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Britain's Police State: The Manufacture of "Surveillance by Consent"

The new CCTV Surveillance Camera Code of Practice published by the UK's Home Office

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It's not often that you get to witness the birth of a new philosophy but that is what we are told is at the heart of the new Surveillance Camera Code of Practice published by the UK's Home Office this month [2]. Drum roll please, here it is, the new philosophy – "Surveillance by Consent".

Now as new philosophies go it's not the best and it's not really new, nor is it a philosophy. In fact it's more of a slogan, or more precisely a propaganda slogan. And what it contains a ready-made judgement to save you the trouble of thinking about the issue at hand, in this case surveillance. Surveillance you are told is by consent. You need not worry how consent is achieved or what that really means. You can rest easy knowing that the word "surveillance" which was sometimes considered controversial now has a positive sounding partner "consent" – which is a good thing. Hooray that's that thorny issue sorted.

> "In our time, political speech and writing are largely the defence of the indefensible [...] Thus political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness"
>
> 'Politics and the English Language', George Orwell (1946) [3]

Image by T.J.Blackwell

Not only has the Home Office created a "new philosophy" they've also launched a consultation process [4] into the new Surveillance Cameras Code of Practice. This is so that they can say the people were asked what they thought and their views were taken into account. Perhaps that's what "surveillance by consent" is about. Except hardly anyone knows there is a consultation and even fewer will bother responding and if they do it's unlikely they'll be listened to unless they support the government/Home Office position. Perhaps *that's* what "surveillance by consent" is about. We're getting warmer.

To understand "surveillance by consent" we are told in the Code of Practice Consultation document [5] that it should be viewed as analogous to "Policing by Consent" – a slogan oft used to paint a rosy picture of the friendly British policeman. In fact it's so often trotted out that it seems rude to deconstruct it here, but what the heck.

Policing by Consent

The slogan “Policing by Consent” is generally attributed to the 20th Century police historian Charles Reith, who constructed it based on what have come to be known as the nine Peelian police principles, so named after Robert Peel, the Home Secretary who introduced the modern police force in 1829. In fact these police principles are not Peel’s but Reith’s principles as it was he who constructed them based on his interpretation of official hand books, public records and the works of earlier writers [6].

A matter of principles

In his book “British Police and the Democratic Ideal” (1943) [7] Reith wrote:

> British Police Principles may be defined, briefly, as the process of transmuting crude physical force, which must necessarily be provided in all human communities for securing observance of laws, into the force of public insistence on law observance; and of activating this force by inducing, unobtrusively, public recognition and appreciation of the personal and communal benefits of the maintenance of public order.
>
> p4, ‘British Police and the Democratic Ideal’, Charles Reith (1943)

So police principles are a way of “transmuting crude physical force” – let’s see which of the Reith principles are most frequently used to transmute crude physical force and hence underpin the slogan “policing by consent”. First we have Reith’s 3rd principle:

> To recognize always that to secure and maintain the respect and approval of the public means also the securing of willing cooperation of the public in the task of securing observance of laws.
>
> 3rd Police Principle, p3, ‘British Police and the Democratic Ideal’, Charles Reith (1943)

In his 1952 offering ‘The Blind Eye of History’, Reith expands upon his third principle by explaining that following the creation of the police force in London in 1829 the public were won over (ultimately) and that the police with “their visible behaviour, sufferings and martyrdom appealed to and roused the inherent sense of justice and fair play in people’s minds” [8]. Of course blanket surveillance of the type used in “surveillance by consent” can hardly be said to represent justice and fair play, as everyone is monitored be they law abiding or law breaking. In essence surely Reith’s third principle merely states that the police must get people to obey laws – most people have a sense of right and wrong so good laws are easy to obey; bad laws need enforcing.

Then there’s Reith’s 7th principle:

> To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence.
>
> 7th Police Principle, p4, ‘British Police and the Democratic Ideal’ (1943), Reith

This 7th principle makes the strange claim “that the police are the public and the public are the police”, but the police are an organised force and a policeman swears an oath to serve the queen [9]. As Dr A.I.Goodhart wrote in the 1962 report of the Royal Commission on the Police, the idea of the police being the public:

> seems to conflict with the fact that the constable is a member of a disciplined service, under a duty to obey orders, and that many of his powers are given to him as a constable and not as a citizen. To say that a constable is a citizen in uniform is no more accurate than it would be to say that all citizens are constables in plain clothes.
>
> p162, Memorandum of Dissent by Dr A I Goodhart, Final Report of the Royal Commission on the Police 1962, Cmnd. 1728,

Would you wear a stab vest to visit your granny?

Since Reith created his principles some seventy years ago much has changed. The police increasingly wear paraphernalia that serves to distance the public from the human being that is the police officer and makes the police look ever more paramilitary. Are the public and the police the same? Would you wear a stab vest to go and visit your granny?

Furthermore we are increasingly seeing moves to privatise large sections of the police, starting with so-called back office functions – for instance the Civica Group has recently won the contract to supply the Dyfed-Powys police with a “hosted” Automatic Number Plate Recognition (ANPR) system [10], and in 2011, 500 civilian staff from Cleveland police were transferred to police outsourcing giant Steria [11] who now run many of their police services including outsourced Control Room services [12]. Even the recent introduction of elected Police and Crime Commissioners (PCC), whilst presented as a way of making police more accountable, ties into the privatisation agenda – as the commissioners will own the new Police ICT Company Ltd which will manage outsourced contracts that “may include service management for the Automated Number Plate Recognition network” [13]. Can we still say that “the public are the police” when large sections of the police service, including major surveillance tools, are now run by private companies driven by a profit motive – with more set to follow?

After a bit of scratching of the surface we begin to see that the “policing by consent” slogan is used to disguise the fact that modern policing is merely imposed authority, as criminologist Steve Uglow writes:

> These images, and phrases such as ‘policing by consent’ and ‘community policing’, form the language of persuasion. Of course, without the consent of the public it is no longer policing but repression. That we do closely identify with ‘our’ police is shown by the high degree of approval for and co-operation with them. But this esteem to some extent derives from the favourable attitude of the media and entertainment industries, since knowledge about the police is, for most people, gleaned at second-hand. Our ‘consent’ is at root artificial, constrained by the limitations of our knowledge.
>
> p11, ‘Policing Liberal Society’, Steve Uglow, Oxford University Press (1988)

The media’s love affair of crime reporting coupled with an abundance of crime-based

entertainment drama has only exacerbated the effects of successive governments heavily focusing on crime and policing – where talking tough on crime is seen as a virtue above all others. As criminologist Robert Reiner said in a recent Howard League for Penal Reform pamphlet [14]:

> Crime fighting is the dominant image of police in the media, which are the main source of information for public. But this leads the police on a Quixotic quest, as there are inherent limitations to the possibilities of crime control through policing. The drivers of crime and disorder largely lie much deeper than any possibility of being tackled by even the best police. This view was once a widely shared orthodoxy. However, it is now frequently claimed to have been refuted by recent experience and evidence.
>
> 'In praise of fire brigade policing: Contra common sense conceptions of the police role', Robert Reiner (2012)

The modern police force has become an accepted part of mainstream society to such a degree that people forget that the whole idea of an organised force was one alien to the people of Britain.

In 1818 a parliamentary select committee wrote on the concept of an organised preventative police force:

> The police of a free country is to be found in rational and humane laws – in an effective and enlightened magistracy – and in the judicious and proper selection of those officers of justice, in whose hands, as conservators of the peace, executive duties are legally placed. But above all, on the moral habits and opinions of the people; and in proportion as these approximate towards a state of perfection, so that people may rest in security; and though their property may occasionally be invaded, or their lives endangered by the hands of wicked and desperate individuals, yet the institutions of the country being sound, its laws well administered, and justice executed against offenders, no greater safeguard can be obtained, without sacrificing all those rights which society was instituted to preserve.
>
> p32, 'Third report from the Committee on the State of the Police of the Metropolis' (1818)

The select committee wrote the above words in the wake of the Napoleonic Wars with revolutionary France, a time when, not unlike now, state surveillance was high [15].

So the slogan "policing by consent" can be seen as a sleight of hand, which discards past resistance to a standing army of police. It promotes acceptance of the police as a virtue above a desire for self-determination and "policing" by the community that pre-dates the modern system.

Interestingly "policing by consent" contains little actual consent. There is no suggestion that there is a choice involved – which raises a serious concern – how can there be consent without choice?

And so we return to the slogan which we are told is analogous to "policing by consent", namely "surveillance by consent".

“Surveillance by Consent”

The “surveillance by consent” slogan has been attributed to Andrew Rennison, an ex-policeman who is now both the Surveillance Camera Commissioner and the Forensic Science Regulator. Rennison has constructed the slogan based on the twelve guiding principles of surveillance cameras that form the recently published Surveillance Camera Code of Practice. In fact the twelve guiding principles are a re-working of fourteen golden rules created as part of an Independent Police Complaints Commission (IPCC) review of the police use of automatic number plate recognition (ANPR) cameras. The fourteen golden rules of the IPCC were broadly based (with some police stuff added) on the eight Data Protection Principles that make up the Data Protection Act 1998 – which is the statute that governs the use of CCTV and ANPR cameras.

Whilst the Surveillance Camera Code of Practice’s consultation document states that the twelve guiding principles “are considered to underpin the establishment and maintenance of surveillance by consent” [5] it appears the 1st principle is the linchpin of the slogan:

> Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need.

At first glance this might seem quite reasonable but this principle has been in place for some time and it has done nothing to curb the expansion of the surveillance state. The ICO 2008 CCTV Code of Practice [16] asks:

> Is it [the proposed system] necessary to address a pressing need, such as public safety, crime prevention or national security?

And the ICO 2000 CCTV Code of Practice [17] states:

> The First Data Protection Principle requires data controllers to have a legitimate basis for processing personal data, in this case images of individuals. The Act sets out criteria for processing, one of which must be met in order to demonstrate that there is a legitimate basis for processing the images.

In other words the first principle in the “new” Surveillance Cameras Code of Practice is a rehash of the ICO CCTV Codes of Practice, which are themselves a repeat of the Data Protection Act 1998. If it’s done nothing to curb the surveillance state until now, why would we expect it to be any better if we simply repeat it yet again?

The new code effectively says: keep doing what you are doing and without lifting a finger you’ll be protecting the freedoms of those you probably never even thought about, and to boot you have their consent. And as current systems are anyway bound by the ICO Code then they must already be “surveillance by consent” by default.

The rest of the “new” guiding principles of surveillance restate the other data protection principles – leaving a few spare principles to slot in surveillance industry related technical standards for equipment and training for operators (rehashed from the 2007 National CCTV

Strategy) – exactly what you'd expect from a code of practice created under an act of parliament called "Protection of Freedoms" – that is provided you're the author of a dystopian novel like '1984'.

The problem with state created regulation

The government introduced this new code supposedly to "further regulate" CCTV – but, aside from the fact that they are just repeating existing regulations, the code and it's cod philosophy demonstrate all too well that state created "regulation" is not the answer. All that regulation does is create rules for the "proper use" of whatever is being regulated instead of consideration of whether such intrusive measures should be used at all.

Before the Home Office's new Code, before the ICO's CCTV codes, before the Human Rights Act, when we were told that there were "no statutory, or other, controls on the use of public space CCTV systems", the Local Government Information Unit published a code of practice for CCTV that stated: "No sound should be recorded in public spaces" [18]. Now that we have regulation and "further" regulation – the new Surveillance Cameras Code of Practice states: "Any proposed deployment that includes audio recording in a public place is likely to require a strong justification of necessity to establish its proportionality" [19]. So we have moved from a clear prohibition to a blueprint of how to use surveillance cameras shrouded in a lawyer's code of euphemism and sheer cloudy vagueness.

A code created by the Home Office, the chief promoter within government of surveillance, is like asking a fox to come up with the best way of ensuring that the chicken coup is only ransacked when "necessary", in a "proportionate" way, when there is a "legitimate purpose" and "pressing need" – "dinner by consent" if you will.

Consent and Choice

> consent – verb: express willingness, give permission, agree – noun: voluntary agreement, permission, compliance
>
> Oxford English Dictionary

As with "policing by consent" there is very little about actual consent in the principles used to create "surveillance by consent". Real consent would require a meaningful debate about whether the meagre benefits of cameras are really worth trading for hard won freedoms. Consent would require the public to be well informed about the harm that cameras have on communities and about the dangers of blindly accepting every new surveillance technology. Consent would require there to be an actual choice – but all the mainstream political parties support the indiscriminate use of surveillance cameras, and the use of the national Automatic Number Plate Recognition (ANPR) camera network that has created automated checkpoints across the country. When politicians debate CCTV it almost always descends into an infantile squabble over who loves CCTV the most [20].

Real choice demands a wider assessment of surveillance technologies, both for existing and new technology. Neil Postman, author of 'Technopoly', suggested six questions [21] to assist in understanding how a technology intrudes itself into a culture – such questions should be the starting point of any discussion regarding surveillance technology:

1. What is the problem to which this technology is the solution?

2. Whose problem is it?
3. What new problems might be created by solving the original problem
4. Which people and what institutions will be most seriously harmed by this new technology?
5. What changes in language are being forced by these new technologies?
6. What sort of people and institutions gain special economic and political power from this new technology?
7. p42, 'Building a Bridge to the 18th Century', Neil Postman, Vintage Books (1999)

Without seeking the real answers to these questions we will constantly be vulnerable to claims that upgrades to surveillance tools are needed, that the upgrades are required to tackle a pressing need or a growing threat, and we will be blind to where our society is headed. In his book 'The Technological Society', French sociologist Jacques Ellul, referring to the indiscriminate nature of police technology, warned:

> The techniques of the police, which are developing at an extremely rapid tempo, have at their necessary end the transformation of the entire nation into a concentration camp.
>
> p101, 'The Technological Society', Jacques Ellul, Vintage Books (1964)

With the publication of the Westminster government's draft Surveillance Cameras Code of Practice a trojan horse has been snuck into every public space in England and Wales – and hidden inside is "surveillance by consent".

If you believe that consent is something that should be given voluntarily and not something that can be taken by bureaucratic thieves in the night then make your voice heard. If you live in England or Wales then start by telling the Home Office what you think (details of how to respond are at the end of this article). If you live elsewhere in the world – watch out, "surveillance by consent" is no doubt coming to your country soon. If you do nothing, your inaction will be taken as your consent to be surveilled.

Surveillance Camera Code of Practice Consultation links

The consultation document can be downloaded from:
http://www.homeoffice.gov.uk/publications/about-us/consultations/surveillance-camera-consultation/consultation-document?view=Binary
The proposed Code of Practice can be downloaded from:
http://www.homeoffice.gov.uk/publications/about-us/consultations/surveillance-camera-consultation/code-of-practice?view=BinaryResponses can be submitted online at:
www.homeofficesurveys.homeoffice.gov.uk/v.asp?i=69377oduov

Or sent to:
Home Office
Police Transparency Unit
6th Floor Fry,
2 Marsham Street,
London, SW1P 4DF

Notes:

[1] http://www.no-cctv.org.uk/blog/the_freedom_committee_cctv__anpr_and_the_manufacture_of_consent.htm

[2] http://www.homeoffice.gov.uk/publications/about-us/consultations/surveillance-camera-consultation/code-of-practice?view=Binary

[3] http://www.orwell.ru/library/essays/politics/english/e_polit/

[4] http://www.homeoffice.gov.uk/publications/about-us/consultations/surveillance-camera-consultation/

[5] http://www.homeoffice.gov.uk/publications/about-us/consultations/surveillance-camera-consultation/consultation-document?view=Binary

[6] See 'The Invention of Peel's Principles: A study of policing 'textbook' history', S.Lentz and R.Chaires, Journal of Criminal Justice, Vol. 35, No. 1. (2007) http://dx.doi.org/10.1016/j.jcrimjus.2006.11.016

Also see p154 'The Blind Eye of History', Charles Reith, Faber and Faber (1952)

[7] 'British Police and the Democratic Ideal', Charles Reith, Oxford University Press(1943)

[8] 'The Blind Eye of History', Charles Reith, Faber and Faber (1952)

[9] http://www.legislation.gov.uk/ukpga/1996/16/schedule/4

[10] http://www.outsourcereye.co.uk/2013/01/16/civica_signs_anpr_contract_with_dyfed-powys_police_force/

[11] http://www.gazettelive.co.uk/news/teesside-news/2011/08/09/steria-deal-will-save-cleveland-police-70m-84229-29200762/

[12] http://www.steria.com/uk/your-business/homeland-security/command-and-control/

[13] http://www.homeoffice.gov.uk/publications/police/pcc/working-beyond-force-area/police-ict-company?view=Binary

[14] http://www.howardleague.org/police-have-marginal-impact-on-c/

[15] http://media.ccc.de/ftp/congress/2012/webm/29c3-5138-en-romantichackers_webm.webm

[16] http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/~/media/documents/library/Data_Protection/Detailed_specialist_guides/ICO_CCTVFINAL_2301.ashx see p7

[17] http://web.archive.org/web/20060409080551/http://www.ico.gov.uk/documentUploads/cctvcop1.pdf

see p34

[18] 'A Watching Brief: A Code of Practice for CCTV', Local Government Information Unit, 1996, as quoted by House of Lords Select Committee on Science and Technology – http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldselect/ldsctech/064v/st0506.htm

[19] Surveillance Camera Code of Practice, paragraph 3.2.2, p9 see [2] above

[20] http://www.theyworkforyou.com/debates/?id=2013-02-11b.557.4

see also http://www.no-cctv.org.uk/blog/back_to_the_future_-_uk_cctv_debate_stuck_in_time_loop.htm

[21] Neil Postman, Technology and Society lecture, Calvin College, 1998 – http://www.c-spanvideo.org/program/98576-1

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