

# **Mrs. Aremac and the Camera: A Response to Ryberg**

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**Nov. 2007**

In 'Privacy Rights, Crime Prevention, CCTV, and the Life of Mrs. Aremac' Jesper Ryberg argues that if our privacy is not violated when a little old woman looks at the street from her window, then it is not violated by functioning CCTV cameras which monitor and record our movements.<sup>1</sup> This article takes issue with this claim. The comparison between CCTV and a little old lady, I will argue, depoliticises the use of closed circuit television as a crime-fighting tool and thus confuses the justificatory burden facing government surveillance, with the justificatory burden facing a little old lady. I will therefore start by examining the disanalogies between CCTV and Mrs. Aremac before turning to the question whether or not CCTV violates our rights to privacy.

According to Ryberg, people have legitimate interests in privacy, even in public places. Moreover, Ryberg insists, CCTV can be morally problematic even if it does not violate people's privacy. The point of his article, therefore, is to challenge the claim that the use of CCTV as a crime prevention tool violates our *rights* to privacy, rather than to deny that people have legitimate interests in privacy. (129, 142) With Ryberg, I will be assuming that CCTV can help to reduce crime, in order to focus attention on the question whether CCTV violates *privacy*. Whether or not CCTV does, in fact, reduce crime, and if so how and why, are likely to be fairly complicated and controversial questions depending, as they do, on the use of counterfactuals, as well as empirical evidence. For the moment, fortunately, we can ignore this. However, because we can have legitimate interests in privacy without the law actually recognising and protecting those interests, I will assume that the privacy rights with which Ryberg is concerned are moral, rather than legal although, unfortunately, he says nothing on the subject.

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<sup>1</sup> Jesper Ryberg, 'Privacy Rights, Crime Prevention, CCTV, and the Life of Mrs. Aremac' in *Res Publica*, (2007) 13: 127 – 143. For the purposes of simplicity, page numbers to this article will be in the text.

*Mrs. Aremac*

Mrs. Aremac is a little old lady who is unable to take part in public life because her legs are no longer up to it. So, she sits in an armchair looking at the street, when she can, in order to ‘compensa[te] a little for a life she is no longer able to participate in’. (130) The key question which Ryberg poses is, ‘If Mrs. Aremac is not in any way acting wrongly, [by gazing from her window], then why and when does a CCTV camera placed at the third floor of a building monitoring daily life in the streets constitute a moral problem?’ (130) CCTV cameras now have zoom capacities, and are able to track unusual behaviour so, ‘when it comes to a comparison with Mrs. Aremac, it is clear that her watching is comparable to the more sophisticated CCTV cameras which critics have regarded as particularly worrying’, but which are better mimics of human gazing than were older, less flexible, versions. (131)

Ryberg’s example of Mrs. Aremac – or ‘camera’, spelled backwards – is an ingenious and helpful one.<sup>2</sup> People’s claims to privacy in public – whatever they are – are going to have to be compatible with little old ladies gazing out of their windows, as Ryberg supposes. So, whatever the disputes about what a right to privacy consists in, we can assume that Mrs. Aremac gazing wistfully, or curiously, at the street does not violate privacy. Indeed, we would probably have to reject as inadequate any account of privacy which implied that little old ladies violate our privacy simply by gazing out of their windows onto the street. And as it is possible that the Mrs. Aremacs of this world spend a great part of every day gazing at the street, it looks as though Ryberg has found a helpful example with which to compare CCTV cameras.

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<sup>2</sup> John Kleinig pointed this out to me.

The difficulties come when Ryberg asserts that if CCTV is helpful against crime, any morally significant difference between Mrs. Aremac and CCTV ‘must lie inherently in the way each of the two operate’, rather than in what they are, in the quality of their interests in the street, or in their consequences for the lives of others. (p.131) After all, the whole point of the story about Mrs. Aremac is that sitting by the window is a poor substitute for what she would otherwise be entitled to do: namely, to participate in the life around her. Indeed, as Ryberg presents the story, sitting by the window is the *only* way in which Mrs. Aremac can participate in the life around her. By contrast, even if CCTV helps to prevent crime, there is no reason to think that it is the *only* way to do so, and it is an open question whether or not it is the *best* way to do so.

#### *Little Old Ladies and CCTV Cameras*

So, at first blush there seem to be a couple of rather significant differences between Mrs. Aremac and CCTV, because it is one thing to *participate* in social life as a private citizen and another to *police* that social life, whether we are thinking of CCTV cameras, or policemen. Just because the former is justified, it does not follow that the latter is, whatever the form of ‘policing’ involved. Moreover, Mrs. Aremac’s watching, we are led to suppose, has no bearing on what other people are able to do, nor does it affect their social standing or status. This is emphatically not true with CCTV. As the point of CCTV is to help law enforcement – rather than, as with Mrs. Aremac, to while away the time, or to quell feelings of loneliness, boredom or despair – it is an inherent, not a contingent, feature of these cameras (at least in Ryberg’s example) that their use can affect the lives, liberties and status of the people who are watched. So, it is simply untrue that ‘If there is a morally relevant difference between Mrs. Aremac and the CCTV camera it must lie inherently in the way each of the two

operate'. Whether or not there are any other differences, it looks as though we already have some differences between the two that are relevant to people's claims to privacy.

Violations of privacy do not depend simply on what one is actually able to see, record, touch or take even though the content of what one has heard, seen, touched or taken may indeed be relevant to whether a privacy violation has occurred, as well as to its severity. What one is authorised to do, in other words, can matter to whether a given act constitutes a violation of privacy. That is why being invited to dinner, to read a diary, or to participate in a birth<sup>3</sup> are all, standardly, thought to matter to whether or not someone has invaded someone else's privacy. It is, therefore, quite possible for the government to violate privacy by placing CCTV cameras on the street without due authorisation. This is possible for just the same reasons, and in the same way, that the government could violate privacy by placing a police-sentry at the bottom of Mrs. Aremac's street – because the government requires justification for scrutinising the street that is not required of Mrs. Aremac, given the differences in power and responsibility between them.

That is not to say that the violation of privacy created by unauthorised scrutiny by government is, inevitably, the most troubling or striking feature of the wrong at issue. It may therefore sound odd to talk of unauthorised surveillance as a violation of *privacy*, perhaps because we are more used to think of it as a violation of *liberty* – or of what Americans call 'due process of the law'. But just because an

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<sup>3</sup> I give this example because of a common law privacy case in America where a married woman sued for invasion of privacy because a doctor brought an assistant to her (home) birth without seeking her permission. For the full story see Anita Allen and Erin Mack, 'How Privacy got its Gender', 10 Northern Illinois Law Review, 44fd1 (1991)

unauthorised act of government surveillance violates procedural constraints on government action - as it would if it depended on the deliberate use of false evidence, or on coercion, perjury, or even a failure to seek authorisation for the cameras in the first place - does not mean that it does not violate privacy, too. Indeed, it might well violate equality if, as is possible, the reason why Mrs. Aremac's street was singled out for unauthorised surveillance was because of prejudice against its inhabitants, or contempt for their well-being and rights. Without belabouring the point, therefore, it is perfectly possible for an otherwise unobjectionable act to violate privacy because it lacks adequate authorisation.

So, even before we consider how Mrs. Aremac and CCTV actually scan the street, it looks as though the former has a justification for her activity that the latter may lack, because more is required to justify CCTV than a bare showing that CCTV serves a useful government purpose. It seems fair to suppose that people are entitled to go about their business without worrying that their presence, actions and demeanour are subject to oversight and recording by agents of the government – whether human or machine. Indeed, it is likely that even in those countries where identity cards are in use, citizens would find the use of CCTV perturbing, absent evidence that law enforcement really requires such privacy-threatening means. After all, one of the main things that CCTV makes possible is the ability to establish people's identities and even, perhaps, their purposes on the street, without actually asking them for this information. In so far, therefore, as you believe that the privacy, equality and dignity of individuals – let alone their liberty and security – are threatened when governments are able to check people's identity and activities at will, you will deny that Ryberg has shown that CCTV is no threat to people's privacy.

Indeed, so it seems, his depoliticised conception of CCTV has obscured the need for justification, or led him to assume that it has been met merely by supposing that CCTV is useful.<sup>4</sup>

Ryberg is also mistaken to believe that there are no significant differences in the way that Mrs. Aremac and CCTV watch the street. Mrs. Aremac's attention is likely to come and go, whereas CCTV, if it is on, is constant in intensity, although, like Mrs. Aremac, it may look first at one thing, then another. CCTV, in other words, does not day-dream, or look without seeing, so what is actually seen and registered – let alone what is actually retained – is likely to be dramatically different in the two cases. If privacy in public involves protection from sustained scrutiny by others, as seems reasonable, CCTV can constitute a threat to privacy even if Mrs. Aremac does not. CCTV would seem to be more like a prying neighbour who spends far less time at the window than Mrs. Aremac, but sees and registers more, with greater intensity and fixity of purpose. Such a prying neighbour might well constitute a threat to our privacy.<sup>5</sup> So, even if we think about the 'seeing' involved in the two cases, it looks as though CCTV is troubling in ways that Mrs. Aremac is not.

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<sup>4</sup> For similar reasons I object to the way Ryberg compares Mrs. Aremac and CCTV for the purposes of covert surveillance. Ryberg concludes that 'Placed behind a window on the third floor, she clearly is an unobservable observer. But if she is not acting wrongly, then neither does the mere fact of CCTV surveillance being covert constitute a privacy rights problem'. (134). However, ordinary people's claims to secrecy are very different from those of public authorities, as we can see when we think about why citizens should be able to vote in secret, although in general their representatives should not. See A. Lever, 'Mill and the Secret Ballot: Beyond Coercion and Corruption', *Utilitas*, (Vol. 20, No. 3, 2007), pp. 354-378.

<sup>5</sup> Ryberg seems to think that perverted or fetishistic gazing in and of itself does not violate privacy (138) In other words, if two people see the same thing and one is a voyeuristic pervert and the other is not, either both violate privacy or neither does, according to Ryberg. But this seems unlikely if, as seems plausible, authorisation – or its lack – can matter to whether or not an act violates privacy. Assuming that people would object to being the object of voyeuristic scrutiny – as happens, for example, when spectators 'rubber neck' those who have been injured in a car-crash – it is perfectly possible for two people to see the same thing, but one violates privacy and the other does not. However, the reasons to distinguish legal and moral wrongs seem relevant here, so attitude alone may be insufficient to turn an otherwise lawful act into a violation of legal rights to privacy, although it may prove decisive morally.

Of course, prying neighbours and prying governments are importantly different as governments have duties and powers that prying neighbours do not. In particular, as Ryberg allows, the use of CCTV may impute criminality to ordinary people in ways that prying neighbours cannot. But according to Ryberg, ‘Even if one believes that there is something inappropriate in regarding others as potential criminals, th[e]... move to privacy rights is highly dubious. Few would hold that a policeman walking and watching the streets motivated by crime prevention turns the situation into one of unacceptable rights violation’. (138) However, it strikes me that there *is* something seriously wrong with treating people as incipient criminals, with no evidence and no grounds for them to rebut the presumption. So, if CCTV indeed carries such a presumption, I think it would be problematic, and problematic in ways that are different from prying by nosy neighbours (awful as this can be).<sup>6</sup>

The trouble with government adopting an attitude that people are all incipiently criminal is that this increases the likelihood that people will be harmed by needlessly aggressive and threatening behaviour by government and its agents. Even more worrying, however, is that such an attitude in and of itself seems to threaten our status as rights-bearers, and as people capable of, and owed, reasoned justifications of government policy. In short, there is something *degrading* about this attitude, quite apart from justified concerns about the sorts of behaviour such suspicion is likely to foster amongst public authorities and, ultimately, amongst citizens themselves. As

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<sup>6</sup> I am genuinely uncertain that CCTV does or must carry such a presumption. But whether or not it does so is *not* settled, as Ryberg seems to believe, by one’s views on policemen plodding the beat. (138) It is important that policemen can help citizens to defend themselves and each other. CCTV cameras cannot. But precisely for this reason, a police beat need not imply that citizens are mostly criminal. As CCTV seems to treat people *solely* as objects of scrutiny, it seems to raise worries that the police beat does not – although other forms of police surveillance may prove more problematic.

privacy is one of the first things to go when we do not trust each other to behave lawfully, the threat to privacy is intimately, not contingently, related to the supposition that we are potential criminals. Consequently, if CCTV either reflects or fosters such an attitude, we would have good reason to suppose it a threat to privacy. Though its privacy-threatening consequences would arise via *psychological* mechanisms (ie the reactions of the police, or of citizens to each other), rather than as *logical* entailments, it does not mean that those consequences were fortuitous, random or unexpected.

A comparison to racial profiling might be helpful. The moral difficulties of racial profiling come largely from the risk of compounding existing and pretty intractable forms of racial injustice.<sup>7</sup> Nonetheless, part of the difficulty of justifying profiling is that we generally require evidence that a crime has been committed, or is about to be committed, before we suppose that police are authorised to stop and search people, their homes, their cars and their belongings. *And we tend to suppose this even when we trust our police, and value law enforcement and the prevention of crime.* In other words, the requirement of evidence, before special scrutiny, is part of a system of rights and liberties that are meant to ensure that there is no punishment without crime, and that the state proves wrongdoing, or imminent wrongdoing, before depriving people of liberty.

Now, one might say that the use of CCTV doesn't amount to a 'search', involves no 'stops', and deprives no one of 'liberty'. And there would be some truth

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<sup>7</sup> My discussion of racial profiling here draws on A. Lever, 'why Racial Profiling is Hard to Justify: A Response to Risse and Zeckhauser' in *Philosophy and Public Affairs*, (vol. 33, No. 1), pp. 94-110 and 'What's Wrong with Racial Profiling? Another Look at the Problem' in *Criminal Justice Ethics*, (Vol. 26, No. 1), pp. 20-28.

to these claims. CCTV does not actually prevent people going about their business, as would a police road-block or even detain them for a time. In that sense, it is not a stop. CCTV does not even require people to identify themselves. It is not a ‘search’ either, if this is understood to mean a pat-down, or a hand going through one’s belongings. Still, it is clear that CCTV has elements of both a search, and a stop conducted for the purposes of law enforcement.<sup>8</sup> CCTV cameras can zoom in to see what people are doing and could, in principle, establish what is in people’s bags, what they have bought, what they gave to each other, what they said to each other and, even, who they are. Moreover, in so far as people want to be unobserved and unrecorded by an instrument of the state – which seems a perfectly reasonable desire even when citizens are law-abiding – they *do* have to alter their actions/habits and, in that sense, suffer the same need to circumvent public authorities as would the effort to bypass a roadblock. So, it looks as though CCTV can threaten, (as well as protect) civil liberties, including privacy, in much the same way as more familiar (though still contentious) forms of law enforcement.

*Conclusion: Privacy, Equality and Democracy*

Governments are not little old ladies, and this difference matters to the justification of CCTV. It means that governments have duties to protect people’s privacy that little old ladies lack. Differences of power and responsibility are relevant to the justificatory burdens faced by little old ladies and governments, so long as we want to ensure that people’s rights and duties are consistent with democratic forms of freedom and equality. So while I believe that Mrs. Aremac is a potentially useful

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<sup>8</sup> For those interested in the different ways searches and stops can be interpreted and justified, the following American Supreme Court cases might be helpful: *Terry v. Ohio*, 329 U.S. 1 (1968); *Almeida-Sanchez v. United States.*, 413 U.S. 266 (1973); *United States v. Brigoni-Ponce*, 422 U.S. 873, (1975); *United States v. Ortiz*, 422 U.S. 891, ~ (1975); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *Delaware v. Prouse*, 440 U.S. 648 (1979) and *Brown v. Texas* 443 U.S. 47 (1979).

device for testing and refining our intuitions about privacy, I have argued that Ryberg is wrong to equate the government's claims to monitor the street with a little old lady's claims to look out of her window. To abstract from differences of power and responsibility, as Ryberg does, is very likely to result in inegalitarian and undemocratic accounts of rights – to equality as well as to privacy.<sup>9</sup> People's claims to privacy cannot be alike if governments are to be accountable to the governed, if employers are not to discriminate against women who are married, who are fertile, or against both men and women who are gay. In short, if you care about democratic government, and sexual equality, it is critical that you avoid interpreting people's claims to privacy in ways that insulate the powerful from collective scrutiny, accountability and change. This is impossible if one ignores the differences between little old ladies and governments.

Still, it does not follow from my argument that CCTV violates people's legitimate claims to privacy. What those claims are, after all, depend not only on the conception of privacy we adopt – and there is considerable, and justified dispute about its nature and value – but on our theory of rights. If, with me, you suppose that most rights are not absolute, you will be moved by Ryberg's contention that threats to privacy do not automatically equate to violations of rights to privacy, however

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<sup>9</sup> The arguments in this paragraph draw on claims that I develop at greater length in A. Lever, "Must Privacy and Equality Conflict? A Philosophical Examination of Some Legal Evidence" *Social Research: An International Quarterly of the Social Sciences*, (Vol. 67, No. 4, Winter 2000) 1137-1171; in 'Feminism, Democracy and the Right to Privacy', *Minerva: An Internet Journal of Philosophy*, 9 (2005) 1- 31, and in 'Privacy Rights and Democracy: A Contradiction in Terms?' *Contemporary Political Theory*, 2006, 5 (142-162).

valuable you take privacy to be.<sup>10</sup> On the other hand if, like me, you suppose that talk of rights is designed to highlight especially important interests,<sup>11</sup> whose protection justifies constraints on otherwise legitimate behaviour, you will be open to the possibility that CCTV might violate rights to privacy because its advantages – real though these may be – are insufficient to justify the threats that it poses to people’s legitimate interests. Those interests, as we have seen, include interests in privacy, equality, and due process of the law. These are important, not trivial, interests. If CCTV indeed threatens them, it might well violate people’s rights to privacy. But in order to decide whether or such threats constituted a violation of privacy rights we would need to know whether CCTV is necessary to avert more serious harms to comparably important interests (such as interests in life or bodily integrity); or we would need to establish that we can mitigate the threats to privacy posed by CCTV without sacrificing such advantages as it has for law enforcement. Ryberg’s article fails to provide much of the information we would need to make such judgements, or to sustain his claim that CCTV does not violate people’s rights to privacy. Consequently, I conclude, we should reject the conclusion of his article, as well as its methodology.

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<sup>10</sup> For a discussion of absolute rights which I have found very helpful, see Jeremy Waldron’s *Liberal Rights*, (Cambridge University Press, 1993), ch. 1, pp. 1 – 35.

<sup>11</sup> This view of rights was developed most memorably by Joseph Raz in *The Morality of Freedom*, (Oxford University Press, 1986), ch. 7, pp. 165-186.

