

Democratic Control of Information in the Age of Surveillance Capitalism

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ABSTRACT Carol Gould's article offers a powerful argument against the sufficiency of informed consent in an age of surveillance capitalism. In this review, I assess the three main claims that Gould makes in her article, namely that (1) democratic control is required by the all-affected principle; (2) democratic control is a means of ensuring that surveillance corporations and governments track public, rather than merely private, interests; and (3) democratic control is constitutive of freedom as self-development and self-transformation.

We are all by now familiar with what Shoshana Zuboff has called 'surveillance capitalism'.¹ Every time we go for a run, surf the net, turn on a 'smart' TV, use our mobile, book a flight, or get a loan, we leave a stream of information regarding our location, desires, interests, anxieties, number of children, income, wealth, and many other things. This information – 'data exhaust' – is stored, tracked, analysed, and sold. The search engine that Google provides and the social media platform that Facebook champions have become what Zuboff calls mere 'interfaces' for gathering data about us, analysing it, and selling it on (for example, to advertisers and political campaigns). The real money these days lies in that information, not in social media or search engines *as such*. Companies, together with governments (most prominently, those of China and the US), are investing heavily in using this data and the algorithms used for processing it to form predictions about our behaviour. Companies are interested because this information provides valuable insight into what gets people to buy their products and services. Governments are interested because it provides a powerful tool for social control. US police departments routinely use this information to identify suspects. China is now perfecting a 'social credit' system that gives citizens points on the basis of not only their creditworthiness but also their willingness to take care of ill relatives, to stop for pedestrians, and to do good works. In turn, those whose points have been taken away are black-listed from getting loans, buying plane or train tickets, or getting job promotions.²

In her article, Carol Gould argues that the informed consent that is at the heart of surveillance capitalism – the myriad terms and conditions that we are asked to approve every time we use an online service and give up our data in exchange – is flawed. It is flawed both because we are ill-informed about the uses that will be made of that data and, more importantly, because of the limited control it gives us over the economic and social structures that have made informed consent necessary. Her solution is to enhance our democratic oversight over data use, both via traditional channels (political and legislative action) and via the governing boards of 'surveillance' corporations. I

will not here question her conclusions (with which I broadly agree). I will also not question how one should convert the conclusions into practical policy proposals (which are not the focus of her article). Rather, I want to focus on (a) Gould's argumentative paths to the conclusion, which are the main focus of her article and (b) the sense in which the emergence of surveillance capitalism represents an injustice. The article is tremendously rich, insightful, and repays close attention, which makes my task both difficult but also rewarding.

Three Paths

There are three main paths Gould takes to the conclusion that we must enhance democratic oversight over collection and use of data: (1) democratic control is required by the all-affected principle; (2) democratic control is a means of ensuring that surveillance corporations and governments track public, rather than merely private, interests; and (3) democratic control is constitutive of freedom as self-development and self-transformation.

The all-affected principle says, roughly, that all those whose interests are affected by some decision ought to have opportunities to influence that decision. The principle has obvious appeal for anyone wanting to argue that surveillance corporations ought to be subject to *direct* democratic control (via their boards, for example) rather than the merely indirect democratic control we have via elected representatives. The decisions that surveillance corporations make with respect to the data they gather have significant implications both for those whose data are being used *and* for third parties that are affected by the corporations' use of that data, even if their personal information has not been collected. Because of such broad effects, it is clear that informed consent is not sufficient.

Gould's emphasis on the claims of third parties is important and well-taken. I want, nonetheless, to raise two minor issues with this argument. First, it generates a claim to democratic control that is not specific to surveillance capitalism. In principle, it is a valid argument for direct democratic control of almost any consequential decision-making. But this leads to a second problem, namely that that argument is only as good as the all-affected principle itself. Indeed, one of the main critiques of the all-affected principle is that it tends to be over-inclusive. My neighbours have a birthday party in their garden. This significantly affects my weekend plans. Should I therefore have a right to assert direct democratic control over their plans? In response to queries like this, defenders either narrow the scope of the interests that should trigger the demand or water down the degree of influence required. For example, Gould writes that the all-affected principle should only be triggered where people's basic human rights are involved (and also that affected transnational third parties should have a say but not a vote).³ But this looks arbitrary: given the effect that the garden party, for example, has on my weekend and hence my wellbeing, why *shouldn't* I have direct democratic control? Why is impact on basic rights necessary? And, more importantly: it now looks *un-derinclusive*. There are many political decisions taken by *governments* that *do not* affect my basic rights. Is it correct that they should not therefore be subject to democratic control? Perhaps Gould means to assert a merely sufficient condition, but, if so, it then shifts the burden of the argument onto the question of how, exactly, surveillance corporations impinge on our basic rights. And when we shift attention to that further

question, the relevance of the all-affected principle seems to become incidental to the demand for democratic control. What we worry about is how surveillance corporations undermine (or threaten to undermine) basic rights. Direct democratic control in this case seems important not because of the all-affected principle but as a means of stopping (or reducing the likelihood of) such violations. But, from this point of view, it now looks contingent whether or not direct democratic control will reduce the likelihood of those rights violations (whatever they are). What evidence do we have that direct democratic control will in fact have such beneficial effects? Might it not increase them?

This brings me to the second argument for democratic control, namely that democratic control is a means of ensuring that surveillance corporations and governments track public, rather than merely private, interests. Gould mentions the value of non-domination in passing, but I think it can be used to highlight the character of this argument. Surveillance capitalism, among other things, increases the inequality in power between those who ‘watch’ and those who are being watched.⁴ Those who have access to data about us can manipulate our preferences, distort our democracies, and hold us to ransom. Whether they do so or not is beside the point. The point is that they *could*. This is why, by releasing our personal data to them, we become the agents of our own domination. From this perspective, direct democratic control is a way of redressing this imbalance in power. By imposing direct democratic control, we can ensure that surveillance organisations use our data for *our* good rather than merely their own.

Again, this argument is only as good as the account of nondomination supporting it. In particular, it is unclear why we ought to think that imposing direct democratic control is not merely like switching one dominating power (the surveillance corporation) with another (the democratic majority on a board). Consider, for example, how popular China’s social credit system has been in cities like Rongcheng (which China has designated as a trial city for its new system).⁵ Direct democratic control could, it might be imagined, easily *increase* the reach and scope of China’s social control policies, even beyond where the government would otherwise want to go. This would allow a democratic majority to control the lives of minorities through controlling the use of their ‘data’. Why does not this possibility itself constitute a form of domination given that it could produce just as much injustice as it promised initially to reduce? Nondomination accounts are hard-pressed to explain why it would not.⁶ The strength of the argument rests, I submit, more on the expectation that democratic control would make *good* constraints – for example, constraints that reduce the likelihood of basic rights violations or other injustices – *more likely* than the current system, not on considerations regarding nondomination *as such*.

Finally, Gould argues that democratic control is necessary for what she refers to as *freedom as self-development and self-transformation*. Gould draws the idea of freedom as self-development/self-transformation (FSDT) from previous work.⁷ The most relevant contrast is with classical notions of freedom as self-governance or autonomy. Gould writes that FSDT:

go[es] beyond autonomy in being responsive to creativity and change over time, and by incorporating an integral relation to the conditions of activity that make choices effective. Without access to these conditions, choices remain empty and unrealised. The conditions include both the absence of constraint – including traditional interference, as well as freedom from

oppression and domination – and the presence of enabling conditions, both natural and social, including recognition and care, along with basic material support for life activity. . . . [C]o-determining the course of the common or collective activities in which these individuals may engage is one of the social conditions for their self-developing activity.⁸

On this reading, democratic control over surveillance corporations' use of our information is necessary to enable us to determine and manage our relations to others through time. If we sign away our personal information for good, we lose the capacity to determine what will happen to it in the future. Individual consent is not enough because the commodification of our information affects not only us as individuals but also our lived environment, including the quality of the democracy we live in, and hence has an impact far beyond those whose information is used.

This brings us to a further question that is somewhat obscured by the emphasis on democratic control: In what sense, exactly, is surveillance capitalism unjust? It is one thing to say that it is unjust because it is not controlled democratically. But, as we have seen, it seems possible for surveillance capitalism to continue, and even to be further entrenched, in the presence of democratic control. In that case, would we still have reason to object to it? Put another way: suppose you are a member of the public whose task is to oversee the operation of surveillance corporations through democratic means. How and why should you seek to change the way they operate? What injustices should you seek to do away with? Gould often speaks of the *structural injustice* wrought by surveillance capitalism. The problem is *structural* because it is not easily addressable by individual action alone (e.g. by informed consent); what is needed is systemic, legislative, structural change taken by people acting in concert (hence democracy). The *structural* aspect strikes me as uncontroversial. But in what sense is it an injustice?

Privacy

There are some clear ways in which surveillance capitalism wrongs us. First, the companies involved can corrupt democracy by selling our information to bias elections and other political outcomes. This speaks in favour of more and better legislation to prevent them from doing so. Second, many companies use somewhat dodgy tactics to get our 'informed' consent. As a consequence, we are not well-informed regarding how our information is and can (legally) be used, and the companies have no incentive to make us more informed. This speaks in favour of better education and better regulation (the parallel is to advertising more generally). These points strike me as important but not specific to surveillance capitalism.

The real issue is privacy – its importance and its future. And here I was surprised how little Gould tells us about what privacy is and why it is important. She mentions FSDT, and the idea that we need control over our self-presentation in order to maintain and develop our capacities for self-development and self-transformation. But this left me wanting more. There are myriad *benefits* that the gathering of data on a large scale can bring in, for example, epidemiology, risk management, product standards, transaction costs, economic productivity, transportation, social connection, policing, education, and so on. Indeed, we may deceive ourselves if we believe that the

popularity of some of China's experiments with social control is merely a product of 'thought control' or fear of sanction.

But, naturally, on the other side are justified worries about excesses of social control – including mistakes, reinforcement of social stigma, and stifling pressures to conform – and the collapse of spontaneity, naughtiness, unconventionality, and eccentricity. We worry about the effects of social control on pluralism; we worry about homogeneity. Worries about Big Data in an information age are as familiar as worries about Big Brother were in an industrial age. How are we to think about privacy in this age? Gould mentions the 'European' idea of privacy as required for dignity, and applauds its rejection of the idea that privacy is property to be bought and sold. She claims, however, that privacy is best understood not as an essential component of a 'dignified life' – she is sceptical of that idea – but as an essential resource for relational self-transformation. I have already discussed how, from this premise, Gould argues for democratic control. But I wonder why Gould does not advocate a more radical solution, such as the *banning* of use and collection of data exhaust? Is it merely that a ban would be infeasible?⁹ If privacy should not be seen as property – as something that can be bought, sold, and traded – but an essential resource for self-transformation, why should not we do all we can to *prevent* people from giving up their personal information for commercial use *whatever a democratic majority might say about it?* (Think of similar anti-commodification critiques of sex work, surrogacy, organ sales.) And what about giving up such information for *non-commercial* use? (What difference, if any, should it make whether those collecting such information are governments or non-profit organisations rather than commercial entities?) I was left wondering, on the basis of her diagnosis of the problem, why Gould prefers democratic control to outright prohibition (especially given her critique of autonomy as a way of thinking about the importance of privacy).

Gould's article is a powerful indictment of surveillance capitalism, and a convincing call for democratic control. We have much to learn from it.

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NOTES

- 1 S. Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: PublicAffairs, 2019).
- 2 S. Mistreanu, 'Life inside China's social credit laboratory', *Foreign Policy* 3 April. Available at <https://foreignpolicy.com/2018/04/03/life-inside-chinas-social-credit-laboratory//>(2018).
- 3 See Gould, this issue, p. 8.
- 4 Gould op. cit., pp. 7, 11.
- 5 Mistreanu op. cit.
- 6 For more on this argument, see N. Kolodny, 'Being under the power of others', Manuscript available at <http://sophosberkeleyedu/kolodny/BeingUnderThePowerOfOthers2pdf2017>; T. W. Simpson, 'The impossibility of republican freedom', *Philosophy & Public Affairs* 45 (2017): 27–53.
- 7 C. Gould, *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy and Society* (Cambridge: Cambridge University Press, 1988).
- 8 Gould, this issue, p. 10.
- 9 But see Tim Berners-Lee's 'Magna Carta for the Web' at <https://www.theguardian.com/technology/2018/nov/05/tim-berners-lee-launches-campaign-to-save-the-web-from-abuse> (accessed 21 February 2019).