

Kant's ethics in the age of online surveillance

An appeal to autonomy

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ABSTRACT

Using Michel Foucault's conception of pervasive power, the purpose of this chapter is to analyse the contemporary paradigm of online surveillance from a philosophical perspective by unpacking the power dynamics involved in online surveillance, ultimately arguing, with McKenzie Wark, that there is an asymmetry of power that puts individual persons at risk. I then turn to Martin Heidegger's notion of *Gelassenheit* as a helpful way to think through what an intentional stance towards online surveillance might look like that does not escape the paradigm but is at least conscious of its influence. Finally, I utilise Immanuel Kant's ethics and political philosophy to provide recommendations as to the appropriate ethical relationships that should exist between individual persons, governments, and corporations, ultimately arguing that respect for personal autonomy – that is, the right to choose our lives in accordance with our interests – must be at the forefront of conversations regarding the ethics of online surveillance.

KEYWORDS: data ethics, Michel Foucault, philosophy of technology, Martin Heidegger, asymmetry of information

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Introduction

A common metaphor regarding surveillance is “Big Brother” from George Orwell’s classic work, *1984*, a dystopian novel in which citizens are constantly not only being watched but also reminded of such surveillance through the ubiquitously hammered slogan, “Big Brother is watching you” (Orwell, 1950). In his 2018 book, *The Culture of Surveillance*, David Lyon asks us to move beyond such Orwellian rhetoric when examining our contemporary age of surveillance, speaking of the ways in which we willingly submit to surveillance, thinking – perhaps – that we have nothing to hide. For Lyon (2018: 4), “watching has become a way of life” to such an extent that we live in what he calls “a culture of surveillance”. Each click, tap, and scroll on our smart devices is tracked and stored in vast databases, which are then sent to algorithms tied to powerful artificial intelligence technologies that have the potential to manipulate future human behaviour. Under such a setup, one can genuinely be confused as to whether, for instance, the consideration of purchasing a product generated by an algorithm in a nudged advertisement from a recommendation engine is truly a reflection of one’s interests or, in fact, a matter of manipulation.

I begin this chapter by arguing that Michel Foucault’s conception of power might provide a helpful lens to understand the contemporary paradigm of on-line surveillance. Rather than the top-down sort of power that subjects experienced in the past from rulers, power must now be understood as “pervading the very fabric of society itself” (Foucault, 1984c: 61). Francis Bacon’s (1899) age-old dictum that knowledge is power has been heeded by corporations in understanding that information is knowledge, which thereby provides power, thus explaining their redoubled efforts toward data analytics. Upon conceptually grounding the power dynamics at work in online surveillance through tactics like data collection and analytics, I turn to McKenzie Wark’s (2019) latest work, *Capitalism is Dead*, where she provided insight into the power of information in the contemporary age, ultimately arguing that those who own and control information – Amazon and Google being obvious players, but also any institution that is putting the power of data analytics to work, including the university you may work for – are demonstrating that information may in fact be more powerful than capital itself. I then juxtapose Wark’s thesis with the work of Shoshana Zuboff (2019), who argued that we live in the age of surveillance capitalism, which undermines personal autonomy and threatens democracy itself. Whether we frame surveillance from the perspective of Big Tech or in terms of the seemingly “self-chosen” surveillance by individuals, one cannot deny that surveillance is pervasive. How, then, are we to respond in our everyday lives if we are not entirely willing to submit? We cannot, as Martin Heidegger (1969: 40) noted, “reject today’s technological world as devil’s work, nor may we destroy it”. I demonstrate that no matter how staunchly we oppose it by clinging to “dumbphones” over smartphones,

typewriters over computers, or cash over debit cards, most contemporary persons in industrialised settings still have to reckon with the ubiquity of surveillance and “dance with the devil”, as digital personal data is gathered through many of the basic institutions in modern society, including, for instance, the government, the electric company, or healthcare institutions. Using Heidegger’s philosophy as a theoretical background, and particularly his notion of *Gelassenheit*, I try to show how we can use technological devices without allowing them to manipulate us, which is the first step in approaching an intentional stance towards online surveillance.

I end the chapter by utilising Immanuel Kant’s conception of autonomy to provide an ethical lens with which to approach the age of surveillance. For Kant (2002: 51), “rational beings all stand under the law that every one of them ought to treat itself and all others never merely as [a] means, but always at the same time as [an] end in itself”. If we take Kant seriously, we ought to respect the human ability to choose our lives in accordance with our interests and not subsume others’ interests to our own without their consent. Moreover, if we treat our digital footprint – that is, the trail of clicks, taps, and scrolls – as an extension of ourselves in the vein of Marshall McLuhan (1964), then we should have a say as to who has access to that information, if we are to respect human autonomy. I conclude by examining some of Kant’s thoughts on the role government plays in ensuring respect for human autonomy and apply it to the age of surveillance, arguing that the government has an obligation to limit the manipulation of consumers through the practice of data analytics by corporations but also that individual rights to autonomy for citizens must be protected from the government itself.

Pervasive power

The most influential philosophy of power espoused in the twentieth century certainly comes from Michel Foucault, who was deeply influenced by Friedrich Nietzsche (Rosenberg & Westfall, 2018). *The Will to Power*, a collection of Nietzsche’s notes spanning from 1883 to 1888, famously ends with the unequivocal claim that “*This world is the will to power – and nothing besides! And you yourselves are also this will to power – and nothing besides! [emphasis original]*” (Nietzsche, 1967: §1067). While Foucault did not agree with all of Nietzsche’s philosophical pronouncements, he seems to have taken Nietzsche’s notion of the pervasiveness of power seriously. In commenting on its historical dynamics, Foucault juxtaposes the old versions of power that dominated premodern societies with contemporary versions of power. Whereas premodern power was exercised by rulers upon subjects, new methods of power are,

not ensured by right but by technique, not by law but by normalization,
not by punishment but by control [and entail] methods that are employed

on all levels and in forms that go beyond the state and its apparatus [emphasis added]. (Foucault, 1990: 89)

Foucault (1995: 208) warns us of power being “exercised continuously in the very foundations of society, in the subtlest possible way”. From a Foucauldian perspective, one cannot *escape* power, but one can become *more conscious* of its mechanisms and how it can affect our “acts, attitudes, and modes of everyday behavior” (Foucault, 1984c: 67). Foucault defines this activity of becoming more conscious as thought:

[Thought] is what allows one to step back from this way of acting or reacting, to present it to oneself as an object of thought and question it as to its meaning, its conditions, and its goals. Thought is freedom in relation to what one does. (Foucault, 1984a: 388)

Engaging in thought entails taking a reflective stance and thinking through how we are affected by that with which we engage with on an everyday basis.

Foucault, of course, was not talking about online surveillance in these passages: He died of complications of HIV/AIDS in 1984 before the digital age in which the culture of surveillance – to borrow Lyon’s (2018) phrase noted above – had become so pervasive (the World Wide Web was not publicly available until the early 1990s). Nevertheless, Foucault’s philosophy of power provides a fitting conceptual lens from which to understand online surveillance. Indeed, Jan Peter Bergen and Peter-Paul Verbeek (2021: 326) have argued that the appropriation of Foucault’s work on the ways in which technology has a formative influence on “the way we live, speak, think, and behave” is fitting. From a Foucauldian perspective, online surveillance must be understood as 1) embedded in various techniques; 2) pervasively normalised; and 3) a form of control. Techniques of online surveillance are polymorphous in nature. Examples of such techniques are as follows: surveillance cameras are now linked with the Internet and monitored constantly; any given action on one’s smartphone can be tracked and analysed, including the exact location of one’s device via the Global Positioning System (GPS); and various smart devices, from smartwatches to smart speakers, are continuously receiving and recording data. Surveillance has become so ubiquitous that we can regard it as “the new normal”. Take, for instance, the normalisation of smartphones noted by Lyon (2018: 85–86):

The smartphone is the embedded medium par excellence that connects users with data in everyday life. They are not just familiar, they are in many ways indispensable to contemporary life. They are used for many commercial transactions, including ticketing and online banking, as a way of being informed about breaking news, working out the ideal route for a trip, and checking what bodily symptoms might mean for personal health, among multiple other tasks.

Even those of us who have resisted adopting smartphones cannot escape the pervasiveness of online surveillance in other spheres, such as healthcare systems, governments, corporations, and utility providers that collect, coordinate, and analyse personal data regularly. McKenzie Wark (2019: 3) puts the point the following way: “These days, not just everyone but everything is tracked and monitored and turned into information”. Thus, the first two aspects of online surveillance – its polymorphous nature and its pervasive normalisation – are straightforward. Given its pervasiveness, we cannot completely escape online surveillance in its various forms.

This leads us to the third Foucauldian aspect of online surveillance, the aspect of control, which calls for the most amount of philosophical reflection. Wark (2019: 26) has brilliantly outlined online surveillance as a form of control in her book *Capitalism is Dead*, where she offers the provocative thesis that poses “the possibility that capitalism has already been rendered historical but that the period that replaces it is worse”. The worse era – *our* era – is the age in which information is “a *dominant* force of production [emphasis original]” (Wark, 2019: 46) that is exploited by “the new kind of ruling class”:

This new kind of ruling class does not appropriate a quantity of surplus value so much as exploit an asymmetry of information. It gives, sometimes even as a gift, access to the location of a piece of information for which you are searching. Or it lets you assemble your own social network. Or it lets you perform a particular financial transaction. Or it gives you coordinates on the planet and what can be found at that location. Or it will even tell you some things about your own DNA. Or it will provide a logistical infrastructure for your small business. But while you get that little piece of information, this ruling class gets all of that information in the aggregate. It exploits the asymmetry between the little you know and the aggregate it knows – an aggregate it collects based on information you were obliged to “volunteer.” (Wark, 2019: 54–55)

The asymmetry of information leads to an imbalance in terms of control: Those who have the information have the power to control those who do not have it.

While we may not want to agree with Wark that we live in a post-capitalist age, we certainly should recognise the truth in the notion that there is great power in information – a truth echoed in the oft-quoted statement from Francis Bacon (1899) that knowledge is power. Those of us who still think capitalism is alive and well might find Shoshana Zuboff’s concept of surveillance capitalism to be a more fitting description of our contemporary era. According to Zuboff (2019: 8), “surveillance capitalism unilaterally claims human experience as free raw material for translation into behavioral data”. She goes on to argue that “surveillance capitalism births a new species of power” called instrumentarianism that “knows and shapes human behavior toward others’ ends” (Zuboff, 2019: 9), which is a threat to both human

autonomy and democracy itself. Instrumentarianism can be defined as a form of power in which all entities – including human beings – are turned into mere means to ends, that is, instruments, to values or priorities above and beyond them. In the end, we are faced with what Zuboff (2019: 11) calls “a twenty-first-century Faustian compact”, in which we are forced to give up fundamental rights to privacy to access even basic resources, given the normalisation of online surveillance. While Faust struck a deal with the devil and exchanged his soul for unlimited knowledge and worldly pleasures, our “dance with the devil” entails figuring out just how much information about ourselves we are willing to share (when, that is, we are given the option) with those in power in exchange for access to convenient technological devices that make everyday life easier to navigate.

Dancing with the devil

Whether we agree with Wark or Zuboff in terms of the status of capitalism in our contemporary era, it is clear there is pervasive power in online surveillance. The question is how we can respond as individuals to retain some sense of human autonomy. The first step, at least in my estimation, begins with Herbert Marcuse’s (1964: 7) sense that “all liberation depends on the consciousness of servitude”. We must begin to recognise what we are submitting to when we click “accept cookies”, allow websites to access our location, agree to the terms and conditions of our various arrangements, or install smart devices into our homes or wear them on our bodies, to mention but a few examples of techniques linked to online surveillance. There are, however, situations in which we are not even offered the chance to provide our informed consent, which explains Zuboff’s notion that we all must engage in some type of Faustian compact. For example, if we want to exercise our right to vote in a democracy, that automatically entails sharing information with the government; similarly, if we want access to electricity, that necessitates disclosing information to the electric company. Barring taking up an existence in which one is willing to live entirely “off the grid”, everyone must, to some extent, submit to the current paradigm.

In this section, I use Heidegger’s philosophy to think through how to navigate the ubiquity of online surveillance. For Heidegger (1969: 40), “we cannot, of course, reject today’s technological world as devil’s work, nor may we destroy it”. We live in an inevitable technological age that includes some level of surveillance. Heidegger (1966: 52) argues that “it is not that the world is becoming entirely technical which is really uncanny. Far more uncanny is our being unprepared for this transformation, our inability to confront meditatively what is really dawning in this age”. Having been born in the small town of Messkirch in Germany’s Black Forest in 1889 and spending much of his life there, Heidegger thought deeply about the ways in which the

age of modern technology was changing the human relationship with things, since he witnessed first-hand how technological advances led to the shrinking of “all distances in time and space” (Heidegger, 1971: 165). Thus, even though Heidegger did not witness the rise of the digital era, his thought has been utilised as a helpful theoretical lens to understand the ways in which the Internet changes our relationship to the world (Carabantes, 2021).

From a Heideggerian perspective, the question is not whether to submit to any and all surveillance for most humans living in the contemporary era, but rather, “what are some ways in which we can resist surveillance and maintain elements of autonomy?” Heidegger (1977: 4) argued that “everywhere we remain unfree and chained to technology, whether we passionately affirm or deny it” and warned of the dangers involved when “the laboring animal is left to the giddy whirl of its products so that it may tear itself to pieces and annihilate itself in empty nothingness” (Heidegger, 1973: 87). Heidegger was worried that the seemingly insatiable drives that persons demonstrate in the age of modern technology for satisfying material pleasures instantaneously – exemplified so clearly, for instance, in Amazon’s same-day shipping or on-demand streaming services – is a sign of nihilism. His philosophy can help get us to step back and reflect on whether a life dedicated to efficiency, productivity, ephemeral entertainment, and material possessions is really a life worth living.

Having spent much of his career elucidating the complexities of Heidegger’s philosophy, the contemporary American philosopher Richard Polt has tried to demonstrate alternative approaches to life wherein one does not completely disavow technology but is instead thoughtful about how one integrates technological devices into one’s everyday life. Polt (2018: 75) argued that “the most desirable kinds of technology may be those that leave room for the non-technological – techniques and devices of limited scope that do not presume to intrude on every aspect of our lives”. In *The Typewriter Revolution*, for instance, Polt outlined how individuals can resist the over-digitisation of our lives by writing with a typewriter rather than a computer. The work begins with the following manifesto:

We assert our right to resist the Paradigm, to rebel against the Information Regime, to escape the Data Stream. We strike a blow for self-reliance, privacy, and coherence against dependency, surveillance, and disintegration [...]. We choose the real over representation, the physical over the digital, the durable over the unsustainable, the self-sufficient over the efficient. (Polt, 2015: 6)

Polt (2015: 352) viewed the utilisation of typewriters as a revolt against “what the world has already become: a digital domain under automated surveillance”. Other ways to resist online surveillance explicitly – to some extent or another –include choosing to listen to music on vinyl record players rather than smart speakers, reading a physical book rather than an e-book, using

a mobile phone that is not a smartphone, or taking Polaroid pictures rather than digital ones. Such intentional stances explicitly repudiate the power of data analytics by detaching the experience from the ubiquitously surveilled online realm. Most of us cannot always choose these options. For instance, as a professor, I'm necessarily connected to the Internet by checking and responding to student e-mails, working in my university's learning management system, and so on. However, in certain aspects of our lives, we do have some choice: My choice to have a non-smartphone and listen to vinyl records in my personal life are examples.

Notice that none of these options entail a complete dismissal of technology but rather an intentional stance toward technology. Heidegger (1966: 54) discusses such a stance as follows:

We can use technical devices, and yet with proper use also keep ourselves so free of them, that we may let go of them any time. We can use technical devices as they ought to be used, and also let them alone as something which does not affect our inner and real core. We can affirm the unavoidable use of technical devices, and also deny them the right to dominate us, and so to warp, confuse, and lay waste our nature.

Heidegger calls this comportment towards things *Gelassenheit* [letting be], which entails the same sort of approach that Foucault mentioned in his definition of thought noted above, that is, a “freedom in relation to what one does” (Foucault, 1984a: 388). Indeed, Heidegger (2010: 149) sees *Gelassenheit* and freedom as inherently linked and states, “as soon as we are capable of [...] letting something be in that into which – as into its own essence – it is let, then we are truly free”. At one point, Heidegger (1998b) actually defines freedom as *Gelassenheit*. When applied to technology and online surveillance, *Gelassenheit* entails a freedom *from* being manipulated and freedom *to* enact one's own possibilities that have been chosen by oneself. When I pull out an old vinyl record to play, for example, I can listen to the music I want to hear without worrying about my preferences being stored in a database so that a recommendation engine can suggest a new song in the future (Rentmeester, 2022b). Thus, an element of freedom is retained without having to worry about that experience being filed away and used in the future to manipulate my behaviour.

In his magnum opus, *Being and Time*, Heidegger (1962: 312) emphasises the importance of choosing one's own life and not getting “carried along” by others. His term *Eigentlichkeit* [authenticity] refers to taking ownership of our lives and not allowing ourselves to blindly submit to the interests of others. As Thomas Sheehan (2015: 262n49) notes, *Gelassenheit* “is the later parallel of the earlier ‘authenticity’” [*Eigentlichkeit*]. Thus, to some extent, Heidegger shows an interest in what philosophers call autonomy, which is typically understood as the right to choose one's life in accordance with one's interests. Importantly, enacting Heidegger's notion of *Eigentlichkeit* does not

entail a rejection of social norms that have pervaded society through normalisation (Burgess & Rentmeester, 2015). When applied to online surveillance, it is not a matter of trying to completely cut ourselves off from society in some sort of Luddite-inspired rebellion. Instead, a Heideggerian-inspired approach to online surveillance based in *Eigentlichkeit* is one in which we “choose to choose” (Heidegger, 1962: 314) our level of comfort when given an option of submitting to online surveillance. For some of us, this may entail seeking alternative, non-digitised technologies that sacrifice some level of convenience in order to retain a greater level of privacy, as Polt (2015) outlined so well in *The Typewriter Revolution*.

Notably, Heidegger does not understand this notion of choosing to choose as related to any sort of ethical stance. It’s not as if those who blindly submit to online surveillance are somehow morally “worse” than those who practice more diligence. Heidegger (1998a) insists that his interest is in ontology (the study of being), not ethics. This makes his thought only so helpful in thinking through the issue of online surveillance, as there are clearly ethical implications involved in the pervasive power of this practice. I think we should pay heed to Nietzsche’s (1967: §244) claim that “every high degree of power involves *freedom* from good and evil [emphasis original]”. Thinking through the power dynamics involved in the asymmetry of information used as a form of control noted by Wark (2019), and discussed above, brings us to the realm of ethics, as those who control the information may be tempted to operate at a level that Nietzsche (1966) would refer to as “beyond good and evil” and thus leverage their power advantage to exploit humans by manipulating human behaviour. Zuboff (2019: 346) crystallises the ethical situation by arguing that “*an information civilization shaped by surveillance capitalism will thrive at the expense of human nature and threatens to cost us our humanity* [emphasis original]”. Where then, should we turn to think through this new ethical terrain? I think the most obvious answer to this question lies in the philosophy of Immanuel Kant, who made respecting humanity [*Menschlichkeit*] the core of his ethical system.

Heeding humanity

Like Foucault and Heidegger, Kant lived long before the digital information age and indeed lived much more sheltered a life than either of them. He was born and died in Königsberg, Prussia, and he never ventured far beyond that city’s walls. Having lived from 1724 to 1804, Kant died 40 years before the invention of the telegraph and thus would have never dreamt of the current ethical challenges we face in the global and digital information age. Nevertheless, in *Groundwork for the Metaphysics of Morals*, Kant (2002: 7–8) engaged in “the search for and establishment of the supreme principle of morality”, which he called “the categorical imperative” and argued that “from this one

imperative all imperatives of duty can be derived” (Kant, 2002: 37). Thus, any ethical question as to what obligations we have to one another as rational beings – our duties to each other who fall in the category of rational beings – can be approached from the perspective of Kant’s categorical imperative, including questions of online surveillance. Indeed, Richard Herschel and Virginia Miori (2017: 34) have argued that “Big Data is problematic for Kantian beliefs because the actions associated with Big Data challenge the rights and fair treatment of the individual”.

Kant argues that there are two types of entities in the world: things and persons. Whereas things can be assigned a price and treated as a mere means to an end, persons have autonomy, which is “the ground of the dignity of the human and of every rational nature” (Kant, 2002: 54). The word “autonomy” stems from the ancient Greek word *autonomos*, a name assigned to political communities that were self-governed or independent instead of being under the governance of another state (*auto* means “self” and *nomos* means “law”). Kant was the first philosopher to apply the concept of autonomy to individuals in emphasising the moral importance of respecting a person’s ability to choose one’s life in accordance with one’s interests. In fact, his self-proclaimed motto of the Enlightenment was “*Sapere aude!* Have the courage to use your own reason!” (Kant, 1963: 3). Because of our ability to give ourselves laws and live in accordance with them, Kant (2002: 46) argued that “*rational nature exists as [an] end in itself* [emphasis original]”, which prompts him to provide what has come to be called the humanity formulation of the categorical imperative: “Act so that you use humanity, as much in your own person as in the person of every other, always at the same time as [an] end and never merely as [a] means” (Kant, 2002: 47). Essentially, this formulation of the categorical imperative tells us that it is wrong to treat persons as mere things to be manipulated to serve our own interests; to do so is to disrespect human nature, which he referred to as our humanity [*Menschlichkeit*].

The Kant scholar Martin Schönfeld provides a helpful analysis of the humanity formulation of the categorical imperative by interpreting it as both a description of what it means to *be* human and a prescription as to how we ought to treat humans:

We ought to treat humans as ends because they really are ends. That is to say, humans are self-directed, goal-oriented, and highly self-determined living beings, compared to other species on the planet. In comparison, humans are the best embodiment of autonomy. No other species enjoys the degree of freedom of action we do. In this sense, humans are ends. (Schönfeld, 2010: 10)

Kant’s understanding that the human capacity to self-determine our lives has moral implications as to how to treat them is a departure from a common theme in Western philosophy from the time of David Hume, one of his prominent

predecessors. Since Hume, many philosophers in the Western tradition have been influenced by what is commonly referred to as “Hume’s guillotine”, that is, the claim that we need to separate statements about the way the world is from the way the world ought to be and that descriptive claims have no bearing on prescriptive claims. Hume (2000: 300) argued that, as compared to *is* or *is not*, “*ought* or *ought not*, expresses some new relation or affirmation” and thus it is “inconceivable how this new relation can be a deduction from [*is* or *is not*], which are entirely different from it [emphasis original]”. While Kant (2004:10) famously credited Hume for awakening him from his “dogmatic slumber” – thus acknowledging Hume’s influence on his thought – he did not agree with the proposition that the way the world is has no bearing on the way the world ought to be as espoused in Hume’s guillotine, since he clearly thought that the fact that humans have a rational nature automatically entailed a moral obligation to respect it. This is why it makes perfect sense to Kant (1963: 7) to speak, for instance, of “crimes against human nature”.

In applying Kant’s ethics to online surveillance, the first question that must be addressed is what we mean by the word “person”. Kant (2002) argued that any rational entity is a person. He explicitly ties rationality to the ability to give oneself laws and act in accordance with them; thus, you and I are persons, but Kant (1963: 86) also explicitly labelled a state as “a moral person”. From a Kantian lens, this means that individuals have an obligation to respect each other’s autonomy but also that the state has an obligation to respect the autonomy of its citizens, and vice versa. What other entities might qualify as a person? Noam Chomsky (2012: 41) noted that many states “broaden the category of persons to include corporate entities, which now have rights way beyond human beings”, and he considered corporate personhood a “gross distortion [of] the concept of person” (Chomsky, 2012: 46). It is beyond the scope of this chapter to elaborate on whether Chomsky is right, but we can certainly entertain the notion that corporations like Google and Amazon are persons, at least under Kant’s definition, since they are rational entities in that they have the ability to give themselves laws and act in accordance with them. Although it is human persons making decisions in a corporate entity, those decisions are made on behalf of the corporation and in accordance with its overall interests, as determined by stakeholders. Thus, the corporation functions as a person in a similar fashion as a government acts as a person in the Kantian framework. In her commentary on the instrumental power of online surveillance, Zuboff (2019: 17) warned of human beings becoming “the objects of a technologically advanced and increasingly inescapable raw-material-extraction operation” through online surveillance. In Kantian language, the risk is that individual persons are treated as mere means by corporations for the sake of profit, or by governments for the sake of control.

Before we can navigate that ethical terrain, we need to get some clarity as to what it means to be an individual person in the digital age. In his influen-

tial 1964 book, *Understanding Media*, Marshall McLuhan (1964: 7) argued that “the personal and social consequences of any medium – that is, of any extension of ourselves – result from the new scale that is introduced into our affairs by each extension of ourselves, or by any new technology”. Under a McLuhanian conception, we can understand our digital footprint – that is, the trail of data created by any device we use that is tied to the Internet – as an extension of ourselves. McLuhan (1964: 4) noted that “whether the extension of consciousness, so long sought by advertisers for specific products, will be ‘a good thing’ is a question that admits of a wide solution”. There are, of course, benefits to the digital information age. For example, biometric data ensures a greater level of accuracy in terms of authenticating persons, which can prove beneficial in the realms of security and criminal justice. Real-time data analytics tied to learning management systems in the realm of academia provide faculty members like myself valuable information to improve student academic performance. We could proliferate many more examples of the benefits of data analytics and online surveillance techniques. At the same time, however, there are risks involved in these techniques when they are pushed to the extreme, due to the asymmetrical information and thus asymmetrical power dynamic involved; indeed, McLuhan (1964: 68) recognised that “once we have surrendered our senses and nervous systems to the private manipulation of those who would try to benefit from taking a lease on our eyes and ears and nerves, we don’t really have any rights left”. There are obvious risks not only when the wrong people get access to information, as in data breaches in which things do not go as planned, but also when the system *is* functioning as planned, since there is potential that corporations or governments will exploit the asymmetry of power noted by Wark (2019) and thus disrespect fundamental human rights.

Autonomous ends

The central question from a Kantian perspective is whether persons are being treated as ends in themselves, thereby respecting their autonomy and heeding their humanity, or whether they are being treated as mere means and thus being exploited. This question requires philosophical reflection regarding the relationships between 1) individual persons and governments, 2) individual persons and corporations, and 3) governments and corporations. To close this chapter, I comment briefly on these three types of relationships.

Regarding relationships between individual persons and governments, Kant’s (1963: 7) claim that “the touchstone of everything that can be concluded as a law for a people lies in the question whether the people could have imposed such a law on itself” is highly relevant. He believed that “men work themselves gradually out of barbarity if only intentional artifices are not made to hold them in it” (Kant, 1963: 9) and argued explicitly that the government

should aspire “to treat men [...] in accordance with their dignity” (Kant, 1963: 10). One way to alleviate the potential of exploitation of power on the part of the government towards its citizens is to ensure that individual citizens have a genuine voice regarding which laws ought to govern the country. When government bodies pass legislation without the consent of their citizens, we are right to be suspicious of whether this fundamental principle of respecting human dignity is being put at risk. In my home country of the US, the federal government rapidly passed The Patriot Act a mere 45 days after the terrorist attack on 11 September 2001 in the name of national security, a law that heavily expanded governmental authority to utilise online surveillance on its citizens. In commenting on this, Chomsky (2002: para. 32) has argued:

[The American government used] this opportunity to try to protect state power from public scrutiny, [which is] part of trying to make the public more obedient and submissive [...]. They would like more control over people, more surveillance, more obedience, more fear, general marginalization. [...] The way you can get away with that [is by ...] ram[ming] through policies you know the public is opposed to.

If we apply Kant’s ethics to this situation, it is clear that the American government’s unilateral passing of The Patriot Act in a time of crisis without input from the public is unethical, as it does not respect the autonomy of its citizens, especially since the law entailed increasing the power asymmetry between the government and its citizens in favour of the government. As a general Kantian rule of thumb, the state has an obligation to respect the autonomy of its citizens and allow them to choose their lives in accordance with their interests, provided those interests do not place other citizens in danger. While policies can be put in place to limit autonomy given certain contexts (e.g., implementing mask mandates during a pandemic) such policies should be guided by public discourse and not unilaterally implemented by the government, if we are truly respecting individual autonomy.

Regarding the second relationship between individual persons and corporations, the most ethically problematic aspect from a Kantian perspective, to my mind at least, is the potential of behavioural manipulation that Zuboff (2019) outlined, noted above. While I am explicitly trying to move beyond the Orwellian understanding of surveillance in this chapter, we should be reminded of Orwell’s (1950: 220) warning of the power “in tearing human minds to pieces and putting them together again in new shapes of your own choosing”. In speaking of human beings, Kant (1963: 141) once said that “we are dealing with beings that act freely, to whom, it is true, what they ought to do may be dictated in advance, but of whom it may not be predicted what they will do”. The normalisation of data collection tied to data analytics has the capability of erasing some of the surprise elements involved in predicting future human behaviour noted by Kant, as the pervasiveness of

online surveillance allows corporations access not only to persons' preferences but to many of their everyday behaviours. Corporations can then use that information to influence future behaviour so that it aligns with their corporate interests through artificial intelligence-driven algorithms, such as recommendation engines. We can understand these as acts of digital nudging (Weinmann et al., 2016). Richard Thaler, who won the Nobel Memorial Prize in Economic Sciences in 2017 for his work in behavioural economics, argued that nudging helps people make better decisions without forcing certain outcomes upon anyone (Thaler et al., 2010). If individuals are simply presented with personalised options based on their past behaviour collected and analysed by the corporation-approved algorithm, we can situate this as an ethical act, since the corporation is still respecting the autonomy of the individual. There is, however, the potential that a corporation may provide information to an individual to trick them into thinking they are making an autonomous choice, exploiting a tendency towards fallacious reasoning that it has discovered through behavioural analytics; this would clearly be an unethical act. We can understand such tactics as acts of interpellation, which Louis Althusser (1971) defined as acts in which individuals are tricked into thinking that they are acting upon their own interests but in fact are being manipulated to serve the interests of others. I have argued that direct-to-consumer pharmaceutical advertising practices in the US already include acts of interpellation that undermine the autonomy of individuals, particularly through their use of fallacious reasoning techniques, including, for example, the common technique of showcasing positive visual cues while verbalising risks and side effects, thus exploiting the human tendency to focus on the visual over the verbal when the content is discordant (Rentmeester, 2022a). If online surveillance techniques on the part of corporations lead to acts of interpellation upon consumers, corporations are treating individuals as mere means to ends and thus disrespecting human dignity.

Regarding the relationship between governments and corporations, it is clear that governmental regulation varies widely from country to country. While my home country of the US still operates on somewhat of an "anything goes" or "wild, wild west" sort of model, the European Union's passing of the General Data Protection Regulation (GDPR) in 2018 has been shown to have "successfully met its objections of strengthening the protection of the individual's right to personal data protection" (Kuner et al., 2021: 9). The US has been famously labelled a corporatocracy by Jeffrey Sachs (2012), who examined the problematic ethical implications of the undue influence of corporate power on government to the detriment of its citizens. If we are to distinguish citizens, corporations, and governments as distinct persons – at least in the Kantian sense – and keep in mind the asymmetry of power between corporations and citizens, as well as between governments and citizens, it is clear that the government must play some role in regulating

the avenues that corporations can utilise via online surveillance to exploit its citizens, especially given the pervasive power of this practice noted above. Kant (1963: 128) argued that “the rights of men must be held sacred, however much sacrifice it may cost the ruling power”. The most basic right of humans from a Kantian perspective is the right to autonomy since it is tied to human nature. Basic principles in the GDPR that minimally reflect a respect for the right to autonomy include mandating corporations to 1) ask permission and gain consent for the collection and use of personal data; 2) design systems with an eye towards privacy and security; and 3) only collect data necessary to the contractual relationship. A societal setup that does not enact any of these protocols, such as the setup we currently have in the US, allows for too much potential risk to be placed upon individual persons by corporations, given the power asymmetry. Thus, the government has a responsibility to enact such measures upon corporations if it is truly respecting the right to autonomy of its individual citizens.

Conclusion

Using various figures in the history of philosophy, most prominently Foucault, Heidegger, and Kant, I have tried to think through the pervasive power involved in online surveillance, how individuals can respond to but not escape such power through an intentional stance towards it, and what sorts of ethical obligations exist between individual persons, governments, and corporations given that power, if we are to respect the autonomy of persons. Through Foucault, I have argued that online surveillance is embedded in various techniques, pervasively normalised, and is used as a form of control. I have utilised contemporary thinkers, most prominently McKenzie Wark, Shoshana Zuboff, Richard Polt, and Noam Chomsky, to bolster my analysis of some of the power structures that exist between persons in the digital age and the risks involved when those power dynamics are asymmetrical. Through Heidegger, I have argued that his notions of *Gelassenheit* and *Eigentlichkeit* offer a means for individuals to take an intentional stance toward technological devices, at least in some contexts where such a stance is an option. Finally, through Kant, I have argued that his autonomy formulation of the categorical imperative proves helpful in thinking through the basic rights that must be respected for persons in order to respect their autonomy.

I think some of the needed discussion that comes from this analysis should pose genuine questions in the realm of political and corporate policies that need to be taken into consideration and likely adjusted if we are to protect the right to autonomy of persons. Ideally, all relevant stakeholders would have a voice in those discussions, with a particular emphasis on respecting those who have the least power in the relationship and thus are most vulnerable. For those of us who live in places where the power structure is already deeply

imbalanced in favour of the government and of corporations, and against the individual person, I think the best advice is to practice diligence in terms of being conscious of the risk involved in willingly submitting to surveillance techniques. In that vein, I end with a quote from Foucault (1984b: 374), who states, “at every moment, step by step, one must confront what one is thinking and saying with what one is doing, with what one is”.

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