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**BALANCING SURVEILLANCE
BETWEEN NEEDS OF
PRIVACY AND SECURITY:
CCTV IN JAPAN AND ENGLAND**

Jonathan Oram

Nagoya University
Center for Asian Legal Exchange

Master's Thesis Paper:

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Disclaimer: the opinions expressed in this thesis are the author's own and do not represent those of the Metropolitan Police Service.

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Abstract

This thesis looks at the current state of privacy and surveillance in Japan and England and asks if Closed Circuit Television (CCTV) is being used appropriately and effectively. The thesis considers cultural, societal and historical factors in Japan and England that have influenced public perception, legislation and practice concerning privacy and surveillance. Research for this study includes interviews with Japanese and English police and archival material in English and Japanese. The research indicates that CCTV is effective when used in conjunction with other measures and when there is a clear purpose but does not achieve the aim of preventing crime. The thesis makes recommendations to improve surveillance practice while protecting the balance between security and privacy.

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Chapter 1: Introduction

In recent years, the UK has seen an increase in use of surveillance through databases and public space CCTV leading to a reduction in people's privacy.¹ Function creep of existing surveillance tools has further raised concerns about the effectiveness of current legislation in protecting citizen's civil rights.² A new coalition government came into power with a mandate to give citizens back freedoms and civil liberties lost under the previous government.³ However, intrusive surveillance continues and in some cases is being expanded under the new government.⁴

In Japan, increased surveillance in public spaces by both local volunteer groups and CCTV, combined with fears of increasing crime and terrorism, has led to concerns that everyone in Japan is now viewed as a potential criminal. Japan has one of the smallest per capita police services in the world, but one of the lowest numbers of crimes per police officer.⁵ Japan's traditional focus on crimes instead of criminals,⁶ was aimed at reducing opportunities for people to commit crime and has resulted in mass surveillance from the police, businesses, and most worryingly, local citizen groups. Recently citizens have begun to lose freedom of action in public due to public space design, volunteer crime patrols, security guards, and CCTV. Yuki Furuta said that Japan is not a surveillance society, but a 'managed society' which silently restricts people's actions and choices.⁷

Bruce Phillips asserted that 'privacy' is not simply an abstract notion, and privacy intrusions have 'concrete, real-world consequences.'⁸ On the other hand, Amitai Etzioni said that 'the common good is being systematically neglected out of excessive deference to

¹ Wood and Ball, "A report on the surveillance society."

² McCahill, *The Surveillance Web*, 187 (noting in 2002 that although CCTV systems were ostensibly there for the purpose of prevention and detection of crime, their use often mutated and became a tool for management and other unforeseen purposes).

³ "Clegg promises 'power revolution'." BBC online, 19 May 2010

⁴ "'Surveillance state' fear as government revives tracking plan." The Guardian online, 21 October 2010.

⁵ Miyazawa, "Learning lessons from the Japanese experience: A challenge for Japanese criminologists," 114.

⁶ Kusuda-Smick, *Crime Prevention and Control in the United States and Japan*, 4-7; Also, see "Regular Opinion Poll." 9 January 2008. (asking respondents if they felt punishment in Japan was severe, appropriate or light? 1% said severe, 30% said appropriate, and 59% said light. see: <http://www.mansfieldfdn.org/polls/2008/poll-08-31.htm>).

⁷ Furuta, "New Trends in Crime Control," 61.

⁸ Phillips, "Privacy in a 'surveillance society'."

privacy.’⁹ Is a loss of privacy through surveillance something that people should be concerned about, or does it result in an increase in safety and security that justifies the reduction in freedom? Concerns with CCTV and privacy invasions raise questions over practical implementation of surveillance and legal protection, and also the extent to which citizens should have a right to privacy.

1.1 Purpose and Methodology

This paper answers three questions. Does CCTV invade our privacy, what are the differences between Japan and England that impact upon CCTV use, and how should CCTV be used? In order to answer these questions, the author carried out both field work and archival research. In England, the author interviewed high level police officers who have had a direct impact on CCTV use and policy. Observations of CCTV use and operation were carried out at the Central Control Room and Empress State Building in London during the Notting Hill Carnival 2010, and the author also spent three days on a certified CCTV operator training course in London. In Japan, the author met police officers in charge of national CCTV implementation for the National Police Agency, visited a pilot scheme in Kanagawa Prefecture, gained access to the Tokyo Metropolitan Police CCTV control room, had meetings with the manager of Nagoya Police’s CCTV scheme, visited one shopping mall in Nagoya carrying out interviews with the staff and manager of the CCTV system, and interviewed the head of a *Chonakai* (Neighbourhood Association). Archival research included English and Japanese material on privacy, surveillance, CCTV, legislation, court cases, and contemporary opinions of scholars and activists. A limited number of interviews were carried out with Japanese, English, and international students in early stages of the research to gain a personal perspective on how surveillance was viewed by real people from different parts of the world. Because different research was carried out in England and Japan, the thesis’s conclusions are more limited than if the research was identical.

1.2 Main Findings

This thesis shows that common perceptions about a ‘unique’ Japanese culture being responsible for Japan’s low crime rates were wrong. However certain characteristics of Japanese society have led to the proliferation of CCTV and local volunteer groups resulting in

⁹ Etzioni also claimed that “immoderate champions of privacy have not merely engaged in rhetorical excesses but that these excesses have had significant and detrimental effects.” Etzioni, *The Limits of Privacy*, 4,7.

a vast surveillance web covering most aspects of public life. The research suggests that neither the English nor the Japanese like being under surveillance, but at the same time people in both nations view CCTV as a benevolent crime prevention measure. In Japan, this contradiction may be due to CCTV's promotion as 'crime prevention cameras', while in England this may be due to the generally positive media coverage and government and local councils' mass implementation of CCTV.

Furthermore, this thesis shows that although CCTV alone does not amount to an invasion of privacy, it has the potential to invade people's privacy in public, and regularly does in practice. This thesis suggests that while CCTV can play a useful role in crime detection, it is rarely effective in reducing or preventing crime so it should no longer be seen or promoted for crime prevention, but concentrated on use as a criminal investigation tool. The discussion on CCTV needs to move away from questioning its effectiveness at preventing crime and ask how effective it is at investigating crimes, and apprehending and convicting criminals.

The thesis recommends reining in the use of CCTV and other surveillance methods in both Japan and the United Kingdom. Some ways to gain control of CCTV in Japan would be to adopt an independent Information Commissioner's Office (ICO) and increase the period of retention for recorded images. In the UK, the power of the ICO should be increased and CCTV operator training improved.

This thesis does not make substantial suggestions for new legislation for two reasons: firstly, there is a concern that both Japan and England are turning into managed societies where new laws regulating privacy invasion may have the opposite effect and actually legalise the infringement of privacy; secondly, the argument is put forward that the courts are the best place to deal with the regulation of CCTV and protection of privacy. This would avoid rash political legislation regulating CCTV based on its use as a crime prevention tool instead of a criminal investigation tool.

1.3 Overview

The thesis is divided into five chapters with chapter 1 representing the introduction and general background. Chapter 2 describes the crime situation in Japan and England and the influence this may have on CCTV. The second chapter further discusses in turn CCTV, privacy, and surveillance, at each stage covering Japan and England separately then drawing comparisons and conclusions relevant to CCTV use and implementation. Chapter 3 looks at legislation relevant to privacy and CCTV and compares various view points on its suitability

in the present day. This chapter also includes a number of relevant court cases to show how the courts are interpreting legislation. Chapter 4 first analyses previous surveys and questionnaires in both Japan and England to get a picture of both how people on the ground view CCTV and privacy, and how it is actually implemented in practice. Then results of interviews with police in Japan and England are laid out and discussed. Finally, Chapter 5 makes suggestions for changes to current use and recommends further research.

Chapter 2: Literature Review

2.1 Crime Levels

England

Crime Figures

There are two ways to measure crime rates in the UK: the British Crime Survey (BCS) and police recorded crime.¹⁰ The BCS shows that, since its figures began in 1981, there was a steady rise in crimes until the 1990s, peaking in 1995, and then decreasing through to 2007 when the lowest ever figures were recorded. BCS crime figures in 2010 were less than half of the 1995 figure.¹¹ Despite the decrease, BCS figures showed there were still approximately 9.6 million crimes against household residents in England and Wales in 2008.¹²

Police recorded figures showed an increase in crime from 1981 until the early 1990s, then a slight decrease to 1999 when the counting rules changed, resulting in a slight increase to 2002. In 2002 the government brought in new crime recording rules, further increasing the figures, but since then there has been a steady decrease from a peak of 5.6 million crimes in 2004 to 4.3 million in 2010.¹³ Police recorded data for homicide (615) in 2008 were the lowest in over 20 years. Firearms offences decreased by 22% from 2003 levels. The risk of being a victim of crime in 2008 was 21.5%, down from 23% in 2009 and 40% in 1995. 3% of adults had been the victim of a violent crime in 2010.¹⁴ The 2009 report showed that England and Wales had a homicide rate of 1.4 per 100,000 and property related crime represented 71% of police recorded crime.¹⁵ Police recorded crime showed a decrease in all the main crime categories in from 2009 to 2010, except for sexual offences. In 2010 there were 871,700 crimes of violence against the person; 54,500 sexual assaults; 75,100 robberies; 540,700

¹⁰ Police recorded crime does not cover some crimes included by the BCS, such as victimless crimes as drugs offences. Furthermore, due both police recording techniques changing periodically and changes in levels of reporting to police, it is sometimes not possible to do a direct comparison with previous years' rates. The BCS on the other hand carries out face-to-face interviews with around 45,000 people over the age of 16 in England and Wales and so includes crimes not recorded to the police. The BCS is seen as a more reliable indicator of the true level of crime and the general trend, but both sets of figures are required to get a clear picture of crime levels in the UK.

¹¹ Home Office, *Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded crime (Second Edition)*, 2 (BCS statistics results are based on interviews between April 2009 and March 2010; police recorded statistics are for the financial year 2009-2010, running from April 09 to March 10).

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid., 17.

¹⁵ Home Office, *Crime in England and Wales 2008/09: Findings from the British Crime Survey and police recorded crime*, 16.

burglaries; 92,300 thefts from the person; 152,300 fraud/forgery; 806,700 criminal damage; and 235,000 drugs offences. The total recorded crime was 4,338,600 crimes.¹⁶

Theories of crime

Under the classical theory, individuals with free will make rational choices and commit crime when the potential gain outweighs the potential cost. Whether or not to commit a crime can be decided by looking at the probability of being caught, the potential punishment, and the speed at which one is brought to justice. In order to make the costs outweigh the gains, the justice system must increase the certainty of being caught, impose a severe but fitting punishment, and bring prosecutions promptly.¹⁷

Positivism, on the other hand, challenges the idea of the criminal's behaviour as being rational and suggests that criminals are influenced by factors outside their own control. The theory suggests focusing on understanding and rehabilitating the offender.¹⁸ This theory can be seen in practice in the work of the probation service and restorative justice.¹⁹

The 'routine activities theory' suggests that crime occurs when there are motivated offenders, suitable targets, and a lack of capable guardians.²⁰ This theory points to societal changes since WWII leading to people being away from their homes more often and so unable to protect their belongings, resulting in increasing the risk of becoming targets of crime.²¹

In 1999, Simon Field looked at economic factors to explain crime rates and showed that property crime was closely related to economic growth. He suggested that when personal consumption grows quickly property crime tends to slow or reverse as people are less likely to resort to criminality.²² He also showed that in the long run this provided greater

¹⁶ Home Office, *Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded crime (Second Edition)*, 18.

¹⁷ Harries, "Modelling and predicting recorded property crime trends in England and Wales - a retrospective," 558-559; Joyce, *Criminal justice*, 1-4.

¹⁸ Joyce, *Criminal justice*, 5-6.

¹⁹ Mantle, Fox, and Dhimi, "Restorative Justice and Three Individual Theories of Crime," 11.

²⁰ For the effect of CCTV on guardianship see: Surette, "The thinking eye," 157 (noting that CCTV may reduce guardianship by local people as they feel the government is watching out for them. Conversely, CCTV may increase the guardianship of an area by the police and therefore increase security).

²¹ Harries, "Modelling and predicting recorded property crime trends in England and Wales - a retrospective," 559.

²² Field, *Trends in Crime Revisited*.

opportunities for theft and burglary resulting in a fluctuating equilibrium. Field explained the reduction in crime from the early 1990s was due to three factors: firstly, the recession in the early 1990s initially caused a rapid increase in the rate of property crime, but due to an equilibrium effect, this gradually began to diminish; secondly, the recession reduced consumer spending which reduced the 'stock of consumer goods' thereby reducing the opportunities for theft and burglary; and thirdly, the number of young males in the population had been steadily decreasing since the early 1980s. He found that neither unemployment nor prison population size showed any positive correlation, but other factors that may influence crime such as criminal justice policy, crime prevention measures, and parenting were difficult to analyse.

Chris Hale agreed in general with Field's results regarding the impact of consumption on crime, but found that short term fluctuations were also influenced by police numbers and conviction rates.²³ Hale further discovered that while unemployment did not explain long term trends, it had a significant impact on short term fluctuations of crime, specifically with burglary and theft but not with robbery, and that the impact was asymmetric.²⁴ That is, the increase in crime due to an increase in unemployment was larger than the decrease in crime due to a decrease in unemployment. Hale suggested that this might be due to criminal habits remaining when the economy grows, and put to better use due to the increase in personal consumables.²⁵ Field said that economic growth when invested in public improvements often led to a reduction in crime, but when it resulted in an increase in consumption of 'stealable' goods, this led to an increase in crime.²⁶ Hale reasoned that it is necessary to fund crime prevention strategies at all levels due to the increase in potential targets as economic growth continues.²⁷

Michael Gottfredson and Travis Hirschi posited, in 1990, that culture was not a deciding factor in crime rates, but rather short-sighted pursuit of self-interest, the absence of self-control, and lack of concern for the long term consequences of one's actions.²⁸ They further said that self-control arises from socialization, current circumstances, and family

²³ Hale, "Crime and the Business Cycle in Post-War Britain Revisited," 696.

²⁴ See: *Ibid.*, 694; However, see: Han, "Economic Analyses of Crime in England and Wales," 694 (showing a negative correlation between employment and murder rate and suggesting this may be due to a reduction in interaction between would be offenders and victims).

²⁵ Hale, "Crime and the Business Cycle in Post-War Britain Revisited," 694.

²⁶ Field, *Trends in Crime Revisited*, 16.

²⁷ Hale, "Crime and the Business Cycle in Post-War Britain Revisited," 696.

²⁸ *Ibid.*, 178.

upbringing.

Prior to 1979 there was a postwar consensus between the main UK political parties about crime control. However during the 1979 election, Margret Thatcher promoted the Conservative Party as the party that would be tough on crime. When the Conservatives came to power that year, the groups on the periphery of society found themselves the targets of crime control. The government no longer attempted to control crime through reforming social change but instead focused on the control and punishment of offenders. These controls included bringing prosecutions at an earlier stage in a criminal's 'career', increasing the use of imprisonment, introducing legislative sanction for social misbehaviour, and linking crime with moral values resulting in social exclusion of the vulnerable and people not conforming with society's expectations.²⁹

During the 1980s, criminology began to shift emphasis from trying to understand why criminals commit crime to trying to predict future criminal patterns and finding strategies to reduce their occurrence. The shift to trying to prevent crime before it occurred led to an uptake of crime prevention schemes and the introduction of 'Neighbourhood Watch'³⁰, CCTV and increased cooperation between different agencies.³¹

The Labour government in 1997 took a 'zero-tolerance' approach to crime and attempted to tackle the symptoms as opposed to the causes.³² However, even though the zero-tolerance approach was picked up by the media, this approach has been shown to be highly questionable as a method of reducing crime.³³ Labour policy changed in 1998 and problem-oriented and intelligence-led policing was brought in to add an element of crime prevention. Furthermore, neighbourhood and reassurance policing began to be promoted by the government.³⁴ The media continued to play a role in presenting a misleading image of

²⁹ Joyce, *Criminal justice*, 40-43.

³⁰ 'Neighbourhood Watch' is a voluntary organisation that aims at making communities safer. The first scheme in the UK was formed in 1982. There are currently around 10 million members. For the official website: <http://www.neighbourhoodwatch.net/>. The Metropolitan Police state on their website that members of the scheme are 'absolutely not . . . expected to patrol the streets': <http://www.met.police.uk/crimeprevention/neighbor.htm>.

³¹ Joyce, *Criminal justice*, 44-45.

³² Minton, *Ground Control: Fear and happiness in the twenty-first century city*, 145-148 (noting that the shadow home secretary in 1995 Jack Straw {soon to be a prominent government minister in the Labour Party} visited New York to visit the mayor Rudy Giuliani who was implementing a "zero-tolerance" approach to crime. Straw returned to the UK and proclaimed that if Labour won the next election the Labour Party would also adopt this strategy.).

³³ Punch, *Zero Tolerance Policing*.

³⁴ Joyce, *Criminal justice*, 134-141.

rising crime that fitted in with the government's tendency to increase crime fighting measures.³⁵

In 2010 a coalition government came into power claiming that a radical reform of the criminal justice system was required, reducing bureaucracy and increasing police accountability.³⁶ Since coming into power, the government have announced large budget cuts that will reduce financing for the police by 20% by 2014-15. Counter-terrorism policing will be prioritised and a new national crime agency will be formed to provide more coordinated policing throughout the UK.³⁷ The coalition aims to keep frontline services visible, which means that there may be significant cuts in funding for investigating crime.³⁸ It is unclear what effect the new government's policies will have on crime; however, with unemployment set to rise in the short term,³⁹ and a decrease in police funding, there may be a noticeable rise in theft related crime over the next few years.

Threat of terrorism

The UK has seen terrorism related to the IRA's struggle over Northern Ireland since the 1970s. However the recent wave of terrorism, including the London bombings on 7 July 2005 (7-7), and the attempted bombings two weeks later, is significantly different to the IRA's bombing campaigns. Despite the IRA's decision to end their armed struggle in 2005,⁴⁰ and no successful major attacks in England since 2005, there remains concern that there is still a substantial danger from terrorism from both dissident IRA terrorists and Al Qaeda inspired terrorists.⁴¹

³⁵ Minton, *Ground Control: Fear and happiness in the twenty-first century city*, 136-139 (referring to a complaint about the BBC headlines between 2004-2007 "cherry-picking rises in crime". The complaint was upheld by the BBC's Editorial Complaints Unit. See: <http://www.mediahell.org/pressrelease240407.htm>).

³⁶ HM Government, *The Coalition: our programme for government*, 13-14.

³⁷ HM Treasury, *HM Spending Review*, 54-55.

³⁸ "Spending Review 2010: key points at a glance." The Guardian online, 20 October 2010

³⁹ Philpott, *Does Britain face a prolonged jobs deficit?*, 4 (disputing government figures and forecasting unemployment rates increasing from 8.1% in 2010 to 9.5% in 2012); *Economic and fiscal outlook*, 60-63 (noting an improved forecast from its June 2010 report and expecting a peak in unemployment in mid 2011 and then a steady decrease through 2015).

⁴⁰ "IRA says armed campaign is over." BBC online, 28 July 2005.

⁴¹ "MI5 warns Britain facing double terrorism threat." The Guardian online, 24 September 2010. (noting that as on December 2010, the threat of an international terrorist attack in the UK was 'severe', and the risk of a terrorist attack related to Northern Ireland was 'severe' in Northern Ireland and 'substantial' in Great Britain.; There are five threat levels: critical, severe, substantial, moderate, and low. See:

In 2006, William Shughart analysed the history of terrorism and concluded that the decisions at the end of the First World War, specifically the ‘un-kept promises’ by the superpowers, including the UK, were largely responsible for terrorism since 1945.⁴² He noted that while there have been fewer incidents over the past 20 years incidents had become more lethal, mainly due to the strategy of ‘Islamist terrorists’ to inflict high casualties.⁴³ Dealing with the upsurge in lethality leads to difficulties for the government. If the government imposes measures that are either draconian, or tends to target certain members of the population, the public will view the government as repressive and give weight to terrorists’ claims that the government is oppressive.⁴⁴ However, as the Director General of the Security Service (MI5), Eliza Manningham-Buller, explained, in November 2006, the security services must not be complacent. She said that there were over 200 groups consisting of 1,600 identified individuals that MI5 were aware of who were actively engaged in plotting terrorist attacks in the UK. Furthermore, the UK security services had, between July 2005 and November 2006, prevented five major attacks in the UK.⁴⁵ These conspiracies against the UK indicate that the terrorist threat remains high.

Gordon Woo said, in 2002, that Britain was a popular location for ‘Islamic militants’ due to liberal asylum and extradition laws and the widespread protection of civil liberties.⁴⁶ Recent years had seen a tightening of these laws and thereby a reduction in the number of terrorist attacks; however, Woo suggested that this was due to terrorists lying low until security measures eased, ‘civil liberties lawyers intervene’, and public awareness declines.⁴⁷ Due to the asymmetric capabilities, the ‘optimal strategy’ for terrorists is to wait for a weakness in the state’s defence to appear, randomise targets, undertake comprehensive surveillance, and avoid aiming at high security targets.⁴⁸

Richard Jackson claimed, in 2007, that the discourse to date on ‘Islamic terrorism’ was

<http://www.homeoffice.gov.uk/counter-terrorism/current-threat-level/> ; However, there were also claims that the threat is lower than is commonly thought. See: “The low risk of terrorism: We’re safer than we think.” The Economist online, 24 November 2010. and “Somalia tops terrorism risk list, Yemen danger up.” Reuters online, 15 November 2010. (stating that the UK was the 46th country most at risk from terrorism, France was the 44th, the US 33rd, Russia 10th, Canada 67th, Germany 70th).

⁴² Shughart, “An analytical history of terrorism, 1945–2000,” 14.

⁴³ Ibid., 30.

⁴⁴ Ibid., 12.

⁴⁵ Manningham-Buller, “The new protective state,” 67-68.

⁴⁶ Woo, “Quantitative Terrorism Risk Assessment,” 9.

⁴⁷ Ibid., 10.

⁴⁸ Ibid., 10-12.

neither new, nor helpful.⁴⁹ He suggested that the common perception that ‘Islamist terrorists’ were fanatical, driven by religion, and irrational, led to the conclusion that they could not be negotiated with and therefore the only possible measures were coercive, repressive, and punitive.⁵⁰ Furthermore, the assumption that home-grown terrorists were radicalised due to a lack of integration, alienation, and the influence of ‘Jihadists’ led to Muslim communities being seen as potential terrorist breeding grounds,⁵¹ increasing the chance of these communities coming under surveillance. Jackson suggests that the ‘Islamic terrorism’ discourse allowed the government to increase surveillance and police powers in the name of national security. However, he also gave credence to studies that claimed the threat of religious based terrorism is ‘overexaggerated’, and noted a study that showed 95% of suicide attacks were related to a secular and strategic goal of ending foreign occupation, not due to religious motivations.⁵² Jackson concluded that ‘Western counter-terrorism policies’ have led to political grievances that provided justification for further terrorist attacks.⁵³ Jeremie Wattellier similarly asserted that ‘harsh procedure-stripping rules’, employed to date throughout European legal history, do not stop terrorism, but instead just reduce civil liberties and reduce the government’s legitimacy.⁵⁴

However, as Peter Hennessy noted in 2007, terrorists ‘are determined to conceal . . . what they intend to do.’,⁵⁵ therefore countering terrorism has become intelligence-based with the difficult task of discovering and disrupting well-hidden terrorist cells.⁵⁶ With the Olympics to be held in London in 2012, the risk of terrorism remains high within the UK, and especially in the capital.

Japan

Crime Figures

The NPA’s report on crime figures show crime decreasing yearly since peaking in 2004 with

⁴⁹ Jackson, “Constructing Enemies,” 397,413.

⁵⁰ Ibid., 409, 421.

⁵¹ Ibid., 411.

⁵² Ibid., 416-421.

⁵³ Ibid., 424.

⁵⁴ Wattellier, “Comparative Legal Responses to Terrorism: Lessons from Europe,” 1,7.

⁵⁵ Manningham-Buller, “The new protective state,” 70.

⁵⁶ Hennessy, “The new protective state,” 15.

2.2 million crimes. In 2009 there were approximately 1.3 million crimes in Japan.⁵⁷ The police recorded figures for 2009 in England and Wales showed a decrease between this period as well; however, there were significantly more crimes than in Japan. The population of England and Wales is 54 million people compared to Japan's 127.5 million, which equates to approximately one crime per hundred people in Japan compared with about one crime per 9 people in England and Wales in 2008/09.

Japan as a nation with low-crime rates

Until recent years, people generally believed that Japan was a safe country; however, in current times, both the media and the general public think Japan is becoming more dangerous.⁵⁸ Other observers believe that Japan is still a safe, low-crime country and the scaremongers exaggerate Japan's problems for their own purposes.⁵⁹ National media coverage of crime has perpetuated the perception that Japan is no longer safe, regardless of crime statistics.⁶⁰ In 2009 Hiroshi Nishihara opined that citizens call for robust action when they believe that crime is increasing and safety decreasing.⁶¹ However, because steps taken by the government have usually dealt with perception of crime and not the reality, they have had little effect, leading to calls for stronger measures. According to Otani (2006), specific, gruesome, but unrepresentative incidents have had policy changing impacts on society and led to further legislation.⁶² In 2006, Won-Kyu Park explained that the overall crime rate in Japan had been gradually increasing since 1974, reaching its highest rate since the end of WWII in 2001.⁶³ Other scholars have shown that since the 1990s there was a steady downward trend in

⁵⁷ National Police Agency, *2009 Crime Statistics*, 12.

⁵⁸ Hamai and Ellis, "Crime and criminal justice in modern Japan: From re-integrative shaming to popular punitivism" (noting how perception of decreasing safety by the general public, and focusing on crime by the media has led to stricter public views on dealing with offenders).

⁵⁹ Murakami Wood, Lyon, and Abe, "Surveillance in Urban Japan," 554 (asserting the media and political right focus on small short term rises in crime without putting the rise in context with "massive historical decline").

⁶⁰ On 10 June 2008 an Asahi Shimbun opinion poll found that overall 44.9% of people were uneasy about crime and safety in Japan, 39.2% of men, and 50.5% of women. Another survey by Yomiuri Shimbun in March 2008 found that 48% of respondents thought public safety has gotten worse, and 37.8% 'relatively worse' in recent years. See www.mansfieldfdn.org/polls/2008/poll-08-6.htm

⁶¹ Nishihara, *Surveillance Cameras and Privacy*, 29.

⁶² Otani, *What are Surveillance Cameras Looking at?*, 137; "Tracking plan invites humiliation." Japan Times online, 27 March 2005; "Paedophile to hang for killing Nara girl." Japan Times online, 27 September 2006.

⁶³ Park, *Trends in crime rates in postwar Japan: a structural perspective*, v.

crime.⁶⁴ In fact, Park contended that the increase was due to theft related offences, and that the rates for other crimes actually decreased.⁶⁵ Other countries have looked to Japan's low crime rate to see if crime fighting methods can be transplanted; however, even Japanese criminologists were uncertain why Japan's crime rate was so low.⁶⁶ There had been scant qualitative or empirical research looking at the causes of Japan's low crime rate; instead the research had been general, speculative, and anecdotal.⁶⁷

Until the late 1920s, it was commonly considered that Japan had low crime due to economic, demographic, and administrative factors. Only recently have scholars pointed out culture as a determining factor.⁶⁸ Raymond Lamont-Brown asserted in 1995 that due to Japan being predominantly middleclass with few social extremes, family units taking collective responsibility, and a competitive education system, Japan remained one of the safest places to live.⁶⁹ Peter Preston (2000) found that the low rate was due to an efficient neighbourhood-based police, prosecution, and judiciary; a culture of conformity; and soft authoritarianism infused in society.⁷⁰ A study by Koji Yamaura in 1982 showed that income inequality, tertiary industry, and fluctuating population increased the crime rate, while expenditures on police equipment and operations leads to a decrease in crime. However neither the rate of total crimes to solved crimes nor population concentration showed any significant effects.⁷¹ In 2000, Park looked at 52 studies concerning the low crime rate in Japan and found that the most often mentioned factors were cultural, legal or administrative, demographic or geographic, and socio-economic.⁷²

The explanation of cultural influences for a low rate of crime flourished in the late 1970s. Academicians identified a number of factors indicative of Japanese society and

⁶⁴ Nishihara, *Surveillance Cameras and Privacy*, 22.

⁶⁵ For a description of misleading crime figures for child abuse in Japan, see: Goodman, *Family and Social Policy in Japan*, 133-151.

⁶⁶ Miyazawa, "Learning lessons from the Japanese experience: A challenge for Japanese criminologists," 105; also see: Gottfredson and Hirschi, *A General Theory of Crime*, 169 (noting that differences in institutions, laws, and other factors mean that it is not possible to know whether differences in crime between societies are due to causal factors or political or cultural factors).

⁶⁷ Park, *Trends in crime rates in postwar Japan: a structural perspective*, 1.

⁶⁸ *Ibid.*, 62.

⁶⁹ Lamont-Brown, "Aspects of Modern Policing in Japan," 133.

⁷⁰ Preston, *Understanding Modern Japan*, 126.

⁷¹ Miyazawa, "Learning lessons from the Japanese experience: A challenge for Japanese criminologists," 114.

⁷² Park, *Trends in crime rates in postwar Japan: a structural perspective*, 6.

national character, including group orientation, law abidingness, vertical society, resilience of informal social control, social cohesion,⁷³ shame culture,⁷⁴ dependency,⁷⁵ and the willingness to work hard.⁷⁶ The theory of culture is also known as *nihonjin-ron* (theory of the Japanese),⁷⁷ and is still used today to assert that traditional social values and informal social control unique to Japan are the causes of the low and declining rate of crime. However, the concepts in *nihonjin-ron* are conceptually ambiguous with no clear definitions as the theory relies on anecdotes and similar works without drawing on empirical data.⁷⁸

Hiroki Noma argued in 2009 that research and publications about *nihonjin-ron* only looked at differences between Japan and other countries and not similarities, leading to Japanese and international scholars seeing Japan as unique.⁷⁹ Even as recently as 2005, Aso Taro, then Minister for Internal Affairs and Communications, said: ‘Japan, a country with one culture, one civilization, one race, one language, is a country like no other.’⁸⁰ This myth of ‘uniqueness’ led to the belief that only the Japanese could understand Japanese society,⁸¹ and

⁷³ Ibid., 10 (explaining that social cohesion within society was seen as coming from the homogeneousness of Japanese society, leading to a lower rate of crime resulting from either racial or social tensions due to a clash of cultures. This lack of heterogeneity was seen as an advantage in crime prevention in Japan.)

⁷⁴ Ibid., 8 (noting that shame is often seen as the dominant emotion in Japan which arises from constant introspection of one’s own thoughts and actions in relation to one’s peers).

⁷⁵ Takeo Doi explains that the Japanese word “amae”, roughly translated as “dependence” but what Doi defines as “passive love”, is central to Japanese behaviour. He claims that there is no equivalent term in English and concludes that “if, then, there is nothing corresponding to it in the languages of the West, one must conclude that there is an obvious difference between the Westerner and the Japanese in their views of the world and their apprehension of reality.” Doi, *The anatomy of dependence*, 21,67.

⁷⁶ Park, *Trends in crime rates in postwar Japan: a structural perspective*, 7.

⁷⁷ See: Marfording, “Cultural Relativism and the Construction of Culture.”

⁷⁸ Park, *Trends in crime rates in postwar Japan: a structural perspective*, 46-49 (asserting that while *nihonjin-ron* exaggerated differences between Japan and other countries, its detractors often overemphasise diversity within Japan, thus the reality was actually somewhere in between); Burgess, “The ‘Illusion’ of Homogeneous Japan and National Character: Discourse as a Tool to Transcend the ‘Myth’ vs. ‘Reality’ Binary” (asserting that while *nihonjin-ron* exaggerated differences between Japan and other countries, its detractors often overemphasised diversity within Japan, thus the reality was actually somewhere in between).

⁷⁹ Noma, “How unique is Japanese culture? A critical review of the discourse in intercultural communication literature.”

⁸⁰ Burgess, “The ‘Illusion’ of Homogeneous Japan and National Character: Discourse as a Tool to Transcend the ‘Myth’ vs. ‘Reality’ Binary.”

⁸¹ Doi also implied that non-Japanese are unable to understand the Japanese: “if there was anything unique about the Japanese psychology it must be closely related with the uniqueness of the Japanese language The typical psychology of a given nation can be learned only through familiarity with its native language. The language comprises everything which is intrinsic to the soul of a nation.” Doi, *The anatomy of dependence*, 14-15.

resulted in discouraging foreigners from scientifically examining Japan's control of crime.⁸²

Park concluded that the culturalist theory did not explain the significant changes in crime rates since the end of WWII. If culture was the determining factor, crime rates should have been relatively constant over time.⁸³ Furthermore, Sugimoto showed that the Japanese sense of 'middleclassness' was neither unique nor distinctive. Sugimoto found that other countries had a higher rate of 'middleclassness' than Japan, including Australia, Canada, France, Germany, Italy, Singapore, and the USA.⁸⁴ Park claimed that the Japanese were no more group oriented, consensual, or harmonious than other cultures.⁸⁵ He asserted that the cultural theory was a myth that was advanced by economic and political elites in Japan to further their own interests, and was both misleading and unhelpful in explaining crime rates and trends in post Second World War Japan.⁸⁶

A critical economic theory of crime was seen by Park as the most important factor in explaining Japan's postwar crime rates and patterns.⁸⁷ Thus, low crime rates resulted from low unemployment rates, a high general educational level, and relative economic equality, combined with general economic affluence, and low military spending.⁸⁸ The social benefits that arose from the rapid postwar growth greatly increased the standard of living for most Japanese people, leading to legitimate employment and reducing the need to resort to crime to make money.⁸⁹ Further evidence for the impact of economic factors can be seen by the rise in crime rates from the 1970s, showing how Japan appeared to be following the earlier trends of other advanced countries.⁹⁰

The 'deterrence and social control' theory explained that the effective functioning of informal and formal social control in Japan was responsible for the low level of crime. The informal social controls included the family, school, and structure of the business environment. The formal controls included an effective, efficient and fair criminal justice system⁹¹ with

⁸² Park, *Trends in crime rates in postwar Japan: a structural perspective*, 50.

⁸³ *Ibid.*, 1-2, 47-48.

⁸⁴ Sugimoto, *An Introduction to Japanese Society*, 37.

⁸⁵ Park, *Trends in crime rates in postwar Japan: a structural perspective*, 46-47.

⁸⁶ *Ibid.*, 49.

⁸⁷ *Ibid.*, 54.

⁸⁸ *Ibid.*, 10-12.

⁸⁹ *Ibid.*, 52-53.

⁹⁰ *Ibid.*, 56.

⁹¹ Utsuro, "Does crime pay in Japan?" (explaining that there was a strong probability of a criminal sanction

strict control on guns and drugs. Moreover, formal controls required a professional and competent police that had good relations with the community;⁹² legally unconstrained criminal justice personnel;⁹³ and a well organized and structured criminal justice administration.⁹⁴

The high formal and informal costs of committing crime in Japan were seen as deterring a large proportion of crime, and therefore keeping the crime rates down.⁹⁵ However, Park's analysis of the statistics indicated that, with the exception of theft, deterrence showed little evidence for any overall effect on crime rates. The upward trend for theft related offences since the 1970s was in contrast to the gradual downward trend for bodily injury, rape, robbery, and murder. Furthermore, a large percentage of cases in Japan did not go to court due to police and prosecutor discretion, suggesting that the fear of punishment was not always a determining factor for low crime rates in Japan.⁹⁶

Park's analysis of crime statistics indicated that the level of material living standards was the most relevant factor in explaining the level of crime in Japan, followed in order of importance by social wages, clearance rate, and conviction rate.⁹⁷ Economic prosperity, in combination with the high possibility of criminal sanction, was a good indicator of the crime rate in postwar Japan. The increase in theft followed the trend to economic prosperity, and the certainty of conviction for more serious offences combined with the overall increase in living standards for normal Japanese people explained the downward trend in other more serious offences. Cultural factors such as age structure, social bonding, and informal social control were the least likely to explain the trends.⁹⁸ There was no substantial evidence that cultural factors had any effect on crime rates and should therefore be discounted as having any impact

and resulting social disadvantage due to the high clearance rate and loss of face, as most crimes became known, even if the offender was not sentenced).

⁹² Ibid.(discussing community policing based on the koban system which focuses on quick response to emergencies, where police attend 110 calls within four minutes); However, see: Cao, "Confidence in the police between America and Japan Results from two waves of surveys," 140,147 (analysing studies that showed the Japanese have lower level of confidence in their police than Americans).

⁹³ Park, *Trends in crime rates in postwar Japan: a structural perspective*, 12-17.

⁹⁴ see: Alarid and Wang, "Japanese Management and Policing in the Context of Japanese Culture," 602 (showing how groupism has permeated through to management within the police in Japan to create a stable, efficient, and hard working police service).

⁹⁵ Park, *Trends in crime rates in postwar Japan: a structural perspective*, 58.

⁹⁶ Ibid., 119-120.

⁹⁷ Ibid., 161.

⁹⁸ Ibid.

on crime trends in Japan, along with the idea that a low crime rate is due to something uniquely Japanese.⁹⁹

Threat of terrorism

In 1994, the terrorist group *Aum Shinrikyo* released sarin gas killing seven people and injuring 500 more. In March 1995 the same group released sarin gas on the Tokyo underground network killing twelve people, seriously injuring fifty, temporarily blinding 1,000, and overall injuring 5,500.¹⁰⁰ Abroad, Japanese nationals have been kidnapped and murdered by terrorist groups, and Japanese embassies occupied by terrorists.¹⁰¹ Although Japan has not been subject to attacks from militant Islamist groups, as in some other countries, Japanese numbered among the victims of the 1993 attack on New York World Trade Centre, the 1997 attack in Luxor, Egypt, the 9/11 attacks, and others lost their lives in bombings in Indonesia and Bali.¹⁰² Furthermore, there have been reports that terror attacks have been planned on Japan by Al Qaida.¹⁰³ In 2007, Murakami et al. pointed to Tokyo as a prime target for an attack due to the concentration of people and buildings,¹⁰⁴ however being a viable target and a likely target are significantly different. Hideyuki Osawa and Go Koyama suggested in 2009 that, compared with other countries, Japan had not given sufficient attention to terrorism legislation, and that current laws were piecemeal and weak, and in need of in order to provide real protection for Japan.¹⁰⁵

Impact upon CCTV

Park found that Japan's low crime rate was due to a high level of material living standards, social wages, and efficiency of the judiciary, and not related to a 'unique Japanese culture'.

⁹⁹ Ibid., 163.

¹⁰⁰ Osawa and Koyama, *Freedom and Security: Individual Country's Theory and Practice*, 12.

¹⁰¹ Ibid., 16-20.

¹⁰² Ibid., 28-29.

¹⁰³ Ibid., 20-21; Ferguson, "Al Qaeda's Threat to Japan: Tokyo's Wake Up Call To The War On Terrorism."; National Police Agency, "The Threat of International Terrorism against Japan," 8.

¹⁰⁴ Murakami Wood, Lyon, and Abe, "Surveillance in Urban Japan," 552.

¹⁰⁵ Osawa and Koyama, *Freedom and Security: Individual Country's Theory and Practice*, 4-22 (noting that after individual terrorist attacks, Japan introduced specific legislation to deal with, for example hijacking, making chemical weapons, and subversive activities. The "Subversive Activities Prevention Law" restricts activities such as demonstrations, publishing material, meetings).

Crime statistics showed that media focus on short term fluctuations and individual heinous crimes was misleading, and the common conception in Japan that crime was getting worse was incorrect. The perception that Japan was no longer safe, that crime was rising, and terrorists were knocking at the door led to an increase in crime prevention volunteer groups and CCTV. However, these perceptions did not hold up. Japan remained a safe country in which to live, with a falling crime rate, and it was highly unlikely to be attacked by terrorists. There were concerns that an increased use of modernised surveillance such as CCTV could undermine and destabilise the relative peace and order present in Japan.¹⁰⁶ Given the low and falling crime rates, relative low risk of a terrorist attack and the potentially destabilising effect on Japanese society, there is little justification for increased surveillance and CCTV in Japan. However, Park's finding that a high possibility of criminal sanction reduced crime indicates that, if CCTV can be shown to be effective in investigations and attaining convictions that otherwise would not have been possible without CCTV, cameras may be justified for use as a crime prevention tool in certain circumstances.

The UK had a significantly higher crime rate than Japan, although crime had been falling since 1995. Terrorism had beset the UK since the 1970s and there is a high chance of further attacks from both IRA dissidents and Al Qaeda inspired groups. The risk of terrorism to the UK is unlikely to disappear due to the deep-seated causes, as explained by Shughart, continuing overseas operations by UK's armed forces, and the high level of protection for civil liberties within the UK. Field and Hale found economic factors and unemployment, rather than police-led 'crime prevention' methods, to have had a significant impact on crime rates. This indicates that increased surveillance will also be unable to prevent most crime, and other measures are necessary. Two areas that may be an exception to this are crime in car parks¹⁰⁷ and terrorism. Likely rises in unemployment in the UK in the coming years may lead to an increase in crime rates. This could also lead to calls for further measures to be introduced, and greater use of CCTV. While increased CCTV use might be justified for crimes in car parks and tackling terrorism, it is unlikely to justify an increase as a general crime prevention tool.

¹⁰⁶ David Leheny and Sida Liu, "The Politics of Crime, Punishment, and Social Order in East Asia," 249.

¹⁰⁷ Welsh and Farrington, *Making public places safer*, 112.

2.2 CCTV

Definition

Closed Circuit Television (CCTV) is a system of cameras, with or without a recording device that sends an image to a limited set of monitors and is not publically broadcast. In Japan the term ‘CCTV’ is not used, instead it is split into two separate categories:¹⁰⁸ *Bouhan Camera* (crime prevention cameras), where images are recorded but not monitored in real time; and *Kanshi Camera* (surveillance cameras) where images are recorded and monitored in real time by a human operator.¹⁰⁹ Japanese systems generally claim to be *Bouhan Camera* systems.

England

The rise in the ubiquitous use of CCTV in England was neither inevitable nor sudden. Initially, the police were not involved in either Home Office policy or local implementation.¹¹⁰ The police were reluctant to promote or encourage the use of such techniques for fear of both being seen as ‘Big Brother’, and potential legal constraints for its use in courts. Local councils on the other hand were quick to see the supposed benefits of CCTV, both for crime control and other local issues.¹¹¹ In 2002, Mike McCahill cited the slogan for Glasgow’s city-centre CCTV system as being indicative of the times: ‘CCTV doesn’t just make sense – it makes business sense.’¹¹² Benjamin Goold noted the impact of a claim made by Margret Thatcher during the 1979 election that Britain was in a state of disorder with rampant crime, and the Conservatives were the ‘party for law and order’. The politicization of crime led to successive governments increasing the rhetoric about how crime should be tackled and order brought to society. Political parties had to be seen to be taking a hard line, and CCTV was a visible

¹⁰⁸ “Nagoya Crime Prevention Camera Centre Blog: The difference between ‘crime prevention cameras’ and ‘surveillance cameras’ (名古屋防犯カメラセンターのブログ: 防犯カメラと監視カメラの違い).” (*Bouhan cameras* (crime prevention cameras) are used to prevent crime and their images are recorded for play back at a later time. On the other hand, *kanshi cameras* (surveillance cameras) are normally monitored live and the cameras can be moved by operators when necessary. 防犯カメラは防犯のために使い録画の画像を再生して観るのは、緊急時のみです。監視カメラはというと、常にライブ映像を観れる状態にし、尚且つ非常時に録画画像を観ることが出来るように設置いたします)

¹⁰⁹ *Kanshi* systems were often classified as *Bouhan* systems by the operators due to the purpose of the system: if a systems’ purpose was only to prevent and deter crime, and not to follow suspicious people or activities, then it was classified as a *Bouhan* system, even if an operator was constantly monitoring images from the cameras.

¹¹⁰ Goold, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain*, 69.

¹¹¹ *Ibid.*, 83.

¹¹² McCahill, *The Surveillance Web*, 13.

positive step.¹¹³

Norris, McCahill, and Wood described four separate stages towns go through with using CCTV. These stages depend on socio-economic, legal, fiscal, and political factors:

1. ‘Private Diffusion’: unsophisticated, unmonitored systems in the private sector;
2. ‘Institutional Diffusion in the Public Sector’: systems in key public institutions; still simple and not routinely monitored;
3. ‘Limited Diffusion in Public Space’: small systems funded by the government with dedicated staff for monitoring, often increase rapidly in size and sophistication; and
4. ‘Towards Ubiquity’: extensive sophisticated systems providing comprehensive coverage of large areas, integrated with other systems.¹¹⁴

The Metropolitan Police in London first requested to use a live TV feed in 1947 for a royal wedding. However the private sector and other public institutions took the lead in using CCTV. It was used for traffic light operations in 1950, crowd monitoring in 1960, on the London Underground in 1961,¹¹⁵ and by 1963 had made headlines in the retail sector after CCTV was used to catch shoplifters. By 1969 14 police services nationwide had CCTV, and in the early 1970s, on the Underground (Northern Line) in London, cameras were installed to deal with assaults on staff. The first large scale public space surveillance system was created in Bournemouth in 1985 in response to the IRA’s attempt to assassinate Margret Thatcher and her Cabinet the previous year. By 1991 ten cities had CCTV systems; however, it was not until the early 1990s that the use of cameras began to grow exponentially.

In 1993 grainy black and white images of the abduction of a toddler Jamie Bulger were picked up by CCTV cameras and replayed on TV for a number of weeks.¹¹⁶ Although CCTV did not prevent the abduction and subsequent murder, the use of such cameras became seen by the government and the general public as a panacea for all crime related activity, and the Bulger incident is viewed as playing a major role in public acceptance of CCTV in the UK in the 1990s.¹¹⁷ The ‘City Challenge Competition’ was launched soon after this incident by the Home Secretary with £5 million of funding, leading to 106 separate crime prevention

¹¹³ Goold, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain*, 30.

¹¹⁴ Norris, McCahill, and Wood, “Editorial. The growth of CCTV.”

¹¹⁵ McCahill and Norris, *Urbaneye: CCTV in London*, 7.

¹¹⁶ See: <http://www.guardian.co.uk/uk/1999/dec/16/bulger2>

¹¹⁷ Norris, McCahill, and Wood, “Editorial. The growth of CCTV,” 111.

schemes employing CCTV.¹¹⁸ Further competitions in the mid to late 1990s led to over 580 new schemes¹¹⁹ bringing spending on CCTV to 75% of the total crime prevention budget between 1996 and 1998.¹²⁰ Norris et al. estimated funding on CCTV between 1994 and 2004 at £4 to 5 billion.¹²¹ McCahill suggested that this competition allowed the government to ‘govern at a distance’, but at the same time keep ‘the centralised state machine more powerful than before.’¹²²

Norris et al. argued that political and fiscal aspects often had far more to do with CCTV growth than hard evidence of crime prevention. In addition, media reporting of CCTV and surveillance had a large impact on public opinion. In 2002, Leman-Langlois stated that the ability of any technology was often exaggerated in the press due a 'lack of expertise', a 'misunderstanding of the technology', and a 'complacent regard for the ready-made headline', all of which created the 'myth of unbeatable crime-fighting technology'.¹²³ Leman-Langlois provided the city of Hull in Canada as an example where four cameras were installed in an area suffering alcohol related crimes. The cameras were used by the police for dispatching officers and identifying offenders. These cameras did not however have any impact on reduction of crime. Crime was only reduced when the bars in the area were forced to close earlier than before, indicating that CCTV cameras had little, if any deterrent effect.¹²⁴

In 2010, in London, there were approximately one million cameras of which around 42,000 were directly controlled by the police, local council, or transport organisations.¹²⁵ Transport for London (TFL)¹²⁶ stated that CCTV ‘remains an essential component of protecting the system from terrorism and providing essential intelligence to the police and

¹¹⁸ McCahill, *The Surveillance Web*, 39-52.

¹¹⁹ “Editorial. The growth of CCTV,” 112.

¹²⁰ Welsh, “Surveillance for Crime Prevention in Public Space,” 499,500.

¹²¹ Norris, McCahill, and Wood, “Editorial. The growth of CCTV,” 112.

¹²² McCahill, “Beyond Foucault: Towards a contemporary theory of surveillance,” 225.

¹²³ Leman-Langlois, “The Myopic Panopticon: The social consequences of policing through the lens,” Perpetual experimentation.

¹²⁴ Ibid.

¹²⁵ Transport for London had at least one dome camera on each of its 8,500 buses, 13,000 cameras on the underground, 12,000 cameras on the train system and 1,300 cameras on roads and tunnels. Local councils ran approximately 7,400 cameras, with the borough with most cameras running 1,113 cameras.

¹²⁶ TFL is a local governmental body responsible for transport in London. It is split into three main bodies: underground, over-ground rail, and Surface transport. See: <http://www.tfl.gov.uk/corporate/about-tfl/3273.aspx> for information on TFL’s safety and security measures.

security services.’¹²⁷ Despite this, the Home Office and The Association of Chief Police Officer¹²⁸ acknowledged that there had been little research undertaken to determine the impact of CCTV on the investigation of crime so anecdotal evidence had to be relied on.¹²⁹ The Home Secretary from 1993 to 1997, Michael Howard, admitted that it was not the effectiveness of CCTV that was the most important factor, but that the public wanted it, and that it made them feel safer.¹³⁰ The House of Commons Home Affairs Committee¹³¹ suggested that there should be more research to analyse the effectiveness of CCTV before additional funds were allocated.¹³²

In 2002, McCahill and Norris estimated that the number of CCTV cameras in the UK was at least 4,285,000, of which 75% were illegal.¹³³ These estimates were based on extrapolating figures from one London borough, and whilst the number of cameras may have been over-estimated, in the proceeding eight years CCTV continued to proliferate in the United Kingdom. The ICO 2010 report listed new concerns with CCTV, including its use in schools to monitor teachers and check on employees.¹³⁴ Freedom of Information requests showed that council run CCTV cameras increased from 21,000 in 1999 to 59,753 in 2009.¹³⁵ The organisation Big Brother Watch claimed that while there was a place for CCTV, little tangible proof existed of its use in tackling crime.¹³⁶

Japan

Surveillance cameras can now be seen in a variety of public institutions such as train stations, roadways, private but publically accessible locations such as convenience stores, and

¹²⁷ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 77.

¹²⁸ See: <http://www.acpo.police.uk> ACPO ‘leads and coordinates the direction and development of the police service in England, Wales, and Northern Ireland.’

¹²⁹ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 80.

¹³⁰ Goold, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain*, 35.

¹³¹ See: <http://www.publications.parliament.uk/pa/cm/cmhaff.htm>

¹³² House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 81.

¹³³ McCahill and Norris, *Urbaneye: CCTV in London*, 20.

¹³⁴ Information Commissioner’s Office, *Information Commissioner’s report to Parliament on the state of surveillance*, 28, 50.

¹³⁵ Big Brother Watch, *Big Brother Is Watching: The first comprehensive analysis of the number of CCTV cameras controlled by local authorities in Britain in 2009*.

¹³⁶ *Ibid.*, 3.

restaurants, and residential complexes. Fear of terrorism had further accelerated the pace and range of CCTV implementation.¹³⁷ Whenever a crime occurred in Japan, attention always turned to CCTV.¹³⁸

Two murder cases that occurred in 2003 are instructive in describing the discrepancy between the perception of CCTV and the reality. On 20 June 2003 in Yokohama a nine year old boy was thrown from a 15 floor apartment block and a 68 year old woman was assaulted.¹³⁹ One day after police published images of a suspect from the apartment block's cameras the suspect handed himself in and confessed to the crimes.¹⁴⁰ In July 2003 in Nagasaki, a four year old girl was kidnapped and murdered by a twelve year old boy who took her to the top of a car park and threw her off resulting in her death.¹⁴¹ 40 minutes after the girl went missing, a CCTV camera 150 metres from the scene of the murder, captured an image of the boy leading the young girl away.¹⁴² In these cases, CCTV assisted in apprehending the offender, but did not prevent the crime. The CCTV cameras were called *Bouhan Camera* (crime prevention cameras), but they failed in their stated purpose – preventing crime. However, because such cameras proved useful in investigation, they were seen as a success by the government and the general public.

Although CCTV has been used by the police and private businesses for many years in Japan, the main changes have happened in the past decade. In 1994, the NPA established the Local Safety Bureau, and in 2004 a 'local safety action plan' was implemented where each town would have a dedicated department for ensuring safety and run in conjunction with the police.¹⁴³ Since 2001, the use of CCTV in underground shopping centres increased, and David Lyon and Yasuhiko Tajima claimed there was evidence to suggest that this was due to fears over the 9-11 bombings.¹⁴⁴

In recent years ATMs have become common place in convenience stores, leading to an increasing need for security, of which CCTV is now an integral measure. In Nagoya, on 1 October 2001, CCTV was installed in a Circle-K convenience store by the Aichi Prefectural

¹³⁷ Ishimura, "Legal Regulation of Surveillance Camera," 223.

¹³⁸ Otani, *What are Surveillance Cameras Looking at?*, 108.

¹³⁹ "Man says he threw boy from 15th floor." Japan Times online, 2 April 2006.

¹⁴⁰ Otani, *What are Surveillance Cameras Looking at?*, 108-109.

¹⁴¹ "Security cameras aid in crime fight, but at a cost." Japan Times online, 15 July 2003.

¹⁴² Otani, *What are Surveillance Cameras Looking at?*, 109-110.

¹⁴³ Nishihara, *Surveillance Cameras and Privacy*, 20.

¹⁴⁴ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 249.

Police.¹⁴⁵ The cameras were not constantly monitored, but only viewed after an incident, or when the store staff pressed a panic button to alert the police, who then could monitor the cameras by remote.¹⁴⁶ In 2003, Kotani stated that the police approved of the use of CCTV at convenience stores because the cameras recorded 24 hours a day and were installed in thousands of stores, creating a vast surveillance web.¹⁴⁷ The head office of the 7/11 franchise said that their cameras were installed under the guidance and request of the police, and that they handed over the recorded images when requested for criminal investigations.¹⁴⁸

Kasuo Handa criticised the ease with which police could obtain recordings.¹⁴⁹ He noted that the police had for a long time pushed the image of convenience stores as a type of secondary koban (or police box). The installation of CCTV in convenience stores was started by Aichi with their ‘Convenience Store Local Safety Information System.’¹⁵⁰ By 2003, Aichi had 2,500 convenience stores, all of which were seen as ‘Safety Stations’ and had installed cameras on the behest of the Police.¹⁵¹ As of November 2010, the 7/11 chain had 574 stores in Aichi and 12,942 stores nationally.¹⁵²

The first place that concentrated the use of CCTV in one area was Kamagasaki, Osaka. The cameras were monitored 24 hours a day and functioned as both surveillance and crime prevention cameras.¹⁵³ The police watched and recorded, and would intervene when it appeared a serious crime would occur, or a situation was getting aggressive. The area had an illegal gambling problem, but the police tended not to intervene in low-level crime, and instead only became involved with violent or serious offences. Otani stated that this implied that the cameras were not there to assist in apprehending criminals, but rather as a tool for maintaining public peace. He stated this indicated that it was policy to value public peace and order over crime prevention and reduction.¹⁵⁴

¹⁴⁵ Kotani, “Rapid Increase in use of Surveillance Cameras by the Police,” 200.

¹⁴⁶ *Ibid.*, 201.

¹⁴⁷ *Ibid.*

¹⁴⁸ Handa, “The Fear of Surveillance Cameras,” 211-212.

¹⁴⁹ *Ibid.*, 211.

¹⁵⁰ *Konbiniensu sutoa chiiki anzen jouhou shisutemu* (コンビニエンスストア地域安全情報システム)

¹⁵¹ Handa, “The Fear of Surveillance Cameras,” 212.

¹⁵² Seven-Eleven Japan, http://www.sej.co.jp/company/en/n_stores.html

¹⁵³ Otani, *What are Surveillance Cameras Looking at?*, 113.

¹⁵⁴ *Ibid.*, 114.

Lyon et al. criticised the rapid increase in Police use of CCTV in recent years and looked at its use in Kabukicho where the rate of crime was 185 times Tokyo's average.¹⁵⁵ In 2001, the Japanese government spent 320,000,000 yen on the installation of CCTV cameras in Kabukicho to prevent and measure crime. The Tokyo Metropolitan Police installed 50 cameras in places with a high probability of crime.¹⁵⁶ Kotani said that the scheme was brought in without a proper pilot scheme being run. He further asserted that the cameras installed in Kabukicho did not meet the standards of a Tokyo High Court ruling and were therefore illegal.¹⁵⁷ The Tokyo High Court ruling¹⁵⁸ concluded that CCTV cameras must only be installed when:

1. The location is recognised as having a high crime rate;
2. There is evidence the cameras will work, or they are being used in an emergency;
and
3. The recording of images is according to society's expectations and desires.¹⁵⁹

On 26 March 2002, the Super Crime Prevention CCTV Scheme¹⁶⁰ went live and was promoted nationally by the police.¹⁶¹ A 2003 police report about the system justified implementation due to a significant increase in crime from 1998 to 2002 (robbery, rape, snatch theft, forcible indecency).¹⁶² Two years previously a gruesome crime had occurred where witnesses were unable to provide good evidence, leading to calls for CCTV to be implemented in the vicinity. Kotani claimed that the reasoning behind the scheme set a dangerous precedent, as the police would be able to use this reason in almost all locations.¹⁶³ Public money was set aside by the scheme for a total of ten locations.¹⁶⁴ The specific

¹⁵⁵ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 249-250.

¹⁵⁶ Kotani, "Rapid Increase in use of Surveillance Cameras by the Police," 191-195.

¹⁵⁷ *Ibid.*, 197.

¹⁵⁸ Judgement of Tokyo High Court, 1 April 1988. 東京高裁判決昭和 63 年 4 月 1 日

¹⁵⁹ Kotani, "Rapid Increase in use of Surveillance Cameras by the Police," 196.

¹⁶⁰ *Suupaa bouhantou* (スーパー防犯灯)
<http://www.keishicho.metro.tokyo.jp/seian/spbouhan/spbouhan.htm>

¹⁶¹ Shimizu, "Development and Problems of the 'Life Security Regulations'," 236.

¹⁶² Tokyo Public Safety Committee (東京都公安委員会) and Japan Police Chiefs, "Maintenance and Use of Emergency Reporting System (Super Crime Prevention) 2003."

¹⁶³ Kotani, "Rapid Increase in use of Surveillance Cameras by the Police," 198 see also:
<<http://www.alpha-net.ne.jp/users2/knight9/setagaya.htm>>.

¹⁶⁴ Tokyo Public Safety Committee (東京都公安委員会) and Japan Police Chiefs, "Maintenance and Use of

locations were to be chosen according to crime figures and other relevant factors; but Kotani said this was not always done.¹⁶⁵ The purpose of the cameras was clearly stated from the start: to prevent thefts, robberies, sexual offences, and other serious crime.¹⁶⁶ There were 17 cameras placed approximately 80 metres apart over 1.5 km. Each camera had a button on the post that when pressed would alert the police and set off an alarm. The police could view images from cameras in the vicinity and potentially catch or acquire an image of a suspect.¹⁶⁷

At the end of May 2002, the police began using facial recognition at Narita and Kansai airports.¹⁶⁸ In May 2006, CCTV with facial recognition capability was installed in Kasumigaseki underground station.¹⁶⁹ The National Transport Ministry promoted the system. Police participated in the consultation stage as observers. The system had been previously installed in the state of Florida, USA in 2001; however, by 2003 the police found that the cameras had no positive impact on crime prevention. Florida police announced that it did not lead to any cases of identifying criminals or any arrests.¹⁷⁰ Meanwhile, the Kasumigaseki system was installed at the entrance gates in the tube station. Tajima said that Kasumigaseki was a location where privacy concerns were greater than anywhere else in Tokyo as the station was used by police, judges, lawyers, accused persons, others visiting these institutions, and people attending public meetings. Many of these people had a heightened sense of concern for privacy and would be uneasy about the government recording their presence and storing their images.¹⁷¹

Shigehiko Ito said that the facial recognition system was a violation of the right to one's own image under Article 13, and that Japan had become a surveillance society as described by George Orwell, even if under the auspices of a friendly, beautiful, and free democratic society.¹⁷² The system was to be introduced and tested during the holidays when the only people travelling through the station would be part-time workers, therefore, the

Emergency Reporting System (Super Crime Prevention) 2003" Hokkaido, Miyagi, Yamagata, Tokyo, Niigata, Fukuyama, Aichi, Osaka, Kagawa, and Okinawa.

¹⁶⁵ Kotani, "Rapid Increase in use of Surveillance Cameras by the Police," 200.

¹⁶⁶ *Ibid.*, 198.

¹⁶⁷ *Ibid.*, 200.

¹⁶⁸ *Ibid.*, 201-204.

¹⁶⁹ Nishihara, *Surveillance Cameras and Privacy*, 20.

¹⁷⁰ Opposition to Surveillance Society Association, "Face Recognition System: An Introduction," 73-74.

¹⁷¹ *Ibid.*, 74.

¹⁷² Ito, "Proposal to the Transport Ministry of Land, Infrastructure and Transport," 75,80.

transport ministry claimed, it would not impact upon ‘normal people’s’ privacy.¹⁷³

In November 2005, the ‘Against surveillance society association’,¹⁷⁴ under Tajima, carried out a survey about the facial recognition system at the Japanese Diet. They surveyed 50 members and found that 35 opposed it, six approved, and nine were undecided.¹⁷⁵ However, the survey was not representative of the entire Diet, as the Diet consists of 480 members of the House of Representatives, and 242 members of the House of Councillors. Furthermore, the survey was carried out when the Diet was in recess. The weaknesses of the survey mean that the results should be treated with caution.

The N-System was installed in 1986 by the NPA at important roads around Japan. Within Tokyo, the system identified suspect cars and took images of drivers and passengers. The N-System could also collect information for public security and be used by the police to follow cars and deal with traffic and major incidents. It was successfully used to trace suspects of the Sarin gas attack in 1995.¹⁷⁶

A number of problems have been noted with the N-System. Firstly, there were no exact details about the number or locations of the cameras. By 2006, there were supposed to be 700 locations, however this may have been a significant underestimation and the number may have expanded into the thousands.¹⁷⁷ Secondly, the cameras not only took pictures of number plates, but also of the faces of the driver and occupants.¹⁷⁸ The information when combined could lead to privacy invasion, especially when linked up with the driving licence database.¹⁷⁹ Thirdly, because the N-System was commonly known to have led to the arrest of the leader of the Sarin gas attack in 1995, the system had become significantly less effective.¹⁸⁰ Finally, Otani said that because each camera location cost approximately 100,000,000 yen, citizens should have a right to know camera locations, how they are used, and what happens with the images. Otani acknowledged that making this public would enable criminals to evade detection; however he argued that as tax payer’s money was used, transparency was important, and it would be better for a few criminals to avoid detection than

¹⁷³ Ibid., 79.

¹⁷⁴ *Kanshi shakai wo kyohi suru kai* (監視社会を拒否する会)

¹⁷⁵ Ito, “Proposal to the Transport Ministry of Land, Infrastructure and Transport,” 78.

¹⁷⁶ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 249.

¹⁷⁷ Otani, *What are Surveillance Cameras Looking at?*, 120.

¹⁷⁸ Sakurai, “Current N-System Prosecutions,” 216.

¹⁷⁹ Otani, *What are Surveillance Cameras Looking at?*, 120.

¹⁸⁰ Ibid.

for all road users to have their images collected and stored.¹⁸¹

Is CCTV effective?

CCTV was usually seen by advocates as serving the community and providing safety.¹⁸² In reality, the effect on crime prevention had not been a decisive factor in their continued use or implementation. Both Japan and England had reached the point where public acceptance of CCTV, instead of empirical research, was used to justify further implementation. However it was the promotion of CCTV through political and media policies that led to public acceptance, not effectiveness in preventing crime. Research showed that cameras were not effective at achieving their accepted purpose.¹⁸³ Lyon et al. wondered if CCTV was used because the government desired an automatic way to watch over citizens.¹⁸⁴ Kouji Ishimura acknowledged that surveillance cameras did have a deterrent and detective effect, but the lack of clear rules and regulations resulted in people gradually losing their freedom and dignity.¹⁸⁵

Ray Surette saw the evolution of CCTV from human based monitoring to computer software enhanced monitoring leading to further concerns. Surette asserted that systems that rely on human monitoring are limited by four problems: data swamping, profiling, boredom, and voyeurism.¹⁸⁶ These could be overcome by replacing the human element with an automated system. Although this may at first appear preferable, as computers are more vigilant and observant, surveillance would become more extensive and intensive.¹⁸⁷ The increase in effectiveness would lead to cameras being of greater use in crime prevention and detection.¹⁸⁸ Due to the heightened intrusive nature, Surette recommended that the new generation of cameras should be restricted to tackling crime, and when CCTV is used for other purposes the minimum possible technology that achieves the cameras' purpose should be employed.¹⁸⁹

¹⁸¹ Ibid., 122-123.

¹⁸² Nishihara, *Surveillance Cameras and Privacy*, 23.

¹⁸³ Goold, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain*, 37.

¹⁸⁴ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 248.

¹⁸⁵ Ishimura, "Legal Regulation of Surveillance Camera," 224.

¹⁸⁶ Surette, "The thinking eye," 160.

¹⁸⁷ Ibid., 164.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid., 165.

Both the English and the Japanese police considered CCTV to be more useful for investigation and police deployment than crime prevention. However, policing in England and Japan was very different, and the powers police have to deal with suspects also differ. Patrol officers in Japan did not generally have the widespread problems associated with drug abuse as in many inner city areas of England. Japanese police powers of search, detention, and arrest were significantly less than British police officers. Furthermore, criminal acts in Japan were not often as overt as in England. Police in England dealt with a lot of low level crime and incidents through proactive patrols involving stop and search tactics. Public space CCTV was more effective in recording crimes occurring openly in public areas. It was also more useful to police officers on the street when they were dealing with dangerous situations, both in terms of knowing what was happening when on route by communicating directly with CCTV control room staff, and in watching over them when they were dealing. CCTV in Japan did not provide this functionality due to the difference in types of crime, policing methods, and restrictions on monitoring of CCTV. In Japan CCTV has been used as a management tool more than a crime prevention tool as can be seen by its use in Kamagasaki and the N-System. One area that CCTV could be used effectively in Japan is on the train network due to the high incidence of sexual assault on crowded trains.¹⁹⁰ CCTV would greatly increase the risk of detection and apprehension to the offender and could reduce the rate of this type of offence. Michael Greenburger suggested in 2006 that CCTV should be installed throughout the US transport system as a deterrence to terrorists,¹⁹¹ however this may not be appropriate for Japan due to the difference in terrorist threat level between Japan and the US.

London had more CCTV cameras than any other city in the world; however, it was not able to prevent the bombings in London on 7 July 2005.¹⁹² The ICO 2010 report clearly stated that CCTV in the UK was relatively ineffective in preventing or detecting crime, or maintaining public order.¹⁹³ Despite the lack of evidence as to CCTV's effectiveness in preventing crime, it was acknowledged by the ICO as being useful in investigating crimes and carrying out surveillance for intelligence purposes.

¹⁹⁰ Kearn, *Stop Street Harassment*, 81-82 (noting that in 1994, 75% of women in their 20s and 30s in Osaka had been sexually assaulted on public transportation. After women-only cars on trains were introduced in 2000, a 2004 survey in Tokyo showed that the percentage dropped to 64% by 2004; however, the numbers have apparently been increasing since 2006.).

¹⁹¹ Greenberger, "The Need for Closed Circuit Television in Mass Transit Systems."

¹⁹² Otani, *What are Surveillance Cameras Looking at?*, 111.

¹⁹³ Information Commissioner's Office, *Information Commissioner's report to Parliament on the state of surveillance*, 21.

2.3 Privacy

Privacy, like an elephant, is more readily recognized than described. (JB Young, 1978)

A right without description is a right without protection. (Gary Bostwick 1976)

Definition

Only since the late 19th century have scholars attempted to define privacy as a distinct concept separate from social custom; until then, ‘people simply knew what it was’.¹⁹⁴ In 1874 Sir James Fitzjames Stephen said that ‘to define the province of privacy distinctly is impossible, but it can be described in general terms’.¹⁹⁵ Privacy specialist Richard Hixson noted that privacy was hard to define because it was both a subjective and personal concept.¹⁹⁶ Hixson further stated that attempting to make a comprehensive definition caused the concept to grow and become ‘unwieldy’¹⁹⁷, and clear definitions were required otherwise personal privacy was unlikely to enjoy sufficient legal protection.¹⁹⁸

The Lords Select Committee noted in 2009 that ‘there is no accepted legal definition of privacy . . . and both the European Court of Human Rights (ECtHR) and UK courts have declined to offer a definition, preferring to judge the right on a case by case basis.’¹⁹⁹ Most observers tend to reject the idea of a comprehensive definition of privacy and instead attempt to split it into different areas. In 2002, Daniel Solove said that privacy law had often been ineffective due to the difficulty in defining privacy, and he recognised that attempts to conceptualize privacy were fraught with difficulties.²⁰⁰ Solove declined to give a definition of privacy, and instead argued for a pragmatic approach, starting with a bottom-up understanding of privacy grounded in real world situations as opposed to starting from an abstract top-down approach.²⁰¹ In 2006, Solove said that ‘privacy cannot be discussed independently from

¹⁹⁴ Hixson, *Privacy in a Public Society*, 6.

¹⁹⁵ Pratt, *Privacy in Britain*, 53.

¹⁹⁶ Mills, *Privacy*, 20.

¹⁹⁷ Hixson, *Privacy in a Public Society*, 68.

¹⁹⁸ *Ibid.*, 46.

¹⁹⁹ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 123.

²⁰⁰ Solove, “Conceptualizing Privacy,” 1090.

²⁰¹ *Ibid.*, 1126-1129.

society’ and that it was an ‘umbrella term’ that covered a wide variety of concepts.²⁰²

Although neither Japanese nor English law specifically defined privacy, at an abstract level it can be described as ‘the extent to which one has control over one’s own personal information.’ In England, ‘personal data’ was defined by the Data Protection Act (DPA) as data that relates to a living individual who could be identified from that data, or from that data and other information that the data controller was likely to come into possession of during their work.²⁰³ According to Bainbridge, data was not personal just because someone’s name was associated with it, rather, the data had to be personal and ‘biographic in a significant sense’ and the data had to have the subject as focus of the information rather than subject being merely incidental.²⁰⁴ From court rulings, personal data included photographs and moving images.²⁰⁵ The Japanese legal system described personal information as information that would enable the identification of a specific individual by name, date of birth, or other description contained in such information.²⁰⁶

England

Affairs that are commonly considered private were often in the past considered public.²⁰⁷ Professor Ferdinand David Schoeman argued that an expectation of privacy only arose when there was a ‘high degree of social and economic specialization’, as this allowed people to live independently from groups that they had to rely on in the past.²⁰⁸ In the past, society did not see privacy as an important concept.²⁰⁹ The demands of society, legislation, and judicial

²⁰² Solove, “A Taxonomy of Privacy,” 485.

²⁰³ In a 2003 European Court of Justice ruling, information about a person’s phone number, occupation, hobbies, and medical conditions was included in ‘personal data’.

²⁰⁴ In *Durant v Financial Services Authority* [2003] EWCA Civ 1746, the court found that ‘personal data is “information that affects [an individual’s] privacy, whether in his personal or family life, business or professional capacity”.’ Bailey and Taylor, *Bailey, Harris & Jones*, 609-610; Bainbridge, *Data Protection Law*, 47-48.

²⁰⁵ Bainbridge, *Data Protection Law*, 41-42.

²⁰⁶ Article 2(1), Act on the Protection of Personal Information, Act No. 57 of May 30 2003

²⁰⁷ Schoeman, *Privacy and Social Freedom*, chap. 7: The ascent of privacy (giving the example of Europe during the early part of the 18th century, where when a single mother was giving birth, the midwife was bound by duty {the Midwife’s Oath of 1726} to demand the name of the father before any help would be given; married couples would be stripped naked by attendants on their wedding night and placed on a bed in front of witnesses to ensure the marriage was consummated).

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*, 127.

decisions had only recently evolved a distinct concept of privacy. Until modern times, privacy was being protected incidentally through the rights of property, life, and liberty without separate, specific legislation.

The argument for a distinct right to privacy was first taken seriously after Warren and Brandeis wrote ‘The Right to Privacy’ in 1890 in reaction to increasing press intrusion. Warren and Brandeis claimed that everyone should own the ‘facts relating to his private lives’²¹⁰ and that ‘the individual is entitled to decide whether that which is his shall be given to the public.’²¹¹ They noted the pernicious impact of technology, seeing it as a threat to people’s private lives.²¹² Around the same time, Herbert S. Hadley also argued for a right to privacy, but said that when people voluntarily enter a public place, they should have no expectation of such a right.²¹³ Hadley thought that the right to privacy should be created through parliament enacted legislation, while Warren and Brandeis believed that the right to privacy should evolve through the courts to allow it to adapt to the times.²¹⁴

In 1979, Walter Pratt argued that the cases Warren and Brandeis quoted as evidence of a right to privacy were in fact misinterpreted and actually proved that a distinct right to privacy did not exist at the time of the Warren and Brandeis article, and any privacy protection was only ancillary to decisions based on clear breaches of trust and property rights.²¹⁵ Pratt countered that Warren and Brandeis’ argument was compelling but that they were wrong to claim that a right to privacy could be deduced from court decisions, as all references to a right to privacy up to that time were *obiter* and not *ratio*.²¹⁶ The lack of a right to privacy could also be evinced from the decisions of other judges around that time, for example in 1865 George Wilshire said ‘it is to be remembered that privacy is not a right.

²¹⁰ McWhirter and Bible, *Privacy as a Constitutional Right*, 76.

²¹¹ Warren and D. Brandeis, “The Right To Privacy by Samuel Warren and Louis D. Brandeis.”

²¹² Ibid. “Numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops.’”

²¹³ Hadley explained that people cannot expect to have a right to privacy when in public: “When an individual goes among people, when he walks along the streets in the sight of all who care to look upon him he has waived his right to the privacy of his personality.” McWhirter and Bible, *Privacy as a Constitutional Right*, 77 .

²¹⁴ Ibid.

²¹⁵ Pratt said that: “The decisive failure of the article is its inability to establish the existence of precedent that would protect inviolate personality, or the right to be let alone, or the right to privacy.” Pratt, *Privacy in Britain*, 31-34.

²¹⁶ Ibid., 34,36; For a description of “ratio and obiter” and how to find the ratio, see: Cownie, *English legal system in context*, 92-99.

Intrusion on it is no wrong or cause of action.²¹⁷ Warren and Brandeis's article should therefore not be seen as evidence of the existence of a general right to privacy in the late 19th century.

Arguments about privacy in England did not exist in a coherent form before the end of the First World War. Conscription and rationing had shown people the positive and negative sides of being enumerated. The increasing use of the national census just prior to the start of the Second World War led to stronger calls for a right to privacy.²¹⁸ In 1944, Viscount Templewood said that 'the uniqueness of European civilization is that it is based "upon the sanctity of human personality and upon the development of the individual soul"'.²¹⁹ In 1948, the Universal Declaration of Human Rights (Article 12) expanded upon this: 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.'²²⁰ Article 17 of The International Covenant on Civil and Political Rights qualified this point specifying that the interference must not be 'unlawful'.²²¹

There was a fundamental shift in attitudes²²² in the second half of the 20th century where concern about privacy invasion shifted from an intrusive press to an intrusive government.²²³ Dystopian novels abounded,²²⁴ and comparisons of government action to Orwellian visions became more common.²²⁵

The first comprehensive legislative proposal on privacy was Lord Mancroft's 'Right of Privacy Bill', in 1961.²²⁶ Although the bill received strong support among the House of

²¹⁷ Pratt, *Privacy in Britain*, 59.

²¹⁸ *Ibid.*, 84.

²¹⁹ *Ibid.*, 85.

²²⁰ Mathiesen, "The viewer society: Michel Foucault's 'Panopticon' revisited," 86.

²²¹ Seipp, "English Judicial Recognition of a Right to Privacy," 350.

²²² *Ibid.*, 345.

²²³ Pratt, *Privacy in Britain*, 143.

²²⁴ Such as 'We' (1921), 'A Brave New World' (1931), 'Kallocain' (1940), and 'Nineteen Eighty-Four' (1949).

²²⁵ Newspapers wrote about the use of computers to control traffic in London: "Motorists are to be controlled by Big Brother traffic computers." [Daily Sketch 19th November 1963]

²²⁶ Pratt, *Privacy in Britain*, 138 (noting that the bills stated purpose was: "to give every individual such further protection against invasion of his privacy as may be desirable for the maintenance of human dignity while protecting the right of the public to be kept informed in all matters in which the public may be reasonably concerned.").

Lords, the Lord Chancellor did not consider it suitable for legislation.²²⁷ In 1983, Seipp said that attempting to introduce legislation was difficult because ‘statutory language proved much more susceptible to attack on definitional grounds than did the imagined pronouncements of future courts.’²²⁸ Government minister Eric Fletcher said at the time that a ‘proposal to create a statutory right to privacy would raise wide and controversial issues, including the liberty of the press.’²²⁹

In 1967 Alexander Lyon unsuccessfully introduced a right of privacy bill asserting that ‘there ought to be in the law a right to be left alone if one wishes to be left alone.’ Lyon defined privacy as: ‘the right of any person to preserve the seclusion of himself, his family or his property from any person.’²³⁰ Lyon thought that the danger to personal privacy was not from the press but rather from technology.²³¹ In the same year the British section of the International Commission of Jurists²³² began a long term study of privacy. The following years saw a proliferation of unsuccessful bills attempting to tackle different aspects of privacy.²³³ In one of these bills, Lord Windlesham asserted in 1969:

the individual has a right to know of and to limit the circulation of information about himself. This, I suggest, is the most practical way of considering the relationship between personal information and the right of the individual to privacy. It is in this sense an ingredient of the individual’s right to privacy and one that should not be infringed without the showing of an overriding social need and...protective safeguards.²³⁴

The 1969 'Right of Privacy' bill by Brian Walden gave examples of what a right the right to privacy should include without giving a specific definition.²³⁵ The Younger

²²⁷ Seipp, “English Judicial Recognition of a Right to Privacy,” 346.

²²⁸ Ibid., 329.

²²⁹ Pratt, *Privacy in Britain*, 157.

²³⁰ Ibid., 161.

²³¹ Alexander Lyon said that: 'It seems to me, that the real threat to liberty in our highly complicated, civilised, modern society, is the invasion of privacy by all who have the apparatus to do so without in any way trespassing on the property of the person, which is about the only right that the English citizen has to defend.' Pratt, *Privacy in Britain*, 168 .

²³² <http://www.icj.org>

²³³ Seipp, “English Judicial Recognition of a Right to Privacy,” 347.

²³⁴ Pratt, *Privacy in Britain*, 179.

²³⁵ Ibid., 180 (asserting that this included the right for a person, his family, home, communications, relationships, communications, and business affairs to be protected from intrusion).

Committee was set up soon after to investigate if there was a need for legislation to protect people from intrusions from 'private persons, organisations, or companies'. The committee was not formed to investigate invasion of privacy by the government, even though this was then seen as the biggest threat to privacy.²³⁶ The committee conceived of the right of privacy as having two main aspects: substantive autonomy, and informational autonomy.²³⁷

The concept of substantial autonomy included freedom from intrusion upon oneself, one's home, family and relationships and concerned the ability to choose how to live one's life. Informational autonomy was the right to control the flow of personal information about oneself.²³⁸ If an individual was unable to control the flow of their own information then this was likely to influence their behaviour.²³⁹ Personal relationships and intimacy depended on the ability to ensure that information about relationships was not widely disseminated without consent or knowledge, and so informational autonomy was vital to substantive autonomy. Informational autonomy is not unqualified, and actions of an official nature as part of a public office do not hold the same level protection as private actions due to the requirement of transparency that holding public office entails.²⁴⁰

Alexander Lyon, discussing the Younger Committee's recommendations, admitted that the concept of privacy was vague, but said that for the purpose of the law that 'privacy is what the law says it is.'²⁴¹ Writing in 1982, Seipp noted that it was surprising that neither the courts nor parliament had taken up the task of creating the right for privacy in its own right.²⁴² In *Kay v Robertson (1991)*,²⁴³ Glidewell LJ stated (echoing George Wilshire in 1865) that 'It is well-known that in English law there is no right to privacy, and accordingly there is no right of action for breach of a person's privacy.'²⁴⁴

²³⁶ Ibid., 184.

²³⁷ Bailey and Taylor, *Bailey, Harris & Jones*, 523.

²³⁸ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 805.

²³⁹ Ball and Webster state that 'a transparent self is a non-self' and that surveillance "strips the self of its independence and autonomy" Ball and Webster, *The Intensification of Surveillance: Crime, Terrorism and Warfare in the Information Age*, 14.

²⁴⁰ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 806.

²⁴¹ Pratt, *Privacy in Britain*, 197.

²⁴² Seipp, "English Judicial Recognition of a Right to Privacy," 325-326.

²⁴³ *Kay v Robertson [1991] FSR 62, Court of Appeal*

²⁴⁴ Bailey and Taylor, *Bailey, Harris & Jones*, 524.

There was no traditional general right to respect for privacy in UK law.²⁴⁵ Instead, other areas of law had incidentally provided privacy protection, such as trespass, breach of confidence, copyright, and defamation. Before the Human Rights Act (HRA) was introduced in 1998, privacy interests that were not protected under other legislation had no protection. The lack of specific legislation meant that protection was ‘piecemeal, inadequate and indirect’.²⁴⁶ The HRA Article 8 was the first piece of legislation that specifically protected UK citizens’ privacy.²⁴⁷ Citizens then became able to directly hold the government to account for invasions of privacy and the government was required to hold private institutions to the same standards as the public sector.²⁴⁸

Japan

The Meiji Constitution contained two articles that provided privacy protection: Article 25 protecting against entry and search of a person’s house, and Article 26 protecting the secrecy of correspondence.²⁴⁹ Intellectuals in Japan first began talking about privacy in 1935 when Sanji Suenobu wrote an article about how secret information was protected indirectly in the UK and directly in the US.²⁵⁰ In 1954 Judge Kawahara defined privacy as ‘the right to limit the reporting of one’s personal affairs.’²⁵¹ He explained that the nature of this right was ‘the right to be let alone’, consisting of the right to not be assaulted, detained, or maliciously prosecuted.²⁵² The number of court cases dealing with privacy issues increased gradually and during the late 1950s, while Japan was going through a technical revolution academicians began to question public freedoms and rights and the role of the constitution in protecting privacy.

²⁴⁵ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 807.

²⁴⁶ Bailey and Taylor, *Bailey, Harris & Jones*, 524.

²⁴⁷ However, the European Court seemed to feel that the UK already protected individuals’ privacy sufficiently: In *Spencer (Earl) v UK* the Court dismissed Spencer’s claim that the UK had failed to protect his privacy interests as he had not exhausted all domestic remedies. This indicates that the court felt the UK already had a privacy law and as a common law country, the courts should develop this right.

²⁴⁸ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 808.

²⁴⁹ Adams, Murata, and Orito, “The Japanese sense of information privacy,” 12-13.

²⁵⁰ Ehara, *The right to Privacy: A comprehensive analysis*, 47-49.

²⁵¹ Kawahara, *Freedom of Expression and Publication*, 122 [*shiji ni kansuru houdou wo seigen suru kenri 私事に関する報道を制限する権利*]

²⁵² Ehara, *The right to Privacy: A comprehensive analysis*, 47-48; Kawahara, *Freedom of Expression and Publication*, 122-126.

In 1959, the translation of Warren and Brandeis's article into Japanese increased the interest in the debate on privacy.²⁵³ Journalism that intruded into people's private lives was a cause of concern, prompting public discussions about how to protect privacy.²⁵⁴ The high profile nature of the 'After the Banquet'²⁵⁵ incident in 1961 brought the discussion to greater prominence for the public. Since the 1970s the mass media paid greater attention to the debate,²⁵⁶ and in the 1970s the government unsuccessfully attempted to introduce a citizen identification system sparking privacy protests.²⁵⁷

Takeru Ehara described the approaches of three professors towards privacy: Koji Sato, Masanari Sakamoto, and Hitoshi Saeki. In 1970, Sato focused on the protection of civil rights under the constitution and said that until then all previous approaches were wrong. Sato said that for humans, protection of privacy was an essential and basic need with regards to love, emotion and trust but the concept of a 'right to be let alone' was too wide. The right to privacy should be limited to one's feelings and emotions, personal information, and personality.²⁵⁸ In 1972 Professor Sakamoto distinguished 'privacy' from 'the right to privacy' and said that the benefit of privacy to individuals was threefold: firstly, the protection of accuracy, completeness, and contemporariness; secondly, freedom to learn and collect information anonymously; and finally, acknowledgement of the value of information. These benefits were limited to circumstances that were about the individual concerned, and not to information that concerns others.²⁵⁹ In 1974 Saeki looked at privacy from the perspective of criminal law and wrote about libel and privacy. Saeki saw a problem with using libel law to protect people's privacy as libel law was usually used for only a small section of society and was not applicable to the majority of people. A right to privacy should not be conditional on one's place in society but on individuals regardless of status. A right to privacy should avoid looking to only protect society as a group of individuals and look at the protection of the individuals that make up the society.²⁶⁰

²⁵³ Nishihara, *Surveillance Cameras and Privacy*, 36; However, Kawahara translated parts of Warren and Brandeis' paper in 1935. See: Kawahara, *Freedom of Expression and Publication*, 123-124.

²⁵⁴ Ehara, *The right to Privacy: A comprehensive analysis*, 47-49.

²⁵⁵ 宴のあと *Utage no ato* (See Section 3.2 Court Interpretations for a description of the case.)

²⁵⁶ Ehara, *The right to Privacy: A comprehensive analysis*, 50-53.

²⁵⁷ Lawson, "Japan's New Privacy Act in Context," 94.

²⁵⁸ Ehara, *The right to Privacy: A comprehensive analysis*, 50-51.

²⁵⁹ *Ibid.*, 51-52.

²⁶⁰ *Ibid.*, 52.

In 2003, Takehiro Ohya also commented on the inappropriateness of libel laws for protecting privacy, stating that fines or public apologies, which may be suitable for libel cases, would only increase the privacy intrusion on the plaintiff.²⁶¹ He further said that privacy cannot be restored once it has been taken.

Dean Barnlund claimed, in 1989, that a typical Japanese ‘public self’ was much smaller than an American’s ‘public self’, and therefore when in public, the Japanese tended not to expose personal information, express personal opinions, or do private actions.²⁶² Therefore, for Japanese, being watched in public did not raise as many concerns as perhaps in America.²⁶³ Drawing a line between private and public was difficult, as what was private for one person may have been public to another.²⁶⁴ Doi suggested that while there is a clear distinction between ‘inner’ and ‘outer’ for Japanese people regarding social relationships, there is no clear line between what is private and public.²⁶⁵ In 2006, Kiyoshi Abe stressed that this confusion was compounded by the difference in the opinions about the extent to which intrusions into public and private life could be justified.

People often have a conflicting, paradoxical demand to live happily and freely while being watched-over in terms of safety.²⁶⁶ Actions and choices in public spaces are to a large extent dependent on the physical environment, although the influence of external factors is often subtle. Changes in public spaces, both physical structure and usage, are generally planned and designed.²⁶⁷ Changes in the physical appearance of a public place transformed the way space is used and the behaviour and responses of people using the space. In adroitly designed public spaces, people become less aware of their loss of freedom.²⁶⁸

As regulations and administrative plans increase, the leeway for people to act freely and retain their privacy decreases.²⁶⁹ People’s actions are on the one hand being controlled

²⁶¹ Ohya, “Privacy and Intention.”

²⁶² Barnlund, *Public and Private Self in Japan and the United States*, chap. 2: Public and Private Self.

²⁶³ A national opinion poll carried out in June 2007 found that 2.4% of respondents (out of 3000) had experienced an invasion of privacy. <http://www8.cao.go.jp/survey/h19/h19-jinken/index.html>

²⁶⁴ Nakamasa, *Can “Freedom” be Defined?*, 159.

²⁶⁵ Doi, *The anatomy of dependence*, 40-44.

²⁶⁶ Abe, *The Managed Space Paradox: Surveillance and Freedom*, 6.

²⁶⁷ *Ibid.*, 7.

²⁶⁸ *Ibid.*

²⁶⁹ Nakamasa, *Can “Freedom” be Defined?*, 159.

and managed, but at the same time they appear to be able to act freely.²⁷⁰ In such situations the question arises whether people really have freedom or not. If public spaces are designed to reduce the choices of the individual and to impose certain behaviour, or prevent certain actions, then the reduction of personal choice due to design may be as much of an intrusion into personal freedom as directly legislating against actions.²⁷¹ As public places become more surveilled and managed, ones expectation of privacy while in public is greatly reduced.²⁷²

In 2009, Professor Nishihara posited that it was very hard to define, or discern privacy's core.²⁷³ However he also maintained that it could be defined by the inclusion of both the right to be let alone and to have control over personal information.²⁷⁴ Nishihara claimed that 'the right to be let alone' arose from the improvement in camera technology, whilst the right to control over one's information arose from improvements in computer technology. The introduction of CCTV cameras into town centres combined both camera and computer technology, jointly having a larger impact on privacy.²⁷⁵ In 2006, Professor Tajima defined privacy as 'information about one's private life. Such information should not, without justification be made public by a third party'²⁷⁶

Ehara claimed, in 1991, that Japanese and Americans thought differently about privacy.²⁷⁷ He believed that in Japan, privacy was strictly limited to excluding others from entering one's room without consent and preventing another from discovering or publishing personal secrets. However, a wider interpretation of privacy requires people to have individual and not group identities, which Ehara insists was not common to Japan.²⁷⁸ Takeo Doi claimed,

²⁷⁰ Abe, *The Managed Space Paradox: Surveillance and Freedom*, 9.

²⁷¹ *Ibid.*, 11, 26.

²⁷² Monahan, *Surveillance in the Time of Insecurity*, 95 (noting that in gated communities, residents resented the way surveillance encouraged them to conform and act in a way that would not bring attention to themselves).

²⁷³ Nishihara, *Surveillance Cameras and Privacy*, 2 (Not being able to find the core of [the right to privacy] 「Puraibashii ken no kakushin」 wa nakanaka mitsukaranakatta. 「プライバシー権の核心」はなかなか見つからなかった。).

²⁷⁴ *Ibid.*, 39.

²⁷⁵ *Ibid.*, 41-42.

²⁷⁶ Tajima and Saito, *Extreme Surveillance Society and Freedom: Conspiracy, Facial Recognition System, and National Registration System*, 4 (shiseikatsjou no jouhou. Koushita jouhou wo togai kojini no ishi ni mototsukazuni midarini tasha ni kaiji sarenai kenri wo puraibashii ken to ii . . . 私生活上の情報。こうした情報を当該個人の意思に基づかずにみだりに他者に開示されない権利をプライバシー権といい . . .).

²⁷⁷ Ehara, *The right to Privacy: A comprehensive analysis*, 391.

²⁷⁸ In a 2009 poll about Japanese society of 5,890 respondents, 56.6% said people should be more concerned with 'country' and 'society', 33.5% said their own lives; 56.7% thought it was more important for the country to succeed, 27.8 thought it was more important for themselves. See:

in 1971, that privacy did not develop traditionally in Japan due to the Japanese concept of *amae* (dependency).²⁷⁹ He further claimed in 1985, that the Japanese had a strong but different concept of the ‘individual’.²⁸⁰ Accordingly, the individual was a distinct member of a group but ‘consciousness of the self as an individual’ was not a new concept.²⁸¹ However, Hayashi and Kuroda found in 1997, that Japanese people were just as individualistic as Americans when they thought in English.²⁸²

Differences in Japanese and Western culture often led to the claim that the Japanese did not have an equivalent word for ‘privacy’.²⁸³ Adams et al. stated that this argument goes back to 1946 when Benedict talked about the lack of privacy in Japanese communities in her book *The Chrysanthemum and the Sword*.²⁸⁴ The claim that the Japanese do not have a word for ‘privacy’ was faulty for a number of reasons. Firstly, the word ‘privacy’ had been incorporated into Japanese as a word of foreign origin as *puraibashii*. The word ‘privacy’ and *puraibashii* are therefore necessarily directly related in meaning.²⁸⁵ This can also be seen in English in the same way that English contains many words of foreign origin.²⁸⁶ Secondly, because there is little agreement on what the word ‘privacy’ means in English, it is difficult to say that the Japanese meaning is different to the English meaning. Thirdly, while there may not have been a specific word for ‘privacy’ prior to the word *puraibashii* being introduced, it has been a common term for many decades now, and to claim that the Japanese don’t have a word for ‘privacy’ is like claiming that the English don’t have a word for *Karaoke* or *Karate*. Finally, the adoption of a word of foreign origin into a culture does not prove the

<http://www8.cao.go.jp/survey/h20/h20-shakai/3.html>.

²⁷⁹ Doi, *The anatomy of dependence*, 39.

²⁸⁰ Doi, *The Anatomy of Self*, 56.

²⁸¹ Adams, Murata, and Orito, “The Japanese sense of information privacy,” 7.

²⁸² Hayashi and Kuroda, *Japanese Culture in Comparative Perspective*, 118.

²⁸³ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 246(*Eigo no ippanteki youhou de iu 「puraibashii」 to pittari ichi suru kotoba ga, nihongo ni wa nai to iu koto da.* 英語の一般的用法でいう「プライバシー」とぴったり一致する言葉が、日本語にはないということだ) .

²⁸⁴ Adams, Murata, and Orito, “The Japanese sense of information privacy,” 2.

²⁸⁵ However see: Murata and Orito, “Rethinking the concept of the right to information privacy” Murata and Orito claim that Japanese people often use the word *puraibashii* without understanding its meaning clearly and see it as more of a subjective concept than “Westerners”.

²⁸⁶ In the *meikyou kokugo jiten* (明鏡国語辞典) dictionary, *puraibashii* is defined as ‘Something related to oneself, one’s own life, individual’s secrets, the right not to be subjected to interference from another.’ (*shiji, shiseikatsu. Kojin no himitsu. Mata, sorega tanin kara kanshou, shingai sarenai kenri.* 私事・私生活。個人の秘密。また、それが他人から干渉・侵害されない権利)

non-existence of the concept that the word defines prior to its adoption by that culture.²⁸⁷

Adams et al. claimed that Japan had ‘a strong sense of informational privacy . . . which had long been part of the culture,’ and that the recent trend to create legislation in this area was due to a break down in social norms that previously protected privacy.²⁸⁸ Lawson suggested that ‘a right to privacy resonated deeply in Japanese society’, and recent trends to conceptualise and legislate in this area were due to ‘public demand and political will’, and not because the concept did not exist in the past.²⁸⁹ Lawson noted that the right to privacy in Japan was not just transplanted from abroad, but was the result of a ‘vibrant, indigenous political process.’²⁹⁰ She suggested that the new data protection laws enacted in 2003 heralded privacy as a new societal value,²⁹¹ and that this new focus on privacy protection may be used to infer that Japan was beginning to move from ‘friendly authoritarianism towards functioning constitutional democracy.’²⁹²

Impact upon CCTV

Specific protection for privacy is a relatively new concept, and while the history of its emergence differs between Japan and the UK, the Japanese and English now have a very similar conception of privacy. However attitudes towards public spaces and the tendency to carry out private acts in public are significantly different. Japanese tend to show more care and attention to public spaces than in England, and when people go against these norms, for example, putting out rubbish on the wrong day, or vandalising a public place, there is widespread condemnation, to a greater extent than in England. The Japanese are also much less personal in public. For example, opinions and actions tend to be held back and the shame culture inhibits people from conducting private acts, such as kissing or openly arguing in public.²⁹³ Such strict norms for acting in public in England are much rarer.

²⁸⁷ Adams, Murata, and Orito, “The Japanese sense of information privacy,” 2.

²⁸⁸ Ibid.; Murata and Orito, “Rethinking the concept of the right to information privacy.”

²⁸⁹ Lawson, “Japan’s New Privacy Act in Context,” 89.

²⁹⁰ Ibid., 98.

²⁹¹ Ibid., 90.

²⁹² Ibid., 101.

²⁹³ Doi said that the Japanese “sense of shame originates in awareness of the eyes of the outside world and is directed in toward the self.” Doi, *The anatomy of dependence*, 53.

These attitudes to privacy in Japan and England impact upon attitudes to CCTV in two main ways. Firstly, the ‘I’ve got nothing to hide so I’ve got nothing to fear’ argument²⁹⁴ is still adhered to by most people, both in Japan and England. However, because people in England are more likely to conduct private acts in public places, CCTV is more likely to capture a private act, and English people are therefore more likely to be concerned about public space CCTV. In Japan, because people do not generally do private acts in public, even if there are cameras, the cameras would be less likely to record private actions. Secondly, expectations of conformity and exclusion for those who act differently mean that people who act within normal social boundaries are likely to support measures, such as CCTV, that would disproportionately target those who do not follow Japanese norms. Therefore, CCTV in Japan is more likely to be accepted by the majority and less likely to invade the majority’s privacy, but less likely to be accepted by the minority and more likely to invade the minority’s privacy. Leon Wolff argued that Japan was comprised of a strong civil society with a healthy debate over human rights issues, so it would be wrong to suggest that Japanese citizens would blindly accept the imposition of CCTV against their will.²⁹⁵ It could be argued that the strong ‘civil society’ provides protection for the rights of the majority, but not foreign residents or those who are not members of mainstream Japanese society.²⁹⁶

2.4 Surveillance

The right to be left alone may not sound a very exciting freedom, but it is the one about which the British people care most. (Brian Walden, 1970)

Definition

Although the word surveillance was originally viewed as a word of terror in France, surveillance was also seen as a vital aspect of society during the middle ages to prevent the spread of the plague.²⁹⁷ Currently its current use evokes different feelings in different people. For someone living under a totalitarian regime the word brings feelings of repression,

²⁹⁴ Solove, “‘I’ve Got Nothing to Hide’ and Other Misunderstandings of Privacy.”

²⁹⁵ Wolff, “The Future of Human Rights Regulation in Japan.”

²⁹⁶ In an interview with a *Chonaikai* (Neighbourhood Association) leader, during a Neighbourhood Association meeting organised by the association and the police, citizens and the police had expressed concern about foreigners committing crime; however, there was no representation from the ‘foreign’ community, and it does not appear that the foreign communities had been consulted about the perceived problem. This indicates that the ‘strong’ civil society protects the resident Japanese, while distancing themselves from the relatively weak foreign community.

²⁹⁷ Foucault, *Discipline and punish*, 195-200.

oppression and fear, and reinforces the lack of balance between state and individual.²⁹⁸ For people living under the constant threat of terrorism or crime, the word can bring feelings of comfort and security.²⁹⁹ For political activists surveillance can be seen as anti-democratic.³⁰⁰ Boyne contended that surveillance grew out of danger and fear.³⁰¹ Foucault described surveillance as the accumulation of coded information and the supervision of individuals by someone in a position of authority.³⁰² Marx suggested that there was not a suitable word in English that conveyed the ‘full meanings of surveillance’, and said the closest one could get was ‘superwatching’.³⁰³ For the purpose of this thesis, surveillance, and its Japanese counterpart *Kanshi*, can be described as the monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications, whether in real time or after the event, by either a person or machine.

Ball and Kirstie divided surveillance into four categories: categorical suspicion, categorical seduction, categorical care, and categorical exposure.³⁰⁴ Categorical suspicion refers to policing aspects of surveillance and its use in combating and preventing crime. Categorical seduction refers to collection of information by corporations on users spending habits for marketing purposes. Categorical care refers to health and welfare systems where data is collected regarding people receiving benefits and requiring medical attention. Finally, Categorical exposure refers surveillance by the media of people in the spotlight.

²⁹⁸ In group discussions on privacy and surveillance, participants from Myanmar expressed concern at government surveillance stating that ‘If its [surveillance] in Myanmar then it’s definitely a problem’.

²⁹⁹ In the above discussion, a participant from India stated ‘In Delhi when I’m out of my home, anything can happen to me, so if it can provide safety or security then I really do not mind. When if I’m at an accident and there is a hit and run case and the guy escapes and maybe there will be a camera they can track down his car and then get compensation. There are many factors, people do not think about the positive things I feel. They really do not. If you had a shop, if you had a store, maybe someone is stealing clothes, or shoplifters I mean there is a car accident there is a camera’.

³⁰⁰ Haggerty and Samatas claim that citizens need a space ‘comparatively free of governmental oversight if they are to engage in political action. Surveillance is therefore anti-democratic to the extent that it prevents individuals from coming together to identify common interests, forge alliances and develop political strategies.’ Haggerty and Samatas, *Surveillance and Democracy*, 4-6.

³⁰¹ Boyne, “Post-Panopticism,” 241.

³⁰² McCahill, “Beyond Foucault: Towards a contemporary theory of surveillance,” 211.

³⁰³ Marx and Muschert, “Personal Information, Borders, and the New Surveillance Studies,” 379.

³⁰⁴ Ball and Webster, *The Intensification of Surveillance: Crime, Terrorism and Warfare in the Information Age*, 7-9; Marx first introduced “categorical suspicion” in 1988: Marx, *Undercover: Police Surveillance in America*, 291; Lyon first described “categorical seduction” in 2001; and Ball and Webster introduced “categorical care” and “categorical exposure” in 2003.

England

Evolution of surveillance

Government surveillance is not a new concept but has been in existence since at least the 1500s. However surveillance is now often carried out by the central state rather than locally.³⁰⁵ Collection of personal information in the national census was not originally used to keep track of people, but to ensure that those carrying out the census did not fabricate information.³⁰⁶ Later, the census was used as evidence of good management of the state.³⁰⁷ Civil registration, detailing the life, birth and death of the population was also not seen as subjecting the general population to control or surveillance, but holding local authorities to account and ‘freeing the working classes from disease and poverty.’³⁰⁸ Similarly, during industrialisation, the collection of personal information was seen as creating rights for individuals.³⁰⁹

The establishment of the police force in London in 1829 heralded in a new age of 'surveillance', but the police relied on their physical presence to watch out for crime instead of the collection of information.³¹⁰ With the decline of the British Empire, there was an urgent need to focus on the health of the growing British population, leading to the General Register Office coming under greater control from the central government. After Britain stopped sending its convicts abroad, there was an increasing problem with the reintegration of offenders into society. The 1879 Prevention of Crime Act brought in the Convict Supervision Office who supervised convicts. The collection of data on former convicts was the beginning of the police systematically storing information centrally for the purpose of control.³¹¹ The police set up units to collect information on those considered dangerous to the state. The rise

³⁰⁵ Higgs, “The Rise of the Information State: The development of central state surveillance of the citizen in England, 1500 - 2000,” 10; However, see: Ball, Webster, and Lyon, “Surveillance after September 11, 2001,” 20-21 (questioning whether surveillance is a centralized power or a dispersed assemblage); Furthermore, Ball and Webster argued that “today”’s surveillance . . . [is] more pervasive and less centralized than might have been imagined by earlier proponents of panopticism.’ Ball and Webster, *The Intensification of Surveillance: Crime, Terrorism and Warfare in the Information Age*, 6.

³⁰⁶ Higgs, “The Rise of the Information State: The development of central state surveillance of the citizen in England, 1500 - 2000,” 11.

³⁰⁷ *Ibid.*, 12.

³⁰⁸ *Ibid.*, 13.

³⁰⁹ *Ibid.*, 15; However, Lyon claimed that measures “intended to ensure equality” could also “provide opportunities for authoritarian or arbitrary treatment” Lyon, “Identification, surveillance and democracy,” 34 .

³¹⁰ Higgs, “The Rise of the Information State: The development of central state surveillance of the citizen in England, 1500 - 2000,” 14.

³¹¹ *Ibid.*, 18.

of the welfare state increased the use of and need for databases and information about people which, Edward Higgs claimed, was evidence of social improvement rather than social control.³¹² Currently, surveillance is carried out routinely on individuals and groups within the UK who are deemed by the government as a threat to national security.³¹³ Keith Laidler suggested, in 2008, that the government had constantly failed to protect citizens' personal information, and any increase in surveillance by the government would lead to increasing, and greater intrusions into people's privacy.³¹⁴

The Panopticon

The panopticon was a prison design that encouraged self control through the uncertainty of not knowing whether or not a person was being watched by a guard. By constantly conforming to the rules, the prisoner would gradually incorporate these rules internally and become an ideal, reformed prisoner. For the panopticon to be effective the population under surveillance must be both rational and share a 'homogenous base of knowledge'. If the prisoners are either ignorant or irrational the panopticon is unlikely to have the desired effect.³¹⁵

This form of prison was never realised, but the idea of the panopticon has been incorporated into the designs of many factories and management strategies since first discussed by Jeremy Bentham in 1785, and is now used to draw analogies with modern-day surveillance society. The concept of panopticism can be seen from the point of view of the observer or the observed. The observer uses the panopticon to observe, gather information, carry out data management, and control the surveilled of a population. The observed see the panopticon as causing them to focus on their self-discipline, tend towards normalization and subjectification, and soul-training.³¹⁶

Bentham saw the Panopticon as being not only applicable to the prison, but also throughout society;³¹⁷ that is, a means by which the functions of the government could be

³¹² Ibid., 16.

³¹³ Manningham-Buller, "The new protective state," 70.

³¹⁴ Laidler, *Surveillance Unlimited: How we've become the most watched people on Earth*, 214-220.

³¹⁵ Simon, "The Return of Panopticism: Supervision, subjection, and the new surveillance," 409.

³¹⁶ Ibid., 406.

³¹⁷ For example, workhouses and factories where labour productivity was notoriously inefficient. It was thought that workers would work harder if they knew they might be being watched and would not slack off.

realised.³¹⁸ Bentham envisioned this idea as a general panacea for society's troubles that would also indirectly give people 'basic civil and political liberties and the freedom to live without fear.'³¹⁹

Bentham did not believe in natural rights not specifically provided for by law, instead he equated the term 'right' with 'legal right'.³²⁰ In 1968, Manning explained that it was a 'mistaken conviction' to say that a government ought never to interfere with the rights that it created itself.³²¹ Therefore, if the government had granted people a specific right, for example, privacy, but later decided that it was deleterious to society, then the government would be justified in taking away this right in the name of creating a better functioning society. Bentham thought that the true object of human desire was not liberty but security. Thus for Bentham the state represented the 'cradle of law', and the work of law was security and not liberty.³²²

Bentham's ideas have been described as being 'as destructive to freedom as they are to rights,' the panoptic as leaving 'no privacy and no tolerance for the deviant', and Bentham himself as being caught up in an 'obsession with it he had forgotten the dangers or unrestrained power; devices of such monstrous efficiency [that have] left no room for humanity.'³²³ However, Boyne explained that the panopticon originated in social architecture as well as prison design, and it was out of concern for the welfare of the criminal and vulnerable, rather than as an oppressive method of control.³²⁴ Margaret DeLacy suggested that the panoptic prison was actually designed to lessen the hardships of the prisons of the time.³²⁵ Bentham's prison also eventually had an effect on Japanese prison designs, which changed their names to *kangoku* (surveillance gaol).³²⁶

Michael Foucault noted a significant change in the 18th century from which the anonymous royal subjects were gazing at the powerful monarchy to subjects being under the

³¹⁸ Manning, *The Mind of Jeremy Bentham*, 88.

³¹⁹ Semple, *Bentham's prison*, 22.

³²⁰ Jeremy Bentham, Works III 334-5; Bentham describes such a contradictions as: *like 'round square', 'a son that never had a father', 'a species of cold heat', 'a sort of dry moisture', 'a kind of resplendent darkness*

³²¹ Manning, *The Mind of Jeremy Bentham*, 43.

³²² Long, *Bentham on Liberty: Jeremy Bentham's idea of liberty in relation to his utilitarianism*, 215.

³²³ Semple, *Bentham's prison*, 3. Quotes are from Himmelfarb, Manning, and S.R.Letwin respectively

³²⁴ Boyne, "Post-Panopticism," 238.

³²⁵ Semple, *Bentham's prison*, 13.

³²⁶ Murakami Wood, Lyon, and Abe, "Surveillance in Urban Japan," 553.

gaze of powerful, but invisible rulers.³²⁷ Simon believed, in 2005, that there was a divergence of views regarding whether or not modern day surveillance was more or less panoptic than described by Foucault,³²⁸ depending on whether panopticism was interpreted from the point of the observer or the observed.³²⁹ The panopticon appears to break down as a metaphor for present day society when the conditions of enclosure, isolation, and training that are constituent parts of the panopticon are viewed. The panopticon relies on enclosure, but urban streets allow extensive mobility and permeability through boundaries. The population cannot be isolated because it cannot be contained, and the training effect from self control under the panopticon, cannot be enforced on such a mobile population. The consequences of ‘being seen without being able to see’ cannot be felt as people are able to move freely and have often left an area before any consequences would be felt by those under surveillance. Simon therefore perceived the panopticon as being inapplicable beyond the confines of total institutions.³³⁰

As surveillance becomes more common and people become aware of its presence, a panoptic effect can be seen in society. People are able to understand what behaviour is expected of them and conform to avoid attention. However, this may simply be causing them to feign conformity while under surveillance.³³¹ The panopticon relies on making all acts visible and having a realistic threat of retribution for any transgression.³³² In institutions where surveillance is not total, as in present day society, neither are all acts visible, nor is there a realistic threat of retribution. Therefore people are able to act, for a large part, in the knowledge that they are not being watched. People who would break the rules will therefore not be subjected to the self-control inducing effect of constant surveillance.³³³ On the other

³²⁷ Semple, *Bentham's prison*, 10.

³²⁸ Foucault said that the “universally widespread panopticism enables [the exercise of power], on the underside of the law, a machinery that is both immense and minute, which supports, reinforces, multiplies the asymmetry of power and undermines the limits that are traced around the law.” Foucault, *Discipline and punish*, 223.

³²⁹ Simon, “The Return of Panopticism: Supervision, subjection, and the new surveillance,” 403.

³³⁰ *Ibid.*, 411.

³³¹ *Ibid.*, 410-411.

³³² Leman-Langlois described the Panopticon as: “The idea of self-imposed transformation and discipline only truly works if we assume that the ‘inmates’ are rational in the classic Enlightenment sense. This implies that, as they weigh the costs and the benefits of their future actions, they always perceive the consequences of being seen, recorded and eventually punished, as serious costs.” Leman-Langlois, “The Myopic Panopticon: The social consequences of policing through the lens,” Introduction.

³³³ Simon explains: “self discipline begins only when the prisoner cannot imagine a means of escape. Once there is nowhere to hide, it makes more sense to conform but as soon as the prison walls are gone, the system becomes more difficult to manage.” Simon, “The Return of Panopticism: Supervision, subjection, and the new surveillance,” 410, 416.

hand, as surveillance becomes common in all spheres of life, the ability for an individual to escape the gaze of an invisible observer decreases.

The 'Oligopticon', described by Bruno Latour in 1998,³³⁴ attempted to conceptualise the conundrum of trends towards more panopticism in some segments of society and less in others. The Oligopticon allows for the observers to see with absolute clarity a small subset of behaviour of the observed.³³⁵ This differs from the panopticon where the observer is able to view everything. The panopticon only works if the observer can see everything and the observed are not able to hide anything.³³⁶ However, with the Oligopticon, the observer is unable to see everything, and the effect of paranoia on the observed is not felt because surveillance is neither total nor constant.

In 1997, Mathiesen described the 'Synopticon' as the 'many seeing the few'. He said that it came into being through the evolution of mass media, combined with panopticism (where the few see the many), as leading to a two-way 'viewer society'.³³⁷ Synopticism and panopticism have evolved and grown together and institutions and technologies are now simultaneously both synoptic and panoptic.³³⁸

Although society may not be a panoptic state as described by Bentham, modern day surveillance appears to approach his description. As recently as 2010 David Omand suggested that society was approaching a panoptic state due to the accumulation of measures which individually are justifiable, but when taken together amount to creating an 'all-seeing state where surveillance is so widespread as to provide a new form of social control.'³³⁹ The synopticon and the oligopticon provide more accurate descriptions of current society and can be seen as later stages in the evolution of the panopticon.

Surveillance Society

In 2000, Haggerty and Ericson noted Orwell's vision of Big Brother and Foucault's panopticon as two dominant metaphors for understanding contemporary surveillance.

³³⁴ Latour and Hermant, *Paris ville invisible*, 28.

³³⁵ Boyne, "Post-Panopticism," 254.

³³⁶ Foucault explains that "It is the fact of being constantly seen, of being able always to be seen, that maintains the disciplined individual in his subjection." Foucault, *Discipline and punish*, 187.

³³⁷ Mathiesen, "The viewer society: Michel Foucault's 'Panopticon' revisited."

³³⁸ *Ibid.*, Parallels, 3.

³³⁹ Omand, *Securing the State*, 110.

Haggerty and Ericson explained that Orwell's idea, while frightening, does not come close to what is technologically possible in the modern day. Furthermore, in *Nineteen-Eighty-Four*³⁴⁰ the 'proles' were not the ones subject to surveillance, but in the present day it is the 'proles' who are often subject to surveillance. Haggerty and Ericson also felt that Orwell only saw the government as potential users of intrusive surveillance, but today it is the private sector that often leads in the field of surveillance technology and application.³⁴¹ Gary Marx showed in 1985 that the idea of a total surveillance state where the government can exert total control and the public are under constant intrusive surveillance was an illusion: 'Government agents are clearly limited in the surveillance and physical coercion they can carry out, but they are free to create the impression of police omnipresence and omnipotence.'³⁴²

Higgs contended that the rise of central state surveillance was not due to a change in the nature of society, but rather a change in the nature of the state and the context in which it functioned.³⁴³ Terrorism in the UK since the 1970s has impacted on the profusion of surveillance and CCTV within England. The change this brought about in people's expectations of daily life created a change in what citizens wanted and what they were willing to allow the state do to in their name.

The world's first DNA database was established in 1995, initially holding the DNA profile of anyone who had been charged with an offence. Since 2004 this has been extended and now anyone who is arrested and detained in police custody for a recordable offence will have their DNA taken and profile stored indefinitely.³⁴⁴ Currently approximately five million people have their profiles stored on database, although one million of these have not been cautioned, charged, or convicted of any offence.³⁴⁵

Since Al Qaeda began its campaign, the nature of both individual nations and the international community had changed with strong measures becoming the accepted norm. Haggerty and Ericson maintained that whilst the poor may have found themselves under surveillance by social and welfare agencies, the middle and upper class were surveilled by

³⁴⁰ Orwell, *Nineteen Eighty-Four*.

³⁴¹ Haggerty and Ericson, "The Surveillant Assemblage," 261-262.

³⁴² Marx, "The Surveillance Society: The threat of 1984-style techniques," 59.

³⁴³ Higgs, "The Rise of the Information State: The development of central state surveillance of the citizen in England, 1500 - 2000," 23.

³⁴⁴ House of Commons Home Affairs Committee, *The National DNA Database: Eighth Report of Session 2009-10*, 5.

³⁴⁵ *Ibid.*, 7.

other agencies, for example, credit card and insurance companies.³⁴⁶ Haggerty and Ericson coined the term the ‘disappearance of disappearance’ to show that it was becoming increasingly difficult for people to remain anonymous and avoid falling under surveillance of various organisations.³⁴⁷ They were concerned with the trend to attempt to digitise every aspect of life leading to the creation of ‘data doubles’ where ‘flesh is reduced to pure information’³⁴⁸ asserting that:

We are only now beginning to appreciate that surveillance is driven by the desire to bring systems together to combine practices and technologies and integrate them into a larger whole. It is this tendency which allows us to speak of surveillance as an assemblage, with such combinations providing for exponential increases in the degree of surveillance capacity.³⁴⁹

Boyne suggested that developments in public sphere surveillance dwarfed those in the private sector,³⁵⁰ and that because surveillance was tied up with the social structures of a welfare state, any deep criticism of surveillance as a principle would ‘have to imply a critique of social democracy and social welfare simultaneously . . .’³⁵¹ Boyne further believed that criticizing surveillance ‘would appear to demand nothing less than complete withdrawal from society.’³⁵²

Recent trends

While the police are traditionally seen as the organisation with the responsibility for patrolling, maintaining peace and safety and watching the community, recent years have seen a host of new groups becoming involved in such activities. Jonathan Merritt noted, in 2010, that the increase in providers of policing services may be due to a decrease in secondary and tertiary agents of control such as park keepers, bus conductors, and local community groups that previously provided ‘natural surveillance’. These non-police agents effectively prevented

³⁴⁶ Haggerty and Ericson, “The Surveillant Assemblage,” 273.

³⁴⁷ *Ibid.*, 275.

³⁴⁸ *Ibid.*, 269.

³⁴⁹ *Ibid.*, 265.

³⁵⁰ Boyne, “Post-Panopticism,” 249.

³⁵¹ *Ibid.*, 242.

³⁵² *Ibid.*, 253.

many incidents from escalating to a level requiring police intervention.³⁵³ The Special Constabulary, consisting of volunteer civilians with police training and powers, although in existence since 1831, rapidly expanded in the late 1990s and early 2000s. Public calls for police to deal with low level crime further led to local authorities funding local community patrols to carry out work that would otherwise take such officials away from other aspects of policing.

By July 1998, 18 out of 43 police forces in England and Wales ran their own patrol schemes. In 2002, paid civilian Street Wardens were introduced, by local councils, who carried out patrols and could act as professional witnesses in court to assist prosecutions. The Police Reform Act of 2002 gave police chiefs the right to appoint civilians to certain roles and led to the formation of Police Community Support Officers (PCSOs). By March 2010 there were 16,685 PCSOs nationwide and 15,505 Special Constables.³⁵⁴ There were significant concerns that training has been insufficient and inadequate for the new agents such as PCSOs.³⁵⁵ Joyce found in 2006 that the development towards plural policing had led to a state where the ‘responsibility for crime prevention had been “hived off” from the central state and had become intimately associated with the objective of community safety.’³⁵⁶ In addition, a vast private security industry consisting of security guards, and detectives had proliferated.³⁵⁷ The growth and popularity of a variety of policing and security bodies indicates that concerns with surveillance should not be limited to governmental organisations such as the police. The Information Commissioner’s 2010 report on the surveillance society (ICO 2010 report) said that the effect of the surveillance society on the UK was not only a loss of privacy, but also a loss in trust.³⁵⁸

³⁵³ Merritt and Stack, “W(h)ither the PCSO? Police perceptions of the Police Community Support Officer’s role, powers and future directions,” 733.

³⁵⁴ Sigurdsson and Dhani, *Police Service Strength: England and Wales, 31 March 2010*.

³⁵⁵ Merritt and Stack, “W(h)ither the PCSO? Police perceptions of the Police Community Support Officer’s role, powers and future directions,” 745.

³⁵⁶ Joyce, *Criminal justice*, 139.

³⁵⁷ *Ibid.*, 166-173.

³⁵⁸ Information Commissioner’s Office, *Information Commissioner’s report to Parliament on the state of surveillance*, 13.

Evolution of surveillance

Surveillance has long played an important role in Japanese society,³⁵⁹ and has been around since long before Western influence arrived.³⁶⁰ Rural relationships necessitated building trust and mutual responsibility among villagers as people were held responsible for the actions of those around them. During the Tokugawa era different castes were separated in different parts of cities with movement strictly regulated and areas split up into various neighbourhoods, each with barriers, gates, and watch towers. Common people did not experience privacy, but rather constant monitoring by employers and home owners.³⁶¹ The constant threat and danger of fire led to a parallel surveillance network under control of the local community.³⁶² Setsuo Miyazawa expressed the view in 1989 that Japanese society had evolved to encourage conformity, which was likely to have had a big influence on their reception of and attitudes towards surveillance.³⁶³

Before WWII, the Japanese government was small but powerful.³⁶⁴ After the war, as Japan rapidly developed, administration and the role of the government also increased. Japan became a world leader in industry and technology, and people found themselves under increasing examination as part of an information society.³⁶⁵ Japan's information society started from public plans, not from private business interests and this led to concerns about the collection and use of personal information by the police and local government for surveillance purposes.

Despite rapid economic and social changes through the 20th century, Japanese society retained many of the characteristics of its traditional society, leading to a greater acceptance of surveillance than in the West.³⁶⁶ For example, police officers make biannual house visits to

³⁵⁹ Murakami Wood, Lyon, and Abe, "Surveillance in Urban Japan," 556.

³⁶⁰ Ibid., 563.

³⁶¹ Ogura, "Electronic government and surveillance-oriented society," 272.

³⁶² Murakami Wood, Lyon, and Abe, "Surveillance in Urban Japan," 556.

³⁶³ Miyazawa, "Learning lessons from the Japanese experience: A challenge for Japanese criminologists," 107.

³⁶⁴ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 245.

³⁶⁵ However, Webster explains Anthony Giddens's argument that all societies have been 'information societies' from the beginning, so whilst the role of information has taken on increasing importance, there is nothing fundamentally different about the current state of society. see: Webster, *Theories of the information society*. 202

³⁶⁶ Johnson, "Japanese Version of Community Corrections: Volunteer Probation Officers and Hostels," 194.

gather information about occupants, what the family makeup is, and check if there are any suspicious people in the neighbourhood.³⁶⁷ A survey published by the National Research Institute of Police Science in 1986 showed that two-thirds of respondents accepted the official explanation (that such canvassing was needed to help provide public services) for house visits with only one percent saying the visits were unnecessary. Miyazawa referred to Ames (1981), who reasoned that the real purpose for the home visitations was for use in potential future criminal investigations. Miyazawa added that most people would probably accept this use because most people do not think that they will ever be on the receiving end of such an investigation. However, collecting information for potential use in future investigations was not the stated reason for the house visits, and therefore people's personal information was being used for purposes for which they had not given their consent.³⁶⁸

Residents of Japan were also kept under surveillance through identification schemes. There was one form of identification for foreigners called the Alien Registration Card System, and two for Japanese citizens: *Koseki* and *Juki-net*.³⁶⁹ An ID card has been imposed on foreigners resident in Japan since before WWII and has evolved into the 'Alien Registration Card System' making non-Japanese both more visible and more traceable than Japanese citizens.³⁷⁰ A foreign resident in Japan may be fined up to 200,000 yen if found without their registration card, and up to one year in gaol for refusing to show it when requested by officials.³⁷¹ There were plans in 2005 to introduce new cards for all foreigners, but the plans were shelved due to concerns about excess surveillance.³⁷² In 2004, David Lyon explained how legislation on terrorism, introduced in October 2001, greatly increased surveillance in Japan.³⁷³ Lyon argued this extra surveillance could be used to increase discrimination on foreigners.³⁷⁴

³⁶⁷ National Police Agency, "Japanese Community Police and Police Box System," 244; Murakami Wood, Lyon, and Abe, "Surveillance in Urban Japan," 554. However, the author of this thesis has talked with a number of Japanese residents who have never had a visit from the police, therefore it is unlikely that this practice is strictly adhered to.

³⁶⁸ Miyazawa, "Learning lessons from the Japanese experience: A challenge for Japanese criminologists," 118.

³⁶⁹ Ogasawara, "A tale of the colonial age, or the banner of new tyranny? National identification card systems in Japan," 94.

³⁷⁰ *Ibid.*, 94-95.

³⁷¹ *Ibid.*, 101.

³⁷² "IC cards planned to track 'nikkeijin'." *Asahi Shimbun*, 20 December 2006

³⁷³ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 247-251.

³⁷⁴ *Ibid.*, 247-248; cf: Etzioni, *The Limits of Privacy*, 131-132 (asserting that universal identifiers would eliminate discrimination in some areas); Lyon, "The border is everywhere: ID cards, surveillance and the other,"

The national registration for citizens began in Japan in 1871 with the *Koseki Act*, and focused on family units as opposed to individuals.³⁷⁵ Family units took responsibility for the actions of all members of their unit encouraging self-conformity and lateral surveillance of other family members.³⁷⁶ The government could use *Juki-net* to access information including name, address, date of birth, gender, history of data changes, and an 11-figure ID number.³⁷⁷ The government claimed that the heads of all the districts and committees requested new legislation to help improve management of citizen's information along the lines of *Juki-net*. However, a survey by the Japan Federation of Bar Associations disputed this conclusion, and showed there was actually very low enthusiasm for the *Juki-net* system.³⁷⁸

Due to significant opposition, the government said *Juki-net* would be limited to 92 administrative purposes; however, a few months after the bill was passed, this was expanded to 264 purposes.³⁷⁹ Protests came initially from Suginami Ward in Tokyo where a survey showed 72% of people were against the implementation of *Juki-net*.³⁸⁰ In an Asahi Shimbun opinion poll, 86% of respondents said that they feared their personal information would be either leaked or misused. 70 assemblies and 29 mayors passed resolutions demanding its postponement, three towns refused to implement the system, and the mayor of Yokohama said citizens could decide for themselves. When the system went live, 4.1 million citizens were not included.³⁸¹ By March 2008 the associated ID card was being used by only two percent of the population.³⁸²

Otani claimed, in 2006, that *Juki-net* was clearly useful for a small section of society who was constantly moving as it simplified administrative acts. Because *Juki-net* allowed a significant amount of information about an individual to be immediately gleaned there were concerns it might result in further discrimination and surveillance of naturalised Japanese

75 (countering Etzioni's stance and claiming that Etzioni ignores the "broader context").

³⁷⁵ Ogasawara, "A tale of the colonial age, or the banner of new tyranny? National identification card systems in Japan," 96.

³⁷⁶ *Ibid.*, 96-98.

³⁷⁷ *Ibid.*, 103.

³⁷⁸ Japan Federation of Bar Associations, *The Day Privacy is Lost*, 79.

³⁷⁹ Ogasawara, "A tale of the colonial age, or the banner of new tyranny? National identification card systems in Japan," 104.

³⁸⁰ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 254.

³⁸¹ Japan Federation of Bar Associations, *The Day Privacy is Lost*, 82, 83.

³⁸² Murata, Orito, and Adams, "The Development of Japanese Data Protection," 113.

citizens with foreign ancestry.³⁸³ Otani pointed out that the system justified neither the cost to the tax payer nor the privacy intrusion.³⁸⁴ The Japan Federation of Bar Associations found that this type of system existed nowhere else in the world, and the Japanese chose a system that was considered too intrusive by others.³⁸⁵

Neighbourhood Associations and Volunteer Patrols

Neighbourhood associations, or *Chonaikai* in Japanese, have been a steady part of Japanese society since the 1400s, and they played a significant role in mobilising the general population during the Second World War. Although the associations were dismantled during the American occupation force after the war, they were reinstated shortly after and they still play a significant role today. The head of a Nagoya neighbourhood association explained that their existence had little to do with grassroots support, but was driven from local government level.³⁸⁶ The association head said that membership was voluntary; however, opting out would result in certain inconveniences, and most people just ‘went along’ with the association when required. The associations had three main roles: planning and preparation for the long expected Tokai earthquake, recycling, and issues related to crime. There were once monthly crime prevention patrols on a Saturday afternoon between 4pm and 5pm by the heads of the local associations (usually middle-aged and elderly residents), and the association had meetings with the police and other members regarding crime prevention. The association head acknowledged that the ‘sense of communal responsibilities and civic duties’ is not felt by the members of the associations, but rather ‘generated top-down by the local government’.³⁸⁷ Furthermore, there has been a delegation of duties to the ‘voluntary’ neighbourhood associations from the local government for functions that are generally accepted as being the local government’s responsibilities.

Volunteer crime prevention may be part of a local neighbourhood association’s responsibility, or new groups may be formed. Organisations have sprung up to protect their communities, conducting patrols for safety and security and carry out surveillance.³⁸⁸ The

³⁸³ Otani, *What are Surveillance Cameras Looking at?*, 127.

³⁸⁴ *Ibid.*, 125-126.

³⁸⁵ Japan Federation of Bar Associations, *The Day Privacy is Lost*, 84.

³⁸⁶ In December 2010, the author of this thesis interviewed the head of a Neighbourhood Association about the role and responsibility and the attitude towards Neighbourhood Associations from residents. The neighbourhood consisted of 260 households in Nagoya city.

³⁸⁷ Ito, “‘Civic Duty’ for Community Development: The Need for Duty-based Approaches?,” 3.

³⁸⁸ Nishihara, *Surveillance Cameras and Privacy*, 28; Shimizu, “Development and Problems of the ‘Life

volunteer patrols are usually carried out in conjunction with the police and local authority.³⁸⁹ The number of volunteer groups has grown significantly in recent years. In 2003 there were 3,056 groups, which grew to 8,079 in 2004, and 19,515 groups by 2005. Of these, 45.7% were run in conjunction with the police, and 32.8% received training from the police. By 2005 almost 1.2 million citizens were involved with volunteer groups, double the number in 2004.³⁹⁰ Shimizu stated in 2003 that there was a worry that society was entering a panoptical or Orwellian state, and that the concern was not surveillance by the state but instead the move towards citizens carrying out surveillance on themselves.³⁹¹

Influence of Terrorism

Surveillance is rapidly being used to deal with detectable terrorist activity and is based upon using sophisticated technology.³⁹² North America and Europe preceded Japan in installing data collection and high tech systems, however Japan has followed suit. Terrorism is not new to Japan. The sarin attack on Tokyo underground has not lost its significance and many in Japan are aware of the risk and reality of terrorism. The large earthquake in 1995 also had a big impact on Japan, and the combination of the attack and disaster led to calls for the government to do more to protect citizens.³⁹³ Prior to the 1995 Sarin attack, surveillance was generally used for administration and had gradually expanded as technical capabilities increased. The attack was seen as a failure of surveillance as the group was being watched at the time and had already carried out two previous attacks.³⁹⁴ Prior to 9-11 Japan treaded carefully in conducting surveillance, but after the attacks, the government become more aggressive in its surveillance network.³⁹⁵

Prime Minister Koizumi presided over new regulations on surveillance and extending the use of the Self Defence Force (SDF) that were quickly enacted,³⁹⁶ in turn creating

Security Regulations’,” 236.

³⁸⁹ Shimizu, “Development and Problems of the ‘Life Security Regulations’,” 237.

³⁹⁰ http://www.npa.go.jp/safetylife/seianki55/katsudo_jyokyo/keissei_jyokyo.html

³⁹¹ Shimizu, “Development and Problems of the ‘Life Security Regulations’,” 239.

³⁹² Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 241.

³⁹³ Ibid.

³⁹⁴ Murakami Wood, Lyon, and Abe, “Surveillance in Urban Japan,” 554.

³⁹⁵ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 242.

³⁹⁶ Tajima, “Japan: Moving Towards a Surveillance Society,” 9.

increased opposition and resistance.³⁹⁷ After the Madrid bombing in March 2004 Koizumi said: ‘There is a possibility of a terrorist attack everywhere...we all need to recognise the need for greater protection.’ Masahiko Shimizu insinuated that the possibility of an attack on the Japanese arose through Japan’s decision to provide support for American foreign policy. Shimizu described that instead of the government taking responsibility for security, Koizumi informed the public that it was their responsibility to protect themselves.³⁹⁸

Tajima worried, in 2006, that Japan was quickly leaning towards a constant wartime footing, in direct confrontation with Japan’s peace orientated constitution.³⁹⁹ Although the installation of cameras had increased rapidly since events such as 9-11 and the 7-7 London attacks, there were still people who said that more needed to be done to ensure Japan was ready to deal with a terrorist attack.⁴⁰⁰ Recent legislation targeting terrorism enacted in late 2004 under the Emergency Public Peace and Order Programme gave significantly more power to conduct surveillance than was previously possible:

- Police given stronger powers to collect and analyse personal information, increase border security, airports and transport networks, tackle cyber-terrorism, greater emergency powers, increase restrictions on foreigners, set up of a special anti-terrorism unit, and increase cooperation with local authorities.
- Government given greater power to collect biometric data at airports, restrict import of materials that could be used for bomb making, and impose restrictions on foreigners at hotels and in financial matters.⁴⁰¹

Shimizu and Itoh maintained that the possibility of a terrorist attack in Japan arose from the cooperation with America’s ‘war on terror’. Therefore these two scholars concluded, in order to prevent terrorist attacks in Japan, instead of increasing surveillance on citizens, the Japanese should cease cooperation with the USA in its military operations and withdraw all SDF personnel.⁴⁰²

³⁹⁷ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 243.

³⁹⁸ Shimizu, “Police and Government Measures for Tackling Terrorism,” 71-72.

³⁹⁹ Tajima, “Japan: Moving Towards a Surveillance Society,” 11-13.

⁴⁰⁰ *Ibid.*, 11.

⁴⁰¹ Shimizu, “Police and Government Measures for Tackling Terrorism,” 68-71 (keisatsu, seiji no [tero taisaku] 警察・政治の「テロ対策」).

⁴⁰² *Ibid.*, 72; Ito, “Proposal to the Transport Ministry of Land, Infrastructure and Transport,” 76.

Recent trends

Otani claimed that the ‘broken window’ theory approach has dominated Japanese policing in recent years.⁴⁰³ This approach looked to reduce crime in high crime areas through zero-tolerance policing on criminals and criminal acts in these areas. However, in 2007, Lombardo and Lough showed that the broken window theory did not have a strong deterrent effect.⁴⁰⁴ Instead, when introduced into an area that was a hot bed of criminal activity, it only temporarily moved it on to a different location. Kamagasaki took a different approach to dealing with crime.⁴⁰⁵ Kamagasaki had suffered a high-rate of minor crimes such as illegal gambling, but the main worry was the threat to public order from violence when people congregated in the streets. The police had maintained extensive CCTV coverage in the area but tended to ignore small crimes and only intervened when there was a danger of public disorder. The police used surveillance to attempt to contain crime in Kamagasaki and not move problems on to other places. Otani says that this was akin to ‘caging the crime problem’ in Kamagasaki, that is, building a fence around the problem and dealing with it, as opposed to exporting crime elsewhere.⁴⁰⁶

In 2006, Abe said that the evolution of surveillance in recent times could be characterised in a number of ways:⁴⁰⁷ from guarding people to watching over people for their safety;⁴⁰⁸ from prohibition to freedom; from detection to prevention; from ‘discipline of actions’ to ‘management of public spaces’;⁴⁰⁹ and an increase in apathy towards surveillance. In 2008, Midori Ogasawara said that another major trend was sorting of the population into the categories of ‘terrorist’ or ‘innocent’, where the innocent are viewed as having the potential to commit acts harmful to the state justifying mass surveillance of the general population.⁴¹⁰ Due to economic fluctuations, contract workers, of whom a high percentage

⁴⁰³ Otani, *What are Surveillance Cameras Looking at?*, 116.

⁴⁰⁴ Lombardo and Lough, “Community Policing,” 131.

⁴⁰⁵ Otani, *What are Surveillance Cameras Looking at?*, 115.

⁴⁰⁶ *Ibid.*, 117.

⁴⁰⁷ Abe, *The Managed Space Paradox: Surveillance and Freedom*, 35-38.

⁴⁰⁸ *Ibid.*, 26(Kinshi kara jiyuu; 「kanshi no manazashi ga 「mihari」 de wa naku 「mimamori」 toshite ukeirarereru you ni natta haikai ni wa, kanshi no arihou jitai no henbou mo shiteki dekiru.」 禁止から自由; 「監視のまなざしが「見張り」ではなく「見守り」として受け入れられるようになった背景には、監視のあり方自体の変貌も指摘できる).

⁴⁰⁹ *Ibid.*, 27-28.

⁴¹⁰ Ogasawara, “A tale of the colonial age, or the banner of new tyranny? National identification card systems in Japan,” 93.

was foreigners, were always at risk of losing their jobs. Handa posited that foreigners were therefore constantly viewed as potential offenders and found themselves under surveillance.⁴¹¹

Mobile phone technology developed by the Japanese telecommunications company KDDI Corporation can now monitor and record minute movements, indicating what the holder is doing. KDDI has been talking with a Japanese employment agency about its use with cleaners and security guards. KDDI claim that this technology was ‘not about curtailing employees’ rights to privacy. We’d like to think our creation more of a caring, mothering system rather than a Big Brother approach to watching over citizens.’⁴¹² The ICO 2010 report noted how in England there had been a shift from the ‘positive and caring aspects of surveillance’ towards the more harmful aspects.⁴¹³ Japan may be a few years behind England, but it is likely that there will be a similar shift in the upcoming years.

Through town planning, open spaces are becoming the norm in restaurants, shopping malls, and streets. Open spaces are perfect for CCTV cameras as they provide no obstructions to their line of view creating no spaces to hide from their gaze.⁴¹⁴ Abe said surveillance cameras in public spaces were not guarding over people as a guard watches a prisoner or a teacher watches over a bad student, but watching over citizens benevolently the way a parent watches over a child out of care and affection, making sure that nothing bad happens.⁴¹⁵ Abe said that as the number of cameras increases, the need for justification also increases. With few cameras there was minimal invasion of privacy, so there was not much concern or need for opposition; however, with the rapid trend towards ubiquity, cameras had become an accepted part of daily life. The extent of privacy intrusion was much larger, and the need for protection much greater, but as they became a normal part of life, opposition was seen as less necessary.⁴¹⁶ Over the past few years, opposition to surveillance had increased and came mainly from lawyers, journalists, academics, labour unions, and civic groups.⁴¹⁷

⁴¹¹ Handa, “The Fear of Surveillance Cameras,” 213-214 Also, see Yomiuri Shimbun opinion poll March 2008 showing 40.3% of respondents who thought Japan has become less safe thought that this was in part due to an increase in foreigners.

⁴¹² “Mobile phone allows boss to snoop.” BBC online, 10 March 2010.

⁴¹³ Information Commissioner’s Office, *Information Commissioner’s report to Parliament on the state of surveillance*, 15.

⁴¹⁴ Abe, *The Managed Space Paradox: Surveillance and Freedom*, 18-19.

⁴¹⁵ *Ibid.*, 22.

⁴¹⁶ *Ibid.*, 24.

⁴¹⁷ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 252.

In 1999 the Act on Wiretapping for Criminal Investigation⁴¹⁸ was enacted in Japan and sparked a large scale controversy.⁴¹⁹ Although the law was aimed at cannabis, gun crime, violent crime, murder, and illegal immigration, it also allowed the police to monitor phones, faxes and email. In May 2002, the Ministry of Defence made a list, including personal information, of people who had made requests to them. The government had a list of everyone who had complained or protested against government policy.⁴²⁰ The next year (2003), it was revealed that for many years the Self Defence Force (SDF) had been compiling data from over 550 local governments on boys and girls of military age.⁴²¹

It is asserted by Lyon et al. that Japan had become a surveillance society where personal information was collected, used, controlled, and managed, and people were watched, followed and discriminated against. In daily lives people's actions and choices were scrutinised in minute details, and they often find themselves categorised.⁴²² There were concerns about the trend towards social sorting and the lack of transparency in the use of surveillance by the government. Fortunately most surveillance is bureaucratic or for business efficiency, however once systems are in place they had the potential to become used nefariously.⁴²³ The lack of clear guidelines and legal restrictions led to increasing opposition, and government actions, such as those of the Ministry of Defence, caused an understandable fear in the minds of citizens.

Impact upon CCTV

Surveillance in Japan and the UK evolved separately and for different reasons. In some aspects, surveillance in Japan was greater in the past than the present. However, as of 2010, neither Japan nor England could be described as a panoptic society. Surveillance was not all-encompassing. In Japan the widespread use of citizens to police their own communities decreased Japanese residents' expectation of privacy while out in public; and in the UK the

⁴¹⁸ Law number: Act No. 137 of 1999 [*Hanzai sousa no tame no tsuushin bouju ni kan suru houritsu*. 犯罪捜査のための通信傍受に関する法律]

⁴¹⁹ Lyon, Tajima, and Shimizu, *Surveillance After 9/11*, 252.

⁴²⁰ *Ibid.*

⁴²¹ *Ibid.*

⁴²² *Ibid.*, 255-257.

⁴²³ cf: Etzioni, *The Limits of Privacy*, 126-131 (arguing that systems such as ID cards do not turn a democratic society into a totalitarian society, but rather when governments neglect public safety, law and order, and work opportunities).

use of local councils to carry out intrusive surveillance on citizens has been a cause of great concern. In both Japan and the UK, the threat of terrorism has helped increase citizens' acceptance of invasive surveillance and the mass implementation of CCTV, leading towards both societies taking on aspects of the panopticon.

Media portrayal of rising crime, along with increased mobilisation of citizens, crystallized the idea that there was a crime problem. In Japan, the mass participation in volunteer policing schemes (1% of the Japanese population) meant that conducting surveillance and being under surveillance was seen as a normal and a fundamental part of society vital to public safety. The increase in surveillance by volunteer policing schemes resulted in residents not only accepting the use of CCTV, but requesting it for their own safety. In England citizens also participated in crime prevention, but it was more formalised and did not have the local characteristic of Japan's volunteer groups.

Research carried out in the UK by the Joseph Rowntree Foundation⁴²⁴ found that when extra security measures were added in areas with relatively low crime, residents' feelings of security and safety decreased.⁴²⁵ Torin Monahan found that when CCTV was installed, people reasoned that the cameras must have been brought in because there was a problem with crime, leading to increasing fear of crime, regardless of crime levels.⁴²⁶ Thus, extra CCTV may result in a decrease in feelings of safety and security, even when crime is actually decreasing, and, as the ICO 2010 report suggests, a reduction of overall trust in society.

An increase in surveillance and use of CCTV could be justified by either an increase in the threat of terrorism or to bring more offenders to justice. However in both England and Japan, it appears that surveillance was increased not when there was evidence for its necessity, but rather simply whenever authorities were able to bring it in and whenever people accepted its use. Furthermore, as Phillips explained in 1997, it was flawed logic to claim that more surveillance necessarily meant a safer and more secure society.⁴²⁷ Law enforcement and crime related surveillance should be undertaken by the government, carried out only when necessary and proportionate and effective, and with the minimum intrusion possible on people's personal lives.

⁴²⁴ A UK based charity that conducts research and publishes papers on social problems in the UK. See: <http://www.jrf.org.uk/about-us>

⁴²⁵ Crawford, Lister, and Wall, *Evaluation of a contracted community policing experiment (Summary)*, 4.

⁴²⁶ Monahan, *Surveillance in the Time of Insecurity*, 11.

⁴²⁷ Phillips, "Privacy in a 'surveillance society'," *Avoiding the death of privacy*.

Chapter 3: Current Legislation

Privacy is a non-renewable resource. Once you lose it, it cannot be regained or regenerated. (Phillips, 1997)

3.1 UK – current legislation

In the UK, the four main sources of regulation for surveillance and protection of privacy are: The Tort Breach of Confidence, The Human Rights Act 1998, The Data Protection Act 1998, and The Regulation of Investigatory Powers Act 2000.⁴²⁸ The Ministry of Justice claimed that the current legislation was sufficient for both ‘current and future needs’.⁴²⁹ Conversely, a House of Lords Special Committee said in 2009 that ‘at present, there are few restrictions on the use of public area CCTV cameras in the UK.’⁴³⁰ Privacy and surveillance academician David Murakami Wood agreed by proposing that the current pace of technological change meant existing legislation and incremental improvements were insufficient and new legislation was required.⁴³¹

The Tort Breach of Confidence

This act provides a remedy for unauthorised use or disclosure of certain confidential information when there is a duty to keep the information secret. A public authority can disregard its duty of confidence in certain circumstances.⁴³² Three conditions are required to prove a breach of confidence: 1) The information should be sensitive, non-trivial, and not in the public domain or easily accessible elsewhere; 2) An obligation of confidence must have existed. This obligation does not have to be explicit, but can be obvious through circumstances; and 3) Use of the information must have been unauthorised. This need not be dishonest nor must it necessarily result in any damages.⁴³³ Eric Metcalfe of JUSTICE⁴³⁴

⁴²⁸ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 118.

⁴²⁹ *Ibid.*, 119.

⁴³⁰ *Ibid.*, 213.

⁴³¹ *Ibid.*, 119-120.

⁴³² “When there is a legal requirement to do so . . . ; where there is an overriding duty to the public to do so . . . ; and where the person to whom the information applies has given their consent.” Performance and Innovation Unit (PIU), *UK: Privacy and data-sharing - The way forward for public services*, sec. A.61.

⁴³³ *Ibid.*, sec. A.60.

⁴³⁴ JUSTICE say they are ‘an all-party law reform and human rights organisation working to improve the legal system and the quality of justice.’ See: <http://www.justice.org.uk/enterb/index1.html>.

stated that since the HRA, courts had begun to develop and use the common law breach of confidence principles as a more general remedy for breaches of rights under the HRA.⁴³⁵

Human Rights Act 1998

Article 8 of the Human Rights Act (HRA),⁴³⁶ entitled the ‘Right to Respect for Family Life’ only allows individuals to bring a claim for privacy invasion against a public authority (known as the vertical effect). However, Article 6(1) states that: ‘it is unlawful for a public authority to act in a way which is incompatible with a Convention right.’ This means that a court as a public institution has to act compatibly with Article 8. Article 8 is therefore not limited to requiring simply that an individual should be simply left alone but instead, Article 6 forces a positive obligation on the state authorities to ensure citizens’ convention rights are protected.⁴³⁷

The positive obligation from Article 6 leads to a ‘horizontal effect’ where the courts are obliged to enforce individuals’ convention rights, even in disputes between two private parties.⁴³⁸ The government can also be held to account when they have not provided a domestic remedy for privacy intrusions carried out by a non public body.⁴³⁹ The horizontal effect has attracted controversy as the convention rights were commonly seen as providing protection for the individual from the state;⁴⁴⁰ however, Bailey and Taylor noted that it could not have been the intention of the legislators to provide no relief in disputes between private parties.⁴⁴¹

In addition, the act provides qualified protection for private and family life, home, and correspondence. These rights are subject to infringement by the government when in accordance with the law, in pursuit of a legitimate aim, and necessary in a democratic society. The ECtHR defined the phrase ‘necessary in a democratic society’ as corresponding to a ‘pressing social need’ and ‘proportionate to the legitimate aim pursued’.⁴⁴² A breach of

⁴³⁵ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 127.

⁴³⁶ <http://www.opsi.gov.uk/acts/acts1998/19980042.htm>

⁴³⁷ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 804.

⁴³⁸ Bailey and Taylor, *Bailey, Harris & Jones*, 37.

⁴³⁹ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 819.

⁴⁴⁰ Bailey and Taylor, *Bailey, Harris & Jones*, 38-39.

⁴⁴¹ *Ibid.*, 516.

⁴⁴² *Ibid.*, 519.

privacy under the HRA does not rest on a simple distinction of location between public and private,⁴⁴³ but rather a breach must involve private information, not originally in the public domain, and when there was no public interest in knowing the information. The personal or private quality of information can be assessed by looking at what the owner and or originator intended to do with the information.⁴⁴⁴ Information can also be classified as private when a reasonable person would consider it ‘obviously private’, for example, medical treatment, weddings, and daily-life activities.⁴⁴⁵ Information is public when it is either known to many people, or is in the public domain.⁴⁴⁶ However, if information is in the public domain but is only known to a limited number of people and further publication would result in greater dissemination thus causing further privacy-invasion related damage by being re-published, then this information still retains some confidentiality.⁴⁴⁷

The Law Commission also found that ‘information was not in the public domain if “it [was] only accessible to the public after a significant contribution of labour, skill or money”’.⁴⁴⁸ Confidential information was not protected if the public interest served by disclosing the information outweighs the interest in preserving its confidentiality.⁴⁴⁹ The courts have ruled that persons holding public office cannot have the same expectation of a right to privacy in public, and their actions are likely to come under greater scrutiny than the average person. However, the courts have also shown that public figures have a right to privacy when they are not carrying out a public function and when the activity being exposed is of no relevance to their role or suitability for public office.

Just because an action takes place in public, this does not mean that the action’s private nature is removed. Everyday activities such as taking a walk or going to work, and even very personal and intimate activities, like attempting suicide, can and often do take place in public.⁴⁵⁰ According to the courts, it is the private nature of the activity that makes it private, not the location where it occurs.⁴⁵¹ Furthermore, the requirement to show an

⁴⁴³ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 822,823.

⁴⁴⁴ See *Douglas v Hello! Ltd (No 3) [2005] EWCA 595*

⁴⁴⁵ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 879-884.

⁴⁴⁶ See *Blair v Associated Newspapers (Case no HG0001236)*, unreported

⁴⁴⁷ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 886-887.

⁴⁴⁸ *Ibid.*, 889.

⁴⁴⁹ *Ibid.*, 916.

⁴⁵⁰ *Ibid.*, 894.

⁴⁵¹ *Ibid.*, 895.

obligation of confidentiality has been removed⁴⁵² and now a duty not to publish information can be imposed simply by the nature of the information.⁴⁵³

The Lords Special Committee said that the HRA was not able to provide protection from ‘over-zealous surveillance’, and support should be given to groups whose privacy may diminish through mass surveillance.⁴⁵⁴ The Committee stated that Article 8 should be clarified in its applicability to privacy and surveillance, as those carrying out surveillance did not have a good understanding of what was proportionate and necessary. Thus the test of proportionality and necessity was an ineffective safeguard.⁴⁵⁵

Currently, there are domestic regulations in place for surveillance that circumvent the HRA and allow local councils and police to conduct intrusive surveillance. The ambiguity in the HRA is not the problem, but rather domestic legislation that provides public authorities the legal power to carry out activities that would otherwise infringe Article 8.

Data Protection Act 1998

The 1995 EU Data Protection Directive obliged member states to incorporate its provisions into domestic laws to facilitate the freedom of movement of personal data throughout the European Union.⁴⁵⁶ The UK implemented the Data Protection Act (DPA)⁴⁵⁷ in response. It was seen by Fenwick as an act ‘of immense significance in terms of protecting the privacy of personal information,’⁴⁵⁸ and increased the scope of the DPA 1984 Act, covering manual as well as computerised files. This act was also the first statutory regulation that covered public space CCTV.⁴⁵⁹

The DPA is aimed at preserving informational autonomy and directly addresses the private sector. This goes beyond the HRA obligations which only have an indirect and

⁴⁵² Confidential material is private information that a reasonable man would deem to be confidential due to either its nature or because it has clear commercial value.

⁴⁵³ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 913.

⁴⁵⁴ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 136.

⁴⁵⁵ *Ibid.*, 4: Legal Regulation and Safeguards, paragraph 142.

⁴⁵⁶ Bainbridge, *Data Protection Law*, 5.

⁴⁵⁷ <http://www.opsi.gov.uk/acts/acts1998/19980029.htm>

⁴⁵⁸ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 921.

⁴⁵⁹ Taylor, “Regulating Big Brother,” 2.

uncertain effect on the private sector.⁴⁶⁰ The act only covers personal data held in a filing system, electronic or otherwise and if the data is readily accessible.⁴⁶¹

The act makes it a criminal offence to: 1) Possess personal information without notifying the relevant authorities; 2) Allow or partake in unauthorised access of personal information; or 3) Require an individual to make a Subject Access Request regarding convictions and cautions for employment purposes.⁴⁶² The Information Commissioner's Office (ICO) enforces these regulations and provides guidance to individuals and organisations over their rights and obligations.

The ICO exempts systems from the DPA under certain conditions: firstly, provided that the cameras are never used remotely to zoom in, or directed for the purposes of seeing what particular people are doing; secondly if they are never used for monitoring staff behaviour; and finally, if the images are not given to other bodies (except the security service and the police). If images contain any personal information and undergo any processing either 'wholly or partly by automatic means', then this comes under data protection law. Therefore, if a web-cam is set up to take and download pictures on to the internet, and the images include personal data, then the whole process falls under DP law.⁴⁶³

The ICO's guidance states that: 'The simple rule of thumb is that you need to decide whether the image you have taken is aimed at learning about a particular person's activities.' The law is concerned with the intention of the operator when the cameras were set up and when they are operated. Images, even if they are not classified as 'personal data' at the time of capture, can become personal data if their use changes.⁴⁶⁴ Lillian Edwards suggested this was unsatisfactory because the processing requirements should start from the moment of collection, 'not post hoc.'⁴⁶⁵ The ICO 2010 report also raised concerns about data protection law, stating that protection of personal information 'continues to lag behind the motivation

⁴⁶⁰ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 936.

⁴⁶¹ Bainbridge, *Data Protection Law*, 43,44.

⁴⁶² See sections 21, 55, and 56 respectively. The final obligation, section 56, is however not in force at present, as it is seen as more important that certain jobs, e.g. looking after children, old people etc... only employ staff without certain convictions.

⁴⁶³ Edwards, "Switching Off the Surveillance Society?," 15.

⁴⁶⁴ For example, an image of a celebrity captured on London's congestion zone cameras is initially not personal data as it is incidental to the purpose of the cameras, however if this image is then sold to a newspaper, the data becomes personal as it is the personal character of the image that is now the subject of the photo.

⁴⁶⁵ Edwards, "Switching Off the Surveillance Society?," 14.

and capability to exploit it.⁴⁶⁶

In order to comply with the DPA, CCTV schemes must ensure that they acquire consent from those being watched for processing of their image.⁴⁶⁷ Where consent may be part of an employment contract, the consent must be ‘freely given and specific and informed’. Where the CCTV user is a store with cameras covering public streets, they have to display suitable signs indicating the identity of the person responsible for the scheme, the purpose of scheme, and who to contact about the scheme. If a CCTV camera is not accompanied with a sign and is not for crime prevention or detection, it is classified as a covert system.⁴⁶⁸

When cameras are for crime prevention or detection, the images need to be suitable for evidential purposes and situated suitably to provide clear facial images; otherwise the system is not fit for purpose and may breach DPA rules.⁴⁶⁹ The images must only be used for the purpose specified and this must have been notified to the ICO. If the operator wants to add another reason for the using the cameras they must resubmit their information to the ICO. There is no specific time limit for retention of images, but guidelines say this should be the minimum time necessary, which will differ between institutions.⁴⁷⁰

The act does not provide substantive rights to individuals to take action in courts; instead the act is enforced by the ICO. Individuals must lodge a complaint with the ICO who can launch an investigation and, if a breach is proved, serve a notice of enforcement.⁴⁷¹ There are exemptions under the 1998 Act for national security and domestic purposes. If personal data is processed for prevention or detection of crime, then there is exemption from the first data protection principle and from the subject access provisions.⁴⁷² An exemption from all of the data protection principles applies when it is ‘required’ for safeguarding national security.⁴⁷³ Bainbridge questioned whether the use of the word ‘required’ was relevant, as in most other provisions of the Act the word ‘necessary’ was used instead. Bainbridge suggested

⁴⁶⁶ Information Commissioner’s Office, *Information Commissioner’s report to Parliament on the state of surveillance*, 6.

⁴⁶⁷ Edwards, “Switching Off the Surveillance Society?,” 16-18.

⁴⁶⁸ Taylor, “Regulating Big Brother,” 4.

⁴⁶⁹ *Ibid.*, 5.

⁴⁷⁰ For example, any incidents at a pub will probably quickly come to the attention of the landlord, therefore seven days is reasonable; banks will need to keep their images for longer as financial crimes/queries often take longer to come to notice, and therefore three months is more reasonable.

⁴⁷¹ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 146-147.

⁴⁷² Section 29 DPA 1998

⁴⁷³ Section 28 DPA 1998

that this may mean that deciding whether the exemption should apply or not became a subjective test rather than an objective test.⁴⁷⁴ Under the DPA, data does not have to be collected lawfully when it is for the purpose of tackling crime or collecting taxes;⁴⁷⁵ however, conditions for processing still apply.

There have been few prosecutions under the DPA, effectively weakening the effect of the legislation, in spite of the self regulation that many organisations undergo.⁴⁷⁶ The DPA has been criticised for its complicated nature by the Lord Chancellor, who in 2004 stated that ‘the problem about the Data Protection Act is that it is almost incomprehensible.’⁴⁷⁷ Nick Taylor found, in 2007, that outside the public sector the dominant factor influencing CCTV operation was not the DPA, but rather operational efficiency due to the complexity of the legislation and the lack of enforcement options available. The lack of influence of the DPA has resulted in poor public knowledge of the rights and obligations under the act. Taylor claimed that the DPA has had a limited effect on the use of CCTV.⁴⁷⁸ This was a dubious claim as CCTV policies routinely state that the DPA applies to their use of cameras and the processing of images, and while there may be a poor understanding of its specific details, it continues to play a central role in the creating and amending of CCTV usage and guidelines.

Regulation of Investigatory Powers Act 2000

Prior to RIPA⁴⁷⁹, invasions of privacy by covert surveillance were occurring on the basis of negative liberties where the state was free to do anything that the law did not forbid. Therefore, as there was no legal right to privacy, the government did not need a specific legal power to justify laws that invaded privacy.⁴⁸⁰ The HRA changed this due to the requirement that any interference must be ‘in accordance with the law,’ making it necessary to introduce a statutory basis for state surveillance.⁴⁸¹

RIPA covers directed or intrusive covert surveillance, but does not apply to overt

⁴⁷⁴ Bainbridge, *Data Protection Law*, 164-165.

⁴⁷⁵ *Ibid.*, 166.

⁴⁷⁶ *Ibid.*, 9.

⁴⁷⁷ *The Guardian*, 18 October 2004

⁴⁷⁸ Taylor, “Regulating Big Brother,” 48.

⁴⁷⁹ <http://www.opsi.gov.uk/acts/acts2000/20000023.htm>

⁴⁸⁰ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 1059.

⁴⁸¹ *Ibid.*

surveillance unless the subject is unaware of being observed.⁴⁸² Surveillance carried out on unidentified individuals as a response to unforeseen circumstances is not covered by RIPA but is part of everyday policing and does not need specific authorisation. Therefore, when a CCTV operator notices an individual acting suspiciously and follows them on camera for a short while, this is outside the remit of RIPA. However, if the surveillance continues beyond a reasonable point, it stops being general observation and becomes directed surveillance, and results in the application of RIPA. The Covert Surveillance Code of Practice says⁴⁸³ that where a person's Article 8 rights are likely to be effected by continued surveillance, authorisation for directed surveillance should be requested from a Designated Person (DP).⁴⁸⁴

Directed surveillance can be carried out by any public authority that specifies at least one DP who is then able to authorise surveillance.⁴⁸⁵ The DP must decide for each application whether the surveillance activity is necessary and proportionate. The DP must consider whether there is any danger of incidental invasion of privacy and if during the surveillance operation, there is any incidental intrusion of privacy, the officers carrying out the surveillance must inform the DP to allow the DP reassess the situation, and if necessary amend or withdraw authorisation.

There are seven grounds that are listed and different public authorities are limited to different subsets of these grounds for authorising surveillance.⁴⁸⁶ The police can use the grounds of national security, prevention or detection of crime or disorder, in the economic well-being of the UK, in the interests of safety, and for protecting public health. Intrusive surveillance can only be carried out under the following three grounds and upon authorisation by senior authorising officers or the Secretary of State:⁴⁸⁷ 1) in the interests of national security; 2) for the purpose of preventing or detecting serious crime; and 3) in the interests of the economic well-being of the United Kingdom.⁴⁸⁸

The former chief of the Covert Investigation Peer Review Group told the Lords Select

⁴⁸² Williams, *Surveillance and Intelligence Law Handbook*, 128.

⁴⁸³ Covert Surveillance Code of Practice paragraph 2.3

⁴⁸⁴ Williams, *Surveillance and Intelligence Law Handbook*, 131.

⁴⁸⁵ This power is also conferred on officers more senior to those specified as DP's

⁴⁸⁶ Williams, *Surveillance and Intelligence Law Handbook*, 134-137.

⁴⁸⁷ For the Police a Surveillance Commissioner must approve the authorisation before it becomes effective. If the case is urgent it can be temporarily internally approved, but the Surveillance Commissioner must be notified as soon as is practicable. If the Surveillance Commissioner considers that the information can be obtained by less intrusive means, authorisation will be withheld.

⁴⁸⁸ Williams, *Surveillance and Intelligence Law Handbook*, 143.

Committee that ‘the use of covert surveillance is indispensable to the police’, and that there was a high level of public support for surveillance when there was a good balance between privacy and safety.⁴⁸⁹ However there have been a number of concerns raised with the legislation that deals with police surveillance.

The introduction of RIPA may have had the impact of reducing the effectiveness of the HRA in the area of privacy protection, because if there was no RIPA then many of the would-be non-statutory powers of surveillance would have been challengeable under HRA Article 8.⁴⁹⁰ In addition, Fenwick noted that the different levels of authorisation required for directed and intrusive surveillance may breach the HRA.⁴⁹¹ There are concerns that RIPA does not enforce proportionality on surveillance but rather masks the activities and prevents an in-depth scrutiny of operations because public authorities are able to self authorize most of their surveillance operations.⁴⁹² The Lords Select Committee have voiced concerns about the lack of judicial oversight for surveillance by public authorities and suggested that a suitable system should be introduced to deal with this problem.⁴⁹³

Authorisation for directed surveillance is only required when it is ‘likely to result in the obtaining of private information about a person’. However, the courts have said that ‘private life considerations may arise once any systematic or permanent record comes into existence.’⁴⁹⁴ This court statement means that if a CCTV camera records, stores and processes data, the recorded information may be considered private and so invoke RIPA.⁴⁹⁵ The regulations are criticized as being unclear and often leading to authorisation being requested when not required, and not requested when required.⁴⁹⁶

A review of RIPA in 2004 found that it had ‘several ambiguities and deficiencies and had been implemented poorly.’ Nick Gargan, former Chair of the Covert Investigation Peer Review Group, said that RIPA had been difficult to implement and that it created ‘an

⁴⁸⁹ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 86.

⁴⁹⁰ Taylor, “State surveillance and the right to privacy,” Privacy and covert surveillance.

⁴⁹¹ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 1074.

⁴⁹² *Ibid.*, 1098.

⁴⁹³ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 163.

⁴⁹⁴ *PG and JH v United Kingdom (25/12/2001) European Court App. 44787/98* (ruling that covert recording of a conversation in a police detention cell was a violation of Article 8)

⁴⁹⁵ Bailey and Taylor, *Bailey, Harris & Jones*, 593-594.

⁴⁹⁶ *Ibid.*, 594.

excessive burden of unnecessary bureaucracy.⁴⁹⁷ The police also appear to seek RIPA authorisation for surveillance that was not intended to be under the remit of the legislation.⁴⁹⁸ Chief Surveillance Commissioner Sir Christopher Rose has defended this ‘unnecessary bureaucracy’ saying that the paperwork required for covert surveillance leaves an ‘impeccable paper trail . . . that helps everyone.’ Rose also suggested that the deficiencies were due to inexperienced officers rather than faulty legislation.⁴⁹⁹

Privacy Impact Assessments

Privacy Impact Assessments (PIA)⁵⁰⁰ arose in the mid 1990s in the USA and Australia. They are not simply legal compliance checks, but rather look at wider implications of a system or legislation with regards to privacy. They require the organisation looking to implement a system to ask ‘should we be doing this’ as well as ‘can we do this’.⁵⁰¹ The onus is put on the promoter and implementer of a system to show that their system is not harmful before unleashing it on the public.⁵⁰² The Lords Select Committee recommended any organisation conducting surveillance or personal data processing system to carry out a PIA. This PIA should be carried out preferably prior to a project’s start to ensure there is a realistic impact on the project; or if the activity has already begun then either an audit or a compliance check to see if there are problem areas to be tackled.⁵⁰³ They are now mandatory in all UK central government departments.⁵⁰⁴ Currently PIAs are restricted to the public sector; however there have been calls for PIAs to be carried out in the private sector. The ICO 2010 report further recommended a PIA to be carried out on any new legislation that may engage concerns about increased collection and exploitation of personal information. PIAs may indicate the need for sunset clauses in controversial legislation.⁵⁰⁵

⁴⁹⁷ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 153-154.

⁴⁹⁸ Bailey and Taylor, *Bailey, Harris & Jones*, 594.

⁴⁹⁹ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 157-158.

⁵⁰⁰ Information Commissioner’s Office, “Privacy impact assessment (PIA).”

⁵⁰¹ Linden Consulting Inc, *Privacy Impact Assessments: International Study of their Application and Effects*, 2.

⁵⁰² *Ibid.*, 5.

⁵⁰³ House of Lords Constitution Committee, “Surveillance: Citizens and the State,” 103.

⁵⁰⁴ Warren et al., “Privacy Impact Assessments,” 1-2 (recounting how the loss of child benefit records prompted a Cabinet Office review whose resulting report mandated PIAs for central government departments).

⁵⁰⁵ Information Commissioner’s Office, *Information Commissioner’s report to Parliament on the state of*

According to a 2007 report that analysed PIAs in a number of different countries, PIAs were most effective when part of a system of incentives, sanctions, review, and when combined with external consultation.⁵⁰⁶ Initial evaluations found that organisations often described their systems at too abstract a level, often missed issues that could have a significant privacy impact, wanted to collect more information than was required for their purpose, and also often failed to have a plan to deal with any privacy issues.⁵⁰⁷ Since the UK implemented PIAs, the Netherlands, Norway, and Mexico have shown interest in the UK's PIA methodology.⁵⁰⁸

CCTV Codes of Practice

Home Office Codes of Practice

Due to changes in technology, and the way CCTV use has changed, an updated code of practice was published in 2008.⁵⁰⁹ The stated purpose is to ensure organisations follow the DPA and reassure people that their privacy is being protected. The code of practice covers the use of CCTV in the following circumstances:

1. 'Seeing what an individual is doing, e.g. monitoring in a shop or on the street;
2. When there may be an action in relation to an individual, for example handing the images over to the police to investigate a crime; and
3. Using the images of an individual in a way that will affect their privacy, for example passing images on to a TV company.'⁵¹⁰

The codes make a number of suggestions to be followed to ensure that a system is setup and run appropriately:

- CCTV should only be used when it is proportionate to the problem it is designed to deal with; otherwise its use would be inappropriate;

surveillance, 7.

⁵⁰⁶ Linden Consulting Inc, *Privacy Impact Assessments: International Study of their Application and Effects*, 29-30.

⁵⁰⁷ *Ibid.*, 29.

⁵⁰⁸ Warren et al., "Privacy Impact Assessments," 5.

⁵⁰⁹ Information Commissioner's Office, "CCTV Codes of Practice."

⁵¹⁰ *Ibid.*

- The presence of all cameras must be made clearly known, and if cameras are to be used in locations or under circumstances where there is a greater expectation of privacy, for example, in public toilets extra effort should be made to ensure that those coming under surveillance are aware of the cameras;
- They must not record conversations between members of the public;
- It should not be possible for third parties to intercept images.;
- Members of public who request access to images of themselves captured on CCTV must be provided access to images within forty days;
- If one of the justifications for using CCTV is prevention/detection of crime and the images are likely to be needed in court, then it is essential that the images can be provided simply to law enforcement agencies. If this can't be done, then the purpose for which the CCTV has been installed is likely to be undermined; and
- Images should be retained for the shortest period necessary, depending on the circumstances and situation in which the cameras are being used.⁵¹¹

Camden Council Codes of Practice

The London Borough of Camden published their CCTV Codes of Practice in November 2001.⁵¹² These codes of practice state that it is ‘a necessary, proportionate and suitable tool to help reduce crime, reduced the fear of crime and improve public safety.’⁵¹³ The codes also clarify eight objectives of the CCTV system in order to justify the processing of data as follows:

1. ‘To help reduce the fear of crime;
2. To help deter crime;
3. To help detect crime and provide evidential material for court proceedings;
4. To assist in the overall management of the London Borough of Camden and selected adjacent geographical boundaries with the London Borough of Brent;

⁵¹¹ Ibid.

⁵¹² In conjunction with Brent Council and the Metropolitan Police

⁵¹³ Camden Council, “Camden Council CCTV Code of Practice,” 1.2.1.

5. To enhance community safety, assist in developing the economic well being of the London Boroughs of Camden and Brent and encourage greater use of district centres;
6. To assist the Local Authority in its enforcement and regulatory functions;
7. To assist in Traffic Management; and
8. To assist in supporting civil proceedings which will help detect crime.⁵¹⁴

Although the code specifies that the system will operate in accordance with all the requirements and principles of the HRA and the DPA, Camden's code is a broad outline that justifies almost any use of the cameras and their images. An annual report on the scheme is made available to the public every year, and it is also to be periodically reviewed independently every two years: 'to establish whether the purposes of the system are being complied with and whether objectives are being achieved, and the results used to develop the specified purpose and objectives of the scheme.'⁵¹⁵ Furthermore, inspections of the system will take place six times a year by independent persons without prior notice. As part of the audit, operators may be required to justify their viewing or recording of any individuals or property.

Other relevant legislation / regulations

The following laws are also relevant to CCTV implementation in the UK:

- Police and Criminal Evidence Act 1984 (S64A): A police constable has the power to a photograph a person outside a police station when they have been arrested for an offence.⁵¹⁶
- Criminal Procedure and Investigations Act 1996: Police-generated or police-acquired images relevant to an investigation must be kept for a minimum retention time to prevent destruction of evidence that could be used in court.⁵¹⁷
- Freedom of Information Act 2000: The public have the right of access to publically held information including positions of publically funded cameras and

⁵¹⁴ Ibid., 1.3.1.

⁵¹⁵ Ibid., 5.1.

⁵¹⁶ Police and Crime Standards Directorate, *Guidance for the Police Use of Body-Worn Video Devices*, 12.

⁵¹⁷ Ibid., 11.

any images stored by the cameras. Requests can be declined in the name of national security, criminal investigations, law enforcement, or if personal information would be disclosed.

- Criminal Justice and Public Order Act 1994 (S 163): Local councils are authorised to install CCTV to record visual images of any events occurring on any of the land in their area to promote the prevention of crime or the welfare of the victims of crime.
- Local Government Act 1972 / Local Government Rating Act 1997: The Local Government Act 1972 gives the council the power to do anything incidental to the discharge of the council's functions.⁵¹⁸ The Local Government Rating Act 1997 gives local councils the power to install and maintain equipment to help prevent and detect crime and grant money to police authorities.⁵¹⁹
- Crime and Disorder Act (S17): The council must to do all that it reasonably can to prevent crime and disorder in its area.⁵²⁰
- The Private Security Industry Act 2001 (PSI): The PSI regulates the securities industry and requires CCTV operators to obtain a public space CCTV surveillance qualification and licence before operating any public space CCTV cameras.⁵²¹

The effect of Legislation on CCTV Use

The ECtHR has given the opinion on what they consider normal uses of CCTV:

the normal use of security cameras per se, whether in the public street or on premises such as shopping centres or police stations, where they serve a legitimate and foreseeable purpose, do not raise issues [in relation to private life].⁵²²

Nick Taylor insisted that this was not the case, and said that overt surveillance should be

⁵¹⁸ "Local Government Act 1972," 111.

⁵¹⁹ "Local Government and Rating Act 1997," 31.

⁵²⁰ "Crime and Disorder Act 1998," 17.

⁵²¹ See Chapter 4 for a description of an SIA CCTV training course the author undertook.

⁵²² Taylor, "Proportionality and the use of video surveillance in the United Kingdom."

legally regulated according to the HRA Article 8.⁵²³

The use of CCTV is directly regulated by the DPA and the CCTV Codes of Practice.⁵²⁴ RIPA only applies to CCTV use when it is used covertly and is either directed or intrusive. The Criminal Justice and Public Order Act 1994 regulates local authority in the use of CCTV installations for general surveillance purposes; however, if there is no perceived invasion of privacy, then the HRA will not apply.⁵²⁵ The ECtHR's comments gave guidance as to when the HRA will apply:

The monitoring of the actions of an individual in a public place by the use of photographic equipment which does not record the visual data does not, as such, give rise to an interference with the individual's private life. On the other hand, the recording of the data and the systematic or permanent nature of the record may give rise to such considerations.⁵²⁶

Therefore when images are recorded there may be an interference with an individual's privacy, and because this is only allowed when provided for by law, its use must be regulated. There is a danger that providing specific legislation for CCTV will in effect legalise the invasion of privacy by CCTV. There are already concerns that RIPA has had this effect on covert use of cameras.

Because CCTV evidence is generally highly reliable, it is unlikely to be excluded at court even when someone's Article 8 rights had been infringed in the process of obtaining the footage.⁵²⁷ Thus the police are unlikely to adhere to Article 8 when it prevents them securing evidence to gain a conviction.⁵²⁸

⁵²³ Taylor, "State surveillance and the right to privacy."

⁵²⁴ Bailey and Taylor, *Bailey, Harris & Jones*, 577.

⁵²⁵ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 1068.

⁵²⁶ Bailey and Taylor, *Bailey, Harris & Jones*, 508.

⁵²⁷ *Ibid.*, 578.

⁵²⁸ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 1077, 1289-1290; See also "Khan v UK (1999) 27 EHRR CD 58; (2000) 8 BFRC 310", where a listening device was placed by the police on the outside wall of the home of a known drug dealer, and Khan, while visiting, admitted importing a large quantity of heroine from the drug dealer. The Court of Appeal agreed that the police had trespassed and breached Khan's Article 8 rights; however, the crime was serious enough to counter balance the manner in which the police gained the evidence.

Relevant Court Cases

In *Campbell v Mirror Group Newspapers (2004)*,⁵²⁹ pictures were covertly taken of Naomi Campbell attending Narcotics Anonymous and published along with details of her struggle with addiction to illegal drugs. Campbell claimed a breach of privacy and the case reached the House of Lords where it was dismissed on the grounds that it was in the public interest due to her previous public statements that she was not a drug user. Lord Hoffmann said that whilst he thinks anyone has the right to take a photo of another person in public, with or without their consent, and that this was not in itself enough to amount to an invasion of privacy, this right did not extend to publishing them to ‘the world at large.’⁵³⁰ Lord Hope of Craighead said that ‘the taking of photographs in a public street must... be taken to be one of the ordinary incidents of living in a free community’, and that one could only complain of an invasion of privacy if they were not incidental to the picture, but rather the focus and goal of the photo.⁵³¹ Baroness Hale of Richmond said that just because a photo was taken covertly, it did not make it confidential – it was the nature of the activity that determined whether it was private or not.⁵³² The case was complicated by Campbell’s repeated false public claims that she was not a drug user.⁵³³ These false public claims were enough to provide a public interest (see below) in knowing the information, and the media was seen as having a right to publish information that directly disproved a falsehood that had been publically proclaimed by the applicant. If Campbell had not publically lied about her drug addiction, the courts would have likely found in her favour.

In *Blair v Associated Newspapers (unreported)*,⁵³⁴ the publication of an article by the ‘Mail on Sunday’ newspaper was deemed as not having removed the confidentiality of the information it published, even though thousands of people may have read the article. This ruling indicates that publishing material that is already in the public domain may still attract liability, if the initial publication breached Article 8.

In *Peck v United Kingdom (2003)*,⁵³⁵ the dissemination of a video of an activity that

⁵²⁹ *Campbell v MGN*[2004] 2 WLR 1232; [2004] 2 AC 457

⁵³⁰ Bailey and Taylor, *Bailey, Harris & Jones*, 550.

⁵³¹ *Ibid.*, 553.

⁵³² *Ibid.*, 557.

⁵³³ Lord Nicholls of Birkenhead, Lord Hoffmann and Lord Hope of Craighead and Baroness Hale of Richmond, , and , Lord Carswell, *House of Lords - Campbell (Appellant) v. MGN Limited (Respondents)*, para. 38.

⁵³⁴ *Blair v Associated Newspapers (Case no HQ0001236) (unreported)*

⁵³⁵ *Peck v United Kingdom (2003) 36 EHRR 41*

took place in public was ruled to violate Article 8. The applicant, Peck, was captured on local council CCTV wandering down a high street with a knife just before attempting to commit suicide by slashing his wrists. The captured images were given to a media company and were shown on national TV to deter crime and promote CCTV, but without either his consent or his being identity masked.⁵³⁶ The judge dismissed the applicant's claim for judicial review saying that while he sympathised with the invasion of privacy:

unless and until there is a general right of privacy recognised by English law . . . reliance must be place on effective guidance being issued by Codes of Practice or otherwise, in order to try and avoid such undesirable invasions of a person's privacy.

Peck took the case to Strasbourg where the court decided that the council's disclosure interfered with the applicant's Article 8 rights to respect for private life because the image of his actions had been shown to a much greater degree and in more detail than would have been possible by a passerby who happened upon the actual event.

The court deemed that the council could and should have taken steps to mask the identity of the applicant or sought his consent. The applicant did not argue that his image being captured on CCTV was an invasion of his privacy, and he even acknowledged that the footage allowed the police to be alerted which probably saved his life; however, the consequent dissemination of the footage was an unacceptable invasion of privacy.⁵³⁷ If Peck had committed a criminal offence then the court would have probably found the release of the images justified if there was a good enough reason, for example to help trace or identify the offender.

However, in this case though Peck had clearly committed a crime by being in possession of a knife in a public place, the release of the images was not related to tracing or identifying him, as he had already been apprehended by the police.⁵³⁸ The court's decision established that a public body breaches Article 8 when it publically releases private information about an individual without their consent. This decision would also apply to a public broadcaster, such as BBC, but it is unclear if it would also apply to a private broadcaster.⁵³⁹

⁵³⁶ Edwards, "Switching Off the Surveillance Society?," 22-24.

⁵³⁷ Bailey and Taylor, *Bailey, Harris & Jones*, 508.

⁵³⁸ Bainbridge, *Data Protection Law*, 168.

⁵³⁹ Fenwick, *Civil Liberties and Human Rights, Fourth Edition*, 819.

In *Von Hannover v Germany* (2006)⁵⁴⁰ Princess Caroline of Monaco was subjected to repeated paparazzi intrusion into her daily life and took a claim for breach of privacy to the German courts. The courts decided that there was no intrusion as she was a ‘figure of society par excellence’ and had to tolerate this kind of publication. This was despite the fact that she did not undertake any public engagements or duties on behalf of the state. She took her case to the ECtHR claiming a breach of Article 8. The court determined that there had been a breach ruling that private life ‘includes a person’s physical and psychological integrity’ and Article 8’s primary intention was to ensure that people are able to develop their own personality and relations with others without outside interference when the activity falls within the scope of private life, and even when it occurs in public.⁵⁴¹ The court went on to say that: ‘the decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the published photos and articles make to a debate of general interest.’ The court decided that the photos that the applicant was complaining about made no such contribution to a debate of general interest as the Princess exercised no official function, and the published information was solely about her private life. Thus the public did not have a legitimate interest in knowing such information about the applicant even if she was well known and the pictures were taken while she was in a public place.⁵⁴²

3.2 Japan – current legislation

Overview

Japan does not have a specific ‘privacy’ law nor is privacy directly mentioned in the constitution. Furthermore no law exists specifically addressing CCTV.⁵⁴³ However a right to privacy can be seen through court interpretations of the constitution and new legislation on data protection.

Constitution

In a report published in December 1945, by the chief of the legal department charged with

⁵⁴⁰ *Von Hannover v Germany* (2006) 43 EHRR 7

⁵⁴¹ Bailey and Taylor, *Bailey, Harris & Jones*, 511.

⁵⁴² *Ibid.*, 515.

⁵⁴³ Kotani, “Rapid Increase in use of Surveillance Cameras by the Police,” 195.

drawing up the Japanese Constitution, one of the rights desired for inclusion was privacy.⁵⁴⁴ Legal scholars generally accept that Article 13, which secures the right to life, liberty, and the pursuit of happiness, also includes the right to privacy.⁵⁴⁵ Annette Marfording argued that the clause in Article 13 specifying that ‘all the people shall be respected as individuals’ was in direct conflict with Japanese cultural norms and contradicts the notion of group identity that is commonly promulgated in Japan.⁵⁴⁶ Some commentators also noted that although Article 13 theoretically provided comprehensive protection for privacy, in reality protection was weak and insufficient.⁵⁴⁷

The right to privacy enshrined in the constitution can be found in the following articles: Article 13: Ehara said that the two phrases: ‘people should be respected as individuals’, and ‘the pursuit of happiness’ were comprehensive and contained the concept of privacy.⁵⁴⁸ These rights were limited by the public good, which was often interpreted as ensuring a balance with other human rights. Some commentators have argued that individual clauses contained the right to privacy, while others have said that the right to privacy comes from the combination, and the comprehensive nature of Article 13.

Articles 13, 21, 23, 33, 35, and 38: The right to privacy is protected as part of a combination of articles. Article 21—a person’s communications must remain secret; Article 23—academic freedom is guaranteed; Article 33—protection from arrest without warrant; Article 35—a person should be free in their homes from entry, searches and seizures without warrant; and Article 38—protection from forced confessions and testifying against oneself. There was also a theory that Articles 33 and 35 were based on the 4th Amendment of the US constitution which protects citizen’s privacy.⁵⁴⁹

Due to difficulties amending the Japanese constitution, the right to privacy, along with other newly claimed rights, have to be extrapolated from different ambiguous articles. The majority of privacy claims have used Article 13 as a base; however, due to the article’s lack of clarity, practical application is difficult. This difficulty leads to the mistaken claim that the concept of privacy is neither fully understood nor protected.

⁵⁴⁴ Ehara, *The right to Privacy: A comprehensive analysis*, 64-77.

⁵⁴⁵ Nishihara, *Surveillance Cameras and Privacy*, 34.

⁵⁴⁶ Marfording, “Cultural Relativism and the Construction of Culture,” 439-440.

⁵⁴⁷ Japan Federation of Bar Associations, *The Day Privacy is Lost*, 78.

⁵⁴⁸ Ehara, *The right to Privacy: A comprehensive analysis*, 67.

⁵⁴⁹ *Ibid.*, 68.

Criminal Procedure Law

The Code of Criminal Procedure regulates criminal investigations by the police. Article 1 states that the purpose of the codes is to ‘reveal the true facts of cases and to apply and realize criminal laws and regulations quickly and appropriately, while ensuring the maintenance of public welfare and the guarantee of the fundamental human rights of individuals.’⁵⁵⁰ This makes clear from the start that there must be a balance between the use of power by investigatory bodies to investigate crimes and the protection of people from the abuse or overstretch of power. Articles 197, 218, and 220 indicate how Criminal Procedure Law regulates police use of CCTV in Japan.⁵⁵¹

Article 197 Section 1 is a general rule for investigation and can be understood as allowing any measure that is proportionate and appropriate to be employed in a criminal investigation.⁵⁵² The article states that: ‘such examination as is necessary to achieve its objective may be conducted; provided, however that compulsory dispositions⁵⁵³ shall not be applied unless special provisions have been established in this code.’ This is understood to rule out using methods of investigation that infringe the rights of individuals against their will. Masahito Inoue explained that, regarding the taking of pictures, compulsory dispositions would clearly include taking pictures of people in their homes with high powered lenses or infrared sensors. In these circumstances people would not be easily viewable to the public and would therefore have a high expectation of privacy in their actions, and therefore intrusion upon it would be a ‘compulsory disposition’. Inoue said that the argument is not so clear cut when talking about taking pictures of people in a public place. He said that when in public people still do not appreciate having their photos taken without their consent; however, in public, actions taken by individuals are in full view of the public and therefore they cannot

⁵⁵⁰ Article 1 The purpose of this Code, with regard to criminal cases, is to reveal the true facts of cases and to apply and realize criminal laws and regulations quickly and appropriately, while ensuring the maintenance of public welfare and the guarantee of the fundamental human rights of individuals. *Dai 1 jou: Kono houritsu wa, kenji jiken ni tsuki, koukyou no fukushi no iji to kojinn no kihonteki jinken no hoshou to wo mattoshitsutsu, jian no shinsou wo akaraka ni shi, keibatsuhourei wo tekisei katsu jinsoku ni tekiyou jitsugen suru koto wo mokuteki to suru.* 第一条: この法律は、刑事事件につき、公共の福祉の維持と個人の基本的な権利の保障とを全うしつつ、事案の真相を明らかにし、刑罰法令を適正且つ迅速に適用実現することを目的とする。

⁵⁵¹ Articles 106 and 107 describe provisions for search and seizure by the court during the trial phase.

⁵⁵² Article 197: With regard to investigation, such examination as is necessary to achieve its objective may be conducted; provided, however, that compulsory dispositions shall not be applied unless special provisions have been established in this code. *Dai 197 Jou: Sousa nit suite wa, sono mokuteki wo tassuru tame hitsuyou na torishirabe wo suru koto gadekiru. Tadashi, kyousei no shobun wa, kono houritsu ni tokubetsu no tei no aru baai de nakereba, kore wo suru koto ga dekinai.* 第百九十七条: 捜査については、その目的を達するため必要な取調をすることができる。但し、強制の処分は、この法律に特別の定めのある場合でなければ、これを行うことができない。

⁵⁵³ 強制の処分 *kyousei no shoubun*

expect the same level of privacy as when in one's own home.⁵⁵⁴ This does not mean that people have absolutely no right to privacy when in public; however taking photos of people in public is not necessarily a compulsory disposition.⁵⁵⁵ Inoue does however claim that when the police take photos in public without a warrant, and there are insufficient reasons to justify the recording, this would be classed as a compulsory disposition.⁵⁵⁶

Article 218(1)⁵⁵⁷ grants permission for a police officer, public prosecutor's assistant officer, or a public prosecutor to take pictures⁵⁵⁸ of individuals as a compulsory method provided there is a warrant. In this case, where a warrant has been granted for the use of cameras in the investigation, CCTV will not breach Article 197, as the granting of a warrant will satisfy the requirement that the special provisions—provided for in the code—have been followed.⁵⁵⁹ Article 218(2)⁵⁶⁰ allows pictures to be taken of individuals without a warrant who have been detained and placed under physical restraint.⁵⁶¹ This can be described as

⁵⁵⁴ Inoue, “任意捜査と強制捜査の区別,” 49.

⁵⁵⁵ 井上, “任意捜査と強制捜査の区別,” 49(stating: '*Gaitou koudou wo shiteiru hito no shashin satsuei wa, kyousei shobun to made wa ienai.*' 街頭行動をしている人の写真撮影は、強制処分とまではいえない。).

⁵⁵⁶ 井上, “任意捜査と強制捜査の区別,” 49 (stating: '*Jouki no youna gaitou koudou wo suru hito no mureijou no shashin satsuei mo kyouseishobun ni zoku suru to iu koto ni narou.*' 上記のような街頭行動をする人の無令状の写真撮影も強制処分に属するということになる。).

⁵⁵⁷ Article 218 (1) A public prosecutor, a public prosecutor's assistant officer or a judicial police official may, if necessary for investigation of an offense, conduct search, seizure or inspection upon a warrant issued by a judge. In such cases, the inspection and examination of a person shall be conducted upon a warrant for physical examination. *Dai 218 Jou (2): Kensatsukan, kensatsujimukan mata wa shihoukeisatsushokuin wa, hanzai no sousa wo suru ni tsuite hitsuyou ga aru toki wa, saibankan no hassuru reijou ni yori, sashiosae, sousaku mata wa kenshou wo suru koto ga dekiru. Kono baai ni oite shintai no sousa wa, shintai sousa reijou ni yoranakerebanaranai.* 第二百十八条 検察官、検察事務官又は司法警察職員は、犯罪の捜査をするについて必要があるときは、裁判官の発する令状により、差押、捜索又は検証をすることができる。この場合において身体の検査は、身体検査令状によらなければならない。

⁵⁵⁸ 写真・撮影 *Shashin / Satsuei*

⁵⁵⁹ Niwayama explains that the photographing of an individual's image is a new form of compulsory disposition: '*Kojin no youbou no satsuei ha [atarashii ruikata no kyouseishobun]*' 個人の容貌の撮影は「新しい類型の強制処分」 See:浩也 and 庭山, “写真撮影と肖像権,” 86.

⁵⁶⁰ Article 218(2): In cases where a suspect is placed under physical restraint, his/her fingerprints or footprints may be taken, his/her height or weight may be measured and his/her photographs may be taken without the warrant set forth in the preceding paragraph, only when he/she is not stripped naked. *Dai 218 Jou(2): Shintai no kousoku wo ukereiru higaisha no shimon moshiku wa ashigata wo saishu shi, shinchou moshiku wa taijuu wo sokutei shi, mata wa shashin wo satsuei suru ni wa, higaisha wo hadaka nishinai kagiri, zenkou no reijou ni yoru koto wo youshinai.* 第二百十八条(2): 身体の拘束を受けている被疑者の指紋若しくは足型を採取し、身長若しくは体重を測定し、又は写真を撮影するには、被疑者を裸にしない限り、前項の令状によることを要しない。

⁵⁶¹ Niwayama, “写真撮影と肖像権,” 86.

permitting the use of compulsory method without a warrant; although it clearly does not cover the use of CCTV in public spaces of individuals or groups of individuals who have not been arrested, detained, or suspected of any offence.⁵⁶² Article 220(1)[ii]⁵⁶³ and 220(3)⁵⁶⁴ permit photographs to be taken during the course of an arrest – that is, as a compulsory method without warrant.

Inoue explains that if there is no warrant, then CCTV must only be used if its use does not infringe an individual's rights; otherwise its use would be contrary to Article 197.⁵⁶⁵ Crime control methods that may be seen as infringing certain rights when used for some crimes will be justified when used in crimes of a graver nature. In the Kyoto Gakuren case police photographed, without warrant, demonstrators who had neither been arrested nor were in the process of being arrested.⁵⁶⁶ This decision can be seen as setting the limits for photographing persons in public under the 'non-compulsory' classification. The case showed how the specific circumstances of individual incidents will determine the extent to which invasive methods of investigation can be employed—that is, whether or not the methods of investigation are proportional. The concept of proportionality applies to both compulsory and non-compulsory dispositions. Police are thus able to employ cameras in public as long as they can show that their use is appropriate and proportionate to the specific circumstances. The concepts of proportionality and appropriateness do not however allow a compulsory method

⁵⁶² Matsudai, “写真撮影,” 76.

⁵⁶³ Article 220 (1) When a public prosecutor, a public prosecutor's assistant officer or a judicial police official arrests a suspect pursuant to the provision of Article 199 or arrests a flagrant offender, he/she may, if necessary, take the following measures. The same shall apply, if necessary, to cases where the suspect is arrested pursuant to the provision of Article 210: (ii) Search, seizure or inspection on the spot at the arrest. *Dai 220 Jou (1): Kensatsukan, kensatsujimukan mata wa shihoukeisatsushokuin wa, dai 199 jou no kitei ni yori higisha wo taihou suru baai mata wa genkou hannin wo taihou suru baai ni oite hitsuyou ga aru toki wa, hidari no shobun wo suru koto ga dekiru. Dai 200 Jou no kitei ni yori higisha wo taihou suru baai ni oite hitsuyou ga aru tokimo, douyou de aru. (ii) taihou no genba de sashiosae, sousaku mata wa kenshou wo suru koto.* 第二百二十条 検察官、検察事務官又は司法警察職員は、第百九十九条の規定により被疑者を逮捕する場合又は現行犯人を逮捕する場合において必要があるときは、左の処分をすることができる。第二百十條の規定により被疑者を逮捕する場合において必要があるときも、同様である。二 逮捕の現場で差押、搜索又は検証をすること。

⁵⁶⁴ Article 220 (3): For the measures set forth in paragraph (1), a warrant need not be obtained. *Dai 220(3): Dai 1 ko no shobun wo suru ni wa, reijou wa, kore wo hitsuyou toshinai.* 第二百二十条(3): 第一項の処分をするには、令状は、これを必要としない。

⁵⁶⁵ Inoue, “任意捜査と強制捜査の区別,” 51.

⁵⁶⁶ Judgement of Supreme Court Grand Bench, December 1969. 最高裁大法廷判決昭和 44 年 12 月 24 日 (Whereby the taking of photos at a demonstration was ruled as justified due to the risk of public disorder and proper procedures not being followed in organising the demo. This is different from ruling that the police had a blanket justification in filming in public regardless of circumstances. See Below, section 3.2: Court Interpretations)

of investigation to be used if it is not specifically permitted by a provision in the code, regardless of the circumstances. From the provisions in the criminal procedure code, and the Supreme Court decisions in 1969⁵⁶⁷ and 2008⁵⁶⁸, the photographing of individuals in situations not described in the criminal procedure code may only take place when the photographing is non-compulsory and proportional. CCTV in public places is now generally recognised as being both non-compulsory and proportional.

Control of Personal Information

Due in large part to the difficulty with encoding Japanese characters on computers, large scale processing of information was not possible in Japan until the mid-1990s. Therefore, there was little need for extensive laws, concerning protection of personal information, akin to those in the US and EU. Until the late 1980s and early 1990s most information was recorded by hand, and business relied on trust and relationships, so people were not too concerned about the safety of information as they only imparted important information to those they could trust. The successful encoding of Kanji on computers quickly led to an increased networked society and information passing between people who did not have solid relationships built on trust. Legal regulation of data became necessary to fill this gap and provide protection for individual's privacy.⁵⁶⁹

In 2004, Alan Westin noted that since 2001 there had been over 50 cases of data leakages by businesses reported in the media in Japan, resulting in just a few victims to several million victims. The specific damage to individuals was usually brushed over through public apologies so the actual impact was usually neither understood nor appreciated by the public. Westin suggested that this may have been because criminals had not yet taken advantage of such data leaks as was common in other countries, although there were indications that this may soon change.⁵⁷⁰ These trends show how important data protection laws have become in Japan in recent years.

In December 1988, Japan enacted the Act on Protection of Personal Information Pertaining to Electronic Data Processing Held by Administrative Organs⁵⁷¹. This act was

⁵⁶⁷ Judgement of Supreme Court Grand Bench, December 1969. 最高裁大法廷判決昭和44年12月24日

⁵⁶⁸ Judgement of Supreme Court 2nd Petty Bench, 15 April 2008. 最高裁第二小法廷決定平成20年4月15日

⁵⁶⁹ Mikami, Shimizu, and Shinden, *Q&A Data Protection Law*, 2; Murata, Orito, and Adams, "The Development of Japanese Data Protection," 102-104, 106.

⁵⁷⁰ Westin, "Data Leakage and Harm."

⁵⁷¹ (Act No. 95 of 1988) *Gyousei kikan no hoyuu suru denshi keisan kishori ni kakaru kojiri jouchou no hogo*

amended and replaced by the Act on Protection of Personal Information Held by Administrative Organs in 2003 and was significantly influenced by the 1980 OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.⁵⁷² Lawson stated that a direct cause of the implementation of new legislation was large scale resistance to the Basic Resident Registers Act 1999, which led to the government actively introducing measures instead of relying on individuals to bring cases before courts.⁵⁷³

Individual districts throughout Japan also brought in their own guidelines, and regularly referred to the eight clauses in the OECD guidelines.⁵⁷⁴ In 2003 Japan introduced data protection laws, in no small part to comply with European Union regulations on exporting data.⁵⁷⁵ The laws enacted by Japan were: Act on the Protection of Personal Information;⁵⁷⁶ Act on the Protection of Personal Information Held by Administrative Organs;⁵⁷⁷ Act on the Protection of Personal Information Held by Independent Administrative Agencies, etc...; ⁵⁷⁸ and the Act for Establishment of the Information Disclosure and Personal Information Protection Review Board.⁵⁷⁹

Lawson concluded that the implementation of privacy law (through data protection law) was ‘an overwhelming success.’⁵⁸⁰ In contrast, Murata et al. discovered that as of 2010 there had been no significant prosecutions under the data protection laws even though there were numerous data protection breaches, therefore the laws and enforcement in place were insufficient.⁵⁸¹ Murata and Orito also found, in 2008, that due to the rapid change in

ni kansuru houritsu. 行政機関の保有する電子計算機処理に係る個人情報保護に関する法律

⁵⁷² Yamada, Yamagishi, and Katsumi, “A Comparative Study of the Information Security Policies of Japan and the United States,” 224.

⁵⁷³ Lawson, “Japan’s New Privacy Act in Context,” 97, 106.

⁵⁷⁴ Japan Federation of Bar Associations, *The Day Privacy is Lost*, 74-75.

⁵⁷⁵ Murata, Orito, and Adams, “The Development of Japanese Data Protection,” 100.

⁵⁷⁶ Law number: Act No. 57 of 2003 *Kojin jouhou no hogo ni kan suru houritsu.* 個人情報の保護に関する法律

⁵⁷⁷ Law number: Act No. 58 of 2003 *Gyousei kikan no hoyuu suru kojim jouhou nohogo ni kan suru houritsu.* 行政機関の保有する個人情報の保護に関する法律

⁵⁷⁸ Law number: Act No. 59 of 2003 *Dokuritsu gyousei houjin nado no hoyuu suru kojim jouhou ni kan suru houritsu.* 独立行政法人等の保有する個人情報に関する法律

⁵⁷⁹ Law number: Act No. 60 of 2003 *Jouhou koukai, kojim jouhou hogo shinsakai secchi hou.* 情報公開・個人情報保護審査会設置法

⁵⁸⁰ Lawson, “Japan’s New Privacy Act in Context,” 95.

⁵⁸¹ Murata, Orito, and Adams, “The Development of Japanese Data Protection,” 119.

technology, regulations based on the 1980 OECD guidelines were unlikely to be suitable for the current situation.⁵⁸² Data protection laws have may not have been able to stop breaches to date due to the lack of criminal sanctions enforceable on breaches in the private sector.

Akihiro Otani argued that because in Japan people thought that that public servants ‘do not do bad things’, data protection laws were formulated to be strict against citizens and easy on public servants.⁵⁸³ This argument was backed up by a 2008 Opinion poll by Yomiuri Shimbun, where only 19.2% of respondents said that they wanted to have greater rights to information from governmental agencies, and only 17.7% said that they wanted greater protection of personal information or privacy.⁵⁸⁴

Takehiro Ohya claimed that Tajima’s perception of surveillance concentrated only on the distinction and clash between Government and Citizens, and ignored the more important sphere of society and the increasing role of business as a purveyor of surveillance.⁵⁸⁵ Daniel Solove similarly argued that focusing on government surveillance avoided the real danger – that of one’s personal information being secretly collected by other actors in society that did not on the surface appear dangerous, but whose actions were less transparent or accountable than the government.⁵⁸⁶ Former Chief of National Police Research Centre, Masahiro Tamura, referred to research from Kyoto University in 1980 that showed the Japanese public viewed police as the most trustworthy protectors of citizen’s freedoms and civil rights, above the judiciary; and in fact people distrusted the media and private businesses.⁵⁸⁷ Therefore, in contrast to Murata, Orito, and Otani’s opinions, not only was the private sector less accountable than the public sector, but it was less trusted. This would indicate that the greatest risk to personal data is from the private sector and not the public sector.

In 2010, Yamada et al. said that due to concerns from the public and citizen’s groups the government was limited to monitoring information for criminal investigations, and heavily restricted on interception of information for ‘intelligence’ purposes.⁵⁸⁸ Therefore, while the data protection laws appeared to be weak, other countries gave significantly more power to

⁵⁸² Murata and Orito, “Rethinking the concept of the right to information privacy,” 4.

⁵⁸³ Otani, *What are Surveillance Cameras Looking at?*, 134.

⁵⁸⁴ Yomiuri Shimbun, “Yomiuri Shimbun March 2008 Opinion Polls (P08-06),” 28.

⁵⁸⁵ Ohya, *What is Freedom? Surveillance Society and the Dissapearance of the “Individual,”* 89-90.

⁵⁸⁶ Solove, “‘I’ve Got Nothing to Hide’ and Other Misunderstandings of Privacy,” 756.

⁵⁸⁷ Tamura, “Submission of a Problem,” 74.

⁵⁸⁸ Yamada, Yamagishi, and Katsumi, “A Comparative Study of the Information Security Policies of Japan and the United States,” 224-225.

the government to monitor citizen's information. Etzioni suggested that restricting the government's ability to carry out surveillance may result in increasing the government's need to exert control on society. This means that the consequence of increasing citizen's privacy may be an increase in government control over society.⁵⁸⁹

Murata et al. noted, in 2010, that there had been a 'significant shift in policy' with non-public bodies covered by data protection laws in recent years.⁵⁹⁰ The new laws specifically require all companies that hold information on 5,000 or more individuals to use secure information handling systems and to be able to deal with complaints and requests. There are concerns however that because there is no independent body to provide oversight and the lack of opportunity for individuals to take action means that there is little real protection for individuals.⁵⁹¹

An independent body such as the Information Commissioner's Office would provide added protection for citizens. Currently, under Article 197 of the Code of Criminal Procedure, the police are able to use CCTV in public without a warrant when it does not infringe the rights of individuals; however this leads to a specific problem: if the police say that they are not infringing individuals' rights, they don't require a warrant to use CCTV. However it can be argued that the police should not be left to make this judgement call as the cameras are being employed by the police themselves to further their investigation, and therefore should be regulated by a body independent from the investigation. The courts alone are not able to be effective as they only come into play when an investigation reaches trial or when the police apply for a warrant. This role can therefore be played by an Independent Commissioner's Office who can ensure that police use of CCTV is appropriate and proportionate when it is being considered for use and when it is being used in all cases that would not initially require court assent. This would mean that cases that make use of CCTV that reach trial will be much less likely to have video evidence rejected by the courts due to an infringement of a suspect's rights as the ICO would ensure CCTV is only used in appropriate and proportionate circumstances where individuals' rights are not inappropriately infringed.

Penal Law and Petty Breach Act

Privacy is also dealt with under penal law. Privacy can be invaded under the following crimes:

⁵⁸⁹ Etzioni said: "the best way to curtail the need for governmental control and intrusion is to have somewhat less privacy." Etzioni, *The Limits of Privacy*, 213.

⁵⁹⁰ Murata, Orito, and Adams, "The Development of Japanese Data Protection," 98.

⁵⁹¹ Lawson, "Japan's New Privacy Act in Context," 99.

defamation, insults, breaking into a residence, unlawful opening of letters, unlawful disclosure of confidential information, and the prohibition of looking into another's residence.⁵⁹²

Police Act

Article 1 of the Police Act states that the purpose of the Act is to protect individuals' rights and freedoms and maintain public safety and order.⁵⁹³ Article 2 Paragraph 1 states that it is the duty of the police to protect the life, physical safety, and property of individuals, and they have the responsibility to prevent, suppress, and investigate crime, arrest suspects, regulate traffic, and maintain safety and order in public.⁵⁹⁴ Using paragraph 1, the police can justify the use of CCTV in public spaces as a method of preventing, suppressing, and investigating crime, and maintaining safety and order. However, further to the duties enumerated in paragraph 1, paragraph 2 states that the execution of these duties must be applied in a fair and impartial manner and protect individual's constitutional rights and freedoms.⁵⁹⁵ This means

⁵⁹² Ehara, *The right to Privacy: A comprehensive analysis*, 116-131 (刑法 230 条 : 名誉毀損罪 Defamation; 231 条 : 侮辱罪 Insults; 130 条 : 住居侵入罪 Breaking into a Residence; 133 条 : 信書開披罪 Unlawful opening of letters; 134 条 : 秘密漏洩罪 Unlawful disclosure of confidential information; 軽犯罪法 1 条 23 号 : 他人の住居ののぞき見の禁止).

⁵⁹³ *Dai 1 Jou: Kono houritsu wa, kojn no kenri to jiyuu wo hogo shi, koukyou no ansen to chitsujou wo iji suru tame, minshuteki rinen wo kichou to suru keisatsu no kanri to unei wo hoshou shi, katsu, nouritsuteki ni sono ninmu wo suikou suru ni taru keisatsu no soshiki wo sadameru koto wo mokuteki to suru.* 第一条: この法律は、個人の権利と自由を保護し、公共の安全と秩序を維持するため、民主的理念を基調とする警察の管理と運営を保障し、且つ、能率的にその任務を遂行するに足る警察の組織を定めることを目的とする。[This law is to protect individuals' rights and freedoms, maintain public safety and order; based on the principles of democracy the police shall manage and administer security; furthermore, these duties shall be purposefully carried out efficiently by the police.] (note – this is the author's translation, as there is no official translation for this law at present)

⁵⁹⁴ *Dai 2 Jou(1): Keisatsu wa, kojn no seimei,shintai oyobi zaisan no hogo ni ninji, hanzai no yobou, chinatsu oyobi sousa, higisha no taiho, koutsu no torishimari sonota koukyou no anzen to chitsujo no iji ni ataru koto wo motte sono sekimu to suru.* 第二条(1): 警察は、個人の生命、身体及び財産の保護に任じ、犯罪の予防、鎮圧及び捜査、被疑者の逮捕、交通の取締その他公共の安全と秩序の維持に当ることをもってその責務とする。[The police have the duty to protect the life and physical security of individuals and their property, prevent, repress, and investigate crime, arrest suspects, regulate traffic, and maintain safety and order in public.] (note – this is the author's translation as there is no official translation for this law at present)

⁵⁹⁵ *Dai 2 Jou(2): Keisatsu no katsudou wa, genkaku ni zenkou no sekimu no hani ni kagirareru beki mono de atte, sono sekimu no suikou ni atte wa, fuhenfuto katsu kouheichuusei wo mune toshi, iyashikumo nihonkempou no hoshou suru kojn no kenri oyobi jiyuu no kanshou ni wataru nado sono kengen wo ranyou suru koto ga attehanaranai.* 第二条(2): 警察の活動は、厳格に前項の責務の範囲に限られるべきものであって、その責務の遂行に当っては、不偏不党且つ公平中正を旨とし、いやしくも日本国憲法の保障する個人の権利及び自由の干渉にわたる等その権限を濫用することがあってはならない。[The police are strictly limited to the duties listed in the previous paragraph. In carrying out these duties, the police must be impartial and fair and protect individuals' rights and freedoms as protected by the Japanese constitution and not interfere

that the police are not free to use any methods in tackling crime that violate the constitution, but are required to adhere to the limits set out in the constitution. The police can look to court decisions to see cases where the use of CCTV to tackle crime has been ruled constitutional or unconstitutional to limit their use of cameras under this act.

Daily Life Safety Regulations

In 1994 the police established an association to deal with public safety and security and crime prevention and promoted the establishment of ‘Daily life safety regulations’.⁵⁹⁶ The level of implementation differed around the country with some prefectures, towns and cities having extensive regulations, and others having none.⁵⁹⁷ The first authority to introduce regulations was Chiyoda Ward in Tokyo on 1 October 2002 with the slogan ‘Rules from manners’.⁵⁹⁸ The /regulations included measures to prevent littering, smoking, dog fouling, and suggested that CCTV should be installed in residential areas where many people have access.⁵⁹⁹ The first regulations contained only around five to ten articles; however, recent regulations now contain over 40 articles, with a large increase in the number of prohibited acts and proscribed punishments. Regulations must be clearly stated along with their purpose, and the police and residents must be consulted about their implementation.⁶⁰⁰ One regularly mentioned clause concerns the occasion when the installer of a CCTV system does not consult the head of the police before installation, they will be subject to an administrative sanction.⁶⁰¹

Shimizu said that the introduction of new regulations was controversial and he questioned their necessity,⁶⁰² noting that results from the previous ten years about crime and perceptions of crime and safety showed that there was actually a downward trend.⁶⁰³ Shimizu

with these rights or abuse their power.] (note – this is the author’s translation as there is no official translation for this law at present)

⁵⁹⁶ *Seikatsu anzen jourei* 生活安全条例

⁵⁹⁷ Shimizu, “Development and Problems of the ‘Life Security Regulations’,” 231-233.

⁵⁹⁸ *Manaa kara ruuru e* マナーからルールへ

⁵⁹⁹ Shimizu, “Development and Problems of the ‘Life Security Regulations’,” 230-231.

⁶⁰⁰ *Ibid.*, 234-235.

⁶⁰¹ *Ibid.*, 236.

⁶⁰² *Ibid.*, 233-234.

⁶⁰³ 『*Toukyouto anzen, anshin machi-dukuri yuushika kondankai*』 *de houkoku shita kadai: hanzai no zouka to taikan chian de atta*. 「東京都安全・安心まちづくり有識者懇談会」で報告した課題：犯罪の増加と体感治安であった。

said that while civil rights should be extended, this should not necessarily be done through promulgating more laws, as this may reduce people's civil rights.⁶⁰⁴ He explained that under Article 31 of the Constitution, no one may be punished except by procedures set out by law;⁶⁰⁵ however, if the laws are significantly increased in scope and range, then the constitution would provide protection to repressive and intrusive laws.⁶⁰⁶ Shimizu said that through regulations such as the 'Daily life safety regulations', Japanese society was effectively subcontracting out surveillance of citizens from the police to the citizens themselves, and the promoting of surveillance cameras through laws and regulations may actually reduce privacy protection.⁶⁰⁷

Court Interpretations

Most cases concerning governmental authority actually invading citizen's privacy have been focused on issues related to people's photos and fingerprints, wiretapping, and collecting, using, and making public personal information. A number of cases show how the concept has been applied in recent decades. As Japan is not a common law country, judicial decisions do not set precedents in theory; however decisions are often followed in practice.

The Tokyo District Court ruling on 28 September 1964 in the *After the Banquet* case⁶⁰⁸ is seen as reifying the right of privacy in Japan.⁶⁰⁹ A novel was written about a relationship between a politician and a woman, which was clearly based on a real life politician and his ex-wife; however the real-life politician did not give his consent to the publication. The plaintiff claimed that his privacy was invaded and requested compensation and a public apology. The judge accepted the plaintiff's request in part, establishing a right to privacy. The case set down three tests for a privacy claim:

1. It has to be true, or seemingly true and about one's private life;
2. An average person should feel that they would not want the information publically published, or an average person would feel mental anguish or unease if it was made

⁶⁰⁴ Shimizu, "Development and Problems of the 'Life Security Regulations'," 237-238.

⁶⁰⁵ 'No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law'

⁶⁰⁶ Shimizu, "Development and Problems of the 'Life Security Regulations'," 238.

⁶⁰⁷ Ibid.

⁶⁰⁸ Judgement of Tokyo District Court, 28 September 1964. 東京地裁判決昭和 39 年 9 月 28 日

⁶⁰⁹ Nishihara, *Surveillance Cameras and Privacy*, 44.

publically known; and

3. The information was not publically known by the average person, and the publication caused distress to the person in question.⁶¹⁰

Professor Nishihara claimed that it was not correct to extrapolate from this decision, outlined above, to claim that there was a general right to privacy because firstly, at the time it was relatively easy to gather and publish information, secondly, the case was based on publication, rather than privacy, and finally, the case did not specify at what point the collection of information became an invasion of privacy.⁶¹¹

One element of a right to privacy is the invasion of one's right to their own image and can be seen from the judgement by the Osaka High Court on 30 May 1964 in a case concerning pictures being taken of demonstrators at a protest.⁶¹² The court referred to the *After the Banquet* case and said that privacy was the right of the individual to conduct his or her life without interference from others and an essential part of a private act was to not have such an act told to the world without one's consent. In addition, the police are limited, by Article 2, paragraph 2 of the police act, to not under any circumstances invade the rights of people that are protected under the constitution, including that of privacy.⁶¹³

The first case that looked at the constitutionality of recording individuals with surveillance cameras was in December 1969 with the *Kyoto-fu Gakuren Jiken*.⁶¹⁴ In this case, the police took pictures at a public demonstration of student protesters at a rally, for which a permit had not been obtained. The use of cameras to take protestors pictures was contested; however the Supreme Court ruled that while people have the right to not have their photos taken, in this case, because the protest was not properly organised, the police were justified in their actions.⁶¹⁵ The judges indicated that this was an exception to the general right to photographic privacy.⁶¹⁶ The court viewed the use of CCTV in this case as proportionate, due to the event not being properly organised and the risk of public disorder, and furthermore as a non-compulsory method of investigation, therefore not invoking Article 197 of the Code of

⁶¹⁰ Ibid., 44-45.

⁶¹¹ Ibid., 45.

⁶¹² Judgement of Osaka High Court, 30 May 1964. 大阪高裁判決昭和 39 年 5 月 30 日

⁶¹³ Ehara, *The right to Privacy: A comprehensive analysis*, 69.

⁶¹⁴ Judgement of Supreme Court Grand Bench, December 1969. 最高裁大法廷判決昭和 44 年 12 月 24 日

⁶¹⁵ Nishihara, *Surveillance Cameras and Privacy*, 46.

⁶¹⁶ Adams, Murata, and Orito, "The Japanese sense of information privacy," 13.

Criminal Procedure. However, this ruling suggests that the use of cameras would have been classified as compulsory, and therefore neither appropriate, proportionate nor sanctioned by Article 197 if the demonstration had been properly organised and there had been no established risk of public disorder. This implies that CCTV is likely to be seen as infringing individuals' rights and be unlikely to be justifiable when there is no identified risk of crime or disorder.

The court in *Kyoto-fu Gakuren Jiken* acknowledged that the essence of freedom in people's private life was to be protected from police and government action, and freedom in individual's private lives includes the right to not have a person's photograph or image taken without consent or just cause. The police may not invade a person's privacy without just cause, no matter to how small an extent.⁶¹⁷ At the time of the decision, the Supreme Court was tilted towards the protection of public welfare, and thus such privacy concerns were often relegated below public safety.⁶¹⁸ However Nishihara posited, in 2009, that Japan was no longer under such pressure, and there should be more attention addressed to privacy concerns caused by the spread and ubiquity of surveillance cameras.⁶¹⁹

On 14 April 1981 Supreme Court Justice Itoh, ruling on a case where the Kyoto city government had given details of the criminal record of a citizen to a lawyer,⁶²⁰ said: 'personal information which the subject does not wish to be known to others should receive the protection of the courts for the sake of their privacy.' This ruling had the effect of making past convictions private information.⁶²¹

In another ruling in October 1984, the court ruled on a case where a Taiwanese man who worked for Japan during the war was listed as having deserted his post and argued that this was wrong and wanted the records changed.⁶²² The court found that the record was right and dismissed his case, but the ruling resulted in recognising the right of an individual to have the false or wrong data held by the government amended or removed if that information could cause damage to the individual through its false nature.⁶²³

⁶¹⁷ Ehara, *The right to Privacy: A comprehensive analysis*, 70.

⁶¹⁸ Nishihara, *Surveillance Cameras and Privacy*, 46.

⁶¹⁹ *Ibid.*, 47.

⁶²⁰ Judgment of Supreme Court 3rd Petty Bench, 14 April 1981. 最高裁第三小法廷判決昭和 56 年 4 月 14 日

⁶²¹ Adams, Murata, and Orito, "The Japanese sense of information privacy," 14.

⁶²² Judgment of Tokyo District Court, 30 October 1984. 東京地裁判決昭和 59 年 10 月 30 日

⁶²³ Adams, Murata, and Orito, "The Japanese sense of information privacy," 14.

Fukuoka High Court in 1986 said that whilst there was no clear provision specifically for privacy, the constitution protected freedom of conscience, freedom of expression, secrecy of correspondence, freedom from search and seizure without warrant.⁶²⁴ From these rights, a right to privacy could be derived. The same judgement also looked at the taking of fingerprints and ruled that this was covered by this right to privacy and that it was an invasion of one's private life.⁶²⁵

In February 1986, the Supreme Court ruled on the *Obis* case.⁶²⁶ The court referred to the *Kyoto-fu Gakuren Jiken* case and decided that speed cameras which take pictures of speeding cars and the occupants did not violate the constitution.⁶²⁷

In April 1994, Osaka Police installed cameras in 15 locations for crime prevention in Kamagasaki and were able to monitor various public areas. Residents in the area requested the police to remove the cameras, arguing three main issues:⁶²⁸ Firstly, the legal basis for installation and use of CCTV cameras; secondly, whether people's privacy was being invaded and people's right to their own image; and thirdly, whether protection of 'privacy' was beneficial, and whether invasion of privacy was a problem. Osaka District Court found that out of 15 camera locations, one was an invasion of privacy and the offending camera was ordered removed, recognising the right to privacy when in public.⁶²⁹

Regarding the first issue, the court found that five grounds were required to be met for CCTV to be installed and used: clear purpose, concrete reasons for its necessity, appropriate, effective, and the system is used suitably. For the second issue, the judge referred to *Kyoto-fu Gakuren Jiken* case where a recording could not be justified to simply deter crime and therefore there was no justification for recording the plaintiff.⁶³⁰ The judgement pointed to the danger of overuse of surveillance and CCTV. Nishihara proposed that the ruling should have gone further as even without recording images, people's civil rights were being invaded by the use of the cameras.⁶³¹ For the third issue, Nishihara says that although one's privacy

⁶²⁴ Judgement of Fukuoka High Court, 26 December 1986. 福岡高裁判決 61 年 12 月 26 日

⁶²⁵ Ehara, *The right to Privacy: A comprehensive analysis*, 71.

⁶²⁶ Judgement of Supreme Court 2nd Petty Bench, 14 February 1986. 最高裁第二小法廷判決昭和 61 年 2 月 14 日

⁶²⁷ See: http://www.courts.go.jp/hanrei/pdf/js_20100319115502679085.pdf

⁶²⁸ Nishihara, *Surveillance Cameras and Privacy*, 48–52.

⁶²⁹ Judgement of Osaka District Court, 27 April 1994. 大阪地裁判決平成 6 年 4 月 27 日

⁶³⁰ *Hanzai yobou mokuteki de no rokuga wa yurusarenai*. 犯罪予防目的での録画は許されない

⁶³¹ Nishihara, *Surveillance Cameras and Privacy*, 50.

cannot be strictly controlled when in public this does not mean that all aspects of privacy are lost in public locations, or that the benefits of privacy can be altogether abandoned. In April 2008, a Supreme Court ruling⁶³² was handed down, stating that the use of crime prevention cameras was acceptable for conducting criminal investigations into crimes such as robbery or murder, in places such as *pachinko* parlours, or on streets where there was likely to be a large congregation of people.⁶³³ This meant that police surveillance could be carried out legally when there was no specific information about a crime occurring, but just when there was a high probability of crime.

In March 1998, a group of activists took the government to court claiming that the N-System was an invasion of people's privacy.⁶³⁴ The group pointed out as issues of contention the right to one's own image, the control of personal information, and the freedom of movement.⁶³⁵ The government contested the first point by saying that only the number plate was recorded and the cameras did not record images of people's faces, therefore the system did not violate the 'right to one's own image' The government further said that once the images had been recorded they were kept for a specified time and then deleted. Management and use of data was strictly controlled, so privacy was not invaded.

The government dismissed the freedom of movement claim saying that there was no right of 'freedom of movement' secured by law and, the N-System did not restrict people's movement. Furthermore, drivers were obligated by law to display their vehicle's number plate; so they did not have any freedom of control over this information, hence the N-System did not violate any law specified in the claim.⁶³⁶ On 6 February 2001 the first instance court dismissed the claim that the N-System was recording, storing, or managing images in an illegal manner.⁶³⁷ Although they court referred to Article 13, they did not specifically refer to 'privacy'. The court said that even if people's images were taken, recorded and stored, this was in and of itself not necessarily a violation of Article 13. As for restricting freedom of movement, the court said that the purpose and the implementation of the specific instance of

⁶³² Judgement of Supreme Court 2nd Petty Bench, 15 April 2008. 最高裁第二小法廷決定平成 20 年 4 月 15 日

⁶³³ See: <http://www.courts.go.jp/hanrei/pdf/20080417160757.pdf>

⁶³⁴ Sakurai, "Current N-System Prosecutions," 217.

⁶³⁵ *Ibid.*, 217-218.

⁶³⁶ *Ibid.*, 218-219.

⁶³⁷ Judgement of Tokyo High District Court, 1 June 1999. 東京地裁判決平成 13 年 6 月 1 日

surveillance had to be taken into account, and in this case its use was reasonable.⁶³⁸

In 2002, a novel called ‘The Fish Swimming in the Stone’⁶³⁹ was banned from publication due to concerns that it would cause significant mental anguish to one of the characters portrayed in the book.⁶⁴⁰ A 2004 ruling went down the same route in granting an injunction on the publication of an article about the divorce of the daughter of a politician on the grounds that it would cause her harm. Initially the injunction was granted provisionally.⁶⁴¹ This injunction was then challenged the next day, but the ruling was upheld.⁶⁴² A further appeal was made and the injunction was lifted by the Tokyo High Court.⁶⁴³ The decision to lift the injunction was confirmed by the Supreme Court as it was ruled that its publication would not cause irrevocable damage.⁶⁴⁴

In November 1998, a lecture at a private university in Tokyo (Waseda University) was attended by a Chinese politician. Around 1,400 students attended and gave their names, addresses, matriculation numbers, and phone numbers to the organisers. The organisers submitted this list to the Tokyo Metropolitan Police without gaining the consent of the students. The court was asked if this was an invasion of privacy. The first court dismissed the case as it did not meet the criteria set in the *After the Banquet* case as it did not have any concrete adverse effect upon the plaintiffs. However, in September 2003, the Supreme Court overturned the ruling and said that when information is given to a third party, the person initially collecting the information must get the consent of the individual for the information to be so handed over.⁶⁴⁵ This could be done by getting people to simply tick a ‘consent’ box. The consent ruling leads to further questions about what does it mean to obtain someone’s consent when the circumstances are not as obvious as the Waseda University case, for example, how can a person determine if they have the consent of someone who is walking

⁶³⁸ Sakurai, “Current N-System Prosecutions,” 220-222.

⁶³⁹ *Ishi ni oyogu sakana*. 石に泳ぐ魚

⁶⁴⁰ Judgement of Supreme Court 3rd Petty Bench, 24 September 2002. 最高裁第三小法廷判決平成 14 年 9 月 24 日

⁶⁴¹ Provisional Disposition of Tokyo District Court, 16 March 2004. 東京地裁定平成 16 年 3 月 16 日

⁶⁴² Ruling of Tokyo District Court, 19 March 2004. 東京地裁決定平成 16 年 3 月 19 日

⁶⁴³ Ruling of Tokyo High Court, 31 March 2004. 東京高裁決定平成 16 年 3 月 31 日

⁶⁴⁴ Adams, Murata, and Orito, “The Japanese sense of information privacy,” 14.

⁶⁴⁵ Judgement of Supreme Court 2nd Petty Bench, 12 September 2003. 最高裁第二小法廷判決平成 15 年 9 月 12 日

down the street to record them on CCTV⁶⁴⁶

In May 2005, the Kanazawa District Court ruled⁶⁴⁷ that *Juki-net* violated Article 13 because it did not allow people to opt-out.⁶⁴⁸ Tajima claimed that the ruling did not show that *Juki-net* itself was against the constitution, but only that it was unconstitutional to force it upon people who opposed it.⁶⁴⁹ However, Tajima said that just because people have not voiced their opposition this does not mean that they have explicitly given up their right to privacy.⁶⁵⁰ In December 2006, the Nagoya High Court reversed the Kanazawa Court's decision saying:⁶⁵¹ 'Various security measures are in place to protect personal information and the system doesn't violate the plaintiff's right to privacy, hence it doesn't contravene Article 13 of the constitution.'⁶⁵² Another case in May 2005 in Nagoya District Court found that *Juki-net* was constitutional,⁶⁵³ and was upheld by Nagoya High Court in February 2007, which ruled that *Juki-net* did not infringe the constitution even though it contained personal information.⁶⁵⁴ The Judge said: 'It cannot be said that information for identity confirmation is information that requires a high degree of confidentiality There is little likelihood the right to privacy will be violated.'⁶⁵⁵

In February 2004, the Osaka District Court judged *Juki-net* to be constitutional;⁶⁵⁶ however this was overturned in November 2006,⁶⁵⁷ when the Osaka High Court judged that holding personal information on *Juki-net* of people who did not want to be listed was an infringement of privacy, and ordered the elimination of the ID numbers of those who

⁶⁴⁶ Nishihara, *Surveillance Cameras and Privacy*, 55.

⁶⁴⁷ Judgement of Kanazawa District Court, 30 May 2005. 金沢地判平成 17 年 5 月 30 日

⁶⁴⁸ Privacy International, "Japanese Court Rules ID System Unconstitutional."

⁶⁴⁹ Tajima, "Japan: Moving Towards a Surveillance Society," 15.

⁶⁵⁰ *Ibid.*, 15-16.

⁶⁵¹ Judgment of Nagoya High Court Kanazawa Branch, 11 December 2006 名古屋高裁金沢支部判決平成 18 年 12 月 11 日

⁶⁵² "Court overturns Juki Net ruling on personal data." *Yomiuri Shimbun*, 11 December 2006.

⁶⁵³ Judgment of Nagoya District Court, 31 May 2005. 名古屋地裁判決平成 17 年 5 月 31 日

⁶⁵⁴ Judgment of Nagoya High Court, 1 February 2007. 名古屋高裁判決平成 19 年 2 月 1 日

⁶⁵⁵ "Privacy Right Violation Said Unlikely: Juki Net constitutional, high court rules.", *Japan Times* online, 2 February 2007.

⁶⁵⁶ Judgment of Osaka District Court, 27 February 2004. 大阪地裁判決平成 16 年 2 月 27 日

⁶⁵⁷ Judgment of Osaka High Court, 30 November 2006. 大阪高裁判決平成 18 年 11 月 30 日

requested not to be included on *Juki-net*.⁶⁵⁸

On 6 March 2008, the Supreme Court gave a final ruling on the Kanazawa, Nagoya, and Osaka cases together,⁶⁵⁹ and judged that *Juki-net* did not infringe Article 13, and that Article 13 was limited to preventing the disclosure of personal information to third parties.⁶⁶⁰

CCTV Policies

National Police Agency

The National Police Agency (NPA) did not have a CCTV policy; instead, each individual jurisdiction had their own policy. As of 2010, the policy used for the pilot scheme in Kawasaki City, Kanagawa was being used as a model.⁶⁶¹ The NPA was also looking at creating a unified CCTV policy. The policy stated that the purpose of the system was to see if CCTV was appropriate and effective. The cameras were used in public spaces to prevent crime, prevent people becoming victims, find out about a crime as quickly as possible when one occurs, promptly pursue criminals, and help victims after a crime.

The CCTV system had a privacy enhancing feature that automatically blacked out residential areas such as windows and verandas.⁶⁶² The cameras were placed in areas where they would be effective, such as parks, shopping streets, public roads. Privacy had to be taken into account when choosing installation sites. Access to the system was strictly limited to ranks of Sergeant and above and then to the minimum possible. Data was to be deleted after seven days, but this could be extended if the data was needed for a criminal investigation.

Tokyo Metropolitan Police

The Tokyo Metropolitan police's CCTV policy was last updated on 27 February 2002 and

⁶⁵⁸ Ogasawara, "A tale of the colonial age, or the banner of new tyranny? National identification card systems in Japan," 104.

⁶⁵⁹ Judgment of Supreme Court 1st Petty Bench, 6 March 2008. 最高裁第一小法廷判決平成 20 年 3 月 6 日

⁶⁶⁰ Ogasawara, "A tale of the colonial age, or the banner of new tyranny? National identification card systems in Japan," 104; see also <http://www.courts.go.jp/hanrei/pdf/20080306142412.pdf>.

⁶⁶¹ Kanagawa Prefectural Police, "Kanagawa Prefecutural Police Street Camera System Policy."

⁶⁶² The author of this thesis viewed this in use at Kawasaki city police headquarters.

consists of seven articles.⁶⁶³ The policy stated its purpose was to ensure the camera system would be used appropriately. The system was used to prevent crime, prevent people becoming victims, and reduce the chance of crime occurring. The presence of cameras was to be clearly marked. The utmost care was to be taken to not invade citizen's privacy. Recorded images were to be used to the minimum necessary, and any use of images was to be reported to Tokyo Metropolitan Public Safety Commission.

Aichi prefecture

Aichi prefecture did not have a CCTV policy or guidelines; however, most individual cities and towns had their own guidelines.⁶⁶⁴ The Aichi police had their own CCTV policy which was updated last on 11 March 2005.⁶⁶⁵ The policy's stated purpose was to maintain public security and order while protecting citizen's civil rights through preventing crimes and preventing people from becoming victims. The cameras were to be clearly placed in areas visited by vulnerable persons or where the police suggested. The chief of police was to take responsibility to ensure that the system did not invade individual privacy and that the recorded images were used to the minimum possible during criminal investigations. Every six months the chief of police would publically report on the use of recorded data.

Chiyoda Ward

The first policy was enacted on 26 November 2003. This has been amended twice with the latest version enacted on 17 May 2010.⁶⁶⁶ The purpose of the camera system was to create a comfortable, safe, and secure living environment, and to prevent crime. The policy noted in its introduction that there were concerns with human rights invasions and that its use was controversial and that there was need for sufficient protection, hence the need for a policy. There must be an individual who is clearly designated as taking responsibility for the scheme. The policy stated that taking into privacy concerns, cameras would be placed in appropriate locations and images would not be leaked. Images would be deleted according to a prescribed time limit unless used for a criminal investigation. The cameras would only record images of public streets and roads, and not without reason target individuals or peer into shops. The

⁶⁶³ Tokyo Public Safety Committee 東京都公安委員会, "Street Crime Prevention Camera Policy."

⁶⁶⁴ Nagoya, Komaki, Inazawa, Yatomi, Tokai, Obu, Chita, Okazaki, Tahara.

⁶⁶⁵ Aichi Prefecture Public Safety Committee, "Street Crime Prevention Camera System Policy."

⁶⁶⁶ Chiyoda Ward Office, "Chiyoda Ward Crime Prevention Camera Policy."

policy had to be made public and the police would be consulted about the use and installation. If the CCTV cameras were used inappropriately or the police requested them to be stopped, the cameras had to be stopped immediately and measures taken to address concerns. Finally, if a privacy problem occurred, all persons connected to the camera installation would bear responsibility.

Nagoya Shopping Centre

The shopping mall has had cameras since November 1978, and as of 2010, had 61 cameras (four dome, 57 fixed).⁶⁶⁷ Three could record to VHS with the images kept for one week. The shopping centre's security was contracted out to a security company who managed the cameras and carried out uniformed patrols. There was a special monitoring room staffed 24 hours a day, 365 days a year. The cameras monitored suspicious behaviour, emergencies, vulnerable persons, and were used in emergencies.

The system manager at the mall explained that there was rarely any trouble in the shopping mall and it was not used to target or move on people. Security staff had one month training in security and disaster work before starting work, and biannual refresher courses, including CCTV operation. The layout of the CCTV control room meant the monitors are visible to anyone who enters the control room; therefore, entry to the control room was restricted. This also meant that the CCTV operators knew that how they are using the cameras may be seen by other members of staff. This informal surveillance could encourage good CCTV use. However no official supervision of the monitoring occurs during operation of the cameras. The centre wanted to update their systems as their current system is from the late 1970s. They recently updated their CCTV policy:

1. Purpose: Maintain safety, security, and public order, and prevent crime;
2. Monitoring and use of images: During normal circumstances, one security guard is posted in the control centre to monitoring cameras; during emergencies, the camera may be fixed or used to follow and record a situation. Two main staircases' cameras' images are normally recorded, changeable according to circumstances.;
3. Recording playback: To protect privacy, recorded images shall not be played back without justifiable reasons. If playback is necessary, Article 4 must be followed;

⁶⁶⁷ On 30 June 2010 the author visited an underground shopping mall in the centre of Nagoya to view the CCTV system and interview CCTV operator staff and supervisors.

4. Playback procedures: a) letter of request must be sent to the manager of the centre; b) either the manager or a member of staff delegated by the manager must supervise the playback; c) in case of emergency any staff member may authorise and supervise playback; d) playback for maintenance purposes does not require the normal procedures to be followed;
5. Secrecy of recordings: The content of all recordings must not be revealed; and
6. The centre will cooperate accordingly if there are problems with the system.

Suggestions for Specific Legislation

Westin suggested in 2004 that new privacy legislation should be enacted in Japan before data mining and fraud based on identity theft becomes a problem as in other countries.⁶⁶⁸ Murata and Orito concluded that granting ownership of personal information to data subjects was not practical, and might in fact be harmful. Murata and Orito advised a new concept where a certain amount of ownership should be relegated to the data controller who then takes on responsibility to protect the data in a 'socially favourable manner'.⁶⁶⁹ On this basis, Murata and Orito said a right to privacy should consist of the following five rights of a data subject: 1) to ensure accurate and recent personal data are collected; 2) ensure that these data are stored in databases managed by the collecting organisation; 3) ensure the data is protected from improper disclosure; 4) ensure the data is used to promote the subject's own welfare; and 5) terminate the use of personal data.

Moreover, Murata and Orito also recommended that the following six obligations to be imposed on data collectors: 1) collect accurate and recent data according to socially authorised rules; 2) store this data; 3) disclose, transfer, and share this data according to socially authorised rules; 4) use the data to promote the data subject's welfare against a socially authorised valuation standard; 5) terminate the use of stored personal data upon request from the data subject; and 6) disclose the methods of personal data management according to socially authorised rules.⁶⁷⁰ These suggestions are problematic due to the subjective nature of 'socially authorised rules' which will vary in different countries. Given that information crosses international borders regularly, such ambiguous wording in a privacy act would probably not grant sufficient guarantees for information security for other

⁶⁶⁸ Westin, "Data Leakage and Harm."

⁶⁶⁹ Murata and Orito, "Rethinking the concept of the right to information privacy," 6.

⁶⁷⁰ *Ibid.*, 6-7.

countries.⁶⁷¹

Ishimura made recommendations for specific CCTV legislation. He believed that taking pictures of people without their permission must be justified and the reasons transparent, so the purpose and object of the surveillance must be clear. Ishimura suggested general principles should be legislated for nationally, with specifics regulated for local bodies.⁶⁷² Regulating bodies should have the responsibility to either accept a system, or if the system needs to be altered, to provide guidance and advice to the system implementer to assist the system passing the requirements. The fundamental principles need to be clearly stated and should include:

1. Appropriate, fit for purpose system with a stated function;
2. The presence of cameras should be made clear;
3. The CCTV provider should have clear and enforceable responsibilities;
4. Recorded images should only be used for the specified purpose unless consent is gained from individuals in the images;
5. Images should be stored safely;
6. There should be a procedure of dealing with complaints;
7. Certain exceptions should apply for news, arts and science, religious activities, and criminal investigations;
8. An independent CCTV evaluation and reporting system should be in place; and
9. New systems must register with the appropriate authorities.⁶⁷³

These suggestions would not only increase the accountability of systems and bring some consistency, but also allow for differences in local populations' needs and desires. The inclusion of an independent CCTV evaluation and reporting system would bring much needed pressure on system implementers to uphold people's privacy.

⁶⁷¹ Cockfield, "Legal Constraints on Transferring Personal Information across Borders: A Comparative Analysis of PIPEDA and Foreign Privacy Laws," 53-54 (noting significant compliance costs for firms transferring information to countries with lower levels of privacy protection).

⁶⁷² Ishimura, "Legal Regulation of Surveillance Camera," 226-229.

⁶⁷³ *Ibid.*, 226-228.

Problems with Privacy Protection

Ehara wrote that although there was a strong argument for the right to privacy to be found in Article 13, there were a number of problems.⁶⁷⁴ For example, if privacy was accepted as a basic, fundamental right, then this could conflict with and limit other rights. A problem could also arise over how to apply the right. In order to protect an individuals' privacy, the government will occasionally exercise their power, but this power may invade people's privacy.⁶⁷⁵ In addition, when the government provides protection from personal information being collected and used, this would clash with the government's need to govern and conduct investigations.⁶⁷⁶ Lastly, although the clause 'freedom to personal life',⁶⁷⁷ was mentioned in a number of court decisions the courts have not gone into detail about exactly how and why privacy is protected in this clause. Nor was it clear exactly how or why the 'right to one's image' is related to 'freedom to personal life'.⁶⁷⁸

Furthermore, many interpretations by the courts discuss what a right to 'the pursuit of happiness' means. One of the problems with Article 13 has been the use of the article in justifying other rights such as environmental rights, portrait rights, and publicity rights. The difficulty with amending the constitution has led to the over use of Article 13 and resulted in some ambiguity with its relation to certain rights such as privacy. However, the lack of clarity for privacy in the constitution does not mean that the Japanese sense or understanding of privacy is ambiguous.

3.3 Conclusion

Welsh and Farrington stated, in 2009, that the most difficult but important questions to answer about CCTV legislation were 'how can its effectiveness be improved, and how could CCTV be less intrusive?'⁶⁷⁹ Arthur Cockfield found in 2010 that having strong privacy law was

⁶⁷⁴ Ehara, *The right to Privacy: A comprehensive analysis*, 71-73.

⁶⁷⁵ The Civil Code Articles 709 and 710 provide protection from other individuals: 709 requires an individual who has infringed another's rights to compensate the other; and 710 requires compensation to be provided for damages to property, body, reputation, and liberty.

⁶⁷⁶ See Constitution Article 35 and 38. Article 35 gives protection in one's home to entry, searches, and seizure unless by warrant; article 38 protects individuals from forced confessions or being compelled to testify against oneself.

⁶⁷⁷ *Shiseikatsu you no jiyuu*. 私生活用の自由

⁶⁷⁸ Ehara, *The right to Privacy: A comprehensive analysis*, 72.

⁶⁷⁹ Welsh and Farrington, *Making public places safer*, 113.

irrelevant if the law was not enforced.⁶⁸⁰ The ICO 2010 report said that existing data protection and privacy laws were inadequate, and ‘Surveillance cannot be effectively constrained without a more rigorous regime of law, supervision and enforcement.’⁶⁸¹ Felix Stalder suggested that attempting to protect privacy through defensive privacy protection is bound to fail, and that what is required is holding to account those whose actions may invoke privacy concerns.⁶⁸² Although other countries have stand-alone CCTV legislation,⁶⁸³ calls for specific laws for surveillance in Japan or the UK should be treated with caution for three reasons:

Firstly, technology is moving too quick for legislation to catch up, so legislation that is suitable for the current generation of cameras is unlikely to be able to cope with unpredictable issues that arise with subsequent models. Flexible guidelines that can be updated annually or when required would be better suited for CCTV. Secondly, current privacy and data protection laws provide adequate protection. Problems with CCTV are related to privacy, and producing new legislation or regulations would result in overlapping legislation and potentially conflicting interpretations. The courts in both Japan and the UK have in recent years used the right to privacy to deal with CCTV. This is likely to be the best route for providing a comprehensive route for regulation of CCTV because court decisions are more likely to deter police from acting in ways that courts have ruled illegal, and the culmination of judgements will provide unambiguous guidelines for police use that provide specific examples of when CCTV use is acceptable and when it is not. Finally, any new regulations may lead to a reduction in citizens’ privacy, as has occurred with the adoption of RIPA.

⁶⁸⁰ Cockfield, “Legal Constraints on Transferring Personal Information across Borders: A Comparative Analysis of PIPEDA and Foreign Privacy Laws,” 51.

⁶⁸¹ Information Commissioner’s Office, *Information Commissioner’s report to Parliament on the state of surveillance*, 46-47.

⁶⁸² Stalder, “Privacy is not the antidote to surveillance.”

⁶⁸³ Bainbridge, *Data Protection Law*, 261 Denmark, Sweden, and Portugal have laws specifically for video surveillance; “Germany and the Netherlands have specific provisions for sound and image data.”

Chapter 4: Analysis of CCTV in Practice

4.1 Surveys and Studies into CCTV use

UK

Council-run and police-run CCTV control centres

In a 2004 Benjamin Goold conducted observations and interviews at council-run and police-run CCTV control centres. He found that often CCTV was implemented where there was high fear of crime as opposed to high crime rates. One of the local authority managers he spoke with said:

the figures actually didn't justify that within the surveillance area we should have cameras there There are other places within the town that ought to, but the council did a survey, and people's perception of crime in the town – the fear of crime – actually got the council to actually put in a town system.⁶⁸⁴

Police-led and council-led schemes resulted in significant differences in the working relationship between the CCTV operators and the police. Operators in police led schemes had closer working relations with such authorities. These operators were better able to understand the pressures the police came under, more motivated about their jobs, and they felt more appreciated. Conversely, in council led schemes, operators felt unappreciated and often were critical of police handling of incidents, and the police felt that operators wasted police time with minor incidents and were unable to do simple tasks such as use the police radio properly.⁶⁸⁵

There were also differences in how operators in police-led and council-led schemes target subjects for surveillance.⁶⁸⁶ Police led operators said that they had learned to 'read the signs' from police officers and that by interacting with the police they were more aware of trouble spots and would keep an eye on these areas and people within these areas.⁶⁸⁷ The reasons for continuing surveillance of targets were different; in council led schemes 21% of continued surveillance occurred for 'no obvious' reason, compared with only 3% in police led schemes.

Police led schemes were much more likely to continue surveillance on a target for

⁶⁸⁴ Goold, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain*, 82.

⁶⁸⁵ *Ibid.*, chap. 5.

⁶⁸⁶ *Ibid.*, chap. 6.

⁶⁸⁷ *Ibid.*, 147-149.

reasons of order and safety than council led schemes. This became significant when the initial targeting and the continued targeting reasons were combined. In council led schemes, 22% of initial targeting was categorical, that is, based on stereotypes, and the surveillance continued for ‘no obvious’ reason 68% in of cases. In police-led schemes there was 18% initial categorical targeting, with 10% continued surveillance for ‘no obvious’ reason.⁶⁸⁸ This means that 14.6% of surveillance in council led schemes consisted of operators following someone on camera based on stereotypes for longer than was justifiable, compared with only 1.8% in police-led schemes.

Goold noted that although police-led schemes tended to claim, from both police and operators, that there was a good, productive relationship, this was not apparent in practice. In reality, only a small number of surveillances resulted in a call to the police, and of those that were reported to the police, only around half resulted in deployment – of 133 surveillances only ten (7.5%) resulted in a call to police, and only six (4.5%) in a deployment. Although low, this was much higher than in council led schemes, where out of 243 surveillances only three were called in to the police (1.2%) and only one (0.4%) resulted in a deployment. This counters the claim that council led scheme operators waste police time on minor calls. However, both sets of figures call into question the effectiveness of CCTV.

Goold also postulated that CCTV had very little impact on shift policies or policing strategies or CID practice; however, he found that it did have a significant impact on deploying officers to crime scenes and collecting evidence.⁶⁸⁹

CCTV on Oxford Street, London

Ian Chappell conducted an analysis in 2001 of a Metropolitan Police Service survey⁶⁹⁰ into CCTV implementation in Oxford Street, London.⁶⁹¹ Chappell found that CCTV had a beneficial impact on crime in Oxford Street, but due to the short follow up period, the results were questionable. Displacement of both the effect of CCTV and crime was difficult to assess, and diffusion was not accounted for.⁶⁹²

The majority of businesses felt that CCTV provided no benefit, even though 40% were

⁶⁸⁸ Ibid., 151-153.

⁶⁸⁹ Ibid., 37, 201.

⁶⁹⁰ PIB3 Research & Survey Unit Charter Unit, *DM CCTV Evaluation*.

⁶⁹¹ Chappell, “Sleuth or Spectator.”

⁶⁹² Ibid., 43.

happy with police support for the scheme.⁶⁹³ The majority of the police felt that CCTV was useful in assisting with incidents (48% very useful, 30% fairly useful, 3% not very useful, and 19% not applicable).⁶⁹⁴ Surveys of public opinion showed that almost everyone interviewed in Oxford Street acknowledged that CCTV helped to reduce crime, and those who were aware of the presence of the system said they felt significantly safer. The crime statistics showed that crime fell by 13%; however, prior to CCTV implementation there was already a noticeable downward trend in crime rates. Chappell suggested that the figures showed that the notices for CCTV acted as a deterrent from committing crime on streets, and displaced crime from the street into shops. Chappell concluded that the introduction of CCTV to Oxford Street was a positive move, but could be more effective with further training for police and greater publicity of the presence of CCTV.

CCTV in towns, housing estates, transport networks, and car parks

Welsh and Farrington analysed 41 CCTV schemes in town centres, public housing estates, public transport networks, car parks, and residential areas. They found that ‘CCTV [if well publicized] . . . may prevent crime because potential offenders are deterred by their increased subjective probability of being detected.’⁶⁹⁵ However, the installation of cameras resulted in a high social cost (invasion of privacy) and victims were given a false sense of security in situations they would otherwise have exercised caution. They also found that the presence of CCTV might increase reporting of crime by the public and recording of crime by police.⁶⁹⁶

Welsh and Farrington analysed 22 separate town/city centre CCTV schemes, out of which CCTV had a desirable impact in ten schemes, mixed impact in one, null impact in five, uncertain impact in one, and undesirable impact in five. The researchers found little evidence of displacement or diffusion of benefits.⁶⁹⁷ When the British schemes were analysed in isolation from the others, there was an average 10% crime reduction compared with control areas.⁶⁹⁸ There was a desirable effect on violent crime in only three of the studies (overall no effect on violent crime), and the crime on which CCTV had its biggest impact was vehicle

⁶⁹³ Ibid., 66.

⁶⁹⁴ Ibid., 67.

⁶⁹⁵ Welsh and Farrington, *Making public places safer*, 36.

⁶⁹⁶ Ibid., 41.

⁶⁹⁷ Ibid., 61.

⁶⁹⁸ Ibid., 65.

crime where there was an average of 26% reduction in crime. Overall, CCTV had a significant desirable effect on crime of 16%, 37% of the schemes showed a desirable effect, 56% showed no significant effect, and 7% showed a significant undesirable effect.⁶⁹⁹

The use of CCTV had a significant impact on vehicle crime in car parks, especially when used in conjunction with other interventions.⁷⁰⁰ On the other hand, city centres and transport schemes, measuring a much larger range of crimes did not have a significant effect on crime. Also, CCTV appeared to result in social exclusion of vulnerable or marginalised people resulting in greater isolation and less access to available help services.⁷⁰¹ Welsh and Farrington suggested some reasons why some schemes were successful and others were not:

- The average follow-up for studies in the UK was 15.9 to 16.1 months, compared to 9.6 months for the other schemes, therefore the other schemes may not have been given enough time to see if they worked;
- None of the schemes outside the UK used other intervention measures;
- The UK had a high level of public and political support compared to the US; and
- The failure of non-UK schemes may be due to undesirable media coverage.⁷⁰²

CCTV in a northern English city

Mike McCahill conducted research on a recession hit city in the north of England with a population of 250,000 people. His research involved over 60 interviews, visits to 20 CCTV control rooms, including 144 hours of CCTV observations in two shopping malls, and 24 hours observation in a high-rise housing scheme.⁷⁰³ McCahill found that although systems were often linked together to create a ‘surveillance web’,⁷⁰⁴ the human element played a big role in the effectiveness of a system.⁷⁰⁵ He observed that acquaintances of offenders were

⁶⁹⁹ Ibid., 74-75.

⁷⁰⁰ Ibid., 112.

⁷⁰¹ Ibid., 113; Monahan found that Surveillance systems “contribute[d] to the construction of marginal identities for target populations” Monahan, *Surveillance in the Time of Insecurity*, 147.

⁷⁰² Welsh and Farrington, *Making public places safer*, 119.

⁷⁰³ McCahill, *The Surveillance Web*, 22-30.

⁷⁰⁴ Ibid., 99.

⁷⁰⁵ Ibid., 92.

watched even if they had done nothing wrong.⁷⁰⁶ In addition, the background of the CCTV operators and where they felt they were in society had an impact on how they acted to situations.⁷⁰⁷

Mike McCahill saw the use of CCTV by local councils and private businesses as a means to clean up ‘undesirables’ from popular areas and having the effect of reducing the ‘democratic public space’ in city centres, leading to public spaces becoming ‘pseudo-public’ spaces, where local business interests override those of the public.⁷⁰⁸ McCahill concluded that there was increasing segregation of groups to give the favoured in society greater security in their own community spaces, and keep the unfavoured isolated in their own communities.⁷⁰⁹

CCTV in a railway station, shopping mall, and on a public CCTV network

McCahill and Norris carried out a study on a public CCTV network, a mainline railway station, and two shopping malls.⁷¹⁰ They interviewed managers and operators and carried out 120 hours of observations in a CCTV control room and found large differences between implementation, use, and effectiveness. The crime rate statistics were inconclusive and not the main focus of the study. This study was most useful for observations of the CCTV operators and how they went about their work.

McCahill and Norris found there were four types of CCTV operators. Firstly, the ‘techno-work embracer’ defined as an operator who is proactive and looks for crimes in progress and is knowledgeable about the system. Secondly, the ‘techno-work-avoider’, defined as an operator who avoids work at all costs and is unable to use any of the systems effectively. Thirdly, the ‘work embracer’, defined as an operator who is hard working, but unable to work effectively in the control room due to difficulties, for example, language problems. Finally, the ‘work avoider’, defined as an operator who was technologically able, but rarely used CCTV proactively rather just waiting for incidents to occur before doing anything. There were also three types of responses to a request of assistance to the CCTV controller: 1) Provide assistance to guards on the floor that will be helpful; 2) Acknowledge

⁷⁰⁶ Ibid., 122,148.

⁷⁰⁷ Ibid., 164.

⁷⁰⁸ Ibid., 15.

⁷⁰⁹ Ibid., 19.

⁷¹⁰ Norris and McCahill, “CCTV: Beyond Penal Modernism?”.

message and provide token response, but not do anything; and 3) No response at all (avoidance).

The researchers found that cameras were used increasingly to exclude ‘undesirables’ from various locations, and was very limited in its use as a crime prevention tool.⁷¹¹ The researchers interviewed a Crime Watch Manager in a South London borough, who said that having police in the control room was of great help as it helped improve the effectiveness of the system as ‘the police know who their looking for. They’ve got people who they’re looking for even before they’ve done something.’⁷¹²

The effectiveness of CCTV was found to be directly related to the type of worker that was operating the CCTV at the time.⁷¹³ Techno-work embracers were very effective in deploying staff to incidents and keeping a track of what was happening in a location. However all the other type of workers resulted in ineffective use of CCTV. During the 120 hours of observations by the researchers, there were only 84 targeted surveillances, equating to around five per eight hour shift, of which only 35% were proactive – one every four hours.

Survey of 14 CCTV schemes

In 2005, Gill et al. surveyed fourteen CCTV schemes (four urban areas, seven residential areas, and three miscellaneous areas). Gill et al. found that although each scheme had CCTV as a common denominator, each was unique and suggested that it made little sense to talk of CCTV as a single measure.⁷¹⁴ Only two of the studies showed a statistically significant reduction in overall crime, but there were ‘pockets of successful CCTV operation’ generally relating to specific crimes.⁷¹⁵ In one of the urban settings, the majority of the reduction in crime occurred between system installation and when the system started operation, indicating that it was the installation that provided the deterrent, not the operation of cameras.

Gill et al. claimed that it was unlikely that CCTV could lead to a significant increased detection of crime through immediate arrest due to the difficulty of pursuing targets on CCTV

⁷¹¹ Ibid., 433.

⁷¹² Ibid., 435.

⁷¹³ See also: Smith, “Behind the Screens: Examining Constructions of Deviance and Informal Practices among CCTV Control Room Operators in the UK” (showing how CCTV operators conducted targeted surveillance according to stereotypes, found it hard to concentrate, rarely caught incidents on camera, and were constantly bored and unmotivated at work).

⁷¹⁴ Gill et al., *The impact of CCTV: fourteen case studies*, 1.

⁷¹⁵ Ibid., 43.

and directing officers to them.⁷¹⁶ Overall CCTV's impact was variable. Gill et al. concluded that CCTV could only work effectively taking individual circumstances into account and when used alongside other measures.⁷¹⁷

Public perceptions of surveillance

In October 2007 Oliver Murphy carried out a quantitative report into perceptions of surveillance in the UK public. He led twelve 2-hour group sessions of six individuals, split according to age and location. The participants were generally accepting and supportive of public space CCTV. The majority of people saw CCTV as watching for and probably preventing crime.⁷¹⁸ It was seen as benefiting law-abiding citizens, reducing crime, bringing criminals to justice, and making people feel safer when in public.⁷¹⁹ Concerns were raised by a number of participants, specifically Belfast residents, who expressed distaste with being watched by the authorities, and black, minority, and ethnic (referred to in the UK as BME) participants who noted that they were often targeted.⁷²⁰ Furthermore, most participants believed that despite the mass use of CCTV the crime rate was still rising, and could not understand why this would be the case. Despite these concerns, people still believed it was effective, and because they also believed that when it was controlled by the police it was used responsibly and kept them safe.⁷²¹ Murphy asked about perceptions of 'Neighbourhood Watch', which was not brought up by anyone as a surveillance issue, but no one viewed it as a form of surveillance. People reasoned that it was local, not systematic, and the information obtained was not passed on to the authorities. People further reasoned that Neighbourhood Watch was necessary due to fewer visible police on the streets.⁷²²

⁷¹⁶ Ibid., 5.

⁷¹⁷ Ibid., 43.

⁷¹⁸ Murphy, *A Surveillance Society: Qualitative Research Report*, 15.

⁷¹⁹ Ibid., 16.

⁷²⁰ Ibid., 17.

⁷²¹ Ibid.

⁷²² Ibid., 19.

Japan

Ikebukuro Tokyo, CCTV Cameras

In 2004, The Tokyo Metropolitan Police commissioned a survey to interview 100 people⁷²³ about whether security could create a safe environment with peace of mind.⁷²⁴ 35 respondents lived in Ikebukuro and 65 were from outside the vicinity. Of those subjects who were from Ikebukuro, 74% knew about the cameras and 26% were unaware. Meanwhile, of those subjects who were from outside the area, 51% were aware and 49% were unaware (total 59% aware, 41% unaware).

For those who were aware of the cameras, they were asked how they knew, 32% said they had seen the cameras, 31% had heard from local shops, 15% from television or news, 15% from family members or friends, 8% from CCTV notices indicating their presence, and 8% from local government news. Everyone was asked if safety has improved since the installation of cameras: 49% said yes, 37% said there had been no change, 14% didn't answer, and no one said that safety had gotten worse.

Those who said safety had improved were asked why: 61% said people canvassing pedestrians had decreased, 41% said they felt safer, 33% said that fliers had decreased, 14% said there was less graffiti, 14% said there were fewer illegally parked cars, 12% said suspicious persons were less common, only 2% said that bike thefts had decreased or police sirens were less frequent, and only 8% said that robbery had decreased.

All subjects were asked if they thought 'crime prevention cameras' were effective in creating a safe and secure environment: 90% said yes, 5% said they were unsure, and 5% said no. Those who said 'yes' were asked why they thought so. 67% said there were fewer crimes now, 61% said cameras are useful when a crime occurs, 38% said they felt safer when travelling, 22% said the image of the area had improved, 20% said the cameras had helped keep the environment clean; and 1% said that criminals appear to be aware of the cameras.

From those surveyed who said cameras were not effective, 60% said that crime hadn't decreased, 40% that it hadn't helped clean up the environment, and 20% said that they gave the area the appearance of having a high rate of crime. No one mentioned privacy concerns even though they were given the choice. Everyone was asked what measure has a high effect

⁷²³ 70 males, 30 females; 2 in their teens, 14 in 40s, 19 in 30s, 9 in 40s, 26 in 50s, 22 in 60s, 8 above 70 years old. No public servants.

⁷²⁴ *Heisei 16 nen Ikebukuroku ni kamera secchi go no ankeeto.* 平成16年池袋地区にカメラ設置後のアンケート (2004, Survey about CCTV installed in Ikebukuro. The results of the survey were photocopied for the author by Police Inspector Shirai. There is no online version of the survey.)

on protecting safety. 82% said police patrols, 47% said an increase in ‘crime prevention cameras’, 42% said improved street lighting and crime prevention lamp posts, 34% said local volunteer patrols, 30% said more kobans being open and staffed, 22% said community events and activities, 20% said information being made public about crimes, 16% said the use of the 110 emergency police number,⁷²⁵ 15% said police crime prevention advice, 8% said the use of rape alarms, and one person said that crime prevention cameras have an effect on people passing through the area.

Attitudes of shopkeepers and customers towards CCTV

In December 2003, a survey was carried out by Kimihiro Hino and Osamu Koide to ascertain the opinions of shopkeepers and customers towards CCTV.⁷²⁶ 160 shops were chosen, with 95 respondents split into an experiment group and a control group. The previous year, due to an increase in thefts and arson, the experiment group installed 26 cameras. They wanted to use the cameras to deter crime, monitor for annoying behaviour, and record images for use after an offence. They were not allowed to use them for monitoring, and the process for recording was limited.

Both the experiment group and the control group had approximately 10% higher expectations for CCTV than security companies for crime prevention effectiveness, but felt that security companies would be easier to use than CCTV. Approximately 35% of both groups felt no unease with cameras taking pictures, 30% felt some unease, 25% felt a reasonable amount of unease, and about 6% significant unease. 70% of the experimental group thought that regulations for CCTV use were necessary compared with only 60% of the control group. 24% of the experimental group thought that the cameras should be monitored compared with 50% of the control group. Hino concluded that it was necessary to have proper standards for CCTV use, and that they must be clear. He also suggested that it was vital to both evaluate the implementation and carry out other measures simultaneously.

Attitudes to CCTV installed in public places

A web survey in March 2008 by Kimihiro Hino, Takahito Shimada and Ayami Hino, with 2,827 respondents asked about the attitudes towards the location and implementer of

⁷²⁵ The ‘110’ number in Japan is the emergency number for the police, like 999 in the UK, or 911 in the US.

⁷²⁶ Hino, Hino, and koide, *Attitude toward CCTVs in Shopping Streets: Questionnaires to Shopkeepers and Customers*.

CCTV.⁷²⁷ Opposition to residential CCTV was four times higher than town CCTV, and there was a greater feeling of unease with private run CCTV than government run CCTV. In order of acceptance to such use was; government or police (highest), followed by business or store groups, neighbourhood associations, apartment managing firms, NPOs, local businesses acting independently, and lastly individuals (lowest). Males were more opposed than females to CCTV implementation. CCTV had approximately 80% acceptance, if it helped reduce the fear of crime and assisted in criminal investigations and approximately 75% acceded if it helped reduce crime and anti-social behaviour.

Effect of surveillance on residents' fear of crime

A survey carried on in April 2008 by Kimihiro Hino and Ken Shibata looked at residents' fear of crime and found that security guards, followed by CCTV decreased feelings of anxiety.⁷²⁸ Alarms were the least likely to lower residents' fear of crime. The results showed that 47% of people thought CCTV to be very effective, 41% quite effective, 8% not very effective, 2% not at all effective, and 2% did not answer. This is in comparison to security guards which 67% felt were very effective, and 27% quite effective; and alarms which 27% thought were very effective, and 45% quite effective.

Attitudes to CCTV use by Waseda University students

Nishihara conducted a ten-question survey out with students at Waseda University between July and October 2008 about the use of surveillance cameras:

The first two questions were about the location of cameras used by non-police and police. The students were mainly against cameras covering entrances to homes, club activity rooms, toilet entrances and exits. Half of the students were against cameras being installed in university buildings. A majority of students were 'okay' with cameras run by the police in Kabukicho, video rental shops, and underground stations. When asked about police or security staff monitoring apartment blocks and hallways, there were significantly more concerns with police than security staff.⁷²⁹

⁷²⁷ Hino, Shimada, and Hino, *Citizens' Attitude to CCTV Installed in Public Places: in the view of Who installs Where*.

⁷²⁸ Hino and Shibata, "Effect of Surveillance Facilitated by Design on Residents' Fear of Crime."

⁷²⁹ Nishihara, *Surveillance Cameras and Privacy*, 60-61.

The third question asked students about what CCTV use they would accept, assuming they were at an underground station in Tokyo. Most students answered that they would accept surveillance cameras if used with police officers, but more than half would not accept randomly programmed cameras that can pick up sound, and more than 90% of students thought that cameras that can match information⁷³⁰ were an invasion of one's privacy. Many students also worried about whether they would be distinguished from criminals.⁷³¹

The fourth question asked the students what were desirable and undesirable uses of cameras. A large percentage agreed with the following uses: collecting evidence after an incident; providing a trail or evidence when a crime occurs; preventing accidents and crimes from occurring; preventing or dealing with emergencies. The following uses were seen as undesirable: just for appearance; to view or watch over young people and schools; for individuals to guard their own areas; as a hobby. Many students did not like the idea of unseen individuals conducting surveillance. However, they wanted to know that CCTV could both exonerate them if they were innocent, and catch offenders if they were victims.⁷³²

Questions five and six asked students what information universities and the police should be allowed to collect about individuals. Students did not object to the following collection of information: for the university: address, phone number, mail address, health and illness history, family information, school history, library usage, part-time job, employment history, and university club attendance; for the police: crime and traffic violation monitoring. Students objected to the collection of information about relationships, friends, schedule, personal contact information, political or religious views, and video rental history.⁷³³

Question seven asked about collection and use of personal data. 80% of students felt that use of their personal information for things outside the initial purpose was an invasion of their privacy. 70% felt that publishing their information was an invasion of their privacy while 50% felt that monitoring or recording by police was an invasion of their privacy.⁷³⁴

Question eight asked the students concerning how people should be made aware of the presence of cameras. The students noted that clear notification was important to prevent invasion of privacy. However, if a criminal is able to avert detection due to the notification of

⁷³⁰ *Jouhou macchingu*. 情報マッチング

⁷³¹ Nishihara, *Surveillance Cameras and Privacy*, 61-62.

⁷³² *Ibid.*, 62-63.

⁷³³ *Ibid.*, 63-67.

⁷³⁴ *Ibid.*, 67-69.

the cameras, then the purpose of the camera is not being realised, causing a conflict between obtaining evidence and protecting privacy.⁷³⁵

Question nine asked the students if security was more important than privacy. 50% agreed, and 40% said they couldn't choose. Over half the students said they did not trust the police to carry out surveillance.⁷³⁶

Question ten asked how extensive CCTV regulation should be applied to public surveillance schemes. There were very few students who said either that all surveillance cameras should be outlawed or there should be no regulations. Almost all students said that there should be some form of regulation in the use of such surveillance.⁷³⁷

Nishihara surmised three points: firstly, the understanding of most of the students of privacy was similar to idea 'the right to be let alone';⁷³⁸ secondly, because the conception of privacy was ambiguous, perception of privacy differed between students; and finally, seeing how privacy is affected in society is difficult as privacy can be a flowing concept due to rapid changes in technology.⁷³⁹ Nishihara's suggestions for protecting privacy through CCTV regulation were:

- Privacy should be given a clear description;
- CCTV systems should have clear, understandable and published standards;
- CCTV should be regulated and controlled and responsibility taken at different levels, that is, the national government controls the prefectures who control the cities who control the towns;
- Signs indicating the presence of cameras should be obvious and clear;
- Individual cameras position and performance should be made publically available;
- There should be a transparent system for complaints. If a complaint is upheld, the offender should be required on pain of sanction to conform; and
- If the residents of an area decide they do not want CCTV, the CCTV operator must

⁷³⁵ Ibid., 70.

⁷³⁶ Ibid., 70-71.

⁷³⁷ Ibid., 71.

⁷³⁸ Nishihara, *Surveillance Cameras and Privacy*, 72 (*Hitori de hotteite morau kenri*. 一人で放っておいてもらう権利).

⁷³⁹ Ibid., 79.

enter into consultations with the opponents. If the operator refuses to comply, the government must ensure the cameras are removed.⁷⁴⁰

Attitudes of CCTV in Suginami Ward, Tokyo

Due to increasing crime in recent years cameras were installed in Suginami.⁷⁴¹ A survey of some residents in December 2007 in the area found that 95% of people felt that CCTV cameras were able to prevent crime. 70% of residents also thought that there should be standards and regulations for the cameras, so a meeting of specialists was set up, and based on the outcome of discussions regulations were established.⁷⁴² The system manager was also interviewed by researchers, working under Nishihara, who asked the following questions:⁷⁴³

1. Following the regulations, has any advice been given regarding bad or wrong CCTV camera set up?
2. Have there been any complaints or grievances about the system by local residents?
3. Have the regulations created any problems or indicated that there is room for improvement?

The system manager answered all three questions with ‘nothing particular’⁷⁴⁴. Nishihara reasoned that either people have opinions but remain silent, or are unaware of the cameras. He proposed the idea that people may be oblivious to surveillance and have ‘sleep-walked’ into a society where cameras are so ubiquitous that people no longer notice them.⁷⁴⁵

Researchers also interviewed the manager of a system on the local railways. The CCTV system was installed in 1998, partially in response to the Tokyo sarin gas attack. The cameras were used for emergencies as well as crime reduction. The images were not monitored in real time unless there was an incident in progress. Images were retained for 30 days but the system did not record sound. The manager said: ‘When something unusual happens the cameras are used. Because citizen’s lives are important and in order to deal with

⁷⁴⁰ Ibid.

⁷⁴¹ Between 1998 and 2002, the number of crimes increased by 160%. See http://www2.city.suginami.tokyo.jp/library/file/sg_cmrkg02_03.pdf

⁷⁴² Nishihara, *Surveillance Cameras and Privacy*, 6-7.

⁷⁴³ Ibid., 6-11.

⁷⁴⁴ [*Toku ni nai*] 「特に無い」

⁷⁴⁵ Nishihara, *Surveillance Cameras and Privacy*, 17.

threats to their safety from those who would do harm, CCTV is a necessary tool.⁷⁴⁶ The manager also said that cameras were used to deal with people's feelings of anxiety and lack of safety as it was believed that this would instil feelings of safety in people.⁷⁴⁷

Interviews were carried out at a Karaoke bar and a Manga Coffee shop by the researchers under Nishihara.⁷⁴⁸ At the Manga shop, cameras were installed for crime prevention. The system manager would not answer how many cameras were kept or for how long the images were stored, claiming that answering could reduce the effect of the cameras.⁷⁴⁹ The cameras were not monitored and no sound was recorded. The Karaoke bar installed ten cameras for crime prevention, emergencies and police investigations. Images were kept for three months and then automatically written over. The cameras were monitored at the front desk and/or at the office. Some of the cameras could record sound.

Crime prevention activities in Aichi-prefecture

In 2010, Aichi prefectural government released a report on crime prevention activities including the use of CCTV. The report stated that although a target had been set to reduce the number of crimes by 20,000 by the end of 2011, which would be a 5% decrease year on year, over the past two years there had been an increase in crimes.⁷⁵⁰ The report acknowledged that in order to create an environment where crime did not readily occur, it was imperative to discuss the limits of power and actions that should be permissible. The researchers interviewed 482 persons (97% response rate out of 497 persons) between 3 August and 20 August 2010 by internet and post.⁷⁵¹ The survey included the following questions:

Question 1: In order to create peace of mind through security and safety, what is most important? (Only one answer)⁷⁵² 75.5% said prevention of crime, 6.8% strengthen control of the environment; 4.6% take measures to deal with natural disasters; 4.4% prevent traffic

⁷⁴⁶ Ibid., 13.

⁷⁴⁷ Ibid., 15.

⁷⁴⁸ Ibid., 15-16.

⁷⁴⁹ *Bouhan jouno tsugou no tame kotaeraremasen.* 防犯上の都合のため答えられません

⁷⁵⁰ Aichi Prefectural Government, *Prefectural government monitor questionnaire report: Towards crime prevention and security consciousness*, 1.

⁷⁵¹ 48.3% male, 51.7% female; 15.7% 20s, 21.3% 30s, 18.5% 40s, 16.3% 50s, 28.2% 60s+

⁷⁵² *Anzen de anshin shite kurasutame ni mottomo juuyou na koto wa nan da to omoimasu ka? (Kaitou wa Itsu made).* 安全で安心して暮らすために最も重要なことは何だと思えますか。(回答は1つまで)

accidents; 3.3% protect food supply; and 3.9% other. The same percentage of men and women chose prevention of crime, and there was a slight preference for this measure for those in their 30s then other age groups. There was a significantly higher percentage of those over 60 wanting increase in control over the environment.

Question 2: What do you think about safety in your local area compared with two years ago? (Only one answer)⁷⁵³ 41.5% said there had been no change; 7.1% a little better; 3.1% better; 0.8% much better; 34.6% a little worse; 10.8% much worse. 48.7% of women thought it had got worse, or a little worse, compared with 41.3% of men. People in their 20s and 30s were least likely to think things had improved; people above 60 were most likely to think things had got better.

Question 3: For those who answered the second question above with ‘got much better’ or ‘got better’, please explain why? (Only two answers)⁷⁵⁴ 50.9% said because neither themselves nor someone close to them had been the victim of any crime; 47.2% said because of an increase in crime prevention patrols; 28.7% because their local area had become more of a crime prevention environment; 20.8% because there were fewer reports of crime; 13.2% because there were more police patrols; 9.4% because the police or local council have said there was less crime. There was a wide variety in answers depending on age.

Question 4: For those who answered the second question above with ‘got a little worse’ or ‘got worse’, please explain why. (Only two answers)⁷⁵⁵ 46.1% said because they or someone close to them had been a victim; 40.6% because there were still many reports of crimes; 35.6% because the police or local government had said so; 24.2% because their local crime prevention environment had gotten worse; 21.5 because there were fewer police patrols; and 7.8% because there weren’t that many crime prevention patrols.

⁷⁵³ *Anata ga osumai no chiiki no chian wo izen (2 nen hodo mae) to kurabete dou natteiru to omoimasuka? (Kaitou wa Itsu made).* あなたがお住まいの地域の治安を以前（2年ほど前）と比べてどうなっていると思いますか。（回答は1つまで）

⁷⁵⁴ *Toi 2 ni de, [1 totemo yoku natteiru], [2 yoku natteiru] mata wa [3 sukoshi yoku natteiru] to kotaeta kata ni wo kikishimasu. Yokunatta riyuu ni tsuite kisai shite kudasai. (kaitou wa 2 tsu made).* 問2で、「1 とても良くなっている」、「2 良くなっている」または「3 少し良くなっている」と答えた方にお聞きします。良くなった理由について記載して下さい。（回答は2つまで）。

⁷⁵⁵ *Toi 2 de, [5 sukoshi waruku natteiru] mata wa [6 waruku natteiru] to kotaeta kata ni kikishimasu. Warukunatta riyuu ni tsuite kisai shite kudasai. (kaitou 2tsu made).*

問2で、「5 少し悪くなっている」または「6 悪くなっている」と答えた方にお聞きします。悪くなった理由について記載して下さい。（回答は2つまで）。

Question 5: What measures do you take to prevent crime? (Multiple answers okay)⁷⁵⁶ 84.6% said locking doors; 33% said they got information about how to prevent crime; 13.3% said they used items such as immobilisers and CCTV; 12% said they used buzzers (rape alarms); 6.8% said they did nothing.

Question 6: What would you most like the local government to do to prevent crime? (Only one answer)⁷⁵⁷ 38.2% said that CCTV should be installed in parks and parking lots; 36.9% said that specific crime prevention advice should be given to local areas; 7.3% said crime prevention volunteer groups should be given appropriate tools; 20% gave other reasons. Split by age group, CCTV in public spaces, above 60s were least likely with 28.3%; the most likely was 30s (47.5%), then 40s (42.4%), then 50s (38.8%), then 20s (38%).

Question 7: What do you think about ‘crime prevention cameras’ in public spaces? (Only one answer)⁷⁵⁸ 70.8% said they were necessary and approve; 12.4% said they didn’t feel the need for them, but did approve; 7.7% said they had no opinion; 6.4% said they were necessary, but didn’t approve; and 2.5% said they were not necessary and so didn’t approve. By age, the lowest percentage who expressed direct approval was the 20s group with 73.3%, and the highest the 50s group with 88.8%.

Question 8: Regarding the outbreak of crime, what kind of information do you think hits closer to home? (Only one answer)⁷⁵⁹ 35.5% said photographs, 27.2% said maps, 23.9% said written information, 10.6% said graphical, and 3.1% said other.

Question 9: Do you want to participate in local crime prevention patrols? (Only one answer)⁷⁶⁰ 35.9% wanted to but couldn’t due to work commitments; 18.5% wanted to but didn’t know how to get involved; 12% had no intention to participate; 10.4% said they would in the future; 9.8% said they were currently participating; and 7.7% said they might. People in their 20s (28.2%), followed by 30s (14.9), 50s (11.3%), 40s (6.5), over 60s (5.8%) had no

⁷⁵⁶ *Anata no totteiru bouhan taisaku ha nan desuka? (Kaitou wa ikutsu demo).* あなたのとっている防犯対策はなんですか。(回答はいくつでも)。

⁷⁵⁷ *Jichitai ni taishite, mottomo nozomu bouhan taisaku wa nan desu ka? (Kaitou wa Itsu).* 自治体にたいして、最も望む防犯対策は何ですか。(回答は1つ)。

⁷⁵⁸ *Koukyou no ba ni okeru bouhan kamera no secchi ni tsuite dou omoimasu ka? (Kaitou wa Itsu).* 公共の場における防犯カメラの設置についてどう思いますか。(回答は1つ)

⁷⁵⁹ *Hanzai hassei joukyou ni tsuite, dono you na jouhou ga yori mijika ni kanjimasu ka? (Kaitou Itsu).* 犯罪発生状況について、どのような情報がより身近に感じますか。(回答1つ)

⁷⁶⁰ *Anata wa, chiiki ni okeru bouhan patorooru katsudou nado ni sanku shitai to omoimasuka? (Kaitou wa Itsu)* あなたは、地域における防犯パトロール活動等に参加したいと思いますか。(回答は1つ)

intention of helping; People participating in patrols increased with age: 60s (17.4%), 50s (8.8%), 40s (8.7%), 30s (5.9%), 20s (2.8).

Conclusion

In the UK, surveys and studies into the effectiveness of CCTV showed that there was a small positive correlation between installation of CCTV and reducing crime rates. However, Welsh and Farrington added a caveat that the effectiveness depended on location and using the system in conjunction with other measures as such cameras were generally not enough of a deterrent to a criminal to be an effective prevention method.⁷⁶¹ Alone, CCTV has a minimal impact on crime rates and should not be seen or promoted as a panacea for prevention of crime.

On the other hand, CCTV used as part of a larger strategy has been shown to be effective and should be promoted when the circumstances and location are demonstratively suitable. In the UK, CCTV tends to target certain sections of society: usually minorities, the less well off, and the young. Such targeting might not be done consciously or intentionally, but results in disproportionate surveillance of vulnerable groups. For example, the installation of cameras in a predominately Muslim neighbourhood in Birmingham under anti-terrorism legislation, and the perception that CCTV operators disproportionately monitor young black men indicates that CCTV is not always used appropriately. In order to avoid accusations of racism, operators purposely monitored other people to create a balance. However, as the subject under surveillance is being selected purely on the base of race, this is an unjustifiable use of a surveillance system. The multicultural character of the UK and the concerns with racism lead to inappropriate use of monitored CCTV.

In Japan, Abe says that surveillance at present is not about guarding citizens but watching over them to prevent others from causing harm. However, this benevolent use of surveillance only applies to Japanese citizens. CCTV and other forms of surveillance are increasingly cementing a 'them and us' attitude whereby surveillance protects Japanese citizens from criminals, and foreigners, who are increasingly branded as criminals, are guarded over by the cameras.

Most Japanese associate with the section of society that needs to be protected and so are happy for the surveillance web to be widened and strengthened. The section of society that feels branded as criminal or potentially criminal finds that the surveillance web not acting

⁷⁶¹ Welsh and Farrington, *Making public places safer*, 118.

benevolently, but as a probation officer. Most CCTV in Japan is not currently monitored, however if it becomes monitored in the future, there is a real danger that it would also be used disproportionately against non-Japanese for two reasons: Firstly, surveillance for crime prevention purposes monitoring staff will look for abnormalities in Japan's relatively homogenous society⁷⁶² as foreigners are often instantly recognisable, either due to their skin colour (for non Asians) or dress sense (non Japanese Asians) or behaviour in public (not maintaining a public façade). Therefore non-Japanese will generally be singled out for surveillance, even if they have done nothing to arouse suspicion beyond not conforming to Japanese norms. Secondly, the common perception that foreigners are a direct cause for increasing crime will lead to institutional racism resulting in increasing monitoring of foreigners.

Institutional discrimination in Japanese and British society, based on both race and sex,⁷⁶³ means that the installation and monitoring of CCTV needs to be regulated to specifically counter issues associated with a society comprised of a wide variety of people.⁷⁶⁴ The ICO 2010 report raised concerns that social sorting through 'joined-up government, utility and services outsourcing, pressure from technology corporations and the ascendancy of actuarial practices' have resulted in different groups of people being treated differently by the state, with life-changing consequences.⁷⁶⁵ This problem needs to be addressed through appropriate training for CCTV operators including reducing stereotypes and increasing the ability to spot criminal activity.

The results from the Japanese surveys showed that CCTV was widely accepted and people were generally content with such surveillance; however, at the same time people express concern with being watched. In total these mixed feelings established a large amount of confusion over using CCTV with the general public. The UK surveys found large

⁷⁶² However, see: Sugimoto, "Class and Work in Cultural Capitalism: Japanese Trends" (saying that the perception of Japan as a homogenous society was flawed, with variations in ethnicity, and social and financial status. Sugimoto said that some of this increase in social inequality was due to the aging characteristic of Japan which exaggerated the class differences).

⁷⁶³ Institutional discrimination occurs when the culture, procedures, and policies of an organisation inherently discriminate against a group of people due to different groups' needs not being taken into account when the systems were set up. See: https://czone.eastsussex.gov.uk/schoolpersonnel/payandconditions/equalopportunities/Documents/discrimination_definitions_download.pdf

⁷⁶⁴ Monahan, *Surveillance in the Time of Insecurity*, 113-117 (noting that because men are disproportionately employed as CCTV operators, cameras are often used for voyeurism, and result in women being targeted for reasons other than protection or suspicion of crime).

⁷⁶⁵ Information Commissioner's Office, *Information Commissioner's report to Parliament on the state of surveillance*, 39.

difference in effectiveness and privacy invasion depending on system set up. These results suggested that it was important to both understand what a system's regulations were and how a system functioned on a day-to-day basis to determine whether or not a system was invading privacy.

4.2 CCTV usage in practice

Japan

Nagoya

Between 1975 and 1979 18 police-run CCTV cameras were installed in Nagoya. These were split into three zones and run by separate police stations. They were not actively monitored or proactively used by police, but only sporadically viewed from local *kobans* in the event of an incident. The number of cameras increased in 2005 and the images began to be recorded, although the police did not confirm the total number currently in use. In one of the *kobans* the author visited, the monitor was displayed in the full view of any members of public who entered the *koban*. The police sometimes used the monitor prior to attending an incident if the cameras showed the relevant area.

Images recorded on the police cameras were stored for 24 hours at the *koban*, and at Naka Ward Police Station for two weeks. This is in contrast with local council cameras where images were stored for only one week. Local council cameras were never monitored, and access to the images was restricted to a select number of individuals.⁷⁶⁶ Installing CCTV in Japan was very expensive. Each camera had to be attached to a specially installed concrete post of a certain height and special cables needed to be laid. Aichi police did not employ any individuals to monitor the cameras in real time over privacy concerns and costs. Every six months the police reported on the use of CCTV to a public safety committee.

The police⁷⁶⁷ explained that in Nagoya CCTV was seen as having three effects: prevent crime, reduce fear of crime, and assist criminal investigations. The police state that theft from motor vehicles reduced by a greater rate in areas where CCTV was installed when comparing crime figures pre-installation and post-installation. The police stated that the effectiveness of CCTV was measured by crime rates because people wanted simple answers and figures, and this was possible to do for crime rates, but much harder to do for what CCTV

⁷⁶⁶ In Sakae, only three people have access.

⁷⁶⁷ The names and positions of the police interviewed during the research remain anonymous for this publication.

was predominately used for – investigation – even though crime rates were not a suitable measure. To date, there have been no incidents caught on camera resulting in the police deploying and making an arrest. There are no figures on the effectiveness of CCTV in investigations; however the police claim that it has become a useful tool in investigating incidents.

Tokyo – Metropolitan Police

In 2010, there were five areas covered by police-run CCTV in Tokyo with a total of 160 cameras installed between 2002 and 2007. The police also had a CCTV van that could go to areas as required and transmit real time images back to the station. There were 141 dome cameras, 18 static cameras, and 1 high definition CCD camera. Local businesses ran a total of 3,032 cameras spread throughout 191 separate areas. The police did not have right of access to the control rooms or the cameras, but could view recorded data upon request.

The majority of police-run cameras were dome cameras because they took up a smaller amount of disk space compared to static cameras in relation to the area that they covered.⁷⁶⁸ The CCTV system did not use facial recognition technology at the time of the author's visit, because regulations required cameras to be at a height of least 4.5 metres from the ground in public spaces and 3.5 metres from the pavement on pavements, creating an angle that made it difficult to get suitable images of people's faces. Furthermore, the main purpose of the cameras was for crime prevention not offender detection. The images from the police cameras were relayed to six police stations and simultaneously to the Metropolitan Police Headquarters. They could be viewed and searched by the individual stations for 24 hours, after which a request had to be made to Police Headquarters. The dome cameras moved automatically according to preset programming and the monitoring officers watched the screens and reacted if necessary or if required to by police requesting their assistance.

All the images generated by the 160 cameras were stored in the Police Headquarters for seven days and then deleted. Theoretically the images could be held for up to one month, or occasionally longer for a complex investigation, but only with good reason. Seven days was chosen as the time limit because this was the recommended period for privacy protection by a panel of university professors, lawyers, and privacy experts. This also cut down on storage space. Every month the police were required to report at a public meeting on how the cameras had been used.

⁷⁶⁸ Four separate static cameras would be required to cover the area that can be covered by a single rotating dome camera.

Hiroyuki Kotani argued that the time that the process that the Tokyo Metropolitan Police was able to extend retention of images was ambiguous and without sufficient transparency or accountability. Kotani stated that the process of making a simple request to the system manager does not provide sufficient transparency or accountability of the police.⁷⁶⁹ Takehiro Ohya criticized Kotani's stance, saying that the process was clear and data was not stored unless the proper procedures were followed. Furthermore, data would automatically be deleted unless a specific request justifying the retention was made in writing from the chief of the requesting department.⁷⁷⁰ Ohya claims that any extension would not be sought arbitrarily but only when a case justified the extended retention of data, and therefore Kotani's fear of police requesting and receiving permission to retain data for long periods was ungrounded.

The police⁷⁷¹ said that their cameras were not 'surveillance' cameras but 'crime-prevention' cameras. They explained that their cameras were not used to find suspicious persons, or to watch high crime areas, but rather to deter criminals by the presence of the cameras; provide evidence for criminal prosecutions after a crime had occurred; and monitor the location of an incident when police were in attendance.

In four of the five areas crime decreased from pre-implementation levels. The range of crime decrease was from 21% to 67%. In one area, Ueno 2-Chome, a rise in crime of 1% occurred after the installation of cameras. The police explained that crime was steadily decreasing throughout Tokyo, however not by as much as the areas covered by CCTV. The police were unaware of any studies looking at either displacement or diffusion of the effect of CCTV and due to financial constraints there were no plans to increase the number of police CCTV cameras in Tokyo.

Tokyo – National Police Agency (NPA)

The National Police Agency is currently running a pilot scheme for CCTV in Kawasaki City in Kanagawa. The town is split down the middle by overland train tracks, with cameras set up on one side of the train tracks and the other side was left as the control area to check for displacement. The police were comparing adjacent areas for diffusion; however, they were not comparing similar non-adjacent areas. The system became operational at the end of 2009 and reached its total number of 50 cameras in March 2010.

⁷⁶⁹ Kotani, "Rapid Increase in use of Surveillance Cameras by the Police," 195.

⁷⁷⁰ Ohya, *What is Freedom? Surveillance Society and the Disappearance of the "Individual,"* 135.

⁷⁷¹ The names and positions of the police interviewed during the research remain anonymous for this publication.

The majority of cameras were dome cameras with full pan/tilt/zoom functionality. The images from the cameras were transmitted to the police station CCTV room, to which a limited number of police officers had access. The positions for the cameras were chosen according to crime rates and areas where there was a high level of unease about crimes against young persons and females. The cameras were monitored sporadically by the police unless an alarm rang on the CCTV system indicating an incident was occurring. The alarm would ring automatically when computer software picked up one of the following circumstances: a vehicle travelling in the wrong direction down a street; a group of people gathering together, perhaps indicating either a fight or lots of people showing concern over an injured person; and when an object that had been moving, stopped moving for a few minutes, for example, a drunken or injured person who is staggering around and then falls over and doesn't move.

The system can search for people over a specified time period and location given height and clothes colour. These functions are currently undergoing testing and haven't been brought into use yet. The cameras have a masking feature that prevents them looking into people's private property. There are two forms: matrix and total black out. Even when the cameras are moved, the masked area remains. This worked smoothly, but could be improved as it also blacked out some publically accessible areas time due to the inflexibility of the rectangular masking feature. The area covered by the cameras contained numerous snack bars and according to the police sergeant explaining the system, there were no problems with either customers complaining about their images being taken going into these places or shop owners or workers complaining.⁷⁷²

Kawasaki was chosen for the pilot because it was the only location that did not have a CCTV system in use at the time and would therefore be better able to show the effect of implementation. One of the police officers involved in national CCTV implementation⁷⁷³ acknowledged that the results of the pilot scheme may therefore not be applicable to other areas that already had some CCTV presence, but that running it in Kawasaki would show whether implementing a camera based security system in an area that was yet to have CCTV made a difference to crime rates.

Before the system was introduced a survey was carried out by the NPA to ascertain people's thoughts and concerns about such uses of cameras. 91% of people said that they

⁷⁷² The police specifically mentioned that although the cameras were covering areas where there were snack bars and other less reputable businesses, the cameras were not being used to conduct surveillance on these businesses.

⁷⁷³ The names and positions of the police interviewed during the research remain anonymous for this publication. The author visited Kawasaki city in Kanagawa, where the NPA is running a pilot scheme.

agreed with the system. This was higher than the police expected. The NPA will carry out a follow up survey and the results will be published in April 2011. In the *Journal of Police Science*, the former chief of the National Police Research Centre Masahiro Tamura discussed the level of confidence Japanese people have in the police. He explained that people have more trust in the police than the judiciary to uphold freedom and human rights. He further discussed the general acceptance of CCTV by the population and referred to a survey⁷⁷⁴ that showed 89% acceptance. Using these results, it can be argued that police use of CCTV is be accepted and trusted by the public.⁷⁷⁵

England

CCTV use in Counter Terrorism

Andy Hayman⁷⁷⁶ commented on the usefulness of CCTV in keeping the UK safe:

One thing is for sure: despite the concerns of civil-liberties groups, the surveillance society of CCTV cameras, listening devices and data-bases . . . is paying off big-time when it comes to catching criminals and terrorists.⁷⁷⁷

Hayman noted that CCTV was a vital starting point for the investigation in the immediate aftermath of the 7 July 2005 bombings in London, and how getting images as quickly as possible enabled the police to find out what happened and what to do next.

Two hours after the bombings a three-phase system to begin the investigation of the bombings was put in place.⁷⁷⁸ The first phase was the ‘Trawl Phase’ which consisted of collecting CCTV systematically for areas using a grid system. Officers were given a pack containing maps, statements, questionnaires to take details of what CCTV system was used, exhibit bags, quality assurance forms to ensure that sufficient details were taken about the location and contact details and system. This stage was very resource intensive. The second

⁷⁷⁴ *Asahi Shimbun*, 27 January 2004. 朝日新聞平成 16 年 1 月 27 日

⁷⁷⁵ Tamura, “Submission of a Problem,” 74; However, see: Cao, “Confidence in the police between America and Japan Results from two waves of surveys,” 149 (concluding that ‘the public in Japan do not rate their police as high as the American public. The surveys used were from the 1981 and 1991 World Values Surveys).

⁷⁷⁶ Assistant Commissioner of the Metropolitan Police at the time of the bombings in London in 2005.

⁷⁷⁷ Hayman and Gilmore, *The Terrorist Hunters*, 314.

⁷⁷⁸ The author interviewed a number of police officers regarding the use of CCTV in counter-terrorism. The names and positions of the officers have been kept anonymous. Topics discussed were CCTV use in apprehending the nail-bomber David Copeland, investigating the 7-7 bombings, tracking down the attempted bombers on 21 July 2005, and issues surrounding CCTV use.

phase was the booking-in procedure. This needed to be organised efficiently as there were a significant number of video tapes and hard-drives,⁷⁷⁹ potentially with evidence of other crimes captured. The third phase was the viewing system. Only five officers were used for viewing because, as the police explained, it was more important to have good quality staff who pay close attention to detail than a high number of staff.

A number of problems and challenges were mentioned in using CCTV effectively for investigations. Deciding how much CCTV to collect during the early stages of the 7-7 investigation was a difficult decision. If they collected too much, it would have taken too long to search through all the tapes, and if they had collected too little, vital evidence may have been lost. CCTV covering the previous six months was chosen because many terrorist acts are often planned and reconnaissance carried out months in advance, and vital clues to the conspirators and those helping the conspirators may only show up in the early stages of a plot. Many businesses and locations with CCTV did not store data going back this far, but where possible the police seized as much recorded information as possible.

CCTV throwing up false leads also led to problems. During the early stages of the investigation, CCTV images of the four 7-7 bombers entering the train station at Luton, showed a fifth man with a backpack running in just afterwards who appeared to be with them. The police thought this might have been a fifth bomber, and as only four bombs had gone off there were concerns that another bomber was on the loose. The suspect was actually unrelated to the bombings, but confirming this resulted in valuable resources being diverted away from the main investigation.

A number of problems were encountered due to the widespread use of CCTV in London. For example, in London there were 26 bus companies and 85 bus garages working over 32 boroughs, each with their own systems, creating downloading and viewing problems. Furthermore, the number and location of cameras constantly changes so it is often not possible to know the exact CCTV coverage of each location. Therefore it is necessary to send officers to the scene of an incident to carry out door-to-door checks for CCTV availability.

There were also technical difficulties encountered during the investigation. For example, some CCTV systems were often unable to record when downloading or copying data.⁷⁸⁰ Other cameras weren't recording at the time of the bombings because either they

⁷⁷⁹ Approximately 58,000 in total (combination of tapes and hard-drives)

⁷⁸⁰ For example, Waterloo station had 60 cameras, it would take one minute to download one minute of footage, and only one camera's images could be downloaded at a time. Therefore it would take 60 minutes to download one minute from all the cameras and 60 hours to download one hour from all the cameras at the station.

hadn't recently been checked;⁷⁸¹ or because they appeared to be working but actually weren't recording.⁷⁸² If the police find a camera is faulty, but do not report this to the CCTV manager of the faulty system, the police may be liable for damages if a crime occurred that would have been caught on the camera. There were also many cameras that were not fit-for-purpose. These included cameras that employed a time lapse function which tended to miss vital information and not allow useful examination, such as gait analysis. Many cameras were low quality with grainy images. Images from low quality cameras have low investigatory and evidential value. Finally, cameras that were in places with unsuitable surrounding lighting rendered images unusable.

Concerns were also raised about public acceptance of CCTV, for example, many systems did not live up to the expectations of the public. The public expected that if there was a camera, it would be recording evidential-quality images, and become aggrieved when the camera images were insufficient. A few years ago, dummy cameras were installed in crime hotspots in West London, but victims of crime complained when they discovered that prosecutions were not possible because the crime was not captured on camera.

The police found during the 7-7 and 21-7 investigations that CCTV was able to highlight forensic opportunities and other lines of inquiry that would not otherwise have been apparent. CCTV was recognised as an important tool for investigations but doubts were raised as its sole use in deterring or preventing crime. Furthermore, the use of CCTV by local councils for trivial investigations such as putting out rubbish or for revenue collection gave citizens a reason to complain about its use.⁷⁸³

A number of recommendations were suggested for improving the use of CCTV. Firstly, an up-to-date handbook listing the different CCTV systems in regular use should be kept for technicians who attend shops and businesses to retrieve images. Secondly, images should be

⁷⁸¹ For the 7/7 bombings, the camera on the 30 bus where the bomb went off was not working, so they did not get an image of the bomber – the bus had three types of recording systems, but none of them worked.

⁷⁸² This occurred with the Stockwell shooting incident where some of the cameras appeared to be recording but weren't. This fuelled speculation of a police cover-up.

⁷⁸³ The National Council for Civil Liberties, "Liberty's response to the Home Office consultation on the RIPA 2000: Consolidating Orders and Codes of Practice," 16-17 (noting how in 2007-2008 only 154 out of 470 local authorities used RIPA, indicating that the majority of authorities don't use the powers. Furthermore those who used RIPA often did so without a clear understanding. This suggests that local authorities don't need the powers in the first place.); "Councils' surveillance powers curbed", The Guardian online, 4 November 2009. (reporting that under reforms by the home secretary in November 2009, junior council officials are to lose authority to order surveillance operations); "Letters: Council surveillance." The Guardian online, 26 May 2010. (stating that surveillance is used by local councils only after authorisation by high level officials have taken into account issues of privacy). Information Commissioner's Office, *Information Commissioner's report to Parliament on the state of surveillance*, 16,22 The ICO report also states that local authorities use of RIPA is often non-proportionate and it should be considered whether their RIPA authorisation should be stripped.

retained for as long as possible, and a minimum of one month. The 7-7 bombers had come to London ten days before the bombings to carry out reconnaissance and were captured by CCTV.

Andy Hayman heralded the usefulness of CCTV in counterterrorism: ‘it was the CCTV pictures that gave us the strongest insight into what had happened on the day.’⁷⁸⁴ He acknowledged concerns, but said that CCTV was generally accepted by the public:

Civil-liberty groups still complain, but the wider public seems to accept that there are cameras everywhere. CCTV is part of everyday life and people expect it to be a principal means of investigation – they’d be angry if we didn’t use it to catch criminals.⁷⁸⁵

Hayman concluded that it was a vital tool in catching terrorists and keeping the UK safe:

When it comes to catching the terrorist, I’d say that, alongside financial, mobile-phone and computer data, CCTV is our primary means of investigation and a key source for creating lines of inquiry. Despite its presence...it’s amazing how often criminals are oblivious to it.⁷⁸⁶

CCTV for Major Events

This section covers use of CCTV during the Notting Hill Carnival (Carnival) on 29 and 30 August 2010. The Carnival is the second largest street carnival in the world and attracts crowds of around one million revellers.⁷⁸⁷ It is a major policing operation with around 5,000 police officers involved in patrolling the event,⁷⁸⁸ and has seen significant policing challenges in recent years.⁷⁸⁹

⁷⁸⁴ Hayman and Gilmore, *The Terrorist Hunters*, 139.

⁷⁸⁵ *Ibid.*, 140.

⁷⁸⁶ *Ibid.*

⁷⁸⁷ <http://www.thenottinghillcarnival.com/>

⁷⁸⁸ <http://www.met.police.uk/nottinghillcarnival/>

⁷⁸⁹ “Mob runs amok at Notting Hill Carnival.” *The Times* online, 26 August 2008.

Central Control Room – Lambeth

The Central Control Room, known internally as GT,⁷⁹⁰ was the largest CCTV control room in Europe and was used for policing large events such as festivals, marches, and summits.⁷⁹¹ The CCTV images were transmitted to a special CCTV control room within GT that was only accessible to authorised personnel. In the CCTV room there were at least two operators at all times, as well as private contractors to deal with technical problems. The monitoring staffs were not police officers but rather police staff technicians. The main role of these technicians was to ensure that the images were focused and clear. The techs were constantly checking images from different cameras, and when there was a focusing, colour, or lighting problem, instructed the relevant camera operator to adjust the cameras accordingly.

The cameras appeared to be used for five main purposes: 1. controlling traffic; 2. aiming on fixed points such as hotspots and problem places; 3. following suspicious behaviour or gang movements; 4. crowd control; and 5. watching police when they attend an incident. The monitoring that occurs at GT was primarily for traffic, crowd control, and police deployment, whilst crime related surveillance was carried out at Empress State Building.

The police officer in charge of traffic at the Notting Hill Carnival (Carnival) said that CCTV was very useful for monitoring and directing traffic and he could not imagine coordinating traffic for events or marches without CCTV.⁷⁹² He said that whilst some images used black-out features to prevent operators looking into private property, the operators were trusted to not do anything inappropriate. There was little direct supervision of the monitoring, because officers knew that they had to be able to justify everything they viewed with the cameras.⁷⁹³

The commanding officers for the event were able to view CCTV of the event from

⁷⁹⁰ Gumm, “New London CCTV Control Room designed to thwart terrorists.”
<http://www.info4security.com/story.asp?storycode=4113985>

⁷⁹¹ On 29 August 2010 from 15:00 to 24:00 the author attended Central London Control Room during the Notting Hill Carnival, and on 30 August 2010 from 11:00 to 24:00 the author attended a specially constructed CCTV monitoring room in Empress State Building. The author had unhindered access to these facilities and was able to speak with senior officers, supervisors, and operators at both locations.

⁷⁹² However, he said that the system did have problems. For example, how to choose which camera’s image is being shown on the monitor requires an operator to navigate a confusing hierarchical system of street names, whereas it would be much easier to have the position of the cameras shown pictorially on a map where they can be chosen by pressing on the relevant camera location. The sergeant informed the system implementers during the consultation phase, but due to financial constraints, the current system’s specifications were chosen.

⁷⁹³ Operators know that whatever they are looking at may be on the big wall, and if they are doing anything inappropriate there is a good chance it will be picked up. One of the technicians said that there is usually justification for all their monitorings, but sometimes things can look suspect due to the high positioning of the cameras.

images captured from cameras set on buildings and a camera mounted on a police helicopter. From these images, and from reports coming in from units on the ground, the command was able to deploy police according to where they were most needed and relieve them when not required. Furthermore, when crowds started to form, road closures could be put in place, and bottle-necks relieved by opening up closed off streets. Without the CCTV this would result in confusion and inaccuracies. The CCTV gave a bird's eye view of the whole event and made deployment significantly more efficient.

Experiences from the Technicians

The technicians mentioned three main problems with the current use of CCTV by the police. Firstly, the CCTV equipment was supplied by four separate companies; therefore when there were malfunctions, it was not always obvious which company was responsible. Contractual constraints meant that was not likely to be a problem that could be resolved in the near future. Secondly, unqualified and untrained operators made basic operating errors so only trained technicians should control the cameras. Finally, one of the operators thought that it would be good to have some legal training prior to starting and whilst working with CCTV. The operator said that technicians picked up useful techniques and knowledge when working with the police; however having specific training would be useful and increase the effectiveness of the cameras.

Effect of the Cameras on the Public

Members of the public who were not involved in criminal activity did not appear to be aware of the cameras. Drug dealers and gang members would regularly look up at the cameras and check their actions and positions accordingly. Even though suspects were aware of the cameras, and would often hide their faces using bandanas, hats, and hoods just before committing an offence, they appeared to be oblivious to the fact that they were often being watched in the lead up to the crime with their images and descriptions recorded, along with pictures being taken of them putting on their disguises.

One Japanese person interviewed for this thesis had attended the carnival and was initially shocked to learn of the extensive CCTV monitoring of the event.⁷⁹⁴ The interviewee

⁷⁹⁴ The author of this thesis carried out 2 one-to-one structured interviews with two Japanese people resident in London. The interviews covered the interviewees' attitudes towards privacy, surveillance, and CCTV, and the differences between their experiences in Japan and London regarding these issues.

professed to not have seen any signage indicating the use of CCTV and did not like the idea of being watched by cameras throughout the event.

Empress State Building (ESB)

Due to an oversight in planning, the Central Control Room at Lambeth did not have an area specifically set aside for CCTV monitoring for crime. An area has to be found each year for monitoring the carnival and other special events. All of the CCTV monitoring equipment is currently rented through a number of different companies. The system used in 2010 was on a five year deal, costing £550,000 and is only used for three days a year. There were two 3-terabyte hard drives that simultaneously record the same images from all the cameras in case one of them fails. There were problems in the past when images were stored on hard drives rusted after three years and became unreadable.⁷⁹⁵

One of the police officers working at the carnival said that CCTV was used very proactively by police officers at ESB to follow and target criminals and was especially good at catching pick pockets. Another useful function was the ability to put together fast time information packs with information on suspects currently at the event, including pictures of them taken on that day. These information packs were then distributed during briefings to officers working on the ground. This was a significant improvement on having to rely on custody imaging⁷⁹⁶ where individual pictures may have been taken some time ago, and with different clothes, hairstyle, eye wear, or clothes. The use of CCTV at Notting Hill has had a significant impact on policing operations and has also led to a significant reduction in complaints against the police.⁷⁹⁷

In 2010 year there were twenty CCTV monitoring officers, reduced from 35 the previous year due to budgetary cuts. This had an impact on the effectiveness of the CCTV system. For example, a cut in staff has had an impact on monitoring. Each operator was given the responsibility of four cameras within a specific sector. The cameras were assigned to ensure that each operator had a similar work load. This assignment was advantageous because no operator was overloaded with work, but disadvantageous because it was harder to track

⁷⁹⁵ This was a significant problem as the images are kept for seven years.

⁷⁹⁶ Custody imaging is photos of offenders taken at a police station upon arrest.

⁷⁹⁷ A high percentage of complaints are either false, malicious, or the police action is actually reasonable in the circumstances. When there is video evidence of the incident, this can be shown to the complainant, and the majority of complaints can then be dropped. On the other hand, when a complaint is confirmed by the CCTV evidence, then the police are able to act quickly and deal properly with the officer(s) involved.

subjects when they moved, and reduced the clarity of who was covering what area. One of the senior operators recommended that each officer should only have one camera to monitor. Craig Donald made similar recommendations based on a survey in Cape Town which found that detection rates decreased when the number of cameras monitored increased. His research referred to casinos where five cameras per operator were found to be the ideal number.⁷⁹⁸

Each monitoring officer had a display monitor, split into four images, a lap-top computer, a CCTV controller, and access to CAD.⁷⁹⁹ The lap top showed the real time images from one of the cameras shown on the monitor's main screen, which could be changed, and at the press of a special button, a snap shot was taken and saved onto the laptop. Each sector (consisting of a number of monitoring officers and a sergeant), had at least one officer or police staff who input real time information of interest, that the monitoring officers call out, onto a police database system called CRIMINT.⁸⁰⁰ This database can also have images linked from the lap-tops.

In the main control room at GT, an officer reads the entries and keeps Gold (the officer in charge of policing the event) informed allowing Gold to make informed decisions about deployments accordingly. When a crime is viewed on a monitor's screen, images that have been captured on the lap-top are then sent through to a specific 'crime-fighting' unit working on the same floor, along with a CRIMINT of details of what happened. This would then be put together into a file to be actioned at a later date. After the Carnival finished, the tapes would be taken away and viewed in slow time by a special unit looking for crimes, and analysing in detail the CRIMINT reports and matching faces with names to aid prosecution.

One of the senior officers explained that there was rarely a problem with privacy issues, such as peering into people's private property, or leering at women, as all operators knew what not to do due to extensive experience in the police. During big events like Notting Hill there was also constant monitoring of the images on camera by the Independent Police Complaints Commission (IPCC) who would immediately question the operator of a camera if they saw something that appears inappropriate.⁸⁰¹

⁷⁹⁸ Donald, "The Right People," 14.

⁷⁹⁹ Computer Aided Dispatch – radio system used by police to enable communication between officers on the street and staff in a control room.

⁸⁰⁰ CRIMINT is an extensive database with police intelligence ranging from sightings of suspicious individuals and movements of known criminals to details of low level public disorder.

⁸⁰¹ One of the supervisors mentioned that he had previously questioned one of the operators who appeared to be looking into a public house. However, it turned out that two of the people in the pub had been chucking things at people in the street, so the operator was looking at the suspects, which is an acceptable use of the cameras.

The senior operator felt that CCTV was generally accepted in London, especially as the police made it clear with big signs that cameras were in place and being used. He also said that they had a deterrent and a disruptive effect on crime. He deduced this from seeing actions of criminals changing their behaviour in front of the camera when they realised the presence of CCTV.

CCTV use by local police

Goold argued that CCTV has had a limited impact on policing. Goold found no evidence to suggest that local police had incorporated CCTV into overall policing strategy.⁸⁰² He suggested this may be due to lack of upper management providing guidance to local sergeants and inspectors or to police practices such as patrol routes, shifts, and the supposed need for officers to be in the public eye.⁸⁰³ On the other hand, the police claim that CCTV had brought down response times, increased officer safety, helped better manage resources, and helped deal with hoax calls and complaints against police.⁸⁰⁴ However, CCTV sometimes increased police work load as it picked up incidents that otherwise would not be reported, although there is no evidence to suggest that police deployment had increased as a result of CCTV.⁸⁰⁵ Such surveillance appears to have influenced police interaction with the public.

Goold noted that two-thirds of interviewed officers said that the presence of cameras had made them 'more careful' when dealing with incidents.⁸⁰⁶ The Independent Police Complaints Commission (IPCC) used footage from such cameras in 300 successful complaints against police officers in 1999 alone.⁸⁰⁷ Sergeants and Inspectors have been known to warn officers that their actions were often visible to the cameras and they should therefore be careful when out on patrol to protect themselves against complaints. This has resulted in some police being overly cautious when dealing with incidents and, in police led CCTV schemes, operators moving cameras away from police when requested.⁸⁰⁸

Aside from council run CCTV, police utilise this form of surveillance in a number of

⁸⁰² Goold, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain*, 168.

⁸⁰³ *Ibid.*, 170.

⁸⁰⁴ *Ibid.*, 172.

⁸⁰⁵ *Ibid.*, 175-176.

⁸⁰⁶ *Ibid.*, 180.

⁸⁰⁷ *Ibid.*, 185.

⁸⁰⁸ *Ibid.*, 189.

ways, including: VIIDO, Body Worn Video, Automatic Number Plate Recognition, CCTV attached to drones, and in police stations. VIIDO uses CCTV images to identify offenders caught on camera. This unit's research apparently shows that convictions are made in 70% of cases where CCTV is used in court. DCI Mick Neville said in May 2009 that when CCTV is treated as a forensic discipline, 20% of crime are solved using CCTV, compared to almost nil in areas where it is not given as much weight.⁸⁰⁹

Body Worn Video (BWV) is a camera that is fitted either to a police officer's helmet or clothes and can record sound and video when attending an incident. The cameras were piloted in 2005 and 2006, and by 2010 were being used by 16 out of 32 London boroughs.⁸¹⁰ Police attending an incident turn on the camera from the moment they are deployed, and the microphone picks up updates that the officers receive on the radio. The device remains switched on until the incident has finished and enables the courts to have a much clearer picture of both the police officer's actions and decisions, and the behaviour of suspects and victims during an incident. It is supposed to increase police accountability, reduce disorderly behaviour, and increase successful prosecutions.

In comparison to traditional police gathering methods such as from written notes, sometimes taken many hours after an incident has occurred, evidence from BWV is far more accurate and enables courts to see and hear what occurred more clearly.⁸¹¹ The pilot study's aims and objectives were to firstly, reduce bureaucracy, improve sanction detections, and streamline the criminal justice system; secondly, reduce challenges to police officer evidence in court; thirdly, increase early guilty pleas, reducing wasted police officer and court time; and finally, reduce the number of malicious complaints against police officers.⁸¹²

The pilot study found that there was an increase in charge or summons from 10.2% - 15% and an increase in sanctioned detections from 29% - 36.8%. Furthermore complaints against police were reduced by 14.3% (and no complaints against police wearing cameras). There was a reduction in 22.4% in officer time on paperwork and an increase of 9.2% in officer patrol time. In terms of crime rates, there was a 10% reduction in attrition rate for violent crime sanctioned detections and significant increase in detections in all crime types except drugs.⁸¹³

⁸⁰⁹ Neville, "Making it work," 18.

⁸¹⁰ MPS, "Body-worn video cameras."

⁸¹¹ Police and Crime Standards Directorate, *Guidance for the Police Use of Body-Worn Video Devices*, 7.

⁸¹² *Ibid.*, 30.

⁸¹³ *Ibid.*, 50-64.

The Automatic Number Plate Recognition (ANPR) system uses cameras either mounted on fixed points on roads, or on mobile police vehicles. The cameras read number plates captured on special CCTV cameras and stores them digitally as a string of characters to save storage and aid processing.⁸¹⁴ In 2010, up to 14 million images were stored each day from the 10,000 ANPR cameras around the UK. Within a short time after the 21/7 bombings in London, the MET sent out every ANPR vehicle available to start logging vehicle movements. At the time of deployment, the police did not know what vehicle, if any, was used by the suspects; retrospective analysis would allow them to build up a picture of movements if they later found details of a suspect's vehicles.⁸¹⁵

In mid 2010 there was significant controversy over around 150 ANPR cameras being installed in two predominantly Muslim neighbourhoods of Birmingham. The cameras were justified by the police and local council to the public on the grounds of dealing with anti-social behaviour; however it transpired that they were funded through anti-terrorism money, leading to speculation that the Muslim community were being unfairly targeted.⁸¹⁶ A survey in 2006 suggests reasons why Muslim communities might be singled out: the survey found that out of the 1.6 million Muslims in the UK, 56% believed the government should do more to deal with terrorism, 50% felt the intelligence services had the right to infiltrate Muslim organizations, 13% viewed the 7-7 bombers as 'martyrs', and 7% considered that suicide attacks could be justified on British civilians.⁸¹⁷

Murphy found in his 2007 quantitative study that ANPR was widely accepted and seen as a valuable tool in dealing with crime and terrorism.⁸¹⁸ The ICO 2010 report suggested that while the use of ANPR to monitor violent protests was probably justified, this probably did not extend to its use to record and monitor peaceful, law-abiding protesters.⁸¹⁹ Home Office Minister Baroness Neville-Jones announced on 3 June 2010 that ANPR will be reviewed, looking at its impact on civil liberties.⁸²⁰

⁸¹⁴ CCTV Advisory Service, "An Introduction to ANPR - CCTV Information."

⁸¹⁵ Hayman and Gilmore, *The Terrorist Hunters*, 189.

⁸¹⁶ "Birmingham ANPR cameras aimed at Muslims." The Guardian online, 7 June 2010.

⁸¹⁷ "Muslim Britain split over 'martyrs' of 7/7" (the survey interviewed 1,131 Muslim adults aged 18 and over by telephone).

⁸¹⁸ Murphy, *A Surveillance Society: Qualitative Research Report*, 18-19.

⁸¹⁹ Information Commissioner's Office, *Information Commissioner's report to Parliament on the state of surveillance*, 40.

⁸²⁰ "Home Office to review ANPR." Kable online, 8 June 2010
<http://www.kable.co.uk/home-office-reviews-anpr-numberplate-recognition-08jun10>

In recent years the police have begun to use of flying drones with CCTV. These drones fly silently at a height of around 60-100 metres and are hardly perceptible.⁸²¹ The 2010 ICO report said that they represented a greater threat to privacy due to their mobility and ability to track and monitor in real time.⁸²²

CCTV in police custody⁸²³ is now common in the main custody room where suspects are brought after arrest and in police detention cells.⁸²⁴ The cameras ensure that a record is kept of all actions taken by and towards a prisoner from the moment they enter the custody area. This helps ensure police accountability, and prove or disprove police complaints. The cameras also provide evidence in case a prisoner, or police officer, commits a crime while in custody. Recently a police sergeant in Wiltshire, UK was gaoled for an assault on a detainee that was captured on the custody CCTV.⁸²⁵

CCTV Operator Training (SIA)

Craig Donald, an expert on human factors related to CCTV, says that the most important factor in effectiveness of CCTV is the people monitoring the cameras, and the second most important is creating the right working environment and ensuring the staff have suitable knowledge.⁸²⁶ Public Area CCTV operators must by law attend 30 hours of classroom based teaching, pass two exams and a criminal background check and then pay for an SIA licence before using a public space CCTV system.⁸²⁷

The author of this thesis enrolled in an SIA accredited training course for an SIA Public Area CCTV Surveillance qualification in August 2010. The following is based on the author's personal experience at this training course. The reader should be aware that this may not be representative of all CCTV operator training schemes.

⁸²¹ "Police make first-ever arrest using unmanned drone." Daily Mail online, 12 February 2010; "Unmanned drones may be used in police surveillance." The Guardian online, 24 September 2010.

⁸²² Information Commissioner's Office, *Information Commissioner's report to Parliament on the state of surveillance*, 38.

⁸²³ 'police custody' is the area where arrested persons are detained within a police station.

⁸²⁴ McCahill and Norris, *Urbaneye: CCTV in London*, 11.

⁸²⁵ "Cell assault sergeant facing sack." BBC online, 5 September 2010.

⁸²⁶ Donald, "The Right People," 14.

⁸²⁷ Level 2 Working in the Private Security Industry [code CT154] and Level 2 Working as a CCTV Operator [code CT159]

There were four students, including the author, enrolled on the SIA CCTV course. One was a male with an IT post-graduate degree from India who came to England to find better work. He was attending the course while applying for IT jobs. Another was a Nigerian male who had been in the UK for one year working as a security guard. He had a SIA door supervisor qualification⁸²⁸ and decided to attempt the CCTV qualification to enhance his job prospects. From his experience it was very hard to find regular door work and even harder to obtain CCTV work. He intended to make some money in the UK before returning to his home country. The last student was a male from London who had been working in the security industry for five years for a large London department store. His job included using store CCTV and door work. He was on the course as the SIA had informed the department store that all employees doing security work would have to be qualified from 2011.

Material provided to students on the course was comprehensive, covering all relevant legislation, technical and ethical matters.⁸²⁹ The quality of instruction was poor, unprofessional, and unsuitable for preparing a CCTV operator. The trainer was also inaccurate and unprofessional throughout the course. The course did not adequately prepare an operator to work either effectively or efficiently as a CCTV operator. The material provided sufficient learning material, and, provided the teaching and practical learning was up to scratch, is a suitable base for a training course. However, only the author read the material prior to the course date, and each of the other students admitted that they had only briefly skimmed the material before the course ended. If the course had been taught over thirty hours and not truncated, it would have been possible to ensure that students had a good knowledge of the material.

The research into the SIA training course only looked at one course, and so may not be representative of other SIA training courses; however it indicated that there was a problem with the implementation of SIA training and monitoring of approved courses.⁸³⁰

⁸²⁸ The SIA Door Supervision qualification licences the holder to work as a door supervisor, but not as a CCTV operator.

⁸²⁹ CCTV Pack (77 pages): Introduction to the roles and Responsibilities of the CCTV Operation and other CCTV Staff; Codes of Practice, Operational Procedures & guidelines; CCTV Equipment and its Operation; Control Room Communications & Access Control; Legislation [DPA, HRA, RIPA, FoIA, P&CEA, CPIA,]; Dealing with Incidents; CCTV Surveillance Techniques; Fire and Emergency Procedures; Health & Safety at Work; Basic CCTV equipment terminology.

Working in Security Industry Pack (40 pages): Roles and Responsibilities; Customer Care & Social Skills; The Law – England & Wales; Health and Safety at Work; Fire Awareness; Emergencies; Communications & Reporting.

⁸³⁰ A letter describing the problems with the course and training was sent to the qualification awarding body shortly after the completion of the course and the author received his qualification paper. The awarding exam body sent an email shortly after stating that they take this matter seriously and would be investigating the claims.

4.3 Should citizens be concerned about CCTV?

Although courts have granted protection to individual's privacy, it has become far harder to escape the gaze of CCTV and other forms of surveillance while in public. The main concerns expressed about CCTV are regarding police use; however, from the research carried out in this thesis, in both Japan and England, police use of CCTV does not amount to an invasion of privacy warranting such concerns.

Data protection and privacy played a deciding factor in restricting the retention of CCTV images in Japan to one week. This is an unnecessary restriction that provides no greater protection to people's privacy, but rather reduces the chance that evidence may be gathered in police investigations. In the UK, data protection scandals have tended to be related to personal information held in long term databases, not short term storage of photos or videos from public cameras.⁸³¹ CCTV that records and stores images for a specified limited period of time before being deleted, and whose images are only viewed for criminal investigative purposes should not be seen as an invasion of privacy. However, with the exception of use in criminal investigations, if CCTV images are viewed, transmitted, or used in any manner that the person in the images has not expressly consented to, this could amount to an invasion of privacy.⁸³²

In both Japan and England, CCTV has been used conscientiously by the police, and this research found no immediate causes for concern. The regulations in place limiting access to cameras, the professional nature of the police involved in CCTV monitoring, and the relative transparency of the use of CCTV by the police should allay fears that the police conduct mass surveillance in an Orwellian fashion. Furthermore, the use of cameras by the police tended to be for investigation after an offence, and so there was little real time 'surveillance' carried out. The main exception to this was during large scale events in England. During the Notting Hill Carnival, extensive surveillance was carried out by a team of officers tasked with finding offenders and obtaining photographic evidence of crimes. The cameras were not used to spy on members of public or in any other inappropriate manner.

⁸³¹ "Previous cases of missing data." BBC online, 25 May 2009. (noting losses of data such as: details about 100,000 members of the armed services, information on all 84,000 prisoners in England and Wales, child benefit details covering 7.25 million families); "Whitehall warns of new data leaks." BBC online, 29 October 2009. (noting recent leaks from areas dealing with national security); "Timeline: Sensitive papers lost." BBC online, 19 July 2004. (noting losses of data such as: details of a new weapons system, the loss of 1,933 government computers)

⁸³² "Spain MP photo used for Bin Laden." BBC online, 16 January 2010.

Facial recognition software may result in unjustifiable intrusion of individual's privacy; specifically that of ex-offenders or people stored on a database who had not been convicted of any crime. Lucas Introna and David Wood said in 2004 that seemingly mundane decisions about algorithmic design in facial recognition systems may lead to significant bias in how systems are used and the type of people who are more likely to be picked out by the software.⁸³³ They further noted that the imbedded nature of facial recognition software makes inspection and evaluation of its functioning difficult.⁸³⁴ In 2010, David Omand, former UK Cabinet Officer Security Coordinator, predicted that CCTV may soon see the application of pattern recognition technology to both recognise wanted individuals and tag an image of a suspect and follow them through a transport system.⁸³⁵ If a CCTV system attempts to match people's images with a database of current suspects this could be seen as a justifiable invasion of privacy of the suspects. However, if the system tries to match faces with a database of people with previous, but spent, convictions, then this could be seen as an unjustified intrusion into citizen's privacy, especially if they are being targeted in preference to people not on a police database.

Another potential cause for concern is if cameras are hidden or their presence is not made clear in public places. If there is clear signposting stating where the camera is sited, its purpose and what it is monitoring, then it will generally not amount to an invasion of privacy, provided the purpose is clearly stated, unambiguous and has a narrow scope. Some of the codes of practice for CCTV schemes are however vague and wide ranging,⁸³⁶ leading to concerns that CCTV may be used inappropriately, specifically in England by local councils conducting surveillance on citizens for relatively trivial issues.

Ohya claimed that the increasing role of business as a purveyor of surveillance is the greatest danger in Japan, not the government.⁸³⁷ Daniel Solove similarly argued that focusing on government surveillance avoids the real danger – that of one's personal information being secretly collected by other actors in society that don't on the surface appear dangerous, but whose actions are less transparent and accountable than the government.⁸³⁸ Monahan asserted that while the public sector is committed to the 'public good', the private sector is committed

⁸³³ Introna and Wood, "Picturing Algorithmic Surveillance," 254-255.

⁸³⁴ Ibid., 183.

⁸³⁵ Omand, *Securing the State*, 109.

⁸³⁶ Goold, *CCTV and Policing: Public Area Surveillance and Police Practices in Britain*, 106.

⁸³⁷ Ohya, *What is Freedom? Surveillance Society and the Disappearance of the "Individual,"* 89-90.

⁸³⁸ Solove, "'I've Got Nothing to Hide' and Other Misunderstandings of Privacy," 756.

to profit and do not have the obligation to work for the good of society. He said that there is therefore greater reason to be concerned about the ‘privatization of surveillance and security.’⁸³⁹

The majority of cameras in Japan and England were run by non-police organisations, therefore raising greater concerns about privacy. A number of factors increase the chance that CCTV will invade citizens’ privacy. For example, real time monitoring, operators using the cameras to follow people, images being stored and labelled, persons in images being named, people’s images passed to third parties or the general public, images being purposefully stored beyond minimum retention time, and the use of facial recognition technology.

The training and qualification scheme for public space cameras did not adequately prepare operators for carrying out surveillance in public. Research by Goold and McCahill showed that operators used cameras inappropriately and ineffectively on many occasions. The lack of well trained, knowledgeable operators means that non-police CCTV cameras may regularly invade people’s privacy. In addition, local council run cameras were often used for purposes beside prevention and detection of crime. Therefore citizens would be right to have concerns about local council CCTV systems.

CCTV continues to flourish throughout Japan and England, but the majority of this is non-police use. While the research shows that police use of CCTV does not raise major concerns, the use of CCTV by non-police does show cause for concern. Furthermore, because non-police CCTV generally also cover areas where there are police cameras, it is not possible to say that certain areas are free from CCTV privacy intrusion. Therefore, it can be argued that the extensive presence of non-police CCTV throughout Japan and England gives justifiable cause for concerns about privacy intrusion by CCTV.

Etzioni listed four criteria that can be used to determine if a measure that invades privacy is in balance with the ‘common good’: firstly, there must be a ‘well documented and macroscopic danger’; secondly, other non-privacy restricting measures must have already been tried; thirdly, the measure must be minimally intrusive; and fourthly, there are no other less intrusive measures that could be used.⁸⁴⁰ According to Etzioni’s criteria, CCTV as is currently used in society does not appear to be in balance with the common good.

⁸³⁹ Monahan, *Surveillance in the Time of Insecurity*, 149.

⁸⁴⁰ Etzioni, *The Limits of Privacy*, 12-13.

Chapter 5: Recommendations and Suggestions

The proliferation of CCTV in recent years led to concerns that citizens' right to privacy was being pushed aside in favour of national security. The current trend towards increasing camera coverage indicates that a reduction in the number of cameras is unlikely in the future, so it is important to ensure that the cameras in place are used responsibly. This thesis set out to answer three questions: Does the use of CCTV amount to an invasion of privacy? What are the differences between Japan and England that are relevant to the use of CCTV? And, how should CCTV be used in Japan and England?

5.1 Limitations of research

This thesis had a number of limitations. The author was not able to carry out identical field-work in each country due to access issues to local council CCTV rooms and private businesses in England. Furthermore, due to the difference in police use of CCTV in Japan and England, the police interviewed in both countries did not have equivalent officers in each country. Another problem was the lack of available archival material about Japan in either Japanese or English, compared to material on England.⁸⁴¹

The author was able to make use of Japanese works, however there has been significantly more research undertaken on the situation in England, and many of the Japanese works refer to American and English commentators when discussing privacy, surveillance, and CCTV. Finally, within the UK the author was only able to carry out interviews with police in London; therefore, although the archival research included other areas of the UK, the fieldwork research was limited to London. These limitations meant that some topics covered in Japan were not covered in England, and vice-versa, so some of the conclusions require caution in making a full assessment.

5.2 Findings and recommendations

Main findings

The findings of this research suggest that firstly, neither CCTV nor the storage of images amount to an invasion of privacy, but several factors can lead to breaches of privacy. These factors include real time monitoring, use of cameras and images outside the purpose of the CCTV system, insufficient training of camera operators, use of cameras to follow people, and

⁸⁴¹ Murakami Wood, Lyon, and Abe, "Surveillance in Urban Japan," 551.

images being made public. Secondly, while the concept of privacy is similar in Japan and England, attitudes to public space, crime rates, public participation, and guidelines for storing images indicate that CCTV is more likely to flourish, but less likely to be effective in Japan. Thirdly, CCTV is used ineffectively in both Japan and England, and there is little evidence to back up its stated purpose of preventing crime. The application of CCTV should continue for investigation of crime but not for crime prevention.

General Recommendations

The present use of CCTV should be labelled and portrayed as ‘crime investigation cameras’, reflecting its actual application – crime investigation. This would have two major effects: firstly, it would stop implementers and proponents from having to justify schemes as preventing or reducing crime and allow them to concentrate on increasing their effectiveness at assisting criminal investigations; secondly, such a name would allow people to understand that CCTV does not prevent crime or keep one safe, but that people need to remain vigilante and take responsibility for both their own safety and look after those around them. This is more relevant to Japan where the name *bouhan camera* is misleading. The Japanese name should be changed to *sousa camera* or *kensa camera*⁸⁴² (investigation camera), when investigation is the main use of the camera; it should be *kanshi camera* (surveillance camera) when monitored, and remain *bouhan camera* (crime prevention camera) only when it has this effect.⁸⁴³

Cameras, for the most part, should not be used for crime prevention. If a camera is actively used to try and prevent crime, this would entail giving cameras the ability to predict who is going to commit a crime, where, and when. This would result in more sophisticated systems using profiling, which could disproportionately affect certain sections of society. Using cameras for crime prevention may also lead to blanket surveillance and treat everyone as a potential criminal in order to try and prevent all crime. There should be exceptions for using CCTV as crime prevention tools for large scale events and in areas that are demonstratively crime hotspots.

Public area surveillance for large scale events and crime hotspots should be monitored only by either certified security personnel with appropriate training or the police. The training and certification process in England currently only pays lip service to the training of

⁸⁴² *Sousa kamera* or *kensa kamera*. 捜査カメラ or 検査カメラ

⁸⁴³ Abe, *The Managed Space Paradox: Surveillance and Freedom*, 32-33.

surveillance operators. Therefore, the training and qualification system for CCTV operators needs strengthening. Japan does not currently monitor most cameras, and so there is currently no need to provide such training. Police monitoring was strictly controlled and only certain personnel are allowed access or control of cameras. If this changes then a clear training framework may be required.

CCTV should only be used in circumstances where it can be shown to be both necessary and effective, and then only used in conjunction with other measures. These measures may include improved street lighting, high visibility police patrols, posters indicating the presence of the cameras, and regular media proclamations of the use of CCTV to catch and convict criminals.

Specific Suggestions for Police Use of CCTV

For large events in both countries, officers in charge of policing events should have access to a hand-held device with images transmitted directly from relevant cameras to enable apprehending identified offenders. Major hotspots should be covered by numerous cameras from different angles to deal with offender's carrying out offences out of the gaze of cameras.

CCTV should be utilised more by patrol teams and CCTV operators should brief relief teams each shift or set of shifts. Such briefings would allow operators to see the officers they are working 'with' and understand their needs and issues, and also give them a chance to feel appreciated. These exchanges would also give the police a better understanding about what is going on in the borough from CCTV operators who have a bird's eye view of what happens in the area. For each shift, at least one police officer should spend down time in the CCTV room watching and learning and getting to see what is going on and getting to know the CCTV operators.

Recommendations for Japan

Firstly, CCTV should be renamed *sousa camera* (criminal investigation camera) from the present term *bouhan camera* (crime prevention camera). Such a name change would indicate to people what the cameras are being used for, and reduce people's reliance on CCTV for personal safety. Secondly, image storage should be increased from one week to one month. Provided the images are stored securely and not arbitrarily viewed, there is no difference in privacy invasion whether they are stored for one week or one month, but the difference in investigatory usefulness may be significant. Thirdly, there should be a reduction in public

participation in volunteer crime patrols and surveillance. Japan's low and declining crime rate does not justify mass citizen participation in surveillance of their neighbourhoods or blanket use of CCTV; but, rather leads to an unjustifiable reduction in freedom of action with little benefit in added security and increases fear of crime. Fourthly, a limited number of cameras should be installed on the train network for use during rush hours to deal with sexual assaults⁸⁴⁴. Fifthly, there should be an independent body tasked with overseeing data protection breaches and the use of CCTV, similar to the ICO in England; and finally, privacy impact assessments should be required for every public space CCTV scheme.⁸⁴⁵

Recommendations for England

Firstly, use of CCTV in public spaces should be restricted to police-led schemes, the police and the security services. If this does not happen, then local council use of CCTV should be strictly limited and open to judicial oversight and public scrutiny.⁸⁴⁶ RIPA authorisation should be removed from local councils to prevent councils conducting unjustified surveillance on citizens. If the incident under investigation is serious enough to require surveillance the police should be involved who could then use RIPA.⁸⁴⁷ In the UK, there is high public acceptance for CCTV due to its use in criminal investigations and apprehending criminals; however local councils' uses for trivial matters has caused widespread condemnation. Local councils should be allowed to use cameras for town management purposes, but not for crime prevention without the cooperation of the police.

Secondly, CCTV operator training should be revamped. CCTV operators carrying out surveillance in public spaces should be trained thoroughly including being taught relevant legal knowledge and moral issues about conducting surveillance. Thirdly, all monitored surveillance should be subjected to inspections. With police surveillance, this could be done by the Independent Police Complaints Commission, and with local councils and private businesses, the ICO. This could take the form of random dipping of recorded images to check for inappropriate monitoring behaviour.

Fourthly, CCTV should not be sold as a crime prevention measure, but as an

⁸⁴⁴ 痴漢 *Chikan* (sexual assault)

⁸⁴⁵ Lawson, "Japan's New Privacy Act in Context," 104 (explaining that individuals and businesses do have a "progression of avenues" to have complaints heard, however not through an independent body).

⁸⁴⁶ Hayman and Gilmore, *The Terrorist Hunters*, 345.

⁸⁴⁷ Murakami Wood, "How would you like your surveillance?." (noting the use of RIPA by local authorities to check on couples applying for local school places)

investigative tool. Crime rates may be used to justify using CCTV cameras, but CCTV effectiveness should not be judged by subsequent rates of crime; instead effectiveness should be evaluated by the impact the cameras have had on obtaining convictions. Fifthly, the UK might consider Japan's system of allowing local viewing of recordings for only 24 hours, after which viewing requires the permission and cooperation of police headquarters. This could greatly reduce privacy concerns in England. Sixthly, any legislation brought in to regulate CCTV should undergo a Privacy Impact Assessment and be subject to a sunset clause. In preference to new legislation, existing data protection and privacy laws should be used more robustly and greater enforcement power given to the ICO.⁸⁴⁸

5.3 Suggestions for Further Research

Further research should focus on the use of CCTV in criminal investigations. Anecdotally, CCTV has become a vital tool in police investigations and counter-terrorism. Research into CCTV as a crime prevention tool should move away from looking at how effective CCTV is at reducing crime rates and begin to focus on how CCTV is actually used. Studies on the application of these cameras may be more difficult than looking at their effect on crime rates, but there are a variety of questions that warrant further research. For example, does CCTV increase the number of confessions at an early stage of an enquiry? Does CCTV help narrow the scope of investigations to more effectively deploy investigative resources? How effective is CCTV evidence in court? How many people are found guilty/innocent on the basis of CCTV evidence, where they would have been found innocent/guilty otherwise? Another area that warrants research is looking at 'place managers', that is, the common use of security guards, and parking attendants that are in plain view outside many buildings in Japanese towns and may have had an impact on Japan's crime rate. Valuable research could be carried out regarding their effectiveness at keeping crime rates low, and their role as surveillance actors, and whether this would be suitable for England.

⁸⁴⁸ Information Commissioner's Office, *Information Commissioner's report to Parliament on the state of surveillance*, 47 The ICO suggest that there should be new positive legislation in areas where this is absent.

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Jonathan Oram

Jonathan Oram studied comparative law and obtained his LLM at Nagoya University between 2009 and 2011. He gained a BSc in Artificial Intelligence and Computer Science from Edinburgh University in 2000 and then taught English in Sendai on the government sponsored JET scheme. In 2005 Jonathan joined the Metropolitan Police in London and was posted to Camden borough where he spent two years on emergency response team in the area hit by the July 7th bombings. In 2007 he then transferred to a proactive team in Camden Town tackling gang related crime. In 2008 Jonathan took a career break from the police and won a scholarship from the Japanese government to study the differences between policing in Japan and the UK. In April 2011 he returned to work in a central London borough.

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Author Jonathan Oram

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Nagoya University
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