

**POLICE, CONTRÔLE SOCIAL ET SÉCURITÉ
NEW TECHNOLOGIES AND LA DELINQUANCE DES PRIVILEGES ***

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I am very pleased to offer these observations in honor of my friend and professional colleague Lode van Outrive. Lode is truly a man for all seasons – a social scientist with roots squarely in the grand European traditions, yet one equally at home with American empirical methods; a professional social scientist and a public intellectual who speaks to broader audiences; a professor and a political leader; a person proud of his Flemish origins and Belgian patrimony, yet an advocate of internationalism and Euro-citizenship. I first met Lode more than a quarter century ago at a meeting in Paris in which the topic was social control and its complexities. I am pleased to continue that discussion as applied to a contemporary issue.

As we move rapidly into high-tech means of social control, will the privileged position of the more powerful be maintained and even strengthened, or undetermined?¹ Video and audio taping, computer trails, electronic location monitoring, DNA and other biometric means are helping to blur the line between science and science fiction and the public and the private.

Technology has always been intertwined with rule breaking, and rule enforcement. One approach to criminology is to ask how a new technology effects crime and its control. On the one hand new developments give rise to new violations – both from a standpoint of legal labeling and because of the new opportunities they offer. But they may also extend social control.

With respect to issues of criminal justice, technology and equity one important perspective in a Marxist or Foucaultian vein calls attention to power and views these developments critically, New technologies simply reproduce and fortify the status quo. They appear in a context of marked inequality. They are likely designed to protect and even enhance existing power relations. Those with power and privilege develop, or capture, technologies that strengthen their positions.

The technology becomes ever more powerful and intrusive and colonizes new areas. The Leviathan stale marches onward. Governments and large corporations (often operating in tandem) gain power not only because they sponsor the technology, but because they have the resources to use it and to shape how the law is written and enforced. From this perspective the rich become richer both legitimately and illegitimately and their control increases.

As Foucault and his chorus remind us social control technology is often about power. Elsewhere in analyzing the cultural images of surveillance technology I offer visual and textual examples of this involving managers and workers, merchants and consumers, men and women, parents and children, police and criminals, guards and prisoners.

Yet a counter view suggests that equity will be enhanced through techno-salvation. In stressing consensus and shared interests, the technologies are seen to be neutral or to

¹ These remarks draw from and extend upon Marx, 1988, 1992, 1995, 1996.

favor the less privileged. Better crime control will help the poor who are disproportionately victimized. Fixed physical responses that eliminate discretion may lessen the potential for official corruption and discrimination. New privacy invading techniques that pierce traditional borders (whether physical, temporal, social or logistic) can reveal protected information about elite behaviors that was previously insulated from public view.

The world is more complicated than a simple power-domination model suggests. It is very difficult to anticipate the varied consequences a technology will have, particularly over longer periods of time. Who for example would have predicted that the printing press would facilitate the rise of the idea of universal citizenship bringing with it the end of feudalism, monarchies and the weakening of the church? A critical observer at the time might have said *all the printing press will do is enhance the power of the crown and the clergy.*

Furthermore elites are by no means a homogeneous group. Technical developments that aid one sector (or unit within a sector), region, or nation may harm others (for example agriculture, extractive industries, manufacturing.) Elites are often in conflict and competition with each other. Using the latest technologies rival national police agencies may check up on each other and companies may hire private security agencies to watch their opponents. Nor is elite status fixed – it may depend on the role played, time and context. Managers are also consumers and workers are parents.

An additional complicating factor is that elite status in modern society comes with some ironic vulnerabilities which work against any simple conclusions about power and technology. Contemporary technologies are very much a double edged sword. To be sure they offer unheralded possibilities for new forms of violations by elites and perhaps on balance, the expansion of their social control. Yet depending on how they are used, they may also help create a more level playing field.

Recall that in Orwell's (then) futuristic 1984 it was not the masses but the elites who were most closely watched. As life imitates art in the contemporary world this becomes truer. The traditional relationship between social status and observability (at least with respect to documentary records of behavior) is in some ways being reversed. To be modern and elite today means to be plugged in and deeply enmeshed in remotely mediated forms of communication. In one sense (excluding direct observation by police in public places) it is not the homeless person who is most subject to surveillance, rather it is those who are most privileged. Indeed the very state of being *off the system* or *out of the loop* which can partly define low or lumpen proletariat status also brings with it a perverse kind of freedom to be left alone. Increasingly it is the more privileged persons whose behavior is subject to surveillance whether through telephone, computer, bank, credit card, employment, medical or travel transactions. Of course there are ways of neutralizing this but that is a different issue.

The paraphernalia of modern life such as credit and debit cards, money transfers, phone calls (whether wired or cellular), beepers, World Wide Web communications, fax, email, electronic location monitors leave records. We are all trailed by electronic tails. The Don Quixote image of being hoist on one's own petard is a frequent accompaniment of the evening news.

In the United States for example, without the incriminating, tapes secretly recorded by President Nixon, Watergate would have remained a case of breaking and entering. Without the back up computer records kept in National Security Council files which Oliver North thought he had erased, we would know far less about the Iran-Contra affair. A respected President of a university had to resign when he was identified as a telephone harasser as a result of caller identification records.

Related to this is the fact that in democratic societies in many contexts, power and privilege inequalities do not have a zero-sum quality. Subordinates have some rights and privileges and dominant power is rarely unlimited – legally, morally or logistically. Some of the technologies suggest the democratization of surveillance. In a free market economy the relatively low cost, ease of use and speed of the new technologies means they are widely available to subordinates. Where the free market does not permit this a black market is likely to develop. Turnabout is fair play and the threat of it may deter violation – whether by elites (who have the most to lose) or others.

Video surveillance cameras, communications intercept technologies, heat, motion, odor, and sound-sensing devices and computer matches and profiles are in principle very democratic technologies in both their availability and the sweep of their data collection. They capture whatever falls within their realm regardless of class, gender, race or age. Biometric measures such as retinal prints, palm geometry and DNA are difficult to counterfeit and offer greater certainty of identification than do traditional means. Accountability may be increased and the prior ability of those with power to shield their behavior is lessened by the more penetrating (and admittedly intrusive) nature of the technology and by the creation of documentary records as verification. This reduces the *deniability factor* that often protected high status persons accused of wrongdoing by those lower in status.

Of course the meaning of overt behavior and even speech is always subject to interpretation. A suspect for example might say that he was *only joking* or that she was manipulated or entrapped into the action revealed by the record. In another example DNA matches are very reliable but they do not indicate how an event occurred (for example they may prove a prison was involved in a fight but they cannot say whether it was self-defense or murder.) In addition the technologies are applied and interpreted in human contexts which may be corrupted.

Consider for example the role of video and audio taping – whether hidden or not. In the Rodney King case in Los Angeles an amateur video taper caught a vicious beating by police of a suspect. Absent the video record the police view of the world likely would have prevailed in which the incident was denied or explained as necessary because arrest was resisted. A woman subjected to continual harassment from her employer secretly tape recorded his overtures and successfully sued for damages. An informer secretly tape recorded police asking him to act illegally and then to great surprise played the recording in court, contradicting police testimony. A retail car radio dealer secretly recorded conversations with a manufacturer in which he was told he could no longer represent the company because of his low pricing. This resulted in a successful antitrust suit in which the manufacturer agreed to stop fixing car stereo prices. Aided by technology all of these

examples reverse the usual critical social science presumption regarding privilege and justice.

A technique such as the video taping of undercover operations may result in the arrest of high status persons beyond the reach of the law using conventional techniques. The efflorescence of such techniques in the United States against those in the criminal justice system has led to the arrest and conviction of corrupt judges, police and prison officials. Consider for example:

In Los Angeles nine officers from the elite narcotics unit were arrested for the large-scale theft of seized funds. Internal investigators staged a phony drug operation and videotaped the police stealing money.

As part of an FBI undercover operation, a federal district judge in Florida was arrested on charges of obstructing justice and conspiring to collect bribes from an FBI agent posing as a racketeer.

In New York city the Corrections Department places undercover officers in the city's jails pretending to be prisoners in order to investigate drug offenses, excessive use of force and theft.

The undercover technique can be a powerful tool for use against white collar criminals. Consider examples such as the following:

An employee of a brokerage firm was suspected of illegally tapping into a computer of the US Federal Reserve System responsible for monetary policy. The computer system identified his efforts. Officials permitted him to tap into a dummy computer program created specifically for catching *his hands in the cookie jar*.

A California mail-order medical laboratory advertised that it would test blood for food allergies. The New York State attorney general sent in \$350 and submitted a sample of cow's blood. Not only did the lab fail to detect that the sample was nonhuman, but it reported that the donor was allergic to milk, cottage cheese, and yogurt.

Undercover agents posing as wine dealers purchased eleven cases of fake Chateau Mouton Rothschild and later seized a number of cases of the fraudulently labeled wine.

In Massachusetts the attorney general's office covertly sold a number of vehicles to used car dealers. The vehicles were tracked, and when they were offered for sale the odometers on a large number of them had been turned back.

Investigators from a US senate committee visited medical firms suspected of insurance fraud and providing unnecessary treatment. The investigators complained that they had simple colds. They were subjected to electrocardiograms, and to tuberculosis, allergy, hearing, and glaucoma tests.

In *Operation Dipscam*, the FBI gathered evidence of wire and mail fraud against mail-order colleges that provide degrees for little or no work. By answering ads in popular newspapers and magazines, one agent earned seventeen advanced degrees.

But ultimately I think that to the extent that there is a lack of equity in enforcement in the criminal justice system it does not stem so much from the weakness of technology or from the structure of white collar offending, but from a lack of political will. To a degree in the United States for example law enforcement reflects (at least indirectly) popular concerns: the system of citizen mobilization of the police by reporting, laws and budgets determined by elected representatives and executive control over police leaders by elected

officials. Certainly the structure of elite offending with the frequent absence of a complainant or diffuse and nonvisible victimization are also factors. Yet to take some extreme examples, victims of murder do not complain and counterfeiting is a very diffuse crime, but given the popular seriousness with which these are viewed, enforcement is taken very seriously.

In the last instance the key to greater attention to white collar violations is education and political mobilization. Until the culture takes such offenses more seriously not much will change, in spite of the occasional high profile symbolic case. If the political will were greater the key is not so much new technology (although it is one important factor) but new laws and resources, the creation of special enforcement units, greater criminal and civil penalties, increased mandatory reporting requirements, increased protections and rewards for whistle-blowers, informers and protected witnesses and greater use of compelled testimony. It is also important to think about prevention and self-policing via managerial reforms, professional socialization and associations, strong ethical codes, and certification boards for professionals.

Even with the political will to use new technologies to act more aggressively against *la délinquance des privilégiés* there are risks. Shakespeare's counsel in *The Merchant of Venice* – "to do a great right, do a little wrong" – must give us pause. Questions of means-ends relations must never be forgotten in the zeal to create a more equitable society. Means have a moral component as well as ends. Among some consequences that might flow from much more extensive use of covert technologies are the creation of a climate of suspiciousness, damage to morale, the invasion of privacy, lessened experimentation and risk-taking, the danger of politically-inspired discriminatory targeting, the creation of offenses that are purely an artefact of the investigation, the diversion of resources from known to possible offenses and the creation of precedent that will likely expand to less socially defensible uses.