

## **A surveillance studies perspective on protest policing: the case of video surveillance of demonstrations in Germany**

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### **Abstract**

*The videotaping of all kinds of political demonstrations seems to have become a standard policing procedure in many countries. This paper explores the video surveillance of public protest in Germany, where, in line with the international trend, developments on different levels have changed the situation immensely in recent years. This article firstly gives a short introduction to the subject and the history of video surveilling demonstrations. Secondly it describes the (changing) legal regulations in Germany. The third part considers technical developments, while the fourth part focuses on protestors' reactions. The relative absence of the social sciences from the field motivates the article's fifth part, which asks after the theoretical implications of the developments analysed from a surveillance studies perspective and explores questions for future research arising from this. Panopticism, surveillant assemblages and the "culture of control" are considered concerning their possibilities and limitations for understanding the problem of video surveillance of demonstrations.*



**Figure 1:** UAV „md4-200“ (microdrones Ltd.), used by police in Lower Saxony

## Introduction<sup>1</sup>

The videotaping of all kinds of public gatherings, and especially of political demonstrations, seems to have become a standard policing procedure in many countries. This paper explores the video surveillance of public protest in Germany, where, in line with the international trend, technical, legal and cultural developments have changed the situation immensely in recent years. It is no longer remarkable to see CCTV systems in public places, transportation and train stations, courts and schools. Their increased deployment has been enabled by technical achievements, price reductions and especially a social environment, which David Garland (Garland 2001) aptly called a “culture of control”.

This development seems to be paralleled in the field of protest. While the phenomenon seems quite obvious to, and omnipresent for, protesters, it has until now attracted little scholarly attention. In the field of surveillance studies this may be due to the omnipresence of and immense interest in CCTV in public places. Yet, the questions arising are similar on a general level: Is there a change in behaviour, thinking or even the individual personality of those under surveillance? Under which exact conditions does individual behaviour change, and how? In the field of research into social movements and protest the relative disinterest in the issue of video surveillance may be due to the predominant orientation towards questions of movement success, while questions of movement identity and spaces of conjunctive experience, which may also be induced by being collectively exposed to massive surveillance, have lost ground (see Heßdörfer, Pabst, and Ullrich 2010). This issue has to be scrutinised more thoroughly in the context of a general tendency towards the repression of social movements to which recent counter summits and related demonstrations of the global justice movements can testify (Smith 2001).

Examining the German case seems fruitful. The slow increase of the phenomenon (which until 2006 took place significantly without any change in legal regulations), but also the recent reforms of laws that regulate the right of assembly, with their authoritarian and bureaucratic tendency, juridical disputes that have taken a somewhat different path, the technical arms build-up of the police with drones and hidden cameras, and the reactions of the persons concerned enable a detailed examination of the political grammar behind these developments. This also includes a detailed look at laws which eventually did not come into effect or were significantly changed after implementation, because they are still very important as political programmes and part of the discursive battles. All this enables a review of the theoretical approaches usually applied to surveillance phenomena. Readers will also easily realise the international significance and similarities with developments in other countries.

This article, firstly, gives a short introduction to the subject and the history of video surveilling demonstrations. Secondly, it describes the (changing) legal regulations in Germany. The third part of the article considers technical

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<sup>1</sup> We are indebted to Andrew Oppenheimer for his kind language support.

developments, while the fourth part focuses on protestors' reactions. The absence of the social sciences from the field motivates the article's fifth part, which asks after the theoretical implications of the developments analysed and the questions for future research arising from them, because until now, no empirical studies about videotaping protest have taken place. Our theoretical focus will be restricted to surveillance studies, to explore the extent to which they can enrich protest research.

### **1. Function creep? From occasional use to standard procedure**

In 1989 a paragraph in the federal law of assembly legalised video surveillance of demonstrations under certain conditions (see section 3). Yet, the history of video recording against protesters by the police in Germany (as well as in Great Britain and other countries) goes back to the fifties and sixties of the 20<sup>th</sup> century (Kammerer 2010, Fay 1998: 326), although the cameras used were often not installed to serve exactly this political purpose. In Great Britain the cameras were mostly fixed to buildings for property protection and often lent from private firms. Due to high costs and bad technical quality, they proved quite inefficient and resulted in few useful pictures (Kammerer 2008: 36).

In Germany, video monitoring by the police was initially deployed for traffic control with stationary cameras or such fixed on cars. Later on, they were used for non-traffic situations as well, for instance during the May Day march in Hannover in 1961 and on several occasions in Frankfurt and Munich.<sup>2</sup> Officials since that time repeatedly have justified cameras via their function in controlling demonstrations, rallies or strikes (Kammerer 2008: 36).

Nevertheless, at that time, recording was a complicated and costly activity in comparison with today. While the technical equipment has changed since then, the main reasons for purchasing video equipment by the state remain the same: prevention and preservation of evidence.

Video surveillance in general is legitimized not only as a measure against property crimes and violent offences, but as a reaction to dissidence, political "extremism", and militancy in a broader sense. This line of argument was crucial for the seemingly unstoppable expansion of CCTV. Examples can be found in Northern Ireland and in England during the 90s as a response to the Irish conflict and campaigns of the IRA (Kammerer 2008: 39). In the German discourse there have been frequent calls for more cameras since the attacks of 9/11 and smaller or attempted assaults.

Cameras are deployed at assemblies and demonstrations in several ways. There are police officers and documentation units on foot holding cameras, and there are opto-electronically equipped police cars, helicopters and unmanned aerial vehicles (UAVs or drones). In addition, as most political assemblies and

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<sup>2</sup> Other examples of function creep are reported from Scotland and China by Fay (1998: 326).

demonstrations take place in public areas, CCTV systems installed there come into play, too. As a consequence of the low prices and the implementation of filming devices in mobile phones, etc., filming is no longer the prerogative of the police, but more and more frequently carried out by protesters themselves. Recently, films made with mobile phones and spread via Youtube and other web2.0 platforms have also provided evidence of police violence and gained remarkable publicity.



**Figure 2:** Police photo unit taking pictures of individual participants and press at a small and peaceful demonstration (London 2005) (private photo)

## 2. Legal Regulations<sup>3</sup>

### 2.1 The German Federal Assembly Law and the regulation of video surveillance

The right to assemble for political purposes, especially to express political opinions, is a basic right enshrined in the German constitution. In the eye of the law, demonstrators (unlike people taking part in other mass events like festivals or soccer games) do not create a group by chance, but follow a goal, which is connected with society's constituting values. Political assemblies such as demonstrations are acknowledged as fundamental elements of democracy. Restrictions or hurdles to exercising the right of free assembly have to be well justified and regulated by law. Because of this, the police in Germany are bound to follow the regulations of the law of assembly, which restrict their margins of intervention much more than does the police law that regulates their competencies in most other fields.

In 1989 a paragraph was introduced into the law of assembly which regulates the video surveillance competencies of the police. Following this, filming is only allowed if significant circumstantial evidence is given that public order or security is endangered considerably. By public order is meant all kinds of unwritten rules which are essential for living together. Public security refers to legally protected interests like health, property, and freedom. It is agreed among lawyers and acknowledged by courts that mere suspicion is not enough to justify video surveillance of demonstrations.<sup>4</sup> Also, the illegal action taking place has to be of the same rank as the freedom of assembly (e.g. right to physical inviolability). Considering these regulations, videotaping is primarily non-preventive and allowed for preserving evidence of considerable acts of law-breaking. There is one exception: persons who are not involved in illegal behaviour may be videotaped if this cannot be avoided, e.g. because of proximity. Standard police practice at political demonstrations seems not to be in line with this interpretation of the law. Yet, for practical reasons it is almost impossible to go to court to stop the police from videotaping while a demonstration is taking place. To sue the police afterwards for filming illegally, on the other hand, often seems fruitless, as the event is over.

Not just police practice, but also some of the regulations are highly ambiguous. First, it is unclear if videotaping is allowed at assemblies taking place indoors<sup>5</sup>. Second, the law of assembly does not distinguish between simple camera-

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<sup>3</sup> As the international readership of this journal will not be too interested in the minor details of the German law of assembly and the disputes to which it is subjected, we restrict our account to the basic features and most important changes in recent years. For a more detailed account, see Koranyi/Singelstein (2011) and Ullrich/Wollinger (2011).

<sup>4</sup> Administrative Court Münster AK1403/08.

<sup>5</sup> This dispute involves the interpretation of the constitution and the basic right to assemble as well as the law of assembly. Under the latter, any limitation of the basic right to assemble is allowed only at demonstrations that take place outdoors (Dietel/Gitzel/Kniessel 2008: 243 ff.). Despite this, the law of assembly has several regulations for assemblies which take place inside.

monitor surveillance and videotaping with storage of the data. The former is often used at demonstrations. Here, a camera is connected to a monitor, so the police are able to get an overview of the demonstration or rally. This is meant to improve the police's field work. While some lawyers argue (Brenneisen/Wilksen 2007: 234 et seq.) that this does not infringe on individual rights, because it is not intended to identify persons, judges contend that the right to informational self-determination is infringed upon, owing to the uncertainty of those assembled as to whether they're under surveillance or not.<sup>6</sup>

Thus there may be an impact on behaviour just because of the potentiality of surveillance and the general availability of the option to an officer to press the record button at any time. Demonstrators do not know if they are being filmed in the moment or if their pictures are "only" transferred to a monitor where other police officers are watching. A further question is how to evaluate overview recordings. Demonstrators want to be seen—that is the reason they go into the streets. However, there is a difference between being seen by passersby or journalists and being registered by the police. In its judgement from 4/24/1990, the Higher Administrative Court of Bremen<sup>7</sup> emphasized that overview recordings are also individual-related data, owing to the technical possibility of identifying persons captured.

In conclusion, one can say that the legal regulations of video surveillance do not grant certainty of their rights to protesters or clearly restrict the police. A reason for this is their age. Camera usage today is quite different than in 1989. Better technology allows for more thorough control. With higher camera resolution, analysis software and the numerous and well connected data bases it has become much easier to identify people even from overview shots. As a consequence, the law often needs to be interpreted by courts, among which there is no agreement in many aspects of jurisprudence (Gintzel 2010).

## **2.2 Deepening the "culture of control"—recent legal changes and debates**

Against these uncertainties it was planned to create a new law of assembly that would take the various court rulings into account. Yet the bill was never passed in the Bundestag because of the reform of the organisation of the federal German state, which gave the individual states the power to enact laws of assembly. The federal law, since then, only applies to the federal states (*Bundesländer*) who waived their right to enact individual laws of assembly. To date, five states (Brandenburg, Saxony, Saxony-Anhalt, Bavaria and Lower Saxony) have exercised their rights, while one (Baden-Württemberg) has a

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<sup>6</sup> Administrative Court Münster AK1403/08.

<sup>7</sup> This was the argument of an American court, which forbade the New York police from producing overview pictures. The behaviour of the police criminalised demonstrators, a lawyer involved argued (United States District Court, Southern District of New York, 71.Civ. 2203, CSH).

legislative proposal pending. In all of the other states, the federal law of assembly remains in force. Except for the law in Saxony-Anhalt, all the laws and proposals are more authoritarian in their basic orientation, imposing several restraints for demonstrators and bureaucratic instruments that allow authorities to restrict demonstrations arbitrarily.<sup>8</sup>

In terms of video surveillance, several changes have been introduced into the Bavarian law of assembly of 2008. It is worth while analysing this law—although some of its specific measures later had to be dropped because of a decision of the Federal Constitutional Court in the law of assembly of 2010—as it was the model for some other reform proposals and thus hints at a general trend: the deepening of the culture of control.<sup>9</sup>

A key change was the introduction of video surveillance as a preventive measure. This meant that a specific, dangerous or law-breaking, situation was no longer required for recording. Demonstrators could be filmed independent of their behaviour. The fact that they participated in a legal assembly was reason enough for filming them. Camera-monitor broadcast without the storage of data was legalised, too. It was not just the police's powers to film which were extended; so too were their rights to store the video material.

Whereas the old federal law determined that recordings had to be deleted immediately after an assembly except when they were needed for criminal proceedings, the new Bavarian law of assembly (and proposals) legalise the maintenance of the records for years and even for unlimited periods of time if they may be useful for police training. It should be noted that this video recording is of such a quality that it allows for identification. Future misuse cannot be prevented; people recorded have no right to information and no possibility to check if there exist records including them. This uncertainty was exacerbated by the legalisation of hidden police cameras, which must give informed protesters the feeling of being potentially always under surveillance.

The Federal Constitutional Court stopped several elements of the Bavarian law

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<sup>8</sup> The Saxon law of assembly, despite generally following the old federal law, defines areas where demonstrations can be easily illegalised. Among them are monuments, like the Dresden Frauenkirche, even a whole part of the city of Dresden and places of remembrance of victims of “National Socialist and communist tyranny” or victims of wars. The broad and unspecific formulation (e.g. “victims of a war”) enables administration to forbid demonstrations arbitrarily (Lehmann 2010). The 2008 version of the new Bavarian law of assembly contained several bureaucratic restrictions on demonstrators: the leader of a demonstration was to be held responsible personally for the assembly, and personal data were required of all persons involved in staging the demonstration. After the Federal Constitutional Court stopped many regulations in the Bavarian law, Bavaria has modified it again. Nevertheless it is more restrictive than the previous federal law. Lower Saxony and Baden-Württemberg created legislative proposals, both strongly oriented by the Bavarian motion. After the decision of the Federal Constitutional Court, both federal states planned to rework their proposals. However, the tendency (also after the law in Lower Saxony having been passed in early 2011) is still clear.

<sup>9</sup> For a detailed account of how the Bavarian law of assembly of 2008 corresponds to the general trends David Garland (2002) analysed (although mainly referring to Great Britain and the US), see Wollinger (2010) and Section 5 in this article.

in the form of an interim order. On this, Bavaria modified the law in April 2010 and withdrew some of the bureaucratic restrictions and obstacles for demonstrators. Hidden filming was dropped in the new version. Filming now is only justified if there is (circumstantial) evidence of illegal activity. Still, overview filming without storage is allowed, if necessary for police work, because of the demonstration's size or complexity of the situation. Regulations in Lower Saxony, which came into effect as late as February 2011, are similar. This will hardly prevent police from generally using the measure. To record overview filming, indications of illegal activity are necessary. Therefore, at demonstrations a situation emerges, in which the police can be equipped with cameras and the demonstrators do not know if they are being filmed or not.

The new laws of assembly in Brandenburg and Saxony-Anhalt are very similar to the federal law; so, too, is the Saxon law in terms of video surveillance. Hence, these states maintain the old, ambivalent regulations related to video surveillance. There is no amending law which pays attention to its existing problems and, most importantly, the respective judgments of the Federal Constitutional Court.

The amending laws of assembly tend to strengthen the authority of the police, especially in relation to video surveillance. Considering the harmonisation of laws and the ongoing integration of security services on the European level, changes for the worse are highly probable. Currently, Great Britain seems to be pioneering an authoritarian tendency, because of a database, which stores names, video records, and pictures of people participating in demonstrations for seven years. Furthermore, the police are permitted to draw up demonstration-participation profiles of activists (Lewis/Vallee 2009).

### **3. Technical arms build-up**

In recent years, video surveillance by police has repeatedly become a public issue. This is related to the above-mentioned legal changes as well as to political contention about the new federal states' laws, and especially to legal action against the Bavarian law of assembly in the Federal Constitutional Court. Another recent development, which caused a degree of public attention, was the test of a flying camera, a so-called drone of the "SensoCopter" type, by Saxon police.

In the beginning, its usage against political protest events was not officially announced. Its main purpose was for soccer games, where fans and hooligans, who had caused several violent clashes in recent years, especially in Saxony, could be observed. However, it is highly plausible that drones will be used for videotaping demonstrations, because for flying cameras the legal regulations are the same as for other forms of video surveillance on assemblies. This issue was what the bigger part of the media debate concerning police drones was about.





**Figure 3:** UAV “md4-1000” (microdrones Ltd.), used by police in Lower Saxony.

The first drone was launched in February 2008 and was tested until 2009. The initial test phase was extended to try out a new drone that is heavier and therefore better suited to windy conditions (anonymous 2009). After the first test phase, press reports stated, that drones do not give any usable pictures (ibid.), whereas the police announced a general “positive experience” (Wend 2009), without any systematic evaluation of the impact of this specific measure—similar to the police’s unevaluated and strongly biased support of stationary CCTV. The first unmanned air vehicle cost about € 65,000. Its successor has been rented for € 2,400 per month. Considering the several riots, mostly caused by right-wing hooligans, which accompanied soccer games in Saxony and contributed to the already bad image of this state as a right-wing stronghold, drones seem to be helpful devices (at least from the police’s perspective), to observe crowds without putting officers in any danger. Contrary to critics of the flying cameras,<sup>10</sup> the police do not see problems in terms of data

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<sup>10</sup> For instance the lawyer Frederick Roggan, who emphasized the juridical significance of the hidden character of the drones, which operate from an immense distance:  
<http://www.zeit.de/online/2008/03/unbemannte-drohnen-hooligans-sachsen?page=all>  
[26.1.10].

security, because sports fans automatically accept monitoring upon entering a stadium (Kälin 2009). Recently other police forces followed suit. The police of Lower Saxony deployed a drone at the protest against nuclear waste transports in late 2010 (Castor protest). The police of North-Rhine Westphalia and the Federal Police have purchased drones (for the policing of crowds, among other reasons). Yet there is until now no information about their usage.

In France, Switzerland, Great Britain, Italy, and other countries, drones are used and Europe-wide cooperation is under consideration (Eick 2009, 2010, Schnober 2009, Monroy 2010). Protests and crowd policing are among their main areas of application (Eick 2009, 2010). Compared to CCTV or mobile surveillance by foot patrols and vehicles, the introduction of drones represents a new quality of surveillance. Drones are quiet, fly high, and can even be used at night time, if equipped with infra-red or thermal imaging cameras. All these decrease direct visibility and therefore the possibility for the affected persons to realise their being under surveillance, to act accordingly, or just to be able to calculate the consequences of their actions. Hence, drones are highly problematic, like other forms of hidden surveillance such as cameras which are technically disguised or hidden due to the inconspicuous carrying along of devices. This procedure was—among other instances—reported from the annual demonstration “Freedom not Fear” in Berlin (Heitmüller 2008). Ironically, exactly this demonstration of a broad alliance, which was directed against the general increase of surveillance, was heavily filmed in 2009 (Laufer 2009). Yet it was not this fact but a video about police violence made by protesters themselves, which caused widespread media attention in the aftermath of the 2009 demo. This raises questions about the impact of technical developments on the prospects for counter-surveillance.



**Figure 4:** Two German police officers, obviously amused by their footage of a demonstration in Hamburg in 2005  
(<http://media.de.indymedia.org/images/2005/03/108664.jpg>)

#### **4. From protest to counter-surveillance?**

Various forms of protest against the above described developments towards a more and more authoritarian and illiberal concept of the state have emerged in recent years. Associations of all kinds, unions and political parties have positioned themselves against the new state laws of assembly. In September 2008 an alliance of unions, liberal and left wing parties, lobbying and grassroots groups initiated a constitutional complaint against the Bavarian law of assembly, and in Saxony a request for judicial review was submitted in September 2010. Besides taking the legal course, which seems a main strategy of today's protesters against surveillance (Steven 2009, Steinke 2009, Leipziger Kamera 2009, Ullrich/Lê 2011), grassroots alliances started campaigning with petitions, info stalls, demonstrations and the like. One problematic point for the protesters may be the fact that most policy modifications to the right of assembly have been legitimised as being directed against "right-wing

extremism". Yet, the new (like the old) regulations constitute restrictions which have an impact on all demonstrators equally. Therefore, a challenging task for critical voices is to clarify the overall meaning of the new laws and to identify the underlying general norms.

However, socio-technological practices often have multidimensional effects and under certain circumstances yield processes with their own inner dynamics, which it may be hard for the institutions concerned to get under control. In this section, a recent example will be used to show that the dynamics involved in the process of establishing a surveillance society can go along with entirely unintended effects, like counter-surveillance.

The reason is plain and simple: access to video devices is no privilege of the police. By now, taking pictures and making films has become very easy for demonstrators, too, for instance by using cameras which are integrated into most mobile phones. Recently, such a mobile phone camera caused a considerable stir with a film of a violent situation during the "Freedom not Fear" demonstration in September 2009.<sup>11</sup>

The video shows a young man, who addresses a police officer, apparently to ask for his identification number, because he has a sheet and a pencil (and it was later reported accordingly). The officer dismisses the man and follows him a few steps. Then the officer grabs his arm and drags him to other policemen. The video take goes on to show the first officer holding the man while another officer hits him in the face. A moment later this officer beats another demonstrator, who tries to help the first man, right in the face. Around the young man a circle of policeman then develops. He is beaten while still being held tightly and still even when lying on the ground. The authentic film was posted on Youtube and spread through the blogosphere. Within days, the video had been watched by hundreds of thousands of people. Later on, more footage from different sources was synchronised, to extend visual information on the case. Even the biggest media reported very critically about this police attack—most of the time referring directly to the Youtube video. Quickly, this little mobile phone video had cause a public stir. Obviously due to the media attention, a legal case against the officers was initiated which is not common practice in cases of police violence.<sup>12</sup>

So, video footage of demonstrators seems to be a good way to preserve evidence of police violence. Nevertheless, it is doubtful if the described case can be generalised, because counter-surveillance is *per se* of a highly ambiguous character (Monahan 2006, Wilson/Serisier 2010). On the one hand, there is the incredible affinity of the new protest generation for the internet. They engage against surveillance (for example in the highly involved Pirate Parties in many

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<sup>11</sup> One of the many posts on Youtube: <http://www.youtube.com/watch?v=8GucY8MpHDc> [15/11/2010].

<sup>12</sup> To date there has been one conviction against an officer in that case, with two other decisions due to follow soon (<http://www.tagesspiegel.de/berlin/polizei-justiz/geldstrafe-fuer-pruegelnden-polizisten/1949016.html>) [15/11/2010].

countries), and the interactive web2.0 is the platform par excellence for their organizing and disseminating information. This strategy obviously proved useful in the case analysed. On the other hand, it will be hard to trigger such amazing media attention on a regular basis. Still, it is likely that counter-surveillance affects the behaviour of the police, as has been shown for officers under CCTV scrutiny. They do act more carefully if they can expect their offences to be recorded (Goold 2005: 227). The Youtube footage described above does not directly indicate such an effect, because the police officers—one can assume—must already have been aware of the possibility of being videotaped. Yet, because of the extraordinary attention the incident received, it may also represent a turning point in this respect.

Independent of all opportunities counter-surveillance seems to offer, it finds its limitations in the general asymmetry of power. The police are in a systematically better position than protesters: better equipped, outfitted with public legitimacy, more trusted by courts, in possession of other preventive and repressive instruments. Legal regulations manifest the different degrees of visibility. Demonstrators in Germany are not allowed to march uniformed, to cover their faces or to hide behind flags or banners, whereas police officers are not individually marked<sup>13</sup> and thus undistinguishable in their uniforms and behind their helmets. It is quite difficult to identify offending officers, a job their colleagues also tend to avoid. Due to the long data storage periods being established with the new law proposals, the identification of demonstrators is possible even years after a demonstration takes place. These data are accessible to a variety of police forces, and they enable the creation of individual profiles.

Filming demonstrations by demonstrators is not favoured even by all of the latter. One reason is the possibility that the police might confiscate the footage and feed it into their own databases. Yet counter-surveillance also seems to concern administrations a bit, too. The power to decide about the character of situation in these cases is more on the side of established actors, who have the instruments of power, like the police. In short, counter-surveillance can hardly ever outweigh police surveillance.<sup>14</sup> And it may even be a part of the surveillant assemblage through triggering vicious circles of surveillance (Fernandez/Huey 2009: 200).

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<sup>13</sup> A sign of hope for protesters is a new regulation in the State of Berlin, which recently introduced individual identification labels for police in protest events.

<sup>14</sup> Some phenomena like new protest styles and action repertoires may be linked to increasing surveillance. Pink and Silver, the Rebel Clown Army and other performative protest repertoires as well as “artveillance” (Brighenti 2009, Ullrich/Lê 2011) are definitely not only a response to police cameras, but they engender a special symbolic significance through their opposition to police cameras.

## 5. Theoretical perspectives

It is obvious that the observations outlined here are far from a systematic empirical inquiry into the effects of video surveillance of demonstrations. We know too little, especially about the habitual practices of the police and their institutional background, and not least about what videotaping demonstrations really does to the persons affected. And the analytical gap between the programmatic and the practice level of analysis is too great. Nevertheless, the obvious changes in techniques, practices, and legal surveillance and protest must have effects. It remains to be seen whether the multiple approaches towards the notorious “surveillance society” (Haggerty/Ericsson 2000: 606) or “disciplinary society” (Foucault 1979) or society (or culture) of control (Deleuze 1992, Garland 2001, Stolle/Singelstein 2006) are fruitful for an analysis of this particular area of research.<sup>15</sup>

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<sup>15</sup> The surveillance studies focus, which we restrict our analysis to, implies that other facets will only be touched upon marginally. Most important in that respect is the literature on the police in general (see for example Ericson and Haggerty 2001) and protest policing styles from a protest research perspective in particular (cf. Della Porta and Reiter 1998 for an overview and case studies of several countries; for recent global justice protests see Della Porta et al. 2006 and Fernandez 2008; for the changes in Germany see Winter 1998). While a general pacification trend has been observed in the last decades, substituting strategies of “escalated force” with pragmatic, de-escalating policing strategies, the number of preventive measures is increasing heavily (“de-escalated force” in Winter’s terms) and thereby blurring the distinction between prevention and repression.



**Figure 5:** Police filming the protests against the Munich Security Conference in 2004. <http://media.de.indymedia.org/images/2004/02/74432.jpg>

### 5.1 Discipline and governmentality

In particular, a critical review of Foucault's (1979) notion of panopticism is required. For a long time, the concept of the panopticon had a significant influence over this field. It was and still is *the* standard metaphor for discussing CCTV (Norris 2005: 360, Haggerty/Ericson 2000). Undeniably, this perspective has contributed essential aspects to the comprehension of the disciplinary claims of video surveillance by emphasising the institutionally enforced, unequal distribution of seeing and being seen, and it enabled scholars to conceptualise the subjectification processes initiated by it. This inequality, combined with the panopticon's architecturally-enforced uncertainty if one is currently in focus or not, Foucault argues, initiates reflexive processes in the

objects of surveillance. Uncertainty initiates self-reflexive reasoning and the smooth incorporation of the surveillants' demands into the surveilled through the internalisation of the surveillant's gaze.

These ideas are important, because they laid ground for the establishment of later Foucauldian (and post Foucauldian) approaches to the study of governmentality, which are interested in bio-political human resources management as a modern way to govern people and, to put it sociologically, to establish social order. Applied to our field of interest, this means greater attention or scholarly sensitivity to the subjectifying consequences of video monitoring (Kammerer 2008: 124 ff.), which are part of an institutional ensemble of less obvious forms of indirect and subtle techniques of governing the self (Rose, O'Malley, und Valverde 2006; Bröckling 2005, Lessenich 2010). We will come back to this idea.

Primarily, the concept of panopticism is excellently qualified to focus on the disciplining and deterring effects on (potential) demonstrators. It leads to the hypothesis that video monitoring fosters well-adapted, peaceful, disciplined behaviour and eventually the avoidance of demonstrations – a result of the visibility and fear of the unwanted use of the footage. German courts, when restricting police surveillance measures, have always argued accordingly (although without any obvious knowledge of or reference to Foucault's works). Of course, without any empirical research, this assumption remains speculative.

Possibly, video surveillance of demonstrations and assemblies corresponds even better to the specific view of panopticism than does CCTV in urban areas—the field to which the concept is most often applied. The panoptic situation is not only based on the asymmetry of visibility, but also comprises extensive classification, identification, as well as the occasional direct disciplining of individuals. However, these aspects are generally absent from routine video surveillance in urban areas (Norris 2005: 369, *ibid.* 362) where the ubiquity of CCTV (at least in Great Britain, which Norris analysed) produces information that can hardly be analysed for police purposes any more due to its sheer amount and the often deficient quality<sup>16</sup>.

The video surveillance of demonstrators is much more “real” and easier for them to perceive, because of its spatio-temporal limitations, which give it more of an exceptional character than, say, CCTV in shops. It is a temporary panoptic situation. Additionally a demonstration is accompanied by lots of symbolic and tangible regalia of power besides the cameras. These regalia (uniforms, weaponry, armor, barriers, searches, reading of restrictions) point to the palpable threat that unwanted behaviour be sanctioned quickly and powerfully, if not violently. Video surveillance of protest is, more than the classical architectural panopticon and its modern form CCTV, a part of a *situational* disciplinary strategy. Still, there is a separation between the function (and actors) of monitoring and intervening. A future use of the data is possible as

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<sup>16</sup> See Hempel and Töpfer (2009) and [http://news.bbc.co.uk/2/hi/uk\\_news/7384843.stm](http://news.bbc.co.uk/2/hi/uk_news/7384843.stm) [15/11/2010].



well. Demonstrators can perceive this as a threat—thereby stepping beyond the situational aspects towards a general disciplinary function.

Two sets of research questions arise from that umbrella question about the videotaping effects. First, what effect does police videotaping have on lawsuits? Is video evidence a powerful tool for police and prosecutors? Does it really change legal proceedings, or is it just another facet of the omnipresent surveillant assemblage (see below) that is of little use even from the police's point of view and hardly more successful than common methods of investigation? This is the question about the (possible) gap between the disciplinary *demands* and their reality. Second, the questions arise of whether there are direct preventive effects on demonstrators at all and of whether there really are those effects, that transgress the situational control situation. Are there more subtle, invisible, complex, subjectifying effects that can be traced back to the multiple forms of surveillance, and more specifically, to its unexpected or uncertain forms that drones and covert cameras represent?

If video cameras do have an impact on demonstrators (i.e. the latter are not indifferent to surveillance), but not following a simple stimulus-response schema, behaviour in a more subtle sense is evoked. The more abstract the threat, the greater either the dulling of demonstrators in relation to the measure, or the emerging degree of self-reflection. Seen from the latter perspective, video cameras can be understood as a part of neoliberal preventive governmentality (Bröckling 2008, Ullrich 2009), the purpose of which is not only disciplinary, but is also meant to initiate processes of activation, responsabilisation and self-management. Such processes need to be mediated between society's, the state's or the police's interests and the (potentially) protesting individual. This mediation is achieved exactly through uncertainty and self-interest (cf. Ullrich 2010). To put it less theoretically: demonstrators are required to weigh risks of their participation and specific behaviour—while they can never be sure about the consequences (Are personal data stored? Will they be used and for what purpose?). Hence, specific subject positions or habitus of demonstrators who are confronted with video surveillance may evolve. These subject positions reflect a mixture of disciplinary (direct power wielding) and post-disciplinary (self-managing or “advanced liberal”; cf. Rose 1996, Deleuze 1992) modes of governing.<sup>17</sup>

It would be good to explore both aspects and the relative share they contribute to the field. Research is highly recommended, because of the potentially vast influence on political participation and protest. This is all the more so as the authoritarian tendency, which is indicated by video surveillance and the tightening of various legal regulations, represents a general attack on the legitimacy of protest. Political assemblies, as Gintzel (2010) notes, are becoming more and more an object of the police law (which is by definition primarily repressive), with its competencies widened and the states grip on protestors

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<sup>17</sup> It is important to mention that governmentality does not replace disciplinary power, like disciplinary power did not replace sovereign power. They can and do co-exist in differing ratios.

tightened. Thus protest loses its character as a basic right, which should be protected and not hindered by the self-identified democratic state. This process exposes the legitimacy of assemblies to a permanent symbolic attack. Overall, in the field of surveilling demonstrations, the disciplinary aspects seem to us to outweigh the post-disciplinary ones compared to prevention, activation and self-management initiated in other sectors like health (Ullrich 2009) or labour markets.

## 5.2 Surveillant assemblages instead?

These considerations show that panopticism is not a one-size-fits-all explanation (compare Norris 2007: 151 ff., Hempel and Töpfer 2009: 160 f., Porter 1996). An influential alternative perspective has been presented by Haggerty and Ericson (2000) in the form of *surveillant assemblages*. With this concept they explicitly oppose panopticism and the popular notion of highly centralised surveillance à la George Orwell's *1984*. Their view, which is heavily influenced by Gilles Deleuze and Felix Guattari, is not so much focused on the disciplinary and governmental effects of concrete architectural and institutional arrangements. In fact, they emphasize the decentralised and network-style, or *rhizomatic* character, of the surveillance society with no centre, no beginning and no end of surveillance institutions, apparatuses and procedures, which all ascertain, collect, classify, arrange and rearrange data ("flows" as they put it). Each of the parts of the assemblages owes its existence to a *desire*. Yet, the utilisation of the information thus produced is independent from the original desire and takes on its own life.<sup>18</sup>

One example of this character can be shown in the Berlin police law (*Allgemeines Sicherheits- und Ordnungsgesetz, ASOG*). This law allows the police the use of private CCTV footage. However, this video material often emerges in a chaotic and rampant fashion owing to different desires, with several techniques, arranged by and operated by many persons—in a grey zone of few regulations or public data protection. This tendency is also supported by the variety of open (= threatening) and hidden (= uncertainty-producing) forms of video surveillance. From Haggerty and Ericsson's point of view, even counter-surveillance footage must be considered part of the infinite net of the rhizomatic surveillant assemblage. The normalisation of all those kinds of opto-electronic monitoring of demonstrations has to be added to the diverse situations of data registration, classification and control, which influence everyday life in the surveillance society<sup>19</sup> and which are the reasons for the "disappearance of disappearance" in modern societies (Haggerty and Ericsson 2000: 619). This

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<sup>18</sup> Thus, the authors argue, it is meaningless to criticise or reform this or that branch. It would not make a change in the general structure.

<sup>19</sup> The notion of the surveillance society does not suggest that the determinant (surveillance) alone represents the specific character of current society, as the notion of capitalism does. However, it does indicate that surveillance is a major constitutive aspect (compare Haggerty and Ericson 2000: 606).

concept, if taken into account, forces scholars to avoid singling out this technique or that practice and reminds us of the overall interconnectedness of surveillance structures.<sup>20</sup>

Unlike the power-analytical panopticism perspective, the idea of surveillant assemblages comprises all kinds of observations. This may mislead one into creating an idea of an overall randomness or a general contingency of surveillance, which is organized, network-like, in ties and edges but without centres (of power) and without differences in the strength and potentials of the various desires, e.g. in the state as well as in private “security producers”. In view of the importance of the expected disciplinary effects of the police’ video surveillance on demonstrations, this approach, though analytically productive, is also not fully sufficient.

### 5.3 Towards a “culture of control”

These various phenomena may be thought in a common framework. It is David Garland’s (2001) book *The Culture of Control* which allows us to understand culturally and discursively the rise of a new restrictive approach towards demonstrations which is indicated by the increasing use of video cameras.

Garland observed the emergence of a culture of crime<sup>21</sup> control in the US and Great Britain, examining laws, practices, and public discourse. This culture of control arose out of its predecessor societies. Their “penal-welfarism”, as Garland puts it, was characterized by the guiding idea of social integration. Punishment aimed at returning deviant (or: “lost”) subjects into accepted ways of bourgeois life. Causes for deviance were predominantly seen in disadvantageous social circumstances. This complex was largely restricted to an expert discourse and not an issue of election campaigns. Today, we live in a society where a view like “social problems have social causes” has become antiquated. Yet, the political system and the general public are strongly interested in deviance. In today’s “high-crime societies”, crime, dangers, annoyances and their (perceived) increase are most salient topics. But politically they are framed as management problems—a practical question of how to handle them. The debates in criminology comprise two main currents reflecting this situation: the “criminology of the alien other” and the “criminology of the self”.

The first one goes along with a strict classification of good and bad, victims and offenders. In this view, “bad” people are bad *per se* (by nature or for other

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<sup>20</sup> Related techniques include databases, travel bans, wiretapping, mobile phone tracking, searches of activist infrastructure e.g. in preliminary investigations, police spies, and many more.

<sup>21</sup> To use Garland’s ideas for our field of research, it is necessary to apply his analysis of societal ways to deal with crime to the general mode of perceiving and handling deviance and everything that challenges public order or good manners. In a restrictive and illiberal social environment like that, it is not too hard to perceive protest as such an unwanted or deviant form of behaviour (See Singelstein and Stolle 2006).

reasons) so society does not offer integration or therapy, but locks them up, punishing and sorting them out. Guantánamo, enemy criminal law and preventive detention are examples for that. Yet this logic can also be applied to police reactions to protest. There are obvious differences in the way police deal with different types of demonstrations (in all likelihood depending on the expected degree of political radicalism, or “extremism”).<sup>22</sup> So it has to be explored which good/bad stereotypes guide police decisions (cameras or not?) and if the demarcation between their good/bad distinctions moves. In such a framework one can also ask, if police cameras on demonstrations (like stationary CCTV) increase discrimination of other social sectors through the reproduction of the surveillants’ and the surveilling institutions’ stereotypes (e.g sexist or racist categories, cf. Norris and Armstrong 1999, Fay 1998).

The ‘criminology of the self’ takes quite a different perspective. It is based on strictly individualistic economic and neoliberal approaches, in which human behaviour results from a cost-benefit-calculation. According to this view, agency does not depend on people, their status, character or previous experience, but on situations: “Instead of addressing human beings and their moral attitudes or psychological dispositions, the new criminologies address the component parts of social systems and situations. They consider how different situations might be redesigned so as to give rise to fewer opportunities for crime (...)” (Garland 2001: 183). It is the situation which restricts cost and outcome, and so people should behave equally in the same situations. Thus, it is no longer a specific group of the population which is under suspicion of deviant behaviour. Everybody with the opportunity is a potential offender. This logic substantiates the necessity to control certain situations and within them all people equally. This idea, too, underlies the more and more preventive approach towards video surveillance of demonstrations, especially in the form of overview shootings of all demonstrators, where no illegal action has taken place. In the economic logic of human behaviour, video cameras will increase the cost of unwanted behaviour.

The phenomenon under study shows the relevance of both criminologies—the mixture of sorting out the bad and managing the rest. These two views are not antagonists in the debates—on the contrary they are complementary. The crucial point bringing them together in the culture of control (which includes the regulations and practices as well as their cultural legitimacy) is that the demonstrations affected seem to be perceived primarily as spaces of potential deviance and by that as a security problem to be solved or managed.

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<sup>22</sup> See Willems et al. (1988), Winter (1998), Fernandez (2008: 8), and Bunyan (without date). In the case of the already mentioned 2009 “Freedom not Fear” demonstration for example, police justified video monitoring with the participation of “radical groupings” like the “black bloc.” See <http://www.daten-speicherung.de/index.php/polizei-diesmal-kein-anlassloses-filmen-auf-demonstration-freiheit-statt-angst-geplant/> [15/11/2010].



**Figure 6:** Hamburg police camera van, 2010 (private photo)

## **6. Conclusion and additional perspectives**

Both approaches to delinquency, deviance and their expansion to unconventional modes of political expression are in opposition to a democratic society. The development of video surveillance of demonstrations described here is thus of interest for research into democracy, public debates and political participation. The problem touched on is often labelled as “disenchantment with politics”. It is likely to assume a relation between disenchantment with politics and video surveillance of demonstrations, because video monitoring might (rightly) be understood as a classification of a (potential) “deviant subject”. This

experience of criminalisation and exclusion will not correlate positively with the belief of having a potential to act politically. It implies aspects of socio-political disintegration and alienation, which might especially affect those (few) people, who still have an interest in politics and engagement (Schneekloth 2006: 106).

As we already stated, there is no empirical research focusing directly on video surveillance of protest, however, other empirical studies already carried out can be enlightening, when focused on comparable situations and problems. For instance, Wells and Wills (2009) demonstrate that speed limit enforcement cameras evoke contention because of their producing a “data double” (cf. Haggerty and Ericson 2000), which in its characterising of those affected as deviants is in harsh conflict with their self-perception. In accordance with surveys related to CCTV in other fields (Hölscher 2003), they concluded that the degree of personal concern and proximity to the surveillance measure increases the degree of refusing it. This suggests a research perspective beyond the realm of discipline and security, focusing on the perceptions of demonstrators, their personal feelings under surveillance and the consequences they draw from that. This also points to the question of whether surveillance produces the obverse effect and even incites frustration and contributes to spirals of confrontation. Several other questions are possible: Is there still a function creep of stationary CCTV for political purposes? How does videotaping demonstrations influence the police and their behaviour? Questions like these, arising from research on CCTV, have to be applied to the field of surveillance of demonstrations as well.

Still, the crucial question remains whether videotaping demonstrations, in the context of generally increasing degrees of surveillance, influences the process of forming the political will. This includes focusing on individual political participation as well as on the general legitimacy of demonstrations, protest and social critique. Considering that successful revolutions have taken place despite thorough surveillance and repression, the symbolic aspect of video cameras (singling out the “bad” as a security “threat” and thus delegitimising their demands) seem to be the main problem. It makes one feel pessimistic, considering that the measures evaluated also often take place in grey areas of the law and are spreading fiercely, while administrative competencies are widened and there is a technical arms build-up of open and concealed surveillance. This development signals the encroachment of authoritarian concepts of the state and is a potentially dangerous attack on political participation from below.

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