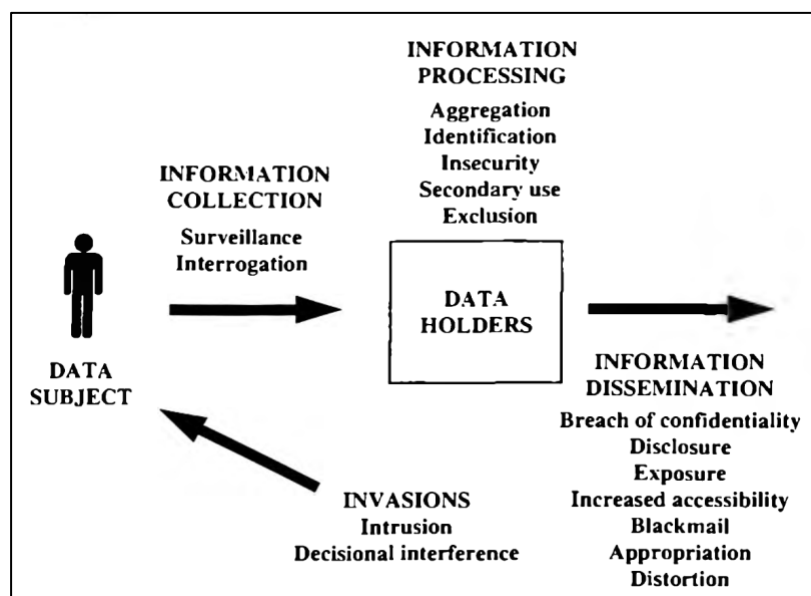


Figure 1.

Model of taxonomy. (Solove, 2010, p.104)

3.2 Case Study and Limitations

The PoIG NRW entails 46 pages of regulations. Thus, it was inevitable to place inclusionary and exclusionary criteria on which paragraphs will be analysed through Solove's model. This work will limit itself to sections that (1) aroused special attention in politics and media as well as (2) paragraphs that are occupied with the three stages of data gathering identified by Solove (2010). Ultimately, these criteria produced six sections that check both criteria. This work will limit itself to § 20c (Fn 19), § 22 (Fn 5), § 22a (Fn 22), § 23 (Fn5), § 26 (Fn 21) and §27 (Fn 21). For the sake of clarity, I will now briefly detail the content of the paragraphs in question. § 20c is occupied with the gathering of data through surveillance of ongoing telecommunication. § 22 deals with the storage of gathered data, while § 22a describes the processing of personal data. § 23 expands on § 22a and details processing of personal data for different purposes than intended. § 26 outlines general rules for distribution of personal data. Finally, § 27 details this notion further and describes distribution of personal data across German state borders. The paragraphs at hand deal with either *information gathering* (§ 20c), *information processing* (§ 22, 22 a, 23, 24a), or *information distribution* (§ 26, 27). These three generalisations reflect upon three different stages in data handling and collection, which Solove (2010) identified to bear potential risks for privacy.

Although the focus of this work lays primarily on the PoIG NRW it was necessary to discuss overarching regulations of privacy as stated in the German Constitution. In Germany, the 'Kernbereich privater Lebensgestaltung' [core area of private life style] ultimately determines what is perceived as an intrusion into the private sphere. I shall refer to the Kernbereich privater Lebensgestaltung only as 'KPL' from now on. Because the KPL provides valuable insight into the understanding of privacy employed throughout the analysed sections of the PoIG NRW, it will also be included in the case study.

The following chapter will first devote its attention first to an outline of the KPL. Afterwards, an outline of the six paragraphs in question will be provided. In chapter five, the core analysis will work out

the qualities and shortcomings of both cases to get closer to the privacy conception employed in the PoIG NRW.

4. Exploring the Case Study

4.1 Constitutional Limitation: The Kernbereich privater Lebensgestaltung

Any surveillance conducted in Germany must conform to the standards of the KPL which is deemed to be the most private sphere of living in Germany. Hence, the understanding of what constitutes privacy in Germany is largely based on this notion.

The idea of a realm, untouchable by the state – a sphere of human freedom – is a key component of liberal reasoning of the 19th century. Otto von Giercke, renowned German legal and political scholar of the 20th century, famously argued that to be human is not to be citizen. Being citizen should merely constitute one part of a personality. Hence, society was in need of an untouchable right to individual freedom. This idea was implemented into German legislation by 1957 (Baldus, 2008). New legislation introduced that the citizen is able to retreat into a sphere of human freedom, and private life: the 'Kernbereich privater Lebensgestaltung'. By 1996, discussions surrounding residential surveillance expanded the KPL. It was declared that even in light of overwhelming interest of the general public, the KPL must remain untouched by the state. A further expansion took place by 2004. It was added that within the KPL there must be the possibility for the individual to express inner processes and reflections without fear of state surveillance (Baldus, 2008). Since 2004 the KPL has remained largely untouched and still acts as the most private a citizen can legally be in Germany. Allow me now get into greater detail about what exactly constitutes the KPL.

The KPL allows to express inner reflections, emotions and experiences of very personal nature, expression of sexuality, as well as sub-conscious experiences. Whether something classifies to be in the realm of the KPL is a question of whether the content of a conversation or monologue is of 'höchstpersönlicher Art' [deeply personal character] (Baldus, 2008, p. 219). Additionally, it must be considered whether the *content* is in touch with other, more public, spheres of living and whether the content is in touch with matter of general relevance. However, this does not suggest that the KPL is only constituted if an individual is by itself. Moreover, a situation can be a matter of the KPL in which an individual is in communication with others. Since the KPL is rooted in core elements of personality, law has acknowledged that social relationships are an essential part of the KPL. Family members, persons of special trust (e.g. lawyer, psychologist, doctor) can be a part of the Kernbereich privater Lebensgestaltung (Baldus, 2008). Even highly personal matters of non-communicative kind, e.g. diaries, are also included in the KPL. So far, both individuals involved as well as content of conversation or monologue act as indicators whether a situation specifies to belong the KPL. Spatiality, however, also plays an important role. Hence, a conversation at the workplace would not classify as a matter of the KPL, since the place implies association with the social sphere. In case the space might be a place of retreat and the persons that communicate are part of the inner circle, or persons of special trust, the content of the conversation would still determine whether that conversation is part of the KPL (Baldus, 2008).

The individual would lose its protection of the KPL if content of a conversation would reflect imminent or past crimes. Hence, although it is constitutionally manifested that the KPL acts as an

isolated untouchable private sphere, this does not imply that the state has to restrain from any interference. The German state is allowed to read through private diaries, or to conduct residence or telecommunication surveillance. However, the state is not allowed to take the risk of potentially harming the KPL, if certain indicators show that the state will penetrate the sphere of the highly personal. This implies that if authorities want to conduct surveillance, they would have to make a prognosis beforehand whether the operation will harm the KPL (Baldus, 2008). If the answer is yes, authorities have to restrain from surveillance (duty of omission). If the operation is claimed to not hurt the KPL but does so regardless, the operation has to be cancelled immediately (ending obligation). Additionally, all gathered data has to be deleted (deletion obligation). In case data that is associated with matters of the KPL has been gathered, it can under no circumstances be use (denial of processing). A neutral instance will judge on this behalf (Baldus, 2008). Now that the framework within which any surveillance in Germany can take place has been explored, the following section will deal with the content of the PolG NRW.

4.2 The PolG NRW: Contents in Question

Changes to the NRW Police Law were first announced in June 2018. Swiftly, the proposed changes and allegedly vague terminology caused NRW privacy appointees as well as Amnesty International to express worries about the draft (Amnesty International, 2018). By December 2018, a revised draft was implemented into the general police law of NRW. Both ruling parties (CDU, FDP) as well as the SPD voted for the draft. The local government stated that problematic sections and formulations concerning constitutional rights and privacy have been revised under supervision of the social democrats in order to present a more balanced revision of the law. Nevertheless, critics noted that only few of the problematic sections were changed for the better (Amnesty International, 2018). To effectively analyse the sections in question it is first best to outline contents of the paragraphs. Structurally, the paragraphs will be discussed according to the analytical model introduced in chapter two. *Table 1* provides an overview of the organisation of paragraphs.

Table 1

Information Gathering	§ 20c
Information Processing	§ 22, § 22a, § 23, § 24
Information Distribution	§ 26, § 27

4.2.1 Information Gathering: § 20c – Datenerhebung durch die Überwachung der laufenden Telekommunikation [Data gathering through surveillance of ongoing telecommunication] (PolG NRW, 2019, p. 18)

So far, the NRW PolG has not entailed a regulation for telecommunication surveillance (Gusy, 2018). By new standards, dedicated 'Informationsmittler' [information investigators] are appointed. Section two of § 20c expands on this notion. Information gathering does to remain limited to telecommunication. With the newly introduced law, information technology acts as an additional source of information. Hence, computers, laptops as well as smartphones can be surveilled as well. This is rather close to the concept of 'online frisking', which before was only possible under special circumstances (Gusy, 2018). In order to get involved in telecommunication surveillance, the investigator has to present evidence. Such an appeal needs to include: (1) name and address of the data subject, (2) either telephone number or information

on the information technology device in question (including manufacturer and software), (3) the kind, extent and duration of the surveillance, (4) the possible crime as well as (5) a justification of why surveillance measures like these must be employed. Said evidence has to express that the data subject in question poses a threat or *is close to* pose a threat. When conducting surveillance, the investigator has to document identification of the information technology system as well as alterations made within the system. § 20c also comes with a number of limitations. Both surveillance of telecommunication as well as information technology is limited to ongoing communication. Surveillance is only allowed so far as it does not enter the 'Kernbereich privater Lebensgestaltung'. All surveillance under § 20c is impermissible once gathered data touches upon the KPL of the data subject. Additionally, the investigator is obligated to protect data from unwanted altering of contents and unwanted deletion.

4.2.2 Information Processing: § 22: Datenspeicherung, Prüfungstermine [Data storing, Scrutiny] (PolG NRW, 2019, p. 20)

Once personal data are gathered, the police can save both physical and digital data, if the data will be relevant for future investigation. Starting with the first new year after the last bit of data was collected, both automatically as well as manually gathered data can be saved at a maximum of ten years. After ten years, the data will be scrutinised again and it will be determined whether it is necessary to leave the data assessable and searchable in the system. All gathered data must be deleted if the data subject is proven innocent by court. Individuals that are in touch with a potentially future criminal data subject can also be surveilled. Their data will can be saved up to one year until it must undergo an inspection. All data can be combined, altered and used if necessary to fight crime.

Information Processing: § 22a: Verarbeitung besonderer Kategorien personenbezogener Daten [Processing special categories of personal data] (PolG NRW, 2019, p. 21)

Policemen taking part in the surveillance process have to be sensitised to take special care of personal data. Additionally, for the sake of transparency it must be indicated who gathered the data, when it was gathered and if someone has changed it.

Information Processing: § 23: Weiterverarbeitung von personenbezogenen Daten, Zweckbindung, Zweckänderung [Processing of personal data for different purposes] (PolG NRW, 2019, p.22)

Personal data, gathered by the police, can be processed to (1) fulfil the same task as originally intended and (2) to protect the same rights and liberties and to prevent the same crimes. However, the police is also allowed to use personal data for different purpose than originally intended. This is possible if data will assist to prevent and fight crime of similar weight or to protect rights and liberties of similar importance.

Information Processing: § 24: Weiterverarbeitung zu besonderen Zwecken [Processing (of data) for special purposes] (PolG NRW, 2019, p. 22-23)

The police is allowed to use gathered personal data for statistical purposes, if the data was anonymised as early as possible. Additionally, gathered data can be used to train future and present policemen and policewomen. Data must not be anonymised in this case, unless the data subject might have an understandable strong interest to keep his or her data confidential.

4.2.3 Information Distribution: § 26: Allgemeine Regeln der Datenübermittlung, Übermittlungsverbote und Verweigerungsgünde [General rules for data distribution, prohibition of data transmission and refusal] (PolG NRW, 2019, p.23)

The police is allowed to share their gathered data with other police departments. Both data of the data subject itself as well as third party data, i.e. individuals in relation to the data subject, are allowed to be passed on to other police departments. In case of third party data, this is only the case if data from the subject itself and third parties are hard to separate.

Information Distribution: § 27: Datenübermittlung im innerstaatlichen Bereich [Data distribution within the boundaries of Germany] (PolG NRW, 2019, p. 24)

§ 27 expands on § 26 and details the distribution of gathered data across state borders within Germany. Although the newly introduced regulations are only in effect in the German states of Bavaria and North-Rhine Westphalia, the police is allowed to share gathered data across county state borders.

5. Analysis: PolG NRW & KPL

The previous chapter described case study in relation to the privacy taxonomy. This chapter will apply the taxonomy of privacy to the case study.

5.1 Information Gathering

§ 20c classifies as dangerous activities in one category of the taxonomy, as a surveillance activity. This one certainly is the most obvious. After all, the law refers to itself as a regulation of surveillance practices. Nevertheless, Solove (2010) was right to classify even the most basic surveillance practice as a potentially harmful activity. The possibility that one can be watched persistently can create feelings of anxiety and discomfort. Additionally, it can cause one to alter one's behaviour. Surveillance can lead to self-censorship and inhibition (Solove, 2010). Hence, being watched and listened can act as a tool of social control, enhancing the power of social norms. It is especially surveillance in private settings, as implied by § 20c, that is of great harm to the individual's well-being. Scholars like Lever (2013), De Bruin (2010) and Taylor (2017) have conducted important work on the impact of even the most basic surveillance practices on democratic capabilities. As briefly touched upon in chapter two, the authors argue for robust privacy rights because they are necessary for individuals to form the deliberative capacities necessary to hold powerful agents to account. Only in a private situation groups or individuals can test out arguments and discover common concerns and work out how to best present these concerns to the society at large. Compromising privacy would therefore also compromise deliberative abilities (Taylor, 2017).

In his taxonomy, Solove focuses on continuous monitoring when discussing surveillance and its potential harming character. One could certainly argue that § 20c does not allow *continuous* monitoring of the data subject. This, in return, would mean that harmful consequences outlined by Solove would not apply to this paragraph. Two arguments can be held against this.

Frist, whether it be overt or covert, continuous or selective, surveillance bears harmful impact for the data subject being surveilled. Surveillance demonstrates a lack of respect for its subject as autonomous person (Solove, 2010). Second, § 20c limits itself in the regard that surveillance is limited to ongoing communication. While this limitation is easily applicable to telecommunication, the question

arises to what extent this is applicable to other information technology. After all, it might be a matter of interpretation at which stage a conversation over an online messenger service, for example, starts and when it ends. Christoph Gusy (2018) argues that this section attempts to avoid encryption techniques of online communication services. Self-protection, human dignity and privacy count as basic rights in the German constitution. Gusy rightfully points out that § 20c would legally bypass these rights. After all, the investigator has to prove beforehand that the risk of a crime demands infringing on the data subjects privacy rights. However, how is it possible to determine beforehand whether a violation of privacy is necessary, when the very reason for this violation lies in the content of a conversation that *will* eventually be held?

An investigator would still need a permit to surveil the data subject. However, while § 20c limits itself to the selective surveillance of telecommunication and information technology, § 30 certainly allows the police to access and request data from public institutions that have *continuously* gathered personal data (PolG NRW, 2018, p. 26). Thus, while it is not the state gathering information, the police certainly has access to continuously gathered personal data *without* the compliance of the data subject. Even if that would not be the case, selective surveillance would still constitute harmful consequences for any citizen. Concealed spying on the data subject can in similar regards produce normalising, behaviour altering consequences for the data subject. Already the panopticon, and its perfectly individualised visibility illustrated that in a state of uncertainty whether the data subject is being watched, the data subject will most likely alter his or her behaviour. Hence, it does not matter whether surveillance is conducted only in special situations or continuously. Since the data subject will not be noticed when being surveilled, as it says in § 20c, everyone could be subject of state surveillance at any given time.

Having inspected § 20c, it becomes apparent that both § 20c and § 30 infringe upon privacy due to the fact that they enable and facilitate continuous as well as selective surveillance. Serious consequences that have to be identified are impact on the data subjects autonomy, democratic capabilities, well-being as well as behaviour. While one might argue that infringements upon privacy are limited to the act of watching and recording, Solove's taxonomy (2010) includes the processing of data to be of potentially harming character. Allow me now to focus on the second cluster of the taxonomy: information processing.

5.2 Information Processing

Information processing is occupied with the way information is stored, manipulated and used (Solove, 2010). The investigated paragraphs in the PolG NRW qualify as potential privacy risks in three categories of the taxonomy.

First, paragraphs of the previous section (§ 20c, 30) as well as §22a illustrate that the police is allowed to combine various pieces of data about a person. § 20c allows the police to gather information through both telecommunication as well as information technology devices. § 30 allows the police force to gather information through public institutions. After all, more telling than isolated data is a synergy of information. However, Solove (2010) identified the act of aggregation as a harmful activity to privacy. The image created through aggregated data bears the potential to represent a distorted version of the data subject. People expect certain limits of what is known about them based on where they, willingly or unwillingly, left small pieces of data. Aggregation upsets these expectations because it combines data in unexpected ways. Aggregated data usually produces relatively accurate estimates. Nevertheless data

is freed from its original context in which it was gathered (Solove, 2010). No precaution is taken in the PoIG NRW to pre-empt dangerous consequences of aggregation of data.

Second, § 23 and § 24 detail the possibility to use personal data for other purposes as originally intended: for research purposes and as long as the data will help to fight similar crimes and protect liberties and rights of equal importance (PoIG NRW, 2019). Secondary use of personal data must be identified to infringe upon privacy rights. Not only is data collected without consent but also it is used without the consent of the data subject. By law, both the breach into privacy as well as secondary use is justified by an imminent terrorist threat. However, in light of continuous surveillance, the PoIG NRW displays a lack of awareness of potential harm caused by secondary use. Of course, measures would be taken in case data is used for research projects. However, anonymisation strategies have evidently failed before. Especially with regards to secondary use for research purposes, the paragraphs in question pose a threat. In 2008, researchers studied the profile data of Facebook accounts of college students of a US university. All steps taken to protect the identity of the students failed. Although no names were mentioned throughout the study, the subjects were swiftly identified, putting the privacy of the students at risk (Zimmer, 2010). It was merely small details, such as field of study that allowed other people to identify the university, and following: the students themselves. Again, within the PoIG NRW no precaution is taken to protect the data subject from potentially harmful consequences of secondary use.

Third, data is cautiously scrutinised for further storing. As per § 26, data of both the data subject can be stored up until ten years. In case of peers in touch with the data subject personal data can be saved up to two years. Both without scrutiny. By January 2019, a 20 year old hacker published highly personal data of hundreds of German politicians as well as journalists. Besides personal matters, the leak also included copies of diplomatic passports as well as drafts of political speeches and papers. The hacker employed a variety of methods. Additionally, the highly sensible political material goes to show that the hacker somehow acquired access to the internal system of the German government (Deutschlandfunk, 2019). This case illustrates that seemingly no system is completely secure. Both individuals interacting with a seemingly secure network as well as network structures themselves always bear a certain degree of vulnerability (Bronk, 2008). Hence, personal data that is stored up to ten years certainly is not safe. Large scale storing of highly personal data will always remain vulnerable to hacking, thus putting the data subject at serious risk. Once a hacker has acquired highly sensible and personal information the data subject can possibly be blackmailed. Hence, data will always remain unsafe once it is stored. Both individuals interacting with the data base as well as the data base itself poses a threat to the security of personal information. Additionally, § 22 does not require investigators to anonymise data.

Having now discussed threats to privacy posed by information processing regulations in the PoIG NRW, the following section will discuss whether information distribution practices of the PoIG NRW pose a threat to privacy.

5.3 Information Distribution

The detailed paragraphs that are occupied with the distribution of information classify as harmful activities in one point of the taxonomy.

§ 26 and §27 amplify the accessibility of information. The paragraphs in question allow the police to share personal data among other precincts and even across county state borders within

Germany. Again, this comes with no surprise. Federal courts in the United States, for example, have long developed system that place their records online (Solove, 2010). An advocate for robust counterterrorist security might argue that personal information about suspects is readily available at local police stations, hence, why not just fasten processes by putting information online? Increased accessibility creates a greater possibility of disclosure, which classifies as a harmful activity as per the employed taxonomy. More access points to sensible, personal data equals more potential security risks for the individual. Hence, amplifying accessibility amplifies risks of disclosure.

5.4 Objections and Justifications

A number of conclusions taken from my analysis have been identified before. After all, the PoIG NRW marks not the first controversial law, or surveillance practice to combat terrorism in the west (see: Snowden, 2013). Scholars have also worked out a number of justifications for privacy harming security measures. Allow me to discuss two valid arguments that can be held against my findings.

The first justification that renders itself important for my conclusion is the 'lesser evil justification'. This is certainly the most prominent argument to legitimise expanding state surveillance apparatuses post-9/11. Scholars like Himma (2007) or Walzer (2015) argue that even though some violations are in place, the benefits that can be gleamed will outweigh the moral reasons (Taylor, 2017). Hence, when the social costs of respecting privacy rights become too great, policies are justified to ignore them. At first notice, this appears to be very convincing. Of course, every society must exercise a certain degree of control. Britain's CCTV is widely known as a 'friendly eye in the sky, not big brother' since 1961 (Solove, 2015). One cannot oblige police departments to restrain from the exchange of potentially useful information. After all, in case of a manhunt across state borders, the police needs to share valuable information to successfully prevent any harm directed at citizens. Hence, one could certainly argue that § 26 and § 27 of the PoIG NRW must enforce a necessary evil to combat terrorism. And in light of a terrorist attack harming the data subjects privacy, appears to be the lesser evil. For this justification, some ground rules have been set by Walzer (2015) detailing when rights must give way for a greater evil. First, the consequence of not violating rights must be significant. Second, the catastrophe must have certain degree of imminence. For example, in the dusk of WW2 allies looked in sight of victory. Hence, infringing upon the rights of German non-combatants was seen as a necessary evil (Taylor, 2017).

In case of the PoIG NRW, case one of Walzer's model could be satisfied. It might be an open question whether the degree of security guaranteed through the data collection is large enough. Nevertheless, consequences of a large scale terrorist attack could be tremendous to Germany and its citizens. However, case two of Walzer's model is certainly not satisfied within the PoIG NRW. In case of § 20c data is collected from the data subject to figure out whether an attack is happening in the first place, not to go after imminent suspicion. Hence, a lesser evil explanation does not account for the surveillance practices throughout the PoIG NRW.

The second justification worth noting for this work is the 'rights forfeiture justification'. Individuals can be thought to lose their rights if they have acted in ways that involves forfeiting those rights. (Taylor, 2017). Consider person A attempting to murder person B. In order to defend him or herself person B hits person A in the head. Under regular terms this would be a criminal offense. But since person A wanted to kill person B, person A has forfeited its right of protection. However, it is not

only through immoral actions that individuals are thought to forfeit their rights. Because all citizens benefit from the product that the state provides, they are under obligation to contribute something towards their production (Taylor, 2017). Both the PoIG NRW as well as the KPL employ this justification. And it does appear very convincing with regards to the threat of terrorism. § 20c, § 27, §26 and § 30 as well as the KPL describe a condition under which the police is allowed to penetrate the KPL, or private sphere, of the data subject. It is argued that if a conversation reflects a past or imminent crime, any protection through the KPL becomes invalid. Political justifications made by the SPD, CDU and FDP also detailed that privacy is a cost that it justified through increased security. This, in return, implies that if one benefits from the increased security that a data collection regime generated, one has no right against some of one's own personal data being collected by the regime (Taylor, 2017). However, in case of the PoIG NRW, equal extraction of data does not involve equal distribution within Germany. Some will find the given data collection more costly than others, simply because they are less willing to permit their personal data to be used. In addition, different groups of people might have greater or lesser need for security and ensuring fairness might involve adjusting the costs in a number of ways to reflect this (Taylor, 2017).

This work does not argue that any data collection is impermissible by itself. However, given that data collection appears to be neither fairly organised nor democratic, none of the outlined practices in the PoIG NRW should be regarded permissible. The two points raised against my argument, hence, prove to not justify data collection, distribution and processing practices raised throughout the PoIG NRW. Although they certainly legitimise practices to a certain extent, justifications swiftly appear to be weak. These justifications do not account for an incomplete comprehension of what constitutes a harmful activity to individual privacy.

6. Findings

So far, both (1) the Kernbereich privater Lebensgestaltung as well as (2) enabled infringements upon privacy through the PoIG NRW have been worked out. What do the identified harmful activities teach about the perception of privacy? Allow me to start with the overarching framework provided by the Kernbereich.

6.1 Privacy in the KPL

The KPL reveals a prospective conception of privacy to which any surveillance practice and policy must adhere. Three striking characteristics must be mentioned at this point.

First, although partaking members of a conversation as well as the space of a conversation or monologue is considered in the KPL, it is ultimately the content of a conversation or monologue that will determine whether something is deemed private. Second, the KPL connects privacy to intimacy and vulnerability. The KPL is understood as a deeply personal sphere in which the individual can express and communicate his or her most personal sentiments and emotions. Third the KPL puts strict limitations on state interference in private lives, any limitations and prohibitions to penetrate the KPL will be abolished once national, societal or governmental security is at risk. Both the KPL as well as a number of sections that were previously explored express that privacy is lost if the data subject poses a risk to eventually engage in terrorist activities, for example. This perceptions reflects a common understanding of privacy, especially in light of counterterrorist policies in the 21st century. It appears that privacy and security are

understood as mutually exclusive concepts. Hence, more robust privacy rights can only be introduced on the expense of national security. In return, stricter security measurements will and must penetrate the KPL to establish and guarantee security.

The KPL provides a valuable insight into what is deemed private and personal according to German law. Following, if the understanding of privacy is flawed and limited within the KPL, so will be the policies in practices. However, the notion implied by the KPL is generally formulated in order to apply it to a variety of cases. The KPL determines which limitations must be placed on surveillance practices and policies. Hence, the KPL only allows to work out an *estimated* conclusion of how privacy is conceptualised in the PolG NRW. The pressing question arises whether detected problems within the limitations that are legally placed upon surveillance practices are reflected in the newly introduced regulations.

6.2 Privacy in the PolG NRW

The analysed paragraphs show (1) a flawed understanding of what kind of privacy must be protected, (2) serious infringing upon personal privacy and (3) security risks in the way data is stored and processed.

Firs, the flawed understanding of privacy employed by the PolG NRW can be seen through the second and third cluster of activities in Solove's taxonomy. Neither the PolG NRW nor the KPL display awareness that processes of (1) data processing and (2) data distribution have to be identified as privacy risks as well. Only acts of information gathering have limitations placed upon them. Neither data aggregation, secondary use, storing nor increased accessibility are recognised as harmful activities. This is also reflected in the KPL. As it has been established privacy protection limits itself within the KPL to the act of information gathering. This limitations does *not* allow to consider processes that follow data gathering to be considered as potentially harmful activities. The analysis has shown that § 22, 22a, 23, 24, 26, 27 all enable and facilitate information gathering, information processing and distribution activities that must be recognised to infringe upon privacy. The only protection in place against activities in these clusters are deleting obligations, which only scratch the surface of harmful activities within processing and distribution that can be harmful to the data subject. Privacy protection both the PolG NRW and the KPL only consider information collection to be harmful. And even within information collection, formulations remain vague, regulatory systems to control surveillance practices render themselves obsolete in case of § 20c.

Second, the PolG NRW infringes upon personal privacy through § 20c. As per my analysis, the permission to conduct telecommunication surveillance of messenger services is hardly defensible. The only protection in place, the Kernbereich privater Lebensgestaltung, is easily avoided. Legally, an investigator must determine beforehand whether he or she will infringe upon privacy. However, the very content that comes out of the telecommunication surveillance will determine whether the surveillance was permissible. At this point, the police will have already harmed privacy rights of a potentially innocent citizen. While any data would be deleted if the data subject turns out to be innocent, the privacy of the data subject has been breached without notice to the data subject. To be fair, § 20c does have limitations in place to protect dignity and the KPL of the individual. However, as previous sections already illustrated the focus of privacy protection in both § 20c and the KPL is flawed. Rather than focusing on protecting secrecy, as seen in the emphasis on Kernbereich, a law that potentially enables

infringements upon privacy *must* anticipate practical and applicable harms and problems caused by surveillance. Merely referring to a private sphere that shall remain untouched by state interference, formulates privacy concerns in such an abstract way that it becomes increasingly harder to define and apply to cases. Additionally, all paragraphs of the PoIG NRW that were reviewed so far, fail to allow the data subject to know about the data that others have about him or her and its handling and use. By EU Law, right of access and correction concerning collected data must be provided (Solove, 2010). If the data subject is left in the dark about the records maintained about him or her by government agencies and businesses, the data subject grows increasingly vulnerable and uncertain.

Third, in light of the uncomplete understanding of privacy, data is stored for an alarmingly long time without scrutiny. The 'Bundestag Hack' exemplifies that no network is completely safe. Anonymisation measurements would do little to combat this. However, the Police does not even need to anonymise data that is shared online, across precincts and across county state borders within Germany.

6.3 Conclusion and Final Thoughts

No research has been conducted yet that discusses surveillance policy the privacy taxonomy as well as conceptual analysis. Future research might improve through the usage of both a taxonomy of privacy and conceptual analysis in surveillance and policing policy. First, the taxonomy of privacy allows to identify activities, rather than focusing the discussion on abstract and vague interests of why privacy is worth protecting. Second, working about the perception of privacy allows to identify the root of problematic surveillance practices. This allows to work out better suggestions and more applied accounts on (1) what is worth improving and (2) why it is worth improving.

In this thesis, I have demonstrated how the elusive nature of the concept of privacy is at root of why discussion surrounding infringements upon privacy has proven to be tedious and not well articulated. Surveillance practices now available to the police, enabled through the newly revised PoIG NRW, pose an alarming threat to privacy. The privacy taxonomy by Solove (2010) allowed me to shed light on the fact that the conception of privacy reflected both in the (1) PoIG NRW as well as (2) the KPL map a rather singular perception of privacy. Since the revised PoIG NRW was implemented by December 2018, practices of policing following this new law are not yet known. Often times, there is a gap between law and practice. On a theoretical side, however, the introduced changes pose an alarming threat to privacy.

Throughout this analysis it became apparent that privacy is seen at risk, *only* when people are being surveilled. This is formerly recognised throughout the Kernebereich and PoIG NRW. As per the previous analysis, privacy can be harmed through activities that follow the data collection process. The storing, combining, aggregating, and second using of data bears a risk. These processes are not legally recognised to pose a threat to privacy in Germany. This comes as no surprise. If the very basis for privacy protection in Germany, the KPL, does not consider anything beyond the act of watching and listening to harm privacy rights, no new regulation will start to consider more wide-reaching and abstract activities that harm privacy. Any surveillance policy and practice is limited by the KPL both in a positive as well as in a negative sense. Considerations taken to protect the data subject from surveillance work in so far as that they put strict regulations on how data can be acquired. However, anything beyond is not considered. Disregarding important processes of data handling that follow the act of surveillance itself puts the individual at serious risk. Hence, present and future policy must employ a

more thoroughly developed understanding of privacy in order to anticipate currently and previously disregarded harmful activities.

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Figures:

Figure 1. A taxonomy of privacy. Adapted from 'Understanding Privacy', by Solove, 2010, Cambridge MA: Harvard University Press.

International Differences in Prison Architecture: What the United States Can Learn from Germany

Maximilian Grönegräs¹

ABSTRACT

This paper examines the differences between the architecture of prisons in Germany and the United States (US). While in Germany, prison design is employed to maximize the privacy of the inmates as well as their freedom of movement, in the US, the close surveillance of the prisoner is regarded as a necessary component of his strict punishment. Several American politicians, academics, activists and journalists regard the German approach towards incarceration as a model that could potentially contribute to an improvement of the prison system in the US. A major obstacle on the way towards betterment are, however, the owners of numerous private American prisons, who employ their inmates under inhumane working conditions that are comparable to slavery. Within the context of this debate, I have interviewed three architects, Edgar Muth, Michael Eschwe and Michael Wächter, who all have either been or currently still are involved in the structural design of German prisons. Their descriptions of generously equipped cells, common residential groups and modernly designed showers draw an image of a prison system the United States could have one day, if the country would be willing to learn some lessons from the German example.

1. Introduction

In the first century BCE, the Roman author Vitruvius formulated the earliest known definition of architecture and its obligations. He believed that architectural structures should be durable, useful and beautiful (Fransson, Giofrè & Johnsen, 2018, p. 21). Numerous scholars have since then argued that, in order to fully understand the functional principles of architecture, one has to move beyond these three simple points. They claim that "Architecture is never neutral. It is at all times, and places involved in exerting power." (Fransson, Giofrè & Johnsen, 2018, p. 24). An architectural work can thus have political qualifications, as it is not only based on the political ideologies that are dominant within a respective country and during a respective time but may also allow some individuals to take control over others (see for instance Atkinson, 2003; Dovey, 1999; Winner, 1986).

A place in which this second position on architecture, focussing on the power it holds, is of especial importance is the prison, an institution designed for the "deprivation of one of the most cherished features of human life, individual liberty" (Coyle, 2005, p. 1). At the beginning of the twentieth century, researchers were reflecting on how the design of this specific type of buildings could be approached as cost-efficiently as possible. Robert L. Davison argued that one should always carefully consider a prison's economic height, meaning that it is always cheaper to build one tall building, rather than several smaller ones (1931, p. 34). A famous prison design, based on financial reflections like these, was Jeremy Bentham's panopticon (1995). The surveillance mechanism created by the structure of this building was supposed to allow the cheap and efficient exertion of disciplinary power (Foucault, 1995; Kammler, Parr

¹ Maximilian Grönegräs received a bachelor's degree in Arts & Culture at Maastricht University in 2013. At the moment he is working as communications operative for the Bundesverband Flachglas e. V..

Contact: maxgroenegraes@outlook.de

& Schneider, 2014). Although the panopticon has never been built, the conservative and inhumane approach towards incarceration that it represents can be considered to still be very much reality in the United States. The harsh punishment of the offender is here widely regarded as the only way to keep the general society safe, which reminds of the utilitarian ideals Bentham believed in (see for instance Frank, 2018; Jenkins, n. d.; Surico, 2015). Several European countries, such as Germany, in contrast, focus on the rehabilitation, rather than on the punishment of the prisoner (see for instance Chammah, 2015d; Duran, 2018; Turner & Travis, 2015). Because of this large international difference, the Vera Institute of Justice, an American, independent, non-profit research and policy organization, has organized several visits to Germany, in order to learn about its national approach towards incarceration (Frank, 2018; Subramanian & Shames, 2013).

The multiple references inserted above demonstrate the extensive amount of research that has already been conducted concerning the political dimensions of architecture, as well as the use of structural design in order to establish power and control within the particular context of the prison. The American willingness to learn from the German prison system is, however, a rather recent phenomenon, that can be allocated to the twenty-first century. Because of its topicality, the sources available on comparisons between the German and the US prison system largely consist of journalistic articles and blog posts (see for example Chammah, 2015a; Duran, 2018; Turner & Travis, 2015). Limited academic work exists on this particular topic, a gap, to whose filling this paper is intended to contribute. I have therefore based my own academic work on the following research question: To what extent can German prison architecture serve as a model for the improvement of US prison architecture? During my research, I have additionally noticed that among the various experts, who had a chance to speak within this international debate, there has been almost no architect. As the architectural aspect of imprisonment, as well as the intended impact of materiality on the prisoner, are what interest me the most, I decided to interview three German architects. All of them have been or still are involved in the design of correctional facilities within Germany.

Following this introduction, this paper continues with a review of the most relevant academic voices commenting on the ideas that architecture possesses political attributes and that it can be the key to power and control. Subsequently, the differences and similarities between German and American prison architecture are closely examined. This comparison is pursued by a detailed evaluation and analysis of the statements the three interviewees provided me with. The discussion concludes with the lessons the United States might be able to learn from the German approach towards the architectural design of prisons.

2. Literature Review: Three Theories on Architecture

This section reviews different bodies of academic literature, which support three main theories. The first of these argues that technical objects of human creation, architectural constructions being among them, can hold certain political qualifications. The second theory is closely connected to its predecessor, postulating that architectural design can be used in order to impact and control human behaviour, making it possible, by way of example, to exclude a specific category of people from a certain area. Finally, the last thesis claims that both the political dimension of architecture, as well as its direct relation to disciplinary power play an especially important role within the prison. This theory is simultaneously to be seen as an explanation for the focus of this paper on this specific kind of societal institution.

The idea that human artefacts can be regarded as something political, serves as a theoretical footing of this literature review. Langdon Winner discusses it lengthily, defending the point that technology may indeed provide specific groups of people with power and authority. Substantiating his theory with an

example, Winner refers to the American public official Robert Moses, who from the 1920s to the 1970s oversaw the construction of circa 200 bridges on Long Island, New York. According to Winner, these bridges were “deliberately designed to achieve a particular social effect” (1986, p. 53), namely to restrict the access of racial minorities and low-income groups to Jones Beach, a public park. As these people could usually only afford to move around via public transport, the bridges were constructed so low, that busses would not fit underneath them. (Winner, 1986, pp. 53-54).

Bernward Joerges calls Winner’s accusations against Moses into question, by arguing that they are based on an insufficient amount of evidence, while the evidence existing cannot even be considered reliable. Robert Caro, who wrote the biography of Moses, refers to only one single source that is supposed to prove Moses’ racist intentions. He quotes a regional planner on Long Island named Lee E. Koppelman, who had measured the height of some of the bridges himself. In a rather simplistic manner, he justifies the fact that he did not examine all of the bridges: “I knew right then what I was going to find” (Joerges, 1999, p. 7). Joerges criticizes further, that during the time of the construction of Moses’ bridges there has been a regulation in the US, according to which trucks, busses and commercial vehicles were simply forbidden to drive on all parkways. Therefore, even if Moses indeed wanted to hinder busses from driving on the parkways to Jones Beach, he would not have needed to (Joerges, 1999, p. 11).

Steve Woolgar and Geoff Cooper share Joerges’ scepticism towards Winner’s hypothesis, however, only to a certain extent. Contradicting both Winner’s and Joerges’ argument, they provide a timetable which proves that a so-called Jones Beach Bus, which drove on the parkways on Long Island, actually existed. Winner’s theory of the politics of technological artefacts, Woolgar and Cooper claim, is, therefore, resting on a flat wrong example (Woolgar & Cooper, 1999, pp. 434-435). The two authors are, nevertheless, fascinated by the story of Moses’ bridges, which they designate as an urban legend. Among its unique characteristics are that it concerns a highly simplistic technological artefact, which it directly connects to a specific human intention (Woolgar & Cooper, 1999, p. 439).

While the idea of architecture as key to control over human behaviour has already been clearly implied by the preceding authors, it is expressed even more explicitly by the following ones. Similar to Winner (1986), Kim Dovey recognizes the power which lies within objects of human creation. Rather than on technological artefacts, however, he specifically focusses on architectural design. He differentiates three primary syntactic relations, describing possibilities in which rooms can be arranged in relation to one another. The linear syntax allows movement through different rooms along just one single line, to leave the building one can therefore just take one single route. The looped syntax enables people to move through the rooms in a circle, leaving open multiple pathways that allow to switch positions in an unpredictable manner. Within the fan structure, access to all rooms is possible proceeding from one single point, that, therefore, offers an ideal centre of control over movement inside the whole building (Dovey, 1999, pp. 21-22).

Just like Dovey (1999), Rowland Atkinson uses the power that inheres within architecture as the underlying idea of his work and applies it to the management of public spaces in Britain. The idea that the access of certain groups of people to spaces needs to be controlled originates, Atkinson argues, in the broken windows theory that has been developed by James Q. Wilson and George L. Kelling. They claim that ignoring the signs of smaller crimes within a neighbourhood, such as broken windows or graffiti, will lead to a local increase of both the quantity and severity of crime. A commonly accepted answer to this is zero-tolerance policing, “the strategy of coming down hard on minor offences” (Atkinson, 2003, p. 1837). The exclusion of people, who are guilty of even only these minor offences, from public spaces can be achieved via various measures. In spaces like shopping malls, non-consumption is already a form of

deviance. Persons without the money to buy something are architecturally excluded, by for example equipping benches with high armrests, so that the homeless won't be able to sleep on them. Another quite common strategy is the use of surveillance cameras, which enable a visual categorization of individuals and the places where they are believed to belong (Atkinson, 2003, pp. 1833-1834).

Katherine Beckett and Steve Herbert examine the use of broken windows policing in the United States, focussing especially on the common practice of trespassing. Based on recent innovations in urban social control in the country, the police have the right to give exclusion orders, which prohibit an individual to enter a specific part of a city for a certain period of time. The amount of power that is given to state authority is shocking, as officers "can still trespass anybody for anything" (Beckett & Herbert, 2008, p. 11) and even completely search somebody who has already been trespassed, without giving any other reason. Breaking an exclusion order is considered as a serious crime, which requires immediate and strict punishment. Unsurprisingly, this offense frequently serves as the sole basis for an arrest (Beckett & Herbert, 2008, p. 12).

A specific category of buildings in which the political dimensions of architecture, as well as power and control over human behaviour, achieved, among others, through architectural design, plays a fundamentally important role, is the prison (see for instance Davison, 1931; Wall, 2016; Wilkinson, 2018). One of the best-known prison designs is Bentham's panopticon. The utilitarian philosopher envisioned a circular-shaped building, subdivided into numerous cells, in whose centre a tower would be located. A guard standing in the tower would be able to look into the inward of every single cell, while the inmates locked in the cells were incapable of seeing inside the tower (Bentham, 1995). For Michel Foucault, the panopticon depicts an immensely powerful surveillance mechanism, as it gives the inmates the feeling of potentially being watched at any moment. The institution is, therefore, an ideal illustration of his claim that "visibility is a trap" (Foucault, 1995, p. 200). According to Foucault's theory of panopticism, surveillance has become an omnipresent as well as an ordinary component of everyday life in the Western society of the 20th century. It has become a form of disciplinary power, which is supposed to control human behaviour in a way that is as cheap and as effective as possible. The panopticon depicts an ideal embodiment of these aims, as its guards are arbitrarily interchangeable and, while monitoring the inmates, are simultaneously monitored by visitors (Catucci, 2018, p. 334; Kammler, Parr & Schneider, 2014, pp. 280-281).

While Foucault uses the prison as a metaphor for larger societal structures, Erving Goffman focusses on the life of the prison inmate. He conceptualizes prisons as so-called "total institutions" (Goffman, 1962, p. 4), whose main characteristic is the strict and absolute separation of the inmate from the outside world. They are ruled by totalitarian regimes, that take full control over all aspects of the inmates' individual life (Fransson, Giofré & Johnsen, 2018, p. 20). The relation between prisoners and staff, Goffman argues, is characterized by mutual, hostile prejudices, consisting of the staff perceiving inmates as bitter, secretive and untrustworthy, and inmates seeing the staff as condescending, highhanded and mean (Goffman, 1962, p. 7).

Elisabeth Fransson, Francesca Giofré and Berit Johnsen give voice to tones that are similar to the ones by Winner (2006), Woolgar and Cooper (1999) and Dovey (1999) by arguing that "Architecture is never neutral. It is at all times, and places involved in exerting power" (Fransson, Giofré & Johnsen, 2018, p. 24). The various chapters within the edited book by the three authors are devoted specifically to the architectural design of prisons, and how materiality impacts the way in which humans experience their time in captivity (Fransson, Giofré & Johnsen, 2018, pp. 20-21).

How far an architect's intentions while designing a prison and an inmate's perception of the final result can potentially diverge, is demonstrated within an opening report by John K., who served his sentence in the Norwegian Halden Prison for several years. The prison's architect had had the aim of creating a space where inmates would be able to lead a humane life, similar to the one in freedom. Nevertheless, K. did not really care for the high materialistic standards the prison offered, in the form of for example colours or furnishings, but instead missed a closer, humanitarian relationship to the staff (K., 2018, pp. 33-34).

In a subsequent chapter, Marie Fridhov and Linda Grønning conduct a comparison of four Norwegian prisons. Oslo Prison was built in 1851 and is characterized as panoptic by the two authors, as its design was based on the assumption that strict isolation of the inmate was necessary to give him the opportunity to regret his crimes. Ullersmo Prison exhibits rather industrial properties, prisoners were not allowed to socialize among each other, receive education or employment. Bergen Prison is exemplary for the progress of humanitarian values in Norway, because it was constructed in a way that respects the dignity of the inmates, as well as their rights to healthcare and education. Finally, the already mentioned Halden Prison has been criticized for offering too much luxury to its inmates, and therefore resembling a hotel, rather than a penal institution. The design of the facility is, however, defended by the idea that the punishment of the prisoner should not go beyond the deprivation of his liberty and, therefore, not impact his everyday life (Fridhov & Grønning, 2018).

In contrast to the claims by K., the findings by Franz James, which he presents in his chapter, demonstrate that material equipment of a prison cell can actually have a profound impact on the feelings and behaviour of the inmate. James interviewed three female inmates at a Scandinavian prison, Nina, Susan and Gunilla, who explained to him the ways in which they use the little furniture they have, in order to withstand their time in captivity. Nina has arranged her cell as cosily as possible, as it is important to her to feel at least a little at home. She reads a lot because it helps her to forget about the passing of time. This escape from reality is also taken up by Susan, who stresses the importance of having the possibility to look out of the window, even though the view might be blocked by bars (James, 2018).

Having illustrated the three fundamental theories my own research rests on, namely that architecture has political qualifications, that it can be the key to power of some humans over others, and that both of these characteristics of architectural design are of especial relevance within the prison, this paper is now turning to the approach section. It offers a detailed description of the methods I have made use of in order to gather information on the differences between German and American prison architecture.

3. Method

As has already become clear through the preceding literature review, one of the key methods I have made use of for this paper has been literature research. While employing this method, I had two major aims. The first of these has again already been illustrated by the review of academic literature I consider as relevant for establishing a theoretical basis of my own empirical research. The hypothesis that both the political qualifications of architecture, as well as its direct relation to surveilling and controlling a space are of unique relevance within the prison, is to be regarded as a justification for my interest in this facility. The second reason for choosing this approach has been the aim of learning about the differences and similarities between the German and American approach towards incarceration. As the academic research on this particular topic appears to be rather limited, the circa 15 sources I have consulted within this

domain are of a great variety. They not only include books and journal articles, but also journalistic articles, blog posts and audiovisual material. The blog posts have all been written by employees of the Vera Institute of Justice in 2018 in the context of one of its trips to Germany and can be found on its website. The media articles refer to these visits as well and have been published by the Canadian-American magazine Vice and the American newspaper The New York Times in a period from 2015 to 2018.

There are two major reasons for my decision to focus on the particular comparison of the prison systems in Germany and the United States, which is going to take up the first part of the subsequent analysis. Firstly, the Vera Institute of Justice has already led several visits to German prisons, joined by “people concerned about the United States criminal justice system” (Turner & Travis, 2015). Secondly, Germany is both my home country and the country I am currently living in, which furthered my curiosity in its national prison system and broadened my possibilities in conducting my own empirical examinations.

Expanding my knowledge about the meaning of prison architecture and its different peculiarities within the two countries caused the desire for collecting some data myself and integrating them into the overall debate. It is noticeable that while discussing whether the US can actually learn some lessons from Germany in terms of designing its prisons, architects have so far been consulted rather seldom. As I regard architecture as one of the most fascinating aspects within this subject area, I decided to interview three different German architects, who have been or still are responsible for undertaking structural changes within two different German prisons. Edgar Muth has been involved in the construction of the Justizvollzugsanstalt (JVA) Aachen, a project he came into contact with right after he had obtained his university degree. Michael Eschwe has been assigned to make renovations as well as constructional extensions within the JVA Heinsberg, a juvenile prison located in North Rhine-Westphalia, Western Germany. Michael Wächter is currently responsible for renovating the derelict shower blocks within the very same facility. All three interviews have been qualitative as well as semi-structured, meaning that they have been based on eleven to fourteen main questions, which during the conversations have been complemented by numerous sub-questions on my part. Among the advantages of this type of interview, in contrast to survey-based interviews, are that it provides “better access to interviewees’ views, interpretations of events, understandings, experiences and opinions” (Byrne, 2004, p. 209) and that it “allows interviewees to speak in their own voices and with their own language” (Byrne, 2004, p. 209). The interviews were conducted on the following dates: Muth on 23 May 2019, Eschwe on 21 May 2019, and Wächter on 13 May 2019. Hereafter, I simply provide names when referring to their interviews. Two of the interviews took place face to face, the third one was via the telephone. The interviews lasted around 30 minutes each. After having asked the respective interviewees for their permission, I recorded the conversations with my phone. All interviews were conducted in German and translated into English, in the remainder of the paper they are therefore presented in a paraphrased form and not directly quoted. I gave all three interviewees the opportunity to proofread their responses, two of them made few, minor changes to their original formulations.

4. Analysis

4.1 The German and the US Prison System in Direct Comparison

In order to give a clear illustration of the striking differences between the prison systems in Germany and the US, it is beneficial to start off with a few telling numbers and statistics. According to Walmsley’s twelfth edition of the *World Prison Population List*, the prison population in the US amounts to a total of 2,121,600

inmates, being part of an estimated national population of 323.9 million. This makes the US the most imprisoned nation in the world. Germany, in contrast, has an estimated national population of 82.93 million, of which 62,194 are prisoners (Walmsley, 2018). During one of his speeches, Santa Clara County District Attorney Jeff Rosen makes use of statistics, according to which from 1925 to 1975 the US incarceration rate has remained quite stable, meaning that for this whole period of time around 100 of 100,000 Americans have been imprisoned. From the mid-1970s until the present, however, the incarceration rate has dramatically increased up to around 700 prisoners per 100,000 citizens (Rosen, 2017). A report produced by the Vera Institute of Justice specifically compares the US with Germany and the Netherlands. In 2011 the US had an incarceration rate of 716 per 100,000, Germany had 79 per 100,000 in 2013, and the Netherlands had 82 per 100,000 in 2012 (Subramanian & Shames, 2013, p. 7).

While considering these unambiguous numbers, the question for their exact origin becomes inevitable. In the late 1960s, the United States suffered from deep economic stagnation. Bankruptcy and the expansion of modern ghettos led to a nationwide wave of violent crime, which in turn caused an increased fear among the American population of falling victim to felonies. Responding to the concerns of the people, politicians started to campaign with their toughness on crime. The approach of broken windows policing, mentioned as well by Atkinson (2003) and Beckett and Herbert (2008), gained exceptional popularity during this era. Additionally, increased imprisonment received an economic dimension, as the federal government began to pay certain sums to the states, depending on their respective incarceration rates. More prisoners, therefore, always meant more money (Surico, 2015). US prisons are, however, not only the key to public but also private profits. In 1985, Texas was the first state to privatize some of its prisons, opening up a promising market, that has since then been growing steadily. According to a statistic that has been updated in August 2018, the number of people housed in private prisons has increased by 47 percent since 2000. There is, however, significant variation between the different states. While New Mexico puts over 40 percent of its inmates into private institutions, in 23 states there do not exist any privatized prisons at all (Private Prisons in the United States, 2018). This does, nevertheless, not change the fact that the corporations which run private prisons in the US, such as GEO Group and Core Civic, try to pointedly attract large investors, including, for example, Boeing, Motorola, Microsoft and Dell. US prisons are able to offer these companies something which they are otherwise only able to find in Third World countries: an extremely cheap workforce. Imprisoned workers have the advantage that they “are full-time, and never arrive late or are absent because of family problems; moreover, if they don’t like the pay of 25 cents an hour and refuse to work, they are locked up in isolation cells” (Peláez, 2019). Various authors argue that this abuse of prisoners originates in the US history of slavery and therefore is to be regarded as a continuation of an old tradition (see for instance Frank, 2018; Motes, 2018; Peláez, 2019). A loophole within the 13th amendment to the US Constitution makes it legally possible to factually enslave prisoners, as the amendment admittedly abolishes slavery, but nevertheless, allows the use of involuntary labour as a punishment for crime. A commonly drawn comparison therefore even equates modern US prisons with the concentration camps that were operated under the command of Nazi Germany (Frank, 2018; Peláez, 2019).

Given Germany’s apparent success in keeping its incarceration rates at a minimum, the Vera Institute of Justice regards the European country as a role model in this area. Vera is an independent, non-profit, national research and policy organization in the United States, whose three main goals are the securing of equal justice, the ending of mass incarceration and the strengthening of families and communities. Its specific aims for the US prison system are to end the widespread use of solitary

confinement, protect prisoners from sexual assault, and expand educational possibilities (Ending Mass Incarceration, n. d.). Hoping that the acquirement of more knowledge about the German prison system might be useful for fulfilling these objectives, Vera has organized its first trip to the European country in 2013, two further ones have followed since (Frank, 2018; Duran, 2018). The diverse teams that joined these excursions consisted of American politicians, academics, activists from left and right, journalists and for one time even a convicted murderer (Rosen, 2017).

During these trips, the American visitors have recognized two major characteristics of the German prison system. Firstly, it is based on the inviolability of human dignity (Duran, 2018). Similar to the cruelty shown towards prisoners in the US, the decidedly more humane conditions within German prisons can be explained by looking back in history. Article 1 of the German Constitution, written after the ending of the Second World War, clearly states that "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority." (Rosen, 2017). The constitution is representative for a new generation of Germans, who have confronted their own past and made an effort to ensure that something as horrible as the Holocaust would never happen again (Frank, 2018). The most fundamental rights, which German prisoners have, are individual expression, self-regulation of daily lives and privacy. The first of these rights includes that the inmates are allowed to wear their own clothes and decorate their cells. They may, furthermore, organize their daily lives themselves, by for example cooking their own meals, during which they even use dangerous objects like knives (Chammah, 2015a; Chammah, 2015f; Rosen, 2017; Subramanian & Shames, 2013). The privacy of the inmates is respected by providing them with keys, which they can use to lock their cells. Guards obviously still have the keys, but nevertheless, knock before they enter. Additionally, the surveillance of the prisoners is reduced by using security cameras as sparingly as possible, making German prisons in no way comparable to the panopticon anymore (Bentham, 1995; Chammah, 2015a).

The second major property of the German approach towards incarceration is the importance ascribed to the successful resocialization of the prison inmate. The German Prison Act declares that "the sole aim of incarceration is to enable prisoners to lead a life of social responsibility free of crime upon release, requiring that prison life be as similar as possible to life in the community" (Subramanian & Shames, 2013, p. 7). In order to reach this goal, a healthy relationship between prisoners and guards, contrary to the relationship of distrust described by Goffman (1962), is regarded as indispensable. Staff members have to complete extensive training, including self-defence and the basics of how to effectively communicate with a prisoner as well as criminal law and educational theory. Communication is regarded as key to making long-term contact between prisoners and staff less dangerous (Chammah, 2015c). In addition to that, inmates are offered various therapeutic and educational possibilities, making sure that they have good chances for re-entering the labour market after their release (Chammah, 2015b; Chammah, 2015e).

4.2 Interview with Edgar Muth

Edgar Muth was 28 when he finished his architectural studies at the University of Aachen and began his first employment at the architect's office Wachenfeld und Endert. The office had previously already built the JVA Wuppertal and was afterwards assigned with the construction of the new JVA Aachen. Muth, therefore, became involved in this comparably big project at a quite early point of his career. Concerning this particular interview, it needs to be explicitly mentioned that the architectural work described was conducted around 30 years ago. Muth assumes that he contributed to the construction of the prison from

1985 to 1988, and is, therefore, talking about memories that have become increasingly vague over time. Furthermore, various architectural changes were subsequently undertaken in the JVA Aachen, which is why this interview does not represent the current state of the facility. Similar to the JVA Heinsberg, the prison nevertheless already possessed certain characteristics at the time of its construction, which resemble the German, humane approach towards imprisonment.

It was definitely a gigantic project for somebody, who just freshly came from university, which I firstly had to come to terms with. Afterwards, I also never had anything to do with the construction of prisons again, because it is too specialized for my taste (Muth).

Although Muth wasn't a fully qualified architect at that time, he nevertheless gained deep insights into the detailed planning of the new building.

Then I received the assignment to finish the shell construction tender for this project. Within this tender, every single service was described separately: from every pillar to every brick and the concrete within the walls and the ceiling. Even a breach in a wall is described as a separate item. Later, the contractors then made offers on the basis of this report (Muth).

Muth and his colleagues were strictly limited in their work by the exact standards the building contractor provided them with. This also the major reason why Muth does not regard prison design as a particularly interesting specification of architectural work.

For one thing, all measurements are surely predefined to the centimetre. The structures, the window screens and the locks also all had special building styles and requirements. The artistic freedom of the architect is here obviously far smaller than with other projects. The choice of materials was of course predefined by the Hochbauamt, which supervised the project.

Architecture is highly interesting, even after the 35 years that I am now in this job. There are lots of interesting kinds of buildings one can develop and prisons are definitely not among them. Surely, these have very complex requirements and a lot of specialties, but an office building, a hospital, or also a residential house have to achieve different things and are, in case of doubt, at least just as complex (Muth).

One of the most important aspects of Muth's work was to limit the possibilities of the prisoners to commit vandalism. This was reflected in the choice of material, as well as the placement of constructional components.

The materials that were essentially used for the façade were red brick and zinc plate. These were of course materials, which were used constantly at that time, as they were seen as fancy and hip back then. Behind it, there was obviously concrete. In the inside of the building, walls were built with bricks, plasterboard wasn't used at all. It was, therefore, a classic solid construction.

Even the bathroom with a sink, which was a novelty during that time, was made out of indestructible materials. To my knowledge, the sink and the toilet were made of stainless steel and not of porcelain, but I can't tell that exactly anymore. At a lot of locations, one constructed especially securely, because surely every inmate is overcome by frustration at some point and just wants to destroy everything. Naturally, there were also special security measures at a prison window. A popular trick was to take a bedsheet or a towel and a stick and to then screw these materials into the window screen. This can set free enormous powers, such a window screen, of course, has to be able to withstand that (Muth).

Although the JVA Aachen which Muth had seen no longer represents the state of the art of German prison architecture, it still illustrates the national development towards a form of incarceration that is based on the recognition of human dignity. Especially the privacy of the prisoners, as well as their successful reintegration into society seem to have been in the foreground.

A reform at that time was that one had a separate bathroom within the cell. Not with a shower, admittedly, but still with a sink and a toilet. Up until then, these just hung at the wall in older prisons, this was given up then. There were mostly solitary cells within the JVA, but some shared cells as well. In these it is kind of unpleasant if one inmate is sitting on the toilet and the other is trying to eat his sandwich. The innovation was therefore made because of hygienic as well as privacy reasons. The topic of resocialization had been intensely discussed in the 1970s, in which lots of rules were turned upside down. All of that resulted from the considerations of the 60s and found a certain approval within the judicial system. The deprivation of liberty was still demanded, of course, but under humane conditions. In the end, one wants to release people, who then don't make themselves conspicuous again and become a valuable member of society (Muth).

Next to this new focus on the inmates' privacy, Muth describes the fundamental importance of daylight as well as a direct relation to the outside world, which already played a central role 30 years ago.

There was daylight in every cell. There even was a regulation in the Landesbauordnung, according to which an eighth of the basal area of a room has to be the window area. That applied to the prison cell as well, as it is a restroom. The window is certainly a necessity for the maintenance of the health of the prisoner, the bars in front of it hinder him from escaping. Humans need light, in fact, daylight as well. Previously, windows in prisons had been positioned quite high, so that the inmate admittedly had daylight, but could not look outside. That didn't exist in the JVA Aachen anymore, the windows were located at a normal height (Muth).

4.3 Interview with Michael Eschwe

From 2007 to 2012 the German architect Michael Eschwe has been responsible for both renovations, as well as constructional extensions within the JVA Heinsberg. This prison is one of five juvenile detention centres within the German federal state North Rhine-Westphalia, housing inmates who are between 14

and 24 years old (Justizvollzugsanstalt Heinsberg, n. d.). The building contractor of the facility is the Bau- und Liegenschaftsbetrieb NRW, which assigned the project to Eschwe via a tendering procedure. During our conversation, the architect recalled the rough sequence of his tasks.

I think it took five years in total. First the tendering procedure, then the planning and placing, only then we could start constructing. The construction works themselves already took two and a half or three years I think because we rebuilt the existing buildings as well. Additionally, new buildings were raised, and because there were more prisoners then, they also needed a bigger kitchen, bigger halls for doing sports and studying and a bigger infirmary (Eschwe).

As a facility of this kind is required to meet specific security standards, the creative possibilities of Eschwe were highly limited. His description of a regular cell within the JVA Heinsberg reminds of the observations made by the American participants of the trips to Germany, that have been organized by Vera (Chammah, 2015a).

Actually, everything had already been planned through beforehand. The only thing we were allowed to newly design ourselves was the façade. Within the cells, every single measurement is explicitly predefined and otherwise there hasn't been much clearance either. The cell is not allowed to be bigger than prescribed, there has to be a toilet somewhere, that is not directly visible, there is a well, through which all the installation cables are running, a bed and a desk have to be in place (Eschwe).

In order to counteract the apparent urge of some of the prisoners to destroy everything they can, Eschwe was forced to take various constructional measures. These are reflected within the design of the different kinds of cells, as well as the materials that were used for their construction.

Very hard materials are built in. The walls are made of concrete or they are brick-built and there is no plaster, which the inmates could scrape off. The fugues are sealed with particularly solid grout, which can't be destroyed. There are, nevertheless, some things which can't be prevented, the prisoners are for example still capable of destroying the windows by slamming them shut. This is just how it is, they just destroy stuff.

Within investigative custody, there are special cells. When new inmates arrive, they may be overwhelmed by the situation, simply because they are locked up. They may even want to take their lives then. For cases like these, there is an especially secured holding cell. It is divided into two floors and has a window upstairs, so that one can have a look at what the inmate is doing at any time. It is not allowed to constantly monitor inmates by using video cameras, therefore there have to be such visible cells (Eschwe).

Descriptions like these may cause doubts about the practical implementation of the theoretical values the German prison is supposed to be based on, such as the inviolability of the dignity of every inmate and the priority of his or her resocialization (Subramanian & Shames, 2013, p. 7). Uncomfortable questions arise: how is an individual supposed to lead a life in captivity, that is intended to be as close as possible to a life

in freedom, when it is locked up in such a specially secured cell, in which it becomes the target of a surveillance mechanism with panoptic traits? Special facilities like these have to be put, however, into a certain relation. Harsh disciplinary measures, such as solitary confinement, are used as sparingly as possible in Germany. The training of German prison staff even includes an extensive clarification on the potential risks of employing extreme methods like these (Subramanian & Shames, 2013, p. 13). Eschwe's words on the residential groups most prisoners in the JVA Heinsberg are allowed to live in are additionally reassuring.

The worst for the prisoners is with certainty that they aren't free, but captive. But it's warm within the prison, the inmates get three meals every day, are allowed to do sports and even educate themselves. Besides, they are allowed to hang up posters and pictures in their cells.

The prisoners are living in residential groups. Such a wing has common showers, a common kitchen, and a common recreation room with a TV and a football table. All of that is only possible, however, as long as the prisoners stick to the rules. The kitchen is kind of a highlight because when the prisoners earn money, they can even order themselves food. Then they can cook on their own, in case they want to eat something else than the regular diet. The kitchens are equipped normally and even include knives. Inmates can even lock their cells if they, for example, don't want their next-door neighbour to come in. The guard has a key, of course, to still be able to open up from the outside, but the prisoner is allowed to have at least some privacy for himself.

The education opportunities of the prisoners include a garden centre, a metalworking shop and a cabinetmaker's shop. Furthermore, one can do carcass work, electrical engineering, art, or tailoring. One can also occupy oneself with car mechanics, the prisoners have a car, at which they can practice screwing (Eschwe).

The extraordinary variety of educational possibilities that is offered to the prisoners is presumably connected to their young age. Still having their whole life ahead of them makes their successful resocialization and reintegration into the German labour market an even more pressing issue.

4.4 Interview with Michael Wächter

Four and a half years ago Michael Wächter started his project in the very same prison in which Eschwe has been working: the JVA Heinsberg. In contrast to Eschwe, however, his attention is directed towards a very specific area of the facility.

It is about six detention houses. The reason for the renovation was the fact that the existing showers in the detention houses were utterly mildewed, therefore a very serious health risk had developed. We had therefore planned an entirely new concept for the ventilation, using very unconventional means (Wächter).

The showers are a particularly interesting component of the prison, as they usually constitute a space that is entirely free of surveillance. Respecting the inmates' privacy gets especially important when it comes

to personal hygiene. The architectural design of the facilities, therefore, had to be adapted to potential conflicts erupting among the prisoners in the absence of the staff.

The showers are after all an area within the JVA, where most commonly no supervision is taking place and where one inmate could perhaps confront another. Physical violence is commonplace, sexual assaults are easily possible as well. Some prisoners, of whose conflict among each other the staff knows already, are consciously not let into the shower area together (Wächter).

Similar to Eschwe and Muth, Wächter had to deal with various attempts of the prisoners to destroy their physical environment. Within the newly renovated showers, however, they demonstrated an extraordinary richness of ideas in order to achieve this goal.

Within the first of the renovated shower blocks, it occurred for a while that the prisoners sliced the bottoms of their shampoo bottles. Thereby a funnel was formed, which they put on the showerhead, in order to be able to direct the water jet. In this way, the inmates then flooded the opposing ventilation system. The showerheads, therefore, had to be replaced. They were additionally not allowed to be usable as hooks so that the inmates wouldn't be able to hang themselves on them (Wächter).

Having made direct experiences with the vandalism practiced by the inmates, Wächter decided to make a little test for himself. He bought cheap plastic buckets and installed them in the showers as holders for shampoo bottles.

That was simply an experiment, in order to find out, whether the prisoners would recognize something that is actually to their own advantage. I, therefore, hung up these quite cheap and simple buckets, in which they can store their shampoo bottles so that they don't have to put them on the floor, where they fall over all the time. Regular bottle holders could not be installed. That would only have generated edges, which could cause additional injuries within a physical conflict. The buckets look quite funny, of course, there is even a smiling face in the front. Nevertheless, they were destroyed in a minimum of time. I think this is a pity because I think that even within the walls of the prison one could maybe still feel comfortable in his environment (Wächter).

Wächter's frustration is quite understandable. After all, he is clearly attempting to implement some of the values of the German approach towards incarceration, as he tries to provide the prisoners within the JVA Heinsberg with as much comfort as he is allowed to. Similar to the report by John K. (2018), the reaction of the prisoners demonstrates that sometimes the ideas of a prison architect do not function just as planned. Wächter has his own explanation for the inmates' destructive behaviour.

That's frustration. The inmates know that we have built something, of which we think that they won't be able to destroy it. This is why they try out again and again whether that isn't

possible after all. Thereby the most absurd ideas come up, I was surprised there myself (Wächter).

Judging on the basis of Muth's, Eschwe's and Wächter's statements, it seems that a prison architect has to find a fair compromise between security and livability. Although Wächter was limited in his creative freedom by strict standards as well, he has nevertheless managed to visibly improve the inmate's surroundings, by for example using aesthetically pleasing materials.

It is an extremely high-end ceramic product, one could even say the Rolls Royce among the ceramics. This material is used as well, among others, for the design of hotel rooms. I have taken advice beforehand and have described my precise expectations to the provider. Our choice of colour was even a bit experimental, as we used very dark tiles for the floor and a wall and light tiles for the opposing wall. That looked so fancy, that some of the staff members of the JVA told me that their bathrooms at home wouldn't look as beautiful. I think it was a special moment for the prisoners as well when they were allowed to move from the old, mildewed showers into the new ones (Wächter).

An aspect of particular importance to Wächter was the preservation of natural light. This area also belonged to one of the few ones within which the architect was able to prove his professional qualities.

In order to be able to install the ventilation system, I initially had windows bricked up. Nevertheless, this alteration obviously entailed a severe reduction of daylight. Especially within a darkly tiled room, it is uncomfortable when there is synthetic lighting only. The missing view outside is occasionally causing a strange feeling. In order to compensate that, I invented an artificial window. It's a large pane made of milk glass, bordered by a stainless steel frame, behind which there are numerous daylight LEDs. One gets the impression of standing in front of a window pointing to the outside (Wächter).

Wächter additionally showed himself impressed by the sheer size of the overall facility of the JVA Heinsberg. When he walked towards the gardening shop, he explained, and forgot the walls in the far background for a moment, he almost got the feeling of not being in a prison. The terrain is that spacious, that a hunter has to visit regularly and shoot some of the rabbits living there, in order to keep their population under control (Wächter).

4.5 Common Themes of All Interviews

Moving closer to the end of this analysis, it is reasonable to address some of the main themes that arose during all three interviews. Among these are the respect for the privacy of the prisoners, the importance of their societal reintegration, the necessary safety measures to guarantee the wellbeing of both prisoners and staff, and the design constraints which limited the creative components of the architects' work.

The privacy of prison inmates was a central topic during the American visits to German prisons, as it is directly related to the inviolability of human dignity. The fact that guards knock before they enter a cell is exemplary for a healthy relationship between German prison staff and inmates, that is based on mutual trust and respect. The possibility of the prisoner to lock his own cell from other inmates is a useful

extension of these values. A fair and balanced compromise between liveability and security is found by still providing the guards with master keys (Chammah, 2015a; Frank, 2018). According to Eschwe, both of these measures are successfully practiced within the JVA Heinsberg (Eschwe). Personal hygiene is usually a component of daily life, during which one especially prefers to remain unsupervised. Just like the cells, the showers of the JVA Heinsberg are therefore a surveillance-free space, in which prisoners are allowed to behave independently and individually (Wächter). The privacy of the inmate already played a central role during the construction of the JVA Aachen as well, as bathrooms within shared cells were for the first time spatially separated from the bed, hindering unwanted intimacy between the two residents (Muth).

The resocialization of the prisoner is what first and foremost provides the prison with its meaning, as it is hard to justify an institution which releases offenders back into society, whose criminality might even have increased during their time in captivity (O'Neil, 2016). The JVA Heinsberg works towards the goal of societal reintegration, by providing prisoners with as much control over their daily lives as possible. They are allowed to wear their own clothes and earn their own money, with which they can buy their own groceries for individual cooking. Living in residential groups additionally provides them with frequent contact with other prisoners and hinders their physical and psychological isolation (Eschwe). It was the spaciousness of the whole compound which especially caught Wächter's attention during his visits to the JVA Heinsberg. Not only the gardening centre, but numerous sports facilities as well invite the prisoner to spend time outside (Wächter). A similar design technique has been used for the Norwegian Halden Prison, in which buildings with different functions are intentionally separated from each other, so that prisoners have to go outside in order to get to places (Fridhov & Grøning, 2018; K., 2018; Vox, 2019). According to the memory of Muth, residential areas did not exist yet within the newly constructed JVA Aachen, shared cells seemed to have been the farthest one wanted to go during that time (Muth).

A persisting challenge of the prison architect appears to consist of finding a balance between providing the prisoner with a humane environment, while still maintaining his safety as well as the safety of the staff. The especially secured holding cells, constructed by Eschwe for the JVA Heinsberg and allowing a panoptic surveillance of the inmate, are to be regarded as the last option within a worst-case scenario (Eschwe). In contrast to the majority of their American colleagues, German prison guards are trained to be fully aware of the potential consequences of making use of radical, disciplinary methods, such as solitary confinement (Subramanian & Shames, 2013, p. 13). The specific design changes that were undertaken by Wächter within the showers of the JVA Heinsberg are partly the result of the already limited supervision in this area. As guards are not constantly watching every single movement of the inmates, the architecture is supposed to take over control the staff usually has and limit the behavioural possibilities of the prisoners. The exchanged showerheads, for example, are to be seen primarily as a measure for protecting the prisoners as well as the inventory from their own destructiveness. After all, offering the inmates humane living conditions still does not seem to suffice to eliminate their frustration about being held captive (Wächter). Considerations like these were also made in the context of the construction of the JVA Aachen. Design and material choices were deliberately made in order to limit the possibilities of the prisoners to hurt themselves or others (Muth).

Lastly, all three architects were unable to outlive their professional creativity while working on the specific facility of the prison. The only individual piece of work produced by Eschwe is the prison façade. Both Eschwe and Muth were highly restricted when it came to the equipment of the cells. Every single detail had already been decided beforehand by the building contractors. Muth became so frustrated by

these restrictions early in his career, that he decided to never take on an architectural project related to prisons again (Eschwe; Muth). Wächter's project seems to have been an exception in this respect. His architectural skills were in great demand, as he has been responsible for finding individual solutions to various problems, including insufficient ventilation, destructible interior equipment and the lack of daylight (Wächter). Nevertheless, the overall impression arises that, ironically, architects have relatively limited influence on the way in which German prisons are designed. The most important decisions in this respect appear to be largely made by politicians or other experts in this field. This may also serve as an explanation for the remarkable absence of architectural voices within the broader debate on prison reform in Germany and the United States. This does, however, diminish the relevance of the content of the interviews.

5. Conclusion

As part of my academic work I have conducted extensive literature research on two major topics: the role of architecture within prisons, based on the political qualities of design and its direct relation to power, and the differences between the German and the American prison system. Based on the knowledge I had acquired throughout this process, I conducted interviews with three German prison architects, analysed their answers and integrated them into the overall debate on the improvement of American prison architecture.

Before coming to the final conclusion, it is necessary to mention the two major limits of my research. First, the comparison between German and American prisons has not been symmetrical. The focus has clearly been on the German approach towards incarceration and, more specifically, prison design. The three interviews should primarily be seen as an examination of the practical implementation of the theoretical values the German prison system is supposed to be based on. In the further course of this conclusion, it is then going to be discussed to what extent these values could be employed in order to improve prisons in the United States.

The second limitation of my research is that it almost exclusively represents the views of politicians, researchers, architects and activists. Prisoners themselves, in contrast, have received nearly no chance to utter their opinion in this paper, the only exception being John K., the former inmate of Halden Prison (2018). The destructive behaviour shown by some inmates, which Eschwe, Wächter and Muth were all confronted with during their work, speaks to a certain extent for itself, (Eschwe; Muth; Wächter). It demonstrates that sometimes even providing prisoners with living conditions that are as humane as possible does not suffice in order to eliminate their anger. That is, however, just a personal interpretation of the inmates' behaviour.

Finally, it is time to return to the original research question, which asked for the extent to which German prison architecture may serve as a model for the improvement of prison architecture in the United States. Having conducted academic research in this area, I now feel confident to conclude that there are three major lessons the United States can take away from Germany.

Firstly, the surveillance of prisoners should be reduced as much as possible within the borders of necessary security measures, rendering US prisons clearly distinguishable from panoptical institutions like Bentham had imagined them (1995). This can be realized architecturally by making regular prison cells a private space that is hidden from view. Allowing a prisoner to have physical privacy is indispensable for still treating him like a human being, even within captivity. Giving him the additional possibility to lock his cell from other inmates is a meaningful sign of trust, which fosters a positive relationship between

prisoners and staff, that is substantially different from the hostile prejudices described by Goffman (1962, p. 7).

Secondly, architecture is the key to providing prisoners with an everyday life, that is as similar as possible to the one they formerly had in freedom. One useful technique here is to provide prisoners with multiple opportunities to spend time outside. These may include sports-related activities, work, or simply the necessity to walk from one building to another. Furthermore, sufficient provision of daylight inside the buildings is vital for the health of the inmates, as well as their ability to keep track of the passing of time. It is additionally important to offer the prisoners as much comfort as possible. Wächter, for example, attempted to achieve this goal by installing clothes hooks and benches within the new showers of the JVA Heinsberg (Wächter). Again, providing the inmates with even these seemingly small possibilities is intrinsically linked to respecting the inviolability of their human dignity.

Thirdly, after having actually implemented these changes, Americans should not allow themselves to be made insecure by apparent setbacks. The fact that inmates sometimes attempt to destroy the fittings or furniture does not constitute a reason for not offering it to them. Living in a well-equipped and aesthetically designed environment does not change the fact that the prisoner is not allowed to leave it, which can lead to sadness, frustration and even aggression. Reacting to this kind of behaviour with a return to harsh disciplinary measures, such as solitary confinement, may only worsen the condition of the prisoner and decrease the likeliness of his successful resocialization.

The suggestions above can additionally be linked back to the three major theories on architecture, that have been stated at the beginning of this paper. According to the first of these, architecture can hold certain political qualifications. The interviews have proven this thesis to be true, showing that in Germany it is politicians and other officials who make primary decisions on prison architecture and not the architects themselves. A major difficulty which American politicians will have to deal with is the pervasive private ownership of US prisons, which turns incarceration into a capitalist industry (Peláez, 2019; *Private Prisons in the United States*, 2018). As long as financial profits are the dominant motive behind imprisonment in the country, the practical implementation of necessary architectural changes remains unrealistic. Further research could, therefore, be directed towards the political steps that need to be taken, in order to make societal reintegration and a reduction of the incarceration rate the primary goals of American prisons.

The second theory argues that architecture can be the key to decisive power of some individuals over others. As it is demonstrated by the urban legend of Moses' bridges, structural design can be used to gain control over human behaviour, a mechanism which Eschwe, Wächter and Muth all employed, in order to hinder vandalising acts of inmates (Eschwe; Muth; Wächter; Winner, 1986). They have, however, not abused this power by controlling every single aspect of the prisoners' daily lives or putting them in a condition of constant surveillance. Such abuse can be observed in prisons in the US, where not the human dignity of the prisoner stands in the foreground, but the amount of money entrepreneurs are able to make with him.

The third theory states that the political characteristics of architecture, as well as its relation to power, are of particular importance within the specific context of the prison. The Russian philosopher Fyodor Dostoyevsky has fittingly argued that "The degree of civilization in a society can be judged by entering its prisons" (Dostoyevsky, 1862 as cited in Pahomov, 2013, p. 38). This still very much applies to Germany and the United States. A close look at their different approaches towards prison design has revealed the German emphasis on reducing the surveillance of the prisoners and increasing his chances of becoming a valuable member of society again (Chammah, 2015a). The American judicial system, in

contrast, is still very much dominated by the use of broken windows policing, stressing the need of politicians and police officers to be tough on crime and its causes (Atkinson, 2003, p. 1839).

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Appendix

Interview Questions Edgar Muth

1. How did you get to the project of the expansion of the JVA Aachen?
2. Had you ever before constructed or renovated within correctional facilities? Which expectations did you accordingly have for the project?
3. What kind of activities belonged to your area of responsibility during the project?
4. How long did the project take in total?
5. Which steps did the planning and the execution of the project include?
6. Which architectural guidelines did you receive from the JVA and which individual liberties did you have concerning the design?
7. Did specific problems come up in the course of the project, which needed to be solved?
8. What kind of arrangements have to be made in order to counteract a potentially destructive behaviour of the inmates?
9. What kind of materials were primarily used for the new building? In which areas outside of the JVA are these materials commonly used?
10. How much importance was ascribed to daylight within the new buildings of the JVA Aachen?
11. Are any architectural changes known to you, that have been undertaken since the original construction of the JVA Aachen?
12. Have you since the construction of the JVA Aachen had the possibility to gain further experiences on the field of prison architecture?
13. A European, or more specifically German approach towards the architecture of prisons is based on the assumption that the punishment of an inmate should not go beyond the deprivation of liberty. Everyday life within prison should therefore be as similar as possible to the one in freedom. Did you have the feeling during your visits to the JVA Aachen that this approach is implemented there, primarily architecturally, of course?
14. Do you hold German prison architecture as inherently more humane than the American one? Please reason your statement.

Interview Questions Michael Eschwe

1. How did you get to the project of the expansion of the JVA Heinsberg?
2. Had you ever before constructed or renovated within correctional facilities? Which expectations did you accordingly have for the project?
3. How long did the project take in total?
4. Which steps did the planning and the execution of the project include?
5. Which architectural guidelines did you receive from the JVA and which individual liberties did you have concerning the design?
6. Did specific problems come up in the course of the project, which needed to be solved?
7. Did arrangements have to be made in order to counteract a potentially destructive behaviour of the inmates?
8. What kind of materials were primarily used for the new buildings? In which areas outside of the JVA are these materials commonly used?
9. How much importance was ascribed to daylight within the new buildings of the JVA Heinsberg?
10. A European, or more specifically German approach towards the architecture of prisons is based on the assumption that the punishment of an inmate should not go beyond the deprivation of liberty. Everyday life within prison should therefore be as similar as possible to the one in freedom. Did you have the feeling during your visits to the JVA Heinsberg that this approach is implemented there, primarily architecturally, of course?
11. Do you hold German prison architecture as inherently more humane than the American one? Please reason your statement.

Interview Questions Michael Wächter

1. How did you get to the project of the renovation of the mildewed shower blocks of the JVA Heinsberg?
2. Which expectations did you have for the project, as you had never constructed or renovated in correctional facilities before?
3. How long did the renovation of the mildewed shower blocks of the JVA Heinsberg take?
4. Which steps did the planning and the execution of the project include?
5. Which architectural guidelines for the renovation of the shower blocks did you receive from the JVA?
6. Where do you think does the criminal energy and the urge to destroy of the prisoners come from, which you were confronted with regularly during your work in the JVA Heinsberg?
7. Why did you, despite your knowledge about the urge of the prisoners to destroy and the other corresponding security measures, provide them with loose plastic buckets as holders for their shampoo bottles?
8. What kind of materials were primarily used for the new shower? In which areas outside of the JVA are these materials commonly used?
9. Why was the walled up window replaced with an LED-window?
10. What kind of meaning do you think does daylight have within a correctional facility?
11. A European, or more specifically German approach towards the architecture of prisons is based on the assumption that the punishment of an inmate should not go beyond the deprivation of liberty. Everyday life within prison should therefore be as similar as possible to the one in freedom. Did you have the feeling during your visits to the JVA Heinsberg that this approach is implemented there, primarily architecturally, of course?
12. Do you hold German prison architecture as inherently more humane than the American one? Please reason your statement.
13. In what way do you think is the humane, German prison architecture reflected in the construction of the new shower blocks of the JVA Heinsberg?

Reflective Note on the 2019 Marble Project: A Submersion into Black Mirror's Nosedive – Dredging Surveillance Theories to the Surface

Emma Béat¹

ABSTRACT

This study is the result of a rather unique approach to the MaRBLLe programme. Filled with the desire to explore the relationship between academic writings on surveillance and elements of popular culture that concern themselves with the modern dimension of surveillance, the author sought the opportunity offered by this programme to illustrate such relationship in an unedited and pedagogical way. To do so, an audio-guide companion to one of the most illustrative episodes of *Black Mirror* pertaining to surveillance theories, i.e. Nosedive, has been developed. This episode displays what appears to be a rather fertile ground for the illustration of surveillance theories as it unfolds in a general atmosphere where the norm is to watch, as much as being watched. This paper, in the form of a written reflective note, is thus dedicated to the emphasis of this project's academic and societal relevance through the display of a thorough literature review on the field of surveillance theory, as well as the methodological logic behind the project.

1. Introduction

The seemingly inevitable encroachment on our private lives by corporate data miners or the government (or pick your own bogeyman) is a recurrent topic of Hollywood movies, the news media, and the press, both popular and scholarly. It is a situation conducive to hysteria, and although a great distance separates academic theorists from mass-market authors, most writers who deal with this subject draw on a common core of alarmist premises and imagery (Rosen and Santesso, 2013 p.1).

It is this very relationship between academic writings on surveillance and these elements of popular culture that concern themselves with the modern dimension of surveillance that this project aims to illustrate. This objective will be achieved through the design of an audio-guide companion of one of the most illustrative episodes of *Black Mirror* pertaining to surveillance theories, i.e. Nosedive (Allard-Huver & Ecurignan, 2018). In this episode, we follow Lacie Pound, the main character, whose daily reality is entirely conditioned by the virtual ranking of all of her interactions, somehow recalling the Chinese "(...) Social Credit System [which] aims to address not only the financial creditworthiness of individuals and companies but also their sincerity, honesty, and integrity" (Mac Síthigh & Siems, 2019, p. 12). This episode displays what appears to be a rather fertile ground for the illustration of surveillance theories as it unfolds in a general atmosphere where the norm is to watch, as much as being watched. Specific scenes, points and details within the episode will be used as opportunities to elaborate on the various theories on surveillance that have emerged in academic literature. This written reflective note is thus dedicated to the emphasis of this project's academic and societal relevance. Moreover, the watcher will, in addition to the

¹ Emma Béat received a bachelor degree in European Studies at Maastricht University in 2019. At the moment she works as a consultant for the European Commission's DG DEVCO. Contact: beat.emma@outlook.com

audio-guide, receive an illustrated and detailed viewer's guide, the aim of which is to summarise the lessons learnt from viewing the episode.

This project sought to answer the following question: How can popular culture such as *Black Mirror*'s Nosedive be used as a tool to illustrate and understand literature on surveillance? If this project's objective was to be summarised through the Booth et al. (2016) formula, i.e. "I study... because I want to find out ... in order to understand..." (p. 45), it would have to be slightly adjusted. I study this specific episode of *Black Mirror* in order to exploit its potential to illustrate the variety of theories that exist in surveillance studies because I want to find out whether a rather esoteric academic debate can be made more generally accessible by using popular culture in order to widen the reach of such debate and help a larger part of the public to understand it. That is the reason why both the reflective note and the viewer's guide are additionally provided. The former is designed to legitimise the aim that is described in the formula. The latter is designed to strengthen the results by thus giving the material a more permanent aspect as well as to provide the audience with suggestions for further research.

Therefore, the aim of this reflective note is to provide the reader with all of the necessary information in order to understand this project's underlying rationale and its methodology. The first section is dedicated to an explanation of the project's novelty and importance, which can be specifically located in the methodological approach used. Accordingly, digital story-telling and its Technological Pedagogical Content Knowledge (TPACK) framework are elaborated upon in the second section. A third section is thereafter dedicated to the literature review upon which this project's theoretical content is built. In order to establish a preliminary link with the episode, the mindmap that has guided the structural elaboration of the project is at the reader's disposition as well.

2. Novelty and Importance of the Project

Although Galič, Koops and Timan (2017) have already done an excellent job at dedicating an entire piece of literature to a thorough state-of-the-art on surveillance theories from Bentham to Zuboff and through many others; and while Cirucci and Vacker (2018) have edited a book which is fully devoted to the analysis of *Black Mirror*'s episodes with the help of various critical media theories, this project seeks to bring originality to the field by merging a rather abstract theoretical approach with a more tangible application. Therefore, what brings to this project both its academic and societal relevance is not so much the content, which is indeed a thorough review of surveillance literature, as the form it takes and the goal it aims to pursue. This project builds upon methods of digital story-telling to provide a unique approach to academic learning (McLellan, 2007; Robin, 2008). The incentive to use popular culture as a means of teaching that is more accessible specifically ensues from the will to reach a more popular audience.

Surveillance theories address extremely contemporary, omnipresent and, I would argue, urgent issues. It will be shown that surveillance has become so deeply embedded in our society that it is now part of our culture, both in real life and in fiction (see Orwell's *1984* or Eggers' *The Circle*). Indeed, dimensions of surveillance have been portrayed in nearly all episodes of *Black Mirror*, a series which has been especially designed to raise awareness about the potential risks hidden behind the surveillance discourses of technology. It has even been argued that the futuristic scenarios used in the episodes were to be considered, and subsequently used, as triggers to generate discussion on these very risks. Although for now, such discussion has remained confined to the works of academia (d'Aquin & Troullinou, 2018). As the physicist Sir William Bragg once said, "The important thing in science is not so much to obtain new

facts as to discover new ways of thinking about them” (as cited in Koehler & Mishra, 2006, p. 1017). It therefore seems important to, at least, attempt to move these discussions out of the boundaries set by the academic sphere by providing the prospective audience of *Black Mirror*, or any person interested in surveillance theories, with the necessary analytical tools to grasp the concept of surveillance to its fullest.

With the more universal intent to generalise findings, it is of course important to keep the potential for reproduction that such method carries in mind. The latter will obviously be dependent upon the relative efficiency and success of such an original approach to theory learning. Yet, the methodological approach used to conduct this project deserves to be explained in more detail.

3. Novelty and Importance of the Project

As this project’s main product in terms of content is a literature review, it follows that the main methodological approach for this project is literature search. Yet, for the creation of the audio-guide, the aim was to adapt my approach to the methodological guidelines of digital story-telling. Digital story-telling is an instructional tool which follows the Technological Pedagogical Content Knowledge (TPACK) framework, namely “a framework that highlights the interactions and connections between content (the subject being taught), pedagogy (the teaching process being used), and technology” (Robin, 2008, p.226). TPACK has been developed by Mishra and Koehler (2006, 2007, 2009). By being initially intended to teachers, the goal of this model is to create a coherent approach to teaching with technology. According to them, “At the heart of good teaching with technology are three core components: content, pedagogy, and technology, plus the relationships among and between them” (2009, p. 62). The emphasis on the importance of the interaction between these components is illustrated in Figure 1.

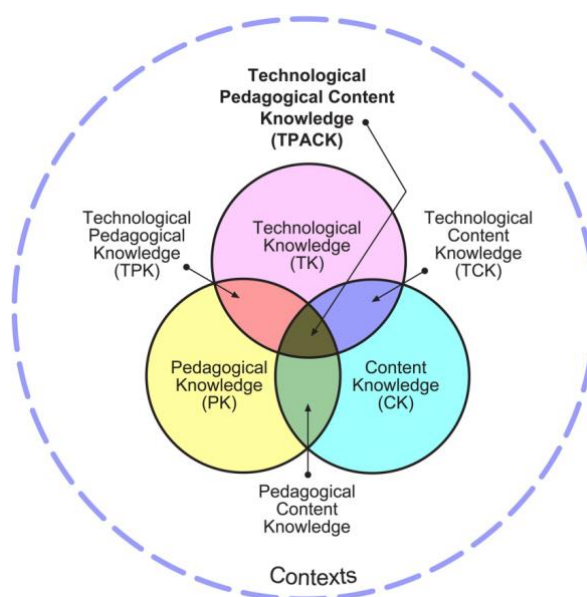


Figure 1. The TPACK framework and its knowledge components (Mishra and Koehler, 2009).

Content Knowledge refers to the teacher’s (in my case, the researcher’s) knowledge about the content that is intended to be taught. In the case of surveillance theories, the Content Knowledge refers to the concepts of surveillance. These are explained throughout the episode, making it the Technological Content Knowledge. The Technological Knowledge is thus resting in my understanding of the ways I can

use information technologies such as a series episode to process and communicate information. The Pedagogical Knowledge represents the knowledge about the educational purpose of the project and its targeted audience. For this project, the purpose is again to offer an alternative and more recreational approach to learning about a topical and relevant issue such as surveillance theories. Hence, the Pedagogical Content Knowledge, being the “knowledge of [the] pedagogy that is applicable to the teaching of specific content”, appears self-explanatory (Mishra and Koehler, 2009, p. 64). The aim in this project is to break down rather abstract theories of surveillance into concepts so that the participants can grasp them more easily. Doing so by using an episode of *Black Mirror* as an illustrative tool thus provides the last element of this model, namely the Technological Pedagogical Knowledge, which denotes the “(...) understanding of how teaching and learning can change when particular technologies are used in particular ways” (Mishra and Koehler, 2009, p. 65). When digital story-telling consists of presenting digital stories that have been created anteriorly in combination with written text, as it is this project’s case, chances are high that comprehension will be enhanced and accelerated (Robin, 2008). In addition to the necessary awareness about the importance of the TPACK, Robin (2008) has developed a table summarising the seven guiding features of digital story-telling. These elements are displayed in Table 1.

Table 1: Seven elements of digital story-telling

Point of view	What is the main point of the story and what is the perspective of the author?
A dramatic question	A key question that keeps the viewer’s attention and will be answered by the end of the story.
Emotional content	Serious issues that come alive in a personal and powerful way and connects the story to the audience.
The gift of your voice	A way to personalise the story to help the audience understand the context.
The power of the soundtrack	Music or other sounds that support and embellish the storyline.
Economy	Using just enough content to tell the story without overloading the viewer.
Pacing	The rhythm of the story and how slowly or quickly it progresses.

Robin (2008, p. 223).

Therefore, specific attention has been given to ensure that these elements were being taken into account during the realisation of the project. The main point of the story is to analyse the episode in the perspective of surveillance theories, in order to answer the underlying “dramatic question” of: How can popular culture such as *Black Mirror*’s *Nosedive* be used as a tool to illustrate and understand literature on surveillance? Emotional content is inherent to the episode’s scenario. Indeed, Lacie’s journey towards an unsuccessful attempt to achieve a ranking worthy of that name has been described as spectacular and terrifying by Lyon (2018, p. 158). Of course, the role of the narrator’s voice is very important in this project. The initial ambition to create an audio-companion was fuelled by the motivation to use the voice to create a personalised relationship between the viewer and the researcher that would ideally be more horizontal than the more conventional top-down approach to teaching and learning. However, for aesthetic reasons, due to my rather pronounced French accent, I have preferred to lend my voice to a native speaker to ensure that all of the viewer’s focus be set on the content and not on the form of the experience. With regards to the power of the soundtrack, the omnipresent upgrading and downgrading tone emitted by the characters’ devices as they rate each other participates to the construction of a stressful atmosphere which, according to my perceptions, keeps the audience in suspense. In terms of economy, the project’s goal was indeed to make sure to keep the explanation of the concepts as clear

and concise as possible in order not to overwhelm the watcher and ensure that it stays a pedagogical, yet enjoyable experience. Lastly, as the pacing is dependent upon the episode's rhythm, it cannot have been controlled. Yet, all efforts have been made to ensure a smooth repartition of the information as the episode progresses. The informational content of the project has been based on a re-organisation of the literature review. The re-organisation was conducted by breaking the theories into concepts. These concepts were subsequently put together and linked to specific scenes of the episode. The next section is dedicated to the display of the literature review and Figure 2 illustrates the mind-map that served as the main basis for this project.

4. Literature Review: Three distinct phases of surveillance theory?

It must be acknowledged that there already exist quite thorough literature reviews on surveillance theory, such as the one of Galič, Koops and Timan (2017). Indeed, the aim of their paper was "to provide an overview of surveillance theories and concepts that can help to understand and debate surveillance in its many forms" (p. 9). What they seemed to have done incredibly well was to conceptually and chronologically cluster certain lines of thought regarding surveillance. According to them, there are three distinct phases of surveillance. Although these phases all emerged as a way to introduce a new paradigm to conceptualise surveillance, this review aims at showing how they have also built upon each other and can potentially co-exist instead of merely cancelling each other out. The first phase in surveillance theory building rests in Bentham's development of the Panopticon.² It is a metaphorical architectural design of a prison that resonates with surveillance features and that has been defined by Simon (2005) as "a machine for dissociating the seeing/being seen dyad: in the peripheric ring, one is totally seen, without ever seeing; in the central tower, one sees everything without ever being seen" (p. 3). The peripheric ring is where the prisoners' cells are located, while the central tower represents that omnipresent, yet invisible, watcher, which installs an illusion of constant potential top-down surveillance (Bentham, 1995).

Subsequently, Foucault (1991) took the concept out of the prison's walls and transposed it to all institutional structures and to the entire society as a whole.³ He describes this society as a disciplinary society where, in order to ensure control and security, one might constantly be watched, thus leading to an internalisation of mainstream norms and values. *Panopticism* thus leads to a process of *normation* according to Foucault (1991). Normation refers to the process in which prescribed disciplinary norms are assimilated, allowing for the subsequent determination of what should be considered as normal or abnormal. In his understanding, the method used to assess whether these norms and values were properly internalised is that of the exam, which is thought of as a way to mould individuals in a desired form and achieve a generalised docility. As a result, access to society's various institutions is determined by the extent to which the norms and values learned through this disciplinary exam are thought to be mastered by individuals (Galič, Koops & Timan, 2017). This concept of access control has subsequently been taken up again by Deleuze (1992) in his re-conceptualisation of the discipline society into a society of control.

Indeed, the emergence of globalisation – i.e. "the sudden increase in the exchange of knowledge, trade and capital around the world, driven by technological innovation" (C.R., 2013, para. 1) – in the end of the 20th century has led scholars to re-think the relevance of the Panopticon. They often came to the

² In Figure 2, see: Surveillance Concepts, Panopticon, Bentham, Prison.

³ In Figure 2, see Surveillance Concepts, Panopticon, Foucault and all ensuing child nodes.

conclusion that the latter concept was obsolete and could not appropriately describe Western society and the path surveillance had taken at the time, leading to the second path of surveillance theory building (Galič, Koops & Timan, 2017). Most notably, Deleuze (1992) has argued that society was not to be seen as one of discipline anymore, but one of control.⁴ The notion of discipline carried with it a spatial element attached to an institutional structure, as well as an element of continuity that Deleuze (1992) aimed to get rid of. In this increasingly consumerist society, control was to be exerted by omnipresent corporations that would use technological progress to divide the individual into pieces of data. Eventually, the individual would become a “dividual” (Deleuze, 1992, p.5). This concept is echoed in Ericson and Haggerty’s (2000) conceptualisation of the data double, as well as Van Dijck’s (2014) more normative approach concerning the ontological implications of datafication and dataveillance, *inter alia*. The concept of the dividual, or data double, is embedded in the wider concept of surveillant assemblage developed by Ericson and Haggerty (2000) on the basis of Deleuze and Guattari’s (1988) broader assemblage.⁵ According to the former, “This assemblage operates by abstracting human bodies from their territorial settings and separating them into a series of discrete flows. These flows are then reassembled into distinct ‘data doubles’ which can be scrutinised and targeted for intervention” (p. 606). In other words, the desire for societal control through electronic monitoring has led to the institutionalisation of a large system where all actions and interactions are recorded as flows and deconstructed from their human origin.

As a result of the vastness of these networks, it has been argued by Renzeman that the sources of surveillance are now impossible to distinguish from each other (as cited in Galič, Koops & Timan, 2017). Eventually, the data double becomes fragmentised into an infinite quantity of data that is so remote from the initial individual that it might not even correspond to the latter’s real representation (Ericson & Haggerty, 2000).⁶ The ensuing data mostly has a functional purpose. Indeed, after having been put in what Latour (1987) would define as “centres of calculation” (p. 232), data become useful to institutions and corporations for governing, commercial and controlling purposes. The consequence of such datafication of society takes the shape of a reversal of power structures. Ericson and Haggerty (2000) use the “metaphor of the rhizome” (p.614), i.e. a structure permanently evolving in all horizontal directions, to describe this new phenomenon.⁷ Through a lateral intertwining of networks, the use of surveillance expands, and traditional hierarchical configurations are altered.

With regards to the expansion of surveillance, three dimensions are elaborated upon and claimed to be inter-connected. Firstly, with the development of new monitoring capabilities came the possibility to target new populations that had remained “untouched” so far. All individuals, regardless of their status, possess a double whose inherent data now serves as a value-added for the purposes of being processed and potentially sold, thus leading to the second dimension: The commodification of the self. Thirdly, the normalisation of such practices has been accused to generate an additional value to those of control and profit, namely, that of voyeuristic entertainment (Ericson & Haggerty, 2000; Haggerty, 2006). As a result of such expanding use, surveillance has adopted a bureaucratic feature, for membership to any sort of institution now necessarily implies the subjection to at least a certain extent of monitoring. Proportionally to the quantity of institutions they are in contact with, members of all classes are thus increasingly monitoring each other and themselves. For the more upper-classes, “(...) this can include the regular

⁴ In Figure 2, see Surveillance Concepts, Corporations and all ensuing child nodes.

⁵ In Figure 2, see Surveillance Concepts, Assemblages, Surveillance Assemblage, Desire and all ensuing child nodes.

⁶ In Figure 2, see Surveillance Concepts, Assemblages, Surveillance Assemblage, Data Double and all ensuing child nodes.

⁷ In Figure 2, see Surveillance Concepts, Assemblages, Surveillance Assemblage, Rhizomatic Surveillance and all ensuing child nodes.

monitoring of consumption habits, health profile, occupational performance, financial transactions, communication patterns, Internet use, credit history, transportation patterns, and physical access controls” (Ericson & Haggerty, 2000, p. 618).

This recalls Deleuze’s (1992) emphasis on the virtual omnipotence of the corporation in a capitalist control society, which has also had an influence on Zuboff (2015)’s *surveillance capitalism* where surveillance is seen as a tool “to predict and modify human behaviour as a means to produce revenue and market control” (Galič, Koops & Timan, 2017, p. 24).⁸ In her conceptualisation of surveillance, she highlights how the emergence of Big Data – i.e. the immensity of the generated data transcending human intuition – challenges the liberal assumption of an unpredictable market. She believes that data-mining and profiling allow to detect economic structural patterns, thus enhancing the possibilities to predict market flows and functioning. However, such transformations of the world’s economic model come at a certain cost. In a paradoxical way, data mining both brings indifference and intrusion with regards to the individual. On the one hand, at the firms’ hyperscale level, costs are reduced at the expense of the tangible relationships with employees and customers that are gradually fading. On the other hand, an improvement in technological capabilities and human behaviour monitoring has allowed corporations and other infrastructures to increasingly intrude individuals’ lives at the consumer’s level (Zuboff, 2015). As a result, the market becomes personalised and customised as described by Varian (2014) when referring to the fact that, “nowadays, people have come to expect personalized search results and ads” (p. 28). Zuboff (2015) interprets this as an informational asymmetry capable of creating power asymmetries as well.

Such reasoning is echoed in O’Neil’s (2016) conceptualisation of targeted advertising as a *Weapons of Math Destruction*.⁹ Her model aims at shedding lights on the ways such mathematical formulas of micromanagement tend to benefit the wealthy and punish the poor while yet remaining unquestioned. In the case of targeted advertising, she argues:

We are ranked, categorized, and scored in hundreds of models, on the basis of our revealed preferences and patterns. This establishes a powerful basis for legitimate ad campaigns, but it also fuels their predatory cousins: ads that pinpoint people in great need and sell them false or overpriced promises. They find inequality and feast on it. The result is that they perpetuate our existing social stratification, with all of its injustices. The greatest divide is between the winners in our system, like our venture capitalist, and the people his models prey upon (p. 70).

The second phase of surveillance theory building can thus be summarised in the tendency to criticise, or at least emphasise, the profitable and business-oriented features of surveillance in a globalised corporate society and the effects of such features on the individual.

The third phase in surveillance theory building finds its foundations in the emergence of social media and aims at both conceptualising a new form of participatory and empowered surveillance and reconciling it with the Panopticon (boyd & Ellison, 2007; Galič, Koops & Timan, 2017).¹⁰ While Andrejevic (2002, 2007) and its lateral surveillance, Albrechtslund’s (2008) participatory surveillance, Lyon’s (2018) culture of surveillance or even Jansson’s (2015) interveillance, all have their particularities which deserve to be examined in more detail, they also share a common element. All of these theories examine the

⁸ In Figure 2, see Surveillance Concepts, Surveillance Capitalism and all ensuing child nodes.

⁹ In Figure 2, see Surveillance Concepts, Weapons of Math Destruction and all ensuing child nodes.

¹⁰ In Figure 2, go directly to New Purposes of Surveillance and all ensuing child nodes.

recent shift from vertical to horizontal surveillance, which subsequently becomes a new form of *do-it-yourself* or *peer-to-peer* surveillance. Lateral surveillance has been developed by Andrejevic (2002) in order to shed light on the security aspect of peer-to-peer surveillance emanating from an enhanced societal paranoia nurtured by a relentless need to gather information about one's acquaintances. Most of the time, such monitoring is done through social network profiling. He explains this phenomenon as the result of an increased perception of risk translated in the feeling that an alternative to more mainstream and public forms of surveillance must be found. Dean (2010) qualifies this as "the new prudentialism" (p. 194), where individuals adopt certain norms and values which aim at their responsabilisation for their own risks.

Andrejevic's (2002) lateral surveillance has served as basis for the development of Albrechtslund's (2008) concept of participatory surveillance in the context of online social networking. While the latter acknowledges lateral surveillance's strengths, namely that it allows to "go beyond the Panopticon" (para. 48) by envisaging the possibility to conceptualise the new phenomenon of peer-to-peer monitoring, he argues that such framework remained unsuccessful in fully getting rid of the initial top-down hierarchical conceptualisation of surveillance. Therefore, Albrechtslund (2008) uses online social networking to illustrate how, again, hierarchical structures within surveillance practices have shifted from a vertical to a horizontal setting. He also distinguishes himself from Andrejevic (2002) in the way he approaches surveillance. While Andrejevic's (2002) lateral surveillance tends to highlight how surveillance is motivated by a general scepticism pushing individuals to perceive threat and danger everywhere, Albrechtslund (2008) rather sees participatory surveillance as a potentially positively empowering tool which users use collectively and voluntarily in order to construct their identity, engage in social activities and conduct surveillance on the powerful. Such distinction serves the aim to emphasise how panoptic conceptions of surveillance necessarily imply a disempowered approach to surveillance, where the surveilled subjects merely engage "in their own surveillance by internalizing the gaze of the watcher" (Albrechtslund, 2008, para. 64). According to him, such internalising should not be considered to be participatory, thus proving the redundancy of Whitaker's (1999) or Lyon's (2007) attempts to project panoptic features onto participatory surveillance in their respective conceptualisations of "participatory panopticon" and "panopitcommodity".

Jansson (2015), in his enterprise to combine both Andrejevic's (2002) and Albrechtslund's (2008) approaches to surveillance eventually developed the concept of the culture of interveillance. By focusing on the mediatised relationships fuelling individuals' need for social recognition and constant connectivity, and by relocating media between and not above individuals, interveillance conciliates Andrejevic's (2002) emphasis on the need to verify one's social status in order to build trust and Albrechtslund's (2008) reminder that this rather occurs through a multi-layered, horizontal hierarchical structure. What interveillance seems to add to previous research is its special feature concerning the way surveillance transforms identity through social networking. According to Jansson (2015), interveillance's "(...) overarching point is that dominant social media contribute to the normalization of simulated forms of recognition, which establishes interveillance as a ritualized part of everyday life and makes certain media devices and applications ritually indispensable to social life" (p. 87). In that sense, the quest of recognition, popularity and connectivity is such that it becomes the main driver in one's life until the point where media are conceived as indispensable; they have become part of our culture.

In a similar way, Lyon (2018) talks about the *culture of surveillance*. He believes that it is the right approach to refer to the fact that watching each other, as much as watching oneself "has become a

way of life" (p. 2). The infinite data that is engendered every second is now thought as a mundane fact with which individuals are familiarised, leading to their conscious will to engender some more. As surveillance through digital activities becomes a means to facilitate monitoring of others and oneself, it also becomes an end. Furthermore, the omnipresence of surveillance makes it hard to locate. Lyon (2018) thus refers to surveillance as a liquid concept that evolves along with space, time and technology. Together with Trottier (2012), they identified five key features to illustrate surveillance's growing liquidity. The first feature denotes the fluidity of identities and how peer-to-peer monitoring through social media allow for the collective construction of each other's identities. The second one refers to the unique surveillance opportunities provided by social networks due to the unconceivable infinity of their audiences. The third feature emphasises the visibility and quantifiability of one's social network and their potential for social sorting and the making of inferences regarding one's status, reputation or entitlement, regardless of these inferences' actual accuracy. The fourth feature illustrates liquidity through the highlighting of social media's dynamism and adaptability. Finally, liquidity is also argued to emerge from social media's inherent possibility to firstly allow surveillance actors to interpret content out of context and therefore, secondly, inaccurately represent and interpret such content (Lyon & Trottier, 2012). After having developed such a fluid conception of surveillance, Lyon (2018) most evidently argued for the obsolescence of the panopticon as an accurate framework to understand the modern shape of surveillance.

However, others have also sought to reconcile the modernity of surveillance with Foucault's (1991) original panoptic principle without necessarily rendering it contradictory.¹¹ Indeed, "each new 'opticon' points to a distinction, limitation or way in which Foucault's model does not completely fit the contemporary global, technological or political dynamic of surveillance" (Haggerty, 2006, p. 26). An illustrative example of such re-appropriation of the concept can be found in Bigo's (2005, 2006) "ban-opticon" which was developed in light of the global insecurity that emerged after 9/11. The ban-opticon represents the *dispositif* through which a global network of institutions, architectural structures and legislations profiles a minority of potentially threatening individuals in order to restrict their entry to particular access points, such as the airport. Hence, according to Galič, Koops and Timan (2017) "in that sense, the Panopticon as a diagram re-emerges; the access points create again a confined and bordered space where both visitors and inmates suffer a constant gaze" (p. 27).

5. Concluding Remarks

Although the three explored phases are distinct, it seems that they must not be mutually exclusive and can rather build upon each other and co-exist. That is, *inter alia*, what this project aimed at demonstrating. Through the illustration of most of these theories through a single (although fictional, rather realistic) episode of Black Mirror, the viewer/listener should eventually be provided with an extensive overview of the literature on surveillance, understand their differences, while additionally being aware of their mutual influences and potential of co-existence. The use of digital story-telling to this end appeared as the most appropriate approach to offer an alternative to more conventional academic content

¹¹ In Figure 2, see Surveillance Concepts, Panopticon, New Strands and all ensuing child nodes.

analysis. Indeed, such method, within the TPACK framework, aims at using digital media as a means to enhance and accelerate comprehension. However, due to the unedited nature of this project, it is still hard for me, as a researcher, to take sufficient hindsight to assess whether my project has successfully fulfilled its expectations. If the scope of this research had been wider, I believe it would also have been valuable to dedicate a part of the research to the assessment of such an approach to theory learning. This should perhaps be the subject of further research. As a result, more external validity could be granted to the project and more possibilities to reproduce such an approach within other theoretical fields could be explored.

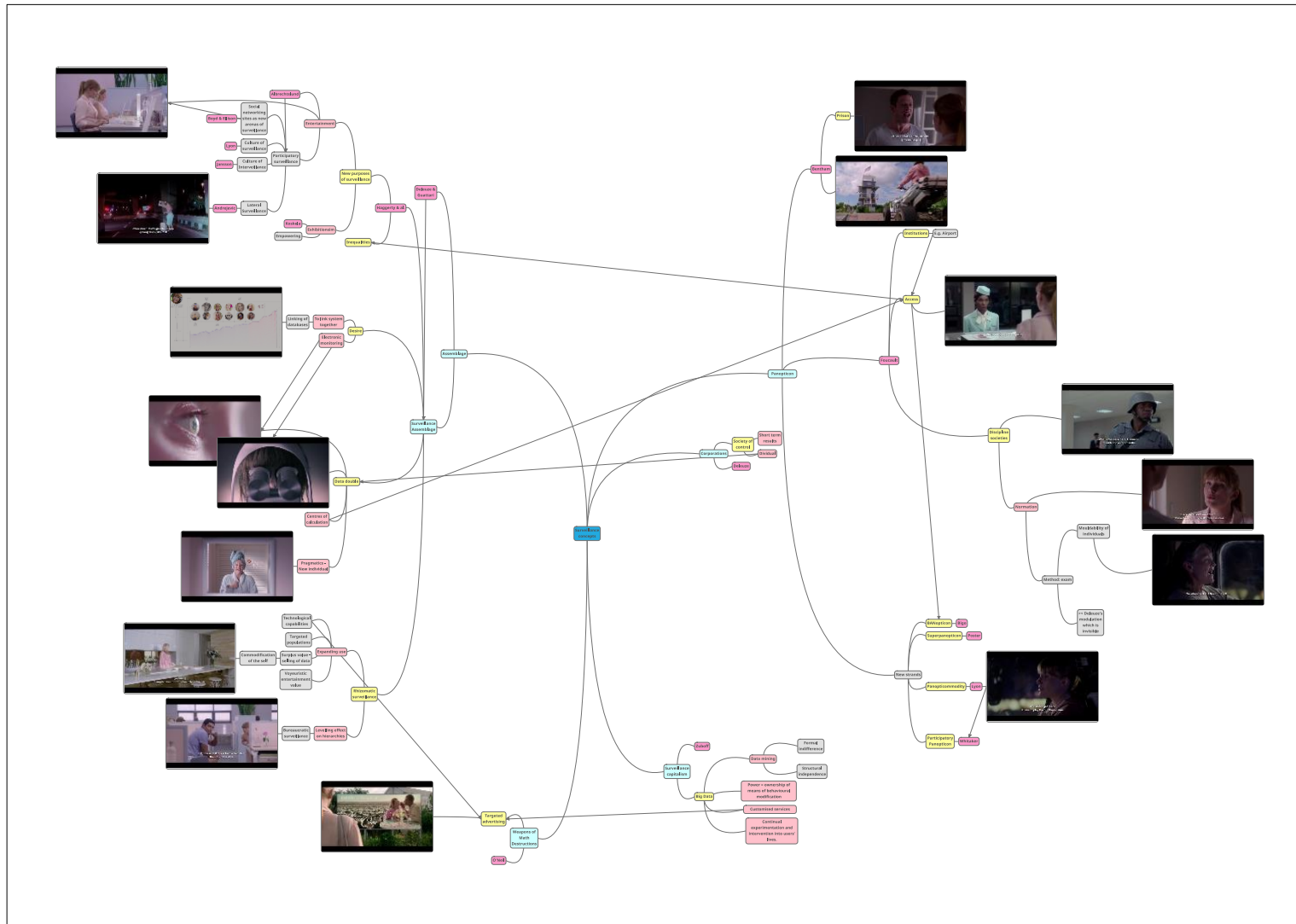


Figure 2. Mind-map created by the author on basis of the literature review.¹²

Colour coding: Parent node in dark blue; Theorists in dark pink; Theorists' main concepts of surveillance in light blue; Underlying concepts in yellow; Empirical consequences in light pink; Ensuing empirical consequences in grey

¹² Do not hesitate to zoom in on your device for more visibility.

6. Contact Information

In case you would like to have access to the final project (i.e. the audio file and the viewer's book), please send me an e-mail at beat.emma@outlook.com.

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Transforming Society for the Better? Why China's Social Credit Systems are Surprisingly Popular

Nadja Aldendorff¹

ABSTRACT

In 2014, the State Council of the People's Republic of China released a document that called for the construction of a nationwide Social Credit System (SCS) with the goal to encourage sincerity and punish insincerity. The system uses blacklists that citizens land on for various cases of misbehavior, ranging from failing to pay a fine to being caught Jaywalking. This research explains the design process behind the SCS and in particular why many Chinese citizens are embracing this form of surveillance. It focuses on three topics to answer this question: the historical roots underlying the system, the perceived lack of trust in Chinese society and the comparison with concepts from surveillance theories developed in the West. From the analysis, following conclusions could be drawn: Historically, the state has often acted as a promoter and enforcer of moral virtue. The SCS fits perfectly into this tradition. The most prominent reason for the positive Chinese reaction is the lack of institutions in China that promote trust between citizens and businesses. There is a severe trust deficit which the government had to find a solution for. Regarding surveillance theory, Foucault's concept of 'panopticism' shows similarities with the SCS and underlines its effectiveness in changing and steering people's behavior while Lyon's notion of 'social sorting' is used to demonstrate the potential dangers of the Chinese system.

1. Introduction

Over the past years, the People's Republic of China has been building a high-tech authoritarian future by embracing technologies like facial recognition and artificial intelligence to identify and track 1.4 billion people. China currently also has an estimated 200 million surveillance cameras – four times as many as the United States (Mozur, 2018, para. 4). China's sole governing party, the Chinese Communist Party, intends to create a surveillance state using sophisticated surveillance technology and maintaining censorship over all media.

In 2014, the State Council released a document that called for the construction of a nationwide Social Credit System (hereafter SCS) by 2020, with a focus on creating mechanisms to encourage sincerity and punish insincerity (State Council, 2014, para. 10). In the five years that have passed since then, millions of Chinese citizens have been unable to book flights, hotels or take out loans because they had landed on a blacklist for failing to pay a fine or being caught Jaywalking. Citizens are not assigned a social credit score on a national level yet, though many pilot programs are experimenting with this. By 2020, the government says that social credit will "allow the trustworthy to roam everywhere under heaven while making it hard for the discredited to take a single step" (Mistreanu, 2018, para. 5).

Media outlets all over the world were terrified of the system, comparing it to Big Brother and an episode of Black Mirror come alive. However, articles of another sort started appearing soon after with titles such as "Chinese Citizens Want the Government to Rank Them" (Hawkins, 2017) and "Why Big Brother Doesn't Bother Most Chinese" (Minter, 2019). It seemed that there was a significant difference between the international and the Chinese reaction. Indeed, after researchers conducted a national survey

¹ Nadja Aldendorff received a bachelor degree in European Studies at Maastricht University in 2019. At the moment she is a trainee at a language and business training school, Berlitz. Contact: nadjaaldendorff@gmail.com

to measure Chinese public opinion on the SCS, a high level of approval was found (Kostka, 2019). However, discussions often ended here without looking into the reasons behind this surprisingly positive response.

This paper therefore wants to explore the following research question: Why are many Chinese citizens embracing the Social Credit System launched in 2014? First, an overview of existing academic literature on the SCS will be given. Then, this research explains the design and ambition behind the government project as well as the local and commercial pilots that are currently being operated. Next, using American and British newspapers (both broadsheets and tabloids), the international response will be contrasted with the Chinese response. Lastly, the research question will be analyzed from a historical, cultural and theoretical perspective.

This paper has several goals. It wants to shed light on the SCS and the Chinese mindset to clear up some of the misconceptions people might have. It also intends to apply concepts of surveillance theory, usually developed in relation to Western politics, to the case of China. This broadens our understanding of surveillance theory as well. Finally, the goal of this research is to create an entertaining, informative and comprehensible piece of writing that can be read by anyone who is interested in the topic.

2. Literature Review

Several scholars have explored the rise of the Chinese surveillance state, often referring to China's explosive economic growth and its rapid advances in technology over the last three decades (Walton, 2001; Tai, 2010; Guo, 2012; Wang & Minzer, 2015; Qiang, 2019).

As the government initiative was only launched in 2014, academic research on Chinese SCSs is just emerging but nonetheless advancing rapidly. Samantha Hoffman (2017) focuses on the SCSs being part of the Chinese Communist Party's (hereafter CCP) broader strategy of social management and control while Chen & Cheung (2017) discuss the system's legal framework. Chen & Cheung argue that current existing Chinese legislation does not prevent the exploitation of personal data used in SCSs and that laws concerning data protection need to be revised (2017, p. 377).

Rogier Creemers (2018) provides a thorough study on the thinking and design processes behind the SCS. His research also describes the supporting technical infrastructure that is needed if the government wants to use SCSs to manage society (p. 19-21). One interesting observation the author makes is that social control techniques normally used in Western democracies are supposed to be unnoticeable. An example for this is nudging, which steers individuals through the manipulation of unconscious decision-making, are. The Chinese government however openly declares its efforts to control the conduct of its citizens and wants individuals to be conscious about their actions (p. 26).

A growing number of studies have now also turned to investigating public opinion toward SCSs in China. Ohlberg, Ahmed & Lang (2017) analyzed official media discussions of the system in 2017 and concluded that the Chinese government presents the Social Credit System as a "cure-all solution to a multitude of disparate societal and economic problems" (p. 5). They also argue that neither party-state nor private media fundamentally question the need for or legitimacy of the Social Credit System (p. 2). Instead, criticism is usually focused on commercial social credit companies (which will be explained in more detail later) rather than on the state-run pilots or the system as a whole (p. 7).

Ahmed (2017) conducted interviews with seven Chinese users of the social credit app Sesame Credit (a commercial SCS) to find out in how far users understand how they are being evaluated and what

consumer risks are posed. The goal of their study was to “challenge the media myth that Chinese social credit users accept the risks of the social credit system without raising concerns about consumer protection” (para. 5). They find that users often do not fully understand the criteria by which their score is calculated (para. 6).

Kostka (2019) notes that these findings are however based on very limited data and cannot be seen as representative of public thought. She is the only scholar so far that has analyzed Chinese public opinion on a larger scale. In her study, she used a cross-national online survey to gauge citizen’s approval of SCSs. She also conducted several interviews that helped better understand the observed high degree of approval. One of the most interesting results was that strong supporters of SCSs were more likely to be older, have a higher income, be male and more highly educated, and live in urban areas (p. 13-15). While they expected such knowledgeable citizens to be most concerned about the privacy implications of SCS, they found that they embraced SCSs because they focus on the perceived benefits and the promotion of honesty in society and economy because of the system (p. 20-22). While it briefly touched upon the issue of trust in Chinese society as an explanation for the results, the study did not go deeper into this topic as its main goal was to showcase the level of support among the public.

This research therefore wants to fill this gap in literature by explaining why many Chinese citizens are embracing the SCS from a historical, cultural and theoretical perspective, with an emphasis on the ‘trust crisis’ in China. So far, scholars have written about the legal, political and technical aspects of SCSs, as well as the current stage of implementation. Recently however, interest in Chinese public opinion and the degree of approval has grown, especially after Kostka’s research was published. Various media sites published articles discussing her study’s findings. This paper hopes to contribute to this discussion by approaching the research question from different angles.

This research is also socially relevant because of the uniqueness of the Chinese SCS and its future implications. While the system is inspired by financial credit scores in other countries such as the United States, it goes beyond these in scope and spectrum by assessing social behavior next to financial criteria (Liang, Das, Kostyuk & Hussain, 2018, p. 425). It is the first of its kind. A correct understanding of the system is necessary in order to have constructive debates and discussions on the project. The year 2020, by which the nationwide system is supposed to be implemented, is also approaching. Hence, it is interesting to take a look at the current stage of implementation. In addition, recent newspaper articles have talked about the possibility of the SCS coming to the United States (Davenport, 2018) and Australia (Rogers, 2019). Analyzing the Chinese attitude towards the project gives insight into why other governments would want to copy the system.

3. The 2014 Project

While the concept of social credit was not unheard of in China, it wasn’t until 2014 when the State Council published the Planning Outline for the Construction of a Social Credit System (2014-2020) that it received attention on a national scale.

The Planning Outline maps a specific implementation strategy, stating that a framework for implementing a SCS should be in place by 2020. It wants to achieve the realization of five major objectives: creating a legal and regulatory framework for the SCS, building credit investigation and oversight, fostering a flourishing market built on credit services, and completing incentive and punishment mechanisms (Creemers, 2018, p. 12).

The government identified four key policy areas where implementing the system takes priority. In government affairs, the SCS would increase transparency, enhance lawful administration, build trustworthiness for government actors, and display the government as a model of sincere conduct. In the market economy, social credit would enhance efficiency, trust and transparency across a range of sectors, ranging from finance to construction, food and ecommerce. In social services, the SCS would enhance trust in healthcare providers, strengthen management over particular professions and enhance scrutiny over online conduct. Lastly, the introduction of credit mechanisms would enable courts to implement judgments more effectively, enhance information sharing about parties in lawsuits and support norms for the legal profession (State Council, 2014, para. 17-53).

According to the Chinese government, the intention behind this project is to establish “the idea of a sincerity culture, and carrying forward sincerity and traditional virtues” and it believes that by using encouragement for trustworthiness and constraints against untrustworthiness as incentive mechanisms, it can raise “the honest mentality and credit² levels of the entire society” (State Council, 2014, para. 1). The implementation process can be divided into two tracks: one, creating an overall nationwide framework for assessing both financial credit and moral integrity (new laws and regulations, institutionalizing basic structures for cooperation, setting common standards) and, two, experimenting with provincial, sectoral, and commercial pilots (Ohlberg et al., 2017, p. 9). Halfway into 2019, the SCS is still far away from being a single unified system with a nationwide framework. Therefore, rather than one system or database, it is better understood as an overall policy or ideology.

One of the major goals of the 2014 Plan is creating incentive and punishment mechanisms for sincere and untrustworthy conduct. Blacklists of non-compliant individuals and legal entities and redlists for outstanding companies and individuals form the core of the current stage of implementation (Creemers, 2018, p. 13). The focus mainly lies on punishing those that land on blacklists. At present, individuals are primarily blacklisted for resisting court orders while companies are blacklisted for breaking existing laws and regulations in a number of areas. These individuals can be blocked from luxury consumption such as traveling first class, on high-speed trains, or on civil aircraft, visiting star-rated hotels or luxury restaurants, resorts, nightclubs and golf courses and going on foreign holidays. It can also restrict them in sending their children to private schools. Citizens that manage to get on redlists on the other hand can get discounts on energy bills and rent things without a deposit. Their profiles even get boosted on online dating sites (Ma, 2018, para. 6-31). As there are various pilot projects, the range of punishments and rewards is very broad and different depending on where you are and what type of system (government or commercial) you are in.

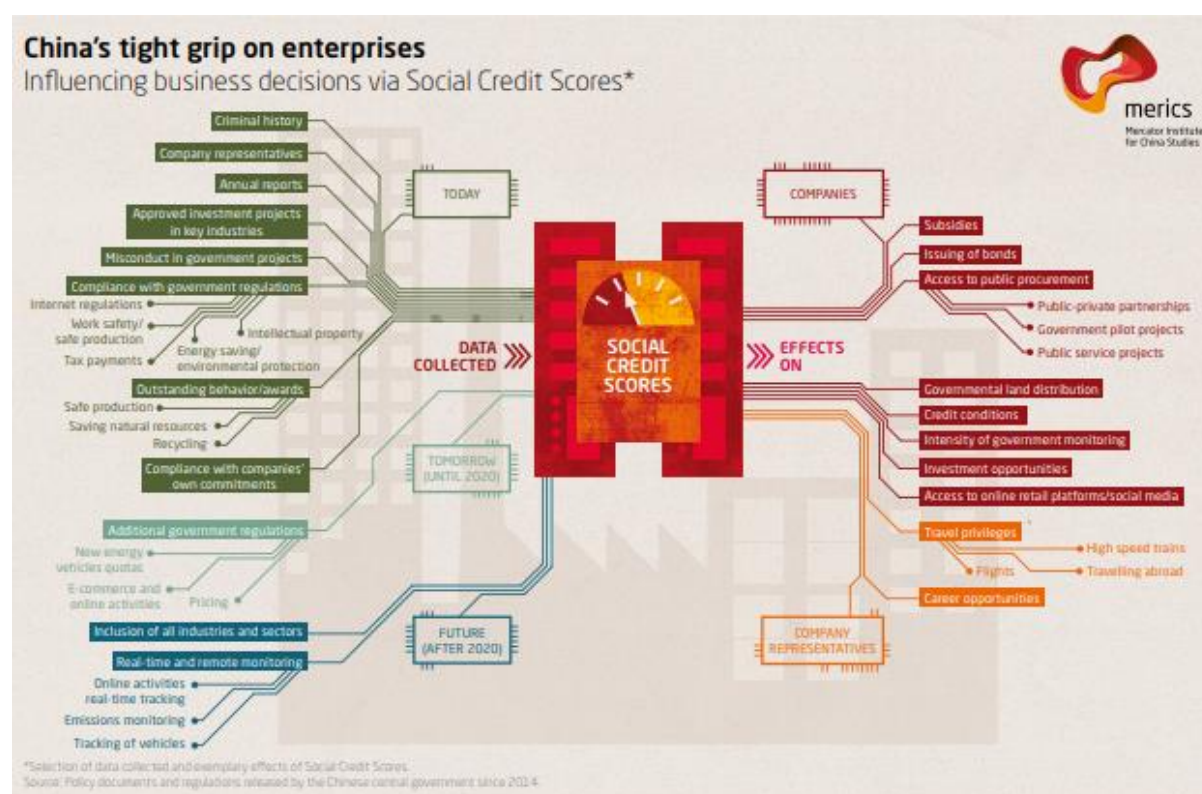
The system is designed to have serious implications for the subject’s ability to pursue a normal life or pursue their business (see figure 1 below). Being blacklisted has reputational costs, as Chinese government agencies are already making these lists publicly available through their databases as well as through major news websites. Naming and shaming through the wide publication of the names, photos, state ID numbers, and in some cases even home addresses of blacklisted persons, is an integral part of the system (Ohlberg et al., 2017, p. 10). The system combines traditional sources of data, such as financial, criminal and government records, with digital sources, such as personal information that individuals provide to websites and mobile phone applications (for an indication of the range of data

² It should to be noted that the Mandarin term ‘credit’ (xinyong) carries a wider meaning than the English translation. It not only includes notions of financial ability to service debt, but also sincerity, honesty, and integrity (Liang et al., 2018, p. 424).

used, see figure 1). The spectrum of records is very wide: from tax payments, bank statements, loans, and transactions to employment, education, criminal records, and social media use (Liang et al., 2018, p. 426).

There are currently different fragmented initiatives managed by both local governments and commercial companies (hence the plural form of SCS is often used). What the different SCSs initiatives have in common is that, by setting up systems of benefits and sanctions, they aim to steer the behavior of individuals, businesses, and other organizations in China. By looking into these, one can get a picture of what the government is trying to achieve and how it plans to do so.

Figure 1: Different categories of data collected that influence the social credit score and the effects of this score on companies and individuals



Source: Meissner, 2017, p. 3

3.1 Local government SCS pilots

There are government-run local and sectoral pilots, i.e. experiments conducted in individual provinces, cities, or limited to certain policy areas or industries. A considerable number of local governments have initiated social credit initiatives far ahead of the central government and were ready to incorporate the blacklist systems within their own jurisdictions when the initiative was announced. According to China Credit, the official website offering information on the Social Credit System, more than 40 municipal and provincial governments had established a local SCS pilot by July 2018 (Kostka, 2019, p. 3).

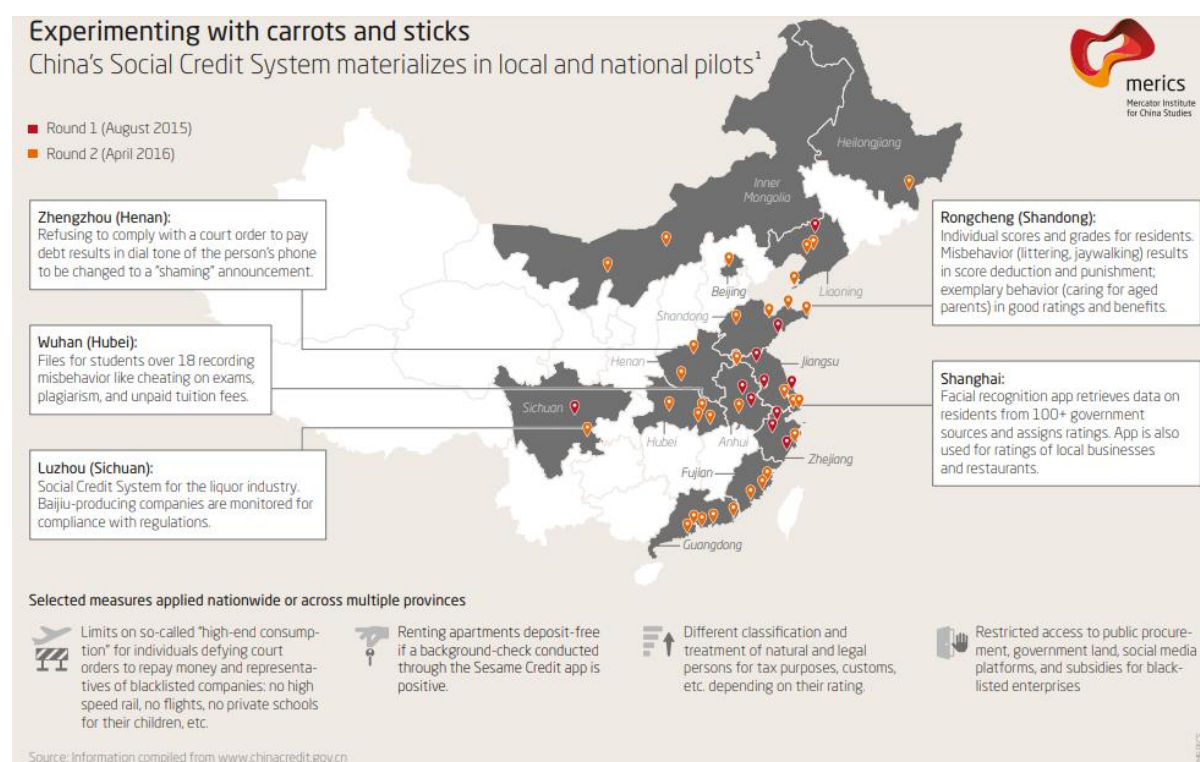
The first area policy where the blacklist mechanism was implemented, and still the most wide-ranging one, is the punishment system for failing to fulfill court judgements. Anyone who is obliged and capable of carrying out a valid legal document, such as a court order or administrative decision, and fails to do so, will be entered on the so called 'List of Untrustworthy Persons'. In principle, they will remain on that list for a period of two years and penalties for example include restricted access to government subsidies for companies (Creemers, 2018, p. 14). Taking this system as an example, individual departments started developing their own blacklist systems for their own policy areas.

Currently, many cities are experimenting with SCSs while being encouraged by the Chinese government (see figure 2 below for more examples). A local pilot in Rongcheng (Shandong), established in 2013, assigns its residents a score of up to 1000 points, with deductions for infractions such as running a traffic light and boosts in your score for donating and volunteering, and then assigning the person a grade from AAA to D. Depending on the grade, people receive preferential treatment or are burdened with additional requirements when interacting with government bureaucracies (Mistreanu, 2018, para. 8-11). Rongcheng has the most successful social credit system led by a local government so far, mainly because the community has embraced it. The community believes that the scheme has a positive effect (cars stopping for pedestrians at the crosswalk – a rare sight in China) and that it is precise in its punishment and generous in its rewards (para. 40).

Apps are also becoming an increasingly popular tool to carry out pilot systems. Since November 2016, the Shanghai Municipal Government has been experimenting with a mobile phone application called Honest Shanghai. Users can input their state ID number and within 24 hours they will receive one of three ratings, 'very good', 'good' or 'bad', based on government data collected on them. As participation is not mandatory, there are only rewards for individuals with good scores and no punishments for those with bad scores. Users of the app are also able to check the reputation of local businesses, using figures provided by Shanghai's local government offices, such as the tax and food and drug administrations (O'Meara, 2016, para. 2-5).

A large number of government bureaucracies are involved in setting up the Social Credit System. The key to making the Social Credit System work is ensuring proper flow and accessibility of information as well as cooperation between these different actors. The Chinese government is currently introducing the Unified Social Credit Number System so that different ministries can exchange information with one another. In the past, different bureaucracies used different number schemes to identify legal entities. These are now gradually being replaced by a unified 18-digit number to identify natural and legal persons across different bureaucracies and to store all social credit related information on them under a unified number. This step will lay the groundwork for social credit ratings to double as a form of identity, following citizens and companies through multiple aspects of their daily lives as well across different cities and provinces (Ohlberg et al., 2017, p. 10).

Figure 2: Examples of government-led pilots



Source: Ohlberg et al., 2017, p. 3

3.2 Commercial SCS pilots

Currently, the more widely used SCSs are those operated by commercial companies. The most common commercial SCSs are Sesame Credit and Tencent Credit. Commercial SCSs are offered on a voluntary basis as users can opt-in. Like Amazon, Alibaba is an online retailer that provides a platform for merchants to sell their products to consumers. At the time when Alibaba set up its e-commerce business, China was largely a cash country in which few people had credit cards. To be able to implement their business model, Alibaba had to secure payment transactions between buyers and sellers. As there was no provider like Visa or MasterCard in China that could handle this task, Alibaba had to set up its own payment infrastructure. Alibaba's subsidiary Ant Financial was established for that purpose. Alibaba needed factors to enable them to assess the creditworthiness of consumers and build trust between merchants and purchasers. That was the origin of the Sesame Credit Score system (Seidel, 2019, para. 10-11).

Sesame Credit combines elements of a traditional credit scoring system with components of a loyalty scheme. It calculates a score between 350 points and 950 points based on data from various categories. It considers what you buy and whether you repay your bills but also what kind of degree you have and the scores of your friends (Hvistendal, 2017, para. 14). Those with higher scores gain access to rewards, including deposit free use of power bricks and shared bicycles, as well as reduced deposits when renting property.

In a press interview, Li Yingyun, Technology Director at Sesame Credit, indicated that the type of product purchased affects the score: "Someone who plays video games for ten hours a day, for example,

would be considered an idle person [...] while someone who frequently buys diapers would be considered as probably a parent, who on balance is more likely to have a sense of responsibility." The system thus steers citizens away from purchases and behaviors the government does not like (Botsman, 2017, para. 5).

To conclude this section, one can say that certain pieces of the system are already in place. All these projects are best seen as a "microcosm of what is to come" (Minsteanu, 2018, para. 20). The target, eventually, is that the government system will be country wide, with businesses given a 'unified social credit code' and citizens an identity number, all linked to a permanent record. While many people think that the system will consist of quantifiable scores (such as in Rongcheng and with Sesame Credit) the government's idea can be better compared to a record accessible to everyone (Kobie, 2019, para. 10).

One key factor to watch is the relationship between government and commercial actors. Government agencies clearly depend on private companies' technological know-how to roll out such a large-scale system. Yet, access to data that is in possession of the government is also essential. Conflicts and rivalry between bureaucratic and commercial players could delay or even derail its implementation (Ohlberg et al., 2017, p. 2). Individual government departments do not like sharing their data as they hold significant commercial and political value for those who control it. This creates difficulty when trying to set up a platform for cross-departmental sharing. While there is a national plan to set up a centralized system for the coordination of data, there is currently little incentive for sharing (Udemans, 2018, para. 42).

4. The American & British Response³

"China's new 'social credit system' is a dystopian nightmare", reads the title of a New York Post article. The author paints a bone-chilling picture of the system by listing the various punishments Chinese citizens with a low credit score may encounter. He quotes the Chinese government which claims that the purpose is to create a 'culture of sincerity' that will 'restore social trust' but rejects this statement: "What it will actually create, of course, is a culture of fear and a nation of informants" (Mosher, 2019, para. 15).

This article is not to only one to make references to George Orwell's dystopian novel '1984', as many clickbait titles make use of the term "Orwellian nightmare", often combined with words such as "chilling" or "creepy", showcasing their opinion of the Chinese government initiative (Botsman, 2017; Dirnhuber, 2019). American Vice President Mike Pence even used the term, stating that "China has built an unparalleled surveillance state, and it's growing more expansive and intrusive [...] and by 2020, China's rulers aim to implement an Orwellian system premised on controlling virtually every facet of human life" (Pence, 2018, para. 30-31).

Comparison is also made with the controversial 'Nosedive' episode of the sci-fi series *Black Mirror*, portraying a society where people are judged by a numeric rating given to them by their interactions with other people, affecting their opportunities in life (Marr, 2017; Palin, 2018, Pettit, 2018). Not surprisingly, most articles focus on the system of punishment and rewards. In 2018, several media outlets reported on the fact that over 20 million times, Chinese citizens were banned from buying travel tickets because they had landed on blacklists (Kuo, 2019; Cheng, 2019). They are also concerned about

³ In order to give an indication of the responses of advanced democracies (mostly established in the Western world) and due to time and word constraint, American and British newspapers were chosen. This is not representative of the international reaction to the SCS but nonetheless gives some insight into 'Western' thought.

the permanence of judgements and that there is no “right to delete or to be forgotten, to be young and foolish” (Botsman, 2017, para. 39). They believe that trustworthy mechanisms and transparency of the algorithm are required to make sure data is used responsibly (para. 40).

The Telegraph draws a comparison between services such as Amazon, Airbnb or Uber that have credit rating systems of their own. They mention the risks that these rating systems bring, such as “petty discriminatory biases” (Yan, 2019, para. 27). The author fears that these are challenges that the Chinese system might also face. They are skeptical about how ‘good citizenship’ is judged and, more importantly, who judges it. Yan also reports of cases where Chinese citizens unjustly landed on blacklists such as journalist Liu Hu who suddenly couldn’t book a plane ticket or take out a loan. He discovered his name on the Supreme Court’s ‘List of Untrustworthy Persons’, because the court hadn’t recognized that he had complied to his judgement in 2016. It took two years to get his name off the blacklist. He criticized the system by saying: “The Chinese government is trying to set up a ‘credible society’ through the social-security system, but how can it be possible if the government is not honest?” (Yan, 2019, para. 30). This shows that some Chinese citizens do have their doubts about the system and that Western media is not completely wrong in pointing out its flaws and showing concern for the future.

Yet recently, more newspapers are taking a deeper look into the 2014 project, trying to figure out the details and motivations behind it, and conclude that there might be some misconceptions: “Rather than instantly dismissing China’s unconventional governance innovations, we need an open-minded discussion of the pros and cons — one that is sensitive to the challenges and priorities of different cultural and political contexts” (Song, 2018, para. 10). They do not deny that there are challenges to the system that need to be addressed but argue that it is also “more complex and less sinister in its intent than the West’s neat dystopian vision suggests” (para. 2). One common misconception seems to be that there is already one single unified system in place and private systems, such as Sesame Credit, often get confused with government plans (for a list of everything media in the West has wrong, see Daum, 2017). A Wired article tried to shed light on the SCS by explaining how the system works, what happens when one is blacklisted and, most importantly, why the Chinese government is building it. In the end, they quote a scholar saying that reality lies “somewhere between the government’s claims and the Western media’s description of horror-filled dystopias” (Kobie, 2019, para. 32).

5. The Chinese Response

Social Credit has become a political buzzword in China. The Chinese media frequently frame social credit as a means of creating integrity in society and government affairs. Creating transparency and holding governments officials accountable as well as establishing confidence in the law are proclaimed as the foundation on which the SCS rests (Ohlberg et al., 2017, p. 6). In terms of economic governance, the system is treated as a catch-all solution for various market efficiency problems and fighting economic crime. It is “regularly mentioned as a solution at the end of articles on various current economic problems, such as product counterfeiting, food and drug safety violations, disrespect of market regulations, etc” (Ohlberg et al., 2017, p. 6). After their analysis of social media discussions, Ohlberg concludes that many citizens have yet to grasp what the SCS is and what its implications may be (p.2). An article on the news site ‘What’s on Weibo’, which reports on social trends in China, argues that there are clear indications that the attention for the Chinese Social Credit System in the international English-language online media environment is much bigger than that within China (Koetse, 2018a, para. 10).

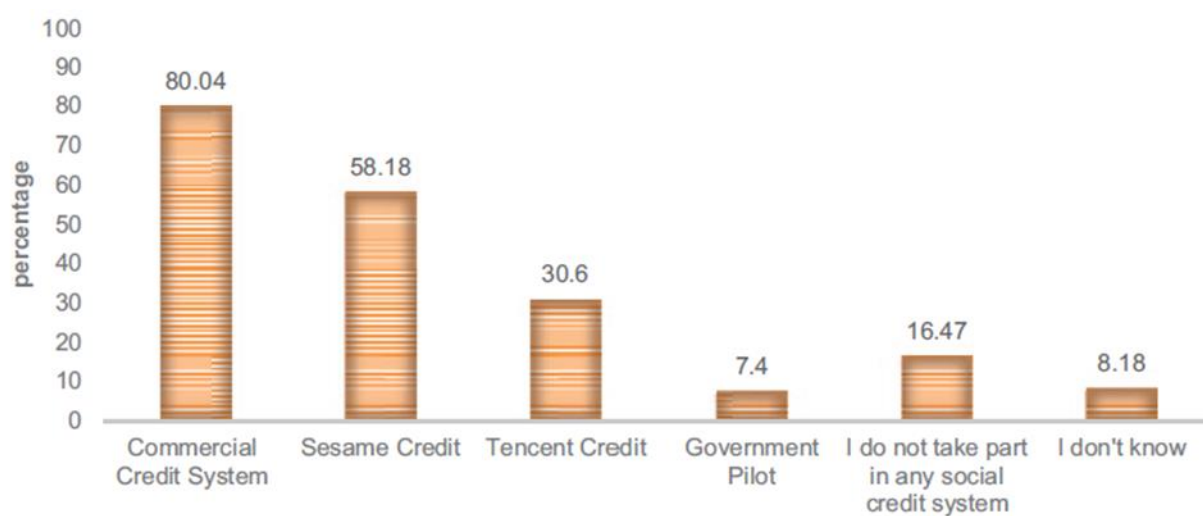
They blame the lack of sensation: "Perhaps the topic of SCS, for many Chinese, is lacking the 'Black Mirror' appeal it has for many Western consumers of news. Perhaps 'harmony' and 'trust' are not as click-worthy as 'creepy' and 'dystopian'?" (para. 55).

However, this doesn't mean that Social Credit is not discussed at all on Chinese social media. Though major discussions on the actual Social Credit System using the exact Chinese term are practically non-existent on Weibo, there are other examples of trending topics linked to the system that have gone viral. One example is the topic of 'Two Tyrants' that went viral on Chinese social media in August 2018 (see Koetse, 2018a). Two 'train bullies' were caught being rude on camera, refusing to give up the seats they had taken from other passengers, raising their voice, and talking rudely to the conductor. The news made headlines and became one of the bigger news stories of that year. When news came out that both 'bullies' were fined and blacklisted by the Chinese railways and thus banned from boarding trains for 180 days, many commenters praised the system with some even demanding heavier punishment. Many people also commented that this blacklisting system should be applied to people disturbing the order in other areas (such as hospitals) and that it should be linked to the nationwide SCS (Koetse, 2018b, para. 32). It seems that, on social media, Chinese citizens applaud seeing individuals land on Social Credit related blacklists. In 2016, when the National Tourism Administration published the names of people banned from plane travel, the news generated thousands of 'likes' and repostings on the Weibo social media site (Minter, 2019).

Lastly, Kostka's (2019) research remains the only study so far that has analyzed Chinese public opinion on a large scale and allows us to make broader claims about public opinion of SCSs. Her study finds that SCSs are already widely used in China with more than 80% of respondents using a commercial SCS and 7% of respondents reporting participation in a local government SCS (see figure 3). Her survey with 2,209 Chinese citizens finds that 80% of respondents approve of social credit systems in China, with just 1 percent reporting either strong or moderate disapproval (see figure 4). With the degree of approval varying across age, gender, education, region, etc., the study finds that more socially advantaged citizens (wealthier, better educated and urban residents) show the strongest approval. One argument for this interesting result is that urban residents in China receive a wider range of benefits from SCSs and see SCSs through particularly positive frames (Kostka, 2019, p. 20). This supports the views of those who claim that Chinese citizens focus more on the perks of SCSs instead of the challenges.

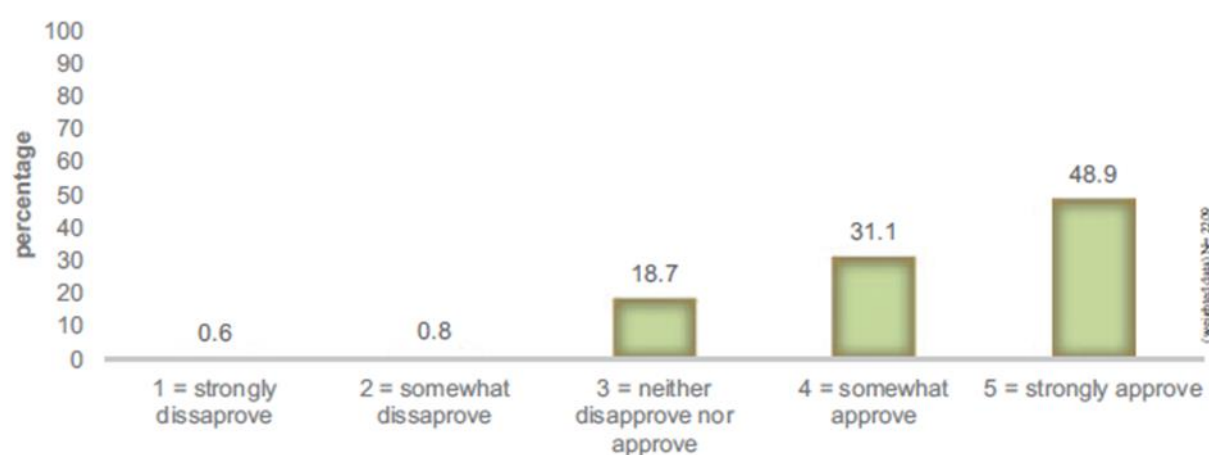
Another point this research makes is how citizens perceive SCSs as an instrument to improve quality of life instead of an instrument of surveillance (p. 21). Through a dozen interviews, the author tried to find an explanation for the observed degree of approval. They concluded that SCSs are perceived as "useful tools that help to increase trust in society and close particular institutional and regulatory gaps" (p. 21). The author however did not go into detail on this intriguing discovery which consequently served as the inspiration behind this paper's research question.

Figure 3: Participation in Social Credit Systems



Source: Kostka, 2019, p. 11

Figure 3: Participation in Social Credit Systems



Source: Kostka, 2019, p. 11

5. Historical and intellectual roots

The concept of a SCS was not unheard of before 2014. The notion of social credit first emerged in debates concerning the development of China's nascent market economy. In 2007, the State Council released the Guiding Opinions concerning the Constructions of a Social Credit System and defined social credit as "an important structural arrangement in the market economic system" (State Council, 2007, para. 4). In other words, the government focused on the financial aspects of credit during this period (Liang et al., 2018, p. 424). However, if we go back even further in time, explanations for the ideology behind the SCS based on historical facts can be found.

China has constantly been striving towards building an effective, powerful and prosperous state. In the 19th century, early generations of reformers saw law as a key element of modernizing state and society (Creemers, 2018, p. 4). Yet, successive generations of leaders were unable to establish stable domestic governance across the entire Chinese territory and protect it from foreign intrusion (p. 5). Law was not seen as a priority anymore and only regained meaning after the Death of Mao Zedong (leader of the CCP from 1935 to 1976). This long period of neglect meant that China missed out on most of the developments in legal systems occurring around the world in the 20th century. The introduction of fundamental human rights never gained a foothold in China (p. 5).

Thus, the state became the promoter of moral virtue: "The close linkage between morality and authority lies at the heart of China's political tradition" (Creemers, 2018, p. 5). The central state would portray itself as morally superior to its local agents and would reframe political conflicts as moral failings. Enforcing these moral standards justified the expansion of the state's capacity to monitor and discipline (p. 6). The SCS fits perfectly into this tradition. From the very beginning of the Planning Outline, all problems that the government intends to solve with the SCS are framed in moralistic terms. The policy document claims that the objective is to establish 'sincerity culture' and stimulate 'trustworthiness' (State Council, 2014, para. 1-3). Thus, once again, the state is justifying its authoritarian plans with righteous principles.

Another Chinese political tradition is the perception of society as an organic whole, where harmony can be achieved if all its members conduct themselves as appropriate to their position in public and civil structures, which is a characteristic of a collectivist culture. One process that the SCS fits into is that of 'social management', a key objective of the 12th Five Year Plan (a blueprint which outlines key economic and development targets for the country for the next five-year period) launched in 2011 (Hoffman, 2018, p. 6). Social management is a political term for China's efforts to create a system that prevents and manages social unrest (Cohen, 2011, para. 2). Definitions for social management are quite ambiguous but its purpose is clear: "to solve prominent problems that might harm the harmony and stability of the society" (para. 5). One implementation of the social management process is the SCS. Social management is the management of the entire society, but it also requires the participation of the entire society. The CCP's definition of social management has always emphasized "public participation" and "self-management" (Hoffman, 2017, p. 8). The SCS creates a process for pre-empting threat by changing behaviors that might lead to larger problems. Compliance of individuals and businesses with laws and regulations is increasingly monitored, and the consequences of noncompliance are subject to swift and efficient sanction (Creemers, 2018, p. 7).

As we can see, the Social Credit System can be traced back to other government initiatives and its ideology can be explained through historical traditions. Chinese citizens therefore might not find the social credit initiative as outrageous as outsiders expect them to. It is only natural that the long history of authoritarian rule has influenced the Chinese mindset. One example for this can be found in an interview Kostka (2019) conducted, where an interviewee explains that "all data is accessible to the CCP already" (p. 22) when asked about potential concerns about what data is used in SCSs.

6. The Issue of Trust in Chinese society

As has been mentioned before, the most significant factor that contributes to the positive attitude of Chinese citizens towards the SCS is the perceived lack of trust in society. This is a topic this research looks deeper into in order to understand Chinese public opinion.

Over the last thirty years, China's economy has grown explosively and has now become the world's largest economy producing \$25.3 trillion in economic output in 2018 (Amadeo, 2019, para. 1). However, China's economic growth has outpaced its ability to create and police institutions that promote trust between citizens and businesses (for example enforce contractual agreements or food and safety regulations) (Chen, Deakin, Siems & Wang, 2017, p. 259). A few examples will be given that demonstrate this.

As recently as 2011, only 1 in 3 Chinese people had a bank account. Even now, cash still rules the country. It however never had the chance to develop Western-style credit histories which meant people could default on loans, or sell counterfeit goods, with few repercussions (Campbell, 16 jan 2019, para. 4). The government even addresses this problem its policy document: "At present, malicious arrears and fleeing bank debts, swindling and evading taxes, commercial fraud, production and sale of counterfeit goods, illegal fundraising and other such phenomena cannot be stopped despite repeated bans" (State Council, 2007, para. 2).

Other examples include a case in 2008 where contaminated milk powder sickened nearly 300,000 Chinese children and killed six babies. Twenty-two companies, which accounted for 20% of the market at the time, were found to have traces of melamine in their products. An investigation found that local farmers had deliberately added the chemical to increase the protein content of substandard milk. In 2015, a mother and daughter were arrested for selling \$88 million in faulty vaccines. When the arrests were made public and it was announced that the improperly stored vaccines had made their way across 20 provinces, the public was furious and there was a severe loss in consumer confidence (Udemans, 2018, para. 23-24). However, with no tradition or even existence of an independent judiciary, there is nowhere to take any complaint for recourse (Blaza, 2012, para. 5).

It is therefore no wonder that in China, trust is only awarded after you've proven yourself to be worthy (De Cremer, 2015, para. 9). After all, "to be Chinese today is to live in a society of distrust, where every opportunity is a potential con and every act of generosity a risk of exploitation" (Hawkins, 2017, para. 4). When old people fall on the street, it's common that no one offers to help them up, afraid that they might be accused of pushing them in the first place and sued (para. 4).

This trust deficit is a dangerous threat to a country's political system because "the less people trust each other, the more the social pact that the government has with its citizens — of social stability and harmony in exchange for a lack of political rights — disintegrates" (Hawkins, 2017, para. 4). Thus, the government started searching for solutions. Rewarding people for 'trustworthy' behavior and punishing people for 'untrustworthy' behavior came to serve as the remedy for China's trust crisis. The government believes that the SCS will create an "environment of sincerity, self-discipline, trust-keeping and mutual trust" (State Council, 2014, para. 4). And it seems that the Chinese people agree.

7. Surveillance theory: Bentham, Foucault & Lyon

Lastly, to offer a fresh perspective, this paper uses two concepts from surveillance theories developed by Western scholars and applies these to the SCS in China. While they might not contribute much to the discussion on Chinese public opinion, this research argues that they do hold explanatory value for the ideology behind the Social Credit System. Additionally, Lyon's notion of 'surveillance as social sorting' is discussed to highlight some of the risks the SCS poses.

The idea of the 'Panopticon' is probably the most widely used metaphor for surveillance and has become particularly famous through Foucault's concept of 'panopticism' (Galič, Timan & Koops, 2016, p. 11). However, Foucault's ideas are founded on Bentham's description of the prison-Panopticon. Bentham depicts a prison as a building with an inspector in a central tower who oversees the activities of the convicts in their cell (p. 12). This architecture results in a "new mode of obtaining power of mind over mind in a quantity hitherto without example" (Božovič, 2010, p. 10). The architectural design creates the illusion that there is constant surveillance. The prisoners are not constantly watched, but they believe that they are, which sustains perfect discipline. In their eyes, the inspector is "all-seeing, omniscient and omnipotent" (Galič et al., 2017, p. 12).

Foucault builds on this idea of an all-seeing inspector and defines his panopticism as "a type of power that is applied to individuals in the form of continuous individual supervision, in the form of control, punishment, and compensation, and in the form of correction, that is, the modelling and transforming of individuals in terms of certain norms" (Faubion, 2002, p. 70). He takes Bentham's prison-Panopticon and projects it onto other parts of society to analyze power relations and models of governing, giving birth to his most famous work: "Discipline and punish: the birth of the prison". Foucault claims that in Western societies, daily life have been invaded with Panoptical mechanisms of watching and being watched and, consequently, of disciplining power. When everybody can potentially be under surveillance, people will internalize control, morals and values. He defines this as the disciplinary society (Galič et al., 2017, p. 16).

The Panopticon is perceived as an ideal system to discipline the individual. Foucault explains this by linking the disciplining process to another phenomenon, namely that of normation. By this, he means the "perpetual penalty that traverses all points and supervises every instant in the disciplinary institutions, compares, differentiates, hierarchizes, homogenizes, excludes. In short, it normalizes" (emphasis in original) (Foucault, 1991, p. 183). The norm constitutes what one has to strive for, the standard and the ideal. In disciplinary societies, the focus lies on individuals who are constantly measured against the norm (Galič et al., 2017, p. 17). Foucault's analysis resonated widely with the public, especially in relation to the rise of CCTV cameras. Through a constant gaze, "normation and internalisation of 'doing good' are achieved [...] and citizens in public space can thus be molded into behaving according to the norm" (Galič et al., 2017, p. 18).

Naturally, this brief description does not do the complex nature of both Bentham's and Foucault's studies justice. Additionally, scholars have argued that with changes in technology and society, and new modes of surveillance, the panopticon should be discarded (see for example Haggerty, 2006). The goal here however is to demonstrate some similarities between their concepts and the Chinese government's ideology. The SCS can also be seen as a mechanism that creates a disciplinary or, in the words of the State Council, a "harmonious society" (State Council, 2014, para. 2). Chinese citizens are steered into behaving a certain type of way through reward and punishment systems. Even

though technology has changed, and Chinese citizens are in some cases voluntarily submitting themselves to surveillance, Bentham and Foucault's fundamental ideas are still valid. "The lack of anonymity [...] through publicly-published blacklists, creates a system of fear even if no one is watching—much like Bentham's notorious panopticon" (Udemans, 2018, para. 49).

David Lyon (2003a) proposes that surveillance can be a powerful tool for creating and reinforcing long-term social differences through a process he calls 'social sorting'. Traditionally, concerns about surveillance are usually focused on privacy and freedom. Now, he argues, people's concerns should take a new perspective into account "for surveillance today sorts people into categories, assigning worth or risk, in ways that have real effects on their life-chances" (p. 1).

A current key trend of surveillance is the use of searchable databases. The belief nowadays is that access to improved speed of handling and richer sources of information about individuals and populations is to be the best way to check and monitor behavior, to influence persons and populations, and to anticipate and pre-empt risks (Lyon, 2003b, p. 14). At the same time, surveillance is intensifying both in everyday life as well as commercial, government and workplace settings (p.19).

The central aim of searchable databases is social sorting. The surveillance system obtains data in order to classify people and populations according to varying criteria, to determine who should be targeted for special treatment, suspicion, eligibility, inclusion, access, and so on. Ever since the terrorist attacks of 9/11, security requirements have been raised to a high level of priority in nation-states around the world. Social sorting is growing because of the increasing number of risks and the desire to manage populations (Lyon, 2007, p. 161).

Kirstie Ball (2003) gives an example social sorting through surveillance at the workplace. Several studies were conducted in call centers in the UK in the 1990s, where the main type of surveillance was computer-based performance monitoring (CBPM) (p. 202). CBPM "monitors workers' performance over a predefined time period and uses the statistics and voice recordings it generates to categorize and evaluate them according to certain performance criteria" (p. 203). Call center workers' performance was intensely monitored and rewards (material or otherwise) for effort and punishment for non-effort were given (p. 204). Ball points out that while some people might view this system as necessary to enhance efficiency, it can seriously affect workers' psychological and physical well-being and that workers should be able to challenge unfair monitoring practices (p. 204).

Relating this to the Chinese SCS, similar points can be made. In some pilot programs, citizens are already put into categories that have far-reaching effects on their lives. While surveillance can help manage society, rules need to be in place to ensure fairness and prevent abuse. However, the establishment of a national legal and regulatory framework is still far from being a reality in China and there is a clear lack of transparency into what data is currently used and how scores are calculated. China might thus run a high risk of turning into the 'Orwellian nightmare' that people fear once the system becomes operational on a nationwide scale.

7. Conclusion

The research question that guided this paper was the question of why many Chinese citizens are embracing the Social Credit System launched by the State Council in 2014. From a historical point of view, the government has always seen itself as the promoter of moral virtue and uses arguments based on righteousness to justify its authoritarian rule. Therefore, Chinese citizens might not be as shocked by

the 2014 initiative and the degree of state intervention as many non-Chinese people. The public furthermore agrees that there needs to be greater accountability and trust in Chinese society. It sees the SCS as a solution to various trust-related problems currently plaguing Chinese society. Rather than resistance from the public, it is more likely that the rivalry between government agencies and large commercial players will become an obstacle while building a national framework and a central database.

While discussing Lyon's concept of 'social sorting' and at several other points in this paper, concerns for the future of the SCS were raised. Knowledge about how and what kind of data is collected for various blacklists as well as what algorithms are used to determine social scores used in pilot programs is very limited. Currently, the most widely used pilot system, Sesame Credit, is offered on a voluntary basis. But for how long? Moreover, being blacklisted affects citizen's lives tremendously. Not to mention the people that get blacklisted unjustly. One offense, such as failing to pay a parking ticket, could result in someone not being allowed to book a train or take out a loan. At the same time, it is still unclear for how long these restrictions will exist. These are valid concerns and will need to be addressed by the government. When more and more people become blacklisted and punishments become more severe, public opinion might very well change.

This research shows that at present, a single unified system is not yet in place – and is unlikely to be completed by 2020. It tries to shed on the design and current implementation stage of the project and both the 'Western' and Chinese response as expressed in the press and online. There are however several limitations to this study. Because of the language barrier, no original Chinese source material, except for the translated State Council documents was used. This limits this study, especially when analyzing public opinion. In addition, because of time and word constraints, the complex technicalities of the SCS, the various organizations involved in its set-up and the subsequent released policy documents could not be addressed in as much detail.

It might be interesting for future research to analyze social media discussions in China (though it seems that for now, not a lot of attention is given to the government project) and conduct more studies related to public opinion as research is still scarce in this field. Future studies might also investigate the possibility of the SCS being introduced in other countries such as the US. After all, Amazon, Facebook and Google already know everything we read, search and buy and we do not know what they might do with all this data in the future.

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The Dynamics of Google within the Frame of a Large Technical System - An LTS analysis of Google

Julian Schäfer¹

ABSTRACT

The Large Technical System approach was introduced by the influential historian of technology, Thomas P. Hughes, in the 1970's and is one of the most prominent theoretical frameworks within the Science and Technology Studies. However, it has found little attention in relation to the digital realm. This research applies the LTS framework onto the US-American company Google and seeks to bring a conceptual understanding to the company's exponential growth. Thus, it describes the emergence and evolution of Google as a complex system – an alignment of components of technical and non-technical nature – and assigns patterns and concepts to its development. This research provides an answer to how Google not only gained a system structure but also reached the notion of momentum. Yet, suggesting a social constructivist path, this paper secludes by elucidating the influencing power of the LTS's user – an important factor which was widely disregarded in the initial works of Hughes.

Keywords: Large Technical System, Google, System Builders, Momentum, Transfer

1. The Dynamics of Google within the Frame of a Large Technical System

Thomas Edison invented the light bulb, founded the Edison General Electric Company and brought light to American cities and villages (Hughes, 1993). Henry Ford launched the Quadricycle, established the Ford Motor Company, and brought the car to American streets (Hughes, 2000). Larry Page and Sergey Brin brought to life a search algorithm, started Google Inc. and changed information gathering on a global scale. (Vise & Malseed, 2006). In modern society, only a few companies had and have a ubiquitous influence on people's life, culture and politics. In most cases, they started out with small, unique ideas and, within a couple of years, developed into systems and networks of great structural complexity. (Joerges, 1996)

Google, even more than General Electric and Ford, is one of the leading examples of companies which rose from a simple idea into a multi-billion-dollar business-network. It took Edison more than half a century to electrify American homes (Hughes, 1993). In only a fragment thereof – 9 years – Google reached 70 percent of all internet users, billions of people across the world. (Auletta, 2010). Although this comparison lacks considering the difference between the physical and the digital realm, it encapsulates the enormous scale of growth. With a fourth term revenue of \$39,2 billion Dollar in 2018 (De Vynck, 2019) it is almost unimaginable that the history of Google started in a garage only two decades ago. But how did the company arrive at such a point of complexity, no longer existing as a pure search engine, but as a company that has branches in sectors ranging from biology to robotics? (Schulz, 2017)

Being such a young company, not much academic research has been done on Google's emergence and growth. By approaching its business model (Schmidt, 2014; Holden, 2008; Lowe, 2009) or the structure of algorithm (Baskin, Brashars & Long 2007; Burns & Sauers, 2014; Guermeur & Unruh, 2010) most publications deal with narrow aspects of Google's characteristics. The history of Google and especially

¹ Julian Schäfer received a bachelor degree in Arts and Culture at Maastricht University in 2019. At the moment he takes a Master in Governance of Technology and Innovation at RWTH Aachen University. Contact: julianjschaefer@web.de lee

its formation is only described in the books by Vise & Malseed (2006) and Auletta (2010), both taking a narrative approach – constructing a chronological sequence of events and weaving them in a congruent manner.

Yet, it is not the only way to describe the formation of a company. By approaching its development from a larger system perspective, historians and predominantly scholars of Science and Technology Studies (STS), aim at finding identifiable and recurring patterns and concepts of evolution. In doing so, they construct a narrative too but base it on a conceptual framework. Arguably, one of the most prominent and recent attempts within STS is the Large Technical System (LTS) approach. The general framework of an LTS was introduced by the American historian of technology Thomas P. Hughes (1993) in the book “Networks of Power” in which he analyzed the emergence of electricity systems from 1880 to 1930 on a regional and national level. The approach found large appreciation and, in addition to the named examples of General Electric and Ford, was applied to a variety of other fields such as railway networks (Kaijser 2005) or water transport systems (Odhoff, & Svedin, 1998). What makes this approach special is the description of the successful alignment of technical and non-technical elements into a sociotechnical whole. This implies, physical, technical artifacts such as inventions and machinery, but also human components such as inventors or managers who guide the development of a company fall under the same category. Additionally, Hughes assigns “loosely defined” patterns and concepts onto the development processes which can be identified and analyzed. In doing so, Hughes illuminates how companies gain a system structure and a structuring capacity onto their larger environment (Bijker, Hughes, Pinch, 2012).

It is quite evident that the current state of Google does possess a system structure and structuring capacity as described by Hughes. In 2015, Google was divided into the company’s traditional and new branches. “Google search”, “YouTube”, “Google Maps”, inter alia, are now separated from new projects such as “Google X” and “Google Ventures” which conduct research in the field of autonomous cars and microbiology. All companies are united under the umbrella company called “Alphabet” (Schulz, 2017). No other company seems to have such an omnipresent role in everyday life. Google is no longer the simple search engine it was originally intended to be. It has become part of everyday life, culture and language. “The internet made information available. Google made information accessible” (Schulz, 2017 p.35). In this context, it is of greater interest to take a step back and investigate how such a structure of power came into existence and what it may imply.

This study entails applying an LTS approach to Google. The research investigates if phases and concepts as described by Hughes can be identified in Google’s history. I am interested in finding out to what extent the theoretical concept of Large Technical Systems (LTS) can provide fruitful insights into the complexity and success of this internet platform? In doing so, I will analyze if the company became part of what Hughes calls a “deep structure”, i.e. a structure that has surpassed key drivers of social change such as politics and geography. No previous LTS research considered an internet platform as the object of study. The majority of previous LTS studies conducted research with individual companies in individual countries. (Kaijser & Vleuten, 2006) I do not intend to cover the entire history of Google. For the analysis, I will spotlight the company’s early period (1997 - 2005), with special attention to the year 2002. In this year, Google first became financially profitable due to the introduction of personalized advertising. I will furthermore focus on the major events in the company’s history and restrict myself to the general LTS definition by Hughes. The information about Google’s development are predominantly taken from the books “The Google story” (Vise & Malseed, 2006); “Googled: The end of the world as we know it” (Auletta, 2010), “Was Google wirklich will. Wie der einflussreichste Konzern der Welt unsere Zukunft verändert”

(Schulz, 2017); "Google: How google works" (Schmidt, 2014) as well as a variety of newspaper articles. Combined, these sources provided me comprehensive insights into its chronological emergence. Further definitions of subsequent LTS research that focus on narrow aspects of the system will only be regarded to a limited extent. In the first step of my research, I will elucidate the Large Technical System approach and apply it to the corporate history of Google. Furthermore, I will discuss the framework under consideration of a previously widely disregarded actor, namely the user. Overall, this research conceptualizes the development of Google for the first time within the realm of STS. In doing so, I intend to pave the way for further discussion and research in the field of LTS studies in relation to modern internet companies.

2. Large Technical Systems – A Versatile Interpretable Approach

Large Technical Systems are complex and so is their definition. It is immensely difficult to use a generally accepted definition for LTS research. Unlike, for instance, the social construction of technology (SCOT) by Pinch and Bijker, the LTS approach does not supply a sharply defined methodology (Bijker, Hughes, Pinch, 2012). Rather, it should be interpreted as an open research approach with different concepts and research strategies (Vleuten & Kaijser 2006). Researchers applying the Large Technical System approach use definitions inspired by the work of Hughes but substitute them to fit their specific needs and purposes. Therefore, even the meaning of the basic terms "large", "technical" and "system" can vary strongly depending on their discipline. One attempt is to define a Large Technical System by its function suggesting to "determine the relative quantity (complexity, speed, rate of growth, etc.) of activities materialized in such systems and the quantity of other social processes necessitated in order to function" (Mayntz & Hughes, 2005 p.24).

Other definitions depend on the relative largeness of the system per se. Particularly, Bernward Joerges defines Large Technical systems as:

[...] complex and heterogeneous systems of physical structures and complex machineries which (1) are materially integrated, or "coupled" over large spans of time, quite irrespective of their particular cultural, political, economic and corporate make-up, and (2) support or sustain the function of very large numbers of other technical systems, whose organizations they thereby link. (Mayntz & Hughes, 2005 p.24)

Although such definitions contribute to a basic understanding of the subject, they are of little use for an extensive discussion of LTSs in relation to Google. To simply apply these definitions to internet service provider would undercut its broader dynamics, such as the implications for society at large. Additionally, the realm of my case study would turn out to be problematic to apply in this context since Google's evolution takes place in the digital and physical sphere. Such factors were previously disregarded. Unfortunately, Hughes, who died during the rise of the most popular internet services in 2005 (Ryan, 2013), did not explicitly apply his LTS approach on digital service providers. Yet, his methodological angle is most applicable for my approach. Instead of providing a sharp, five-line working definition he analyzed the dynamics from a descriptive stance and organized the system in different concepts. In the following, I will illustrate Hughes' basic concepts of LTSs. Simultaneously, I will here relate to the development of Google and point out corresponding patterns.

3. Large Technical System

3.1 Structure

Before diving into the analysis of Google, I need to evaluate Hughes' fundamental framework of LTSs in more depth. The fundamental structure of an LTS consists of a network of interrelated components – the system. The system is of national, but mostly global scale (Gökalp, 1992). Noticeably, components have different functions and can be of very different nature (Bijker, Hughes, Pinch, 2012). Thus, Hughes distinguished between physical artifacts – material technology components – such as machines and production devices, organizational structures which control and govern the system, as well as institutional elements which provide a regulatory framework, the system's cultural values and professional know-how. Together the components build up a material and immaterial as well as human entity with closely inter-related parts and processes. Hughes stresses that a clear classification and restriction of components must be provided. If one component is investigated in isolation, a system structure with further components and organizational arrangements might appear again. In other words, components can consist of individual sub-systems and are categorized in accordance with the system. All components are united by a common objective – the system goal. They all contribute to a larger outcome or product.

At this point, scholars of STS might point out similarities to the "Actor-Network" approach by Michel Callon and Bruno Latour in which components – or according to Callon and Latour, "actors" – can be of technical and physical nature, too (Muniesa, 2015). To a certain extent, this is correct, but while the "Actor-Network" approach treats actors of the network with relative equality, the LTS approach argues for a guiding force which steers the LTS. According to Hughes, such forces are executed by managers, inventors, engineers called system builders (SB). The SB aligns the technical and non-technical components into a socio-technical whole. In other words, the SB oversees the hardware invention and development as well as the organizational structure of the Large Technical System and enforces centralization within. The character of the SB varies in accordance to the systems development. Hence, Hughes distinguishes between the inventor-entrepreneur, the manager-entrepreneur and the finance-entrepreneur. Even though the System Builder seems to be a dominant figure, the system and the SB are strongly dependent on each other. While the SB is reliant on the system's function and the system is reliant on the SB's strategy. In my later analysis, I will look at the concept of the system builder more closely.

Taking a step back, the Large Technical System is placed in an environment – a physical but also non-physical setting such as the market – which cannot be controlled by the system builder. However, it is the goal of the system and its builder to gain control over some of the environmental factors by incorporating them into the system. For instance, this can be achieved through the domination of the market. By means of control, factors of uncertainty such as a once free market are eradicated. The LTS becomes more calculable and more influential in this environment. Later Hughes describes this phenomenon as the momentum, a concept which will be relevant in the last part of the paper.

3.2 Emergence and Development

Having explained the foundation of the system, I can turn to the LTS's emergence and development. Hughes suggests that the development of a large technical system is neither linear nor stable at any time (Bijker, Hughes, Pinch, 2012). It undergoes a constant process of change. New Large Technical Systems can supersede others or merge. They can spread from national to international territorial or change

radically in competition with others. However, changes of an LTS can be framed into four major phases: invention phases, development phase, innovation phase and competition and consultation.

While going through these phases, the system's number of interrelated components increases, and consequently, does its complexity. The expansion, however, comes with some cost and hence sooner or later the LTS will inevitably encounter problems which hinder its further growth. Hughes calls these problems reverse salients and they are characterized by underdeveloped components, organizational anomalies or general uneven development. To illustrate, a technical system's growth might be impeded by environmental factors, restricting policies or by a system's component becoming overwhelmed by its current task. It is the duty of the system builder to identify reverse salients, characterize them as critical problems and enact countermeasures. Put simply, the system builder is the "problem-solving manager" who steers the direction of an LTS. Like the system's components, the reverse salient can be of technical and non-technical character. Therefore, the system builder often engages in transdisciplinary problem-solving.

3.3 Invention Phase

A new Large Technical System originates in the invention phase. According to Hughes, all sociotechnical systems start out with and are structured around a technical core, the so called radical new invention. (Bijker, Hughes, Pinch, 2012) The radical new invention is created by the inventor entrepreneur. Hughes describes radical new inventions as technical solutions to a problem which however cannot be integrated into an existing Large Technical System. To illustrate, Thomas Edison invented the light bulb, one of the most revolutionary technical artifacts of the 19th century. But, since no electricity network existed at the time, there was no possibility for other LTS – mostly production companies – to integrate the light bulb as component into their systems. The idea was rejected. (Hughes, 1993). Hughes suggests that radical new inventions can either occur within or outside of an LTS. Both options are characterized by two different types of inventors. The independent inventor entrepreneur creates from an external position, outside of the LTS. He has complete freedom from any organizational constraints. On the one hand, he does not rely on contributing to an LTS due to solving its reverse salient, on the other hand, he lacks important resources for the invention process. The professional inventor entrepreneur, on the contrary, works for a Large Technical System. He has access to a variety of resources, however, lacks creative freedom because the creation of new inventions, which are incompatible with the existing LTS structure, are not favored by the system. In effect, radical new inventions do not occur on a regular basis. They are extremely rare because of their demand for innovative freedom and resources. (Bijker, Hughes, Pinch, 2012)

For the analysis of the innovation phase of Google, the environment in which the company took shape needs to be considered. Unlike the Ford Motor Company or General Electrics, Google is not a producer of physical goods in a physical environment, but a service provider in a digital realm. For this reason, my LTS analysis has conceptualized the internet per se as environment. In a different analytical frame, the internet as such can be considered a Large Technical System itself, yet since it provides the stage for Google's and other relevant companies' rises, I regard this reduction as justified.

In the early 90's, the internet differed heavily from how we know it today. People were just beginning to write e-mails or create websites. (Vise & Malseed, 2006). Bit by bit actors of every kind became aware that almost silently a new marketplace was on the rise: The World Wide Web. Yet, despite all its new advantages, one fundamental problem soon emerged. Although it suddenly became possible to

create information and share with everyone in the world, the more the internet was used, the more difficult it became to find what one was looking for. Efficient web-searching was not born yet.

Google's innovation phase started due to the two system builders named Larry Page and Sergey Brin. Page and Brin were both PhD students at Stanford University and had a common interest in the emerging fields of data science and data mining. They were interested in improving internet searching. Web-search-programs at the time were almost useless. With the exponential growth of the web, search engines as for example offered by Netscape, which was the most popular web browser of the early World Wide Web, crawled every website word by word and hence needed a huge amount of time to digest and publish results. Inktomi, another example for former popular search engines, could not even find itself if its name was typed into the search-bar. Most search engines came up with thousands of results, completely unsorted and mostly without anticipated results. Even Yahoo, one of the first internet platforms which provided a search function, went so far to employ human editors to improve their search.

The solution which would bring order to chaos was proposed by Page and Brin in the form of a radical new invention called "Page Rank". "Page Rank" was an algorithm which not only came up with the correct search results but also seemed to sort them according to their relevance (Wiesend, 2015). But, how did it work? Until today, the precise function of Google's backbone remains secret. However, to understand Google's radical new invention in its most essential one must understand a different search engine – arguably Google's inspiration –, namely Altavista. Instead of crawling through the entire web, searching for buzz words, Altavista used links – highlighted words in a text document which led the reader directly to a web-page – to generate search results. The procedure allowed the search engine to be incredibly fast, especially in comparison with its competitors. However, also Altavista shared the problem of not sorting the results in a useful way.

Page and Brin developed the link-based search further by comparing links of web pages to references in academic work (Vise & Malseed, 2006). The more references lead to one particular academic work, the greater the importance of the work. The same should be true for websites. Quickly, both inventor entrepreneurs began to program a link rating system which gave more weight to web-pages that were highly mentioned by links. In other words, websites with high traffic appeared as top searches while low-traffic websites appeared in a lower position. A radical new invention was born. Page and Brin embedded the algorithm into their first official search program "BackRub", an immediate success. In a couple of weeks, it was used by thousands of Stanford students on campus. Only a few months after their invention, Page and Brin decided to rename their invention in what would become a world known brand, Google.

Revisiting this radical new invention with the LTS approach, Page and Brin can be considered independent inventor entrepreneurs. Both did not work for a Large Technical Systems, in this case major internet platforms such as Yahoo or Microsoft. Furthermore, their radical idea was repeatedly rejected as unfitting. As an illustration, in 1997 Yahoo which was worth multi-million dollar at the time, was offered the Google license for \$500.000. Yahoo declined, arguing that this search engine was too efficient and would lead users away from the platform itself. Google would run counter to their business model which was, very similar to Microsoft, to create a platform that would keep the users onsite for as long as possible. However, labelling Brin and Page as pure independent inventor entrepreneurs according to Hughes' description would also not capture the complete picture. Stanford University provides inventor entrepreneurs with the freedom to research ideas and inventions unfitting for other Large Technical Systems. Nonetheless, Stanford University also provides basic resources by supporting start-ups like

Google financially on the condition of them receiving stocks in the case of a successful launch later during development (Vise & Malseed, 2006).

3.4 Development Phase

Once the planted seed of a radical new invention can flourish, it proceeds into its developmental phase. According to Hughes' LTS approach, within the developmental phase, the invention develops a system structure and its first related components (Bijker, Hughes, Pinch, 2012). The new system is used by or is available to a larger group of consumers. It adapts to social economic and political characteristics of its environment. The inventor entrepreneur is still in charge of the system, yet the managing power is often distributed. Hughes suggests the inventor entrepreneur can be replaced or substituted by the management entrepreneur who has a further guiding position. Furthermore, during this phase, the system must encounter its first reverse salients. In many new technical systems, the most prominent first reverse salient is financial support. Up to this point, the system grows metaphorically in the dark. It is recognized by few, but not perceived as the LTS it is going to be. Hughes suggests, if the new system is offered to already existing Large Technical System's it is, similar to a radical new invention, rejected as an unfitting component. Finding investors who support the early system is therefore vital and of utmost importance.

After the radical new invention Backrub/ Google was founded, it did however not jump directly into the development phase. At that time, it was not even clear if their radical new invention would develop a system structure, which would add new components. New physical artifacts in the form of self-build computer systems were added to fulfill the demands of their ever more resource and energy-hungry program (Vise & Malseed, 2006). This extension happened to such an extent that in mid-1997 Pages' dorm room was rebuilt into a server room. Yet, the inventor entrepreneur kept Google below its potential. Available under its first domain "google.stanford.edu", the search engine soon enjoyed prominence far beyond campus borders. Search demands were too high to be handled by two PhD student with a few computers. However, Page and Brin were skeptic about providing their radical new invention the needed system structure to fulfill its demands. They hesitated to launch Google's development stage. Even though from today's perspective this hesitation seems to be incomprehensible, in the late 90's Pages's and Brin's concerns were very valid. New internet services emerged everywhere and generated much traffic in little time. Yet, successfully attracting a large popularity did not automatically imply financial success. Multiple new internet companies were able to acquire a large share of public attention but went out of business because they were not profitable. Investing in an internet company was therefore risky which Page and Brin, in close contact to the tech industry, were aware of. Internet companies seemed to allow revolutionary ideas no one paid for. Simultaneously, their unsuccessful effort to sell the Google license underpinned their skepticism.

Regardless of the uncertainty, Google arrived at the developmental phase when the system builder Page and Brin followed an advice from the Yahoo co-founder David Filo. With a credit of 100.000 \$US from a private investor, Brin and Page founded the company Google Inc. and moved into their first office in Palo Alto, California in 1999 (Auletta, 2010). Immediately, the search engine flourished and continuously added new technical and non-technical components to its system structure. Page and Brin massively extended Google's server system. Even though their financial backup would allow to buy a professional large server system from IBM, Google continued to purchase and rebuild many weaker, yet cheaper, computers into a single powerful unit run by the open source system Linux. Besides avoiding higher costs, this strategy had

the further advantage of not having to rely on external components. The servers fueling Google's search-engine were in complete control and ensured the autonomy of Google. Non-technical components were added in the form of an exclusive team of engineers selectively chosen by Page and Brin to improve the search engine and to keep the server system running. Everything indicated further growth.

In mid-1999, Google was able to generate 500.000 search requests on an average day and started to compete with other search engines such as AltaVista and even Yahoo, regarding the size of their search-index (Vise & Malseed, 2006). The former project of two PhD students grew into a company with 40 employees. But Google did not stop there. Though web-search was the priority for Brin and Page, the two inventor entrepreneurs intended to extend their now system structure beyond initial invention. For example, in 2000 the Google image search was integrated into the regular Google search. This was the first time a search engine incorporated this.

However, guided by two inventor entrepreneurs with a background in engineering, the system arguably grew without a precise plan or business strategy. The system builders Page and Brin followed the first and foremost goal which was to optimize the system. This soon resulted in the company's encounter with its first reverse salient – finance. To recapitulate, the early success of Google can be boiled down to two aspects. Firstly, and unmistakably, Google delivered a better search service than its competitors. Secondly, Page and Brin strongly opposed conventional advertising. Unlike other websites, Google did not propagate flashy imagery and advertisement. On the one hand, this made the website incredibly fast, but on the other hand, undermined one of the most important financial pillars of web market at the time. The alternative, to charge people money for using their service, would not have worked either as users, even more than today, were extremely skeptical about paying for digital services. In other words, Google had no idea in which direction the system was supposed to go or how to make money in the first place. Google was stuck in the developmental phase.

The reverse salient was declared as critical problem when Google slowly ran out of its financial backup of 20 million dollar provided by early investors. As Hughes' LTS approach suggests in this phase, the system needed to adapt to the market. (Bijker, Hughes, Pinch, 2012) Hence the reverse salient was approached in a twofold way.

Firstly, the system guidance was extended by a third leading member, Eric Schmidt, whom can be considered as manager entrepreneur. Unlike Page and Brin, Schmidt had a background in management and was the former CEO of the software and service company "Novell, Inc.". Even though the main guiding force was in the hands of the two initial System Builders, Schmidt was supposed to introduce the first business plan to make the company sustainable. (Vise & Malseed, 2006)

Secondly, to overcome the reverse salient of finance, Google introduced in 2001 a conservative invention called "AdWords", an advertising program associated with search. (Wiesend, 2015) The idea was simple. By associating key words with public sales, Google managed to link advertising to the user directly. In doing so, Google held online auctions where advertisers could bet on specific words such as names of car brands or public products in general. Such words were sold in a price range from a few cents up to more than 15 US\$ per click. If a user searched for a sold word, the advertising of a company which owned the word appeared in a small box next to the search results. Additionally, "AdWords" was subsidized by the so call "Cost-per-Click" concept. Advertisers were only charged if the user clicked on an advertiser's link. The more an advertisement was followed, the higher it also appeared in the search results. This way, Google revolutionized and democratized the advertising market at the same time. Companies worldwide were able to display their products for a relatively small amount of money. Massive PR budgets which

could only be provided by the most successful companies were no longer needed. The system builders had found a technical component to overcome its most critical problem. For the first time in 2001, Google could make a profit of \$7 million on revenues of \$86 million which in the next year even jumped to \$100 on revenues of \$439 (Auletta, 2010).

This invention came just in time. Already one year before, the so-called "Dot-com bubble", i.e. speculative investments due to a tremendous overvaluation of internet companies due to, started to bust. Many internet companies which did not find a financial pillar crashed. Yahoo, which was one of Google's largest competitors up to this point, lost not only much of its stock value but also many of its users, especially to Google. The technical system by Page, Brin and Schmidt, however, was barely affected by the financial disaster and even came out of the crisis better informed. Finally, Google was given the unique opportunity to establish market dominance, best depicted when Yahoo gave in completely and embedded Google's search engine into their own web-portal in 2001. According to Hughes, the system had passed the developmental phase (Vise & Malseed, 2006).

3.5 Innovation Phase

Hughes argues, if the system overcomes its reverse salient, it approaches the innovation phase (Bijker, Hughes, Pinch, 2012). Thus, the system is ready to enter the market and to prevail in competition against other LTSs. By entering the market, the complexity established up to this point is revealed. Both the competition, as well as the public, become aware of the massive network of components which developed within the two previous phases. The process of revelation takes mostly place when a technical system goes public. Thus, not only its complexity is revealed, but also its financial worth and turnover. At this point, the system builder strives to increase the size of the system and decrease the influence of factors which are not in control of the system. Further components are added relating manufacturing, sales and service facilities. Such new components can be part of the initial company, but also be entire new companies which are related to the system. Overall, the system attempts to create a dominating market position. The radical new invention from the beginning slowly acquires the shape of a Large Technical System. Hughes suggests that, in this phase the influence of the inventor-entrepreneur slowly decreases, while the influence of the manager-entrepreneur increases.

Google entered the stage of innovation on the 19th of August 2004, when the system builder affirmed the companies worth and turnover and thus revealed its complexity. The public became aware that Google not only created a completely new market in advertising but also that the company was already deeply rooted in it.

The step of going public was mainly initiated by Schmidt and against the will of Brin and Page (Vise & Malseed, 2006). According to Schmidt, Google needed more investment capital, and going public would be the only possible solution. The two inventor entrepreneurs, however argued against Schmidt by claiming that going public would reveal the true trajectory of Google. Google's potential competition would find out how much money is behind combining search with advertising and would join the new market. Furthermore, going public would imply that the company was in public hands. Hence, Page and Brin feared that short time growth– the immediate satisfaction of Google stock buyers – would become most essential, restricting the inventor-entrepreneurs from risky investments.

After a long debate, Google again took a rather unconventional turn. Again, not relying on external environments, in this case the Wall Street stock market, Google created something unique at the time:

its own stock selling component, Google stocks. Shareholders could buy shares as usual, but Google reserved the rights of deciding which investments it was going to make. In other words, Google was in public hands, yet the system builders still had full control over the system. Page, Brin and Schmidt were able to invest in components which might not be of interest to the investors in the short run, but which eventually benefited the system in the long run. Thus, Google introduced and strongly invested in additional components such as "Google Books" (2004), "Google Scholar" (2004) and "Google News" (2006). Even though the company's unusual behavior rose a lot of suspicion and skepticism in the American business world, the plan turned out as planned. During the first day on the stock market, the Google stock reached \$108,31, on the next day jumped even to \$200 and finally rested at approximately \$300. Within a few days, hundreds of Google employees became millionaires and the initial system builders, billionaires. The day Google went public, Google's public offering – an official document which declares a company's offering of stock – wrote: "We began as a technology company and have evolved into a software, technology, advertising and media company, all rolled into one." (Auletta, 2010, p. 186). Hughes could not have given a better description of a Large Technical System.

However, one aspect of Hughes innovation phase is unfitting in describing the development of Google. For Google, it is not the case that the inventor-entrepreneur is substituted by the manager-entrepreneur. Though Schmidt kept a major advisory role, the system remained in the hands of Page and Brin. The innovative and inventory characteristics of the inventor-entrepreneur were supposed to pilot the technical system further on.

3.6 Google – a Large Technical System?

Yet, can Google be characterized as a Large Technical System already in the year of 2005? To provide an answer to this question, I considered the fundamental structure of an LTS described in the beginning of this paper. Clearly, Google established a system structure of a variety of components. It consists of physical artifacts in the form of server systems which power the engine and web products, organizational structures such as previously named web products (Google Search, Google News, Gmail and Google maps), human components in the form of employed engineers, as well as institutional elements such as a regulatory framework opposed by the system builders Brin, Page and Schmidt and a system culture which will be evaluated in the "momentum" section. All components aim for the system goal of improving the World Wide Web, attracting user attention and expansion. Page, Brin and Schmidt are in close relation to the system. They steer its direction but also depend on its performance. The system consciously attempts to incorporate environmental factors, which is seen as an ongoing attempt to achieve and defend market domination in web search. With this in mind, I conclude that labelling Google as a LTS is justified.

4 Competition and Consultation

Nevertheless, having described the emergence of an LTS, Hughes approach does not reach its resting point here. Instead, his research methodology changes from a historically descriptive approach in which identifiable actors are in charge of the system towards an analytical frame in which structural features and tensions of the system are analyzed. Too many internal and external factors influence the system at this stage of development which is why an explicate analysis only in relation to system builders is no longer possible. According to Hughes, the new LTS enters competition and consultation, a vaguely defined phase that aims to describe the systems dynamics. As the phase's name suggests, mature LTSs have the

tendency to grow through the means of competing and consolidating. Within my analysis, I have particularly regarded the competition and consultation's sub-concepts of momentum, transfer and technical style which are most characteristic for this phase. In my analysis, momentum describes the force an LTS acquired during its later evolution while transfer, largely determined by the system's technical style, limits the demonstrated force, pointing towards factors which have further influencing power onto the system. (Bijker, Hughes, Pinch, 2012)

4.1 Momentum

Momentum suggests that the LTS becomes less dependent on its environment. (Mayntz & Hughes, 2005) The interconnection of components created the appearance of autonomy. In other words, the Large Technical System acquired such a mass and velocity that inner dynamics seem to drive the course of development. The more components are involved into the system structure, the more momentum increases. To an outsider, it may feel as if the LTS is not affected by external environmental factors. It appears as if the system can no longer be controlled by external forces. A relevant sub-concept of momentum is what Hughes (1993) calls system culture. A system culture is the mindset which the system is guided by. It is imposed by the system builders to elucidate what is rational and desirable for development. To put it another way, the system culture can be compared to a company's ethical code.

Within the frame of the LTS approach, Google eventually entered the competition and consultation phase between 2002 - 2006. After a successful deal with AOL in 2002 in which Google became the web platform's official search engine, and with the additional defeat of Yahoo, Google seemed to gain momentum by having obtained a dominant market position in web search (Vise & Malseed, 2006). No other Large Technical System, neither web platform, hard- or software provider, nor search engine seemed able to compete with Google. The LTS's sheer market dominance is best illustrated by showing its competition with the multinational technology company Microsoft. Exactly as Page had foreseen, going public came at the cost of drawing attention to the business's success formula. Everyone knew that the system builders managed to combine web search and advertising to create a completely new market. Microsoft, famous for bringing the computer to nearly every household, planned to join the race of search-engines. Just as it did with the previous web search engine "Netscape", Microsoft tried to surpass Google by introducing a similar search engine, intending to outplay its competition with a larger market share. In a press conference in the fall of 2004, Microsoft released a statement that their own search engine had surpassed Google's search index by one billion websites, now enabling users to search the web within a search index of five billion websites. This step was extremely cost intensive for Microsoft. Web search was a business branch which previously did not gain massive attention and was not even financially beneficial without Google's "AdWords". Microsoft's idea however turned out to be more difficult than expected. A few days after Microsoft's official announcement, Google also disclosed a press release, stating their former search index doubled and encompassed now almost the entirety of the internet. Eight billion websites were now available to the user. Google's momentum which it established through its network of technical and no-technical components, programs, algorithms and server structures shattered its competition.

But momentum can also be perceived without focusing on Google's most profitable share in the internet market. According to Hughes, momentum is obtained when an LTS becomes less dependent on its environment by incorporating it into the system (Bijker, Hughes, Pinch, 2012). Zooming out, Google did not only stick to its initial environment of web search but has grown in multiple directions which are

barely related to its core idea. In 2001/2002. Google introduced Google News, an attempt to centralize news stories from all over the world on one page. In 2001 Google set off Google Earth, a global attempt to photograph the entire world, followed by Google Maps in 2004. Yet, most illustrating for Google's expansion to different environments is "desktop search". "Desktop search" was a program which could be downloaded to a Microsoft computer and search the computer better than its initial operating system (Vise & Malseed, 2006). A further embarrassment for Microsoft. Clearly, these are just three examples of web search unrelated components which would need further investigation by themselves, yet they demonstrate the enormous velocity Google gained during its evolution.

I argue, however, that especially the appearance of momentum has a different source despite the system's evolution and growth. Media has a major share in creating Google's image of being unstoppable. Magazines and newspapers like the "The Wall Street Journal" or "Fortune", must reads in the American business world, published headlines such as "Why Google Scares Bill Gates" or "Living in the Google; Welcome to Microsoft Nightmare" (Vise, Malseed, 2006, p.253). Doubtless, Google became an LTS which was almost impossible to compete with, but such headlines stressed this notion even further.

Yet, it is important to stress, Google is aware of its momentum and even further, which impression momentum can have on the external environment. If much power is concentrated in one place, people tend to become suspicious about how such power is used. As I will demonstrate later this was not different for Google. Google attempted to oppose this notion by developing a highly valued system culture. The motto "Don't be evil", introduced in 2000/2001 was supposed to influence every inventor's ideas and to be of guidance to Google's business strategy (Schmidt, 2014). Surely, this motto can be critiqued as Google's naïve and idealistic attempt of "making the world a better place", especially as it was still up to Page and Brin to decide what is "evil". Nonetheless, no other company did make their motto to such an important part of their business culture.

To recapitulate, within the phase of competition and consultation Google acquired momentum. From an outsider's perspective, it seems as if Google's success was unstoppable. The system continuously grew without the restriction of any actor. Yet, is that true? In the following I suggest, even though Google gained the notion of momentum, it did not become technological deterministic. To understand that Google's momentum is influenced by further factors, I rely on the concept of transfer.

4.2 Transfer

The second concept to which Hughes pays a lot of attention within the phase of competition and consultation is transfer (Bijker, Hughes, Pinch, 2012). The concept of transfer describes the system's adaption to new geographical, social or political factors. While the system is growing and expanding into new environments, e.g. new countries, new markets, new legislations or social norms it must also deal with such influencing factors. The function of components in a different environment might be influenced. Components might not be able to operate in the same way. Transfer into a new environment can either be successful or unsuccessful. The LTS either adopts to the new environment or the system fails and cannot sustain in the environment. The success of an LTS's transfer is determined by its technical style. The concept of technical style describes the unique characteristic of a Large Technical System and its components e.g. its legal ideas, organizational models and artifacts. During transfer, the technical style of a system might change but also other environmental factors such as participants of the market can adapt to an LTS technical style. Hughes included the framework of transfer to oppose the notion of

technological determination due to momentum by suggesting that also an LTS is open to the social shaping of technology. (Mayntz & Hughes, 2005)

Google's notion of transfer can be analyzed in two ways. Firstly, as Hughes intended in his original approach, when the company moves to a different environment in a geographical sense, it needs to adapt its system style. Secondly, if the company adds new components to the system, the system's technical style needs to be transferred onto such components as well. Yet, before evaluation how the concept of transfer can be assigned to Google, I need to clarify how I understand Google's technical style. In alignment with the LTS approach, I consider Google's second revolutionary invention "AdWords" as its manifestation of technical style. Since then, Google has been collecting data to match it with user related advertising.

During Google's competition and consultation phase, transfer in a geographical sense was a relatively minor problem. As is natural for an online platform, Google was able to operate on a global scale from the very beginning. The system did not have to alter its style to appeal to users from different cultural and geographical environments. The only minor system change was its translation to the respective countries' national languages (Vise & Malseed, 2006). However, I do not consider that as an alternation of the system's style because the system was still able to run with and on its traditional components. Furthermore, as the internet was unregulated by political actors to a wide extent, Google as large technical system did not have to fear any law violations. Some publisher's campaign to improve the copyright, for instance, was largely ignored and only gained little public and institutional attention. Everything within the reach of the possible was permitted.

However, focusing my analysis on the transfer of Google's technical style onto its components, Google recognized quickly that this form of transfer was unexpectedly problematic. In the spring of 2004, Google introduced "Gmail" a free e-mail service which was supposed to be the counter draft to the market-dominating e-mail services by Microsoft and Yahoo. With a data storage of one gigabyte – at the time a massive amount – Google wanted to provide its customers with the comfort of not having to delete any mail anymore. To make the component profitable, Google transferred the same technical style from its search engine to its new e-mail service. Thus, Google analyzed what their users were typing and in accordance provided relevant advertising, arguably all for the benefit of the user. However, this transfer did not only backfire. It immediately became a reverse salient, putting the entire component "Gmail" into question. Knowing that Google Was scanning, categorizing and collecting data for further analysis generated a public outcry. Suddenly, privacy issues became an important point of discussion. People began to ask how Google search and "Gmail" were connected and what data would be stored by it. Google generated sensible data for commercial purposes. Already that was seen controversial, but activists also began to worry, what could happen, if such data fell into the hands of third parties. (Auletta, 2010)

The public discourse which was initiated due to this unsuccessful transfer went completely against their established system style. If Google wanted to maintain its momentum and scale of growth it needed to maintain its system style and hence rely on user data without any restrictions. Yet, if the users became unwilling to share their data, Google's system style could not be maintained, and if it did not adapt in a certain way, it would eventually cause Google to lose its momentum.

Noticeably, this interpretation of transfer and momentum guides the intention to a factor which massively influences the LTS yet finds not much attention in Hughes initial Large Technical System approach. Refocusing my research on this factor will bring further understanding about how momentum might be overcome – how the expansion of an LTS might be limited.

5 LTS and the power of the user

I will again turn to Google and its behavior as an LTS. Furthermore, I need to complete Hughes's initial Large Technical System approach by adding one guiding component besides the system builder. Especially by analyzing contemporary internet companies, the user as a social actor is particularly important. Taking a social constructivist stance, I argue that the user and more specifically the user's favor decide if a system can pass Hughes's described stages of development. The user, even more than the system builder, decides about the fate and future direction of the LTS. The user is not necessarily bound to an online service, especially if the service is free of cost in the first place. Thus, if the system's product or service does not appeal to the user, he will no longer support it. If the company does not provide the right service, users will immediately switch to a different one, reducing the company's income (Schulz, 2017).

The additional concept of the user will finally help to understand why Google emerged as Hughes predicted in his Large Technical System approach. It also explains why Google as Large Technical System does not behave in the way as predicted by Hughes's last phases by not opposing radical new inventions but embracing them.

During Google's invention phase and throughout its development and innovation, Google's future momentum and power was not obvious to the user. Google search was revolutionary and provided a handy tool for internet activity. It was free and provided a better product than its competitors. No user had concerns about the little, helpful search tool. How could it do any harm? With the users' blind support, Google was able to pass the described phases of invention and development.

Nonetheless, this does not mean that Google was uninformed of its users and their power. Since the very beginning, Google Inc. and especially its system builders, put much work in the interaction with its users. As an illustration, from 1998 to 2011 Page and Brin wrote a monthly newsletter named "Google Friends" in which they informed users about their latest updates, future goals and had a section for user feedback. Google never developed completely in the dark and strongly engaged in user discourse. Inspired by the academic tradition of Stanford University, Page and Brin regularly conducted experiments and tests to find out how their users behaved and how the search engine could be improvised accordingly (Vise & Malseed, 2006). This way, for instance, in 1999 the System Builders discovered that their almost blank web page did not simplify its usage, but rather had a confusing effect. Some users stared at the page for more than five minutes. When asked later, they replied they were waiting for the website to fully load. This is the only reason why Google included a footer with contact details. Furthermore, it demonstrates perfectly the users' influence on the system.

The close user contact helped Google to imply a sense of transparency. In the eyes of the users, Google delivered a service which can be consumed, but nothing more. Combined with the strongly propagated system culture "Don't be evil", Google established an image of a user-friendly company whose primary intention was to improve the internet and later the world as such. This user image was of high importance when Page, Brin and Schmidt overcame their reverse salient finance, added the component "AdWords" in 2004 and pushed their company into the innovation phase. The user's carefree deployment of data was Google's financial fundament (Auletta, 2010).

However, this user image was firstly tested with Google's failed transfer of Gmail and its successful stock market launch. Eventually, the user became aware of the system's influencing power and complexity considered as momentum. People became suspicious of Google's monopoly position. Even though Page and Brin repeatedly assured their good intentions, no one could guarantee that their promises were

fulfilled. Slowly, concerns about data protection and privacy issues entered the public's consciousness. The reverse salient which first manifested due to Gmail remains a critical problem until today. Providing a free and competitive service keeps Google in its current dominant position. However, the louder the critical voices become, the harder it will become for Google to validate its technical style.

So far, it remains unclear how or if Google will overcome this reverse salient.

Google was aware of its dominant but instable position. For years, the company has tried to establish a new financial basis. In doing so, Google opposed the path suggested by Hughes. Instead of relying heavily on its only financial pillar and rejecting every unfitting component, Google sought innovation. Radical new inventions were not rejected, but highly supported. Google's unique stock allowed high risk inventions and even Google's work plan suggests the embracement of the radically new. Twenty percent of a Google-employee's work time, or one day each week, is supposed to be devoted to a project of the employee's choice (Schmidt, 2014). It remains to be seen if the strategy of innovation will provide a solution for Google's critical problem and the user can be continuously be convinced.

6 Conclusion

I have demonstrated that Google can successfully be labeled a Large Technical System including the concepts of momentum and transfer. The Large Technical System approach can be helpful to understand the origin and growth of complex networks and systems. The general framework provides a useful tool to conceptualize the company's development and power even though not all elements of the Large Technical System approach are applicable to Google. The findings reveal that, the domination of power of the manager-entrepreneur in innovation phase or behavior of the mature LTS in the competition and consultation phase did not take place as suggested by Hughes.

The concepts of momentum and transfer can furthermore be applied to comprehend the system's expansion after attaining a large technical structure. Hughes' concepts vividly illustrate the dynamics of an LTS, but only the consideration of the user suggests that momentum is just a notion and that a system's decline can arise faster than expected. In essence, it is true that Google started out with a small revolutionary idea and became one of the most powerful companies in the world. Yet, it is not excluded from external influences and its momentum might not be eternal. The user, more than any other actor, decides the company's future.

Although according to the LTS criteria I established previously in my paper, the analysis was restricted by several factors. I had to restrict my analysis by not involving the concept of load factor (Joerges, 1996). Although, this concept appears repeatedly throughout the competition and consultation period and is described as "the ratio of average system output to maximum output over a given period" (Joerges, 1996, p. 14), there was no valid opportunity to involve the concept in the analysis of Google. Even though my initial research question, namely what extent the theoretical concept of Large Technical Systems (LTS) can provide fruitful insights into the complexity and success of this internet platform, is answered positively and validates the LTS approach, it paves the way for a variety of subsequent questions. After the Large Technical System arrives at a dominant, mostly global position, Hughes' analysis stops. However, he states that LTSs are in constant change, so how do they maintain their dominant position? Furthermore, Hughes' describes a system evolution only within the frame of system growth. Components are added to a system and are later attached to by other components – the network structure. Yet, his approach does not explain what it means if one component is omitted. Moreover, it is not

elaborated if some components are less essential to the system than others and who determines the value. Has Google search the equal value such as newer branches of the company?

Following research into Google's development within the frame of LTS might be complemented by the research of Arne Kaijser (1995). Noticeably, Kaijser turned away from a heavy focus on individual guiding actors and instead paid further attention to the links of an LTS's components. Within his theory of system coupling, his main interest is in linking LTS with further institutional actors. Kaijser seeks to find answers on what institutional and governing frameworks steer and how they influence an LTS, especially if the mature LTS spreads across country borders. In the case of Google, his approach is of special interest. Within recent years, Google as a company gained an increasingly ambivalent name across different nations. Though Google's services are massively used on a global scale, governments start to restrict Google's power. To illustrate, in May 2014, the Court of Justice of the European Union asserted the "right to be forgotten" as fundamental principle into EU law (Zuboff, 2019). Enforceable since May 2018, the General Data Protection Regulation enables EU citizens to request service providers to erase personal data concerning them under certain conditions (EU 2016/679, Art. 17). This implies the right not to be shown among Google search results any longer. This example shows that institutions and governments begin to adapt laws to the previously unregulated realm of the internet, but also that companies such as Google are no longer independent of any regulatory constraints. Further research in relation to Kaijser's work could, for example, investigate how these altered boundary conditions might influence an LTS's development. The thus obtained findings could hence be used to extend the here established application of the LTS framework on Google by addressing the question of how the future evolution of Google might look like.

7 Reference List

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