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Deliverable D2.4: The Theoretical Framework
Discussion paper integrating the reviews presented in the reports (D.2.1, D2.2, D.2.3)
into a comparative theoretical framework

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IRISS WORK PACKAGE 2

TASK 2.4: THE THEORETICAL FRAMEWORK

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CHAPTER 1: INTRODUCTION AND PURPOSE

1.1   Introduction

This discussion paper sets out the analytical theoretical framework for the IRISS project. The framework is designed to capture existing knowledge about surveillance and democracy and to shape the direction of the empirical research to be conducted in the project. The framework therefore represents the consolidation of existing knowledge and a methodological tool for creating new knowledge. The framework is organised around three core perspectives, or 'ways of seeing', each of which alerts us to a different set of themes and research questions. The perspectives are not mutually exclusive, they are different ways of comprehending the surveillance phenomena. The paper is organised around three main chapters. Chapter 1 sets out the purpose of Task 2.4 and the theoretical framework, including the methodological approach adopted. Chapter 2 presents the three main theoretical perspectives that make up the theoretical framework, the social, political and legal perspectives, including core themes and potential research questions/directions. Each of the perspectives presented here is a distillation of the ideas presented in IRISS Deliverables 2.1 (the social perspective), 2.2 (the political perspective) and 2.3 (the legal perspective). Chapter 3 presents the IRISS Theoretical Framework, a distillation of the themes and ideas presented in Chapter 2. Chapter 3 also includes a note about methodology and how the theoretical framework can be operationalised.

1.2   Purpose of Task 2.4

The IRISS 'Description of Work' (DoW) states that IRISS Task 2.4 will *"synthesise the analysis emerging from the three reviews completed in Tasks 2.1, 2.2 and 2.3 into an integrated theoretical framework presented in a discussion paper. Embedded within this framework will be a series of topics and questions for exploration in the empirical research to be conducted in WPs 3, 4 and 5"* (IRISS DoW, p33).

The purpose of IRISS Task 2.4 is to design an integrated theoretical framework of analysis building on the knowledge base established in IRISS Work Package 1 and the IRISS draft Deliverables 2.1, 2.2 and 2.3, which will provide a number of comparative dimensions and which can be utilised to identify questions, topics and themes for exploration in the empirical research to be conducted in Work Packages 3, 4 and 5. The theoretical framework will be organised around three core perspectives – the social, political and legal perspectives - each of which will highlight specific aspects of the intertwined relationship between surveillance and democracy. These distinctive ways of 'seeing' and understanding help identify and highlight different aspects of co-evolution of surveillance and democracy in different democratic societies. The intention is therefore to design an analytical tool based on existing knowledge and which can be utilised to comprehend the development of surveillance technologies in any social and democratic setting. In this way, the core purpose of the framework is twofold, it consolidates existing knowledge and is a core tool in the creation of new knowledge.

A key function of the IRISS theoretical framework is to consolidate existing knowledge about the intertwined relationship between surveillance and democracy. This is achieved by distilling the analysis presented in IRISS draft Deliverables 2.1, 2.2 and 2.3. Each of these deliverables considers the surveillance-democracy relationship from a particular perspective, where each perspective represents a mainstream way of thinking about surveillance. In the

framework the in-depth analysis contained within these perspectives, and presented in Deliverables 2.1, 2.2 and 2.3, is distilled down into a number of core themes or topics, roughly five per perspective. In this respect, the theoretical framework refines and summarises the knowledge contained within each of the perspectives. The final theoretical framework is therefore a synthesis of the three perspectives and consequently the dominant ways of thinking.

Beyond consolidating existing knowledge the theoretical framework is a key method in the creation of new knowledge. The framework realises this by shaping the administration of the IRISS empirical research conducted in Work Packages 3, 4 and 5. This is achieved by distilling the three perspectives into a series of core themes and topics and then identifying key research questions and directions for each. The approach taken is to identify a number of critical questions, four or five for each theme. So, each perspective is refined into a series of manageable themes and associated research questions, which are then utilised in the design of the empirical research for IRISS. These questions are intended to be the 'basic' questions that would have to be asked in order to comprehend the theme and hence the perspective. Whilst the themes and questions embedded in the framework emanate from existing theory, consolidating them into theoretical framework of analysis means that they can be deployed in any democratic setting. In this respect, the framework is intended to be a comparative tool, which can be deployed in a number of social, democratic and institutional settings. The assumption here, is that a focus on fundamental questions may in different settings prompt different answers and responses and in doing so help explain why surveillance technologies co-evolve differently in different democratic environments.

Table 1 sets out the distillation process and the sequence of ideas that culminates in questions for research. It is a simple deductive process whereby a body of knowledge, represented in the framework as a perspective, is refined into a number of key themes or dimensions, which then in turn are distilled down into a series of research questions. In this way the three perspectives are refined into approximately 15 core themes and 45 research questions.

Table 1. Distilling ideas and generating research questions

Research perspective 1	Research theme 1	Research question 1
		Research question 2
	Research theme 2	Research question 1
		Research question 2

1.3   Methodological considerations

The IRISS theoretical framework serves a number of purposes. It is an analytical device used to help comprehend social phenomena, it is a methodological tool to help shape and guide empirical research, and it is a comparative device which allows surveillance to be studied in a number of different democratic settings. It is therefore a mechanism that consolidates and creates knowledge.

The development of the framework derives from existing academic literatures which seek to explain the relationship between surveillance and democracy. This existing theory is grouped around three main approaches, referred to here as 'perspectives', each of which is based on a key underlying theoretical understanding. Each of these perspectives represents a dominant way of comprehending developments in surveillance in the social sciences. The framework

developed here groups established thinking into three dominant perspectives; (1) social, (2) political and (3) legal perspectives. For each perspective, the key features, ideas, concepts and ways of understanding are considered and reflected upon. Constructing the framework in this way allows for different features of the surveillance-democracy relationship to emerge as significant and to be explored empirically. The IRISS theoretical framework is built around three dominant ways of comprehending the surveillance-democracy relationship. Each is a way of 'seeing' or understanding and each emphasises different aspects of the relationship. They are not intended to be mutually exclusive approaches, rather they offer different versions of the same phenomena and therefore, combined, allow for a more holistic understanding of the phenomena being explored.

The starting point for each of the three perspectives is a key social science approach. The social perspective considers the social implications and consequences of surveillance technologies, including the way that human relations evolve with the diffusion of new technologically mediated surveillance systems and practices. At the heart of this perspective is a recognition that surveillance technologies interact with and shape (and are shaped by) societal structures, institutions and relationships. The focus of the social perspective is therefore 'the social', how humans interact and relate to one another and with new technology. The political perspective considers political dimensions of the deployment and use of surveillance technologies, including how surveillance technologies serve political purposes, how their use is shaped by political and policy processes and how they are governed. At the heart of this perspective is recognition that surveillance technologies are not neutral artifacts, but interact with and are shaped by political forces in society. The focus of the political perspective is therefore 'the political', how formal and informal authority and power shape (and are shaped by) the development of surveillance technologies. The legal perspective considers the legal apparatus utilised for shaping the deployment of surveillance technologies and those designed to safeguard and protect human liberty. At the heart of this perspective is a recognition that formal regulation, administrative procedures and law, play a significant role in mediating the ways in which surveillance technologies are deployed and consequently in shaping surveillance relationships. The focus of the legal perspective is therefore 'the legal', how formal rules and regulations are created and implemented in order to govern the use of technologically mediated surveillance systems.

All these perspectives offer a different account of surveillance in society with the emphasis of analysis placed on different core areas and values. They have in common the idea that the relationship between surveillance and democracy is a complex phenomenon which cannot be explained through a single idea or concept. Therefore, the best way of comprehending the relationship is by synthesising the various ideas and approaches, and in doing so, a more comprehensive understanding of the surveillance-democracy relationship can emerge. This is achieved in the IRISS project via the creation of an integrated 'synthetic' theoretical framework of analysis which brings together the dominant ways of thinking.

The methodological process used to construct the theoretical framework can be described as a staged 'funnel approach'.[1] It is a staged approach because research design, the research questions and the theoretical framework are refined and developed as the research progresses via a series of sequential cumulative stages. Marshall and Rossman refer to this as the 'funnel approach', because as the researchers travel further into the funnel so the research questions, topics and approach become more tightly defined. Conducting background contextual

[1] Marshall, Catherine, and Gretchen B. Rossman, *Designing Qualitative Research,* Sage, London, 1995.

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research (IRISS Work Packages 1 and 2) prior to building a theoretical framework and completing the main elements of the empirical research allows the research to be sensitised to potentially significant issues and inter-relationships in the field, to identify existing research and to facilitate the development of appropriate research questions. For IRISS, the theoretical framework was developed from existing knowledge about surveillance in society.

Table 2. The IRISS theoretical framework and stages of the research process

Identify Research Topic	The IRISS research topic was defined by FP7-SSH.2011.5.1-2, and seeks to examine the implications for democratic practice and societal relations arising from the increased use of technologically mediated surveillance systems and practices.
Background/Context Research	Collect and analyse practitioner and academic materials which are relevant to the development of surveillance technologies in society (IRISS Work Packages 1 and 2).
Construct Theoretical Framework	Construct and develop a comparative analytical theoretical framework which consolidates existing knowledge and identifies potential research questions (IRISS Work Package 2, Tasks 2.1, 2.2, 2.3 and 2.4).
Conduct Empirical Research	Design and administer empirical research ulilising theoretical framework (IRISS Work Packages 3, 4 and 5).
Analyse Research Findings	Conduct analysis and make recommendations. Revisit framework and research questions in light of research findings. Consider developments in theory and understanding. IRISS Work Package 6.

Scientific method is important in informing the development of a theoretical framework and both deductivist and inductivist approaches can be taken when developing one.[2] A deductivist approach requires the development of a conceptual structure prior to its testing through empirical observation – theory before research,[3] [4] whilst an inductive approach involves observing the world and constructing theories and explanations about what has been observed – research before theory.[5] So, depending on which approach is adopted the theoretical framework is either constructed before or after entering the field. Typically, social scientists favour the deductive approach and attempt to verify existing theoretical propositions. This approach however, can constrain theoretical development by encouraging closure and bias, leading to a situation where empirical data is made to fit existing theory.[6] Closure can occur because the researcher enters the field with preconceived ideas about how to comprehend the phenomena being investigated. To overcome this problem inductivists argue that the theoretical framework should be developed after entering the field, so that the research is conducted without any preconceived ideas. Research that follows this approach does not incorporate literature reviews prior to undertaking fieldwork, existing theory, research questions and assumptions are suspended until the researchers leave the field.[7] The key

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[2] Gill, John and Phil Johnson, *Research Methods for Manager,* Paul Chapman, London, 1991.

[3] Popper, Karl Raimund, *Conjections and Refutations: The Growth of Scientific Knowledge,* Harper and Row, New York, 1961.

[4] Popper, Karl Raimund, *The Logic of Scientific Discovery,* Science Editions, New York, 1968.

[5] Merton, Robert K., *Social Theory and Social Structure,* Free Press, New York, 1968.

[6] Glaser, Barney, G., and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Quality Research,* Aldine, New York, 1967.

[7] Ibid.

problem with this approach is that it is impossible to work in a theoretical vacuum and total suspension can never be achieved.[8]

The approach adopted in the IRISS project to establishing a theoretical framework, and the solution to these difficulties, is to combine deductivism and inductivism in such a way that the difficulties associated with each are overcome and the inherent advantages of both are maximised. In this respect, the theoretical framework developed in IRISS derives from both these methodological traditions. It is deductivist, in that the content of the three perspectives and the emerging research questions derive from prior knowledge manifest in literature reviews – theory before research. The identification of a variety of explanatory and sometimes competing and overlapping perspectives contribute to objectivity by protecting against premature closure at the outset of the empirical research. The IRISS theoretical framework can also be considered to have an inductivist bent because all the researchers involved in the IRISS project are active in the research field and have observed it at close quarters before the formation of concrete IRISS research questions and processes – research before theory. The construction of the theoretical framework around a series of dominant perspectives also ensures objectivity by allowing complementary and competing conceptions of the surveillance and democracy relationship to emerge as important. These different perspectives can be seen as 'narratives' or interpretations of the phenomena being studied.[9] Consequently, no single perspective offers a definitive version of the relationship, but is a unique 'way of seeing' and understanding. Developing the framework in this way also ensures objectivity by encouraging flexibility and the overlap of ideas between the different perspectives. This ensures that the research does not get locked-in to a rigid set of ideas, which could preclude inclusion of more holistic thinking.

Central to the development of a theoretical framework is a consideration of what constitutes theory. Theory can have a predictive capacity, in that it can explain why events and behaviours occur, or it can have an explanatory capacity, in that it can be utilised to describe the relationships between phenomena.[10] Primacy in the IRISS theoretical framework is given to explanatory role of theory, primarily in explaining and understanding the democracy-surveillance relationship. In this respect, the IRISS theoretical framework is an analytical tool designed to help comprehend surveillance societies and not a theoretical tool which generates hypothesis to be tested empirically.

CHAPTER 2: SURVEILLANCE TECHNOLOGIES AND CONTEXTS

The IRISS Theoretical Framework builds on the contextual work completed in IRISS Work Package 1: 'Surveillance, fighting crime and violence'. In particular, Work Package 1 provides a solid foundation of the different surveillance technologies in use, the typical contexts in which they are used, and for what purposes. This chapter provide a brief summary of some of the main points raised and a basic definition of the range of surveillance technologies and practices explored in the IRISS Project.

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[8] Burrell, Gibson, and Gareth Morgan, *Sociological Paradigms and Organisational Analysis: Elements of the Sociology of Corporate Life,* Gower, Aldershot, 1979.
[9] Best, Steven and Douglas Kellner, *Postmodern Theory: Critical Interrogations,* Macmillan, London, 1991.
[10] Gummerson, Evert, *Qualitative Methods in Management Research,* Sage, London, 1991.

Etymologically, surveillance means "watching over". However, surveillance is more than just watching – there are different types of surveillance. According to Wright and Raab,[11] while there are many different surveillance technologies, they can essentially be grouped within nine main types of surveillance, as follows:

1. *Covert or visible* – Some surveillance may be covert (e.g., eavesdropping or intercepts by the police) while other surveillance technologies (e.g., video cameras) may be visible. Some surveillance, e.g., the data mining by Google, Facebook and many others may also be invisible to users, although it may be possible to turn off some of it, for example, as a result of 'Do not track' policies in the US.

2. *Personal or mass surveillance* – Clarke distinguished two main types of surveillance: "*Personal surveillance is the surveillance of an identified person. In general, a specific reason exists for the investigation or monitoring. It may also, however, be applied as a means of deterrence against particular actions by the person, or repression of the person's behaviour. Mass surveillance is the surveillance of groups of people, usually large groups. In general, the reason for investigation or monitoring is to identify individuals who belong to some particular class of interest to the surveillance organisation. It may also, however, be used for its deterrent effects.*"[12]

3. *Watching (visual surveillance)* – includes technologies such as photography (cameras, mobile phones, mobile video), CCTV, unmanned aerial vehicles (drones), imaging scanners and high resolution ("keyhole") satellites.

4. "*Listening*" (communication surveillance) – includes audio recording devices such as those used to intercept wired and wireless communication (mobile telephony) as well as calls using Voice-over-Internet Protocol (VoIP). Call logging often provides surveillants with as much helpful information as eavesdropping does. The EU Data Retention Directive[13] requires electronic communications operators to retain call data (including e-mail data) for up to two years, which greatly facilitates the work of law enforcement authorities. Law enforcement authorities in the US solicited the metadata of calls (who called whom, on what date, at what time, for how long did the call last, etc.) more than 1.3 million times in 2011.[14]

5. *Detecting (sensors)* – can range from traditional retail security systems at store entrances and exits or metal detectors to complex, recently developed explosives-"sniffing"[15] or behavioural sensors. Although each type of sensor often performs only

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[11] Wright, David, and Charles D. Raab, "Constructing a surveillance impact assessment", *Computer Law & Security Review*, Vol. 28, No. 6, Dec 2012. http://www.sciencedirect.com/science/journal/02673649

[12] Clarke Roger, "Information technology and dataveillance", *Communications of the ACM*, Vol. 31, No. 5, May 1988, pp. 498-512.

[13] European Parliament and the Council, Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, Brussels, 15 March 2006.

[14] "In the first public accounting of its kind, cellphone carriers reported that they responded to a startling 1.3 million demands for subscriber information last year from law enforcement agencies seeking text messages, caller locations and other information in the course of investigations." Lichtblau, Eric, "More Demands on Cell Carriers in Surveillance", *The New York Times*, 8 July 2012.

[15] There are two main types of "sniffing" to detect explosives and drugs. Bulk detection involves non-olfactory methods to sense significant quantities of the targeted material. The technologies used for bulk detection of explosives or drugs are the same as the imaging scanners, i.e., X-ray backscatter imaging, millimetre wave

one specific task, these sensing systems can be combined to consolidate a comprehensive, multi-modal system. Other detectors include heat detectors.

6. *Biometrics* – such as facial recognition, gait recognition, iris scanning and keystroke logging can be used in surveillance systems. Biometric details may also be stored in RFID chips embedded in passports and travel cards, which can be "read" or detected by readers at airports (for example).

7. *Tracking through space (geotagging, location determination)* – While a wide variety of location determination systems exists, all of them fall into three main classes of localisation techniques: (1) triangulation, (2) proximity sensing and (3) scene analysis. Some of the most prevalent location determination techniques include GPS, WiFi/cell phone and RFID.

8. *Dataveillance* – Roger Clarke coined the term in 1988. He defined it as "*the systematic use of personal data systems in the investigation or monitoring of the actions or communications of one or more persons. Dataveillance is significantly less expensive than physical and electronic surveillance, because it can be automated. As a result, the economic constraints on surveillance are diminished, and more individuals, and larger populations, are capable of being monitored.*"[16] Dataveillance includes data mining, data matching, data fusion and data aggregation, and is more or less synonymous with cyber surveillance.

9. *Assemblages* – refers to the convergence and combination of hitherto distinct surveillance technologies.[17] They greatly increase the power and capabilities of surveillance technologies. Assemblages are almost always examples of smart surveillance.[18]

Wright et al. have defined smart surveillance "*as being capable of extracting application-specific information from captured information (be it digital images, call logs or electronic travel records) in order to generate high-level event descriptions that can ultimately be used to make automated or semi-automated decisions*".[19] A couple of other terms have gained some, but rather more limited currency. One is sousveillance, also known as "inverse surveillance", which is the recording of an activity by a participant in the activity, as happens when a user is wearing portable video cameras or engaged in lifelogging.[20] Sousveillance is not too far from "participatory surveillance", which has gained greater currency. Albrechtslund did not coin the term but he has certainly popularised it to describe "*the social and playful aspects surveillance*" that one witnesses in online social networking, where he

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imaging and terahertz imaging. "Chemical sniffers" or "electronic noses" detect and identify residual traces that indicate either the presence of, or someone's recent contact with, certain chemicals, such as drugs or explosives.

[16] Ibid.

[17] Haggerty, Kevin D., and Richard V. Ericson, "The surveillant assemblage", *British Journal of Sociology*, Vol. 51, No. 4, 2000, pp. 605-622.

[18] Marx distinguishes between old or traditional surveillance and new or smart surveillance. See Marx Gary T., "What's new about the 'new surveillance'? Classifying for change and continuity", *Surveillance & Society*, Vol. 1, No. 1, 2002, pp. 9-29.

[19] Wright, David, Michael Friedewald, Serge Gutwirth, Marc Langheinrich et al., "Sorting out smart surveillance", *Computer Law & Security Review*, Vol. 26, Issue 4, July 2010, pp. 343-354 [p. 347]. http://www.sciencedirect.com/science/journal/02673649.

[20] Mann, Steve, Jason Nolan and Barry Wellman, "Sousveillance: Inventing and Using Wearable Computing Devices for Data Collection in Surveillance Environments", *Surveillance & Society*, Vol. 1, No. 3, 2003.

finds mutuality, "*user empowerment, subjectivity building and information sharing*".[21] He says "participatory surveillance is a way of maintaining friendships by checking up on [personal] information other people share." Yet another term of interest is "überveillance", which Clarke uses to describe rampant and excessive surveillance in today's society.[22] He sets out some principles as a way of "bringing the surveillance mania back under control".

From this discussion it is clear that the term surveillance incorporates a wide range of technologies and practices. Moreover, it is important to note that these technologies may be implemented differently in different settings and that surveillance practices may differ considerable in different national and democratic contexts.

CHAPTER 3: THE THEORETICAL FRAMEWORK

3.1   Overview of the theoretical framework

The theoretical framework derives from a thorough assessment of what is currently understood about the intertwined relationship between surveillance and democracy. It derives from a review of literature on what is known about surveillance in society and especially in relation to the co-evolution of technologically mediated surveillance systems and democratic institutions and processes. From the literature review a range of theoretical ideas and concepts emerge which may be used to understand the complex surveillance-democracy relationship. The theoretical framework highlights different ways of thinking by grouping different ideas and approaches around a typology of dominant perspectives. Constructing a framework of analysis designed to comprehend the complexity of surveillance in a democratic polity utilises insights from different academic disciplines in the social science, including sociology, politics, policy studies, history and legal studies. The framework is built around core academic disciplines with each perspective using at its stating point a key social science approach. Each perspective should be conceived as a way of 'seeing' or comprehending the surveillance-democracy phenomenon. Each perspective is therefore also a 'narrative', a 'story' of the development of the core concept underpinning the perspective. No one perspective should be seen as better than the others, each has explanatory power in its own right and can be used to enhance understanding and interpret events. They are also all intertwined because none are completely independent of the others and because essentially they are describing the same thing. The perspectives based theoretical framework developed here is intended to help conduct the empirical research by identifying research themes and potential questions.

The framework groups approaches in the social sciences into three overarching perspectives, the social, political and legal perspectives. Each is considered in turn and is set out in more detail in the Deliverables 2.1 (the social perspective), 2.2 (the political perspective) and 2.3 (the legal perspective). Each perspective is distilled into a number of core themes or topics and a number of exploratory questions. The exploratory questions presented here are only

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[21] Albrechtslund, Anders, "Online Social Networking as Participatory Surveillance", First Monday, Vol. 13, No. 3, 3 Mar 2008. http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/2142/1949

[22] Clarke, Roger, "What 'Überveillance' Is, and What To Do About It", Version of 30 September 2007, Prepared for an Invited Keynote at the 2nd RNSA Workshop on the Social Implications of National Security - From Dataveillance to Überveillance, 29 October 2007, University of Wollongong, Xamax Consultancy, 2007. http://www.rogerclarke.com/DV/RNSA07.html

illustrative, they are not a definitive set of questions. Rather, the questions relevant to a particular theme, in a particular setting or context may change in order to make them relevant. The point is that the questions are intended to help unpack each of the themes identified for each of the perspectives. These themes and questions are subsequently used in the design of the IRISS empirical research in Work Packages 3, 4 and 5.

3.2   The social perspective

The social perspective considers key contributions to knowledge emerging from sociological (including criminological) perspectives of surveillance and democracy. Included within this perspective are approaches which consider changing societal values, such as security, trust and privacy, changing social behaviour, criminological approaches that address feelings of fear and insecurity, and how all these have changed over time in different democratic settings. The social perspective also considers the ways in which people and groups in society experience surveillance and how they can and have resisted surveillance over time. The essence of the social perspective are the social implications and consequences of surveillance technologies, including the way that human relations evolve with the diffusion of new technologically mediated surveillance systems and practices. At the heart of this perspective is a recognition that surveillance technologies interact with and shape (and are shaped by) societal structures, institutions and relationships. The focus of the social perspective is therefore 'the social', how humans interact and relate to one another and with new technology. The underlying theme emerging from this perspective is that surveillance, mediated by new technology, is increasingly embedded in the fabric of society, and as such shapes and is shaped by social relations and structures.

The social perspective alerts us to a range of social relations in the democratic polity and the ways in which surveillance is embedded in these relationships. Surveillance has become normalised in society, it is part of everyday life and as such is unsurprising and interacts with pre-existing institutions, structures and processes. The most obvious surveillance relationship is between the surveyor and the surveyed, it is an unequal power relationship and in many cases reflects dominant power structures in society, such as the state or big business surveying citizens and customers. Surveillance technologies are recognised to be tools of social control, in that they can be used to shape human behaviour in particular ways. Surveillance technologies can also be seen to support processes of social sorting and in doing so impact upon social exclusion and individual life chances. They interact with social relations and social values and there is a co-evolution of the diffusion of surveillance technologies and changing social values, like trust, equity and privacy. The normality of surveillance is manifest in the many ways surveillance is experienced and represented in popular culture, including in the media, film and literature. The dominant social experience of surveillance is as a tool to enhance security and these systems are often used politically to address feelings of fear and insecurity, the use of surveillance in this way frames our perception and understanding of the value and purpose of these technologies.

Surveillance has many forms and interpretations, but inevitably involves a relationship between different parties – the surveyor and the surveyed – a relationship which is increasingly mediated by new digital surveillance technologies. Sometimes the purpose of surveillance is unknown to one or more of the parties, the surveillance can be unseen and an unequal power relationship can exist. Even where the surveillance relationship is transparent and clear it is evident that it has an effect on the observed subject. The issue for a modern society is how is how to achieve equilibrium between accepting varying forms of surveillance

which are perceived to be for the common or societal good, whilst ensuring that checks and balances are in place to prevent the state and public or private bodies from exceeding their powers which potentially could result in individuals' loss of privacy, disclosure of their personal information, or unauthorised use of personalised information for commercial or criminal purposes.

Central to our existence in modern society are a series of core values which underpin our social relations. These values are not fixed, they have evolved over time and mediate and structure our behaviour, our relationships and personal and social identity. Fundamental social values include, the freedom to associate and form relationships, the need for safety and security, the need for fairness and equity, and for self-expression, a requirement for human dignity and to be private, as well as trust in key social institutions. These values are critical to the functioning of society and have evolved differently and are experienced differently in a variety of democratic contexts. In recent years, these value have been shaped by, and are shaping, the diffusion and use of new digital surveillance technologies. They may be introduced to reinforce social values associated with the need for safety and security, but in doing so may pose a threat to other social values, such as equity and fairness.

Social understandings of surveillance are often linked to the concept of the panopticon. Here, surveillance is perceived as a mechanism for social control, which is realised through the disciplinary power of surveillance artifacts because the subjects of surveillance internalise formal authority and subsequently exhibit the desired behaviour. This has ramifications for our social existence and our very being, leading some authors to argue that we are living in a 'control society'. A key concept in sociological literatures which considers surveillance, social control and equity is that of 'social sorting'. Social sorting refers to those surveillance processes which codify the personal information of the observed in order to establish categories that assign value or risk to certain individuals and behaviours. These assessments are then utilised to make decisions about the allocation of goods and services by private companies and public agencies. Social sorting is therefore seen to be having a significant impact on people's choices (or lack of) and their life chances. As a consequence, surveillance as social sorting emphasises social inequalities whilst identifying, profiling and differentiating individuals. By definition, the discriminating character of surveillance entails unequal exposure to surveillance systems and therefore their controlling power. This encourages marginality and enhances social discrimination on the basis of their digital being.

Within the social sciences is a body of literature that alerts us to the social shaping of technology and that technology is not a neutral artifact but is shaped by existing social institutions and values. Surveillance systems should therefore be seen as 'socio-technical systems' which embody technological components and also key social values. They therefore cannot be understood separately from the world and the dynamics of power, privilege and discrimination therein. The deployment of surveillance technologies must therefore be understood to reflect vested interests in society and the inequalities of power across society. Inequality of power refers to the inherent inequality in the social, political and economic infrastructure that both makes surveillance possible and determines its consequences. The issue here is to focus not only on who is watching, but who can watch – who has the means and the authority to be on the surveying side, and, at the other end, who can't escape the electronic eye. This approach highlights the imbalances of power between the surveyors and the surveyed, highlighting how their position in relation to the surveillance device is not coincidental, but reproduces pre-existing imbalances of power – between the rich and the poor, the 'normal' and the 'deviant', the state and corporations vs. 'ordinary people'.

Surveillance technologies play a major role in the production of identities and surveillance has an intimate relationship with identity and identification. Surveillance technologies are used to construct digital identities of individuals, in order to help make decisions about the allocation of goods and services. In this way, they create 'data doubles' of members of society and 'embody' them with digital personal information relating to the real self. A key aspect of this process is the identification process, where our identity is actively created and used to verify our existence and rights, for example our right to travel enshrined in the identity evident in a passport. Consequently, it is argued that identity becomes disconnected or disembodied from the agent and is increasingly abstract and the domain of others. So, the degree to which we are visible or anonymous, determines the nature of our relations within society.

One of the most intriguing features of surveillance is that it always has some ambiguity in its effects in relation to caring (to look after) and to control (to look over). Criminological approaches to understanding the proliferation of surveillance technologies suggest that fear and insecurity have had a significant role to play in the justification of such measures, that the measures have enjoyed unprecedented political support despite very little evidence suggesting value for money or effectiveness. The emphasis of the criminological approach has been to assess the impacts of individual surveillance technologies on levels of crime, disorder, the fear of crime, antisocial and undesirable behaviour. In this approach, surveillance is intimately associated with personal, national and societal security and those surveillance systems which are used to 'enhance' safety and security.

The normality of surveillance is manifest in the various representations of surveillance in the media and popular culture. Surveillance in art, literature, film and television shape our understanding of what surveillance systems do and how they are used. It is clear that as members of society we understand the need for and role of surveillance and that surveillance is a normal part of everyday life. Our perceptions of surveillance and our attitudes towards surveillance are also shaped by our experiences. There is some evidence that there is more resistance to surveillance in countries that have experienced authoritarian political regimes and where surveillance technologies have been used as tools of oppression and control.

3.2.1 *Distillation of themes in the social perspective*

The social perspective can be distilled into a number of interlinked core themes or topics for further investigation.

Theme 1. The normality of surveillance

Surveillance has become a normal part of everyday life and it is entrenched in the social fabric of life. This is manifest in the way we perceive, use and react to surveillance technologies. Surveillance technologies therefore shape our socio-economic relations, our relationships with each other, relationships between the state and its citizens, our reality and our life chances.

Theme 2. Surveillance, power and control

Surveillance technologies influence and shape human behaviour and can therefore be seen as tools and practices for social control and social exclusion. Surveillance represents a

disproportionate power relationship between the surveyor and the surveyed. The relationship is unequal and affords the surveyor more power. Surveillance technologies are embedded in and reinforce existing power relations in society, especially, but not exclusively, citizen-state relations.

Theme 3. Surveillance and security

Surveillance has predominantly been understood as a technique (a set of tools and practices) to combat and deter criminal and other undesirable behaviour. Surveillance technologies are regularly deployed in security settings and the dominant discourse about their purpose and impacts relates to their security function, and their use in alleviating public fears and insecurities.

Theme 4. Surveillance and social values

The diffusion of surveillance technologies and associated practices is interlinked with evolving social values. The development of both is intertwined and they are evolving together. In particular, our attitudes towards trust, privacy and identity are evolving alongside the use of surveillance technologies.

Theme 5. Surveillance and transparency

Surveillance, mediated by new information and communication technologies, generates huge amounts of information about individuals, groups and trends in society. This information is valuable and is used to shape the production of goods and services. Surveillance technologies utilise vast quantities of personal information, they make individuals more 'transparent' with their digital personas becoming more important and influencing their social relations and life chances.

3.2.2 *Exploratory questions emanating from the social perspective*

The distillation of the social perspective into a series of core themes can be further refined into a series of exploratory research questions which can be applied in different democratic settings, presumably soliciting different responses in different democratic contexts.

Theme 1. The normality of surveillance

Exploratory research questions emanating from theme 1 'the normality of surveillance' would include:

Question 1:
What are our (citizens) attitudes towards the use of surveillance technologies?

Question 2:
How are surveillance technologies percieved and understood?

Question 3:
How do we (citizens) respond to the use of surveillance technologies?

Question 4:
How is surveillance depicted in the media and popular culture?

Question 5:
How do surveillance technologies shape our behaviour?

Theme 2. Surveillance, power and control

Exploratory research questions emanating from theme 2 'surveillance, power and control' would include:

Question 1:
Who is the surveyor and who is surveyed?

Question 2:
Which vested interests (actors and institutions) are supported by the development of surveillance systems?

Question 3:
How are surveillance systems used as tools of social control?

Question 4:
Which segments of society are being marginalised by surveillance technologies?

Question 5:
To what extent do surveillance technologies challenge existing power structures in society?

Theme 3. Surveillance and security

Exploratory research questions emanating from theme 3 'surveillance and security' would include:

Question 1:
Which surveillance systems are used for security purposes?

Question 2:
What is the prevailing discourse around specific surveillance-security systems?

Question 3:
How effective are surveillance systems in realising the security function?

Theme 4. Surveillance and social values

Exploratory research questions emanating from theme 4 'surveillance and social values' would include:

Question 1:
What are the fundamental social values in society?

Question 2:
How do surveillance systems undermine and/or reinforce fundamental social values?

Question 3:
How are fundamental social values shaping the use of surveillance technologies?

Question 4:
How do surveillance systems shape personal identity?

Question 5:
How are social values protected and enhanced in surveillance intensive democratic societies?

Theme 5. Surveillance and transparency

Exploratory research questions emanating from theme 5 'surveillance and transparency' would include:

Question 1:
What personal information/data exists in the digital world?

Question 2:
What information/data is collected and processed via surveillance systems?

Question 3:
What information/data is exchanged and shared between and with agencies and companies?

Question 4:
What profiling takes place and how is this information used?

Question 5:
How do these information processes influence our life experiences?

3.3   The political perspective

The political perspective considers the key contributions to knowledge emerging from political (including political science and policy studies) perspectives of surveillance and democracy. Included within this perspective are approaches which consider changes in democratic values, such as accountability, transparency, equality, the rule of law, rights and freedoms, those which consider changes in democratic policy-making practices and procedures, and how these have changed over time in different democratic settings. The political perspective considers political dimensions of the deployment and use of surveillance technologies, including how surveillance technologies serve political purposes, how their use is shaped by political and policy processes and how they are governed. At the heart of this perspective is recognition that surveillance technologies are not neutral artifacts, but interact with and are shaped by political forces in society. The focus of the political perspective is therefore 'the political', how formal and informal authority and power shape (and are shaped by) the development of surveillance technologies.

The political perspective alerts us to a number of approaches that emphasise the role of political actors, institutions, values and processes in shaping the co-evolution of surveillance

and democracy. At the formal level the political perspective can be used to identify the democratic and policy processes associated with generating surveillance public policy and with the institutions charged with the governance and regulation of surveillance. This would include legislative processes and mechanisms associated with public policy-making. The political perspective also draws attention to the normative values and beliefs that support contemporary democracies, values like accountability, equity, public discourse, rationality, stewardship of resources, and the rule of law, etc. The political perspective sensitises us to the 'politics of surveillance', the political value of surveillance technologies and the importance of political discourse surrounding their development and use. The political perspective is also central to our understanding of the activities of 'the state' and of citizen-state relations. Given that surveillance technologies are closely associated with national and local security and that they are powerful technologies that can be used as tools of social control it is unsurprising that agencies of the state are intimately associated with their diffusion and use.

The practice and policy of data retention is an important element in the political importance of surveillance affecting citizens in democratic societies. Data retention is not normally thought of as a form of surveillance because it is a non-visual, non-real time, empirically unnoticeable form of observation and control of citizens. It is pervasive, involving both the public and private sectors in a relationship that requires a flow of information that blurs the boundaries of responsibility for posing dangers to privacy. Data retention emerged on the EU policy agenda as part of counter-terrorism efforts, resulting in the Data Retention Directive of 2006. There are several critical perceptions of data retention in different democratic contexts. Member States regard data retention as valuable or indispensable, but little statistical or other evidence exists for such conclusions to be reached; thus they are political rather than evidence-based, and some evidence supports the opposite case. Data retention is seen as undermining democracy and a free society by eroding the rights to privacy and anonymity, the presumption of innocence, and social confidence. Some survey evidence shows that data retention chills social and political relations and practices among citizens, and on freedoms. Some Member State judicial authorities have ruled data retention unconstitutional.

The media are implicated in the surveillance process by making crime newsworthy, by amplifying fears, and by constructing 'folk devils' and 'moral panics', although such imputations in the literature should be regarded with circumspection. Nevertheless, the media do play a large part in shaping attitudes towards dangers and the dangerous, and in contributing to a climate in which surveillance, through the use of a variety of technologies, seems an attractive solution in what criminologists and others have called a 'risk society'. Public insecurity, in turn, is said to inhibit and distort policy debate and decision-making by promoting what is politically popular. This promotion brushes aside a fuller evaluation of the side-effects and economic drawbacks that might otherwise suggest that solutions to crime, terrorism, and other problems can be addressed by alternative strategies and policies that do not necessarily involve intrusive surveillance. How to deal with risk is a subject for considering the relationship between resilience and prevention and precaution, and this question is aired with reference to literature on individual resilience in the face of real or perceived threats.

Surveillance is also a tool or set of practices that are subject to regulation, limitation and control. Accountability, a central pillar of the modern democratic state, is one method of keeping surveillance and its users in check, but there are deficiencies in accountability practices in the context of data protection. Transparency is another important check because it scrutinises the use of power in a democracy and acts as a vehicle for public participation in

debates. There is a relationship of mutual dependence between transparency and privacy and the need for transparency in a democracy can be considered in terms of factors that inhibit and promote it, with transparency-based privacy solutions emerging. A core democratic value is accountability, with political representatives held to account, via established democratic pratice, for public policy and services, including those associated with the development and use of surveillance technologies. For data protection, accountability is being heavily promoted as a regulatory strategy by the EU and the private sector, especially following major data losses and breaches. The argument is that, while the development of accountability as part of information governance is a good step, it confuses responsibility for actions and performances of functions (e.g., surveillance) with answerability for these functions through publicly available accounts, or 'stories', that could be challenged. Accountability in this sense would be consistent with other areas of democratic political practice. It bears a close relationship with transparency, an attribute of a democratic polity promoting public debate and participation. The relationship between privacy and transparency is one of interdependence and complementarity. The exercise of privacy rights is contingent upon the transparency of surveillance practices, and the success of transparency mechanisms depends on the cognitive, social and legal status of the audience for the available information.

The rule of law is considered to be a pillar of democratic constitutional states. In relation to surveillance and the political perspective, highlights that the rule of law has formal and substantive dimensions, respectively connoting rule by law, legislative processes, and consent, on the one hand, and individual rights, justice and the right to dignity, and substantive equality of welfare, on the other. Privacy and data protection are directly implicated in all of this, with privacy as a tool of opacity and data protection as a tool of transparency. The ECtHR has struggled to reconcile surveillance with democracy by means of interpretations of the rule of law in specific cases.

A consideration of law, rights and freedoms leads to analysis of the broader governance of surveillance through a range of instruments of which the legal order and the rule of law are not the only ones currently experienced or capable of further development. The ubiquity and variety of surveillance technologies and practices are governed – albeit with limited and variable success – by regimes at various jurisdictional levels (e.g., local, national, regional, global) and with various regulatory tools. Among these are laws; regulatory bodies such as data protection authorities; codes of practice; technological instruments such as privacy-enhancing technologies, privacy by design, encryption, identity assurance systems using anonymity; and the promotion of greater public awareness so that they may safeguard their own privacy. The regulatory landscape has shifted in many respects towards an interest in newer instruments that might be able to cope better with new contexts – the online and social-networking environment, for instance – than can more traditional, law-based instruments, although the latter remain indispensable. There is also a wide range of policy actors, in which formal 'policy-makers' and regulators are not alone. Whether the governance of surveillance is, or can be, carried out by coherent, well-integrated, and strategically deployed actors, tools, and principles is a crucial question. The political perspective also focuses our attention on policy-making and surveillance in terms of the dispersal of surveillance policies over a range of separate domains and settings (e.g., education and transport), policy idioms, and jurisdictions, and embedded in various practices, including the delivery of public services, e-government, and many others. This means that 'surveillance policy' as such is elusive and not singular: discerning its content is not straightforward, and understanding the processes through which it is made and implemented requires complex analysis.

3.3.1 *Distillation of themes in the political perspective*

The political perspective can be distilled into a number of core themes or topics for further investigation.

Theme 1. Surveillance and democratic rights and freedoms

Surveillance practices of all kinds impinge on a large range of rights, freedoms, liberties, and social and political relationships and processes that affect the nature and texture of life in democratic societies and political systems. Although these democratic rights and freedoms may be common to contemporary modern democracies they may differ in the way they are exercised, regulated and protected.

Theme 2. Surveillance and political discourse

Public attitudes, perceptions, fears, expectations and demands are shaped by many forces, among which the mass media are one of the most powerful, tending towards a particular appreciation of surveillance, its technologies, and its role in reducing threats and the level of fear. In this respect, public discourse and debate play a central role in the diffusion and ongoing use of surveillance technologies.

Theme 3. The politics of surveillance

Social insecurity feeds policy demands for surveillance that tend to limit genuine debate and to ignore the disadvantages and externalities of making life safer and more secure through surveillance, and societal resilience or, on the other hand, precautionary anticipation of threats, are at issue in these processes. The political value of surveillance is reflected in a range of vested interests within the political and public policy-making process and these vested interests benefit from and seek to influence the deployment of these systems and practices.

Theme 4. Surveillance and democratic values

The accountability and transparency of surveillance, and the rule of law, are essential in a democratic society, and need to be improved and made potent in order to limit surveillance. Although these democratic values and freedoms may be evident in all modern democracies they may differ in the ways they are expressed and enshrined in institutional practices.

Theme 5. The governance of surveillance

The governance of surveillance, and surveillance policy-making, are highly complex and sometimes ephemeral processes that need to be comprehended and rationalised if surveillance is to be regulated in accordance with democratic values. Surveillance technologies and practices are governed and regulated by a variety of mechanisms which differ in different political and democratic contexts.

3.3.2 *Exploratory questions emanating from the political perspective*

The distillation of the political perspective into a series of core themes can be further refined into a series of exploratory research questions which can be applied in different democratic settings, presumably soliciting different responses in different democratic contexts.

Theme 1. Surveillance and democratic rights and freedoms

Exploratory research questions emanating from theme 1 'surveillance and democratic rights and freedoms' would include:

Question 1:
What are the most important rights, freedoms, liberties, relationships and processes in a democratic society?

Question 2:
How does surveillance relate to the exercise of these democratic rights and freedoms?

Question 3:
Can different types of surveillance be mapped onto an inventory of democratic rights and freedoms so that the effects of surveillance can be pinned down more precisely and mitigating strategies brought to bear?

Question 4:
How much is known, and can reliably be known, about the social distribution of surveillance effects and protections; i.e., who gets what surveillance and what privacy?

Question 5:
As a meta-question, what impedes our knowledge of these effects and how can the obstacles be overcome in research processes?

Theme 2. Surveillance and political discourse

Exploratory research questions emanating from theme 2 'surveillance and political discourse' would include:

Question 1:
What are the dominant political discourses surrounding the deployment of different surveillance technologies and how are these discourses shaping the deployment of these technologies?

Question 2:
Which political actors are actively engaged in shaping the discourse surrounding specific surveillance technologies.

Question 3:
How much is known, and can reliably be known, about these media effects, or are we in the realm of dramatic anecdote and illustration rather than any other mode of research?

Question 4:
Do social media differ from traditional press and broadcasting media in their shaping of public attitudes, perceptions, fears, expectations and demands regarding the threats of crime and terrorism, and attitutes towards surveillance technologies and practices?

Theme 3. The politics of surveillance

Exploratory research questions emanating from theme 3 'the politics of surveillance' would include:

Question 1:
Who derives political value from the development of surveillance technologies?

Question2:
Is the public more likely to demand precautionary policies to combat crime, terrorism and other threats, than they are to demand resilient strategies once threats materialise?

Question 3:
Do political decision-makers ever question the validity of public fears and demands, or are they fated always to cater to them by intensifying surveillance?

Question 4:
What is the role of academic and other independent research and discourse in informing the debate, establishing the validity of fears and demands through risk analysis, assessing the benefits and disadvantages of surveillance, and in developing precautionary and resilient strategies?

Theme 4. Surveillance and democratic values

Exploratory research questions emanating from theme 4 'surveillance and democratic values' would include:

Question 1:
What mechanisms and processes exist to facilitate and enshrine the democratic values of accountability, transparency and the rule of law, etc.?

Question 2:
How are democratic values like accountability and transparency evolving in relation to the development of surveillance technologies?

Question 3:
Can accountability be improved, not only with regard to practices that impinge upon information privacy and data protection, but also with regard to incursions on non-information dimensions of privacy and rights?

Question 4:
What mechanisms exist for establishing the political and public-engagement requirements for holding surveillance operators accountable through better transparency that includes scrutiny of their accounts and debate?

Question 5:
What mechanisms exist to facilitate free access to public data and can members of the political community be expected to exploit the multiple benefits of such access data while being under constant, overt surveillance?

Question 6:
How is the rule of law developing in relation to the emergence of surveillance?

Theme 5. The governance of surveillance

Exploratory research questions emanating from theme 5 'the governance of surveillance' would include:

Question 1:
What are the institutions, practices and mechanisms used to regulate surveillance technologies and practice?

Question 2:
What surveillance policies exist?

Question 3:
What are the public policy processes surrounding the development of surveillance technologies?

Question 4:
Would an emphasis on resilience to threats to national or personal security, rather than on precaution, lead to different ways of governing surveillance?

Question 5:
What are the prospects for better, more global regulation of surveillance, and on what factors does this depend?

3.4   The legal perspective

The legal perspective considers the key contributions to knowledge emerging from legal perspectives of surveillance and democracy. Included within this perspective are approaches which set out formal mechanisms for regulating surveillance technologies, different approaches to protecting fundamental rights and civil liberties and the emergence of legislative safeguards to counter possible infringements, and how these have changed over time in different democratic settings. This includes the emergence and implementation of key laws, such as data protection legislation. The essence of the legal perspective is the emergence of legal apparatus utilised for shaping the deployment of surveillance technologies and those designed to safeguard and protect human liberty. At the heart of this perspective is a recognition that formal regulation, administrative procedures and law, play a significant role in mediating the ways in which surveillance technologies are deployed and consequently in shaping surveillance relationships. The focus of the legal perspective is therefore 'the legal', how formal rules and regulations are created and implemented in order to govern the use of technologically mediated surveillance systems.

The relationship between surveillance and democracy entails the implementation of governmental and authoritative powers. However, surveillance is not the exclusive product of dictatorships and authoritative regimes, nor democracy can be ensured by keeping our societies free from surveillance. These considerations come as a result of an analysis of how surveillance has changed over time and on its impacts on fundamental rights and civil liberties in different democratic settings. In the mid-1950's, for example, civil and political rights could be enforced relatively freely under the Communist regime in Hungary, despite the surveillance measures enforced by state authorities. Nonetheless, it is also noteworthy that surveillance does not only have a public dimension, but also a private one which should not be neglected. Surveillance has the potential to undermine democratic norms and values. Legislation and regulation have the key role of preventing and avoiding such a risk. However, the existence of a legal framework meant to regulate surveillance technologies and their use does not necessarily prevent the spread of surveillance in our societies. The pervasive use of surveillance for deterring and preventing crime and terrorism and the development of surveillance technologies in urban areas are emblematic of this state of affairs.

A range of legislative and regulatory measures have been introduced at the national and European levels, including the European privacy and data protection framework. These legal instruments are designed to protect individual rights, including the right to privacy and the protection of personal data, and are significant in shaping the way surveillance technologies are designed and used. Key legislative/regulatory instruments include legislative safeguards and formal mechanisms for regulating surveillance enshrined in article 8 of the European Convention on Human Rights (ECHR) and the European Data Protection Directive (95/46/EC). There are also legislative instruments relating to the criteria of lawfulness, accessibility, foreseeability, necessity, proportionality and the emergence of European case law with regard to surveillance and focuses particularly on two specific categories, namely unwanted listening to and unwanted watching of individuals.

Surveillance is not only regulated through privacy and data protection instruments, there is also an array of human rights and principles that contribute to set the legal framework that applies to surveillance. Furthermore, the nature of these principles is not necessary legal. However, from a legal perspective, privacy and data protection can be considered as the main instruments for regulating surveillance. Article 8 ECHR represents the cornerstone of the protection of privacy, together with the jurisprudence of the European Court of Human Rights (ECtHR). Surveillance is not necessarily against privacy and data protection, nor does it constitute *per se* a violation of art. 8 ECHR. Instead, art. 8 ECHR is the synthesis of conflicting rights and interests that oppose each other when surveillance is at stake. This results especially from analysis of the principles of art. 8.2 ECHR and from the case law of the ECtHR. There are gaps in privacy and data protection laws that regulate surveillance and they are only partially filled by the European case law.

Privacy and data protection are broad, ambiguous and contentious concepts which are rooted in national constitutional values of European Member States. They encompass different dimensions that can be referred to as decisional privacy, informational privacy and local privacy. There is a rich tapestry of legal traditions and cultures at European level that originate in turn different privacy and data protection regimes. These differences are evident mainly by the existence of a gap between the privacy regimes of both civil law and common law. In western countries, civil law privacy developed as a human rights demands grew, and shaped many national constitutional frameworks from the late 1940's in response to the horrors of totalitarian regimes. By contrast, privacy protection in common law systems has

been developed mainly within private law, as a legitimate interest protected by national tort law. Great efforts have been made at national level by Member States to implement European privacy and data protection laws in the last few decades and to regulate surveillance. However, remarkable differences still exist across Europe.

3.4.1 Distillation of themes in the legal perspective

The legal perspective can be distilled into a number of core themes or topics for further investigation.

Theme 1. Surveillance and legal instruments

Privacy and data protection provide the legal framework for regulating surveillance. However, the legal framework that applies to surveillance is not clearly defined and varies across European member states with a range of legal instruments in use. Legislative and regulatory mechanisms exist at the national and European levels. Although the rights to privacy and data protection contain several and significant safeguards against the spread of unfettered surveillance, this is not only regulated through legal norms and principles, but also through values which are highly influenced by social and political values, such as accountability and transparency. In addition, remarkable differences exist at national level as to how privacy and data protection norms and principles are implemented

Theme 2. Surveillance and fundamental citizens rights

The relationship between surveillance and democracy is usually explored from a public perspective, analysing the impacts of state surveillance on citizens' rights and liberties. However, private surveillance plays also an important role in shaping this relationship. On the one hand, technological developments can be seen to challenge citizens rights, yet on the other, mechanisms to enforce citizens' rights can be seen to shape and restrict the spread and nature of surveillance. Surveillance can affect the exercise of fundamental rights in democratic settings. It can challenge democracy and be non-democratic. However, the existence of specific legislation and/or regulations on the use of surveillance technologies does not necessarily prevent the spread of surveillance in our societies.

Theme 3. Surveillance and the legal balance

Tensions between surveillance and democracy result from the effects and impacts of the former on fundamental rights. Indeed, the ECtHR recognises that secret surveillance can undermine or even destroy democracy on the grounds of defending it. However, the governance of surveillance consists often in balancing conflicting rights and interests, whose task is usually performed by Courts, on a case-by-case basis.

Theme 4. Surveillance and emerging case law

Gaps and pitfalls can be found in legislation and case law on privacy and data protection with regard to surveillance. There is a body of case law of the European Courts concerning surveillance which contributes only partially to filling these gaps. There is also an emerging body of national case law within European Member States.

3.4.2 *Exploratory questions emanating from the legal perspective*

The distillation of the legal perspective into a series of core themes can be further refined into a series of exploratory research questions which can be applied in different democratic settings, presumably soliciting different responses in different democratic contexts.

Theme 1. Surveillance and legal instruments

Exploratory research questions emanating from theme 1 'surveillance and legal instruments' would include:

Question 1:
What legal instruments are used to regulate surveillance at the national and European levels?

Question 2:
How effective are privacy and data protection instruments in regulating surveillance?

Question 3:
Can legislation on privacy and data protection can be improved taking into account the widespread use of surveillance technologies and their effects, while having regard to the different European legal traditions?

Question 4:
Can the proposed European data protection reform addresses surveillance concerns?

Question 5:
How do legal, social and political principles and values contribute to shape the regulatory framework for surveillance?

Theme 2. Surveillance and fundamental citizens' rights

Exploratory research questions emanating from theme 2 'surveillance and fundamental citizens' rights would include:

Question 1:
How are fundamental citizens' rights protected and what are the threats to fundamental citizens' rights posed by new surveillance technologies?

Question 2:
How are citizens' rights enhanced through the deployment of surveillance technologies?

Question 3:
What are the differences and similarities between public and private surveillance and how are they regulated?

Question 4:
How can surveillance technologies be designed to enhance democracy and citizens' rights?

Question 5:
What processes exist to ensure legislation and other regulatory instruments are designed to accommodate developments in surveillance technologies?

Theme 3. Surveillance and the legal balance

Exploratory research questions emanating from theme 3 'surveillance and the legal balance' would include:

Question 1:
What are the recognised balances emerging around the deployment of surveillance technologies?

Question 2:
On which legal grounds are conflicting rights balanced in surveillance societies?

Question 3:
What are the implications of this case-by-case approach on fundamental rights and democracy?

Theme 4. Surveillance and emerging case law

Exploratory research questions emanating from theme 4 'surveillance and emerging case law' would include:

Question 1:
What case law exists that relates to the introduction and use of surveillance technologies?

Question 2:
Despite case law of the ECtHR and the doctrine on art. 8 ECHR, there is not a unanimous consensus on which surveillance measures can be considered as '*necessary in a democratic society*'. How do Member States address this criterion in surveillance societies?

Question 3:
What is the meaning of the expression '*a person's reasonable expectation of privacy*' which the ECtHR refers to? When a person's expectation of privacy can be considered reasonable? How legislation can safeguard this expectation? What is the meaning and value of this expression from a legal, sociological and political point of view?

Question 4:
What are the limits of discretion of national authorities in deploying European regulations concerning the regulation of personal data and national security?

3.5   Synthesis of theoretical framework

This discussion paper has explored the dominant ways of seeing and understanding promoted by three core social science perspectives of surveillance and democracy. Each core perspective has been distilled into a series of core themes or topics and a number of research questions. These questions represent critical areas for investigation and when operationalised empirically will facilitate new knowledge about way surveillance and democracy evolve

together. Combined, the perspectives offer a thorough assessment of what is known about surveillance in a democratic polity. The distillation of knowledge emanating from these perspectives into a series of core themes represents a synthesis of existing knowledge in the social sciences. In total, 14 core themes are identified, four or five per perspective. The themes are not nessesarily mutually exclusive and may have relevance to more than one perspective. Table 3 presents a summary of the three core perspectives and 14 main themes that constitute the IRISS theoretical framework.

Table 3. The IRISS theoretical framework – perspectives and research themes

Perspective	Research Theme
The Social Perspective	*Theme 1. The normality of surveillance* *Theme 2. Surveillance, power and control* *Theme 3. Surveillance and security* *Theme 4. Surveillance and social values* *Theme 5. Surveillance and transparency*
The Political Perspective	*Theme 1. Surveillance and democratic rights and freedoms* *Theme 2. Surveillance and political discourse* *Theme 3. The politics of surveillance* *Theme 4. Surveillance and democratic values* *Theme 5. The governance of surveillance*
The Legal Perspective	*Theme 1. Surveillance and legal instruments* *Theme 2. Surveillance and fundamental citizens' rights* *Theme 3. Surveillance and the legal balance* *Theme 4. Surveillance and emerging case law*

CHAPTER 4: CONCLUSIONS

4.1　Summary of theoretical framework

This discussion paper sets out the analytical theoretical framework for the IRISS project. The framework is designed to capture existing knowledge about surveillance and democracy and to shape the direction of the empirical research to be conducted in the project. The theoretical framework therefore represents the consolidation of existing knowledge and a methodological tool for creating new knowledge. The framework is organised around three core perspectives, or 'ways of seeing', each of which alerts us to a different set of themes and research questions. The three core social science perspectives are the 'social' perspective, the 'political' perspective and the 'legal' perspective. The perspectives are not mutually exclusive, they are different ways of comprehending the surveillance phenomena. Emanating from these core social science approaches are a number of research themes or topics. They represent the distillation of existing knowledge and critical research directions. Tables 4, 5 and 6 present a summary of the themes and research questions emanating from the three perspectives. These tables represent the IRISS theoretical framework

4.2　Using the theoretical framework: IRISS case studies

The IRISS Theoretical Framework is to be utilised in exploration of the case studies in IRISS Work Package 3. The case studies are designed to interrogate the intersection between participatory activities driven by democratic values and surveillance practices from the perspectives of both watcher and watched. Its ultimate aim is to identify the ways in which democratic processes can be made more resilient in the face of intensifying and pervasive surveillance. Case studies have been selected to cover a range of surveillance practices in a number of different countries. The IRISS Theoretical Framework provides the dimensions of exploration to be undertaken in these cases. Work Package 3 features a broad structure of paired case studies of surveillance practices across Europe. These cases form the core of empirical material for WP3 and is a key component of the empirical phase of IRISS. In designing the cases it was decided that it was critical to capture the perspectives of both watcher and watched in relation to specified surveillance practices. Thus, WP3 will feature case studies of state-citizen surveillance from the perspective of both parties; private sector-consumer surveillance from the perspective of both parties, and a stand alone case study of citizen-citizen surveillance practices:

- State-Citizen/Citizen-State: Use of Automatic Number Plate Recognition cameras and databases by law enforcement agencies
- Private sector-Citizen/Citizen-private sector: Credit Scoring by Financial Services Institutions
- Citizen – Citizen: Neighbourhood watch programmes (in today's social-media rich world we anticipate a strong online element to these programmes i.e. that they will go beyond the 'curtain twitching' antics of one's elderly neighbours)

For each case the IRISS analytical framework provides a direction for exploration and the key thematic areas to be explored. In this way, the research themes and question embedded in the framework highlight differences and similarities between the cases and their contexts. This furthers out understanding of why surveillance technologies and practices emerge and are used in different ways in different settings.

Table 4. The IRISS theoretical framework – the social perspective

Perspective	Research Theme	Exploratory Research Questions
The Social Perspective	*Theme 1. The normality of surveillance*	Q1: What are our (citizens) attitudes towards the use of surveillance technologies? Q2: How are surveillance technologies perceived and understood? Q3: How do we (citizens) respond to the use of surveillance technologies? Q4: How is surveillance depicted in the media and popular culture? Q5: How do surveillance technologies shape our behaviour?
	Theme 2. Surveillance, power and control	Q1: Who is the surveyor and who is surveyed? Q2: Which vested interests (actors/institutions) are supported by the development of surveillance? Q3: How are surveillance systems used as tools of social control? Q4: Which segments of society are being marginalised by surveillance technologies? Q5: To what extent do surveillance technologies challenge existing power structures in society?
	Theme 3. Surveillance and security	Q1: Which surveillance systems are used for security purposes? Q2: What is the prevailing discourse around specific surveillance-security systems? Q3: How effective are surveillance systems in realising the security function?
	Theme 4. Surveillance and social values	Q1: What are the fundamental social values in society? Q2: How do surveillance systems undermine and/or reinforce fundamental social values? Q3: How are fundamental social values shaping the use of surveillance technologies? Q4: How do surveillance systems shape personal identity? Q5: How are social values protected and enhanced in surveillance intensive democratic societies?
	Theme 5. Surveillance and transparency	Q1:What personal information/data exists in the digital world? Q2:What information/data is collected and processed via surveillance systems? Q3:What information/data is exchanged and shared between and with agencies and companies? Q4:What profiling takes place and how is this information used? Q5:How do these information processes influence our life experiences?

Table 5. The IRISS theoretical framework – the political perspective

Perspective	Research Theme	Exploratory Rese
The Political Perspective	*Theme 1. Surveillance and democratic rights and freedoms*	Q1: What are the most important rights, freedoms, liberties, and relationshi Q2: How does surveillance relate to the exercise of these democratic rights Q3: Can different types of surveillance be mapped onto an inventory of der pinned down more precisely and mitigating strategies brought to bear? Q4: How much is known, and can reliably be known, about the social distr surveillance and what privacy? Q5: What impedes our knowledge of these effects and how can the obstacl
	Theme 2. Surveillance and political discourse	Q1: What are the dominant political discourses surrounding the deploymen shaping the deployment of these technologies? Q2: Which political actors are actively engaged in shaping the discourse su Q3: How much is known, and can reliably be known, about these media eff than any other mode of research? Q4: Do social media differ from traditional press & media in their shaping regarding the threats of crime &terrorism, & attitutes towards surveilla
	Theme 3. The politics of surveillance	Q1: Who derives political value from the development of surveillance tech Q2: Is the public more likely to demand precautionary policies to combat c strategies once threats materialise? Q3: Do political decision-makers question the validity of public fears & de Q4: What is the role of research & discourse in informing the debate, estab the benefits and disadvantages of surveillance, & in developing resilie
	Theme 4. Surveillance and democratic values	Q1: What mechanisms & process exist to facilitate & enshrine values of ac Q2: How are values like accountability & transparency evolving in relation Q3: Can accountability be improved, not only with regard to practices that incursions on non-information dimensions of privacy and rights? Q4: What mechanisms exist for establishing the political & public-engagen through better transparency that includes scrutiny of their accounts & c Q5: What mechanisms exist to facilitate free access to public data and can benefits of such access data while being under constant, overt surveilla Q6: How is the rule of law developing in relation to the emergence of surv
	Theme 5. The governance of surveillance	Q1: What are the institutions, practices and mechanisms used to regulate su Q2: What surveillance policies exist? Q3: What are the public policy processes surrounding the development of s Q4: Would an emphasis on resilience to threats, rather than on precaution, Q5: What are the prospects for better, more global regulation of surveillanc

Table 6. The IRISS theoretical framework – the legal perspective

Perspective	Research Theme	Exploratory Research Questions
The Legal Perspective	*Theme 1. Surveillance and legal instruments*	Q1: What legal instruments are used to regulate surveillance at the national & EU levels? Q2: How effective are privacy and data protection instruments in regulating surveillance? Q3: Can legislation on privacy & DP can be improved taking into account the widespread use of surveillance technologies & their effects, with regard to the different European legal traditions? Q4: Can the proposed European data protection reform addresses surveillance concerns? Q5: How do legal, social and political principles and values contribute to shape the regulatory framework for surveillance?
	Theme 2. Surveillance and fundamental Citizens' rights	Q1: How are fundamental citizens' rights protected and what are the threats to fundamental citizens' rights posed by new surveillance technologies? Q2: How are citizens' rights enhanced through the deployment of surveillance technologies? Q3: What are the differences and similarities between public and private surveillance and how are they regulated? Q4: How can surveillance technologies be designed to enhance democracy and citizens' rights? Q5: What processes exist to ensure legislation and other regulatory instruments are designed to accommodate developments in surveillance technologies?
	Theme 3. Surveillance and the legal balance	Q1: What are the recognised balances emerging around the deployment of surveillance technologies? Q2: On which legal grounds are conflicting rights balanced in surveillance societies? Q3: What are the implications of this case-by-case approach on fundamental rights and democracy?
	Theme 4. Surveillance and emerging case law	Q1: What case law exists that relates to the introduction and use of surveillance technologies? Q2: Despite case law of the ECtHR and the doctrine on art. 8 ECHR, there is not a unanimous consensus on which surveillance measures can be considered as '*necessary in a democratic society*'. How do Member States address this criterion in surveillance societies? Q3: What is the meaning of the expression '*a person's reasonable expectation of privacy*' which the ECtHR refers to? When a person's expectation of privacy can be considered reasonable? How legislation can safeguard this expectation? What is the meaning and value of this expression from a legal, sociological and political point of view? Q4: What are the limits of discretion of national authorities in deploying European regulations concerning the regulation of personal data and national security?