

Most striking in Lauren Hardman's prose are her representations of art—from illustrations of photographic series, to palpable descriptions of film, to a shocking comparison of George Orwell's novel, 1984, to U.S. political reality. In this essay, written in Megan Shea's "Writing Art in the World," scenic work and current events are so effectively fused that privacy becomes trivial and safety turns dangerous.

O'SAY CAN YOU SCAN: SURVEILLANCE IN ART, PUBLIC, AND SELF

Lauren Hardman

A resident sleeps in an apartment in Tribeca, New York. A resident holds a pair of scissors while undertaking an unknown task. A dog stands at the window of an apartment, looking outwards (Weeks). These are the titles and content of the high-resolution photographs in Arne Svenson's collection *The Neighbors*. Curtains, lampshades, and shadows artfully dance across the two-dimensional, not-so-pristinely clean, floor-to-ceiling window in the foreground; we do not, with the exception of the Boston terrier, see the subjects' faces. While the couple and their children—the residents—are engaged in seemingly innocuous activities such as cleaning, napping, etc., reactions to Svenson's latest works have been anything but placid. Some of Svenson's harshest critics are even calling for his arrest. In fact, 'the neighbors' themselves filed to sue. Why? Svenson took these photographs from his apartment through his neighbors' window, across the street, sans permission.

Martha and Matthew Foster, the couple who unwittingly became Svenson's muses and who no longer maintain the facelessness they once possessed in the photographs, filed suit against him for invasion of privacy after they, along with other residents of Lower Manhattan, saw their photographs in the *Tribeca Citizen* (Perlson). According to Hili Perlson of *ArtNet News*, the Fosters were "frightened and angered by defendant's utter disregard for their privacy and the privacy of their

children,” (Perlson) and officially filed a complaint. Furthermore, the New York State statutory privacy law forbids the invasion of a reasonable expectation of privacy for exploitation by means of trade or commercial gain (Perlson). Yet art does not fall under this category, and the district court ruled in favor of Svenson, who was merely exercising his freedom of speech (Perlson). Barbara Pollack, an author and contributor to the journal *ArtNews*, reflects on the effects of the case and what many critics of Svenson and the ruling are calling the “death of privacy” (Pollack). She questions: “[W]hat is the difference legally between looking at people or places and producing a photograph that is distributed and displayed in the public arena? And does any of this matter today, when Facebook, selfies, and NSA data-gathering have expanded access to personal information to the point where many believe we are witnessing the death of privacy?” (Pollack). She also hints that Svenson’s work can be interpreted as “surveillance art,” a genre wherein artists use “loopholes in privacy laws to create works that expose just how much has been lost” (Pollack). Is this the satirical, critical lens through which Svenson operates? Much like Pollack, I struggle to see a clear cutoff where this “fine-art photographer” and his “examination of [the government’s] voyeurism” just becomes another “creep with a telephoto lens.” In turn, one must question the effects these sorts of covert photo-snapping and data collections have on such “unsuspecting citizens” (Pollack).

For the Fosters, the damage seems far from critical. Their identities could potentially have remained anonymous: faces obscured, room number absent. A tricky limbo state surrounds Arne Svenson, whose other works evoke a sense of ‘art photographer’ while *The Neighbors* screams ‘Peeping Tom.’ The outrage at his surveillance of the Fosters, via the lawsuit and the slew of online comments-section criticism, suggests Svenson has broken some unspoken rule of privacy. I say ‘unspoken’ because the courts ruled in his favor—effectively silencing the Fosters and others like them. Nonetheless, *The Neighbors* exudes a discomfiting essence once the context is made clear. Pictures of their children, breakfast rituals, naps: the intimate details of the Fosters’ lives have been recorded in detail, and, until recently, was unknown to them. Suddenly a little girl dancing half-naked in a tiara becomes a little less innocent and a little more dis-

turbing (Perlson). Yet Svenson merely captured, in his opinion, the beauty of their everyday lives—not any sordid acts or, with the exception of the ballerina spectacle, embarrassing secrets. Rather than critiquing government surveillance, perhaps the Svenson controversy begs a different sort of question: if *The Neighbors* have nothing to hide, why do they care if someone has a peek?

Perhaps the Fosters really did have nothing to hide. This also may have once been true for the subjects of Thomas Hoepker's "9/11's Most Controversial Photograph"—as *The Guardian's* Jonathon Jones named it. Hoepker's photo presents five friends on a sunny summer day. The sun is shining, the water shimmers its bright blue hue, and the trees are their full green. It is a day for a bike riding and picnicking, and that's just what these friends are doing in this park along the Hudson. It is a perfect day.

Except for the ash and chokingly thick smoke rising from what was once the Twin Towers.

While the photograph itself contains no title, Jones' label of "controversial" reeks of understatement. How could it not—five people lounging and relaxing despite the "mass carnage" (Jones) going on behind them? Jones likens their pose to the characters of the sitcom *Seinfeld*—which concludes with the gang's arrest and conviction under a Good Samaritan law for "failing to care about others." He writes that when the photograph was finally published in 2006, it caused "instant controversy" (Jones). He cites Frank Rich of the *New York Times*: "The young people in Mr. Hoepker's photo aren't necessarily callous. They're just American." Jones speculates that Americans failed to learn any "deep lessons from that tragic day." Perhaps Americans (unlike U.K.-based Jones) take things at face value, are too hasty in moving on to the next issue. This may be true in more ways than one. The failure to "learn any deep lessons," as Jones describes, ought to refer not to the lack of Middle East policy reform that Rich points out, but to the "undeniably troubling picture" being taken as undeniably troubling: "Walter Sipser, identifying himself as the guy in shades at the right of the picture, said he and his girlfriend, apparently sunbathing on a wall, were in fact 'in a profound state of shock and disbelief.' Hoepker, they both complained, had photographed them without permission in a way that misrepresented

their feelings and behaviour” (Jones). Despite the allegedly incorrect widespread interpretation of the photograph, Jones believes its meaning to be that “life does not stop dead because a battle or act of terror is happening nearby.” He concludes that “the people in this photograph cannot help being alive, and showing it” (Jones).

Walter Sipser and his biking buddies cannot help being alive, but that did not stop those looking at the photo, including myself, from judging them, immediately and incorrectly. It is clear from both the article and the photo itself that the subjects had no idea they were being photographed, much like the Fosters. They are merely living and responding as they naturally would to the horrors behind them—perhaps not as visibly as Hoepker—and we—might prefer. Yet unlike the Fosters, there is no doubt that Sipser and his friends would have altered their appearance had they known they were being observed. A frightening trend echoes through these hidden shots; unsolicited moments of human life that can be bent and twisted, potentially distorted for the worse. It appears that it is only with a concealed camera that true human reactions can be seen—of course Sipser and his friends would have made an effort to not look like the biggest jerks of 2001 if Hoepker had explicitly approached them. Spontaneity, and arguably natural authenticity, only exist in the absence of pretense. Laura Poitras’s *O’Say Can You See*, recorded just a few days after Hoepker took his photographs, highlights this idea that those sort of rewarding, spontaneous instances of humanity do not arise from a subject who is focused on the camera itself.

A brunette woman with large round glasses and a turtleneck gazes out into the distance. She places her arms around her son, who still hasn’t lost all his baby weight, it seems. His dark skin pops against his mother’s white shirt, but their gigantic glasses are practically identical. There’s a reflection of something in their glasses—a building? His bright blue windbreaker catches the eye, matching his much-too-big football gear. Jersey #37 and matching baseball cap: Go Giants. He faces the camera, and looks like he’s about to vomit. A warped version of the National Anthem fills the space.

Blackout.

A petite Asian woman also stares. Her boyfriend joins her, his arm around her shoulders. She shrinks into her navy sweatshirt as her

right hand shakes to cover her mouth. She can barely breathe. She's shivering, but it's not cold outside—her boyfriend is wearing only a T-shirt. He kisses the side of her head, but her gaze does not waver. He looks at it too—slowly.

Blackout.

An athletic-looking young black man with a UNC baseball cap points his boxy silver Nikon. He focuses it. Focuses. Focuses. He can't. His female companion approaches from the left with his digital camera, as those behind him scurry from left to right. His finger moves slowly. We see the reflection of a skyscraper in her wide-rimmed glasses. The young man stands frozen; tears well up in his big brown eyes.

Blackout.

The subjects of Poitras' *O'Say Can You See* are alive, and boy, are they showing it. Jones would probably be right under these circumstances—they really cannot help it as their immediate reactions to one of the greatest American tragedies are surreptitiously caught on film.

And yet, again, this all still does not stop the observer from almost immediately judging and vilifying the five “picnickers” in Hoepker's photo, nor from empathizing with—or judging, perhaps, based on a lack of obvious grief—the subjects of Poitras's video. Personally, I cannot help but empathize; what if that was me? Should anyone be subject to vilification for not looking sad enough at the right time, for being in the wrong place at the wrong time and having there be documentation—artistic or otherwise—to prove it? One cannot help but realize the uncomfortable similarities between artistic and government surveillance—the alteration, and subsequent distortion, of perception. What does that mean when the stakes of perception are higher than that of an artwork—that the government, the NSA, and CIA, and their photographers with a license to capture—have been watching, judging, and perhaps misinterpreting us? The federal government surveils the public with the assumption that those suspected of terrorism will be targeted—their plans found out, their identities verified, their plots stopped—because the CIA will know where to find them. But what if coincidental mishaps land us in an inescapable and unfortunate situation? Too much of a good thing can be a bad thing, and the same goes for surveillance for public safety, in the opin-

ion of the public. It seems we hate surveillance because we fear that there is a chance, however small, that the government will misinterpret our actions.

The most famous/notorious whistleblower in modern times, Edward Snowden, declared this the main danger of unmitigated, total, secret surveillance (*Citizenfour*). This led him to leak the scope and methods of the surveillance conducted by the National Security Administration under the Patriot Act in 2013. Much like the “victims” of the famous 9/11 photograph, surveillance and its documentation can alter perceptions of who we really are. They get the metadata, but not the whole story. In the end, a distorted, yet simultaneously ‘factually’ true portrait of us is presented—what Snowden refers to as our “data double” (*Citizenfour*). Potentially, this can be used against us.

In another film by Poitras, *Citizenfour* (2014), Snowden explains the dangers of such widespread surveillance—both when it is known and when it is kept secret. While distorted images of us can be presented when our actions (places/transactions/phone records recorded as “metadata”) are framed out of context when we do not know we are being watched, there are dangerous consequences when we know we are being watched as well. When we know that Big Brother is always listening in, we are less likely to engage in private, thoughtful, controversial, and fruitful debates, because we “know that every border [we] cross, every purchase [we] make, every call [we] dial, every cell phone tower [we] pass, every friend [we] keep, site [we] visit, subject line [we] type, is in the hand of a system whose reach is unlimited, but whose safeguards are not” (*Citizenfour*). Snowden goes beyond warning us of the reality that the mass accumulation of personal data is a target for cyber-terrorists. He stresses that when we know that surveillance can distort the authorities’ perception of us, we are not going to talk about those issues the government wants to crack down on (guns, terrorism, etc.), because we know that one day, if we find ourselves in a deep enough pickle, those words we said in private might, in the full light of their not-so-contextual truth, be used against us.

This fear of surveillance and its threat to democracy drives Peter Marks’s *Imagining Surveillance: Surveillance Studies and Utopian Texts*. Marks describes impactful literary portrayals of surveillance—and

how these fictional representations shape our real opinions on being surveilled. Marks describes the intense, permeating effects of George Orwell's *1984* as shaping our "profound cultural fear" (13) about surveillance—the dystopian, "all-seeing God" (14) of Big Brother, the censorship-happy Thought Police, and the ultimate sacrifice of its protagonist Winston's individual identity. Orwell's 1949 novel, inspired by the rise of totalitarianism in Europe in an age of advanced technology, chronicles Winston's original distrust of the overly-watchful Party to his ultimate surrender and total brainwashing by Big Brother, the face of the Party, and a phrase that Marks notes has become synonymous with surveillance government. From the constantly recording telescreens to the brainwashing-enforcing Thought Police, the public's familiarity with and fear of *1984* exemplifies its effectiveness as a "catalyst" in the public anti-surveillance backlash (15).

Torin Monahan, in his article "Surveillance as Cultural Practice" for *The Sociological Quarterly*, emphasizes a need for empiricism (497) since, in accordance with Marks, the U.S. public bases most of its fear of public surveillance off of a terrifying sense that *1984*'s Big Brother is just around the corner. In response, Monahan cites positives of public surveillance, such as overall security, health improvements (monitoring which cities' water supply might be affected by factory construction), while stressing the "agency of those monitored as surveillance objects" (497). This, in turn, relates to the importance of studying surveillance's immediate effects on subjects themselves (not, as is often the case, in fictional Winston). Monahan encourages the embrace of the "critical reflexivity" (502)—balancing positives and negatives, theory and localized application—as the key to understanding the true impact of surveillance on culture.

We can perhaps gain a great deal of perspective by observing the "artveillance" of Arne Svenson, Thomas Hoepker, and Laura Poitras through the lenses of Monahan's concepts of reflexivity and the agency of subject (Maass). In *The Neighbors*, the subjects—the Fosters—have little to no agency: they did not know they were being photographed in the privacy of their own apartment, and by this nature had no say in the matter, nor were they able to garner enough power in their lawsuit for a case of invasion of privacy. When it comes

to surveillance, it seems that subjects are pretty unhappy when their agency levels zero out. And when subjects are deprived of agency in a place that is supposed to be private, that makes the surveillor—Svenson—not just in the wrong, but downright malevolent and, well, creepy. Perhaps the same is true of Hoepker, who took the photograph of the allegedly callous brunchers on 9/11—yet perhaps his offense would appear lesser, as his subjects were out in public. Nevertheless, both Walter Sipser and the Fosters felt deprived of agency, and were enraged when an artist portrayed them in a negative, or all-too-intimate, light. Whether it is the creepiness of Svenson or the reputation-wrecking of Hoepker, in the end, a subject's lack of "agency" can have harmful effects on the "data double," or their factual, supposedly objective representation. This can portray a distorted, untrue truth. But what about Poitras' *O'Say Can You See*? Her subjects did not know they were being filmed, at least at the beginning. Why is her piece not considered controversial? In truth, her subjects still have agency—that is, they have power as individuals asserting themselves, their true identities, in the film. We see the contexts of time, duration, and place: their slow, long reactions, their obvious emotionality. The subjects of *O'Say Can You See* are unlike our other victims of surveillance-style art because, whether they know it or not, they are given the opportunity to make a case for themselves, establishing themselves as individuals. This begs the question: what are the consequences when subjects with no agency are not subjects of art, but subjects of investigation by the federal government? I suspect the NSA and CIA do not feel much need for Monahan's "critical reflexivity" and the "agency of [the subject]"—especially when they feel we are constantly under an imminent terror threat. Perhaps the consequences have the potential to be much worse when the unjust refusal of a subject's agency is perpetrated by the government, and not merely an artist. And yet I still feel that this overwhelmingly negative portrayal of a watchful government—or for that matter, surveillance artists—is incomplete.

In the spirit of reflexivity, I return to Marks, who describes the less discussed but equally relevant utopian concepts of surveillance—particularly Jeremy Bentham's Panopticon. Literally a 'place of all-seeing,' originally a prison designed in 18th-century England with a

central “inspection house” from which all inmates were visible, so that their activities could, in theory, be constantly monitored (23). Although it would be impossible to keep tabs on every prisoner at once, each knew there was a possibility of being watched at any time, causing them to censor their behavior accordingly, maximizing efficiency and good behavior. According to Marks, however, philosopher Michel Foucault presents a dystopian view of this Panopticon model in his *Discipline and Punish*; those being watched (e.g. patients, workers) would inevitably repress their individuality, devolve into paranoia, and lose any trace of personhood out of fear. While Orwell renders 1984’s society as an avoidable entity, Foucault’s Panopticon is so dark it seems inevitable. Marks concludes that “[i]n societies of control, individuals as such do not exist...the individual signature has been replaced by a code” (20). Works like those of Orwell and Foucault present the individual as a “dehumanized object” with an “absence of agency” (26-7). In either dystopic or “less apocalyptic” forms of surveillance, an individual’s identity fades into his or her “data double”—whether that is from an end to personal freedom or an implicative censor to creative, controversial thinking (35). When the “data double” is trusted more than the actual person, we are less inclined to allow ourselves to be spied upon. The more these texts reveal the nature of “government duplicity in the real world,” (33) as Marks writes, the more we are to actively fight against having our privacy invaded. As the privacy debate rages on in the U.S., we are less likely to sacrifice our individual identity—our “agency” of subject—for government identification because, let’s face it, our data doubles practically take our agency right out of our card-swiping message-typing fingers.

Surveillance makes individuals safe, supposedly. Surveillance ultimately destroys the individuality, the autonomy of one’s self. If we are sacrificing our liberty for safety, what is the point of being safe if, one day, we have no liberties, or no self, left? Maybe what caused the U.S. uproar was not so much that we might be watched (we knew about the Patriot Act), but that we did not know the extent. We assumed we would be followed, observed, under surveillance, if we had actually given the government a reason. So when Snowden dropped the truth bomb, we were outraged to discover what little say we had in the mat-

ter. While we question the NSA's motives/methods, we are forced to question what we say and how we act online, because we know we are being watched. This concept is clarified by the works of Poitras and Svenson—i.e. why *The Neighbors* is controversial and *O'Say Can You See* is not. Poitras did not try to be sneaky, but Svenson definitely did. On the other hand, why do we deem the widespread, once-covert NSA surveillance an infringement upon our hard-earned rights, when, of course, all people—dangerous people—will censor themselves if they know they are being watched? Of course the government does not want to leave a stone unturned, or iPhone un-scanned when it could be the key to eliminating the threat. Why would Big Brother not want the efficient Panopticon when it is the phone calls in the dead of night that reveal the terrorists' plots, plans, and vulnerabilities?

But what about our vulnerabilities, the negative outcomes for the general public? In "The Role of the Arts in a Time of Crisis," former Tisch dean Mary Schmidt Campbell describes a larger artistic crisis in which government surveillance plays a role, as creative voices are being silenced by an overwhelming amount of post-9/11 conservative reactionism. She asserts that the "university is one of the few remaining spaces in the United States where we can have real debate and dissent without fear of reprisal and revenge" (26). Echoing Snowden, she bemoans the growing trend of Americans becoming increasingly reticent to act controversially, citing Patriot Act NSA surveillance as the "single most troubling action" of the government (23). There is a rampant "instinct to suppress" any "voices of dissent" (23). Meanwhile, those "cultural advocates—the left-wing liberals" make "surprisingly little fuss" (23). Campbell bemoans the perceived lack of "potency" in the arts as a shaper of public policy, while she agrees that no one stops being marginalized because they see a lovely painting, art still has an important place in reflecting and challenging public values. Perhaps this is where surveillance art comes into play. While the works of Poitras, Hoepker, and Svenson do not criticize the NSA outright, they certainly do stir up a conversation about privacy, and when a person in power keeps tabs on "unsuspecting citizens" (Pollack). While Svenson and Hoepker are questionable in their methodology, perhaps the fire they stoke—the controversy of the

9/11 photo, the legal complaints of the Fosters—are examples of the potency Campbell fears is declining. If what we desire most is a freedom from the need to self-censor, then should we just post, act, and behave without fear of social or legal percussions?

There is a reason, albeit with lower stakes, why you don't post a link to your favorite swear-word-ridden Ludacris music video on Facebook when you know your grandma likes every status. Surveillance of any type is the double-edged sword supposedly being used to fight our enemies and also show the aesthetic qualities of our unforgivingly human lives. While we would hypothetically never sacrifice our lives to a terrorist who could have been caught if we had just quietly let the NSA check our e-chats, our awareness of this surveillance will cause us to self-censor to the point that—while our bodies are (hopefully) safe—our liberties and very sense of personhood are moribund. Perhaps this is where surveillance art comes in, for, unlike the NSA's cameras and headsets, we can actually see art. We care what people think of us; we are always self-censoring in the public social sphere, but we desire that illusion of control of who gets to look at us. When they look, who knows what they will see? Both artistic and government surveillers crave the uncensored, authentic behavior we only exhibit when we don't know the camera is there. But when the subjects of surveillance are denied agency—be it knowledge of the surveillance or the ability to accurately present oneself—1984 becomes a near future and not a year past. We want safety from threats, but we also want control—a control we are denied if our data doubles become our only voice. In the end, perhaps self-censorship is the greatest threat of public surveillance. Yet I can't help but think of *O'Say Can You See*. A picture like Hopeker's or Svenson's might be worth a thousand words, as the backlash for each suggests, but these still may not be the right words. Poitras' filmed subjects are silent, and yet there is no doubt that we get the whole story—time, emotion, every breath and pause, the right story. I cannot pretend to have a solution to the surveillance debate; with fear of self-censoring, maybe the damage has already been done. As the Patriot Act expires, perhaps we can hope for a silver lining—that when the NSA does record us in secret, they might give us the courtesy of context. Hopefully they will

use a video, and not just the ambiguous, taken-for-granted truth of a still photograph.

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