

# The Surveillance Consensus

## Reviewing the Politics of CCTV in Three European Countries

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### ABSTRACT

This article is inspired by Haggerty and Ericson's notion of the 'surveillant assemblage', which draws on philosophical concepts of Deleuze and Guattari in order to analyse the dynamics of contemporary increasingly extensive and intensifying surveillance. The surveillant assemblage has a twofold character. On the one hand it aims to increase visibility and on the other hand it works invisibly, 'beyond our normal range of perception'. The surveillant assemblage offers a surveillance consensus. To disentangle this consensus this article focuses particularly on CCTV as a technology that is still visible. We analyse three aspects of the surveillance consensus, namely, correlating with the aesthetical concept of consensus, what we call (after Luhmann) (1) the illusion of total inclusion, which is hardened by (2) media arrangements and eventually by (3) regulation. We will refer to these three aspects empirically along with examples from the development of CCTV in the UK, France and Germany.

### KEY WORDS

CCTV / France / Germany / Politics of Surveillance / UK.

Our cameras are here today providing your right to be seen and heard.  
(Promotion at the Security and Prosperity Partnership summit in Montebello.  
Quoted in Naomi Klein, *The Guardian*, 24 August 2007)

## Yes it works! No it doesn't!<sup>1</sup>

The year 2008 began with an astonishing report from a German newswire delivering the latest story on surveillance: 'British police admits substantial weaknesses of CCTV' (Stefan Krempf, *heise online news*, 19 January 2008). Only a few months before, in October 2007, the Home Office and the Association of Chief Police Officers (ACPO) had published a 'National CCTV Strategy' (Gerrard et al. 2007) which raised some concerns about the management and organization of the British CCTV infrastructure but overall confirmed the usefulness of the technology as a crime fighting tool. And yet the Deputy Chief Constable Graeme Gerrard, chairman of the ACPO CCTV subcommittee and co-author of the 'National Strategy', was admitting substantial weaknesses at a hearing in the House of Lords. Had the police forces of the UK, the country that more than any other has extensively installed CCTV in open streets to combat crime, suddenly reverse their position? Or does Gerrard's admission of CCTV's weaknesses simply indicate a new level of discussion? In fact, Gerrard acknowledged first of all the issue of overstated expectations at the hearing in the House of Lords Constitution Committee. His major concern went far beyond the question of whether CCTV works or not, revealing the political dimension of the issue of effectiveness:

Most of the pressure [for CCTV] comes from the public. ... Some of them may get disappointed ... it doesn't deter most crime. I think they [the people] are perhaps misled in terms of the amount of crime that CCTV might prevent. (Quoted in Rosa Prince, *Telegraph*, 19 January 2008)

Public pressure? Disappointment? Crime prevention? Misleading? Gerrard certainly did not argue that CCTV was completely useless. He pointed to failings of CCTV not in general but rather specifically with regard to crime prevention. Since the London bombings of July 2005 this attitude has been backed by public discourse about CCTV, which now places less emphasis on crime prevention and more on the ability to prosecute offenders on the basis of CCTV footage. It was just a matter of time before this argument collapsed as well. Indeed, a few months after Gerrard's statement, Scotland Yard CCTV expert Mike Neville called CCTV an 'utter fiasco', announcing that only 3 per cent of street robberies 'had been solved by using CCTV images' as, among other reasons, 80 per cent of them is of poor quality and thus useless (*Telegraph*, 6 May 2008). Regardless of whether these reports were requests for further funding, a substantial discrepancy has obviously opened up between what was promised by the

<sup>1</sup> We borrow this phrase that indicates the ambivalent crime effects of CCTV from Ditton and Short (1999).

assumed virtues of this technology and what has been achieved in reality. A crack had appeared in the surveillance consensus. Though manufacturers, politicians, the media, the public and researchers 'have all been drivers for the deployment of CCTV' (Groombridge 2008: 77), it was in particular the police that felt the pressure arising from the discrepancy between the expected and actual benefits of CCTV. They immediately responded to the perceived failure.

Gerrard's and his colleagues' intention was on the one hand to reduce expectations while on the other hand maintaining the general belief in the benefits of CCTV. The motif of effectiveness serves as a rhetorical means to legitimize enduring surveillance. Stemming from a complexity of cultural, social, economic and political issues the consensus that CCTV works has been constructed through the media, audits, surveys, evaluations, legislation and so forth. For instance, public acceptance rates for CCTV have been widely used not only in the UK but throughout the world to promote the deployment of security and surveillance technologies. In Germany just recently an audit stated that 83 per cent of Berlin's population wanted more CCTV (*Berliner Zeitung*, 31 August 2007), a figure which has been repeated *ad nauseam* by various stakeholders. Also various surveys have continuously reported high levels of public support for the use of CCTV, unfortunately, without giving any thought to their political impact. One of the latest surveys on public attitudes towards CCTV – indeed carried out on behalf of the UK Home Office – by Spriggs et al. (2005) indicated that 82 per cent of the respondents were 'happy with' the installation of CCTV and 80 per cent even expected CCTV to reduce crime. Moreover, 63 per cent believed that due to CCTV there is now a smaller number of young people hanging around, 69 per cent were convinced that people report more incidents and 56 per cent that with CCTV the police is able to respond more quickly (Spriggs et al. 2005). What do these numbers mean? Do they have anything to do with CCTV? Given that these numbers represent what is called public attitudes, with Gerrard's statement and the various findings of evaluations and meta-evaluations in mind, they imply that not less than four out of five respondents are wrong and thus deceived with regard to the impact that CCTV has on crime and criminal justice.

Over the last decades the UK Home Office has spent more than three-quarters of its crime prevention budget on funding CCTV and an estimated £500 million of public money has been invested in the CCTV infrastructure (Murakami Wood 2006: 19). Moreover, it is reported that of the five London boroughs with the most cameras, four have a crime-solving record that is below average (*Evening Standard*, 19 September 2007). And finally, 90 per cent of cameras violate the Information Commissioner's Code of Practice on the use of CCTV cameras (*Telegraph*, 2 June 2007). Given these facts,

the statements of Neville and Gerrard turn out to be acknowledgements of a serious political scandal: the UK government has obviously ‘undermined civil liberties for no apparent reason’, as David Davis admitted in his spontaneous reply to Gerrard during the hearing. Ever since the widespread introduction of CCTV in the UK there have been questions regarding its effectiveness and the value-for-money. Many scholars and critical observers have articulated concerns regarding the discriminative potential of CCTV and its implications for civil liberties; but these concerns have been more or less ignored for more than a decade. However, the scandal is not just about the mere ignorance of some individual politicians, who have ignored the warnings, it is also not just that the people have been ‘perhaps misled’, as Gerrard fears. Paying heed only to these most immediately visible aspects means staying at the level of accusation and blame and thereby risking the distortions of reductionism. At the core of the politics of CCTV lies the question of how, against all implausibility, CCTV has become not only a reality but first of all an unquestioned agreement among politicians, police *and* the people. How do liberal governments actually come to implement surveillance measures that continuously derogate democratic liberties and political rights? What are the systems of truth and justification? How is it possible that the sacrifice of liberty for personal security is not seen as a sacrifice that risks personal security?

## Envisioning the surveillance consensus

Various scholars have pointed out that new forms of surveillance challenge conventional approaches to the theory of surveillance in terms of Foucault’s notion of the panopticon (Lyon 2006b). But the critique of Foucault’s transformative reading of Bentham’s famous architectural regime of (in)visibility has led to various reconfigured frameworks for understanding contemporary surveillance, either overbidding the original model, e.g. Poster’s (1990) ‘super-panopticon’, or trying to leave it behind, e.g. Boyne’s (2000) ‘post-panopticon’. Mathiesen’s (1997) notion of the ‘synopticon’ goes a step further, contrasting Foucault’s dispositif of the ‘panopticon’ – in which a few control the many, thereby emphasising self-discipline – with the synoptic character of the ‘viewer’s society,’ where many watch the few by media coverage in the press, on television and the Internet. Furthermore, Bigo’s (2006a) notion of the ‘ban-opticon’ opposes the view of scholars that contemporary surveillance is scrutinizing entire populations. This vision, Bigo (2006a: 35) argues, ‘is only the dream of a few agents of power, even if the rhetoric after September 11 articulates a “total” information’. Instead, he insists, only the few profiled as “unwelcome” are monitored by a few’.

Within post-September 11 discussions on the state of exception, the ban-opticon is characterized by three major aspects: (1) ‘the way it excludes certain groups in the name of their future potential behavior’; (2) ‘the exceptionalism of power (rules of emergency and their tendency to become permanent)’; and (3) ‘the production of normative imperatives’ that ‘normalizes the non-excluded’ (Bigo 2006a: 35). What makes this especially interesting is not that the ban-opticon may ‘deflect attention from the routine technologies of control’ (Lyon 2006a: 12) nor that it stresses profiling and dataveillance, which it does to a certain degree; rather, the visibility of exclusion vanishes, while the power of exception and the production of normative imperatives amalgamate into a ‘governmentality’ of uncertainty, unease, fear and (in)security. Marx (2002) has characterized new surveillance as having a tendency to become abstract. It is this abstract character of new surveillance that almost invalidates opposition. The ban-opticon ‘banalizes’ both ‘the exception’ (Bigo 2006b: 47) and the technologies of surveillance, so ‘that nobody (including the judges) asks for their legitimacy and their efficiency after a certain period of time’ (2006b: 49). Indeed, the aim of the ‘surveillant assemblage’ (Haggerty and Ericson 2000) is its invisibilisation as every visible sign of it, including cameras, indicates borders, conflict and exclusion, and thus would challenge the surveillance consensus. Hence, to prevent threats is only one side of the proactivity of the ban-opticon; the other is to prevent its visibility by demonstrating in the mass media its effectiveness to mitigate threats, which in turn become omnipresent.

The notions of synopticon and ban-opticon both merge the various drivers of surveillance with the viewer society for the sake of more (in)security, creating a consensus that ensures the routinization of surveillance practices, generates ubiquitous images of threat and suspicion, and finally guarantees that the spread of surveillance develops into a ‘global fifth utility’ that is as invisible – unless the cameras are seen – as power, gas, waste and communication and self-evident in its permanent production of exclusion (Graham 1998; Norris et al. 2004). The consensus produces a reality that is identical with the pre-structured normality of the non-excluded, a simulacrum of an overarching visibility in which exclusion is first subjected to invisibility and, second, the many follow the comfortable illusion of a total inclusion. Therefore, liberal societies can approve of their own self-image, in which, according to its main imperative of mobility, everybody is free to offer their labour to the market or to follow commodified life in a culture of capitalism. As Bigo (2006a) stresses, the ban-opticon, unlike Foucault’s panopticon, does not immobilize bodies under an analytic gaze but rather claims mobility for all.

In the following we aim to disentangle the surveillance consensus by briefly reviewing the rise of CCTV in the UK, France and Germany. The different speeds and methods of adoption point to variations in cultural, political, legal, political and economic traditions within these jurisdictions, for instance in regard to attitudes towards privacy and what is seen as the duty of the state, the community and the citizen (Marx 1995). At the same time there are common trends among these countries, such as the commodification of urban space and everyday life, also converting privacy and personal data into tradeable goods, and the changing public perception of security and risk that are corresponding with the governance of unease, fear and (in)security. In all three of these countries, deviant behaviour has been correlated with crime, crime with terrorism and terrorism with war, which ushered the 'preventive turn' (Narr 1998) from public safety policies to internal security policies that complement the logic of reactive repression with one of proactive prevention. All these trends, which can be traced back historically as far as the 1970s, are part of the forging of the surveillance consensus. However, the variations in speed and the different methods of adoption of public CCTV in the UK, France and Germany allow for some insight into the creation of this consensus. We want to focus particularly on three different aspects that seem to be most relevant to understanding the contemporary surveillance consensus. First, the postulate of total inclusion in advanced modern societies that blinds out CCTV as a technically mediated practice of social exclusion. Second, the massive impact of the media in shaping the consensus. Third, the process of affirmative regulation that does not limit or control surveillance but dissolves the boundaries of its control.

### **Total inclusion: setting the scene of exclusion**

The first permanent public CCTV scheme started operating in 1985, monitoring the promenade of the English seaside town of Bournemouth. The town was hosting the annual Conservative Party Conference, which the previous year had been marked by an IRA attack in which five people were killed and many more injured (Norris et al. 2004: 111). Often overlooked in surveillance research is the fact that public area CCTV was as quickly adopted across the Channel in France. Although Levallois-Perret is most often cited as the first French city, developing an 86-camera network since 1991, it seems that Hyères, again a seaside resort at the Côtes d'Azur, had already installed a large-scale CCTV system to combat street crime in the late 1980s (Töpfer and Helten 2005: 48). In Germany, compared to the UK and France, the proliferation took place more hesitantly and moderately,

the Saxonian city of Leipzig starting the first four-week trial with police video surveillance in April 1996, monitoring the area around the central railway station in an effort to combat drug-related 'street crime'. After it had been declared a 'success' by the local police department, the temporary installation was made permanent and expanded (Müller 1997). Around the same time, the police on the island of Sylt, northern Germany, utilized a surveillance camera in a pedestrian zone of the seaside resort Westerland, this time to protect tourists from misbehaving teenagers and punks (Töpfer 2005: 5). Terrorism, crime, deviant behaviour – the whole spectrum of contexts of public CCTV was already covered by the first systems.

Is it a coincidence that in all three countries, with the exception of Leipzig, the first schemes were installed not in major crime-suffering cities but at seaside resorts? Surely it is not. We have to consider the specific cases to understand the consensus in its beginnings, which will also shed light on the eventual proliferation of CCTV. What makes Sylt a case of particular interest, besides the fact that we have empirical data on it, is that its status as an exclusive tourist site means that it is somewhat off the German political map, which in 1996 was characterized by a diminishing hope that the economy would recover quickly from the burden of reunification. Although the highly unpopular 'Agenda 2010' of Helmut Kohl's successor Gerhard Schröder had not yet come about, on the German mainland, the model of German Rhine capitalism seemed well beyond its expiry date. The rising demand for substantial reforms both reflected and contributed to fears that the prosperity West Germans had been used to since the postwar period was over for good and that East Germans would not have the chance to benefit from the prosperity that they had hoped for in 1989. Additionally, the introduction of a common European currency and thus the end of the Deutsche Mark was a momentous and sometimes frightening event.

Given this situation, Sylt, known as 'the isle of the beautiful and rich', appeared to be a microcosm in which life still proceeded in peace. Therefore, the introduction of a single camera was hardly noticed. Compared to Leipzig, the issue was completely uncontested. Holiday-makers had complained about disturbances by loitering punks and drunken youngsters visiting the island. The local administrators worried that the town's image would be damaged and therefore called for a partnership, which included the police, local businesses and social workers. Private security guards began to patrol the beach while the social workers established relationships with the youths, and CCTV was installed at the central plaza of Westerland.

The objective of this new regime of policing on Sylt is clearly not only to protect tourists from deviant youths. In fact the aim of the managers was to prevent adolescents from establishing the island as a hang out and transforming it into a 'cheap place'. Although ultimately unsuccessful, efforts

were even made to convince the national railway company Deutsche Bahn to discontinue special offers that allowed young people to travel to Westerland for a reduced price of DEM 35 (*Die Welt*, 16 March 1996).

Whether the juveniles' behaviour was perceived as some kind of excessive individualism, moral degeneracy or even social illness within this particular consensual environment of peacefulness and wealth was irrelevant once their behaviour threatened the economics of tourism. A line was drawn, and policing that line now meant identifying and sorting desirable tourists from undesirable ones based on a calculus: exclusiveness versus non-exclusiveness, young people with economic capabilities versus those without. The tourist site is the perfect illustration of a capitalist idyll, based on an aesthetic and socio-economic consensus. First of all, and this is true for all types of tourism, it is a reward system available to those in the higher levels of society. According to the adjusted underlying aesthetical arrangements of tourism, status can be staged among equals. Socio-economic differences are eliminated as far as possible. The 'police order' objectifies this rule. Referring to Rancière, it marks a certain 'partition of the sensible,' not founding but confirming first of all an exclusive topological 'order of visibility and sayability' that allocates bodies according to their 'names' and 'activities'. The police order is in charge to ensure that 'this activity is visible while those others not, that this word is understood as speech and those others as noise' (Rancière 2002: 41). It ensures that those who do not count stay mute and that those who count form the population as a social whole, which in fact is a divided community.

Furthermore, the police order confirms the implicit agreement of surveillance being the best means to ensure the aesthetical and economic setting of the scene. Accordingly, the consensus to implement CCTV in Sylt had three dimensions: first, a desire to disrupt or eliminate deviant behaviour; second, an agreement on a specific surveillance regime; and third, legitimation of the solution as it substantiates the existing order. The result is that exclusion was excluded from general perception.

In Luhmann's (1996) terms, the dynamic of exclusion and inclusion is delegated to functional differentiation. Sub-systems (e.g. cheap tourism) ensure the inclusion of those that are excluded from another (exclusive) tourism. Therefore, though exclusion takes place the ideological construction of total inclusion allows one to believe that it does not take place, which is an apt description of the way that contemporary liberal democracies function. 'As under these entire conditions participation is still possible,' as Luhmann (1996: 230) argues, 'one devotes oneself to an illusion of a state of inclusion never achieved before'. Neither those noisy fellows who do not count nor the mechanisms of exclusion are visible. Instead, the removal of a certain group from the sight of the beautiful and rich fully confirms a spatial order



and therefore resists objection. This finds its manifestation in the elevated camera which first of all represents the 'tourist gaze' (Urry 2002); i.e. seeing what that gaze expects to see. And exactly what those expectations are is shaped by traditions, the media and commercial advertisements, inscribed into the image production of the police order that, as part of an institutionalized partnership between local public and private agencies, distinguishes between acceptable and unacceptable images. Thus, quite literally, the camera itself produces the images that the tourists wish to take home on their cameras according to their pre-formed expectations.

The 'partition of the sensible' produces a reality completely identical with itself, making Sylt a telling example for the surveillance consensus. The introduction of CCTV remained uncontested; neither its adequacy nor its legality was questioned. By the end of 1990s, the camera was deemed no longer necessary, and the system was dismantled by the tourism managers. Its continuing visibility was a sign of an exception that was undesirable insofar as it indicated a border and thus a conflict within a space where differences ideally do not exist. Thus, the *status quo ante*, an illusion of total inclusion, which is a status of invisible exclusion, was regained when the surveillance measure finally vanished from the tourist gaze, demanding surveillance without being disturbed by surveillance. Seaside resorts, aside from political struggles, islands of absolute consumerism, seem to be the perfect test arenas for surveillance, not because of higher acceptance, which would imply whatever kind of consideration and public consciousness, but because they are aesthetical, socio-political diagrams of a surveillance consensus in more or less privatized public areas that exclude resistance and politics.

## The media staging of the surveillance consensus

The debate over the commodification of urban space can also be understood as a transfer of the surveillance consensus from the tourist site to cities. There is probably no city council that introduced CCTV in the early 1990s without proposing that cameras within inner cities would increase tourism. Conversely, it is obvious that implementing CCTV in urban environments is different than in tourist destinations. In cities, the postulate of total inclusion, which consequently makes exclusion invisible, is fragile and challenged constantly. In the case of CCTV, the challenges come from two sides, both nourishing our feelings of (in)security: first from crime and disorder; and second, from what has been called the return of the poor and repressed (who in turn become criminalized, and so we turn full circle) (Christie 1993; Wacquant 2008). At the edges of the sub-systems, as Luhmann (1996, 1998)

has put it, exclusion again becomes visible. The promise of total inclusion cannot be kept. Additional efforts to force the surveillance consensus are needed and found in extending the partnerships to systems of knowledge production, namely media and science, under the central topic of (in)security. Propagating threats of crime, terrorism, war and natural catastrophes and thus evoking the element of fear perfectly binds together mobile individuals inhabiting an increasingly complex world in a simulacrum of global community. This archaic mechanism has been expressed in the original frontispiece of Hobbes' *Leviathan* and has been used repeatedly to forge alliances in the aftermath of 9/11; but it was also popular during elections campaigns, whether in Germany, France, the UK or elsewhere, at both national and local political levels. Therefore, as many scholars have argued in respect to 9/11, propagating (in)security is due less to exaggerated feelings in the first place than to a governance of unease (Bigo 2006b). In face of the use of purely propagandistic means in legitimization of the Iraq war, Rancière (2004) noted:

It is not some felt insecurity which made the war necessary. Rather, the war was necessary to impose insecurity. Indeed, the management of insecurity is the most adequate way for our consensual State societies to function.

In the context of CCTV, crime and terrorism are the most important contexts to propagate its use. Camera surveillance is anything but new, but its wide and permanent deployment was limited more or less to private spaces such as banks, petrol stations, and so on. Notably, however, since the early 1990s, CCTV has spread out visibly into the public realm, and cameras are now connected to public efforts to combat crime, which means they have achieved a public value that is immediately reflected in the media. Yet, especially in the UK, any critical debate seemed to be banned from the beginning. Although the press did report the expansion of CCTV, in contrast to France and Germany, the dominant discourse in the UK, as Norris and Armstrong (1999) have shown, was 'emphasizing effectiveness', 'downplaying displacement' and stating: 'your liberties are safe with us' (McCahill and Norris March 2002: 34). Moreover it has been well reported that the breakthrough of CCTV in the UK took place in 1993/4 under the constantly broadcasted footage of the murderers of the Liverpool toddler James Bulger. On air for several days, the sequence convinced the British public of the usefulness of CCTV. The interaction of surveillance and television proved powerfully effective: television quite literally visualized the belief that surveillance could be a silver bullet to be used against crime, and any further public discussion of its actual use was subjected to the media staging. Advice from the Home Office's guidebook *CCTV: Looking Out For You*, published in the context of the first round of the City Competition a

year after the murder of the Liverpoolian toddler, underlines the importance of the media as the dominant driver in the creation of the consensus:

Get the local press on your side early and get a key player on your committee from the start. Ensure they realise what your objectives are, and focus them on the shopping/walking element ... it is also useful to give a high profile to all convictions secured as a result of CCTV. Local press and TV should be constantly reminded of the numbers who plead guilty and are convicted because of the cameras. (Quoted in Norris and Armstrong 1999: 75)

According to this advice, media communicate the idea of implementing a socio-technical measure to the public. It refers to the role that media play in promoting public support and consensual acceptance of surveillance. Being familiar with the power of media, the advice emphasizes that this is done not only by content, but by the how, the form in which a measure like CCTV is presented. Public opinion is never arbitrary but rather shaped. Media construct the understanding of what they are presenting. The making of news implies for the majority of people the power of defining what is of significance. Even before an issue has been picked up by a journalist and transferred in one of the diverse media forms, the level of production describes the coding of significances and thus prearranges the level of reception. In this respect the advice is a perfect illustration of how the partition of the sensible takes place. The Home Office ensures the objectives of CCTV. The advice is a precise instruction on how to stage the camera as an actor in public perception, framing it in a context of public concern: the public element is sharply contrasted with the opposing element of crime, which CCTV will now, for the sake of public safety and protection, keep an eye on. Thus in this media arrangement CCTV is immediately connected to the public. The camera itself marks the borderline between the public world and the world of crime, which under the gaze of the electronic eye becomes manifest, countable in 'numbers' and consequently controllable by the rationality of the police order. The usefulness of the friendly eye is thus completely set. Its effectiveness and its legitimacy can remain unquestioned. Moreover, the rhetorical calculus makes reference to the apparent fact that crime is a threat to the public. Within this assumption lies a hidden rationale for constituting public identity within a circle of total inclusion, which, in the newly rearranged setting, the camera is itself proof of.

In other words, before CCTV became a reality of everyday life it first of all became a part of news stories and nationwide television shows. For instance, in Germany it is possible to trace back and see that until CCTV was officially declared by the Ministers of Interior of the *Länder* in 2000 as an appropriate tool for fighting crime, the first deployment of camera systems in Leipzig and on Sylt constantly served as references for each other when

proponents wished to claim effectiveness and minimize concerns about data protection and privacy: CCTV is 'well received among *the people*' was the invariable assertion (*Süddeutsche Zeitung*, 26 August 1999, emphasis added). In other words, the tourists on Sylt were taken to be the voice of the social whole, despite the fact that even during prosperous times the numbers of those tourists are limited, not to mention that they generally come from a particular (exclusive) sector of society. Given this strategy, the parameters of public debate had already been (narrowly) defined. The common belief in the functioning of technology, correlating with the desire to delegate as much responsibility as possible to technology meant that seemingly objective societal aspirations of inclusion fostered the desire to join what had already previously been settled as consensus. Unsurprisingly, public support was confirmed by audits and polls, which showed acceptance rates of between 70 and 90 per cent, these figures being then continually copied and cited by journalists, as numerous examples show.

Rancière (2002: 112) calls public opinion a 'false counting', as it equates the people with the counting of a part and identifies behaviour with what is staged as public opinion (Krasmann, forthcoming). Thus within the context of surveillance, the task of the media is not only to bring a particular technology across but to harden the consensus in the first place. But this is only one side of the coin. Rancière (2002: 112) asks: 'What then implies the identification of the democratic opinion with polls and simulations? It is the actual withdrawal of the sphere of the people's appearance.' Thus, the people as political entity ('demos') vanish in the counting of its media representation. No intervention and dissent gets beyond mere articulation. The people disappears as it stays 'captured in a structure of visibility, a structure, in which one sees everything and everything is seen, and in which therefore no space for the appearance is left' (Rancière 2002: 112–13).

In the UK the massive deployment of CCTV in the 1990s was promoted as a common effort of the British people and government to combat crime. Slogans such as 'Together we'll crack it' emphasized the collective impetus of this effort. The much-vaunted British virtue of common sense, which traditionally linked issues of the private and public spheres, was reduced to its appellative moral function while its discursive structure, confronted with the continuing problem of combating crime, was completely derogated. Therefore, the incompatible conclusions of criminologists were not able to provoke any kind of rethinking. Instead, an evaluation and survey campaign was created by the Home Office to 'back up' the consensus by scientific expertise. To give only one example: the outcomes of a recent survey on public perceptions of CCTV in residential areas seem to demonstrate that people are becoming aware of the overstated promises. Nonetheless, the authors

conclude their report by repeating exactly what was promised in the first place – that CCTV is a tool to fight crime:

Although CCTV remains popular, it is neither the threat to civil liberties nor the silver bullet that some had thought. It is evident that it is not being properly used, and society still has to learn to maximize its value as a crime fighting tool. This does need urgent attention; it was oversold in the beginning, and reduced support reflects evidence that the public is on to this. (Gill et al. 2007: 323)

## Ambivalent regulation: enacting the surveillance consensus

The rule of law is an integral part of the self-conception of liberal democracies. Wherever a lack of regulation becomes manifest, the demand for regulation, i.e., for establishing a predictable order is articulated. Even though the requirement for order can be answered in different ways, to limit arbitrariness is the main task of any regulation. That this purpose of regulation does not necessarily result in a limitation of opaque surveillance regimes but can eventually stabilize a surveillance consensus is discussed in the following.

Although it is true that the expansion of CCTV in the UK took place without limitation by privacy or data protection acts (Maguire 1998), it was, however, framed by legislation: Section 163 of the UK Criminal Justice and Public Order Act 1994 explicitly authorized local authorities to deploy CCTV ‘on any land in their area’. Moreover, the act released the authorities from their obligation to pay expensive license fees for laying CCTV cables payable under the Telecommunications Act, which had been a crucial cost factor in the previous years (Töpfer 2007: 204). Privacy concerns only surfaced in 1998 when the House of Lords recommended ‘that the Government give urgent consideration to introducing tighter control over any system, either publicly or privately owned, covering sites to which the public has free access’ (House of Lords Select Committee on Science and Technology, *Digital Images as Evidence: Eighth Report*, 1998, quoted in Taylor 2007: 52). As Gras (2004) argues, ‘the tenor of debate’ has indeed changed since then. The European Data Protection Directive (95/46/EC) was implemented in 1998 by the UK Data Protection Act (DPA) 2000 and represents the first statutory regulation of CCTV surveillance in public spaces in the UK (Taylor 2007).

Although it does not specifically address the use of CCTV, the decision in the *Durant v Financial Services Authority* case of 2003 serves as a good example of what the DPA regulation implies. The Appeal Court refused access to certain records concerning a dispute between Durant and Barclays

Bank held by the Financial Services Authority (FSA), on the grounds that the data did not comply with the definition of personal data. According to the court, in order to qualify as such and be able to be subject to a complaint, the data 'must be information that affected his privacy, whether in his personal or family life, business or professional capacity'. Commenting on the decision, the human rights organization Liberty concluded that: 'Mr Durant had not been able to show that the information was close enough to this standard' (Crossman et al. 2007: 38). Referring to Section 1(1) of the DPA, the UK Information Commissioner's Office (2006: 2) argued:

In the Durant case the Court of Appeal did not consider the issue of the identifiability of an individual. This is often the starting point in developing an understanding of personal data. Instead, the Court of Appeal in this case concentrated on the meaning of 'relate to' in that definition, identifiability not being an issue in the case.

Thus, according to the court, privacy is first of all a relational term, and does not refer to the individual as such. Instead, it seems connected to property. In the German tradition the same is true, but with a decisive difference. Beyond the understanding of property in relation to the private home or business, information privacy in the German context (*Recht auf informationelle Selbstbestimmung*) seems to be based on the notion 'property in one's self'. Property in one's self is understood as a precondition of freedom and recognition as a legal person; and it remains untouched wherever a person is located. Thus, while leaving the private sphere and entering the public realm means in the UK becoming subjected to public rules, in Germany, and elsewhere on the continent, the distinction between the public and the private is not drawn as strictly and clearly. Instead, the individual self can lay claim to being private in public as well, and indeed this is, as Dahrendorf (2007) argues, seen as evidence of liberty. While the DPA focuses on the protection of individual privacy, the court decision was based on a view of privacy as not encompassing more than the private home and the business or the professional capacity of an individual. Thus it must be asked – aside from considerations of poor compliance in practice (Taylor 2007) – whether the DPA was really a step forward in terms of a mode of regulation that limits surveillance. According to the decision of the Court of Appeal the DPA appears to codify an understanding of privacy that made the mass introduction of CCTV in public spaces possible, despite the social and political concerns around privacy.

The French experience can help to clarify the role of regulation. Following the installation of the Hyères' public area CCTV system, the mayor of Avignon announced a plan to install a network of 93 public surveillance cameras which, in contrast to Hyères, was supposed to record CCTV images. But the plan was contested by a minority in the city council and challenged in court. In June 1990, the administrative court of Marseille

ruled against the mayor's plan and decided that permanent and extensive CCTV surveillance of public areas constituted an infringement of the right to privacy and the right to one's own image. However, it also ruled that Avignon's plans for an analogue surveillance system did not fall under the responsibility of the national data protection commission, the *Commission Nationale de l'Informatique et des Libertés* (CNIL), and that the scope of the Data Protection Act of 1978 only covered matters of automated data processing. Thus, the court made clear, on the one hand, that CCTV surveillance may, under certain conditions (in the Avignon case, because of the system's capacity to record footage), collide with the right to privacy. On the other hand, it indicated that authorities opting for public area surveillance entered an unregulated field and legal grey area (Töpfer and Helten 2005).

It took five years until the creation of a legal framework ended this unclear situation. In 1993, a coalition government of Gaullist (*Rassemblement pour la République* [RPR]) and Conservatives (*Union pour la Démocratie Française* [UDF]) under the Prime Minister Edouard Balladur came to power after five years of socialist government. In the Département Hauts-de-Seine, political homeland of the new Minister for Interior, Charles Pasqua, his political ally Patrick Balkany, mayor of Levallois-Perret, an affluent suburb of Paris, had, since 1991, been developing a 96-camera network. Although the CNIL, struggling for influence, symbolically (as the system was operating without recording facilities) approved this system, it sparked not only local protests but a nation-wide controversy. In an effort to arbitrate the dispute two members of the Senate drafted a report that concluded that CCTV is only legal if seen as necessary for police action, traffic management or, in the case of private but publicly accessible premises, if meant to enforce house rules. They recommended an amendment to the Data Protection Act and the handing over of the approval of CCTV systems to the supervision of the CNIL.

The results were not as expected. Spurred by the violent protests of youths and trade unionists against the 'reform' of minimum wages for young people that rocked the nation in March 1994, Pasqua pushed his *Loi d'orientation et programmation relative à la sécurité n° 95-73* (LOPS) through parliament in January 1995. One of the new measures and police powers legalized and regulated by the 'Loi Pasqua' was the video surveillance of both public areas and private but publicly accessible premises – if deployed for the purpose to protect public buildings and institutions, or if targeting areas with a high risk of being the target of criminal activity. According to Article 10 LOPS and further administrative regulations, any installation of CCTV in such areas had to be approved by the Prefects as representatives of the national government in the Départements on the basis of an opinion by the newly created *Commission Départementale de Vidéosurveillance* (CDV)

instead of the CNIL. These commissions were to comprise two judges (one judge acting as chairman), one elected local councillor, one member of the local chamber of commerce and one engineer. They were to assess the plans for new CCTV installations and their justification, to find an opinion by majority vote and to report their decision to the Prefect who is in charge of licensing the systems. Critics point to the biased composition of these commissions, the opaque process of nominating their members and note that proper checkups of license applications are hardly guaranteed, given the fact that only the two judges are paid for their CDV responsibilities (Bausch 2004; Gras 2004: 222–3).

Seven years after the passage of LOPS, demands for CCTV surveillance were fuelled by the then Interior Minister Nicolas Sarkozy who, after election campaigns for the president's office and the national assembly in 2002 were dominated by law and order issues, presented a massive programme to combat crime. 'Tolerance zéro' was the leitmotif of this program that targeted, among others, street sex workers, 'aggressive begging' and youth gangs. To implement his program, Sarkozy announced £5.6 billion in finance for the modernization of law enforcement, with video surveillance being one of the 'sensitive quarters'. Authorized by the 'Loi Pasqua' and partly funded by central government money, between 250 and 300 municipalities have opted for public area CCTV since 1995 – in particular municipalities in larger urban centres such as Paris, Lyon, Nice, Montpellier, Toulon, Lille, Mulhouse and Nancy (Töpfer and Helten 2005). In January 2006, the French Parliament passed an Act for Combating Terrorism and Border Control (*Loi relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers n° 2006–64*) that expanded the legal framework for the deployment of surveillance cameras. Minister Sarkozy was explicit in his references to the UK CCTV experience and the importance of CCTV footage to the eventual identification of those behind the London bombings in July 2005. While every company and institution is permitted to monitor the public space surrounding their premises, the French police can now deploy cameras for four months without the need for a warrant.

In July 2007, two months after Sarkozy was elected President, the new Interior Minister Michèle Alliot-Marie unveiled plans to expand the French CCTV infrastructure by tripling the number of surveillance cameras by 2009, and to integrate existing systems by authorizing real-time police access – in particular, access to the thousands of strong camera networks of the transport corporations SNCF and RATP and major retailers – in order to 'cover as much territory as possible' (quoted in Florian Rötzer, *heise online news*, 26 July 2007). To achieve this aim Alliot-Marie announced that a new Framework Bill for Internal Security (*Loi d'orientation et de*



*programmation de Sécurité intérieure*) would be introduced in 2008 as the final step in the development of the legislation.

In the context of our discussion, the significance of the French regulation is that it does not limit but affirms and legalizes an increasingly unlimited CCTV surveillance. Thus the legislation does not abridge fortuity and combat the arbitrariness of unregulated development, but erodes the existing law. Current legislation in this respect is best seen as a means for implementing the desire for unlimited observation and surveillance. This is all but a mere tendency. Lyon (2004: 144) argues that ‘to relax the limitations on previously stricter laws, such as those to do with wiretapping or indeed any message interception’, has to be seen ‘as one consequence of 9/11 and the proliferation of antiterrorist legislation’ more or less across the world. Such a derogation of law can take place on different levels. Ericson (2007: 387) has recently introduced the idea of ‘counter-law’, which has two aspects:

Counter-law I takes the form of passing laws that negate the traditional principles, standards and procedures of criminal law. Counter-law II takes the form of surveillance infrastructures that facilitate direct behavioral control and self-policing without recourse to legal regulation.

CCTV combines both forms. In France anti-terrorism legislation has served to globalize its infrastructure as a whole and has widened its deployment within the country. As Ericson (2007: 388) argues, ‘[t]he counter-law regime is designed to cast the net as widely as possible’ and more importantly ‘there is not even a pretense of what might be termed *probabilis reus*: criminalization on the basis of actuarial knowledge of risk.’

## Conclusion

‘Politics,’ as Rancière (2006) notes, ‘is when you create a kind of stage where you include your enemy’. Politics in this sense does not refer to the formal institutions of government and voting in its usual sense and cannot be reduced to the mere interests of diverse social groups. Rancière’s politics stems from the silenced position of the unarticulated and excluded. They articulate conflict, dissent and disagreement on the ‘partition of the sensible’ that determine who and what is seen and heard on that stage (Rancière 2002). But this stage is increasingly determined by a ‘police order’, which, according to Rancière, also cannot be reduced to a mere organization as we usually understand it. Foucault’s notion of the police controlling the discourse (Krasmann, forthcoming) is corresponding with the ban-opticon *dispositif* of a viewer society as it replaces the political through an internal

and external management of the stage. This management aims to silence dissent over the actual partition of the sensible and, thus, produces consensus by eliminating conflict in response to the demands of the non-excluded. The increasing impossibility of articulating dissent and disagreement lies at the core of Rancière's political thinking, and gives him reason to call our contemporary society post-democratic. The remaining question then is whether the emergence of the so-called surveillance society is the other side of this post-democratic society? The notion refers to the efforts of the 'Surveillance Study Network', which published on behalf of the UK Information Commissioner a 'Report on the Surveillance Society' in 2006. This report drew attention to the dangers of surveillance and led to the hearing where our introductory anecdote on overstated expectations took place. After a year long inquiry, the Home Affairs Committee rejected 'crude characterizations of our society as a surveillance society', despite noting that 'the potential for surveillance of citizens in public spaces and private communications has increased to the extent that ours could be described as a surveillance society unless trust in the Government's intentions in relation to data and data sharing is preserved' (House of Commons, Home Affairs Committee 2008: 10). However, there are neither reasons to worry nor reasons to be complacent about the Committee's conclusion, even in face of common trends of automatization, function creep and integration of surveillance systems. Instead, the statement should be read as an urgent call for greater visibility and vocalization in order to crack the current surveillance consensus.

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