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# Art, human rights, and threats from above

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## Abstract

Art can present to people the dangers coming from above, like excessive surveillance, military attacks and climate change, which all threaten people's physical and mental well-being. Governments, however, also use art to legitimise new military and surveillance technologies. They often create seductive images which show the efficiency of these technologies, and they develop fiction related to pre-emptive measures which might try to predict and prevent crimes from occurring. In the last 20 years, especially after the 11 September terrorist attack, we have witnessed an essential change in the perception of human rights and reinterpretations of laws to allow pre-emptive strikes in the battle against terrorism. The concept of pre-crime, increased surveillance, and the belief that one can predict and prevent crimes have also altered the perceptions of subjectivity. While some critics regard human rights as obsolete or inefficient, political scientists like Claude Lefort have perceived them as always open to reinterpretation and expansion. People can invent new human rights. The increased threats from above require that we expand the existing rights corpus.

**Keywords** Art · Human rights · Surveillance · Pre-crime · Pre-emptive strikes · Subjectivity

With the help of images or compelling videos, art can present to people the dangers coming from above, like excessive surveillance, military attacks and climate change, which all threaten people's physical and mental well-being. Art might also help people deal with the traumas they experience because of these threats. However, art does not simply illustrate what it means when the air we breathe and the sky we look at is not a safe space but something that can kill us. Art is paradoxically also a mechanism with the help of which those in power legitimate their practices.

When governments are promoting increased surveillance and attacks from the air, they are often resorting to artistic traditions. They might use fictional images to show the might of military power, present actual surveillance mechanisms as if they are coming from Hollywood movies, and create seductive descriptions of the benefits of new technologies that often resemble a plot from a science fiction novel.

There is always a political dimension in the discussion on threats from above and how people can protect themselves. Art plays a vital role in the political battle between the governments and corporations' legitimisation of the threats from

above, and the critique of these threats often coming from the civil society.

Proposing a new human right that addresses the psychological and physical dimensions of the threats people face from above presents an essential step in the struggle against new dangers related to surveillance, military development that is happening in the airspace and outer space, as well as increased ecological threats coming from the polluted air.

The question, however, is whether we need new human rights. Already in the so-called post-modern times, at the end of the previous millennia, universalist notions have been put under scrutiny. While the power of human rights was often questioned, they remained an important point of reference in political struggles since they appeared to be a normative imperative beyond politics and law.

In the last 20 years, especially after the 11 September terrorist attack in New York, we have witnessed an essential change in the perception of human rights. After this attack, the idea of pre-emption was formulated in US politics and with this, we also witnessed a particular redefinition of subjectivity. In the domain of criminology in the last two decades, we have discussed various strategies for using pre-emptive measures. The pre-crime paradigm, which was first brought to the public attention with the help of the Hollywood film *Minority Report*, became an

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essential theme of debate. Under this paradigm, all sorts of new surveillance techniques developed, which gave the impression that one can somehow predict and prevent future attacks or criminal behaviour. Today, our cities, airspace, and outer space are full of high-tech devices like facial recognition cameras, drones powered by AI and numerous satellites, which are supposed to increase our security.

In the last two decades, we also witnessed a reinterpretation of the right to war with the concept of preventive airstrikes, which the USA used from the times of the Bush and Obama administrations. During Obama's presidency, the USA conceptualised the preventive use of force to establish the legal basis for targeted killings of individuals suspected of being leaders of al-Qaeda and affiliated groups. The prophylactic use of force was reinterpreted so that two key traditional components of the term "imminent threat"—immediacy and certainty—were eliminated from its definition (Badalić 2021).

The US government started increasingly justifying military power as a preventive use of force. And, with this reconceptualisation, all kinds of principles of international law have been ignored. Among them is the concept of necessity, one of the fundamental principles of international humanitarian law.

With these changes, we also witnessed a reinterpretation of subjectivity. People are more and more perceived as potential suspects. The assumption is that everything around us should be perceived as a threat where no degree of intelligence or security can guarantee that harm will not happen. So, we are constantly living in anticipation of something. The pre-crime strategies that governments use often focus on non-immediate threats. They speculate and pre-construct potential future crimes to prevent them from happening.

Today's surveillance differs from what Michel Foucault reflects on in *Discipline and Punishment* (Foucault 1977). Instead of controlling the population by confining them and moulding them into obedient citizens, surveillance nowadays often encourages people to consume and to increase mobility and connectivity. Predictive analytics uses information related to people's consumption and movements. The subject's physical body also becomes a valuable source of information since it emits data that can be used to predict future moves and actions. These new types of surveillance are also increasingly using biological information when they are trying to predict people's future dangerousness.

Surveillance, with the help of predictive analytics, often blurs the line between real and non-real threats. Imagination of the future threats in a strange way resembles artistic work. However, the fictional stories and elaborate images that often accompany pre-crime discourse are primarily used to legitimise the surveillance mechanisms that track our everyday lives and perceive every human as a potential suspect.

New technologies can, however, also be used successfully in the public fights for human rights. During the war in Bosnia and Herzegovina in the early nineties, satellite images were essential in discovering mass graves that the Serbian army dug around the country. They denied their existence until the satellite cameras revealed many areas of freshly dug land. In 1999, during the Kosovo war, commercial French SPOT satellites collected data from an altitude of 822 kms above to show displacement and destruction happening on the ground. Here, too, the public was informed about ethnic cleansing with the help of satellite images, which revealed mass graves, refugees in the mountains, burning mosques and villages, and organised deportations. As Laura Kurgan points out, in this war, satellite images were released as pictures, which showed less of the facts on the ground than the technology's ability to record these facts in minute detail (Kurgan 2013).

The new satellite technology reinterprets the facts on the ground. It creates a reality that serves particular purposes, one of them being the creation of cultural memory, which was the case at the time of the wars in Bosnia and Herzegovina, Kosovo and other war-torn countries.

The satellite images have, however, often served less dignified purposes. In recent decades, the military has increasingly relied on airspace and outer space to attack and control presumed enemies. In these operations, fiction also plays an important role. It is not only that computer-generated images of what is happening on the ground can be highly unreliable, but they can also easily be manipulated in such a way that things become invisible. In some parts of California, Google Maps do not show streets and houses since wealthy people in this area were able to convince Google to keep their dwellings private from the general public.<sup>1</sup> Homes that the US military attacked in Pakistan with the assistance of drones, often working directly from satellite images, look intact. The drone bomb easily creates only a tiny opening in the roof of the building, which is invisible from afar. The fact that the bomb which exploded inside the house killed its inhabitants thus remains hidden and unacknowledged.<sup>2</sup>

In *Topologies of Air*, Shona Illingworth reflects on the battle that is nowadays going on in airspace and outer space, where new technologies are often used for surveillance and destruction (Downey 2022). This battle is about more than which country will, with the latest technology, use the space high above the ground for its economic and political purposes. The battle is also going on for interpreting what it means to be a human being and what fantasies and memories are created with the help of new technologies.

There are also dilemmas regarding the rights of the countries and corporations that possess these technologies and those who suffer from their use. These problems have led to the project of the Airspace Tribunal, which opened a public discussion on whether the changes we can observe



concerning airspace and outer space require the legal conceptualisation of a new human right.

The question, however, is: do we truly need a new human right? In contemporary philosophy, the relevance of the notion of human rights has repeatedly been proven or rejected according to how unjust laws can be legitimately resisted. The answers to this question differ in so-called neo-Kantian philosophy and among those more aligned with the theory of Michel Foucault. The neo-Kantians argue that it is necessary to have some regulative principle according to which people orient their behaviour and judge the justness of the law itself. For these philosophers, human rights is a regulative idea that has to be postulated as the principle of our actions. However, it is a principle that always remains in some way unrealisable.

The Foucauldians, on the contrary, resist the idea of some regulative principle and say that one needs to make a demystification of the notion of human rights since these rights are very much tied to the mechanisms of power. These thinkers argue that in resisting unjust laws, there is no need to appeal to some universal human rights because judging power structures in terms that are part of these structures is unproductive.

The neo-Kantians would object to this take and say that this Foucauldian perspective tries to drown law in history and, by doing this, in a way, loses the means to judge illegal practice. To evaluate the effectiveness of the law, from the neo-Kantian perspective, we have to have a historical or even extra-political regulative idea, like human rights.

The reason we need human rights relies on the Kantian notion of subjectivity, which is perceived primarily as an empty subjectivity, a subjectivity which, in some ways, is also at the core of the perception of democracy. Kant's important idea was that human beings are not determined by nature or culture and that with the help of concepts like freedom and rights, they can critically assess the social setting in which they live.

There is something indeterminable, empty, at the core of Kantian subjectivity, which is why we can only partially define human subjectivity. And the same goes for human rights. We are constantly allowing a new interpretation of human rights and their enlargement. When we are arguing for a new human right, it is also of help to go back to the French philosopher Claude Lefort, who said that human rights are an essential element of democracy precisely because they are grounded in the idea of abstract subjectivity. The contribution of human rights to democracy lies in the fact that human rights can never be fully defined. Their character cannot be entirely determined or enumerated, and the challenges they address are also changing so society constantly invent new rights.

Claude Lefort strongly opposed theorists who perceive rights as some relic from the past, long stripped of their

significance (Lefort 1986). He stressed that human rights, because of their abstract and undefined character, cannot be situated in a specific, historical area, which means they cannot easily be genealogically analysed as Foucauldians like to do. Nor can they be measured or controlled.

The concept of human rights, however, retains its potential for a critique of actual circumstances of their times as long as it remains, in some way, an empty universal idea, which means that there will always be a battle for its meaning. And, there will always be a possibility for creating new rights, such as the right to live without physical or psychological threat from above.

## Notes

1. <https://www.businessinsider.in/From-hiding-their-mansions-on-Google-Maps-to-building-500000-panic-rooms-rich-people-are-sparing-no-expense-to-keep-their-lives-private-and-secure/articleshow/66681557.cms>.
2. <https://forensic-architecture.org/investigation/drone-strike-in-miranshah>.

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