



# The Judging Spectator and Forensic Video Analysis: Technological Implications for How We Think and Administer Justice

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## Abstract

The philosophic spectator watches from a distance as a “disinterested” and impartial member of an audience (Arendt, Beiner (ed), *Lectures on Kant’s political philosophy*, University of Chicago Press, 1992; Kant, *On history*, Prentice Hall Inc, 1957). Judicial systems use many of the elements of the spectator in the concept of an eyewitness (Katz, Ohio arrest, search, and seizure, Banks-Baldwin, 2015) but, with increased video technology use, the courts have taken the witness a step further by hiring forensic video analysts. The analyst’s stance is rooted in objectivity, and the process of breaking a video down to its component parts to examine it, but is it based on the philosophic spectator? To better understand whether the forensic video analyst has adopted the stance of the philosophic spectator, this paper examines both the analyst and spectator, and discusses the implications for how we think and administer justice.

**Keywords** Judgment · Spectator · Video technology · Immanuel Kant · Hannah Arendt · Phenomenology · Judicial system

## 1 Introduction

“If I like a moment, I mean me, personally, sometimes I don’t like to have the distraction of the camera. I just want to stay in it...Yeah, right there. Right here” (Conrad, 2013).

Sean Penn played a photographer in the film, *The Secret Life of Walter Mitty*, and, in the quote above, explains why he deliberately did not photograph the elusive snow leopard in the Himalayas. He chose to stay in the moment with the “ghost cat”

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because he recognized the potential of a technological tool, like a camera, to impact his connection with the moment and shape his experience. Although we approach technology as a mere tool, we also experience technology itself through our use and interaction with it. Alfred Schutz would argue what we perceive through technology is mediated (1970; Piccorelli & Stivers, 2019). Heidegger (1977) went further to warn that technology does not just change our experience, but actually orders us. This is because we take for granted the enframing power of technology to change how and what we experience, and how we understand the world (Heidegger, 1977, p. 304–6; Piccorelli & Elias, 2018; Piccorelli & Stivers, 2019).

One way to understand a situation or event is through the judicial system's concept of an objective eyewitness, which draws on the spectator. Katz (2015) argues, a "disinterested, identified witness" can be used to establish probable cause. With increased surveillance (i.e., cameras fixed to objects and people) the notion of a witness is now being pushed beyond traditional boundaries of those who were physically present. The courts and public increasingly rely on video footage as a form of evidence to be considered alongside eyewitness accounts and, in many cases, ahead of or in place of these accounts (Piccorelli & Elias, 2018). In the police shooting of Tamir Rice, for example, police experts said the expert video analysis provided "reasonable justification" (McGinty, 2015) for the shooting because it "found that Rice's arm moved forward and toward his waist as the police car neared" (Palmer, 2015). In the case, *State of Minnesota v. Derek Michael Chauvin* (Court File No. 27-CR-20–12,646), video footage served as the catalyst for worldwide protests, and has played a key role in determining guilt. Court documents not only rely heavily upon body worn camera footage and Facebook videos posted by witnesses (Memorandum 10–12–2020), but one Memorandum (11–16–2020), argues "the body worn camera videos for this [2017] incident...provide a more honest account of the incident than Chauvin's report." Judgment helped the courts arrive at this decision and place more weight on the video footage, but the statement also suggests the two sources were interpreted. This interpretive process and the decisions to apply judgment are formalized through forensic video analysis and further investigated in this paper.

Making sense of video technology is further complicated within a modern democracy, which plays a role in technological mediation. The sheer size of a modern democracy means a limited number of people can be physically present to witness an event, suggesting the media and different forms of news agencies might mediate, yet a third time. Public opinion is imbedded in Kant's *sensus communis* (2001)—what he believes grounds judgment—likely technologically mediated several times. Video footage provides details that the naked eye might otherwise lack access to, but does so at the expense of a more complete perspective. Sometimes details combined with common sense might negate the need for a complete perspective, from multiple vantage points or a longer duration. In the case against Chauvin, if Floyd resisted arrest, we might understand an emotional reaction from Chauvin and why his knee was placed on George Floyd's neck for a minute or so. However, after several minutes, common sense tells us the use of a knee on his throat becomes unacceptable, even if Floyd resisted. Thus, if Kant and Arendt's idea of judgment is accurate, common sense, what is continually re-shaped through politics, has played a major role in worldwide protests, and how we understand events.

While video technology, to borrow a term from Schutz (1970), mediates a forensic video analyst's experience, it still affords a claim to expertise and an authoritative stance. Perhaps the weight of this expertise explains the growth in the field of forensic video analysis—one teacher touts having trained more than 2000 analysts over the past 14 years that specialize in the “use of video evidence in courts” (Forensic Video Solutions, 2019). It is defined as “the scientific examination, comparison, and/or evaluation of video in legal matters. The forensic video process must be performed in a forensic lab that is equipped with the appropriate tools and follows best practice protocols in order to process the video recording with integrity and accuracy” (Garrett Discovery, 2019). The practice of forensic video analysis relies on expertise and authority, demonstrated by the use of a lab, a focus on what can be empirically observed, and established processes that theoretically allow for consistency, reliability, and repeatability.

Expertise aside, we should remain mindful of the difference between science, and technology. Because the two concepts are related to one another, there is a tendency to conflate them. “Science comes from the Latin word “Scientia” which means to know” (Alawa, 2013), suggesting the process of how we know through science is open, rather than confined. Technology, “the application of organized knowledge to practical tasks,” can be considered a relatively narrow application of science (Barbour, 1991, p.3). Technology applies one form of scientific examination in an effort to further our understanding in a particular area. Heidegger argues the field of physics is now retreating “from the kind of representation that runs only to objects” (Heidegger, 1977, p. 304). Because physics places too much weight on what can be observed visually, it substitutes a form of systematic inquiry (Piccorelli & Elias, 2018) for science. In a similar way, we see the application of deep learning undermining artificial intelligence as a concept. For example, today's autonomous systems for vehicles designed through deep learning do not differentiate between a person and a tree, but instead focus on optimizing the pixel-based calculation to determine whether the vehicle should stop or continue. As a result, the technology and scientific examination become confused with artificial intelligence itself. Heidegger went further to say, “because the essence of modern technology lies in enframing, modern technology must employ exact physical science. Through its doing the deceptive illusion arises that modern technology is applied physical science” (1977, p.304). The biggest danger is not necessarily what technology does, but instead in its power to reduce science down to a form of scientific examination (Heidegger, 1977). In other words, we conflate scientific examination applied through technology with science itself, and this conceptual leap impacts how we understand reality. And the concept of the spectator, to the extent that it offers a way to perceive an event, has the potential to shape how we understand reality.

The philosophic spectator has the “universal yet disinterested sympathy” necessary to judge an event (Kant, 1957). Disinterest helps free the spectator from partiality due to having “been thrown into existence,” i.e., Heidegger's notion of “falling” (1962, p. 390), which allows “the ‘world’ [to] ‘matter’” (1962, p. 214). Because we are born into the world (Heidegger, 1962), we have certain preconceptions and biases. And rather than “falling” or being tied to Arendt's “general” (1992, p. 76), the spectator emphasizes the particulars of a situation (Kant, 1957). This focus on

particulars might equip the philosophic spectator with objectivity much like the forensic video analyst, but is the spectator's capacity to judge fundamentally different? Through a closer examination of the spectator as well as how forensic video analysis is used in the justice system, this paper will assess whether the forensic video analyst is acting as a type of spectator. Beginning with a more in-depth discussion of the spectator from the literature of Immanuel Kant and then Hannah Arendt, it then compares key elements of the spectator with the stance adopted by the forensic video analyst and discusses how the judicial system might want to approach video technology.

## 2 Immanuel Kant's Spectator

"Theatai," in Greek, means spectators (Birmingham, 1999, p. 33), suggesting Kant conceived of the spectator in relation to theatre. Like a member of an audience attending a play, or a historian examining events after they have taken place, Kant's spectator experiences the event, but in a different way than an actor in the situation. Actors were prone to act like fools because they were in the spotlight and paid to perform, therefore any interpretations of the situation from an actor's point of view could suffer from bias (Kant, 1957). In this way actors could influence how the situation unfolds, as well as the interpretation of it. But the spectator's distance goes beyond proximity, and extends to their attitude. This stance is possible because a spectator's judgment is guided by the sense of taste based on "feelings of pleasure and displeasure" (Kant, 2001, p. 299). Although it is difficult to imagine spectating without interest, Kant carefully differentiates between the delights, and then stresses that judgment is based upon the sublime. Kant argues, of all the delights, only "that of the taste in the beautiful may be said to be the one and only disinterested and free of delight...[for] all interest pre-supposes a want, or calls one forth; and being a ground determining approval deprives the judgment on the object of its freedom" (Kant, 2001, p. 299).

Spectators are not interested, partial, nor driven by the perceptions of others, but instead motivated by a "passionate participation in the good" (Kant, 1957, 2001, p. 145). As Kant explains, this "genuine enthusiasm only moves toward what is ideal" (2001, p. 145). A good example of this "passionate participation in the good" might be a citizen serving on a public planning board without any political aspirations. Whether this attitude is possible when spectating, particularly in societies rooted in rugged individualism, is a separate issue. This aside, Kant considers spectating to be a private activity, stripped of as much self-interest as possible so the particulars could emerge and be used as a foundation when judging. His "concept of right" (Kant, 2001) was thought to ultimately rule over self-interest, otherwise the spectator's judgment would be clouded.

The inherent distance in the spectator helps to establish objectivity when judging, but the spectator's ability to judge is actually based on the subjective—our sense of taste (Kant, 1957). As Kant explains, "everyone has his own taste (that of the senses)" (2001, p.301). And our sense of taste, what Kant considers one of the two most private senses, serves as the foundation for the spectator to begin judging from.

Taste, Kant's most private sense, is the basis for aesthetic judgment, because it enables spectators to approach a situation or event in a more open way. Spectators are deliberately given the particulars of a situation, but not general concepts that might be discovered through the act of judging (Hermsen, 1999). These general concepts come from Kant's thinking, and raise a question related to his analytic and just how open a judging spectator can be. Judging requires thinking to guide it, but at what point does thinking begin to limit a spectator from judging? Thinking helps to check judgment, and perhaps politics too. But while judging is a private activity, rooted in the particulars of a situation, the spectator is also still grounded in politics, or the activity of listening to others (Arendt, 1992) through the *sensus communis*. Therefore, how we interpret *sensus communis* begins to shape the boundaries of judgment.

*Sensus communis* is Latin for common sense, but Kant argues we must be careful with the term common and "double signification," suggesting instead of understanding common as something people merely have the capacity for, we might extend it to mean something that people share intersubjectively (Kant, 2015, p. 151). The term "universality" could imply a connection with the activity of politics, but does it? When Kant used the term "universality" with reference to the spectator he meant, "this mode of thinking demonstrates a character of the human race at large and all at once" (1957, p. 144). While it is a natural tendency to take an internal feeling and extend it to the political, it also requires concepts which he believed reside outside of judgment. As Kant argues, "in respect of the good it is true that judgments also rightly assert a claim to validity for everyone; but the good is only imagined as an object of universal delight by means of a concept, which is the case neither with the agreeable nor the beautiful" (Kant, 2001, p. 302). *Sensus communis* represents the political sphere which includes judgment, but also thinking and imagination, which require concepts. While it is possible our understanding of these concepts might align intersubjectively, it is also unlikely. "Taste is then the faculty of judging a priori of the communicability of feelings that are bound up with a given representation (without the mediation of a concept)" (2015, p. 153). This analytic distinction could reflect the time in which Kant was writing. Kant discusses the spectator in relation to the French Revolution, a situation where right and wrong were less clear, but perhaps in an effort to better address the issues of her time (i.e., WWII and the Nazis) Arendt argues Kant's *sensus communis* stood for something more (1957; 1992).

### 3 Hannah Arendt's Spectator and Dialectic Mode

Arendt recognizes Kant's sense of taste to have "something nonsubjective in what seems to be the most private and subjective sense...[and] the nonsubjective element in the nonobjective senses is intersubjectivity" (1992, p. 67). More simply put, Arendt did not view Kant's usage of "universal" to mean everyone has the inherent capacity to judge, but instead envisioned judgment as universally shaped. She looks to politics to intersubjectively align the community around a particular and presumably good version of taste in an effort to help prevent another atrocity. This extension of Kant's spectator brings about a fundamental conflict—judging is meant to be an independent activity and yet it is also supposed to be guided by

the *sensus communis*, which is founded upon politics. In other words, given the importance of politics to Arendt, there is some question as to whether a spectator can independently and effectively judge. Her answer resides in being able to not just think, but entertain, imagine, and even reflect on the possible (Villa, 1999).

As Arendt phrases it, “To think means to generalize, hence it [judgment] is a faculty of mysteriously combining the particular and the general” (1992, p. 76). Thinking about the possible allows the spectator to move beyond the constraints of the general and emphasize particulars of the situation when judging. Arendt interprets Immanuel Kant’s “enlarged mentality” as a type of thinking that moves beyond the self thereby downplaying the experiences one might bring that wed us to certain norms and categories, which we acquire because we are born into the world (Heidegger, 1962). As Villa notes, because the Kantian spectator is freed from pre-existing categories, they can occupy a more impartial “appears to me” stance while judging (1999, p.25). Imagination and reflection, in this sense, provide the spectator with the necessary space for new categories that might be revealed through the judging process.

Hannah Arendt’s use of the spectator and the inability to occupy two states simultaneously (the activity of independent judging and bringing that judgment to politics) led to some criticism (Weidenfeld, 2012), but Villa and others argue Arendt actually demonstrated how the spectator judges in her book, *Eichmann in Jerusalem*. It was likely her stance as a spectator and focus on the particulars of the Eichmann trial that prompted her to say Eichmann was “average” (1963), suggesting her theoretical activity was different from the politics of the wider community. This demonstrates the spectator’s commitment. As Villa argues, “the Kantian spectator has in fact given up the *dokei moi*, the it appears to me, along with the desire to appear to others, Arendt is willing to pay the price” (1999, p. 25). This could be Kant’s “enlarged mentality” at work, an activity with the spirit of politics embedded, yet performed alone. Judging requires thinking (with or through an enlarged mentality), which is distanced and impartial, but also public. Publicness calls for the help and criticism of others; therefore, it was a dialectic between the two states of thinking and action (Bilsky, 1996; Taminiaux, 1999). This dialectic indirectly incorporates the political. As Villa notes, “in making her judgment [of Eichmann], Arendt self-consciously took the standpoint of the outsider: a non-participant in the trial, to be sure, but also an outsider when it came to the immediate political stakes of the process” (1999, p. 28). Those familiar with the activity of listening to music or a performance might argue it is a back-and-forth process which much like Kant’s taste requires the presence of others, in this case members of the audience, to come alive (Piccorelli & Stivers, 2019). This back-and-forth raises an important question—if Arendt was a member of the audience at Eichmann’s trial, was she truly a “non-participant” or did the actors involved in the trial respond to her presence, thus making her a participant?

A more detailed look at how Arendt’s judgment operates sheds some light on the question above. Hermsen argues taste, the most private or inner sense acts as the basis for judgment, but it requires imagination and reflection to be operationalized (1999). There is also a dialectic between taste and the other operations that

are related to judgment, suggesting they inform one another (ibid). The following illustration captures this dynamic, at least in part.

$$\text{Taste} \longleftrightarrow (\text{Imagination} + \text{Reflection}) = \text{Judgment}$$

*(Sense)*
*(Operations)*
*(Faculty)*

(Sources: Arendt, 1992; Hermsen, 1999, p. 75-7)

Imagination and reflection help guide taste by incorporating the *sensus communis* (Hermsen, 1999). These operations also require Arendt's notion of going visiting (1992), or the act of putting oneself in someone else's shoes allows a person to imagine differences in detail despite many of the preconceptions we bring as individuals. This is Kant's "enlarged mentality" at work and a theoretical activity that involves a dialogue with the possible (Hermsen, 1999). Perhaps the solution to a spectator's inability to occupy two states simultaneously is that the spectator, in fact, moves between two states (sense and operations) in an effort for them to inform one another (ibid). Meaning dialogue between our sense of taste (inner feelings) and imagination and reflection (the *sensus communis*), serves to shape judgment. Rather than being directly inserted, politics are incorporated into judgment through this theoretical activity. Appealing to politics as a theoretical activity is quite different from testing one's judgment in the public sphere (Arendt, 1992; Villa, 1999, p. 28). And one step in Arendt's judging is the attempt to "'woo' or 'court' the agreement of everyone else" in order to find agreement in the public sphere (Arendt, 1992, p. 72). But, if evidence of this interplay can be found it might illustrate how Arendt's spectator can both engage in politics, typically considered a social activity, and simultaneously judge in solitary. The spectating "process has no end" (Arendt, 1992, p. 58) for this reason, suggesting it is hermeneutic in nature.

Arendt's interpretation of Kant's spectator is complicated by her view of aesthetic judgment, which suggests (good) taste is socially shaped, and therefore rooted in the political (1992). Arendt, aware of Kant's effort to split the two modes of (1) contemplative or philosophic thought, and (2) the political, argues these modes are not mutually exclusive (1992, p. 60). She reinterprets Kant's philosophy with the use of rationalism, and even questions his analytic philosophic distinctions between thinking, reasoning, and judging, suggesting these splits are not separate and distinct from one another. Arendt believes we ought to interpret all modes or actions as inherently political ones. As she explains,

"If you ask yourself where and who this public is that would give publicity to the intended act to begin with, it is quite obvious that in Kant's case it cannot be a public of actors or participators in government. The public he is thinking of is, of course, the reading public, and it is the weight of their opinion he is appealing to, not the weight of their votes" (Arendt, 1992, p. 60).

Arendt recognizes Kant's public is narrowly defined, likely consisting of intellectuals performing a theoretical activity, but she sought to take the responsibilities of the public further. While Kant believes the public can learn from a situation like



the French Revolution, his writings do not clarify whether he necessarily believed the majority of people have or can develop good judgment. This might explain the variation between Kant and Arendt and how they understand *sensus communis*, and why Arendt, writing after WWII, stretched Kant's philosophy to mean intersubjective agreement at the community level.

## 4 The Spectator and Forensic Video Analyst

### 4.1 Manifestation of Distance

The spectator and the forensic video analyst each rely heavily upon the concept of distance as a mechanism to establish impartiality when judging, but the manifestation of distance in each is also fundamentally different. The video analyst typically watches video footage from a different space and point in time. Even if an event is viewed in real-time, analysts are still physically removed from it. This means the analyst has physical distance from the event or situation, but also might lack some of the context that comes from being-there (Heidegger, 1962; Piccorelli & Elias, 2018) and the subtle cues like felt sense (Gendlin, 1962), emotion, or even mood (Heidegger, 1962) that accompany the first-hand experience.

In contrast, the philosophic spectator is removed from the situation, but in a different way than a video analyst. The French Revolution might be experienced in real-time, through remembering, or the future study of the event. These spectators view events as members of an audience—they are within earshot and in many cases lack the ability to see facial expressions as clearly as actors. But the experience of spectating offers the potential for a deeper connection with the event, and the mood and meaning evoked. This is to suggest that in the trial of Eichmann, Arendt had a connection with the trial that differed from a viewer or listener of the media coverage, but it also does not mean that viewers or listeners did not connect with it. Instead, the spectator's proximity to the event might provide them with access to different particulars. Proximity also offers the potential for spectators to react to actors, suggesting they could inadvertently influence the actors through watching them. The spectator's distance is a means to "uninvolvedness and disinterestedness... [and] impartiality" (Arendt, 1992, p. 67), which suggests distance is not necessarily physical, but instead figurative. Distance was between the self and the imagined self, as Kant and Arendt discuss (Hermsen, 1999, p. 73). So, the spectator's use of politics and impartiality, does not necessarily require speaking with people whilst judging. This is not to suggest the spectator ought to avoid speaking with people over the course of everyday life, but simply that speaking with people while judging is awfully difficult—this inability to occupy two modes simultaneously was recognized by Weidenfeld (2012).



## 4.2 Objective v. Subjective

The second difference between the spectator and forensic video analyst relates to what each begins judging from. As Arendt notes, “by removing the object, one has established the conditions for impartiality” (1992, p. 67). The spectator’s judgment is founded upon taste, one of the two most private, inner and subjective senses (Arendt, 1992), while forensic video analysis begins with video footage. The video analyst’s expertise, in this way, is rooted in the objective. Video footage is a tangible object which allows them to break a video down, frame by frame, into its component parts, and provide a process which helps them adopt an authoritative stance. In the Department of Justice’s report on the police shooting of Michael Brown, for example, video surveillance is placed ahead of eyewitness accounts (2014). In the section titled “Ferguson Market Surveillance Video” the report actually mixes a combination of evidence from the video footage and statements from the actors involved, in this case, store clerks and other witnesses. This use of eyewitness accounts be seen in the statement “Brown, looking ‘crazy’” within this section of the report, as video footage cannot capture looking crazy like an eyewitness can (Department of Justice, 2014, p. 26). The nature of the writeup on the surveillance video suggests the author of the report interjected eyewitness accounts to fill in the context which the video must have lacked. And the author’s presentation of video surveillance ahead of eyewitness accounts suggests that videos hold greater value in terms of establishing objectivity. Embedding eyewitness accounts within the video footage section is, in this report, perhaps an effort to make eyewitness accounts appear more objective. It is worth noting here that if artificial intelligence were utilized to interpret video technology we might expect a similar judgment, and judgment could become further buried. This concern aside, the report’s strategic use of technology positions the video as objective evidence, which is quite different from the spectator.

Kant and Arendt’s spectator begins with the sense of taste as a foundation for judging, which is subjective in nature (1992). Taste and smell are “subjective because the very objectivity of the seen or heard or touched thing in annihilated in them or at least not present: they are inner senses because the food we taste is inside ourselves, and so in a way, is the smell of a rose” (Arendt, 1992, p. 66). When a person tastes a food is it not only difficult to communicate the resulting feeling, but the taste remains subjective because, in many cases, it quite literally remains within.

Although counterintuitive, Arendt believes “by removing the object one has established the conditions for impartiality” (1992, p. 67). The forensic video analyst’s judging begins with video footage, based on the seen and heard, while the spectator’s judging begins with the subjective feeling we get when tasting food. Moreover, while the forensic video analyst’s findings carry a connotation of objectivity (and expertise), the analysis of video footage actually requires judgment, what Kant and Arendt believe is rooted in the subjective.

### 4.3 Political Dialogue and Interpretation

The third key difference between the spectator and forensic video analyst stems from the authoritative stance taken by the analyst. This stance, likely enabled by the use of video footage as an object, lays the groundwork for how judgment is interpreted and whether it is accompanied by political dialogue. The conversation that should occur between the analyst of video footage and politics, what Kant and Arendt's spectator incorporates through imagining, is limited in an effort to appear objective. This is Heidegger's enframing power of video technology at work, which leads both analysts and the wider community—in many cases groups that were not present to witness the event—to translate appearances from video footage into the truth. The spectator's stance might allow for the political dialogue that is largely absent from both the analyses and many of the protests.

The prosecutor's report on the police shooting of Tamir Rice is different from the report on the shooting of Brown, because it presents video evidence after the eyewitness accounts (McGinty, 2015). Perhaps, in this case, the prosecutor who composed the report was mindful of what the video lacked, but the written document shows no sign of imagination. After a detailed description of each of the ten cameras and their perspectives, the report presents a timeline of events associated with each camera and focused more on what are likely considered the "facts" captured being careful to not overstate what could be seen. One entry, for example, was "15:12:36-Tamir walks on sidewalk in front of the gazebo alone" (McGinty 2015, p. 24). After spending more than ten pages establishing the timeline of events from each camera's perspective there are two later sections of the report titled, "experts" and "forensic video analysis confirms the officers' statements" (McGinty 2015). The video analysis was performed by "an accident reconstructionist with a Ph.D. in Biomechanical Engineering" and "a former police officer who is a certified Forensic Video Examiner" (ibid, p. 32). In both cases, the experts' background is a degree or certification which very few people have, suggesting the interpretive process is not readily available to a reader, or as an antagonist in the spectator's imagination.

Arendt argues, "By closing one's eyes one becomes an impartial, not a directly affected, spectator of visible things. The blind poet" (1992, p. 68). But imagine a forensic video analyst presenting his or her findings to a court stating they performed the analysis with their eyes closed. Assuming the absence of rotten tomatoes, the court would worry the analyst came to decisions unfairly on the basis of something like taste, and subjectivity—but those are precisely the capacities we use to judge. Closing one's eyes engages the *sensus privatus* and imagination, but it also illustrates the extent to which Kant and Arendt's spectator requires an interpretive process rather than one, which strictly deals with appearances. Forensic video analysis makes the cartesian assumption that what the eyes see does not involve the mind more fundamentally (Arendt, 1992, p. 68; Piccorelli, 2014) in how we make sense of what happened. But the dialogue between what appears to me, and one's feeling for a sense of the whole is where the power of the spectator's judging originates from. Spectating must access politics and the *sensus communis* by way of imagination, which might be more feasible if one's eyes are closed.

## 5 Conclusion

Fallis (2020) argues “we make significant decisions based on the knowledge that we acquire from videos,” and this paper more deeply examines how we make sense of video technology itself. Video technology, like social media technology, is more than just a tool—it implicitly shapes how we experience both space and time (Piccorelli & Stivers, 2019; Schutz, 1970) as well as how we administer justice in profound ways.

Each of the court cases examined appear to adopt the stance of the spectator, but each also establishes its argument differently, suggesting that perhaps there is no *one best way* to perform a scientific examination. The variation in the use of video technology indicates we might be able to perform forensic video analysis differently—to supplement and enhance the form of judging Kant and Arendt envision. This would require the forensic video analyst to first detach oneself from the philosophic concept of the spectator and be more aware of the difference between science and technology. In particular, they ought to recognize and admit science’s potential to quietly embed human values in a process that is designed and perceived to be objective. This paper focuses on the relative fit of the spectator in forensic video analysis, but it raises a more troubling issue, which is adopting the stance of the spectator is not only difficult, but it is also very unlikely given its potential to bring a state of discomfort, and even anxiety (Heidegger, 1962; Ratcliffe, 2008; Piccorelli & Zingale, 2018). The spectator must be open to the possibility of concepts which contradict those gained from being thrown into the world (Heidegger, 1962) and yet grounded in some concepts that make us think, independently judge an event through a dialogue between the particulars and an imagination of the possible, and continually, and perhaps anxiously embrace and engage in politics to refine their judgment through dialogue.

Phenomenology introduces an ontological tension to the role of a forensic video analyst, because it suggests knowledge is acquired through interpretation and can be found using the mind. In other words, what the analyst feels when experiencing a technologically mediated event is real, but it is also possible interpretation will reveal a fundamental difference. This tension would be less of an issue if instead of using Kant’s philosophic idealism, we adhered to philosophic realism, which argues there is truth outside of the world of appearances that can be acquired using the mind. Because phenomenology recognizes the importance of the experience in knowing and also uses reason to interpret the experience, its epistemic frame is rooted in both the subjective and objective. Arendt’s pursuit of a universal taste is likely an attempt to integrate the two and resolve this conflict. Through imagination and reflection the spectator indirectly incorporates politics and the subjective into a seemingly more objectively oriented task. But, new technology means imagination and reflection become more difficult. When a technology brings the possibility to experience something in a different way, it becomes much harder to imagine on the basis of a set of pre-existing experiences that lack this technologically induced experience.

Perhaps, in the tech-mediated world, phenomenology needs much more skepticism to function. A lack of skepticism can confine us strictly to the realm of

appearances, when in fact there is something to be gained by constantly questioning what we see and even our epistemic orientation. Arendt's "blind poet" (1992, p. 68) takes this skepticism a step further and attempts to isolate other senses from the influence of sight. She reminds us of the possibility of a cartesian blind-spot in terms of what we think we see and the importance of doubt in what is an increasingly technologically-mediated world. Moreover, Arendt's "blind poet" (1992, p. 68) suggests forensic video analysts and anyone using video technology should not only be very carefully selected and trained, but anyone using video technology must recognize that perception is only possible if judging.

The experiential gap between spectators of a situation and forensic video analysts is perhaps an example of Heidegger's enframing at work (1977). Technology is an instrument built upon a set of assumptions about how we know, but the act of applying it repeatedly changes what we perceive, and can limit thought (Arendt, 1958; Heidegger, 1977). Arendt recognizes the technology of human surveying helps us understand the world, but it also distorts the notion of distance, which is intimately connected to the activity of judging (1958, p. 251; 1992). She notes that "Men now live in an earth-wide continuous whole where even the notion of distance, still inherent in the most perfectly unbroken contiguity of parts, has yielded before the onslaught of speed. Speed has conquered space...it has made distance meaningless..." (1958, p. 250). If technologies like railroads, planes, and human surveying (ibid, p. 251) have conquered distance, then so has video technology. To improve how the justice system operates we might consider building in limitations around the use of technology, like how much it can be used, and the extent to which it can be used as a basis for a decision. Lie detector tests are no longer a valid means to establish a conviction in courts, because people recognized their limitations. Given the extent to which video technology can shape how we understand an event, especially when tied to the concept of the spectator, if we cannot remain mindful that video technology is just a tool, then perhaps it too should be reconsidered.

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