



Dialogue | Data and the Good?

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Abstract

Surveillance studies scholars and privacy scholars have each developed sophisticated, important critiques of the existing data-driven order. But too few scholars in either tradition have put forward alternative substantive conceptions of a good digital society. This, I argue, is a crucial omission. Unless we construct new “sociotechnical imaginaries,” new understandings of the goals and aspirations digital technologies should aim to achieve, the most surveillance studies and privacy scholars can hope to accomplish is a less unjust version of the technology industry’s own vision for the future.

It is news to no one that we live in a data-driven world: tools for capturing, analyzing, and acting upon information pervade nearly all parts of individual, social, and economic life. The subject of frequent commentary, this condition has come under special scrutiny by legal scholars (especially those focusing on privacy law) and surveillance studies scholars, who—over many decades—have documented and theorized the harms these technologies threaten. And while these two groups tend to differ in focus and approach, with privacy law scholars interested primarily in how law can curtail surveillance and surveillance studies scholars interested in the broader implications of surveillance for individuals and society, their orientations toward surveillance, and toward the data-driven technologies enabling it, share at least one important feature: an aversion, or if that’s too strong, a *hesitation*, to articulate a positive vision. Few describe what a good data-driven society might be.

This is too bad, because there is little reason to believe that trends toward increasing data-drivenness could be—nor, even, should be—reversed. More data-collecting digital sensors, more sophisticated data analytics, and more automated decision-making are coming. The question is what forms these new systems will take, what effects they will have on us, and what meanings we will imbue them with. Will they make our lives better or worse? Surveillance critics admit this, implicitly if not outright, when they frame concerns about surveillance as “costs” that must be balanced against the benefits of data collection, analysis, and use. Except, perhaps, for some tech abolitionists, most privacy and surveillance scholars accept that data-driven technologies will continue to proliferate. The aim is to encourage their development along less unjust trajectories.

The problem, I want to suggest, is that critical scholars (myself included) too often stop there, identifying risks of data collection and surveillance while leaving it for others to specify the goods against which to weigh them. In practice, of course, it is the technology industry that fills this gap: the goods of data collection are whatever goods Silicon Valley imagines. Thus, many understand the upshot of constant surveillance to be more engaging social media content, more relevant advertisements, and more abundant gig economy services. Unless we introduce competing visions of a good technological future, the most we can hope for,

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the most surveillance studies and privacy law can achieve, is to realize Silicon Valley's vision—minus some of the harm.

I suspect the hesitation to put forward a positive conception of the good data-driven society has multiple origins. For privacy law scholars, an imperative against advancing substantive conceptions of the good is core to the liberal foundation upon which most (Western) legal scholarship is built. In pluralistic liberal democratic societies, people are supposed to autonomously pursue the good life as they understand it, and the law is supposed to act as a neutral arbiter when different understandings collide (Rawls 1999). In this view, law has no business telling people how to live, let alone how to live, specifically, with technology. Moreover, there is (at least in the US) a profound deference to markets as the primary engines of innovation. Privacy and surveillance scholars need not bother themselves with the work of imagining new digital futures; that's industry's job. The law's role is procedural—to create order within which everyone can freely pursue their good—and the role of legal scholarship is to help craft the best possible rules and procedures. If surveillance technologies cause harm, there should be legal safeguards to prevent it. Beyond that, however, the law should be silent.

Many surveillance studies scholars share this liberal orientation. For those who don't, especially scholars working in more radical traditions, resistance against putting forward constructive visions of a good data-driven society likely comes from elsewhere: a general distrust toward normative prescription. In some cases, such suspicion follows from the “foundational” role of Michel Foucault's work in surveillance studies (Wood 2003), which—rightly or wrongly—is often interpreted as opposing substantive normative projects (Kelly 2009). In other cases, it may stem from worries about insufficiently critical conceptions of the good reinscribing racist, colonial, or imperialist values (Couldry and Mejias 2019).

To be clear, I am not suggesting that the work of critique is finished, that we're “past” criticism and should operate in a purely constructive register moving forward. Nothing could be further from the truth. Technology is constantly evolving, our relationship with it changing, and each development threatens new injustices that scholars will need to identify and explain. Nor is this a call for “solutions.” In interdisciplinary conversations about technology and society, it is not uncommon for engineers to throw their hands up and say, “enough criticism, propose some solutions!” For example, in debates about algorithmic bias, some computer scientists have become frustrated with persistent efforts by humanists and social scientists to identify new and unexpected ways automated decision-making systems can unfairly discriminate, insisting that progress on this issue requires a pivot toward less negative and more constructive engagement. Providing a “solution,” in these contexts, means helping make the technology work as intended—perhaps enabling certain kinds of social classifications or behavioral predictions—without the unfair discrimination. And, thus, the demand for “solutions” is a demand for technology critics to help realize the goals of technology creators—minus some of the harm.

I am suggesting we contemplate new goals. In addition to diagnosing and mitigating the risks of data-driven technologies, privacy and surveillance scholars ought to contest the tech industry's vision of the technological future we are striving to achieve by offering competing visions of our own. Borrowing Sheila Jasanoff's and Sang-Hyun Kim's (2009: 120–123) phrase, we need to develop new “sociotechnical imaginaries”—i.e., new “collectively imagined forms of social life and social order,” “feasible futures,” “visions of what is good, desirable, and worth attaining for a political community” with and through technology. Of course, these proposals will also be imperfect; they too will need to be critiqued. Change, even for the better, always carries risks.

The field of surveillance studies is already well-equipped to think in this direction, because it is particularly attuned to the fact that surveillance and surveillance technologies do not merely impose constraints; in a variety of ways, as Foucault and many others since have argued, they are *productive*. For example, surveillance produces particular kinds of subjects—a lesson, Julie Cohen (2014) suggests, legal scholars should learn from surveillance scholars. “Legal theorists are uncomfortable discussing the social shaping of subjectivity,” she argues, “Engagement with Surveillance Studies could help legal scholars and

policymakers understand the ways in which heightened visibility within social media spaces and the affordances of new architectures for interaction shape emergent subjectivity and collective culture” (Cohen 2014: 92, 96).

More broadly, in her contribution to this discussion, Lisa Austin (2022) argues (following James Scott) that surveillance produces terms of “social legibility.” That is, it determines who powerful institutions “see” and how they are seen and treated. In this way, Austin claims, data-driven technologies are “world-making”—they don’t simply capture and represent a given world, but rather create the worlds they are designed to see. “We often hear talk about ‘raw data’ as though it connotes a basic ground truth about the world and data as a ‘resource’ to be allocated and used,” Austin observes, “But Scott’s (1998) analysis reminds us that practices of legibility are not about accessing what is ‘really’ there but are instead about the imposition of a representation on diverse and complex social phenomena.”

These observations about the active role surveillance plays in shaping individual subjectivity, collective culture, and the broader terms of social order reflect more generally a central insight of philosophy of technology and science and technology studies (STS): that our technologies are not merely neutral instruments we use to pursue pre-determined goals. Rather, as Langdon Winner (1986) puts it (following Wittgenstein and Marx), particular technologies generate specific “forms of life.” By “provid[ing] structure for human activity,” technologies “reshape that activity and its meaning.” “As they become woven into the texture of everyday existence, the devices, techniques, and systems we adopt shed their tool-like qualities to become part of our very humanity,” Winner (1986: 6–12) writes, “In an important sense we become the beings who work on assembly lines, who talk on telephones, who do our figuring on pocket calculators, who eat processed foods, who clean our homes with powerful chemicals.” Today, we have “become the beings” who participate in a world of pervasive digital tracking.

Yet it is important to recognize that we are *active* participants in such a world. The technologies we use “provide structure” for our activity—as Phil Agre (1994) argues, they train us to follow specific “grammars of action,” patterns of behavior that digital technologies can capture, represent, and analyze. We carry smartphones, for instance, that follow our every movement, visit websites that reveal our interests and vulnerabilities, and share details about the minutiae of our lives on social media. Were we to behave differently, following other scripts reflecting alternative grammars of action, the effects—and effectiveness—of digital surveillance would change.

I don’t emphasize this point to blame the victim. That we are active participants does not mean we are willing ones—we follow the grammars of action our digital technologies demand mostly because we are dependent on them. Smartphones, social media, and other instruments of digital surveillance are indispensable parts of our personal, professional, and social lives. Rather, I draw attention to the active role we play in these systems to emphasize our agency over them. Resistance is hard, and the effort required to change things can entice us toward technological determinism (the view that technology develops more or less autonomously along a trajectory over which we have little meaningful control). But that view is a luxury most people cannot afford, and those most impacted by surveillance—racial, sexual, religious, and other minority and marginalized groups—have developed both its most trenchant critiques and our most promising paths forward (Browne 2015; Benjamin 2019; Skinner-Thompson 2021). Moreover, as Winner (1986: 10) reminded us long ago, to embrace determinism is to let ourselves off the hook, for “the concept of determinism... does little justice to the genuine choices that arise, in both principle and practice, in the course of technical and social transformation.”

Instead of technological determinism, Winner (1986) argued that the real problem was what he called “technological somnambulism”—we could steer technology’s course, if only we weren’t asleep at the wheel. Nearly four decades on from those observations, I think people have woken up. We understand that surveillance has social, ethical, and political implications, we are alive to the harms it threatens. The problem is we lack alternative visions. If digital technologies are “world-making,” if they create specific “forms of

life,” then we should ask not only how those worlds, those forms of life, are unjust and deficient but also what other worlds, what other forms of life we want to realize.

If surveillance studies helps us understand how data-driven technologies are “world-making,” privacy scholars can help us imagine the worlds we want to make. Privacy theory focuses not only the harms of surveillance but also on the positive value of privacy—for intimacy (Rachels 1975), autonomy (Roessler 2005), equality (Allen 1988), democracy (Schwartz 1999), innovation (Cohen 2012), and much else besides. It explores privacy’s different modalities—spatial, informational, decisional (Roessler 2005); intellectual (Richards 2015); sexual (Citron 2019); and otherwise. And it traces how privacy has evolved over time in response to changing social and technological conditions (Igo 2018). While privacy law scholars have tended not to develop these insights into substantive conceptions of the good, data-driven society, they are invaluable for constructing new sociotechnical imaginaries that center “what is good, desirable, and worth attaining” rather than simply what is harmful or unjust about other people’s visions.

Indeed, some are already moving in this direction. Tech abolitionists have called for radically reimagining the meanings and purposes of digital technologies, since as Ruha Benjamin (2019: 162) writes, “Calls for abolition are never simply about bringing harmful systems to an end, but also about envisioning new ones.” Law and technology scholars have begun to chart a course toward more democratic “data relations” (Viljoen 2021). Some in surveillance studies have urged the development of “another surveillance,” perhaps a “participatory surveillance,” in which the risks and benefits of data collection “can be openly negotiated and audited” (Hong 2017: 197). Radical political theorists have outlined paths toward “digital” or “platform” socialism (Fuchs 2020; Muldoon 2022).

One may or may not find these specific proposals compelling, but they demonstrate meaningful departures from our existing sociotechnical imaginaries. They are conceptual tools for contesting Silicon Valley’s hegemonic vision, new substantive ideas about what data-driven technologies could do and mean.

References

- Agre, Philip E. 1994. Surveillance and Capture: Two Models of Privacy. *The Information Society* 10 (2): 101–127.
- Allen, Anita L. 1988. *Uneasy Access: Privacy for Women in a Free Society*. Totowa, N.J.: Rowman & Littlefield.
- Austin, Lisa. 2022. From Privacy to Social Legibility. *Surveillance & Society* 20 (3): 302–305.
- Benjamin, Ruha. 2019. *Race after Technology: Abolitionist Tools for the New Jim Code*. Medford, MA: Polity.
- Browne, Simone. 2015. *Dark Matters: On the Surveillance of Blackness*. Durham, NC: Duke University Press.
- Citron, Danielle Keats. 2019. Sexual Privacy. *Yale Law Journal* 128: 1870–1960.
- Cohen, Julie. 2012. *Configuring the Networked Self: Law, Code, and the Play of Everyday Practice*. New Haven, CT: Yale University Press.
- . 2014. Studying Law Studying Surveillance. *Surveillance & Society* 13 (1): 91–101.
- Couldry, Nick, and Ulises A. Mejias. 2019. Data Colonialism: Rethinking Big Data’s Relation to the Contemporary Subject. *Television & New Media* 20 (4): 336–349.
- Fuchs, Christian. 2020. Communicative Socialism/Digital Socialism. *TripleC: Communication, Capitalism & Critique* 18 (1): 1–31.
- Hong, Sun-ha. 2017. Criticising Surveillance and Surveillance Critique: Why Privacy and Humanism Are Necessary but Insufficient. *Surveillance & Society* 15 (2): 187–203.
- Igo, Sarah E. 2018. *The Known Citizen: A History of Privacy in Modern America*. Cambridge, MA: Harvard University Press.
- Jasanoff, Sheila, and Sang-Hyun Kim. 2009. Containing the Atom: Sociotechnical Imaginaries and Nuclear Power in the United States and South Korea. *Minerva* 47 (2): 119–146.
- Kelly, Mark G. E. 2009. *The Political Philosophy of Michel Foucault*. 1st ed. New York: Routledge.
- Muldoon, James. 2022. *Platform Socialism: How to Reclaim Our Digital Future from Big Tech*. London: Pluto Press.
- Rachels, James. 1975. Why Privacy Is Important. *Philosophy & Public Affairs* 4 (4): 323–333.
- Rawls, John. 1999. *A Theory of Justice*. Revised ed. Cambridge, MA: Belknap Press.
- Richards, Neil. 2015. *Intellectual Privacy: Rethinking Civil Liberties in the Digital Age*. Oxford, UK: Oxford University Press.
- Roessler, Beate. 2005. *The Value of Privacy*. Cambridge, UK: Polity.
- Schwartz, Paul. 1999. Privacy and Democracy in Cyberspace. *Vanderbilt Law Review* 52: 1608–1702.
- Skinner-Thompson, Scott. 2021. *Privacy at the Margins*. Cambridge, UK: Cambridge University Press.
- Viljoen, Salomé. 2021. A Relational Theory of Data Governance. *Yale Law Journal* 131 (2): 573–654.
- Winner, Langdon. 1986. *The Whale and the Reactor: A Search for Limits in an Age of High Technology*. Chicago, IL: University of Chicago Press.

Wood, David. 2003. Editorial. Foucault and Panopticism Revisited. *Surveillance & Society* 1 (3): 234-239.