

Cyber Challenges to International Human Rights

Title: Protecting Human Rights in an Age of Surveillance: Collective Rights and Collective Remedies

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Abstract:

Much of the challenge of securing civil liberties in our age of surveillance stems from a common preconception of these rights as individual rather than collective in nature. This skews the moral math, particularly in the national security context, and raises high substantive and procedural barriers against challenges in court. This paper tests that preconception by arguing that many of the most important civil liberties threatened by contemporary surveillance technologies and policing practices are collective rights that belong first to “the people.” Building on my recent book, *The Fourth Amendment in an Age of Surveillance* (Cambridge, 2017), this paper explains and explores the role of collective rights and collective remedies as guarantors of rights to privacy, due process, and political self-determination, which are at the heart of contemporary conversations about cybersecurity, surveillance, policing, and national security. The paper pays particular attention to the legal and policy consequences of adopting a collective rights framework and the roles that corporations can play in vindicating those rights on behalf of their customers.