



Kafka in the age of the internet

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world, you do not know you if you are being watched, but you you live "in the assumption that every sound you made was overheard, and except, in darkness, every movement was scrutinised." (1984, George Orwell) The bleak world of government power found recourse in Orwell.

But to frame surveillance in the Orwellian is to leave out a big chunk of what it entails. Orwell's world is of total

authority on the individual life; it misses the issue of the data we give almost willingly, and the collection of which does not directly correlate to an issue of freedom of speech. Because the issue of privacy in the digital age transcends beyond the censorship of speech, a better analogy for the world we live in today is Kafka's *The Trial*. In Kafka's world, things inexplicably happen; in *The Trial*, the main character, Joseph K., wakes up one

fine morning and finds out he has been arrested. His guards, who work for some authority which remains unnamed, inform him he is under arrest. His charges are not named, neither are his accusers, and K, though initially nonchalant, can find no trace of what he has done wrong. The mysterious Court, which is overseeing his case and where the judgement of his guilt it seems has already been assumed, cares little of confining K. It does not even force on him any obligation: he is free to come to the court if he pleases. The world surrounding his trial is one of secrecy. His only links to the court are through its lower officials, the Advocate, his maid, or the official Court Painter; and they, too, only tell him that they know little about how The Court functions. K. cannot figure out why he is being accused. The entire process of the proceedings happens in the shadows, of which K. can glimpse only parts. This is a world of a cult or an ancient religion, where the uninitiated knows little of what goes on. The bureaucratic labyrinth, the secret laws and mysterious court officials hopelessly entangle K. in a trial which he tries to fight, resorting to whatever means he can. Towards the end, a priest, also a court official, tells him the parable of the doorkeeper who guards the doors to the law, and entry to which is forever restricted to a man who seeks to go in. Without warning, one night, K. is taken away and executed.

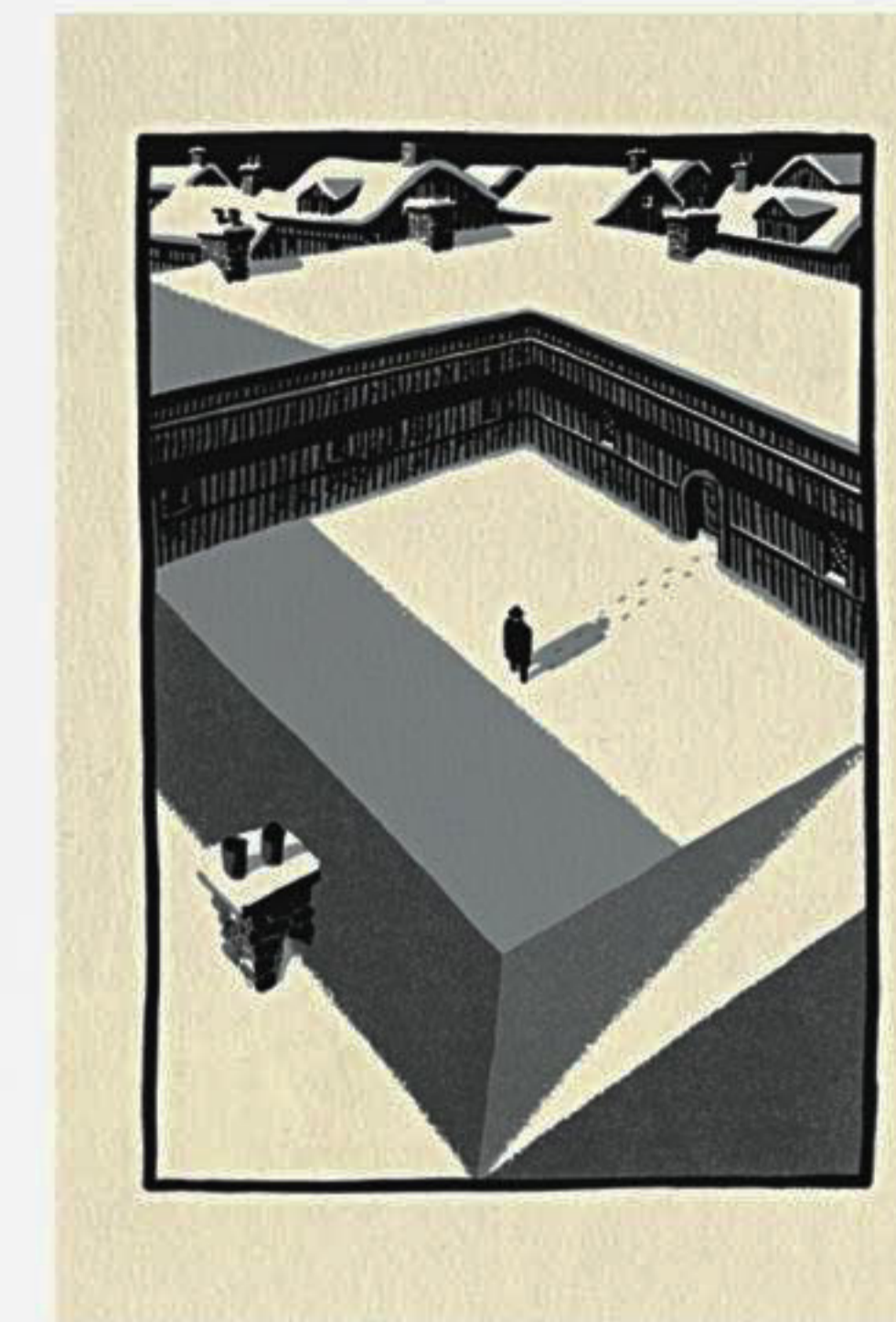
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"Judgement does not come suddenly; the proceedings gradually merge into the judgement."

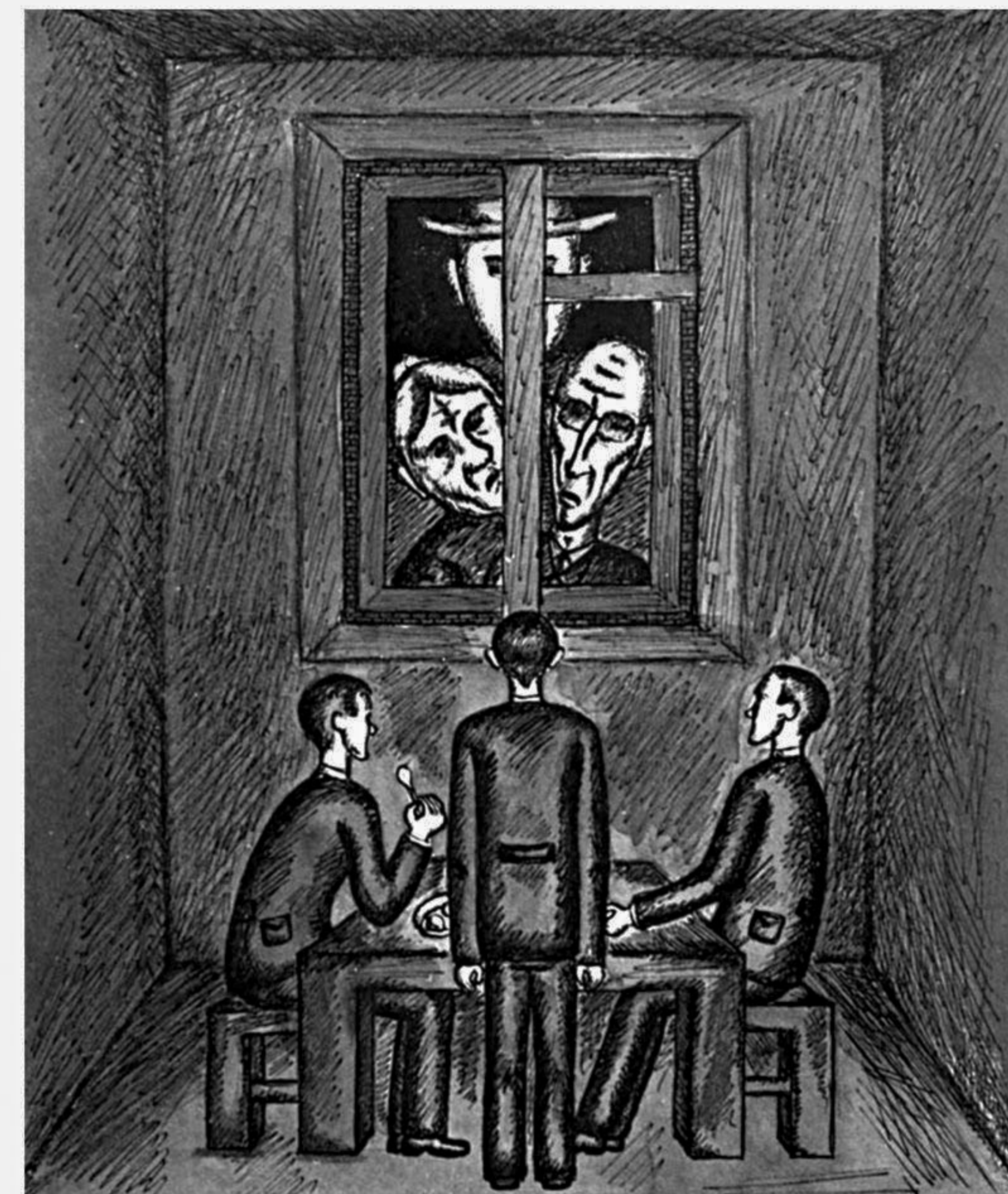
One should not take a metaphor too far. It isn't in K's execution or the exact process of the court proceedings that Kafka is relevant today. Yet, reading *The Trial*, one cannot escape an eerie sense of recognition. Surveillance today is not only about targeting dissidents and the free press: the issue is that we do not even know what data is being collected. We do not know about the bureaucracy and the laws and courts that decide who can take what data from us, and how they are used. And it is not even only the government that is interested in one's private life; corporations such as Facebook and Google collect data and make the decision about what ads and search results should pop up on someone's newsfeed. How is this data stored? Does one have a choice to opt out of it? And by clicking the "I Agree" on the terms and conditions page, what personal information are we agreeing to share? The feeling of helplessness and powerlessness in a vast process outside oneself is what makes Kafka eerie reading.

The debate about privacy in terms of the Orwellian leaves out this distinction. Daniel J. Solove, Professor of Law at the George Washington University Law School in 2001 was already stressing the importance of the Kafka metaphor when it comes to understanding the legal debate about surveillance and privacy. In a paper titled *Privacy and Power* on the *Stanford Law Review*, he writes: "*The Trial*



captures the sense of helplessness, frustration, and vulnerability one experiences when a large bureaucratic organisation has control over a vast dossier of one's life. At any time, something could happen to Joseph K.; decisions are made based on his data, and Joseph K. has no say, no knowledge, and no ability to fight back."

In a subsequent work, published in 2008, Solove argues that the widespread justification of surveillance based on the premise "if one is not guilty, he has nothing to hide" takes a narrow approach to the idea of privacy as a right. It is here he thinks Kafka is important; for him it is not whether the collection of data is necessary, but what



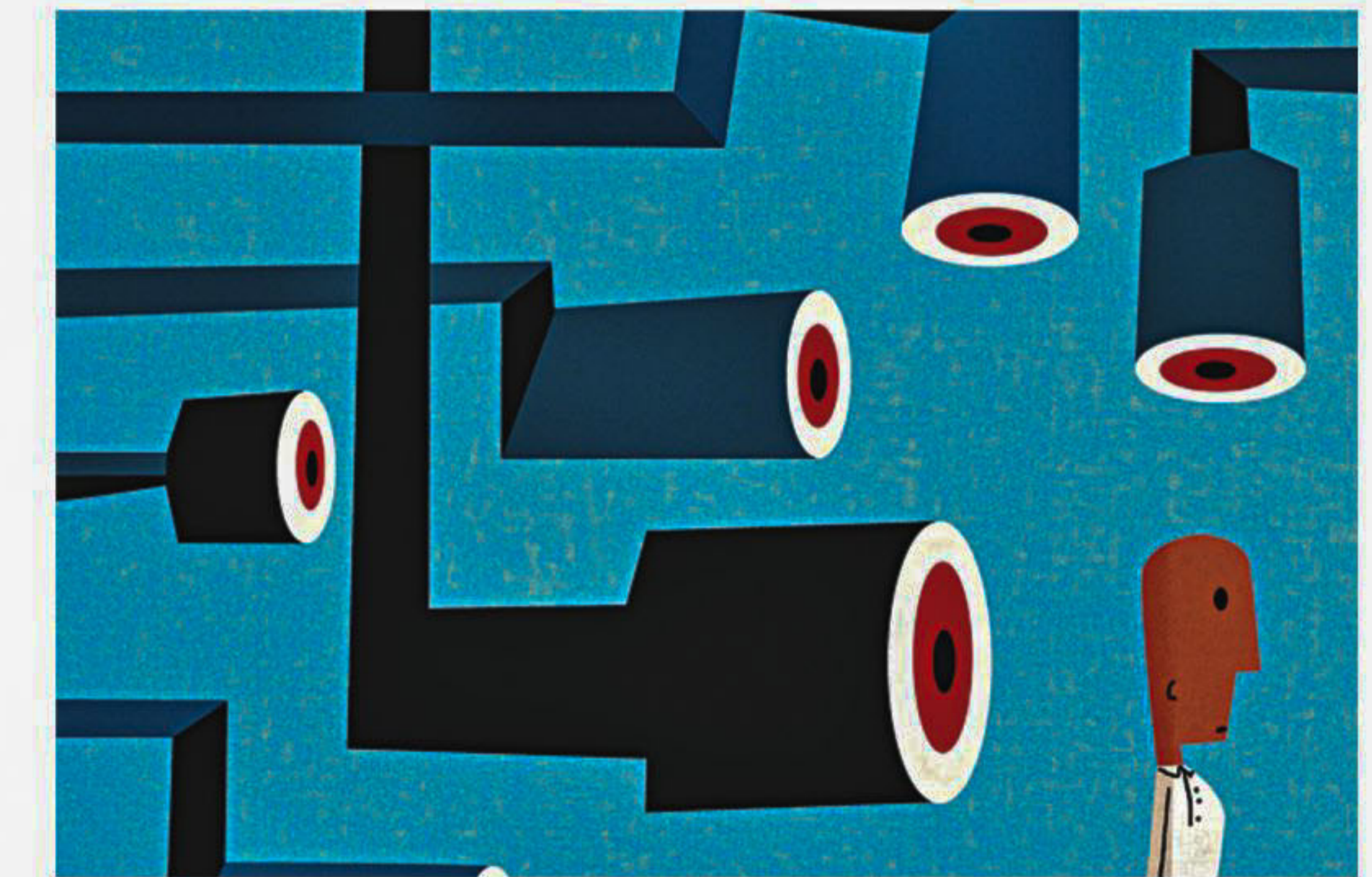
control and oversight exists in this process. He writes, speaking of the storage, use and analysis of the data collected, in his paper "*I've got nothing to hide*" and *Other Misunderstanding of Privacy*:

They affect the power relationships between people and the institutions of the modern state. They not only frustrate the individual... but they also affect social structure by altering the kind of relationships people have with the institutions that make important decisions about their lives.

So a view which defines privacy as "hiding bad things" shifts the debate away from the issue about what legality a state or corporation has of sifting through one's data. For Solove, Kafka's

to justify their suspicion and be accountable to a court when infringing on one's privacy. When the surveillance debate has been framed around the vague notion of national security, it takes our data, from fingerprints to household income information, without giving us any idea of how it will be stored, who will use it, and why. The law seeks guilt, and it is right because it is the law.

It is interesting to note in passing that Milan Kundera once called the spiritual condition of man in a totalitarian state *Kafkan*. "There are tendencies in modern history that produce the *Kafkan* in the broad social dimension: the progressive concentration of power, tending to deify itself; the bureaucratisation of social activity that turns all institutions into



Maybe, the world today is not *Kafkan* in the same sense he meant (for he lived in a different world). But it is all the more *Kafkaesque* in our lack of control. Is the choice to opt out of using Google or Facebook even a real one for us? How many of us understand the dense legal language of the laws which gives authorities the right to read our data? The justification of unrestricted access to our data because of national interests leaves us no choice but to acquiesce.

The Trial poses a more fundamental issue: it is not only uninhibited behaviour that is at stake, but the exclusion of an individual from the knowledge and participation in the use of their data.

"After all, our department, as far as I know, and I know only the lowest level, doesn't seek out guilt among the general population, but, as the Law states, is attracted by guilt and has to send us guards out. That's the Law. What mistake could there be?"

In *The Trial*, Kafka creates a world of exaggeration which contains the truth of one's disempowerment. It is far away from a world where government's need

boundless labyrinths, the resulting depersonalisation of the individual." (*Kafka's World*, The Wilson Quarterly) Maybe, the world today is not *Kafkan* in the same sense he meant (for he lived in a different world). But it is all the more *Kafkaesque* in our lack of control. Is the choice to opt out of using Google or Facebook even a real one for us? How many of us understand the dense legal language of the laws which gives authorities the right to read our data? The justification of unrestricted access to our data because of national interests leaves us no choice but to acquiesce.

So where do we go from there? After all, *1984* ends in two lovers denouncing each other, while *The Trial* ends with K.'s execution. No power is dismantled, and K. dies not knowing what he did wrong. The two books give us a frame of reference to understand our world today; they provide some comfort. They are not solutions. They can only highlight what is at stake, and as Solove suggests, help us frame our argument in opposing unrestricted constant watch through helping us understand a pluralistic view of privacy. Or, in the age of social media, help us understand and demand that participation in what corporations get to do with one's data. It is not only about being put on the docks for a crime, but about this participation in the power structure, which now favours the state and big businesses.

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