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What is Privacy? The Threat of Surveillance and Blackmail in the 21st Century

Harrison S. Ruprecht

The College of Wooster, hruprecht17@wooster.edu

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**WHAT IS PRIVACY?
THE THREAT OF SURVEILLANCE AND BLACKMAIL IN THE 21ST
CENTURY**

BY SKYLAR RUPRECHT

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF SENIOR
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ADVISOR: JOHN RUDISILL

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Abstract

In an interview published in *Wired* magazine on November 12, 2013, Steven Levy asked Bill Gates, in virtue of recent NSA revelations, “What is the proper balance of surveillance and security, and where do we go from here?”¹ Gates responded, “Historically, privacy was almost implicit, because it was hard to find and gather information. But in the digital world, whether it's digital cameras or satellites or just what you click on, we need to have more explicit rules - not just for governments but for private companies.”² In many ways Gates’ thought anticipates my project. In the pages to follow, I will outline how, under current conditions, the rise of mass data collection will give way to mass blackmail of private citizens per ideas put forth by Bernard Mandeville, Daniel Ellsberg, and others. Additionally, I will show how, even if this mass blackmail campaign improves the overall economy as well as the behavior of the vast majority of actors, it is still harmful in virtue of its explicit disregard for personhood (as defined by Charles Taylor) since it invades one’s privacy and alters cognitive development. This part of the paper will also reference relevant selections from James Rachels, Charles Fried, and Stanley Benn, and will give an account of privacy that precludes significant incursion even if that incursion could be justified in a utilitarian sense.

¹ Levy, Steven. "Bill Gates and President Bill Clinton on the NSA, Safe Sex, and American Exceptionalism." *Wired*. Conde Nast, 12 Nov. 2013. Web. 27 Feb.

² *Ibid.*

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Chapter 1: Introduction—A Brief History of Everything

Troubled Beginnings

If you're reading this, you're being watched. Should you happen to be one of those perverts who takes this to mean he's important and derive pleasure or self-worth from it, let me assure you, you're nothing wonderful. Even people in the decidedly larger set of 'those not reading this' are suffering the same fate and it's been going on since before any of us were born. All the way back in the Middle Pleistocene, pre-Napoleon, Nero, and Nimrod, early man crawled out from the depths of the sea to get a breath of the quaint, unindustrialized atmosphere. He travelled an aimless, untraceable path, treaded throughways never before taken, and, according to various theologians, even he was being watched by a voyeuristic fellow in the sky named God who apparently found the whole thing rather amusing. It took us nearly 200,000 years, but through perseverance and selective breeding that original class of modest Homo sapiens eventually gave rise to a strain of television executive types born with the necessary confluence of narcissism and ambition to imagine themselves in the divine creator's place—a captain's chair before an array of infinite monitors, observing and controlling the entire human race.

Now, just as they did in Boston after Super Bowl XLII and across the globe on November 8, 2016, we sit stunned, scratching our heads and asking 'How?' Perhaps we told ourselves for too long that rationality and advanced consciousness were tools for peace and liberty. If these concepts ever converge, it is only a happy accident, and a brief one at that. As we'll come to understand, for all our 'rational' behavior and capacity for

'higher' thinking, we are rather irrational and shortsighted beings when it comes to the matter of that most precious task: the progress and preservation of our own species.

A population that spent more time watching reality than reality television might have been apt to anticipate the potential dangers of Big Data collection before they revealed themselves, but unfortunately we thrive on distraction. We must now navigate a world that comes fully equipped with a vast spying apparatus and the embedded ethical and institutional justifications to use it quite deviously. Barring a change in present conditions, the ambitious elites among us will soon realize their goal of unseating God and controlling the population at large with the threat of blackmail, using information accrued while the rest of us were too busy arguing such a reality could never come to be.

Groundwork for Blackmail

Now that I've painted a sufficiently pessimistic picture I'll offer the (relatively) good news. In the social realm, actors are not chemical reactions. Dropped in even a seemingly hopeless situation, it is at least plausible that we can reason our way out. Furthermore, just as even the worst player cannot lose a game of chess on the first move, even the most sinister actor cannot perform his most devastating act without the convenience of certain vulnerabilities. Therefore, I will argue for three necessary but not sufficient conditions that lay the groundwork for the blackmail of private citizens by government and corporate institutions. If these conditions are met and the subsequent line of argumentation succeeds, then we have the necessary inputs to obtain the output of

mass blackmail.³ You might complain that what I termed ‘good news’ sounds anything but good, but remember only once we know what it takes to create the nasty blackmail outcome, can we work toward preventing it.

The three conditions:

1. It must be the case that powerful institutions can collect and process massive amounts of data/metadata on a wide swath of citizens.

2. It must also be the case that powerful institutions use utilitarian criteria for what counts as right and wrong, which causes them to overlook the value of privacy.

3. Game Theory should suggest that blackmail is a likely progression from mass data collection and mining that currently exists. This should even apply to those institutions that were previously opposed to data collection and blackmail.

Further, I will counter-object to rebuttals that attempt to argue against the blackmail outcome or justify its existence. This will require an investigation into what privacy is and how privacy invasion affects normative development and harms persons. Through this investigation, I will demonstrate that outside of altering at least one of the three conditions or subjecting ourselves to an at least equally bad consequence, there is no promising solution to the problem as I have imagined it. Likewise, there is no reasonable justification for it. Thus, we must accept that we are travelling a cruel, narrow road toward authoritarianism and work with diligence and optimism to alter our course.

³ The outcome is highly likely, troublingly likely in fact, but not guaranteed, hence my omission of ‘sufficient’. Nonetheless, this omission should not be too comforting, and should certainly not inspire anything close to complacency.

Chapter 2: Surprise! Your Daughter is Pregnant

Data Collection and Processing

At the Parthenon in Greece, on the ground where Western philosophy was forged, in the hall of truths, there is a linen closet, out of sight, near the back, where the unpopular facts reside. In this closet you can encounter claims like ‘Climate change is real’, ‘Vaccines don’t cause autism’, and ‘Corporate and government entities collect and analyze data on private citizens’. Each of these is veracious and well-sourced, but somehow 40-45% of the population still resists them like insulators in our human circuit. As a result, I feel that even though there can be no reasonable objection to my claiming that powerful institutions do indeed collect, source, and store data on private citizens, it is necessary to justify this fact in the face of stubborn opposition.

Surveillance and the dangers of Big Data are among the subjects every voracious cable news watcher has fancied himself an expert in since 2013, but at the risk of alienating these distinguished intellectuals, I’d like to suggest that any serious discussion about the reality and potential harm of mass data collection is not reducible to selected George Orwell quotes or a constitution of libertarian platitudes. Just as all discussion of political figures eventually devolves into comparisons to Hitler, all debate over the nature of government and privacy now reduces to semi-coherent tangents on the NSA and the prophetic nature of *1984*. However, singling out the NSA as the lone, rogue actor in the world of data collection is similar to pinning the MLB’s steroid era squarely on Barry Bonds just because he was the most polarizing and successful figure of the time. Back in May of 2013, when Republicans still liked intelligence leaks, Edward Snowden ruffled

more than a few feathers after he revealed just how comprehensive the NSA's intelligence-gathering program was, but even then and especially now, data collection is so widespread that consumers cannot escape it and have already (perhaps even unwittingly) given up too much information about themselves to ever hope for the proverbial *tabula rasa*.

In the introduction to his book, *Data and Goliath: The Hidden Battles to Collect your Data and Control your World*, Bruce Schneier writes of data collection, "It's not just the cell phone location data I've described. It's also data about our phone calls, e-mails, and text messages, plus all the webpages we read, our financial transaction data, and much more".⁴ In other words, American citizens are already complicit in the fulfillment of the first half of the first condition necessary to run the blackmail argument—the collection of mass amounts of data/metadata.⁵ If you live in America in 2017, you exhale not only oxygen, carbon dioxide, and nitrogen, but also huge quantities

⁴ Schneier, Bruce. *Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World*. New York, NY: W.W. Norton, 2015. Print. 5.

⁵ A brief passage from Bruce Schneier's *Data and Goliath: The Hidden Battles to Collect your Data and Control your World* is quite helpful here, "One way to think about it is that data is content, and metadata is context. Metadata can be much more revealing than data, especially when collected in the aggregate" (Schneier 75-76). Essentially, data collection would reveal something like the content of your telephone conversation, while metadata collection would reveal the speakers as well as the timing, length, and frequency of the calls but not the actual words or phrases used in those calls. Lest you think metadata is somehow inferior to pure data as a result of the U.S. government's dismissal of it following Edward Snowden's reveal of the NSA's domestic metadata dragnet, remember "In 2014, former NSA and CIA director Michael Hayden remarked, 'We kill people based on metadata' (Schneier 76). Suppose God could only receive the location, length, and frequency of your prayers, but never the content. He would still be able to interpret a great deal about you based upon that information. For instance, God could probably tell a 'good' Christian from a 'bad' Christian because the 'bad' Christian's prayers would only occur briefly during Easter, Christmas, Super Bowl Sunday, and big frightening tropical storms and other strange weather events. He would not even need the contents of these prayers to make educated inferences about the people making them. Likewise, much can be gleaned from the metadata of our conversations.

of data, and your exhaust no longer dissipates into the ether as it might have years ago. Now the NSA has it, Google has it, Facebook has it, Target has it, your bank has it, and the list goes on.

Of course, there is a meaningful difference between bulk data/metadata collection and the successful navigation of that data/metadata. Imagine a geologist who drops a net so big that he is able to collect every rock in the Sahara Desert. He claims to possess tens of thousands of rare, important fossils, but when asked to produce them, he asserts he cannot because he does not have the time or manpower to actually sift through his net and find the fossils. If data/metadata collection is analogous to the geologist's predicament in our example, then all the data collection in the world is still rendered meaningless because there is no possibility of separating important trends and information from the general pool of data. Fortunately for the argument, and unfortunately for us, it has become clearer and clearer of late that companies and government agencies prefer bulk data collection specifically because they now have the ability to glean trends and sort through it in a way they were not able to even as recently as fifteen years ago. Nowadays, "Big data⁶ sets derive value, in part, from the inferences that can be made from them".⁷ Further, "computing power is...doubling every eighteen months"⁸ and "what is clear is that data-mining⁹ technology is becoming increasingly powerful and is

⁶ From Schneier, "The general practice of amassing and saving all kinds of data". Big data sets contain too much information for any human to reasonably process them and gain any realistic insight. However, computers do possess the power to rifle through these data sets and make surprisingly accurate judgments and conclusions as a result.

⁷ Ibid. 116-117.

⁸ Ibid 120.

⁹ "The science and engineering of extracting useful information from [big data sets]" according to Schneier.

enabling observers to draw ever more startling conclusions from big data sets”.¹⁰ Returning to our original example, we can imagine the value in our geologist dropping his big net if he possesses a device that allows him to quickly scan the rocks collected and determine which are important fossil specimens and which are merely sedimentary. This is akin to what quantitative computer analysis has done to the world of data collection.

On a more sinister note, a recent paper written by Jessica Su, Sharad Goel, Ansh Shukla, and Arvind Narayanan contains evidence that the online advertising industry, which “builds browsing histories of individuals via third-party trackers embedded on web pages”¹¹ has been lying when they “promise users that the histories are pseudonymous and not linked to identity”.¹² In their paper, the authors “show that browsing histories can be linked to social media profiles such as Twitter, Facebook, or Reddit accounts”.¹³ This means companies that claim they are only tracking your browsing by assigning you a randomly generated pseudonym so they can aggregate clicks and advertise effectively can actually, quite reliably, figure out exactly who you are by matching the unique characteristics of your particular browsing ‘feed’ with various social media accounts. Ignoring the myriad of incidental problems this creates, we can, for our purposes in this chapter, simply conclude that if these online aggregators had no desire to use the deanonymizing power of their algorithms, they would have pointed out the problem to

¹⁰ Ibid 121.

¹¹ Su, Jessica, Sharad Goel, Ansh Shukla, and Arvind Narayanan. "De-anonymizing Web Browsing Data with Social Networks." (2017): 291-304. Web. 17 Feb. 2017. 1

¹² Ibid 1.

¹³ Ibid 1.

relevant authorities long before a group of Stanford researchers independently discovered it.

Real World Examples

If you're unconvinced by abstract concepts or too dull to abstract from them to real life dangers yourself, please continue below onto the provided list of recent, alarming data collection cases to help stimulate your imagination.

- In 2010, Google CEO Eric Schmidt admitted: "We know where you are. We know where you've been. We can more or less know what you're thinking about".¹⁴
- In a now infamous case, Andrew Pole, a statistician working for Target, was able to create an algorithm based on customer purchasing trends that led Target to correctly identify a teen's pregnancy before she had even broken the news to her parents.¹⁵
- In 2010, Kalev Leetaru, a researcher from the University of Illinois, compiled over 100 million news stories from the U.S. Government's Open Source Center, BBC Monitoring, and *The New York Times* Archive dating back to 1945, and fed these into the supercomputer Nautilus. After mining the data, all 100 million

¹⁴ Schneier. 74.

¹⁵ Duhigg, Charles. "How Companies Learn Your Secrets." *The New York Times*. The New York Times, 18 Feb. 2012. Web. 04 Oct. 2016.

articles were woven into a networked mesh with some 100 trillion interconnections. By analyzing this data, Leetaru and Nautilus were able to predict Osama bin Laden's location within 125 miles in Pakistan when top experts still claimed he was living in Afghanistan. Additionally, the computer's outputs suggested the eruption of the Arab Spring, which happened the very next year.¹⁶

- In 2013, Facebook was able to send targeted ads to a user known as 'Matt' who was struggling to come out of the closet. Facebook predicted his struggles using only two comments, two page 'likes', and Matt's age, gender, and browsing habits.¹⁷

Conclusion

Mass data collection is no longer the stuff of science fiction movies and dystopian novels. It is a reality of the world in which we live. This is justifiably alarming to many; though there remain some intrepid apologists capable of repressing their anxiety by repeating the surveillance state's favorite cliché: 'Why should I worry? I have nothing to hide.' You might notice, though, that these people with 'nothing to hide' still walk around fully clothed, lock their doors at night, close their blinds, delete their browser histories, disguise their pin codes at the ATM, won't give you their social media passwords, refuse to release their medical records, scoff at the notion of live streaming

¹⁶ Anthony, Sebastian. "Supercomputer Predicts Egyptian Revolution, Bin Laden's Location | ExtremeTech." *ExtremeTech*. N.p., 12 Sept. 2011. Web. 04 Oct. 2016.

¹⁷ Green, Jon. "Facebook Knows You're Gay before You Do." *AMERICAblog News Gay RSS*. N.p., 24 Mar. 2013. Web. 04 Oct. 2016.

their sex lives, and get irrationally angry when you scrawl their phone numbers in a dirty, 7/11 bathroom stall. The point here is: we all have things we would prefer to keep secret. Some may be worse than others, but everyone has 'something to hide', and that being the case, we ought to be especially concerned about how those 'somethings' could be used against us now that mass data collection is a normalized reality.

Chapter 2.5: An Intermission for Ethics

Grounding for Future Discussion:

In the succeeding chapters, I make frequent references to ethics (in business and private life), but I've realized that I do so with the presumption of a robust, universal understanding of what that slippery term actually entails. Considering the fervent debate amongst philosophers over what qualifies as a good ethical theory, my presumption seems more likely to lead to confusion than elucidation. To alleviate this confusion, I am going to lay out, in general terms, what we ought to expect from a good ethical theory and what can absolutely not be permitted. This will inform my evaluation of businesses' behavior in later chapters.

The 3 General Goals of Ethical Theories:

1. At its broadest, an ethical theory should aim to make normative statements by reflecting on the body of moral practice observable in society. This does not mean an ethical theory must *condone* prominent ethical practices, but it ought to provide criteria for evaluating what counts as morally right or wrong. Thus, "an [ethical theory]... specifies what characteristics all moral actions must possess".¹⁸ For instance, in a utilitarian ethical theory, the principle of utility is the criteria by which we evaluate the morality of any action. Any sufficient ethical theory should have some sort of guiding principle as such.

¹⁸ Dixon, M. "Normative Ethical Theories." *Normative Ethical Theories*. Web. 29 Apr. 2015.

2. An ethical theory should provide justificatory, not explanatory, reasons for action because, from the ethical perspective, we are not interested in what caused an act to occur but whether the act ought or ought not have been done. To help explain the distinction, we might imagine one of Socrates' disciples asking him near the end of his life, 'Why are you in prison?' Socrates could respond: 'Because the bars prevent my escape', but this obviously ignores the aim of the initial question. In the field of ethical theory, giving explanatory reasons in place of normative, justificatory reasons involves a similar mistake. As ethical theorists investigating Socrates' imprisonment, we do not want to know that Socrates is in prison because a guard locked him in. Our focus is on whether Socrates *ought* to have been imprisoned. This should all make perfect sense when we consider that normative claims are not true or false based on empirical data, but are instead, evaluative, meaning they state how the world ought to be. Thus, ethical theories should focus on justificatory claims because explanatory claims miss the point of the initial inquiry.

3. Ethical theories ought to be objective and relational when considering value. That is, a good ethical theory should reject both subjectivism and absolutism and accept: A. that normative claims can be either true or false in virtue of the non-absolute concepts through which we experience the world and B. that moral claims are objective and can succeed or fail to accurately describe reality. I expect this last criterion will inspire the most resistance of the three because of its peculiar ability to unite natural enemies—devout scientists and obedient theologians, bleeding-heart liberals and proto-fascist conservatives—against itself. Although they may disagree on the solution (absolutism or subjectivism), classes composed of polar opposite individuals often find themselves in

agreement about the need to reject an objective-relational interpretation of normativity because it threatens their own worldviews. However, the disturbance of an imprudent philosophy is no reason to postpone the quest for truth; indeed, it may even provide greater justification for such a search. Thus, I will defend the objective-relational nature of normative claims by first rebuking both the absolutist and subjectivist pictures, and then offering a replacement, positive account.

Absolutism, or the idea that there is a non-relational, 'true' reality that some mode of inquiry will give us access to, relies on the notion that we can somehow escape the categories that shape our experience and get a glimpse of what Kant would call the Noumenal world or the world 'as it really is'. This leads absolutists to defend Eliminativist positions, which preclude the truth of normative judgments necessary for an ethical theory. Normative claims, the absolutist says, are not part of the true fabric of reality that our mode of inquiry reveals to us. As a side note, whether this proposed mode of inquiry is religious in nature or scientific (as is more often the case presently) is irrelevant. What matters is the apparently outrageous claim that we can, in principle, experience the world from an external point of view, whatever the medium for such insight may be. John McDowell argues against this notion in his seminal work 'Aesthetic Value, Objectivity, and the Fabric of the World' in which he systematically dismantles J.L. Mackie's and Bernard Williams' absolute conceptions of reality. As McDowell puts it, "It is natural to wonder whether the idea of transcending special points of view really makes sense. Surely any conception of reality we could achieve would still be *our* conception of reality, from a point of view we occupied; the idea of a view from nowhere

is incoherent".¹⁹ If, as McDowell channeling Kant suggests, our experience is shaped by linguistic categories, then any attempt to make claims about reality outside of those categories will be nonsense because there is no point of view we could possibly adopt that would not be our own point of view, still limited by the very same categories we were trying to escape. If this privileged point of view from nowhere is not possible, absolutism fails.

On the other hand, subjectivists define truth as how something feels to the person experiencing it, such that, the phenomenological feel of an experience comports directly to the truth of said experience. As a result, subjectivists tend to be moral relativists because the truth of any ethical claim depends only on how it seems to any given individual. Ludwig Wittgenstein famously challenged the subjectivist ontology when he outlined an argument against essentially private languages in his *Philosophical Investigations*. The argument, reproduced in a paraphrased form here, claims:

1. Subjectivism requires that something is true or false in virtue of how it feels to the person experiencing it.
2. Subjectivism prevents the possibility of errors. (If truth only involves how something seems to me, it is impossible for me to be mistaken about it).
3. For a language to be meaningful, it must include the possibility of mistaken identification.

Conclusion: Subjectivism is meaningless.²⁰

¹⁹ McDowell, John Henry. "Aesthetic Value, Objectivity, and the Fabric of the World." *Mind, Value, and Reality*. Cambridge, MA: Harvard UP, 1998. 112-30. Print. 118.

²⁰ Wittgenstein, Ludwig. *Philosophical Investigations*. Oxford: Blackwell, 1968. Print. §243-§271.

As Wittgenstein's argument shows, the subjectivists must have the wrong conception of truth since we do not have a meaningless essentially private language, but a public one that can be described in functional terms.

Even though it would prevent stress and toil, I don't want to commit myself to fallacy à la Quine's false trichotomy by suggesting the mere failure of absolutism and subjectivism implies the truth of the objective-relational view. Instead, I will draw a positive argument to justify the claim that normative judgments actually identify something real in the world and can be true or false. Traditionally, opponents of moral realism have held the view that normative claims cannot be true because they do not refer to anything *actually in the world*. True enough, one cannot point to a normative claim as easily as he can the White House, and the appropriateness of our moral actions is not weighed with the same precision as a smallmouth bass. However, this shouldn't be too discouraging and certainly shouldn't lead one to moral skepticism because this objection relies on a mistaken notion of what normative claims actually describe. That is, the moral skeptic (whether he knows it or not) is reifying normativity. He is arguing that normative claims ought to identify some substance in the world, but this is not the only way for a claim to be meaningful.

In the vein of Gilbert Ryle, consider this: I walk into my dorm room twirling one of those thin, stretchy produce bags from the grocery store around my index finger. My roommate, Jamie, who happens to be sitting on the couch, asks me what I've got. I respond, 'I bought a dozen apples.' He says 'Show me.' One by one I pull out crisp,

green Granny Smiths until I've revealed all twelve. Jamie gives me a bewildered look and says, 'But where's the dozen?'²¹

This is an example of what the moral skeptic does to normative claims. In the apple example, the dozen is not something independent of the twelve apples that comprise it—it is a feature of them. We should not expect a different substance called 'dozen' to appear when I empty out my produce bag. Likewise, we should not expect the normative claim, as some kind of Platonic form, to exist as a substance in the observable world. Of course, we cannot perform brain surgery on someone and use a pair of pliers to extract their moral judgments the same way we could extract their medulla oblongata. However, the reason we cannot steal someone's normative judgments in this way is that normative claims are features of action just as thoughts are features of experience and not separate substances from the brain that produces them. When we act, freely and with intention, belief, and desire, normative claims become possible, and while they are not graspable in the physical sense, they are real features of our experience.

To review, a good ethical theory should reject absolutism and subjectivism and accept an objective-relational view—that is, objective in the sense that reality can be misdescribed and relational in the sense that the only way to describe reality is through a set of concepts that provide the necessary features of experience. Further, normative claims can be true or false and do identify something²² real in the world, which justifies the ethical theory project.

²¹ Inspired by the University/parts of the University thought experiment found in Ryle, Gilbert. *The Concept of Mind*. New York: Barnes & Noble, 1949. Print.

²² Not *some thing*.

Necessary Features of a Good Ethical Theory:

Since we've established that normative claims are real and worth investigating, it is now sensible to more closely examine the features of several prominent ethical theories to determine whether or not they warrant inclusion in our ideal theory.

I will start by reviewing the four major features of utilitarianism: consequentialism, monism about non-instrumental value, a maximizing view of rationality, and impartiality in moral considerations. Of these, only impartiality fits completely with normative ethics.

Pure consequentialism must be rejected on the grounds that certain institutions like slavery seem wrong for reasons other than their consequences. To use Kant's words, it appears that a better explanation for why slavery is wrong is that, in using someone as a slave, the slave owner does not "act in such a way that you treat humanity, whether in your own person or the person of any other, never simply as a means but always at the same time as an end".²³ If pure consequentialism cannot adequately capture what is inherently wrong with slavery, then it would be an insufficient feature of a good ethical theory.

Utilitarianism also requires one to be a monist with respect to non-instrumental value. Utilitarians claim that there is only one thing with intrinsic value—formerly happiness, and probably some conception of 'goodness' in more contemporary times. Aristotle's theory of eudemonia rejects this claim. In Aristotelian virtue theory, "virtues... have profiles containing a plurality of functions, a plurality of modes of moral

²³ Kant, Immanuel, and James W. Ellington. *Grounding for the Metaphysics of Morals*. Indianapolis, IN: Hackett Pub., 1981. Print. 29.

acknowledgement, and a plurality of targets”.²⁴ As the Aristotelian theory demonstrates, non-instrumental value cannot be captured by monism because living well requires the acquisition of virtues whose value is not simply reducible to the actions they prescribe. Thus, we need a pluralistic view of eudemonia to adequately capture what it means to live a good, flourishing life.

Finally, we can reject the maximizing view of rationality by appealing to satisficing theory. From inside the utilitarian perspective, a maximizing view appears obvious because utilitarians are consequentialists and “once we make the consequentialist move and declare that the only features of actions relevant to moral evaluation are their consequences, we seem to have every reason to strive to bring about the best consequences we can”.²⁵ However, we have already shown that pure consequentialism is not consistent with a good ethical theory and as a result, we can reject maximizing theory and replace it with satisficing theory because results are not all that matters; thus, sometimes a satisficing view will be consistent with morality.

An inspection of the features of Kantian theory reveals that, while his notion of respecting persons as persons is an integral part of a good ethical theory, his purely non-consequentialist view fails to capture something inherent in our moral thinking. Consider these two similar scenarios: In the first, we are given the choice of killing one person to save five lives. In the second, we are given the choice of killing one person to save five million lives. We are more compelled to kill the single person in the second example, but

²⁴ Gahir, Bruce, and Stefano Cavagnetto. *Pluralistic Virtue Ethics and the Corporate Community*. Web. 29 Apr. 2015.

²⁵ Byron, Michael. *Satisficing and Maximizing: Moral Theorists on Practical Reason*. Cambridge: Cambridge UP, 2004. Web. 29 Apr. 2015.

our reason for doing so is inherently consequentialist. That is to say, we feel we have better reason to kill the single person in example two because the stakes are higher—more people will die as a result of our inaction than in example one. If this is true, then outcomes matter morally. Therefore, although it would be wrong to include pure consequentialism in a good ethical theory, it would also be wrong to include pure non-consequentialism.

We should also recognize that a good ethical theory cannot be composed of merely first order rules because rules underdetermine morality. Per Wittgenstein's notion of the open-textured word, "careful examination of actual speech situations shows that in no case can a single rule account for the countless variety of uses to which an individual word may be put".²⁶ In other words, rules do not determine how they themselves are to be applied. This is a problem for any rule-based ethical theory that intends to give conclusive, closed-circuit reasons for action. The problem here is, conclusive rules are circumstance-specific because they must include all exceptions to themselves. However, it is not possible to list all exceptions to a rule without placing restrictions, like specific circumstances, on that rule. As a result, ethical theories cannot consist of conclusive rules, but must instead express good reasons for action.

A good ethical theory must also include parts-whole relationships and expressive relationships in addition to the typical means-end relationship. Let's tackle parts-whole relationships first. These relationships essentially account for the now cliché notion that happiness is journey not a destination. Put in terms of friendship, acquiring friends and

²⁶ Blackburn, Simon W. "The Later Wittgenstein." *Encyclopedia Britannica Online*. Encyclopedia Britannica. Web. 29 Apr. 2015.

spending time with them is not simply a means *to* eudemonia, but is actually a *part* of eudemonia. Thus, a means-ends relationship would not be able to adequately capture this part of morality. Too often we see the paradigm case of a means-end misapplication in the form of a depressed celebrity who assumed their success in some field was a means to the end of happiness when really their success ought to have been a part of happiness the whole time.

Expressive relationships explain how our attitudinal states can impact our worldview. Suppose every time I see a pretty picture I spit on it and grimace. These acts express a vice and that expression will sour my outlook and make me less receptive to my surroundings. If, as a result of my sour demeanor, I enter situations without a reasonable amount of goodwill, then I cannot possibly interact well with others, and, as such, cannot live a good life. Hence, our ideal ethical theory needs to account for expressive relationships in order to ensure that our actions reflect virtue and good will.

Conclusion:

To recap, a good ethical theory aims to explain moral practices by giving criteria for what counts as morally right and wrong through objective-relational, justificatory, normative statements. It should include certain features of utilitarianism, Kantian theory, and Aristotelian virtue theory, but none of these is sufficient in and of itself. It should not be composed merely of first-order rules, and must include parts-whole relationships and expressive relationships in addition to means-end relationships. From now on, when I speak of ‘normative ethics’, it is a theory with these attributes that I have in mind.

Chapter 3: Unsafe at Any Place

Where Sleeping Mill's Lie—The Trouble with Business Ethics

My good friend Brad used to tell a joke. “It goes like this,” he would say, “Business ethics.” If my father happened to overhear²⁷, he’d come leaping over like a jackal and dive straight into his prefabricated rant about freedom, economics, and all that Edmund Burke bullshit, and I’ve learned a well-adjusted man²⁸ doesn’t just come undone like that unless something cuts deep, so there must’ve been some truth to Brad’s little gag. In a country that unironically took Gordon Gekko and Jay Gatsby at face value, and has made a habit of vilifying the poor as lazy, dumb, freeloaders, perhaps it’s actually the temporarily embarrassed millionaires like my father who are most averse to ethical regulation. Maybe they lie awake at night and lament that intuitive inclination for justice that settled in the pit of their stomachs somewhere around 1969 and kept them from going for the jugular and making their fortune. Maybe it all just trickles down from the 51st floor boardrooms.

In any case, the cliché of the venal, greedy businessman is prevalent enough that plenty of people would likely accept, out of hand, the idea that businesses will encroach on someone’s private life provided it serves their bottom line. However, this is more an excuse to cop-out on defending the premise than it is a legitimate argument. After all, anyone with a nuanced view of the world can surely accept that there isn’t some mystical, magnetic force attracting only the most vile, contemptible folks toward careers in big business. In fact, there are plenty of businesspeople who, in a vacuum, appear charitable

²⁷ And we often made sure he did.

²⁸ He is.

and empathetic. I for one do not believe it is necessarily the quality of the people that make up the business world that leads it to value profit over privacy. Rather, it is the regularly unmentioned utilitarian compass built into our business institutional structure that encourages these people to act in a way counter to normative ethics and often counter to their own values.

Of course, encouragement to behave unethically is not analogous to gravitational pull; there is no guarantee that simply because a system encourages unethical behavior that any unethical behavior will occur. Instead, it might be easier to suppose we are detectives investigating the cause of a house fire and we want to make the case that the homeowners should have expected their house would burn down given a specific set of circumstances. While this section will not make the case that there is no way for a business to avoid unethical behavior, it will argue that we ought to expect unethical behavior from businesses because of their structure.

The Fable of the Bees

People have been put to death for less, but perhaps it is not so outrageous to claim, in a capitalist economic system, morality and business mix about as well as oil and water. Bernard Mandeville developed this very idea in his poem, “The Fable of the Bees”, back in 1705. In his work, a hive of corrupt but prosperous bees demand more moral regulation and wind up sacrificing their prosperity in the process. As a result, George Bragues concludes Mandeville means to advance the idea that “Selfishness drives the commercial system that creates wealth benefits, while self-denial would create

poverty”.²⁹ Many have since referred to this concept as private vice for public gain.³⁰ If Mandeville and Bragues are correct, then the introduction of ethical standards to the business world runs counter to the project of private enterprise—wealth and product generation. Of course, how true the notion of private vice for public gain was in Mandeville’s time³¹ remains a matter of contention. Certainly, though, in the context of this project, we ought to be skeptical about any promise that private vice will indeed result in public gain.³²

Nonetheless, Mandeville’s work does give voice to a real problem (however crude his diagnosis may be), and it’s one related to the ethical investigation of Chapter 2.5. Our inability to combine commercial practices with normative ethics arises from the cryptic utilitarianism³³ that underscores a business’s behavior in capitalist economies. It is, in effect, the pre ‘business ethics’ ethic of the commercial system, and this hidden ethical arrangement is what causes the friction between businesses and normative ethics. In a capitalist framework, companies look to maximize profit because greater profits equate to

²⁹ Bragues, George. "Business Is One Thing, Ethics Is Another: Revisiting Bernard Mandeville's "The Fable of the Bees"" *Business Ethics Quarterly* 15.2 (2005): 179-203. Web. 27 Sept. 2016. 182.

³⁰ I want to be clear here: I do accept that business and ethics are not naturally cohesive, but I do not endorse the conclusion of Mandeville’s work. That is, I do not think we should abandon the business ethics project. Rather I think we ought to redefine what counts as a successful business such that our definition better captures ethical considerations and concerns. However, for the purposes of this section of the paper, I am not going to make any such normative claims, but instead rely on the descriptive claim about the immiscibility of business and ethics as they currently stand.

³¹ A time when his home state of England still had slavery.

³² A counterargument to this slogan will become a focal point of Chapters 4 and 5.

³³ Utilitarianism, as an ethical theory, is not a decision procedure. In other words, utilitarianism (as all ethical theories should) makes semantic claims. Decision procedures require answers to epistemological questions, but ethical theories only provide criteria for right and wrong. This is all to say, how a business decides what to do in virtue of what their underlying ethical theory calls for is not a part of the ethical theory itself and we should take care not to muddle those concepts.

greater overall utility. As a result, these companies run according to a utilitarian or at least proto-utilitarian program. Recall that this entails pure consequentialism, monism about non-instrumental value, adherence to maximizing theory, and impartiality; though, fittingly enough, the one fully redeemable feature of utilitarianism—impartiality—is arguably omitted in the business variety of the theory. As we covered in Chapter 2.5, the other three features of utilitarianism do not mesh with proper ethics. Thus, when we talk about normative ethics, we cannot possibly mean something directly compatible with the utilitarian system used by businesses. Among other things, normative ethics cannot be purely consequentialist, must be pluralist with respect to non-instrumental value, and should not unexceptionally conform to maximizing theory. Accordingly, when we try to introduce normative ethics into the world of business, we run into conflict. How can we reconcile non-consequentialism and respect for persons as persons with the pure consequentialism that drives the commercial system? How can we ask a business that believes its mission to be the maximization of profit to instead conform to satisficing theory? How do you convince monists with respect to the non-instrumental value of utility of the intrinsic value in a plurality of virtues? All of these paradoxes, and more, plague the unification of business and ethical theory. This also explains how a collective of people who are normally empathetic and in compliance with ethical obligations could form a company that violates the privacy of private citizens. The program that underwrites their business's behavior is purely consequentialist and has no conception of respect for persons as ends and never as mere means, so the ramifications of that non-consequentialist, Kantian feature are never entertained.

The Slow Arm of the Law

What is ethically right and what is legally permitted do not always converge, and even in instances when they do, it often takes years, decades, or centuries for our laws to catch up to our collective moral conscience. In the same vein, our infrastructure, whether it is cyber or industrial, also tends to lag behind innovation, only adopting new rules and systems after the old ones have become entirely obsolete. In our specific case of Big Data and privacy violation, this short, slow arm of the law combined with the reactive nature of infrastructure design has an adverse effect on the moral behavior of businesses.

In the legal sphere it becomes the case that “many instances of unethical behaviour are not illegal: ethics goes beyond the law. Other cases are difficult to prove, and the imperfections in the justice system are a real handicap in encouraging business ethics”.³⁴ Further, our justice system does not always speak utilitarian. By this I mean, to get a utilitarian to disavow an act, one must make the negative consequences of that act stiff enough that performing it would no longer maximize utility. However, the U.S. legal system, even when it does prescribe a punishment for a business’s unethical behavior, often presupposes that businesses who violate the law will experience a sort of Kantian revelation and recognize the error of their ways as a result of non-consequentialist thinking. Due to the almost dogmatic praise we heap on proprietors and entrepreneurs, U.S. legislators are hesitant to saddle businesses with any regulations or restrictions that might deter future unethical acts. Consequently, the judiciary is hamstrung, unable to mete out the sort of punishments that interface well with the

³⁴ Emami, Mostafa, and Kamran Nazari. "Entrepreneurship, Religion, and Business Ethics." *Australian Journal of Business and Management Research* 1.11 (2012): 59-69. Web. 6 Mar. 2017. 64.

implicit assumptions of utilitarians. For instance, records vary in respect to the number of bankers who were imprisoned for their role in the 2008 financial crisis, but we do know that only one top Wall Street banker was sentenced to jail time and the percentage of white collar crime prosecuted by the federal government immediately after the crash actually shrunk from where it had been in the mid-90's.³⁵ This meager punishment is not likely to discourage similar future behavior from utilitarian actors, yet it is a feature of our legal system.

Meanwhile, unaddressed flaws continue to plague the world of cyber security, “the many sources for retrieving and generating data have expanded the amount and availability of personal data. For example, health data is particularly vulnerable; a single breach risks exposing critical information from a multitude of patients’ records”.³⁶ This means, in addition to the weak or non-existent punishment for their behavior, businesses know that obtaining valuable information is incredibly easy because the cyber infrastructure rules and regulations have not kept pace with the ability of would-be thieves. Again, the system meant to mitigate unethical behavior actually encourages it because of its utilitarian illiteracy.

Normalized Corruption

On a more sociological level, we can see that corruption is hereditary—one generation of corrupt practices can easily bleed into the next. For example, if a college

³⁵ Eisinger, Jesse. "Why Only One Top Banker Went to Jail for the Financial Crisis." *The New York Times*. The New York Times, 30 Apr. 2014. Web. 01 Mar. 2017.

³⁶ Crawford, Kate, and Jason Schultz. "Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms." *Boston College Law Review* 55.93 (n.d.): 93-128. Web. 27 Sept. 2016. 97.

football team's seniors haze the freshmen every year by forcing them to make a lap around the campus naked, it is likely that when any particular group of freshmen become seniors they will continue the tradition. If you asked the seniors to answer as individuals (that is, unaffiliated with the team) whether the tradition was ethically right, you would probably find a majority who say it is not. But what if you asked them to answer with team affiliation in mind? They might justify the hazing by claiming it is an initiation ritual that builds trust and fosters brotherhood, and we can forgive them for that because we all become susceptible to a certain amount of rationalized bullshit when we realize we've done something immoral. The point here is not that football players are bad people, but that people who would individually renounce unethical treatment can quickly become apologists for it when put in a collective. Once-unacceptable behavior becomes accepted as a norm. In the business world:

Corrupt behavior initiated by a few members of a group or collectivity may transform over time into a collective norm. As corrupt behavior spreads and intensifies within a community, individual deviance turns into 'institutionalized corruption: personal behaviors become impersonal norms, emergent practices become tacit understandings and idiosyncratic acts become shared procedures'.³⁷

Therefore, the normalization of corrupt behavior (likely embedded in most data-mining companies already) also reinforces the notion that the harm of violating privacy rights can be rationalized away using a purely consequentialist perspective. Since we know businesses are already apt to think in consequentialist terms, it should come as no surprise that they frequently normalize corruption per consequentialist argumentation.

³⁷ Spicer, Andrew. "The Normalization of Corrupt Business Practices: Implications for Integrative Social Contracts Theory (ISCT)." *J Bus Ethics Journal of Business Ethics* 88.S4 (2009): 833-40. Web. 27 Sept. 2016. 834.

Furthermore, far from only trickling from the top down inside a business, corruption can seep in from outside depending on the actions of competitors. In contemporary America where businesses must turn profits in order to remain afloat, one cheating, unscrupulous company could become the justification for other companies deciding to take their own shortcuts. For instance, “if a supplier is not paid on time, he in turn is unable to pay his own suppliers. In some extreme cases, the only defence measure is to refuse to deliver...a rather unethical practice, and in some cases approaching blackmail. Thus, unethical behaviour encourages and breeds other unethical practices in business”.³⁸ After all, considering the structure of the system, if one business is cheating to get ahead, it would be disadvantageous for the others not to engage in the same behavior, since businesses judge ethics in consequentialist terms and not engaging would threaten their continued existence, which has negative consequences for employees and consumers. What we are left with is a perfect circle of literal backbiters³⁹, each losing mass to the man behind him while recovering it from the man in front with no one daring to object, lest they be eaten whole.

Conclusion

In summation, because we fail to speak to businesses in utilitarian terms, and instead expect them to meet us with better ethical theories in mind, we are incapable of creating conditions that encourage behavior more consistent with normative ethics. Until

³⁸ Fassin, Yves. "The Reasons Behind Non-Ethical Behaviour in Business and Entrepreneurship." *Journal of Business Ethics* 60.3 (2005): 265-79. Web. 27 Sept. 2016. 269.

³⁹ Brock, Isaac. *Edit the Sad Parts*. Modest Mouse. Steve Wold, 1996. CD.

we do start communicating with businesses in their own ethical language, we as private citizens in a capitalist country should expect they will continue engaging in unethical practices in order to gain private information that may benefit them. Remember, even if a company contains a quorum of ‘good’ people, it cannot allow normative ethics to play a decisive role in its decision-making because it may run counter to the ultimate goal.

Just to reiterate, this is not an attempt to make an excuse for the invasion of privacy or contend that businesses are mere helpless actors in a causal cycle that requires them to violate our privacy. Instead, this section is meant to paint the institutional structure as partially responsible for enabling the kind of unethical behavior we might find so despicable.

Case Study

Thus far, I have written about the difficulty in joining business utilitarianism and normative ethics in the macroscopic abstract, but it might be helpful to investigate a real-world example of what I mean when I talk about these subjects. To that end, let’s study the famous GM vs. Nader case of privacy invasion for examples of the institutionalized incentives for corruption we have already posited.

GM vs. Ralph Nader

The Facts:

After *Unsafe at Any Speed* painted them in a negative light, General Motors took to tapping Ralph Nader’s phone line in order to catch him saying or doing something immoral in order to discredit his damning discoveries. When that failed to produce

anything noteworthy, they hired prostitutes to proposition him in a supermarket (if successful, the plan was to blackmail Nader with the evidence), though this scheme also flopped.⁴⁰ Afterward, Nader sued GM for invasion of privacy and won \$425,000, a backbreaking .02% of GM's \$2,125.6 million of profits from the 1966 fiscal year.

Analysis:

In this case, the motivation is clear. GM's profits were threatened by Nader's book, and the simplest way to avoid a drop in revenue was to discredit Nader, thus discrediting his attack on their brand. Much as Mandeville suggested, GM's did not comply with normative ethics due to their desire to maximize profit. Had they let Nader go unchallenged and opted to take the normatively ethical route (as far as they knew) their profits would fall, which, as we have already established, is a death sentence in a capitalist economic system, and runs counter to the utilitarian engine of commercial enterprise. Further, this case also elucidates the ineffectuality of the law. .02% of annual profits is not a stiff enough penalty to deter a pure consequentialist whose ethical theory does not include a notion of respecting persons as persons such that one man's misery (Nader in this case) appears justifiable insofar as it allows for the continued generation of wealth that spreads about and trickles down to the nation at large.

As for our third institutional defect, normalization of this kind of corrupt, unethical behavior is notoriously difficult to quantify, but the fact that GM President James Roche apologized personally to Nader before a Senate subcommittee suggests this scandal went all the way to the top and infected the entire company. This again shows

⁴⁰ Longhine, Laura. "Display Cases." *Legal Affairs*. Legal Affairs, Nov. 2005. Web. 27 Sept. 2016.

that the ethical theory at the heart of GM did not include a requirement for treating persons as ends in themselves and never as mere means.

Chapter 4: How to Win Games and Extort People

Why Data Collection?⁴¹

As the companies and government agencies reading this paper probably recall, in Chapter 2, I presented empirical evidence to prove the existence of mass data collection directed at ordinary, American citizens, and in Chapter 3, I explained how attempts to reconcile normative ethics with commercial utilitarianism inevitably fail, meaning businesses (as a collective of people) do not feel the intuitive ethical aversion to privacy violation in the same way individuals might. But even if companies have real incentives to snoop, even if they can justify it as ethically right, it remains unexplained *why* the first institution decided to cross the metaphorical Rubicon into the world of data collection. After all, utilitarianism is not a decision procedure. Even if, under certain circumstances, it condones privacy invasion as morally good, it cannot offer anything more than a defeasible reason to *actually* invade privacy. In other words, the decision exists in a different domain than the semantic categorization, as does the actual implementation process. So while an ethical theory can give criteria for what counts as right and wrong, it is still only a suggestion for action. A complete narrative requires an explanatory account that tells a reasonable story about how (at least in principle) a company could employ decision theory and move from standing *against* data collection⁴² to eventually

⁴¹ This particular chapter is heavily indebted to Gerald Gaus' *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*.

⁴² This company's stance does not require ignorance of the economic benefits of data collection, nor does it require them to be non-utilitarian. Remember, utilitarianism does not mandate acts, only gives criteria for what counts as good and bad. Thus, this company may think, from a commercial outlook, it is ethically good to collect data, but still choose not to do so.

blackmailing private citizens. In this case, ironically enough, it is our most celebrated blessing that makes us susceptible to such awful vice. Man so often looks down on instinctual beasts and counts himself superior because of his capacity for rationality, yet it is that very gift that becomes his undoing.

Using simple game theory we can create a four-quadrant chart to illustrate how a company that originally decided against implementing privacy invading policies could fall victim to the Siren song of mass data collection and storage, all while acting ‘rationally’. Suppose two companies, Alpha and Beta, are considering collecting data on consumers for the purpose of streamlining their operations. Alpha accepts that, in an ideal scenario, collection would increase utility, but thinks the implementation is impractical and finds other non-ethical⁴³ reasons for avoiding the practice. For example, while an obligation to treat customers as ends may not factor into Alpha’s ethical considerations of what counts as right and wrong, it could still be a reason against *making the decision* to engage in data collection irrespective of its exclusion from utilitarianism. On the other hand, Beta not only accepts that collecting and storing data will make them more efficient and maximize their profits, they believe implementation *is* feasible and ignore or don’t assess the same weight to the non-ethical reasons that informed Alpha’s decision. Thus, Beta intends to begin collecting data on consumers.

In Figure 1 below, Alpha’s actions are labeled beside the rows and when they intersect with Beta’s actions (labeled atop the columns) the payout is listed in the form ‘A and B’, meaning the first number represents Alpha’s payout and the second represents

⁴³ That is, reasons that do not count directly as criteria for right and wrong in a utilitarian account of ethics.

Beta's. The numbers are representative of the value each company assigns to that particular outcome.

Alpha	Beta	
	Collect Data	Don't Collect
Collect Data	100 and 100	100 and 10
Don't Collect	10 and 100	20 and 20

(Figure 1)

Assuming Alpha chooses 'Don't Collect' and Beta chooses 'Collect Data', we get a payout of 10 and 100, meaning Alpha gets 10 and Beta gets 100. Thus, Beta's malfeasance begets success while Alpha's integrity becomes a disability and its forethought a flaw. Post-decision, we have two companies playing the same game by very different sets of rules—Beta has the liberty to ignore the plight of others, that great American freedom: indifference; meanwhile, Alpha is encumbered by its commitment to consumers. In return for their thoughtfulness, consumers punish Alpha by flocking to Beta en masse. Now, the people at Alpha may still feel good about their decision not to collect data, but remember the goal of a business is not to generate good feelings, but rather a profit. If Mandeville's story is to be believed, Alpha is making a mistake. In fact, now that Beta is turning an even greater profit and expanding into previously uncharted markets, Alpha will be forced to either collect data and stay in business or remain true to its original decision until it is eventually swallowed by competitors. A rational agent asked to choose a side in the Alpha-Beta problem has no real choice at all.

Examining the scenario, the rational agent would always choose ‘Collect Data’ because no matter what the other player does, it is always in a player’s best interest to collect. Thus, the company more in line with normative ethics is either snuffed out or forced to become the very thing it once found so distasteful.

However, suppose a different, though perfectly reasonable scenario, in which both Alpha and Beta have a natural aversion to mass data collection, and thus, even though they both know they would be better off collecting and storing data, and both believe it is ethically justified, neither does. In fact, companies Gamma, Delta, and Epsilon also enter Alpha and Beta’s market and none of them want to participate in the seedy game of data collection either. It is particularly troubling to find that the addition of just one rogue actor, Zeta, who has no reservation about collecting and storing data on private citizens will infect the rest of the once ethically stalwart group. If we redraw Figure 1 with Zeta now sitting atop the columns, we find that Alpha is in the exact same position as before even though it now has four other allies who agree with it about the indecency of data collection.

		Zeta	
		Collect Data	Don’t Collect
Alpha	Collect Data	100 and 100	100 and 10
	Don’t Collect	10 and 100	20 and 20

(Figure 2)

Once again, Alpha is either forced to assent to mass data collection or face eventual destruction at the hands of Zeta and other companies who choose to use data collection to their advantage. The introduction of Zeta, like a single drop of red dye into a cup of crystal clear water, changes the entire dynamic of the industry. The assumptions from Chapter 3 combined with the payoffs in our figures demonstrate how even a collective of moral, upstanding people could be corrupted by circumstance into behaving in a way contrary to their own individual beliefs.

Blackmail

In this section, we will make the leap from data collection to blackmail. To that end, I want to give a brief explanation of what I mean when using terms like ‘blackmail’ or ‘blackmail campaign’. The phrase ‘Blackmail campaign’ could refer to a company using all information at its disposal to actively extort (through forced purchases or donations) any consumer they felt would rather give up X dollars than have something unsavory released to the public; though, as we will discuss later, this method may not be the most effective. It could also refer to a more indirect method. For instance, a company with dirt on 218 members of the United States House of Representatives, 60 members of the U.S. Senate, and the lone U.S. President could, in theory, influence legislation and increase their profits as a result. For my purposes, I do not want to rule out any of these possibilities, but I do think the most likely scenario involves the specter of blackmail alone causing changes in people’s behavior. That is to say, if Joe Smith knows that he has something in his past he would rather keep hidden, and he knows that company X has been collecting data on him and likely knows about his secret, and he has

seen how people who oppose company X frequently have their secrets revealed to much personal and professional harm, then he may be more inclined to purchase products from company X or use company X's browsing service, etc. In a sense, given what we now know about data collection, a company only needs to make credible their threat to blackmail in order to prompt this sort of thought process in the mind of someone like Joe Smith. But before we get too deep into this thought, I want to reinforce why a company might resort to blackmail in the first place.

The explanation for blackmail takes essentially the same form as our explanation for data collection. If, in our figures, we replace 'Collect Data' and 'Don't Collect' with 'Blackmail' and 'Don't Blackmail', the same problem reoccurs. All it takes is one player to choose 'Blackmail' to force the other players to confront the option of slowly going out of business or engaging in a practice they would otherwise choose not to. This is not to understate or make flippant the vast differences between the data collection case and the blackmail case. For one thing, the model used in the case of data collection is meant to be explanatory in regards to an event that has already happened while the blackmail case is more predictive. Furthermore, I do not mean to insinuate that the choices in each case are equivalent. I think it is uncontroversial to suggest that, in general, people find blackmail more disturbing than data collection, and would therefore be less likely to engage in it simply to make a profit even if their moral calculus determined it to be morally right. The trouble is, it takes only one rogue actor to initiate the sequence but generations of ethical stewards to prevent it. The fact that megalomania and corruption often find homes in the offices of the people charged with facing these payoff models only exacerbates the problem.

Even so, there is yet another facet to the blackmail case that distinguishes it from the data collection case, and makes it more difficult to carry out effectively—you. Although most people have technically given up the rights to much of their data by clicking ‘Agree’ buttons under licensing agreements they have read little to none of and thus had some say in whether or not mass data collection takes place, it is hard to imagine how blackmail could be carried out in such a clandestine and almost trivial way. Therefore, it is worth examining the plausibility of a company lucratively running a blackmail campaign given the additional variables and barriers to success.

First and foremost, blackmail “want[s] to influence ‘rational decision’: choices among alternative actions, insofar as the choices are determined by subjective expectation and preference”.⁴⁴ That is to say, blackmail attempts to make you choose a path that would otherwise be considered irrational by altering your expectation through a threat. In his work on blackmail, Daniel Ellsberg uses a version of the following chart to help visualize the choice faced by the extorted.⁴⁵ I have added an X in the Punish/Comply quadrant because it would never be in a company’s interest to punish compliance:

	Comply	Resist
Accept	90	100
Punish	X	0

(Figure 3)

⁴⁴ Ellsberg, Daniel. *The Theory and Practice of Blackmail*. Santa Monica, CA: Rand, 1968. Web. 28 Jan. 2017. 4.

⁴⁵ Note that although Figure 3 looks similar to Figures 1 and 2, it does not include the payoffs for the blackmailer, meaning this is not meant to make the optimal choice for each actor definitive, but to codify what is going through the head of the person being blackmailed when they are confronted by the blackmailer.

This figure gives only the payouts of the person being blackmailed. As we can see, under normal circumstances, our subject would assign a weight of 90 (taking into account whatever relevant criteria he sees fit) to complying with the blackmailer's request and a weight of 100 to resisting the request. Thus, under normal conditions, resisting would be the natural, rational choice. The goal of blackmail is to alter that choice. In this example, our subject may be tempted to comply based on the fear of getting an outcome he assigns a weight of 0 should he choose to resist. If he were certain the blackmailer would punish if he resisted, it would no longer be rational to resist because he would effectively be choosing 0 over 90. However, interpreting interactions with others, we are rarely in positions of absolute certainty. Thus, the blackmailer must determine the subject's critical risk or "the maximum risk of punishment that you will accept, in choosing to resist".⁴⁶ For example, if our subject resists with a perceived 10% chance of punishment, but complies with a 50% perceived chance of punishment, then his corresponding critical risk is somewhere between 10 and 50%. As the blackmailer, all one must do is make certain the person being blackmailed perceives the threat to be more likely than his or her critical risk.

For example, in an episode of the comedy web series *Jake and Amir*, Amir attempts to use blackmail to force Jake to give him \$1,875 for a 'Blow your own Glass' studio he purchased on eBay. The exchange goes like this:

⁴⁶ Ellsberg, Daniel. *The Theory and Practice of Blackmail*. Santa Monica, CA: Rand, 1968. Web. 28 Jan. 2017. 10.

Amir: Alright, how 'bout this. You give me the 1875 or I blackmail ya.

Jake: With what?

Amir: With what? Isn't blackmail alone bad enough? Now you want to know "with what"? How about I punch ya, man. Or you wanna know "with what"?⁴⁷

In this case, we see that Amir has failed to establish any credibility. Jake assesses the likelihood of Amir choosing 'Punish' to be 0, and is therefore empowered to choose 'Resist' in order to attain his best possible outcome. This scenario might be different if Amir had a history of revealing damaging secrets about colleagues who resisted him or if he presented to Jake a piece of information, the secrecy of which Jake determined to be worth more than \$1,875.

None of this is particularly hard to grasp theoretically, but in practice, all of these procedures and percentages become mixed in with the minutiae of everyday life. This places a rather large burden on the blackmailer to make his threat credible and to make himself certain that the payouts offered are not so extreme that they undermine the credibility of that threat.

There are several potential strategies a company could employ to increase the likelihood of effective blackmail by increasing the credibility of their threats. One such strategy would be a variation of the Tit-for-Tat strategy. In this scenario, any time an actor resists, the company punishes and any time an actor complies, the company accepts. In this way, over repeated interactions, those who comply receive a much higher payout than those who resist, meaning the population ought to evolve to comply. However, this is a dangerous strategy because of the other variables involved. Although, in principle,

⁴⁷ *Jake and Amir: IOU*. Dir. Jake Penn Cooper Hurwitz and Amir Shmuel Blumenfeld. Perf. Jake Hurwitz and Amir Blumenfeld. College Humor, 10 Mar. 2011. Web. 28 Jan. 2017.

Tit-for-Tat ought to work, it runs the risk of producing too much bad publicity. If a company exists in a world with ten other actors, and punishes nine of them while accepting the one who complies, their reputation may suffer too much, which could force them to stop their blackmail campaign. Similarly, it may be too harmful to the company's bottom line. Remember, neither the person being blackmailed nor the blackmailer want the Resist-Punish outcome because, on the one hand, the citizen gets a payout of zero, and on the other, the company expends resources for what is likely an overall negative payout. The negative payout is only worthwhile insofar as it inspires future compliance by increasing the credibility of threats. However, if this process is not happening quickly enough or the resistance is too embedded, the company may not be able to sustain the continued losses in repeated interactions.

Another strategy might involve giving an excessive punishment to a resister in order to change the preferences of future players. In America for instance, there are many people who espouse the idea that taxation is theft. If they truly believe that, then it ought to be near impossible for the IRS to collect taxes from them. However, in many cases these people allow themselves (from their perspective) to be robbed by the internal revenue service. This may have something to do with the notoriously harsh punishments given to those who have previously resisted the IRS. In the case of commercial enterprise acting against private citizens, the company engaging in blackmail may only need to severely punish a few people before even those who are repulsed at the idea of being extorted find it preferable to the ugly outcomes they have seen before. Again the biggest drawback here would likely be the negative press. Though IRS punishments may be harsh, they are legally ratified, and the IRS is generally accepted throughout the

country as a legitimate and necessary institution. This same argument may not hold up for a company like Google if they begin releasing horrible dirt on people who resist their attempts at blackmail since they lack that sort of institutional prestige.

What might be more effective than would be a type of finesse blackmailing. That is to say, the company that intends to engage in blackmail cultivates good relationships with members of the media, acquires a good reputation through positive public relations, and makes the first targets of the blackmail campaign people who they can so thoroughly discredit that any pushback will be seen as the graceless flailing of a man on a sinking ship. Further, given the current precision of data algorithms and the rapidly increasing capability of technology, it would not be outrageous to assume, in the not so distant future, a company could use an algorithm to predict what sort of people would be more amenable to blackmail. This adds another wrinkle to finesse blackmailing.

The conditions of this tactic are not easily represented in a four-quadrant model, but the scenario seems plausible enough. Suppose for the sake of argument that in the morning paper you read of two murders that took place the night before, one allegedly committed by Fred Rogers, one allegedly committed by Al Capone. Independent of the facts of the cases, most people would likely require a greater amount of evidence to be convinced of Mr. Rogers committing murder than they would for Al Capone. Later that same day you turn on the television and hear countless stories from various media members about Mr. Rogers' philanthropy. News anchors across networks voice their skepticism about the Rogers murder. On the other hand, no one on any network has anything nice to say about Al Capone, and they almost treat his guilt as a foregone conclusion. By cultivating relationships and a good reputation, Mr. Rogers has bought

himself greater immunity from public reprisal than Al Capone. Likewise, our company in question might be best served using finesse rather than pure power when beginning their blackmail campaign.

Further, finesse blackmailing can be done in clandestine, almost trivial ways. Imagine a phone company, Bell Phones, with 5 million customers nationwide. Bell Phones has been collecting and storing data from their consumers' phone calls for several years and has a good reputation. Their current base price plan is three dollars cheaper than competitor Marconi Phones who also has 5 million customers. The natural inclination of man to compare himself to his contemporaries has the executives at Bell Phones feeling despondent because their swimming pools are thirty cubic feet smaller than their counterparts at Marconi. To correct this injustice, the board decides to raise the price of a Bell Phones' base plan ten dollars. Basic economics suggests this should cause an exodus of Bell Phones' customers who will seek refuge in Marconi's cheaper plan. But remember, Bell Phones has been collecting and storing data on its customers this whole time, and they make that fact well-known in some fashion or another. Most of their customers decide the seven-dollar difference is a small price to pay for not having their lives uprooted, so they begrudgingly renew their Bell Phones' plans. If the plans went from \$10 to 20\$ and Bell retained 4 million customers, they have increased their profit by \$30 million. This is no trivial sum, yet it results from a mere seven-dollar increase that most consumers see as annoying but ultimately insignificant. That is the nature of finesse blackmailing.

Chapter 5: Objections to the Blackmail Outcome

I now want to examine some possible objections to the scenario I have just laid out. The first four objections will question the possibility of this nasty blackmail campaign, while the final one will attempt to justify it using the utilitarian ethics we have previously discussed.

Objection 1: The Desensitization Defense

Alfred Hitchcock's film *Psycho*, released in 1960, stirred a good bit of controversy in America for depicting an unmarried couple in bed together⁴⁸ and lingering in view of a flushing toilet.⁴⁹ Yes, this was considered boundary stretching in Puritanical, pre-hippy America, so why would we now laugh at the notion that either is taboo? Desensitization. People born in or after 1960, now the majority of the America's population, have never lived in a world where toilet-flushing and pre-marital coitus hasn't been depicted on the big screen. We have grown rather comfortable with these ideas, so they no longer elicit shock, nor do they draw the ire of the Production Code censors. Would not the same then happen with the information a company uses as blackmail against a wide swath of the American people? Perhaps the first wave of people whose kinks or fetishes are deemed revolting would suffer, but after some time, that type of information would lose its potency. In essence the Desensitization Defense asks: If we

⁴⁸ Griffith, Dave. "Psycho – Classic Hitchcock Horror Turns 50." *Psycho – Classic Hitchcock Horror Turns 50 | Voxy.co.nz*. Voxy, 14 June 2010. Web. 13 Jan. 2017.

⁴⁹ Kermode, Mark. "Psycho: The Best Horror Film of All Time." *The 25 Best Horror Films of All Time*. Guardian News and Media, 22 Oct. 2010. Web. 13 Jan. 2017.

discover, in virtue of release of once private information, that we really have more in common than we first thought, might we actually be more prone to join in solidarity against the blackmailing company thereby evading the problem altogether?

This objection does have some merit. After all, being outed as gay in America used to mean, at best, social isolation, but now, as people have grown more accepting and knowledgeable about homosexuality, coming out can be much less painful. However, it would be strange to suggest this same logic applies to all secrets. For example, while sexual preference may be something (and rightly so) that a person wants to release on his own time,⁵⁰ it is objectively harmless and ought not be treated with disdain. On the other hand, something like sexual assault or murder is harmful and warrants revulsion and punishment. Given that morality does not depend on the will of the majority, even discovering that 51% of the American people had committed sexual assault would not make the behavior acceptable. People with histories filled with these unquestionably unacceptable behaviors would still make fine targets for blackmail, and their harsh punishments for resisting could be enough to deter resistance from someone whose ‘crime’ (say a relatively normal fetish that they nonetheless think others find despicable) is actually harmless.

This raises an additional counter objection—a company may not have to perform too much actual punishment in order to deter most people from resisting. By that I mean, four or five high profile cases of people suffering greatly after resisting attempts at blackmail would probably make future actors less likely to resist. If this is the case, then the material being released does not have a chance to become normalized because there is

⁵⁰ More on this in Chapter 5.

simply not enough of it in circulation to make a difference. Let us say, for sake of argument, normalization of a once detested behavior occurs when we realize that roughly one percent of the population engages in that behavior. The current population of America is approximately 319 million, which means it would take 3,190,000 individual cases of the behavior in question to normalize it. If, after the promulgation of the first 100 cases of some behavior, Jim who has also engaged in that behavior notices his cohorts are suffering as a result of being outed, he would be less likely to resist provided complying did not require him to do something outrageous or overwhelming. As a result, it seems unlikely that a company would ever need to release the 3 million odd cases required to normalize the behavior. Even if we lower the threshold for normalization drastically to something like 10,000 public cases, it remains at least plausible that people would stop fighting back long before normalization occurred.

Objection 2: The Love of Freedom Defense

It is conceivable that people find the idea of blackmail so objectionable that, when given the choice between complying and resisting extortion, their critical risks are raised beyond normal levels because they value their freedom to make decisions above all else. Thus, one might object that in a nation like America, proud and founded on the backs of Protestant work ethic, a mass blackmail campaign is simply inexecutable. On the contrary, though, I have found people in general (a category which does include Americans) to be quite willing to sacrifice freedom for convenience, and there is a relevant analogy between those sacrifices and the blackmail case.

For example, many children used to play the computer game *Where in the World is Carmen Sandiego?* The object of the game was to use clues to pinpoint Carmen Sandiego's location on the world map. This game became infinitely easier when Carmen Sandiego, like many people, decided to trade in her anonymity for the convenience of a pocket-sized personal computer. If kids were to play the game today, they would only need to open up their Find My iPhone app and use the GPS signal to locate Carmen. She traded her ability to roam nations without detection for luxury. Now imagine if one of the children playing the original game had taken Carmen's family hostage and threatened harm unless she revealed her location. In a sense, this is a similar tradeoff. The first scenario uses a reward to get Carmen to give up her location and the second uses a threat, but both, in effect, make Carmen reevaluate her priorities. She would have to be extremely indignant to put her freedom to travel unobserved above the safety of her family.

This is echoed in the mass blackmail campaign. A breadwinner who is asked to spend \$100 monthly at Department Store X to prevent the release of damaging personal information cannot simply weigh his desire for freedom against the unpleasantness of blackmail. He must also consider the effect on his family, and any others who depend on him. If asked to spend \$100,000 a month at Department Store X, he may resist because the price is simply too high, but the point here is, there is some cost requested by Department Store X that we would expect the breadwinner to pay in spite of his personal distaste for blackmail and love of freedom. This is simply to say, most people will accept some minor drawbacks if it means maintaining the generally positive narrative arc of

their life. Consider the bank robbery outlined by Pumpkin and Honey Bunny in the opening of Quentin Tarantino's *Pulp Fiction*:

Pumpkin: ... You don't even need a gun in a federal bank. I heard of this one guy, walks into a bank with a portable phone. He gives the phone to the teller, a bloke on the other end of the line says, we've got this guy's little girl, if you don't give him all your money, we're gonna kill her.

Honey Bunny: Did it work?

Pumpkin: Fucking right, it worked. That's what I'm talking about! Knucklehead walks into a bank with a *telephone*. Not a pistol, not a shotgun, a fucking phone. Cleans the place out, don't even lift a fucking finger.⁵¹

In this case, the man who hands the phone to the teller is actually in on the robbery and there is no clear and present danger since he is unarmed. Nevertheless, the teller is unwilling to step outside his usual routine or question the authenticity of the stick up. It is just not worth it for the teller to make a martyr of himself here when complying, while mildly unappealing, is not catastrophically bad or life-altering given that his compliance ensures he will get to go home to his wife later and the bank will be compensated for the loss of FDIC-insured money. This same reaction would likely occur in response to finesse blackmailing.

Objection 3: The Eminent Defense

Consider a scenario where A, B, C, and D are all aware that Alpha has compromising information on them, and for simplicity's sake, let us assume the information is relatively equal in badness, that is, nothing like murder, but also not just some trivial secret that they wrongly believe is exclusive to them. One might expect that A, B, C, and D would join together and release the information before Alpha can

⁵¹ *Pulp Fiction*. Dir. Quentin Tarantino. By Quentin Tarantino. Prod. Lawrence Bender. Perf. Samuel L. Jackson and Uma Thurman. Miramax, 1995.

blackmail them; thus, removing the power of extortion. If they make up a society all their own, then there will be no heavy negative repercussions because all the equally bad secrets will be in the open. Further, they will effectively defang Alpha. I refer to this as the Eminem defense in reference to his character, B-Rabbit, who in the movie *8 Mile* is involved in a rap battle with fellow rapper Papa Doc. Going into the battle, “Rabbit is aware that Doc knows all his weak points, so he decides to address them preemptively with his freestyle”.⁵² Papa Doc is forced to forfeit the match because B-Rabbit’s rap acknowledges all the ‘embarrassing/compromising’ information that Doc had on Rabbit; thus nullifying that information’s power. In our scenario, A, B, C, and D would be acting similarly. Knowing that Alpha has access to all their secrets, they release them and destroy their status as ‘secret’ altogether.

First, I would like to rebut by demonstrating that, even in a situation where the blackmailing institution foolishly sets up a game of Prisoner’s Mild Delight (a game where cooperation always appears to be the best outcome), there is some value e that cooperators receive when dealing with defectors such that defection is actually more rewarding than cooperation. This can be seen in Brian Skyrms’ model below where row’s payouts are shown when played against column’s actions.

	Cooperate	Defect
Cooperator	$2 + e$	e
Defector	2	0

(Figure 4)

⁵² Hombach, Jean-Pierre. *Eminem*. N.p.: Hombach, 2012. Print. 220.

As Skyrms explains, if “1 defector is introduced into a population of N cooperators... cooperators pair with the defector with probability $(1/N)$ and with other cooperators with probability $(N-1)/N$, for an average payoff of $[(N-1)/N]*2 + e$. So if $e < (2/N)$, a spiteful mutant does better than the native cooperators”.⁵³ In other words, if Alpha can ensure that the value of e is greater than $2/N$ with N representing the cooperating population, then we ought to expect defection to occur even in a Prisoner’s Mild Delight scenario where defection ought to be most difficult to encourage. If defection does occur, then A, B, C, and D’s strategy is defeated because they cannot simultaneously take away Alpha’s power and ensure that everyone know everyone’s secrets (since the defectors will keep their secrets hidden). In virtue of the fact that we ought to expect Alpha to set up matrices far friendlier to their cause than Figure 4 in the first place, we should at least assume in this worst case scenario they will do the bare minimum to ensure the success of their blackmail and seek out a value of e that nullifies A, B, C, and D’s strategy. If we can assume that, so can A, B, C, and D, and this will likely make them too wary and suspicious of each other to even attempt their plan.

We might also object that we cannot realistically extrapolate from the population size in the Eminem Defense to the entirety of America. For instance, in a population of four like we see with A, B, C, and D, coordination of release is much simpler than it would be with a larger group. Additionally, since the Eminem Defense posits the existence of only four actors, we can safely assume that A, B, C, and D know each other

⁵³ Skyrms, Brian. "Evolution and the Social Contract." *Social Dynamics* (2014): 49-69. Web. 28 Jan. 2017. 58.

quite well and each trusts that the others will keep their word and release their secrets. However, in the real-world case of this objection, a 30-year-old man who has never left Philadelphia would have to put his trust in a seventy-seven year old woman from outside Topeka, which may require more faith in others than the average person possesses. As a result, in a population as large as the United States, it would be unlikely that the Eminent Defense would be sufficient protection from blackmail.

Objection 4: The Inaccurate Results Defense

Some people argue that, although running algorithms through collected data can produce reliable information about someone, it can also be mistaken, meaning we should not view it as 100% reliable. Thus, all accusations made based on data-mining should and will be treated with heavy skepticism, which will soften the harm done to even those truly guilty of what the algorithm claims.

To refute this, I imagine something like a modern day false rape allegation. Of course, based on our justice system, someone accused of rape ought to be presumed innocent until proven guilty. Further, about 2-3% of rape allegations are false, which is around the same percentage of people who could be falsely classified based on a reasonably good algorithm used for data-mining. However, we do not often see those accused of rape treated as innocent, ordinary citizens until a jury judges them guilty. These people, emphasizing the innocent accused, often have their lives torn to pieces before a verdict is rendered, and oftentimes they cannot even recover much of what they have lost based on stigma and privately held doubts about their *actual* guilt. I do not see why we should expect people to be more forgiving or discerning when it comes to the

world of digitally mined data about someone. If anything, the fact that this digitally mined data is mathematically backed instead of delivered straight from a flawed human's mouth ought to make people even less skeptical about its accuracy. Simply put, the possibility of false positives has never been enough to spur restraint or reflection of harsh allegations in the past, and we should not use it to defend the notion of surveillance and privacy invasion.

Moreover, if the proposed crime is sufficient enough to make the public irrationally rabid, it might even be in a company's interest to intentionally lie about what their algorithms' reported to impugn someone's character provided the evidence surrounding the lie is murky enough to prevent full refutation. After all, in the public eye, the burden of proof often falls on the accused, and a shrewd enough company could use this societal weakness to their advantage.

Objection 5: The Milo Minderbinder Defense⁵⁴

Many people in America find no fault in defending actions that run counter to normative ethics so long as they are profitable, just ask a majority of the U.S. Congress or my father. These defenses, given their most charitable readings, are essentially restatements of the utilitarian claims from Chapter 3. The thought here is that, from a purely consequentialist standpoint, more people benefit from blackmail than are harmed by it since the blackmail we're thinking about encourages spending, which puts more capital into circulation and is ultimately almost universally advantageous because utility

⁵⁴ While the first four objections all cite reasons to doubt the emergence of the blackmail outcome, the fifth objection actually justifies the blackmailing with a normative claim that blackmail leads to a better overall outcome than no blackmail.

increases in a booming economy. Thus, proponents contend that even though blackmail is undesirable, the fact that it efficiently generates wealth is enough to ethically justify it at the expense of a small subset of the population.⁵⁵

Milo Minderbinder famously uses this argument in Joseph Heller's *Catch-22*⁵⁶ to defend his actions after his underground business is found to have contracted missions with and provided intelligence to the enemy German army, leading to the deadly bombing raid on the American soldiers at Pianosa. When Minderbinder finds out he will be tried for treason he hires "an expensive lawyer who is able to convince the court that it was capitalism which made America great."⁵⁷ He "is absolved...by disclosing his enormous profit to the investigating congressional committee".⁵⁸ Even though Milo sold out his own unit, he claims that everyone has a share in his syndicate; thus, his success is everyone's success. As a result, his profit is reason enough to pardon his apparent treason. This is mirrored in the potential reply to the blackmail case where the immoral act, evaluated as such by normative ethics, is excused because of the overall economic benefit. In fact, "Heller created Minderbinder's famous saying 'What's good for Milo Minderbinder, is good for the country' as a parody of Charles E. Wilson, who said 'What is good for General Motors is good for the country' during a hearing of a Senate

⁵⁵ Recall that this justification does not automatically imply implementation, but it does provide strong reasons to at least entertain the idea of blackmail. Considering we've already demonstrated, through decision theory, the difficulty in maintaining the status quo, a strong 'moral' reason for blackmail could be enough to push a company over the edge, which will cause others to follow.

⁵⁶ Heller, Joseph. *Catch-22*. New York: Simon and Schuster, 1961. Print.

⁵⁷ "Milo Minderbinder." *Wikipedia*. Wikimedia Foundation, n.d. Web. 28 Jan. 2017.

⁵⁸ *Ibid*.

subcommittee in 1952”.⁵⁹ One could imagine a modern day Charles E. Wilson saying something similar if his company were caught blackmailing individuals in order to turn higher profits.

To defeat the Minderbinder defense we must demonstrate that the harm of blackmail extends beyond just the person being blackmailed. If we can prove damage is done to people simply because they live in a world where mass blackmail and spying is happening, the Minderbinder defense fails since it is no longer utility maximizing.

⁵⁹ *Playboy Interview: Joseph Heller*. Playboy, June 1975. In: Joseph Heller and Adam J. Sorkin: *Conversations with Joseph Heller*. University Press of Mississippi, Jackson 1993, ISBN 0-87805-635-1, pg. 150.

Chapter 6: Caroline and the Average Man

Against the Minderbinder Defense: A Theory of how Espionage Threatens Personhood

If the public writ large were jurors adjudicating the right to and proper extent of privacy, it would not be difficult to come up with non-controversial cases where they would consistently uphold the right to confidentiality. This class of cases would include things like potentially embarrassing or life-altering secrets⁶⁰ and behavior that would not be seen as normal or healthy in a public forum due to stigma, but that one engages in while in private.⁶¹

We're predisposed to think this type of material is not the proper business of the community because:

- 1.) We all possess some material that fits this category and we don't want it released.
- 2.) There's little doubt that its unauthorized release could harm the subject.

For example, revealing a sexual fetish or preference might make someone the object of ridicule or even psycho-religious controversy in certain areas of the world. In the '80's and '90's, being outed as an AIDS patient could turn someone into a social pariah. The release of a person's net worth could cause said person to become the target of robbers or gold-digging significant others, while revealing their debt could alienate them from potential partners. Thus, most of us would agree these secrets are best revealed at the discretion of their owners. However, these examples do not make the strongest case for the inherent harm in privacy invasion because they are all reliant on some 'out of the

⁶⁰ e.g. fetishes, medical records, personal finances (wealth and debt), etc.

⁶¹ e.g. talking to yourself or acting out different roles in front of a mirror.

ordinary' quality of the subject. To answer the Minderbinder defense, we need to prove that privacy invasion is harmful even when nothing out of the ordinary is gathered in the observation.

Suppose for a moment the existence of an 'Average Man' who quite literally embodies all the qualities we attribute to normal⁶² people. That is to say, this man has an unremarkable amount of money, but enough to get by, such that releasing his financial information would cause about as much drama as a fly in a mosh pit. He enjoys nothing but the most vanilla sex and only for the purpose of procreation. His medical history is completely clean aside from perhaps an appendectomy or tonsillectomy, but nothing that would reasonably affect his ability to be insured or form relationships. In his free time, he sits quietly in a chair and reads great literature of the 19th and 20th centuries. To defeat the Minderbinder defense, we need to prove that even for this 'Average Man', an invasion of privacy constitutes harm, and rather significant harm at that. In fact, I want to go a step further and suggest that even if the 'Average Man' is never blackmailed, even if the blackmail campaign stimulates the economy and gives him lifelong financial security, even if his behaviors and thoughts become better⁶³ because he wants to avoid being a target of blackmail, even then he is harmed.

⁶² Whether or not 'normal' people properly exist is irrelevant. This 'Average Man' is simply the manifestation of traits we associated with normalcy. For instance, even if everyone picks their nose, which would in fact make nose-picking normal, the fact that we might associate not picking one's nose with being properly normal means this 'Average Man' would not be a nose picker.

⁶³ I am suggesting here that his awareness of intruders makes the 'Average Man' act in total accordance with normative ethics. True enough, the 'Average Man' may already be acting in accordance with these claims in virtue of how I have described him, but this same example could work for the 'Nearly Average Man' whose only fault, prior to the blackmail campaign, is his slight deviance from normative ethics.

However, before we can levy any claims about harms against persons, average or not, we must get clear on what exactly a ‘person’ is. Colloquially, we often equate personhood with life i.e. life begins at conception, life begins at birth, life began billions of years ago and is a complex, continuous process, but this line of thought is not philosophically helpful. Surely the ‘life’ being posited here is more than having the right configuration of atoms and being a member of the right species. If these were the only qualifications, we would consider zombies to be persons and confer them all the same rights we claim for ourselves. However, we intuitively resist this because personhood is not so modestly defined. According to Charles Taylor:

Where it is more than simply a synonym for ‘human being’, ‘person’ figures primarily in moral and legal discourse. A person is a being with *a certain moral status*, or a bearer of rights. But underlying the moral status, as its condition, are *certain capacities*. A person is a being who has a sense of self, has a notion of the future and the past, can hold values, make choices; in short, can adopt life-plans. At least, a person must be the kind of being who is in principle capable of all this, however damaged these capacities may be in practice.⁶⁴

Taylor’s account of personhood excludes things like zombies because they cannot hold values or make choices. Perhaps, they are not even bearers of a token-reflexive “I”, which distinguishes them from other members of their species.⁶⁵ If scientists invented some type of shock programming to control and influence a zombie’s every movement, we could make a legitimate argument that the zombie would not be harmed because the

⁶⁴ Taylor, Charles. *Philosophical Papers: Volume 1, Human Agency and Language*. Cambridge: Cambridge UP, 1985. Web. 97. Italics added.

⁶⁵ This is a reference to the teleporter thought experiment that suggests if a teleporter rips a person apart atom by atom and reassembles those atoms in the same configuration somewhere else, the reconfiguration cannot be the same person because the ‘I’ that the original person used to distinguish himself from other people was lost when he was ‘killed’ in the teleportation process.

ability to choose and hold values are not prerequisites for zombiehood. On the other hand, a person, by definition must be able to hold values and make choices, so stripping away those capacities could plausibly constitute harming that person because the prevention of normative and cognitive development through outside interference is an impediment to a good, flourishing life. Therefore, for privacy invasion to count as harmful, it must remove or impede the ability of a person to meet the necessary conditions of personhood. I will argue that certain kinds of privacy invasion limit intimacy, thereby disturbing friendship and negatively impacting normative development, which hinders ones' development as a person and, thus, constitutes a serious harm.

Now one might naturally and preemptively want to object to the very existence of privacy. If humans are social animals, speaking public languages, living in a global world, and reliant on each other to survive, then is 'privacy' not just a vacuous term kept alive by a syndicate of misguided Libertarians? If by privacy, we mean the ability to completely isolate oneself from other human beings and institutions, perhaps privacy has become a myth, or at least uncommon enough to make us doubt its existence. However, this is not the account of privacy I want to use. Rather, I think a good account of privacy ought to be as applicable to a lone person lying in bed as it is to four close friends sharing a drink in the kitchen. According to James Rachels⁶⁶:

Even in the most common and unremarkable circumstances, we regulate our behavior according to the kinds of relationships we have with the people around us. If we cannot control who has access to us, sometimes including and sometimes excluding various people, then we cannot control the patterns of behavior we need to adopt (this is one reason why

⁶⁶ Whose eventual adoption of utilitarianism should not be held against him in this context.

privacy is an aspect of liberty) or the kinds of relations with other people that we will have.⁶⁷

Rachels account implies that even on a city street, two friends walking side by side should expect some degree of privacy. Since privacy is our ability to control what kind of information about ourselves we divulge, how we divulge it, and when we do so, even our friends on the busy street should see a violation in a stranger eavesdropping on their conversation or a third person intervening to reveal a secret one friend was about to tell the other, even if that secret was on the tip of the tongue.

So we now have a foundational definition of privacy that makes its existence quite plausible. At this point, I will turn to Charles Fried to help develop the connection between our new understanding of privacy and personhood. Fried has argued that:

[A] necessary feature of love and friendship is a ‘sharing of information about one’s actions, beliefs, or emotions which one does not share with all, and which one has the right not to share with anyone. By conferring this right, privacy creates the moral capital which we spend in friendship and love’.⁶⁸

Fried’s work borrows assumptions from Rachels’ account of privacy, namely that privacy consists in our ability to divulge or withhold information as we see fit. Fried goes one step further though, and demonstrates that the intimacy privacy affords is a prerequisite for friendship. Without intimacy, friendship loses its meaning, and without friendship, one cannot appropriately express virtues related to being a friend, which hinders one’s ability to meet Taylor’s definition of personhood.

⁶⁷ Rachels, James. “Why Privacy Is Important.” *Philosophy & Public Affairs*, vol. 4, no. 4, 1975, pp. 323–333. 331.

⁶⁸ Benn, Stanley I. *A Theory of Freedom*. Cambridge: Cambridge UP, 1988. Print. 284.

To clarify, let's continue with Fried's metaphor, which claims privacy creates moral capital that can be spent on friendship and love. If our privacy is constantly invaded, we may refuse to spend our moral capital because we feel uncomfortable sharing secrets in the presence of those to whom we do not want them divulged. On a long enough timeline, with enough intervention, this would lead to a loss of friendships because people would stop 'spending' altogether. However, even if one overcame a natural aversion to divulging privileged information in the presence of a stranger, one's moral capital would still depreciate because the once-personal information would instantly become public knowledge. That is, information that is supposed to be indicative of trust and companionship between two people is devalued when dispersed to eavesdropping strangers. In other words, intimacy is annihilated by perpetual incursions.

Consider this, in an intimate situation, receiving personal information makes the recipient special. He or she is privy to something that most other people are not. They are trusted with access to a more complete picture of a person. However, if an intruder is always present, this specialness fades away. Fried is essentially espousing the idea that if everyone is special, no one is. Imagine if everyone had priority boarding on a plane. In that case, there would effectively be no priority boarding. Similarly, if a person's intimate secrets are available to anyone in earshot, the secrets are not really so intimate after all. Therefore, even if one is able to somehow ignore intruders and engage in an exchange of intimate information, that exchange is immediately devalued by the fact that just anyone (in this case, the intruder) has access to it. Given that, the exchange actually lacks intimacy, and being that our intimacy is what allows us to spend our moral capital

to establish and sustain friendships, a lack of intimacy is directly correlated with a lack of true friendships.

Stanley Benn makes a similar argument in his book *A Theory of Freedom*:

If Caroline knows that Alan is listening, his intrusion alters Caroline's consciousness of herself and of her experiences in relation to her world. Formerly self-forgetful, she may now be conscious of her opinions as candidates for Alan's approval or contempt. But even without self-consciousness of this kind, her immediate enterprise – her conversation with Desmond – may be changed for her merely by Alan's presence.⁶⁹

In addition to reinforcing certain themes from Rachels' and Fried's work, Benn's argument here elucidates the way in which a third party's presence can alter normative development practices.⁷⁰ That is to say, too much outside interference can harm our cognitive relationship with the world. I'll elaborate on this idea below.

I'm going to take for granted that removing personhood from a creature capable of it is a serious harm to that creature. As we have already shown, personhood includes a certain moral status and capacities like the ability to survey relevant facts and make decisions. If something interferes with that status or those capacities, it consequently hinders an agent's ability to achieve personhood, which, again, is a serious harm. We can justify this through a famous epistemological debate.

In what might be a worldwide first, Donald Trump is actually useful here. Trump is on record stating, "The concept of global warming was created by and for the Chinese

⁶⁹ Ibid. 275.

⁷⁰ This refers to a type of virtue epistemology that suggests mere justified, true belief is not sufficient for knowledge, but rather the belief must also be good in other ways. One popular stance, which I am appropriating here, suggests that our beliefs must reflect a good cognitive relationship with the world. This cannot be achieved if our beliefs come about through pressure of outsiders' judgment rather than through our own cognitive development.

in order to make U.S. manufacturing non-competitive.”⁷¹ Those of us with the capacity for rational, abstract thought know this is not the case, but just because our belief accords with truth does not make that belief epistemologically good. For instance, imagine Donald Trump calls a press conference and announces he now believes that climate change is real and that humans have some part in accelerating its pace. We would naturally ask:

‘What prompted you to change your mind?’

Trump might respond: ‘Well I have a very good mind, some are saying the best, and it’s very good, and many smart people, the smartest, have been telling me that it’s actually more economically beneficial to fund alternative energy—and by the way, no one respects alternative energy more than me—so they’re saying it and we’re gonna do it. We’re gonna fund alternative energy like you’ve never seen, big league, and climate change is real by the way. It’s real and you have to say it’s real because we have to fund alternative energy. We’re getting killed on alternative energy.’

In this case, his view now tracks reality, but he has arrived at his conclusion through flawed logic and bad epistemic practice. But what if every time we found something economically beneficial, we also found a tangentially related truth such that someone led around by free market economics like a cow by a nose ring always wound up espousing true beliefs even though they had no justification for those beliefs beyond material, self-interest? In that example, our subject would still not reflect epistemic excellence because, as seen through Gettier problems, knowledge is more than just

⁷¹ Samuelsohn, Darren. "Fact: Drumpf Claimed Climate Change Is a Hoax Created by China." *POLITICO*. N.p., 26 Sept. 2016. Web. 04 Feb. 2017.

justified, true belief. We need a more Zagzebskian⁷² notion of good epistemic practice; e.g. justified, true belief that is good in other ways. For instance, relying on virtue epistemology we might claim that virtuous epistemic practice⁷³ does not reduce to the veracity of the claims made as a result of the investigative process. That is to say, intellectual irresponsibility (even so far as it produces views that reflect reality) cannot accord with good epistemic practice. After all, if we were merely after truth maximization, we would be inclined to marvel at the epistemic progress made when someone memorizes every number in the phone book, but we do not do this. There is a necessary, normative component to doing epistemology well.

Similarly, in our case, the ‘Average Man’ who acquires good behaviors and wealth as a result of the blackmail campaign will find those acquisitions are meaningless because they do not reflect a good relationship with the world nor do they allow him to grow and express his capacity for personhood by forming beliefs and making judgments free from interference. Thus, our ‘Average Man’ may appear to be flourishing in the world of the Minderbinder defense, but he is not because, despite looking like a success, he has been stripped of his ability to make choices and hold his own values—features of personhood that, when removed, constitute harm.

This is paralleled in Benn’s story about Caroline. If our investigation into epistemology is right, then even if Alan’s presence causes Caroline to change her beliefs for the better because she is wary of his opinion, he is still committing harm by preventing her from acquiring good, true beliefs in the appropriate manner. Caroline’s

⁷² Zagzebski, Linda. "The Inescapability of Gettier Problems." *The Philosophical Quarterly* 44.174 (1994): 65-73. Web. 16 Oct. 2016.

⁷³ That is, arriving at beliefs based on a preponderance of evidence that reflects a good cognitive relationship with the world.

own cognitive relationship with the world suffers. When she filters her thoughts in order to placate, impress, or avoid judgment from Alan, her normative development is stunted.

Stunting Caroline's normative development effectively robs her of her ability to flourish as a person. If she divulges all sorts of apparently personal information to Desmond, but that information is actually only presented as her own because of Alan's presence, Caroline and Desmond's 'friendship' is predicated on falsehoods and is no real friendship at all. This disturbs both Caroline and Desmond's pursuit of the good life because false friendships (or a total lack of friendships) prevent one from learning what values related to friendship are appropriate to hold and how they are appropriately expressed. If Caroline has no friends, she has no way to express her concern for the well-being of a friend. This expression of virtue is something we ought to expect from a person, and its exclusion renders one less developed than they could have otherwise been.

Benn notes this worry when he continues:

Personal relations are exploratory and creative; they flourish with care and attention, requiring continuous adjustment as the personalities of the parties are modified by experience, both of one another and of the relationship's environment. Such relations could not exist without conditions that excluded intruders.⁷⁴

This is consistent with our prior conclusion. Intrusions stunt friendships like malnutrition stunts growth, and a loss of friendships prevents the kind of care and attention Benn writes about, which in turn, prevents the appropriate expression of that care and attention that is a prerequisite for a flourishing life.

Substituting an omnipresent eye in for Benn's character of Alan might get more to the heart of the privacy invasions we face in the 21st century. As stated in earlier

⁷⁴ Benn. 284.

sections, almost everything we do leaves a trail of data that someone could conceivably track. As we become more aware of something (in this case the all-seeing eye) actually doing the tracking, we will inevitably alter our beliefs and actions. Per the arguments of the last few pages, when privacy is violated in this way, people suffer.

For a final diagnosis of the flaw in the Minderbinder defense, let's return to Charles Taylor. According to his definition, persons are more than simple, instinctual creatures or littered newsprint that moves only as the wind directs it. They are special precisely because they can recognize when they are confronted with a choice, survey and weigh relevant criteria, and decide what ought to be done. This process necessarily contains normativity. To 'do', a person must first believe and desire. His action presupposes a type of intentionality. Even more than this, his beliefs and expressions ought to reflect good cognitive development and a good relationship with the world. That is, people must create and hold their beliefs based on a process that respects others' moral status and reflects epistemic responsibility. In some sense then, a surveillance system that forces a person to always consider the approval or disapproval of the observing party strips them of their personhood. The weight of the observer's opinion (or rather perceived opinion) becomes a major factor in the process of belief forming for the subject. This inability to control his own normative vision of the world removes a staple of personhood. I do not mean to claim that surveillance necessarily makes a subject a non-person, just that it does strip away the freedom of a process necessarily present in persons. In a sense, we could see this as a violation of Kant's notion that persons are ends in themselves. Putting someone under constant surveillance, alters their ability to

make personal, normative judgments, which in turn, pushes them closer to the newsprint in the wind, heavily influenced by outside factors.

Why do the companies using the Minderbinder defense to justify their actions miss this point? For the same reason they struggle to incorporate normative ethics into their worldview: a reliance on utilitarianism. Our diagnosis shows the flaw in the Minderbinder defense is that it fails to respect persons as ends in themselves and never as mere means. However, commercial enterprises are blind to this flaw because their ethics models also fail to account for Kantian respect for persons. Thus, the Minderbinder defense arises due to an imperfection in the utilitarian account of ethics used by businesses and is dissolved through a proper investigation of personhood and morality.

Chapter 7: Life in the Panopticon

Since I have already defeated the Minderbinder defense even after giving it full deference and charitable consideration, I feel free to assert that none of the positive assumptions I granted it would actually come to fruition. In this section, I will offer an alternative rebuttal by using Bentham and Foucault's work on the Panopticon to claim that the type of mass surveillance essential for a blackmail campaign necessarily creates a kind of depressed, dystopian society, not one that appears to be flourishing, even if that flourishing is based on a mistaken conception of the good life.

Observation affects reality. This is as true scientifically; e.g., electrons in the double-slit experiment, as it is socially; e.g., junior varsity athletes when the coach turns his back. But despite the enormity of difference between these two cases, one obvious similarity remains: the observer's presence is easy to ascertain. The quantum observer in the double-slit experiment is either present or not. Likewise the coach is either facing the players or has his back to them. However, for a true analogy to the conditions present in modern surveillance, we ought to consider what happens when an observer's presence is not so binary. We can do this through a case I'll inelegantly dub Schrödinger's Dime.⁷⁵

Let's imagine three heterosexual men in a suite lounge, sitting around a table, eating peanuts and pretzels, and generally being themselves.⁷⁶ Further let's accept that these three men: Arthur, Brian, and Chris react differently when they encounter pretty

⁷⁵ This requires only the uncontroversial presupposition that heterosexual men act differently around women they are attracted to.

⁷⁶ In the most unphilosophical way possible. Simply put, acting as they usually would in the company of their friends, feeling free from judgment or isolation based on anything they may utter.

women. Arthur only talks about ‘appropriate’ things—that is, he avoids topics he thinks might gross girls out or make him appear overly feminine. Brian becomes a ‘peacock’, constantly bragging about himself and trying to show off. Chris clams up and becomes almost entirely mute. Additionally, because they consider it feng shui, they hang a thick, black curtain to divide their suite lounge from the corridor leading into the hallway. One day, Debra, a universally agreed upon gorgeous woman (both physically and personality-wise) comes over to borrow some Tupperware. While she is around, our three tenants adjust their behavior accordingly. Eventually, Debra excuses herself and disappears behind the curtain. If, in virtue of the curtain, they cannot see whether or not Debra has actually left the room, how long will it be until Arthur, Brian, and Chris return to their normal behaviors? Now obviously in this case if their fear of her presence persists, one of them can check behind the curtain to see if she is still there. Nonetheless, the point remains, after Debra vanishes behind the curtain none of them can be sure if they are or aren’t in the presence of an attractive woman; thus, they will likely continue to behave in abnormal ways just to be safe. These abnormal actions don’t appear to be *good* in any justifiable respect. They don’t seem to be the staple building blocks of the sort of happy society I granted the Minderbinder defense in the previous chapter.

The Schrödinger’s Dime account differs from my other explanations of behavior modification because it gives a socio-psychological story for how life under surveillance *actually* alters a person’s actions. It is, in essence, a frivolous parody of Jeremy Bentham’s Panopticon, here described by Michel Foucault:

The major effect of the Panopticon [is] to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action...To achieve this, it is at

once too much and too little that the prisoner should be constantly observed by an inspector: too little, for what matters is that he knows himself to be observed; too much, because he has no need in fact of being so. In view of this, Bentham laid down the principle that power should be visible and unverifiable. Visible: the inmate will constantly have before his eyes the tall outline of the central tower from which he is spied upon. Unverifiable: the inmate must never know whether he is being looked at at any one moment; but he must be sure that he may always be so.⁷⁷

In Foucault's story, the Panopticon harms prisoners by suppressing their individual personalities through the perpetual threat or appearance of observation. The new personalities that arise are not consistent with 'good behavior'; no one in the Panopticon finds himself a model citizen because of the gentle nudge of the guards' eyes. Instead, we see the development of paranoia and insanity. In our Schrödinger's Dime account, Arthur, Brian, and Chris are analogous to the prisoners; they lose their true, individual personalities because their opinions and behaviors anticipate Debra's presence. That is to say, they filter their actions through Debra's eyes and what her estimation of those actions might be. Imagine our trio, trapped in the lounge suite, with no way to peel back the curtain. In this case, the permanent threat of Debra's presence⁷⁸ would alter their behavior and growth in much the same way the threat of a guard affects prisoners in the Panopticon, and none of these altered behaviors align with what we would consider good.

Of course, most of us will likely never experience life in a literal Panopticon prison, but Bentham's original invention has taken on new meaning in the era of mass surveillance and data collection. In a world where companies and agencies can collect, store, and interpret the data we create nearly everywhere we go, a literal prison becomes

⁷⁷ Foucault, Michel. "*Discipline and Punish, Panopticism.*" In *Discipline & Punish: The Birth of the Prison*, edited by Alan Sheridan, 195-228. New York: Vintage Books, 1977.

⁷⁸ Remember, these effects occur even if Debra is never actually present in the suite. So long as her presence is likely enough our trio can never relax their inauthentic behaviors.

almost redundant. We may not be relegated to physical cells, trapped behind bars, lit up in the eye of a spotlight, uncertain of whether or not a guard is spying on us from his central tower, but we are trapped a world where our data belies our behavior, actions, and opinions, which are contained in our many technological toys, which the ‘guards’ (data-collecting institutions) can extract sensitive information from at any time. This metaphorical Panopticon functions much the same as Bentham’s literal prison would have, but it maintains the illusion of freedom; prisoners are free to roam but not free from constant observation.

To be fair, there is a relevant disanalogy between the metaphorical and literal cases, one we all likely interact with every day—people who are either unaware or dismissive of the power and potential danger of this Panoptic state. The Panopticon cannot function if everyone is blissfully unaware of their status as ‘prisoners.’ However, preliminary studies from the Pew Research Center suggest a troubling trend away from happy ignorance. According to a 2015 survey conducted by Pew:

18% of Americans who are aware of the surveillance programs say they have changed the way they use their email accounts ‘somewhat’ or ‘a great deal’. 17% say they have changed the way they use search engines. 15% say they have changed the way they use their cell phones. 13% say they have changed the way they use text messages. 9% say they have changed the way they use their landline phones.⁷⁹

Further, when asked why they modified their behavior, many respondents gave answers like “‘I used to be more open to discussing my private life online with my select friends. Now I don’t know who might be listening’ [and] ‘[I] can’t joke about stuff that could be

⁷⁹ Rainie, Lee, and Mary Madden. "How People Are Changing Their Own Behavior." *Pew Research Center: Internet, Science & Tech*. N.p., 16 Mar. 2015. Web. 29 Nov. 2016.

taken as a threat”⁸⁰ These answers, particularly the first selection, ought to look disturbingly similar to the worries raised by Rachels, Benn, and the like. Granted, the effects are not as widespread as some philosophers have predicted, but rather than scrap our theories we can attribute the dissimilarities to ignorance of surveillance programs or a lack of tangible evidence that these programs target ordinary citizens and can lead to significant pain and punishment.

Moving beyond raw survey data, investigative social science has also identified a relationship between privacy invasion and a decline in both mental and physical health. Researchers claim, when observing those living under surveillance, “personality change has been noted in a number of studies and has been recognized by ICD-10. The most prominent features of this include symptoms of apathy, chronic tiredness, lack of initiative, poor concentration and paranoid thoughts”⁸¹ These symptoms show that not only is personal development negatively impacted by surveillance, but the body itself also suffers. In fact, the description offered by Abed is fairly consistent with symptoms used to diagnose depression. Anyone who’s ever known a depressed person or has been depressed himself is aware of the strain it puts on relationships, both intra and inter personally. If symptoms consistent with depression manifest themselves under surveillance, we have good reason to suspect those living in surveillance states (or who perceive themselves to be) will suffer similarly devastating outcomes as a result of their symptoms; e.g., hindering or preventing altogether an individual’s ability to form and develop relationships. Thus, even if we can only build a modern Panopticon through metaphor, the nasty outcomes are analogous enough to warrant concern despite the

⁸⁰ Ibid.

⁸¹ Abed, Riadh T. *British Medical Bulletin* 72.1 (2004): 1-13. Web. 29 Nov. 2016.

relevant dissimilarities between our Panoptic case and Bentham and Foucault's iteration. As a result, we can reject the idea of an apparently flourishing community as portrayed in the Minderbinder defense.

The Safety Objection

Functionally, it is a feature, not a defect of the Panopticon that it keeps subjects in a constant state of vulnerability, but one might object that vulnerability is not synonymous with living a 'bad' life. Perhaps in our metaphorical Panopticon mildly inconvenient psychological vulnerability is a necessary tradeoff for safety. That is, we would actually be more vulnerable without the intruding eye of mass surveillance because we live in a world composed of people and things out to harm us and we need some sort of watchman to protect us. Consider the hermit crab, safe in his shell, invulnerable to the plodding feet of uncoordinated beachgoers. We could even accept that it's a point of pride for the crab that he can survive in this tiny shell, but if he were rational, would he not trade it in, in exchange for the safety of a tank and life under the watchful eye of a dutiful pet owner? There's no surer safety than that, and if the deshelled hermit crab is analogous to citizens under surveillance, maybe surveillance is the least bad option.

Of course, I haven't come this far to suddenly about-face and endorse surveillance. Absent from arguments about how our vulnerability may be a necessary inconvenience for the benefit of greater overall safety is a concern for how that vulnerability might simply lead to overwhelming paranoia. More than just a derogatory diagnosis for the guilty man, paranoia manifests itself in mental and physical illnesses

(surely not safe insofar as safety implies a kind of robust comfort). A man under constant surveillance, unable to fully relax and reflect, will surely experience an uptick in stress. In fact, “Researchers have found that as surveillance increases, so does anxiety. Anxiety can lead to a host of health conditions, including high blood pressure, obesity, respiratory problems, gastrointestinal problems, and even cancer”.⁸² Thus, we ought to be suspicious of the very promise of safety through surveillance, given, at a certain point, surveillance does more to harm those it ‘protects’ than it does to prevent harms from those it aims to catch and deter. Additionally, as we saw with the Panopticon, the existence of increased surveillance is not even necessary for one to experience increased anxiety. The mere *perception* of an increase in surveillance is enough to harm a person’s quality of life. This is not to say all surveillance should be eliminated, but the mental health angle does put a larger burden on the observing party to ensure the harm inflicted on its subjects is not greater than the harm prevented through its surveillance techniques. Many modern day surveillance tools and techniques—backdoor access to phones and laptops or mass data collection and storage—plausibly fail to generate benefits that exceed the harms they inflict, and, thus, ought to be eliminated. Short of abandoning surveillance altogether, we should at least reevaluate our practices while giving greater deference to personal development and mental health.

We should also take care to consider the interests of members of the population *not* under surveillance at all. Remember, according to the Panopticon story, from a subjective perspective, there is no way to conclusively prove one is free from

⁸² Villines, Zawn. "Watch Out: The Psychological Effects of Mass Surveillance." *Good Therapy*. N.p., 16 Sept. 2013. Web. 29 Nov. 2016.

surveillance. Thus, mass surveillance has major ramifications even for those outside of its purview since they can never be sure they actually are outside at all. Further, once it gains momentum in a world where some people are right to be paranoid, mass paranoia is not easily cured because, in the immortal words of Kurt Cobain, “Just because you’re paranoid don’t mean they’re not after you.”⁸³ For our own sake, we should at least reject an unqualified, positive correlation between surveillance and safety, and aim to be more discriminating in our application of surveillance on the whole.

⁸³ Cobain, Kurt, David Grohl, and Krist Novoselic. *Territorial Pissings*. Nirvana. DGC, 1991. MP3.

Chapter 8: A Prescriptive Account

I should preface this with a disclaimer: I am not an expert on law or technology. I could offer a detailed, technical, legislative solution to the problem I have just used seventy pages to outline, but it seems to me that to solve in a single page or two a problem that takes 20,000 words to adequately explain is to rather carelessly ignore a multitude of factors that must be weighed for appropriate resolution. Further, I would hate to get too specific and initiate a sort of modern 'Four Pests' campaign. That is to say, just as Mao thought he could reverse China's poor crop yields by exterminating the sparrows that actually ate the insects most responsible for bad harvests, I may also offer a solution that appears to be a good remedy but actually causes a worse outcome.

What then is the point of this final chapter? Should we just hope for a devastating solar flare or a nuclear holocaust to prevent the nasty blackmail outcome? While both of those disasters would apparently eliminate the problem, it would be peculiar to prescribe horrible destruction to avoid horrible destruction. I still believe, perhaps naively, that we are not bound to the fate described herein. At the outset I described three necessary conditions that must precede any attempt at corporate blackmail in order for it to be effective. If I've been convincing enough, and if the problem is troubling enough, then we ought to work toward altering at least one of those conditions such that the groundwork for blackmail is non-existent. This is an intentionally vague solution because, as I stated earlier, I do not want to commit myself to a plan while lacking the requisite knowledge of the legal system and technological field to fully understand the repercussions.

Just to remind you, here are the original three conditions I labeled necessary for a successful blackmail campaign:

1. It must be the case that powerful institutions can collect and process massive amounts of data/metadata on a wide swath of citizens.

2. It must also be the case that powerful institutions use utilitarian criteria for what counts as right and wrong, which causes them to overlook the value of privacy.

3. Game Theory should suggest that blackmail is a likely progression from mass data collection and mining that currently exists. This should even apply to those institutions that were previously ethically opposed to data collection and blackmail.

Alter one of these even slightly and you create a butterfly effect that ripples across time and changes the outcome. Now, whether you change that outcome for better or worse depends on what alterations are made to the conditions, but to think we are bound to the fate I have predicted is to view life as overly deterministic. As I've repeated throughout this paper, people are not simple chemical reactions. We have the capacity to reason and make value judgments and as a result, we should not see ourselves as passengers strapped along for the terrible ride, but rather conductors and engineers who can control the twists and turns (albeit with varying degrees of certainty) to forge a better experience.

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