

The Transparent Citizen

Joel R. Reidenberg

Stanley D. and Nikki Waxberg Chair

Founding Director, CLIP

Fordham Law School

Thesis

- **Ubiquitous data collection and ambient surveillance create transparent citizens and non-transparent government that challenge core principles of democracy and drive an evolution toward a new form of governance**

Key points

- **The “Transparent Citizen” is a feature of the network ecosystem**
- **The Transparent Citizen stands outside traditional legal privacy protections and reverses presumptions about democratic government**
- **The challenges to democratic governance force the emergence of a new political dynamic**

Ecosystem Factors and Features: Ubiquity of Ambient Surveillance

- **Network functionality**
- **Open government and benefits programs**
- **Commercial goals / Social Media**
- **Public safety and security**

US legal framework poorly adapted to Transparent Citizen

- **Constitutional Framework**
- **Statutory Framework**
- **Regulatory Agencies**
- **Common Law**
- **Public Sector vs. Private Sector**

Basic premises of Democracy and Rule of Law

- **Respect for Rule of Law**
- **Accountability**
- **Personal freedom (thought, association)**
- **Assurance of public order and safety**

Transparency upends these commitments to Democracy

- **Infrastructure of daily life**
 - **Generalized transparency**
 - **Government / Companies / Families seek security through surveillance**
 - **Privacy is sought through security**



Transparency upends these commitments to Democracy

- **Loss of Respect for Rule of Law**
 - **Circumvention of checks and balances on the State**
 - **Self-help vs. vigilante tools**
 - **Integrity of institutions (e.g. FB judges)**



Transparency upends these commitments to Democracy

- **Infrastructure undermines Accountability**
 - Transparent citizen/Opaque Government
 - Presumption of guilt rather than innocence
 - Transfer of enforcement to private actors
 - DarkNet
- **Freedoms**
 - Loss of anonymity, chilling of expression
 - Persistent monitoring, chilling of association

Transparent Citizen undermines commitments to Democracy

- **Surveillance/Security programs undermine public safety**
- **Surveillance/Security programs undermine commercial safety**



Conclusion: Evolution of Governance

- **Evolving institutional dynamics**



- **Emergence of new political dynamic**

- **What are the governing principles, checks/balances?**
- **Who regulates what?**
 - **Network federalism / subsidiarity**