In 2003, a Georgia homeland security officer closely watched a protest by vegans at a honey-baked ham store. A few years later, Virginia officials worried that historically black colleges could be “nodes of radicalization.” Missouri briefly focused on Ron Paul supporters as potential enemies of the state. While a Leviathan homeland security apparatus pursued these phantom menaces, officials who should have been regulating Wall Street were barely monitoring it. For example, a former Office of Thrift Supervision director told the Financial Crisis Inquiry Commission that as late as September 2008, he had “no clue—no idea—what [AIG’s] credit default swap liability was.” Pervasive nonfeasance left finance regulators in an informational vacuum as they attempted to respond to the worst economic crisis since 1929.

The US needs to implement far-reaching surveillance of markets in order to prevent further economic crises. Some civil libertarians may object to such pervasive monitoring as one more step toward a “Big Brother” state. However, given the massive and irremediable blows to individual privacy struck by technological advances, near-universal “consent” to privacy-invading practices, and accumulation of executive power, it is no longer realistic to promote “privacy” as a universal value. Rather, the best civil libertarians can hope for is an egalitarian surveillance, one that afflicts the rich as well as the poor, corporations as well as natural persons. First, Fourth, and Fifth Amendment jurisprudence should accommodate statutory requirements for audit trails, whistleblower protections, and data mining aimed at detecting and deterring illegal and harmful corporate practices.

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