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Bargaining with the Machine: A Framework for Describing Encounters with Surveillance Technologies

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Abstract

Relationships between surveillance and inequality (e.g., as surveillance is used for domination, as surveillance affects subjects' life-chances) have been a central concern of Surveillance Studies scholars. This concern with inequalities that are produced and sustained by surveillance runs parallel to the longstanding interest of many social theorists more generally with the unequal workings of power in nominally free societies. How is inequality sustained without resort to force? Why do people consent to subjugation? Some form of ideology critique is often employed to answer such questions. However, the work of Rosen (1996) and others has cast serious doubt on the ability of ideology critique to make good on its explanatory claims. Thus, it is necessary to explore other theoretical constructs that carry greater explanatory force as theorists investigate the disadvantageous effects of surveillance on its targets. In this essay, I argue for the use of an alternative framework—a bargaining paradigm—to articulate what happens in individual subjects' encounters with surveillance technologies. "Bargaining" shifts the focus from systematic domination of social groups to individually situated subjects while also ascribing agency to individuals rather than depicting them as merely helpless victims of larger forces. This framework can also help to show when bargaining cannot meaningfully take place—because of lack of information, unequal bargaining power or other constraints.

Introduction

Relationships between surveillance and inequality (e.g., as surveillance is used for domination, as surveillance affects subjects' life-chances) have been a central concern of Surveillance Studies scholars, and a number of important studies have examined the effects of surveillance on social relations, power and domination, and life-chances. (Adey 2004; Salter 2006; Gandy 2009, 1993). This concern with inequalities that are produced and sustained by surveillance runs parallel to the longstanding interest of many social theorists more generally with the unequal workings of power in nominally free societies. One line of social-theoretical inquiry running from Marx through Adorno, Althusser and Gramsci has tried to generate explanations for why subjects act in self-injurious ways, or more precisely, why they accept laws and practices that appear contrary to their interests. How is inequality sustained without resort to force? Why do people consent to subjugation? Rosen (1996) has called this the problem of "voluntary servitude." In other words, as Rosen says (recalling Wilhelm Reich), a modern theory of power needs to explain why hungry people often don't steal food, why oppressed workers often don't strike, when it would be clearly in their interests to do so (1996:1).

Explanations for voluntary servitude often take the form of ideology critique. Though there are a number of variations of ideology critique, I intend the term "ideology critique" here to refer to systematic explanations of voluntary servitude wherein construction of meaning is related to distribution of power. In

an ideological system, the process of meaning-construction functions to create or sustain power relations. Ideology critique, then, seeks ways to interrogate and explain ideological phenomena. Weberman (1997) points out that "meaning" in the context of ideology critique is associated not only with propositional logic, but with desires and attachments as well. Thus, ideology critique takes in more than simply cognitive content. Modern political and social theorists are familiar with Karl Marx's explanation of the workings of ideology, in which capitalist social relations themselves distort the perceptions held by people living within them, so that capitalist domination is sustained by the very forms of consciousness it produces. By now though, as is well-known, ideology critique has itself been subjected to thoroughgoing criticism and it is not clear what remains of it in terms of cogency or explanatory force.[1]

Nonetheless, social theorists continue to seek ways to articulate and interrogate relationships between action and belief that account for unequal power relations. In this essay I suggest that a bargaining paradigm can be productive for such theorizing. "Bargaining" suggests a common and familiar mode of interaction in which social actors pursue self-beneficial ends through calculation and sometimes persuasion. By viewing certain choices and experiences as forms of bargaining, we gain a stronger understanding of how subjects are situated as those experiences confront them; we see more clearly how their life-chances are affected; we gain insights into subjects' self-understanding. In this effort, I follow recent suggestions by Marx (2006) and Monahan (2010, 2006) that Surveillance Studies scholars examine more closely the notion of "trade-offs"—a concept integral to bargaining. While trade-offs are frequently mentioned in everyday discussions of contemporary life, Marx and Monahan both show that the term is typically employed there with little critical reflection: most commonly, for example, in the form of an exhortation to "trade liberty for security." Of course, the liberty/security trade-off is oversimplified at best and factually and propositionally false at worst. Losses in liberty can be greater than they appear, and the gains in security are often illusory. However, in addition to exposing the factual inaccuracies and flawed logic lying beneath these oft-cited trade-offs, it is also worthwhile to employ the concept of bargaining as a descriptive device: to reconstruct the bargains involved and thereby to grasp the actual gains and losses experienced by social actors who navigate a life-world pervaded by surveillance. In fact, viewing subjects' encounters with technologies of surveillance (or "surveillance infrastructures," as Monahan (2010: 8) puts it) as forms of bargaining can highlight inequalities and other effects while avoiding some of the epistemological difficulties associated with earlier approaches.

Bargaining as a frame for these inquiries works in two ways. First, it helps us to see how individuals make choices to engage with technologies. We can see how they calculate gains and losses and we can avoid ascribing to them some set of pre-given interest or needs. But in addition to this element of individual agency and efficacy, we can also note instances where any sort of bargaining is absent—when interactions (even if they are called "bargains") are not bargains at all in any meaningful sense. This assessment even goes beyond saying, "This is a bad bargain." Instead, we may conclude that what is presented as a bargain actually lacks mutuality, disclosure or roughly equal bargaining power. In such cases, the bargaining frame will highlight the absence of the possibility of a bargain.

In what follows I proceed in three steps. First, I indicate briefly the limitations of a social theory that relies exclusively, or too heavily, on questions of social control. This part of the discussion identifies some of the limitations of ideology theory as it now stands, but it also introduces inquiries particular to the field of Surveillance Studies—that is, why Surveillance Studies seems to be moving away from theorizations that emphasize systems of domination that act on subjects in a unidirectional manner. Instead, theorists posit a

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[1] Some commentators have even suggested that we are now in a "post-ideological" phase. Terrence Kelly (2000: 372) ascribes this view to Rorty (while criticizing it). Kelly reconstructs Rorty's view as follows: "Because liberal societies are founded on widespread egalitarian views about fairness," those egalitarian views have already triumphed and become dominant in liberal societies. Therefore, there is no longer anything for ideology critique to critique. Kelly contests this kind of "death of ideology" claim, and there is certainly much to say in response to it. I will not reproduce or evaluate the debate here, though; instead I want to show how a "bargaining" analysis provides an alternative.

richer descriptive picture, highlighting the role of "agential shaping" (Monahan 2010: 38), the multiple valences of various technologies (Fisher 2006), and the forms of countersurveillance that have arisen (Marx 2007). In these more nuanced critiques we see interplay between active agents on the one hand and disembodied processes transcending individual intentions on the other: we see individual agency, and we see its limits as human agency runs up against the "machine." Neoliberal tendencies toward privatization and securitization are both contested and furthered by subjects who contend with them.

Thus, ideology critique and Surveillance Studies confront distinct aspects of the same problem: the thickness and complexity of (post)modern social life that frustrate characterization of social relations as the product of systematic domination. Of course, no one would seriously question the existence of unequal power relations in many contemporary social settings, or the on-going historical fact of domination by one group over another. The problem, rather, is that attempts to show voluntary servitude operating systematically on subjects are beset with difficulties.

Next, I propose a bargaining framework as a means for looking at and understanding subjects' encounters with surveillance technologies. Surveillance Studies scholars are interested in examining more deeply and critically the purported "trade-offs" associated with the use of certain surveillance technologies and practices, and following their lead, I examine two settings where discussions of trade-offs occur: submitting to surveillance for security purposes as part of the "war on terror," and voluntary submission of body fluids for DNA testing. My aim is to show that a bargaining framework is useful for examining these two examples of trade-offs that are mentioned in the Surveillance Studies literature, and that in view of the insights gained, further and wider use of a bargaining construct as an analytical tool is warranted.

Once again, the bargaining frame sheds light on subjective, context-specific understanding and motivations for action, but it also helps to show that often there is no bargaining relationship. Just as it seems counter-intuitive to bargain with a machine, it will often become apparent that individuals are engaged in transacting with a vastly more powerful, diffuse and impersonal "partner," and that this relationship precludes meaningful bargaining. Here, "machine" can signify a number of phenomena associated with contemporary social life. I will develop the notion of "machine" further at the end of this article, but in general I mean to suggest the complex and impersonal technological processes that surpass the intentions of the individual actors who deploy and try to control them.

Of course, many bargains are made in the course of living out social relations. Employees decide to accept and keep jobs. Families negotiate limits to work obligations and balance them against family time. Deciding what might be a "socially meaningful" instance of bargaining could be a complex and contestable matter. Rather than pronouncing, here, once and for all, which bargains "count," I would suggest simply that deciding whether to engage/accept or reject/contest surveillance is one area where the bargaining frame brings clarity and insight.

The limits of ideology critique in the surveillance context

If one wishes to show that individuals accept (or fail to object to) pervasive surveillance, examples abound. Closed-circuit cameras are used in ATM locations, parks, schools and motel hallways. DNA samples are collected voluntarily as part of criminal investigations. Customer service phone calls are routinely recorded. Mobile phones pinpoint the location of their users. Employees wear Radio Frequency Identification RFID tags. Each of these examples represents a common interaction with surveillance technology that is experienced by large numbers of people. Moreover, they have all become commonplace and non-controversial. While all of the examples involve a clear loss of privacy, that surrender of privacy has been, to differing degrees, voluntary. Such behavior seems to be a prime candidate for evaluation through ideology critique as defined above: people understand surveillance (they assign meanings to it) in

such a way that it becomes unobjectionable to them (power relations are sustained). What more does ideology critique have to say about the matter?

"True interests"

One way to explain subjects' acceptance of surveillance practices is to say that there is something defective about their understanding of those practices. As we specify what is meant by "defective," the dimensions of ideology critique and the problems associated with it begin to come into focus. For instance, one understanding of defectiveness develops around interests. Acceptance of surveillance practices that diminish individual privacy is defective, we could say, because such acceptance runs counter to the "true" or "real" interests of individuals, i.e., the interest in preserving privacy. However, as Geuss (1981: 48-9) has shown, ascertaining the "true interests" of a person or group is fraught with problems. He asserts that two conditions are necessary in order for true interests to be identified. First, the subject must possess perfect knowledge, for only with perfect knowledge can the subject be confident that a particular calculus of interests is superior or even defensible.[2] Of course, the subject never attains perfect knowledge; the acquisition of knowledge is cumulative and incomplete as the subject goes through life. Meanwhile, people face choices in everyday life that cannot be postponed, and yet they are armed with incomplete information as they make those choices. And so true interests are perpetually elusive. Second, it is only under optimal conditions that true interests can be formed. Anything short of optimal conditions leads to identification and pursuit of interests that are merely realizable—even if they are not what would be chosen under better circumstances. Here, Geuss (1981: 49-50) supplies the example of the Ik, a people of sub-Saharan Africa who, through many generations of famine and starvation, have come to value above all else the pursuit of food. It is easy to find fault with such a way of life, in which able-bodied individuals steal food from weaker ones. But before criticizing the hierarchy of values or interests that is in play here, it is necessary, first, to acknowledge that the values were formed and the interests chosen in response to conditions of terrible suffering. Probably they would not have been chosen in better material conditions. Any such exercise of evaluating interests in a real-world setting, though, must take place against a backdrop of less-than-optimal conditions. The lack of perfect knowledge and the lack of optimal conditions, then, will always complicate the formation of interests.

I want to emphasize that these difficulties arise for the critic as well as for the subject. Just as individuals' formation of interests is inflected by material conditions (and specifically by what is lacking in their lives), so is the process of ideology critique hampered by the messiness of individual matrices of choice. To say that someone's choice is defective because it goes against that person's interests is to presume that those interests are unaffected by material conditions. Can the failure to resist a law or program be seen as going against one's interests even if such resistance is in fact futile? In short, critiquing "voluntary servitude" by way of evaluating interests seems quite problematic, because the necessary conditions for ascertaining the "true" interests of an individual or group are never actually present.

While it is true that some interests might be "better" for an individual in the estimation of some observers (and therefore apparently "truer"), the lack of an evaluative criterion still poses problems for the theory of ideology. Distinctions between "long-term/short-term" and "first-order/second-order" desires and interests remain in many situations where it is difficult to say which interest is "truer." For example, some people advocate high-risk behaviors like smoking and drinking by asking, "Who wants to die healthy?" I may disagree for myself, but is my response "truer"?

"False beliefs"

Is there an alternative? Instead of focusing on interests, we could say that a subject's understanding is defective because it rests on false beliefs. Perhaps ideological processes induce the subject to believe things that are false. One thinks here of Marx's oft-cited comments about religion. The promise of an

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[2] See also Kelly (2000); Eagleton (1991); Thompson (1990).

afterlife, he suggested, serves to placate people who face difficulties or suffering here on earth. But as Rosen (1996: 51) has shown, many of the things people believe are not so easily adjudged "true" or "false" (see also Eagleton (1991; Butler (1997)). For example, the phrase "work is ennobling" is a statement of the values one espouses, and as such cannot be true or false. I can reject a set of values for myself; I can even show how another person fails to live up to certain values. But it sounds strange to call a set of values "false." Beliefs such as "bats are blind" can be disproven. Other beliefs refer to and reflect the ordering of values rather than claims about which there can be evidence. And yet some such beliefs (e.g., as to the value of patriotism) connect immediately to power relations.

Similarly, desires are not usefully or accurately characterized as true or false. I may desire something that is unfulfillable or something that harms me in some way. But desires themselves are neither true nor false (even if psychoanalytic theory provides a means to link desire with its object). And finally, some statements that function ideologically (i.e., that affect power relations) are in fact "true" in some sense. For example, it is accurate to state that there is a threat of a terrorist attack on the United States in the year 2012. Nonetheless, that statement functions ideologically when political leaders overstate it or repeat it endlessly in order to produce consent to new anti-terror policies. "Beliefs," "values" and "desires" are distinct from each other, and the relationships between them are complex. So many interesting and important examples of "false beliefs" actually involve desires and values rather than evidence-based judgments (the attachment to the idea of "nation" is one obvious example).

This brief summary of "false beliefs" in the ideology context is intended to show that "falsity" is not a workable criterion for identifying defective consciousness. Consequently ideology critique cannot rely on "falsity," just as it cannot rely on "interests," as a metric for judging whether ideological processes are at work. Of course, there is still room for critique of the intentional use of statements for political ends. If a candidate uses racialized language in a campaign speech, and people respond with support for the candidate, we can make a number of critical observations, including ethical judgments, about the event, but ideology theory does not meaningfully add to the understanding of what happened.

Systematicity

A theory of ideology assumes that ideology is produced in a systematic way. If forms of consciousness arise randomly, or occasionally, then it sounds strange to call them "ideological." A connection between the effect (sustaining power relations) and the cause (arising from within the system itself) is missing. Rosen (1996: 102, 2000) argues convincingly that this is an additional obstacle confronting the project of ideology critique: the problem of showing that a systematic process is at work. Ideology critique must offer a theory of the systematic functioning of beliefs—that is, an account of the ways in which belief-formation occurs so that it creates or sustains unequal power relations. This account must do more than simply describe episodic occurrences of belief-formation; those episodes must bear some relation to each other. Even if the problem of determining objectively true interests and the problem of specifying what is meant by "false beliefs" could somehow be surmounted, it would still be necessary to come up with an explanation for how belief-formation occurs. This explanation would have to show that it happens in such a way as to skew power relations in favor of some people and to the detriment of others. A functional link between belief-formation and social conditions must be shown—that is, the link must explain how those social conditions are reproduced. It would NOT be enough to say that belief-formation simply functions favorably to a given set of conditions. An early frost in Florida would benefit fruit growers elsewhere, but the freeze would represent only an episodic occurrence that happened to benefit one group at the expense of another. Rosen phrases this distinction using the terms "functional for" versus "functionally explained by" (1996: 262). In these terms, the event of cold weather was "functional for" increasing fruit sales in California, but that is all that we can say about the functional relationship. The stronger claim—that the weather event happened because California growers needed to sell more fruit—is of course absurd. Ideology critique wants to make that kind of strong claim about how ideology functions, but the same problem arises.

Rosen notes that in the natural sciences, functionalist relationships can be drawn. In evolutionary biology, natural selection provides such a link. Species survive when individual organisms transmit beneficial traits to their offspring. The adoption of certain traits by a species over time is functionally explained by its role in helping the species to survive. But in the social sciences, functional links like that one are more elusive. Rosen says that social theorists often implicitly rest their ideology critiques on the idea of society as an organism, as a self-maintaining system (Althusser (1984) is one example he uses). The system has needs, which can be identified, and mechanisms within the system operate to keep the system going. An organism is a self-maintaining system. The human body, for example, produces sweat because it needs to maintain a moderate temperature in order to survive. But a social world differs from an organism, and social phenomena often elude functionalist explanation. For one thing, social agents possess internal motivations. They are capable of resistance and subversion. A soft or implicit determinism is at work when theorists posit social actors or social forces as inevitably bound to play roles in replicating the conditions supporting a social order.[3]

In addition, there is a fundamental distinction between organisms on the one hand and societies on the other, consisting in the process by which each of them arrives at stasis. The body produces sweat for the benefit of the body itself. Ideology theory, by contrast, envisions functional roles for the ruled as well as the rulers—especially for the ruled, in fact. Their consent sustains their disadvantageous position. As Rosen (2000: 401) puts it,

> It does not seem to me to be either theoretically problematic or empirically implausible to think that those who benefit from a social system should spontaneously come to form ideas that embody their interest in that system's continuation; the real problem is why on earth those ideas should be accepted by those who lose out.

By attributing this kind of functional role to "those who lose out," ideology theory suggests that unequal power relations are being maintained by the disadvantaged through their own efforts. To say that the society needs this to happen simply begs the question. Why does it need to happen? What would things look like if it did not happen? Even if we assume that a social order "needs" to exist in the same way that a body does, that brings us no closer to being able to say how consent of the ruled is necessary to the social order. Geuss (1981: 16-17) observes that we have no way of knowing exactly how much repression is needed to sustain a social order. Thus, the idea of surplus repression (more than what is needed) becomes incomprehensible.

The brief and summary cataloguing of arguments in this section is meant to introduce the problems facing ideology critique as it tries to explain why people consent to things that harm them in familiar contexts such as privacy and surveillance. In view of these difficulties, theorists could continue to search for cogent formulations of ideology theory that have thus far eluded them. Alternatively, we could turn to other modes of theorizing that seem more promising. I suggest the second of these alternatives. In this regard, we can examine existing scholarship in Surveillance Studies that focuses on the positioning of the subject within surveillance regimes.

A number of scholars working on problems related to surveillance have explored the ways subjects are positioned relative to surveillance agents and processes. This recently generated literature takes as a central concern the inequalities associated with surveillance technology. In particular, the relationships between technologies of control and subjects' attitudes toward those attempts at control can be seen. For example, Fisher (2006) has studied the use of Radio Frequency Identification (RFID) technology in

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[3] For a more nuanced treatment of this topic, see Laclau and Mouffe (1986) in response to Althusser. The authors posit a discursive terrain that is more open, and a view of language as perpetually contested.

hospitals. The RFID tags themselves could potentially be used to locate patients and inventory property. More often, though, they are deployed for surveillance, monitoring the whereabouts of nurses. This utilization of the RFID technology has clear implications for domination and control. Technology with ambivalent applications is intentionally deployed for a social control function. A choice is made by the owners of the technology to prioritize one use over others. But Fisher also documents resistance from the nurses themselves, and some of their resistance is motivated by practical concerns, such as the difficulty of keeping RFID-tagged equipment at hand for use when they need it (2006: 82). While this account is clearly attentive to the processes of social control that are facilitated by RFID systems, it portrays a more complex interaction between social agents and the "surveillance infrastructure" in which they live. The tendency toward social control applications of surveillance is clearly shown here, but so are the resistance and contestation that they provoke. We see how subjects feel about attempts to monitor them; it is not simply a matter of technology acting on them in a one-directional manner.

Similarly, scholars studying jurisprudential developments related to surveillance have added complexity to depictions of individuals living within those regimes of control. Mitchell (2005) reads the 2000 privacy-related Supreme Court decision in Hill v. Colorado to create "floating bubbles" around individuals that insulate them from unwanted social interaction. Mitchell is not celebrating the "SUV citizenship" that develops out of this doctrine of individual privacy; to the contrary, he is concerned about some of its implications. Once again, though he complicates the picture of a contemporary social setting by focusing on individuals' negotiation of constraints. For as long as these "floating bubbles" continue to be recognized by the state through case law, they provide a means for subjects to escape various kinds of interpellation. Moves toward control of the subject are not inevitably successful, in part because the state itself has undermined their function through privacy law.

Important work has also been done to examine the activities of agents of social control. Marx (2007) uses a speech by a fictitious security consultant to exemplify some of the discursive moves frequently employed to justify pervasive surveillance regimes. But then he goes on to list a series of "techno-fallacies" reflected in the speech. One important lesson to take from this essay is the possibility of contesting what is made to appear inevitable by proponents of surveillance. Once again, individuals can interrogate and reject claims made by owners of technology. Marx calls for a critical attitude toward surveillance—one that questions neutrality, inevitability and other taken-for-granted assumptions that have helped to form some of the background beliefs about surveillance. Marx notes that "ideology" is a relevant, important concept as we examine statements made by pro-surveillance commentators like Rocky Bottoms. However, we can also address the content of Bottoms' statements directly. Bottoms is a socially positioned actor intentionally deploying claims about surveillance in order to further certain interests. Thus, his claims can (and should) be evaluated in connection with the background beliefs they reflect, and the claims should be challenged as well. Bottoms' speech can generate critical responses, just as it can mystify listeners; either outcome is possible.

The field of Surveillance Studies has also been attentive to the collective dimension of positioning as well. Lyon (2006) considers the literal meaning of "positioning" in an essay entitled, "Why where You Are Matters." Cell phone technology can locate individual cell phone users, and this technology developed because it "matters" to various constituencies where we are; they need to know, and technology is therefore directed to enabling them to find out. These constituencies include parents, law enforcement and state security forces. But there is also a secondary, figurative sense in which "where you are matters." Location with regard to social positioning and power relations "matters" as well, because it influences the likelihood that one's physical location will be monitored in the first place. Some technologies operate on social actors across the board, while others make the more vulnerable more visible (Gandy (2009) notes this phenomenon as well). And then for yet other purposes, greater visibility is an asset, but only some people can benefit. As Lyon puts it, "[c]ertain well-heeled groups are targeted for special deals and privileges; others, with poorer postcodes, are passed by" (2006: 222). Here again, Lyon depicts an

"ongoing negotiation" by actors seeking to increase visibility for their own purposes and actors who wish to escape it. This location technology has a dual valence: to find the "good subjects" and confer privilege on them, and to track others whose status suggests that they require monitoring.

The works I have just summarized represent an interest in the complexity of subjects' relationships to technologies of social control. Each commentator raises new and important questions about surveillance: How do individuals feel about it? What can they do about it? How does the state address subjects in the first place? Processes of belief formation, and the effect of the resulting beliefs on individuals' life-chances, are too complex to depict as somehow systematically determined by social processes operating outside human control or intention. What we see in the accounts mentioned above is a sustained focus on positioning in its individual and collective dimensions, and an attentiveness to the contingencies located within regimes of social control. These features of the recent surveillance literature indicate a more promising direction for critical social theory as compared to what ideology theory can offer.

Bargaining with the machine

I suggest moving away from ideology theory explanations for subjects' acceptance of apparently disadvantageous surveillance practices. In place of ideology theory, the notion of bargaining offers a descriptive advantage when applied to encounters with surveillance technologies. Here are some questions to guide and structure the application of a bargaining framework.

Who is proposing the bargain?

Is it the state, as when individuals are asked to submit to invasive airport searches in order to be safe from terror attacks? Alternatively, private actors offer to bargain, e.g., "This call may be monitored (surrender your privacy) in order to serve you better (you'll get something in return)." Additionally, bargains can be nested inside one another, so that the state proposes a bargain through legal frameworks that diminish privacy (at airports, for example), and nested within that bargain is the one a passenger strikes with a Transportation Security Administration official at the airport: bargaining occurs at both levels. This "nesting" phenomenon can help to explain why a one-on-one (state actor-individual) bargain is actually a simulacrum of the higher-level relationship with the state in which the possibility of bargaining is limited or non-existent.[4]

What is the balance of bargaining power?

Individuals are almost never bargaining at arm's length, with equal bargaining power. The state obviously has greater resources, and even in cases were a bargain is struck with private actors, freedom to refuse or to demand better terms is a fiction that is parasitic upon the (neo)liberal fiction of freedom of contract. We say that individuals are free to make any contract they like, and yet in practice one side often has much more to lose. Imagine, here, a factory owner offering low wages to a worker. The worker is "free" to refuse only if better prospects are out there. And the worker has much more to lose than the owner by refusing. By asking about the balance of bargaining power we can often discover that no meaningful choice exists, and what looks like a bargain is actually a situation where an individual concludes there is no alternative. Questioning the balance of power in bargaining recalls Habermas' use of the "ideal speech situation" in discourse ethics: in both cases, the ideal type can help to diagnose what is missing in real-life intersubjective encounters. As Marx (2006: 43) puts it,

> To be meaningful choice should imply genuine alternatives and refusal costs that are not wildly exorbitant, absent that we have trickery, double-talk, and the frequently spoiled fruit of inequitable relationships.

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[4] I am indebted to an anonymous reviewer for this formulation.

A related question here would be, "How familiar/recognized is this bargain?"[5] This question would help to illuminate the social significance of the choice being offered.

What is surrendered? What is gained?

Sometimes it is clear what an individual gives up in negotiating surveillance practices. When employees agree to unannounced workplace searches, they are clearly losing an expectation of privacy that they would otherwise have. At other times, individuals may not know the full extent of what they will surrender. Personal data might be shared via lists for marketing purposes or assembled into data profiles for the same reason. Consumers addressed by targeted marketing, for instance, might not know how information about them was obtained, what was learned secretly, or what calculus produced the decision to address them rather than someone else.

What is gained (i.e., the benefit of the bargain) is even more likely to be unclear. Monahan (2010: 23) points out that the liberty/security trade-off does not always bring greater security—and in fact, the government often explicitly disclaims any ability to keep us safe even while demanding new and greater sacrifices of liberty.

Are they getting what they think they are getting?

This question lies at the heart of the bargaining inquiry. In one sense, it is a predictive question, as when it is applied to the liberty/security trade-off. Will airport searches prevent hijackings? It is difficult to answer with certainty, but we can at least utilize statistical and anecdotal evidence to make a judgment. Another way of exploring the question is to look for hidden information that is available to one party and not the other. In the targeted marketing example cited above, customers receive product offers, which they are of course free to accept or decline. What they may not know, however, is how the marketing information is obtained and why a particular customer has been chosen to receive it. The retail giant Target allegedly utilized targeted marketing to reach pregnant women on the theory that they would be more receptive to certain sales pitches as compared to non-pregnant women, and men (Duhigg 2012). Company statisticians were able to predict through purchasing patterns which customers were likely to be pregnant. Customers had not told anyone at Target that they were pregnant, of course: the conclusion was reached through aggregating purchase data. Such background information revealing how she was chosen would be useful to the customer, and might even influence the decision to accept or reject the bargain. If she knew that the retailer had determined surreptitiously that she was pregnant, and then targeted her for product offers on that basis, she might decline the offers based on that knowledge. This is another way in which a bargaining frame illustrates the lack of a meaningful bargaining relationship: hidden information makes a bad bargain (or no bargain). With regard to state (as opposed to private) actors hiding information, Doctorow (2013) has this to say:

> If online oversharing is a public health problem, then the state's decision to harness it for its own purposes means that huge, powerful forces within government will come to depend on oversharing. It will be vital to their jobs—their pay-packets will literally depend on your inability to gauge the appropriateness of your online disclosure.

These questions reach a deeper level as well. What does it mean when an individual explicitly avows that the bargain was struck for a particular reason? "I know I'm surrendering personal information to obtain an expedited border crossing permit," one might say, "but I'm doing it willingly because I can travel much faster and more conveniently." Phrasing the bargain that way, we make it difficult to criticize. We might be tempted to say, "It's not worth it," but in fact the individual has already decided that it is. People surrender control in exchange for convenience. They surrender control to facilitate lifestyle. At the end of the bargaining inquiry, when all the questions listed above have been explored, we will sometimes reach a

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[5] I am indebted to an anonymous reviewer for this formulation.

point where no normative judgment "sticks" to criticize a bargain struck by an individual. If the bargainer is getting what is sought (convenience, privilege, desired consumer goods), the critic is hard-pressed to call the bargain "bad," "false" or "wrong." Let me be clear, though: there is still more to say even if normative criticism is foreclosed. For one thing, the consequences of the bargain can be drawn out and described. Consider the case of a homebuyer deciding to live in a gated community. The buyer may be well aware that the home purchase will entail a loss of privacy within the walls of the community, as well as a certain isolation from the world outside. Nonetheless, the buyer deems those losses worth the bargain in exchange for living in a controlled environment where visitors are screened. It is difficult to find a common metric whereby the components of the trade-off can be measured, and so we might conclude that we cannot evaluate the bargain normatively and call it good or bad. However, even here, it is possible to trace out the effects of the trade-off and then consider those effects in future policymaking. The closing-off of private space by the designing of gated residential communities contributes to civic decay, social stratification and general suspicion. These effects can be shown even though we may be unable to say that the resident made a bad bargain. And of course, social norms will bear on the individual's bargaining decisions—both in the substance of those decisions and in how the bargainer feels about them. Going against collective judgments and expectations can be difficult, and even traumatic.

Blind spots

The focus on bargaining that I recommend here comes with a tendency—that should be resisted—to think in terms of a "rational actor" who confronts each situation in a one-size-fits all manner. This tendency is problematic for several reasons. First, the collective dimension of the experience can be lost: that is, the ways in which race, class and gender can bear on opportunities and outcomes. A "rational actor" approach can cause the observer to miss these elements. Also, focusing on a rational actor can suggest that there is an objectively correct answer to a proposed bargain, when in fact the reasonableness of a bargain may be more complex than that. Seeming objectivity may in fact conceal a biased standpoint, positing false neutrality created by one more-powerful actor to benefit themselves. Mackinnon's (1987) discussion of falsely neutral legal standards is an example of such imbedded bias from another context: conceptualizing pornography as a free speech issue appears neutral but is in fact a legal framework created by men and advantageous to men.

The way around these difficulties is, first, simply to be aware of them. It is possible to make observations about the phenomena associated with a particular bargaining situation, or to notice hidden information, without making a normative judgment about what the bargainer ought to do. The phenomenological insights yielded by this framework may well be some of its most useful contributions.

Applications

DNA samples.

Marx (2006) discusses the state's "soft surveillance" that is carried out via voluntary DNA testing as part of crime-solving. Individuals can choose to cooperate with this testing or not. Similarly, programs now exist wherein athletes agree to be randomly drug-tested in order to strengthen norms of drug-free sports training. Applying the questions listed above to these examples, we see the following:

Who is proposing the bargain?

In the DNA example, it is the state; in the drug-testing case, it is often a private organization. And sometimes, state/private actions interpenetrate so that private firms operate as agents of the state.

What is the balance of power?

As with many instances of soft surveillance, the individual is at a disadvantage that is not immediately apparent. "Free to refuse" in one sense, the subject nonetheless faces certain negative consequences flowing from refusal. The burden shifts from the state to the individual, who must now explain refusal.

Suspicions arise. Everyone else is doing it. Do you have something to hide? This burden-shifting may be enough to produce a "yes" to soft surveillance rather than "no." We need to be attentive, here, to false choices, or in Marx's (2006: 43) terms, lack of "meaningful choice."

What is surrendered/what is gained?
DNA- and drug-testing involve a clear loss of privacy in the sense that something normally kept from public view has left the individual's control. But what is gained in the exchange? An individual who helps with crime-solving might gain esteem as virtuous, patriotic, community-minded (Marx 2006: 38). These gains are questionable though; the primary reward is a negative one, i.e., value seems to lie in not refusing to participate. In other words, it is more accurate to say that participants would have seemed less patriotic, etc. if they had refused to submit to the requested surrender of privacy. And of course, the full extent of the cost in privacy is likely unknown. Once the individual participants have lost control of their information, it can be shared, aggregated and analyzed ad infinitum. Like a revealed secret, there is no way for them to regain control of it.

Airport security
The image of invasive and time-consuming airport searches has become iconic in the post-9/11 world. Removing one's shoes, standing in an imaging chamber, and submitting to a pat-down are familiar, if humiliating rituals every airline traveler now expects to endure. To the extent these state practices are explained or justified, the claim is that we must "trade liberty (or privacy) for security."

Who is proposing the bargain?
It is the state, of course, that is asking airline passengers to enter into this bargain—although nested within the state's bargain is the negotiation between the airport security agent who confronts each individual traveler.

What is the balance of power?
Legal and political frameworks ensure that the state is in a stronger position here. In fact, individuals have no way of refusing to consent to airport searches. They will not be allowed past the security checkpoint or permitted to board the plane if they do not submit to a search. In fact, refusal to submit to a search might well draw additional attention from security personnel. The state's stronger bargaining position is buttressed by the law of search and seizure, which holds that constitutional protections against "unreasonable search and seizure" do not apply to airport searches, whose purpose is passenger safety rather than law enforcement.

What is surrendered/what is gained?
Once again, the loss of privacy (and dignity) is clear enough, but the gains are harder to quantify. Anecdotes about foiled terror plots might suggest that the new search protocols promote greater safety, but ultimately the government cannot guarantee that another attack will not take place (in fact, as Monahan (2010: 23) shows, the US government makes it clear that it cannot be relied upon to keep us safe). Viewed in this way, the bargain does not seem very attractive. And as Monahan shows, the phrasing of this dilemma in terms of a trade-off obscures some of the options that might have been available (e.g., promoting security and preserving liberty) (2006: 21). A distinction might be drawn between trade-offs as a rhetorical device on the one hand, and bargains as an interactive encounter on the other. Bargains might be easier to assess, and trade-offs less so.

A word on machines

The figure of the machine looms in many dystopian critiques of modern/postmodern life. Writing in 1934 of the dehumanizing effects of industrial capitalism and its associated cultural forms, Simone Weil (2001: 102) posited the machine as a terrible obstacle to thought, to liberty. She decried the

> impotence and distress of all men in face of the social machine, which has become a machine for breaking hearts and crushing spirits, a machine for manufacturing irresponsibility, stupidity, corruption, slackness, and above all, dizziness.

Weil's "machine" critique develops out of her conviction that modernity had alienated humans from love for each other and love for God. In place of Christian love, modernity ushered forth a parade of horrors that included exploitation of industrial workers, world war and genocide. These developments were vast and impersonal as well as devastating to the human spirit.

Proceeding from a very different starting-point, Deleuze and Guattari (2004) also critique the proliferation of machines. They see them actually replacing humans, populating the world:

> Everywhere it is machines—real ones, not figurative ones: machines driving other machines, machines being driven by other machines.

For Deleuze, machines are the central descriptive device in his reconception of materialism (Holland 1999). Machines do something; they are productive. Even Deleuze's written work itself, oddly enough, can be thought of as a machine (Holland 1999: 1). One hesitates to attempt to summarize here, but "social production" for Deleuze follows the "fundamental rhythms" of capitalist society and as such, operates cyclically to generate markets and consumption Holland (1999: 20). Individuals' existence unfolds against these forces of social production; people are caught up in the activity of machines. In this view, as with that of Simone Weil, the place of human agency is precarious.

Music and other cultural forms reflect and refract this vision as well. The group *Rage against the Machine* was often explicitly political in its subject matter. And in a different musical genre, Jay Farrar (1998) sings,

> All this talk about
>
> The machine and what it means.

One way to read these statements is to take them as lamentations of the dehumanizing experience of living in a world where so much is impersonal, where agency has largely been ceded to disembodied forces and processes. One can hardly dispute the truth of such complaints. At the same time, however, it is possible to incorporate notions of resistance, of contestation, into descriptions of a world of machines (or machine). It is certainly ironic to talk of "bargaining with the machine," when bargaining typically suggests interaction between humans. Moreover, bargaining presupposes choice on the part of the bargainers, and yet in much of the "machine" critique (particularly as Weil presents it), one gets the sense that the machine is irresistible, that the individual lacks any and all agency in the face of a totalizing Other. But this irony can be a productive irony. First, the traditional notion of bargaining can become meaningful by virtue of its absence. In other words, we can see how constrained subjects' choices—and their very agency—are by institutions that have become "something too vast and too complex for any one man to be able to grasp […] fully" (Weil 2001: 103). In other words, the vastness of the machine shows us that the purported bargains offered or suggested in discourse, such as "a little liberty for security" are not bargains at all. At the same time, though, we can read subjects' decisionmaking and calculation as a reimagined

bargaining that takes place despite the lack of bargaining power, despite the lack of alternatives. Individual subjects can be seen as aware of their predicament (and therefore not simply "dupes"), yet still resistant, still calculating. Thus, as a construct, "bargaining with the machine" allows us to describe individual resistance (agency) while taking account of larger forces and trends that are not within the control of individuals. As such, it is potentially illuminating as we look for new ways to describe and evaluate surveillance technologies and subjects' response to them.

Conclusion

This essay is meant to suggest a framework for thinking about encounters with surveillance technology. The frame of bargaining allows observers to focus on what subjects are experiencing in such encounters, and this focus will hopefully yield richer understanding of these encounters that have become to central to the experience of living in the 21st century. Also, we can learn from situations where there is no meaningful bargain being struck—either because a participant lacks information, or because the subject lacks bargaining power when confronting the machine. I believe that the frame is useful in both ways, and it could it could inform empirical research programs. Interview and survey research could explore individuals' attitudes about privacy in regard to data sharing, CCTV surveillance and social media use, for example. The questions I pose above could be asked in a survey to determine whether—as some have suggested—online privacy is simply not a concern for many people (Keller 2013). Survey responses could determine whether users understand what they are surrendering in exchange for social media use, and whether they care about the loss (or whether they have even read the privacy agreement at all). The resulting data could help to evaluate the kinds of bargains people make as they decide to use social media, or to enter public space that is under surveillance. In turn, analysis of this data could inform privacy law and policy development by providing a cogent and accessible framework for discussion.

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