A THEORETICAL REVIEW of EMPLOYEE’S FREEDOMS and PRIVACY in THE US and in FRANCE: THE IMPACT of 9/11

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ABSTRACT

This review discusses employee monitoring in the United States and France before and after 9/11. The differences in the work environments of the two countries reviewed are underlined, and the propositions developed suggest variations in employee’s perceptions of workers’ freedoms and privacy rights in the US and France. The managerial implications elicit a reflection on a cross-cultural HR environment which is being marred by new concerns from the threat of terrorism superseding those related to companies’ and employees’ welfare.

INTRODUCTION

This discussion focuses on the impact of 9/11 on employee monitoring in the workplace, and by inference, on freedoms and rights of employees in the United States and in France. It introduces this reflection with a rationale for studying the US and France, followed by a brief history of the working conditions in the two countries, leading to a review of the work environments before and after the terrorists attacks of September 11, 2001 (9/11) on American soil. Propositions are developed, managerial implications for academicians and practitioners in both cultures. The conclusion concurs with the intuitive belief the human resource environment is being deeply imprinted by the events of 9/11, in the two countries, though at varying degrees, and in different ways. Testing the propositions suggested is the next step to this two-prong discussion.

STUDYING THE US AND FRANCE

In the post 9/11 period, France became familiar to American audiences, and not as referred to its cuisine and fashion. Lately, when Americans have heard of France, it has been to lament the lack of understanding of this long-time transatlantic ally of the United States. In effect, recently, France has tended to embrace views not germane to those Americans held, as seen in France’s refusal to support the US in its conflict with Iraq. The relationship between these two countries may be one that has always been marked with punctuated antagonism (Meunier, 2000; Essounga & LeMaster, 2004), yet it is one that has sustained momentum as to commercial dealings. Europe has united under the agile marksmanship of such artisans as Late President François Mitterrand of France, and Late Chancellor Helmut Kohl of Germany (Lacouture, J., 1998a, 1998b). The old continent has become a market rich of 346 million inhabitants and growing, made up of individuals with a high per capita income, and a tremendous opportunity for fruitful business relationships with the United States. France and Germany, with 142 million inhabitants, constitute 41% of Europe, and France is a non negligible member of the European Union, still holding ties with former colonies in Africa. One may tap into the emergent markets in Africa, using French experience in dealing with these (Diawara, 2003; François Mitterand, l’Européen, n.d.; Goulard, et al., 2003; Njoh, 2002; Sargent & Cordell, 2003).
What is sought in this discussion is a reflection on the work environments of the two countries under review, in order to have an indication of the degree the attacks of 9/11 have impacted HR practices in the United States and in France. The remainder of this paper will cover a brief history of the work environments, and the prevailing work environments before and after the terror attacks of 9/11 in both countries. Then, propositions will be suggested, followed by the implications of such for companies with operations in both countries, as well as for researchers.

A BRIEF HISTORY OF THE WORK ENVIRONMENT IN THE US AND FRANCE
At its inception, the working contract was not one that favored freedoms for workers in the US and in France. Conflicts have always characterized relationships between employers and employees in both countries, the employee, for the longest time, being only requested to perform his duties and be quiet (Crunden, 1994; Lorwin, 1957; Waquet, 2003). However, the evolving labor laws in the two countries inaugurated regulations protecting the rights of employees.

HISTORY OF THE WORK ENVIRONMENT IN FRANCE
In France, the ideas of freedom derive from liberalism. Here, liberalism goes beyond advocating the lack of government intervention in the nation’s economy. It is a philosophy of freedom and respect of the individual’s responsibility as well as a political and social notion. Its roots can be traced back to the Declaration of the Rights of Man and Citizen, the foundation of the Constitution of the French Republic (Asselin & Mastron, 2001). This Declaration, adopted in August 26, 1789, was inspired from the 1776 American Declaration of Independence, the latter founded on the works of 17th and 18th Centuries philosophers such as John Locke, and Francis Bacon. The Declaration of the Rights of Man and Citizen includes freedom among the natural and indefeasible rights with which each individual is born. These rights are viewed as natural because they are inherent to each person’s upon birth, and they are also called indefeasible because they cannot be denied to anyone, regardless of circumstances and laws. They can be said to be above all laws, and thus, cannot be violated (Asselin & Mastron, 2001; Crunden, 1994; Muenchinger, Salaès-Vincent & Paris, 2002). This environment made it difficult for the legislator to deny employees the right to private life, even at work (Le libéralisme dans la France d’aujourd’hui, 2001; Waquet, 2003).

HISTORY OF THE WORK ENVIRONMENT IN THE UNITED STATES
In America, working relationships were marked by a labor force composed of individuals who moved to the United States from Europe in order to acquire wealth. Some of the new arrivers may never have done any hard work in England, where most came from, neither were these individuals ready to engage in that path, once they arrived to the United States. In such a climate, and the economy being dominated by manual and labor work, sizable amounts of seasonal laborers started being imported from the streets of Britain to the plantations of Virginia, USA, in one instance. The workers brought in the country in such a fashion were, for the most part, contract workers who agreed to perform duties for a certain term, in exchange for some form of determined compensation. The relationships may not have been the best a worker could find and with hardly any legal framework governing these relationships, workers soon realized they were trapped in a deal marred by violence, in which they were hardly recognized as humans. Later on, the advent of slavery did little to improve such a precarious legal environment, and labor laws in America, years after these tumultuous beginnings, have had trouble straying far off from this rogue start (Asselin & Mastron, 2001; Crunden, 1994 Hodgetts,
Luthans & Doh, 2006; Lorwin, 1957). In comparison, the French legal system appears rather protective of the rights of the individual (Ariss, 2002; Anciennes et nouvelles formes de surveillance des salariés, 1999; Muenchinger, et al., 2002; Givord & Maurin, 2004).

**THE WORK ENVIRONMENT BEFORE 9/11 in THE US**  
Before 9/11, employees in the US were submitted to monitoring, albeit reluctantly, as indicated by figures reported in a number of studies. Aikin (1998) indicated 45% of US employers engaged in electronic monitoring, reading employees’ emails, accessing documents saved on employees’ hard drives, and watching employees’ Internet activity. Ariss (2000) underscored from merely 8 million monitored in 1991, by 1999, there were 30 million Americans under surveillance by their employers, often, without the employees being aware of it. Another study (Le courrier électronique des employés [the worker’s email], 2000) suggested 74% of companies in the US spied on employees’ electronic communications, files, and telephone calls. Today, it is believed over 80% of US corporations keep employees under regular surveillance (Anciennes et nouvelles formes de surveillance des salariés, 1999; Best, Krueger & Ladewig, 2006; Labor laws trumps privacy claims, 2000; Le courrier électronique des employés, 2000; Schmitz, 2004).

Although eavesdropping on the phone, for instance, has been made illegal in the US since the 1930s, Courts have almost always invariably ruled for companies and against employees, alleging there was no expectation of privacy at work. Thus, in one instance, when truck-stop workers sued their employer for secretly video-taping them while in restrooms, the US Court of Appeals for the Ninth Circuit preempted state law privacy and emotional distress claims brought by these workers, though recognizing the employer may have violated criminal statutes enforced in California (Ariss, 2000; Labor law trumps privacy claims, 2000).

Regardless of the fact many employees in the US do not seem to be aware they are being monitored, it would be better for workers to understand most of the time, they are being monitored (Farley, n.d.; Lee, 2001; Rotenberg, 1994; Sanderson, n.d.; Schmitz, 2004).

**THE WORK ENVIRONMENT BEFORE 9/11 in THE US in FRANCE**  
In France, the period before 9/11 was characterized by an environment marked by strong privacy rights laws, making it challenging for companies to monitor employees, though this did not prevent companies from attempting to do exactly so. Nevertheless, Article L 432-2-1, § 3 of the French Labor Code makes it clear that before enacting monitoring, the workers’ committee, a body representing employees in a workplace, should be informed and consulted with. Article 9 of the French Civil Code states each person has the right to his or her privacy; and Article L 120-2 of the French Labor Code underscores no one can impinge upon the rights of persons or collective freedoms, unless justified by the nature of the task, and even then, only in proportion with the aim sought (Waquet, 2003), an expression further explained hereunder.

Before an employer can initiate monitoring, he is mandated to comply with four requirements. The first is to notify employees who also must agree to the monitoring, before it can take place. The second requirement is to inform and consult with the workers’ committee, a body composed of employees’ representatives, acting as intermediaries between management and workers. The third is to provide a rationale for monitoring, and the fourth and last requirement is to monitor only proportionally to the aim sought. For instance, monitoring employees in order to verify
their productivity would not be considered as being proportional to the aim sought. However, monitoring premises to prevent theft in groceries stores or banks could be equated to monitoring conducted proportionally to the aim sought (Laurenti, 2003; Le courrier électronique des employés, 2000; Lee, 2001; Le salarié surfe au travail oui, mais..., 2003; Muenchinger, 2002; Waquet, 2003). This, needless to say, created a pre-9/11 environment where employers, in France had difficulty monitoring individuals’ activities in the workplace.

**THE POST 9/11 ENVIRONMENT**

Certain events have such an impact on people’s lives they change lives in a profound and indelible manner (Burke, 2005; Caidi & Ross, 2005). The terrorist attacks on American soil had such an effect on the American people that Sproule’s (2001) statement that the world is not the same, since 9/11 are justifiable. Quilès, et al. (2001) even offered that just as it can be said WWI started the 20th Century, so can it be said of 9/11 and the 21st Century.

**POST-9/11 IN THE US**

Before the 9/11 attacks, the momentum was shifting toward enacting privacy laws, in view of mounting dissatisfaction with invasions of employees’ privacy. Even in the US, the public was not supportive of such invasions (Ariss, 2000; Labor law trumps privacy claims, 2000; Rotenberg, 1994). Employees were becoming uncomfortable with the idea of potential abuses resulting from organizations disposing of such a wealth of information on employees (Best et al., 2006; Caidi & Ross, 2005). These may not have been aware of the details regarding their being monitored at work (Kierkegaard, 2005). However, the little they knew was enough to make many wary about the possibility of misuse of data easily collected and just as easily used and disseminated (Kennedy, 2002). The legislator was slowly catching up and Congress enacted the Privacy Act of 1974 in effect since September 27, 1975, protecting individuals against the potential harm resulting from the use of technology to collect information on employees (USC § 552a, n.d.; The Privacy Act of 1974, 5 U.S.C. §552a, n.d.; Woodman, et al., 1982).

When 9/11 hit the United States, pro-privacy spurs vanished and the paranoia that seized American society made all almost forget about invasions of privacy, in the name of security. No company wanted to appear as having been in a position to have prevented a repeat of 9/11 and not having done so under the pretense of whimsical claims of respect of privacy (Borland & Bowman, 2002; Bovard, 2003; Fitzpatrick, 2002; Post-9/11 shift seen in employee attitudes about privacy, n.d.; Sproule, 2002). In the period following the 9/11 attacks, no company or individual could advance claims of respect for privacy to counter the security imperative. Today, even libraries are not immune to authorities’ requests for information on individuals patronizing these localities. Internet providers also admitted to being, more than before, the object of public authorities’ scrutiny. Most individuals asked about this new contingency in the US human resource environment responded terrorism was to blame (Bovard, 2003; Schmitz, 2004).

The post-9/11 work environment in the US can be seen more pro-invasion of privacy, in the sense that in the name of security, invasions of privacy became more tolerated than before. The USA Patriot Act (Uniting and Strengthening America by providing Appropriate Tools Required to Intercept and Obstruct Terrorism) passed on October 11, 2001, in response to the terrorist attacks of 9/11, and the Enhanced Border Security and Visa Entry Reform Act of 2002, mandating the use of biometric information in the passports of foreigners entering the US, found
a US population converted to the security cause. The population was ready to abdicate some of its freedoms, if only this would prevent a repeat of 9/11 (Borland & Bowman, 2002; Greenya, n.d.; Kierkegaard, 2005; Les États-Unis instaurent le fichage biométrique systématique des étrangers, 2003). Stated differently, if employers used to spy on employees in order to protect companies against potential lawsuits resulting from the misuse of companies’ technology, the focus shifted. Today, companies spying on workers do so for reasons of security, almost with the blessing of these very workers (Fitzpatrick, 2002; Sanderson, n.d.).

Today, dissenting voices over struggles between security and privacy resonate weakly in an environment marked by 9/11. Claims the attacks on freedoms may weaken American fundamental beliefs in freedom do not suffice to ease the paranoiac climate fostered by 9/11 (Borland & Bowman, 2002; Rahal, 2002). Just as it is sometimes difficult for Americans to understand the fuss over WWII in France, this time, a superficial outlook at the French since 9/11 may lead one to surmise France may not have integrated the meaning of 9/11 on the American psyche (Asselin & Maston, 2001; Monseau & Essounga, 2003).

POST-911 IN FRANCE
Many not familiar with France and its mentality will be surprised to learn following the attacks of September 11, 2001, the French government decided to take measures aimed at fighting terrorism more efficiently. The laws conceived attempted to enact stricter controls of the Internet, and particularly the surveillance of electronic communications in the workplace. On October 3rd, 2001, less than four weeks after the events marking the recent history of the US, the French Prime Minister, then Lionel Jospin, requested the French National Assembly to take measures, in order to prevent a repeat of 9/11. However, the people of France, the magistrates, the CNIL (Commission Nationale de l’Informatique et des Libertés [National Commission for Information Technology and Freedoms]), the French data protection agency, and the European Commission for Civil Rights opposed the adoption of such measures, alleging the inability of such to deter terrorists attacks. Thus, although the French Commission investigating the consequences of 9/11 for France concluded 9/11 marked the beginning of the 21st Century, the French strong tradition of respect for individuals’ freedoms did not let them buy into the security motive the way individuals in the US did (Quilès, et al., 2001; Loi restreignant les libertés individuelles en France, n.d.). In other words, individuals in France believed the threat of terrorism, and the horrible character of the 9/11 attacks. However, they also believed the rights of the individual were indefeasible and could not be restricted, regardless of the circumstances (Laurenti, 2003; Le salarié surfe au travail oui, mais..., 2003; Les États-Unis instaurent le fichage biométrique systématique des étrangers, 2004; Waquet, 2003).

PROPOSITIONS
Proposition 1: More so in the United States than in France, employees will tolerate the loss of some freedom in the workplace, because of the paramount importance of security.
Before 9/11, and regardless of the fact that the Courts repetitively found against employees in lawsuits involving invasion of privacy at work, there was a growing protest against what employees saw as attacks on their dignity. In a post 9/11 environment, employees in the US understood for the good of all, it was not so bad to forfeit a measure of freedom (Ariss, 2000; Borland & Bowman, 2002; Caidi & Ross, 2005), if it would equate increased security.
Proposition 2: More so in the United States than in France, employees will agree with monitoring in the workplace.
The history of labor in the US has seen constant conflicts between workers and employers, which is different in France, where the work environment has reputedly been friendlier to employees. In the aftermath of 9/11, employees in the US, attuned to controversial relationships with management were almost used to a legal environment finding for employers. These employees agreed to losing some freedoms, rationalizing monitoring was carried out for a good reason, and not to cause employees embarrassment (Crunden, 1994; Fitzpatrick, 2002).

Proposition 3: More so in the United States than in France, employees will feel it is important to abdicate some freedoms in the workplace, in return for protection and security.
The United States was the theater of the 9/11 attacks, and individuals in the US may not have had latitude in philosophizing on issues of freedoms as did individuals in France (Bovard, 2003; Post-9/11 shift seen in employee attitudes about privacy, security at work, 2004); the latter rather believed the government should protect the people without touching their sacrosanct freedoms (Anciennes et nouvelles formes de surveillance des salariés, 1999; Waquet, 2003).

Proposition 4: More so in France than in the US, employees will be suspicious of being monitored at work.
The skepticism in French employees’ minds despite employers’ claims of lack of surveillance came from instances where French employers were caught in the act of monitoring employees, without any notice given to these (Anciennes et nouvelles formes de surveillance des salariés, 1999; Le salarié surfe au travail oui, mais…, 2003; Muenchingher et al., 2002).

Proposition 5: More so in France than in the US, employees will feel monitoring in the workplace has been practiced all along.
French companies such as Thomsom Daimler Aerospace, Alstom Energy Systems, and Laboratoire Servier have been caught spying on their employees because companies have been monitoring employees even before 9/11 (Anciennes et nouvelles formes de surveillance des salariés, 1999; Linowes & Spencer, 1996). Accordingly, Europe invited employers to maintain high standards of protection of the rights and freedoms of workers, reminding employers if a system of monitoring was implemented, it should be transparent (Laurenti, 2003). Still, Lee (2001) underscored individuals in the US and Europe were aware of being monitored, though not sure how (Le salarié surfe au travail oui, mais…, 2003; Waquet, 2003).

MANAGERIAL IMPLICATIONS
As mentioned, there are instances when Americans do not seem to fathom why the French react in a certain way, while at other times, the French do not understand why Americans react the way they do. For instance, the atrocities of WWII remain poignant in the French collective memory, while in America, individuals sometimes have trouble understanding why a war that is over 50 years old is still so fresh in individuals’ minds. The events of 9/11 can be said to have had the same effect on the collective memory of the American people that WWII has had on the French psyche.

American and French managers and academicians, alike, are continually attuning themselves to the differences in sensibilities and perceptions in the two cultures. This should prevent one from
posing an act that may be construed as crossing the line of legality. Also, it would prevent acting in a manner that would insult the collective memory of a people. In the US, for instance, this awareness may mean less trouble for managers enacting monitoring, provided employees were made to understand the reason for such behavior. In contrast, managers in France may have more trouble with a legal environment mostly finding for employees’ respect of freedoms.

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