

Critical Theory in *The Age of Surveillance Capitalism*: How to Regulate the Production and Use of Personal Information in the Digital Age

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SHOSHANA ZUBOFF. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. New York: Public Affairs, 2019.

The Age of Surveillance Capitalism is a landmark text for many reasons (Zuboff 2019). To begin with, it is driven by the highest theoretical ambition put to the service of enlightening the general public about the fundamental threats to our freedom and dignity represented by the unprecedented and unaccountable concentrations of knowledge and power in the hands of a few capitalists. Many readers will be aware of the context in which these broad changes have happened—namely, the alliance between digital and social media companies and national security agencies formed after 9/11. They will also have heard of the scandals that have sporadically burgeoned at the surface of the public’s attention, like the use of personal data to derive voting predictions by Cambridge Analytica, whose practices, as Shoshana Zuboff (2019) reveals, were not very different from the daily operation of the more established “surveillance capitalist” companies. But reading this book makes us understand that few of us are aware of the nature and scale of the operations through which such accumulation of power/knowledge operates and its effects on our freedom.

CRITICAL THEORY IN THE AGE OF SURVEILLANCE CAPITALISM

To describe these processes, Zuboff coins a series of new concepts—uncontract, behavioral surplus, predictive markets, division of learning, shadow texts—which are systematically organized into a novel theory of value extraction and distribution in the new (“surveillance”) phase of contemporary capitalism. These new concepts are abstract on purpose, as the new vocabulary she introduces helps us move away from

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the misleading “pre-notions,” as Emile Durkheim would have called them, that cage us into docile acceptance of the “free” goods that digital giants are supposedly serving us out of altruism. Think of the Google searches we run every day: we feel in debt to this company that offers us such a valuable “free” service. Zuboff shows us the very high price we in fact “agree” to pay for that service. Indeed, we give away our privacy to Google, and not just to Google, as Google makes a huge profit by selling such a wealth of behavioral data to many other agencies and companies that analyze and use our data to “fudge” our future behaviors.

Zuboff claims that we collectively miss this truth because our experience of the digital world is fragmented and marked by a process of alienation. Like the twentieth-century workers who were distanced from the knowledge and control of the end product of their labor by the segmentation of production chains across many factories, we now are distanced from the knowledge of how our “information” is being used to produce value today because of the firewalls that digital privacy giants erect between our experience of the digital world and their use of that experience. Until we read this book, most of us would not know precisely how companies use the information extracted from the searches we run, the ads we click on, the cookies we leave behind our explorations, although we suspect that more than what we would like to be shared is in fact sold by surveillance capitalists to a wide range of private multinational companies, political parties, and domestic and foreign governments.

Changing the vocabulary through which we understand these processes, distancing ourselves from the pre-notions, and seeing the whole chain of production and accumulation of capital and money in surveillance capitalism constitutes the first steps toward enlightenment. Then, we hope we can liberate ourselves from surveillance capitalists’ power. Or can we? Joining a long line of works in critical theory, from Karl Marx’s *Capital* to Hannah Arendt’s *Imperialism*, Zuboff claims that she produces theory to put us, her readers, on a path toward emancipation from, and resistance against, alienation. Critical theorists generally assume that abstract and holistic thinking can be emancipatory.

PRODUCING THEORY, AND EMOTIONS, TO CHANGE THE WORLD

At the same time, theory without empathy inescapably fails to move readers into action. After studying the Googles, Amazons, and Facebooks of the world for so long, it would be puzzling if Zuboff did not understand that, to have impact, cognitive content needs to also play on emotions and affects. The range of emotions elicited throughout the (long) reading journey may be precisely what differentiates this book from many more abstract or dense theoretical essays and also what explains its success. The reader experiences alternatively bewilderment, shock, anger as well as empathy, a sense of intimacy with the author’s experience, and a desire to exert one’s agency and freedom by joining the march she has started.

In fact, Zuboff re-humanizes how the production of emotions and emotional solidarity is supposed to work in cultural exchanges. Whereas surveillance capitalists have turned emotions into behavioral data, whose algorithmic manipulation is based

on the absolute boundary between the observed and the observer, the reader can confront her or his emotions with that of the author. Zuboff abolishes the boundary between author and reader by sharing her own emotions with the reader, revealing personal stories based on her own experience and mixing them with interviews or stories from journal articles. For instance, she tells us about seeing her house destroyed by fire and what she felt at that moment about the loss of privacy it meant. She also tells us how she felt impressed and, at the same time, dismayed by the charisma of important psychology professors she met as a young Harvard graduate student: especially B. F. Skinner, whose theory was so foundational for the behavioral surplus extraction attempts performed by early digital capitalists. Her fight to emancipate herself from behaviorist capitalism is not just abstract: it is rooted in a singular personal story, which she offers to share with us.

So in addition to providing a novel abstract theory of value creation, these biographical vignettes turn the experience of solitary reading into something close to a private conversation, which may be why her calls to action may be so compelling. They provide readers with the necessary emotional apparatus to sustain a prolonged engagement with the issue, with the goal of changing how surveillance capitalism works. But does her examination provide precise calls to action?

A CALL TO ACTION, NOT A POLITICAL PROGRAM

Zuboff is interested in describing the holistic logic of the new political system—which she calls “instrumentarianism” to differentiate it from “totalitarianism,” described and denounced by Hanna Arendt—which is associated with the rise of surveillance capitalism: a political system in which surveillance capitalists disburse huge sums to lobby the US government not to pass any regulation that would curtail their freedom to extract, analyze, store, sell, and nudge our behaviors in the digital world and increasingly in the physical (inter-connected) world. To convince us that “Expensive is Free,” to paraphrase George Orwell’s ([1949] 2004) dystopian novel *1984*, in which Big Brother declared that “War is Peace,” “Freedom is Slavery,” or “Ignorance is Strength,” digital capitalists spend lavishly on lobbying firms involved in convincing the US government and its allies that there is no alternative to letting them access our data and share it with the US national security agencies and their allies.

In contrast, Zuboff repeatedly calls for more regulation. But she does not tell us which law we should think of reforming first, in which direction, and in which country. The implicit assumption is that the regulation of surveillance capitalism should be done first in the United States, although she hints from time to time that the new directives adopted by the European Union to protect data privacy in its territory may be promising if extended worldwide. Still, even on this issue, she remains quite elliptic and non-programmatic. The role of law in the new mode of value extraction is thematized but not completely reconceptualized compared to other recent contributions on the transformation of contemporary capitalism (Pasquale 2015; Pistor 2019). For readers who are interested in law, in general, and contract law, in particular, or in the operation of law in

markets, this text provides many interesting puzzles that can then be taken by more policy-oriented thinkers, but it does not propose any concrete policy prescriptions out of the many detailed case studies showing how law has participated in the broad erosion of our freedom since 9/11 and the rise of surveillance capitalism.

Take the role of patent agencies in establishing the legitimacy and legality of Google's proprietary claims on certain technologies that are central in the management of our private information. Were these claims really acceptable from the legal point of view? Until a court assesses this question, one may never know. In the absence of court challenges, Zuboff's (2019, 77–80) description of the early innovative use of personal consumer information for advertisement purposes, which Google patented in 2003, provides a good case to think about the eligibility of broad patent claims in the digital era. In effect, as she describes, Google asked the patent agency to give it proprietary rights on technologies to obtain and process "information" from search and browsing histories, cookies placed on our computers, psychographics constructed based on our past searches, as well as other sources of information obtained by other means, like locations sent by our cell phones and, later, connected devices placed in our home. Did this "targeted advertising patent" not assume the absence of rights of the consumers—rights that should otherwise be protected in constitutional documents and international conventions? The legality of such patents—from the human rights and privacy rights perspective—thus seems dubious at best, scandalous at most. When a domestic patent agency grants to a private company the conceptual ownership of a technical mechanism that assumes the absence of consumer rights, it raises a classical issue of conflicts of laws: then, technical agencies produce law that contradicts broader legal norms enshrined in more general documents like constitutions or international treaties.

In another telling example, Zuboff's text raises interrogation about the apparent legality of market devices such as "contracts"—which she calls "uncontracts"—like the data privacy disclosure "agreements" that we (web users) are routinely asked to "sign" (electronically) in conditions that are ridiculous when compared to how a contract should really be agreed upon. Indeed, most of the time, we "sign" these documents because the website tells us that otherwise it will malfunction or that we shall otherwise read ten pages of incomprehensible legal text without being given the opportunity to obtain legal advice. And, in fact, she shows that many times these "contracts" just do not specify certain uses of our data, or employ a language that intentionally obscures those uses, or fail to attach appendixes that would show the extent to which our data is being shared by the company with a myriad of buyers.

Whether the new regulations adopted by the European Union and supposedly extended globally by surveillance capitalists will change the situation is an empirical question that the author leaves open, like many other questions she raises about specific legal changes that she analyses. Again, the merit of Zuboff's analysis does not lie in the formulation of new policy proposals but, rather, in providing a new vocabulary (like the "uncontract") that allows us to distance ourselves from wrongful pre-notions (like the idea that these apparently legal documents operate in the classical manner of a "contract"). Her book does not seek to convince legal scholars interested in issues of privacy protection and freedom of speech to endorse specific policy proposals but, instead, to

help them frame the broader question of how our freedom and dignity is protected in the age of surveillance capitalism.

CONCLUSION

Lastly, I would like to underline one key contribution of this book that may be overlooked: its contribution to the intellectual history of market governance and neoliberalism. We often experience the present association between the rise of the digital age and the reinforcement of the neoliberal inspiration of the governance of markets as disruptive, unexplainable, and without clear historical roots. For most of us, the digital economy was supposed to bring a more cohesive, inclusive, and redistributive global capitalism. Twenty years after its advent, the unmatched concentration of wealth among the owners of capital and the end of labor protection for all those modern-day workers who operate the machines of Amazon and Bitcoin mining companies seems like an unexpected nightmare that no one wanted or predicted.

It seems as if neoliberalism came to surveillance capitalism as an afterthought, as a serendipitous outcome whose origins may be found in the practical operations of the workplace rather than in the intellectual master plan of a long chain of thinkers. The stern neoliberal economists inspired by the writings of Friedrich Hayek, who denounced totalitarianism, great plans, and the redistributive welfare state for years, seem to bear no responsibility for the happy marriage of behavioral extractive industries and neoliberalism (Slobodian 2018).

Not at all, claims Zuboff, who devotes almost hundred pages to the figure of B. F. Skinner, whose writings, she shows, entertain a deep affinity with the Hayekian project of creating automated market outcomes protected by rigid laws, if not of nature and of societies. To this extent, this text also provides a formidable contribution to intellectual history, by exploring the continuity in the philosophical writings between Skinner and the later behavioral psychologists, behavioral economists, and key data scientists/digital-age-gurus involved in the development of start-ups and companies responsible for the design of new geo-localization or emotion-management technologies, which were rapidly swallowed up by Google, Facebook, and YouTube—if they were not incubated in their own dark bellies.

Zuboff thus shows how the evolution of a science of behavior put to the service of neoliberal societal control and economic maximization of gains was key to the creation of new global markets where behavioral data were exchanged by firms that used such data to further extract new data and fudge market behavior to the service of market predictability and profit. Neoliberalism, therefore, was not grafted onto the digital project afterward but was actually at its very intellectual origins. This is a bold thesis, which also opens new directions for those interested in rewriting a global history of neoliberalism.

REFERENCES

- Orwell, George. (1949) 2004. *Nineteen Eighty Four*. New York: Penguin Classics.
 Pasquale, Frank. 2015. *The Black Box Society*. Cambridge, MA: Harvard University Press.

- Pistor, Katharina. 2019. *The Code of Capital: How the Law Creates Wealth and Inequality*. Princeton, NJ: Princeton University Press.
- Slobodian, Quinn. 2018. *Globalists: The End of Empire and the Birth of Neoliberalism*. Cambridge, MA: Harvard University Press.
- Zuboff, Shoshana. 2019. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. New York: Public Affairs.