
HUMAN RIGHTS IN THE AGE OF BIG BROTHER: A MODERNIST RESPONSE IN A POST-MODERN AGE?

Dr Nic Groombridge, Senior Lecturer in Sociology and Media Arts, St Mary's Strawberry Hill, A College of the University of Surrey.

Jack Straw has not described the European Court of Human Rights as a friendly eye in the sky as David Maclean described CCTV (The Times 6 July 1994). However, to stretch the metaphor it might be seen as a geo-stationary satellite with oversight over our judicial processes and agencies. The little Englander fears that this celestial body means god is watching him and that he is a Belgian! - confusing the ECHR in Strasbourg and the European Court of Justice.

This paper welcomes the Human Rights Act but is cautious about the continuing relevance of the 'Rights approach' in what is characterised by some as a postmodern era. It surveys some of the more usual challenges to the 'Rights approach'. Since 1948 (George Orwell's 1984 and the year of the United Nation's Universal Declaration of Human Rights) much of the concern about surveillance has been couched in terms of the dangers of 'Big Brother'. Yet now Big Brother is a Channel 4 show in which contestants allow every aspect of their private lives to be subject to the cameras. Has the age of Human Rights in the UK arrived at exactly the point at which people no longer seem to need them?

Is god a European?


One of the standard objections to HRA is specifically eurosceptic - a tabloid creation where gay sex is mandatory and straight cucumbers banned and large fees are due to Cherie Booth. More historically is the guarantee of a free press in the common law of England relied on by Justice Judge recently in finding for *The Guardian*. Left wing objections are likely to emphasize the class position of judges or the unreliability of the law in determining what is property and what is theft.

An irony of these political positions is illustrated by the treatment of football hooliganism. Whilst England (football team and jurisdiction) has a poor record on human rights it seemed less keen to abrogate them than the Belgian hosts of Euro 2000. Thus if god is a European then he is a very old testament god - fire and brimstone not brotherly love and forgiveness.

However, the eurosceptics are right on the European dimension. The ECHR and the whole rights approach can be seen as part of the Enlightenment Project which, despite the often overlooked contribution of Tom Paine, can be seen largely to be European - though its best known exemplar is the United States Constitution. A number of theorists now argue that the overarching nature of the disciplines (metanarratives) that have flowed from the French *philosophes* - marxism, sociology or feminism for example - is fatally flawed.

Post modern or past caring?

If we accept that the 'modern era' roughly commences with the Enlightenment and is characterised by a rational capitalism based on production then - contra Marx - post modernity is marked by global capital lead by consumption. Some theorists claim that this maturing of capitalism may still lead to communism or, at least, represents no new era. However, there is clearly an analytical style associated with postmodernism that deconstructs 'texts' - from the articles of the Convention to popular television programmes. It is this critique that informs the following discussion. However, a quote may help illustrate



'privacy has less to do with 'persons,' 'individuals,' and 'selves' less with secluded spaces and being left alone, than with informed personalities and virtual territories.... privacy for all practical purposes is equivalent to publicity, because both are functions of being online.' (Bogard, 125: 1996)

Yet despite the floridity of the language he eventually concludes:

Information technology is always years ahead of privacy legislation, which for the most part responds to the phenomenal growth of surveillance at the end of the twentieth century within a framework that remains essentially modernist' (Bogard, 125: 1996)

That is individual rights guaranteed by law are a modernist response to a post modern situation. The files on us and the multiple images of us are all electronic data. We have no 'real' existence only a hyperreal one upon which even the highest law can have no purchase. Do we care?

'We've become a race of Peeping Toms' (*Rear Window*, 1954)

The voyeuristic element in James Stewart's viewing habits were noted by critics at the time and since by academics (Belton, 2000) but the connection with CCTV is less often made (Groombridge, 1995 and see Norris and Armstrong (1999) for summary of much else written about CCTV). The scopophilic attractions of Big Brother the TV programme could not be clearer. We are invited to watch the edited highlights but also to view continuously the webcams. Moreover the press cover the story in great detail. All playing up the 'reality' element that many crime shows offer. This taken with the many websites dedicated to allowing net surfers to view the daily lives of 'jennycam' and her many imitators and the success of the film the *Truman Show* and many docu-soaps indicate a great willingness to watch but also a growing willingness to be watched. To only exist if one is being watched. Thus every one wants to be on television - hence the 40,000 applicants for Big Brother, but also the cheery waves to camera by the armed robbers who appear on *Crimewatch UK* every month (Gill, 2000). The fear of civil libertarians is that being watched will infringe our privacy in the name of social control and the fear of moralists is that our willingness to expose ourselves - think too of the rash of autobiographical columnists - proves social control has broken down. Our apparent indifference to CCTV (Honest and Charman, 1992) might be seen in the same light.

Room 101 - a television studio or CCTV control room near you.

The TV programme Big Brother is artificial - if only in that it is edited, and not as alleged, rigged. However, its attraction and that of much TV programming - often crime related is the promise of being shown 'reality'. However, this is not actually the case. Even the most sophisticated surveillance systems cannot show everything and certainly not until after the event. Armed with his manly Hollywood persona James Stewart cannot prevent a murder at a distance with his camera. Yet the dream of omnipotent social control is prevention. This might be more effectively managed through ensuring not that the few or even the many are watched - though we will be - but that many of us are watching. Not only watching television but also interacting with the internet which allows us complete privacy to download pornography but only at the expense of a complete and potentially public record of it. Thus a democratic demand might be access to all CCTV camera output by all it could only be met by putting us all under surveillance - a record not of being watched but of what we watch.

Clearly where the 'reality' of crime and criminal justice intrude into the post modern world - and both have an elementality that is positively premodern - then the human rights approach can have a welcome part to play but increasingly where both crime and crime control become digital it cannot keep pace. Simple resistance is futile as it merely attracts further repression. Avoiding cameras is suspicious, disguise is deeply suspicious. Noting the growing extent to which official wrong-doing is captured on film (the Vietnam war to the beating of Rodney King) is encouraging

but ironically valorises the technology. Post modern methods may be called for. Thus direct action against the cameras might take the form of a 'performance' for the camera. And can we be sure that living in the global village will be so different from living in premodern villages where we knew each other's business? The attraction of the city was its promise of anonymity. It is CCTV and other forms of surveillance that threaten that but is that the same as privacy? The Big Brother contestants show us that their human rights have been expanded in many ways by giving them up. We have seen them naked and the tabloids have endlessly analysed them yet we know nothing about them. Conversely the mob requires no CCTV to convict the local paedophile and he can expect no immediate help from the Human Rights Act.

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