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BOOK REVIEW

Windows into the Soul: Surveillance and Society in an Age of High Technology,

by Gary T. Marx, Chicago, IL: The University of Chicago Press, 2016, 326 pp., $35 (paper), ISBN 978-0-226-28591-7

After the 9/11 terror attacks, Americans were forced to think about privacy in a new way. As always, in the aftermath of a major crime story, calls for legislation were issued and those calls were heeded. The legislation that resulted, the USA Patriot Act, was passed hurriedly, with little thought about the larger principles of democratic theory that were impacted by the law. As is so often the case with laws passed in reaction to a sensational crime story, the law had little effect in terms of preventing the behavior that prompted the law, but quite a large impact on the law abiding citizens of the nation. One of those major impacts was to provide for a dramatically increased level of surveillance using information technology in an unprecedented way. Gary Marx's book, *Windows into the Soul*, provides a telling look into the underlying normative principles of a free society faced with incredible advances in technology coupled with a new and extremely worrying global terrorism threat.

One question that all of us should be asking ourselves is to what extent the terrorists achieve a part of their objective if they force us to abandon some aspects of the openness of our society. Free speech and free association are cherished norms of a free, democratic society. There was never any question of whether free speech and association would be abandoned in the aftermath of 9/11, but there was an important question of just how much were we, as a society, willing to constrict our own freedom in the cause of preventing another terror attack. Marx examines the question of just how we should think about technological surveillance in a democratic society. In the process, he lays out a series of useful normative guidelines that assist serious scholars as they ponder the challenges that technology poses to the free and open society that we tend to associate with constitutional, limited government.

Marx is a notable scholar with an impressive body of work in this area. His expertise shows throughout the work, as does his encyclopedic knowledge of the classic works and principles of social science. Mature scholars will enjoy the frequent references to Michel Foucault, Aldous Huxley, George Orwell, C. Wright Mills and others. Additionally, his references to movies and music enrich the text.

The book is, as the author repeatedly reminds us, only a small part of a much larger project. Frequent references to supplemental material on the University of Chicago Press's website are made in every chapter, and one chapter (ch. 12) is little more than a list and a reference to the web site. I know that Marx's editor at the University of Chicago Press had a difficult task trying to whittle what is clearly a much larger and detailed work down to a manageable, self-contained book, but some of the editorial choices left this reader frustrated. The quality of the ideas and the questioned posed are very enlightening and well worth the effort to read, but the book as currently packaged is not very accessible to any but those with a certain amount of expertise.

One of the things that make such a book useful are the illustrative examples. At the center of the middle section of the book are several hypothetical case studies that illuminate the larger principles, and Marx makes good use of them. In addition to the major hypothetical cases, there are frequent, almost casual, mentions of real life examples, but often with little detail. For readers

with a certain amount of expertise in the types of information and surveillance technology that can be used by both the government and private business, these brief references are very useful. Readers who are less well acquainted with this area of law and technology may miss something by not knowing just how pervasive surveillance can be. The text could have benefited from the inclusion of far more current, "real life" examples of surveillance practices and capabilities of both the government and the private sector. This does serve to limit the audience and that is unfortunate.

Perhaps one can measure the value of a book by the extent to which the reader can take its principles and apply them to current social science phenomena. One of the key dilemmas faced every single day by every person using a smartphone is the extent to which they share private areas of their lives with both the government and with those who gather data based on use patterns and locations of smartphones. Do you share your pattern of movement, internet search history, substance of texts, preferences for food and drinks, and other information, or do you cut yourself off from the world? Julia Angwin's *Dragnet Nation* (2014) provides a frightening case study of the futility of attempting to exist off the grid while still maintaining a normal life connected with friends, family, news, and commerce. So many users simply cannot imagine how they would cope with daily life without their smartphone that they do not even think about the fact that they are sharing such a large amount of information. Reading Marx's book made this reviewer think more carefully about the choices made and how these issues should be presented in the classroom to students who are absolutely dependent on their cell phones.

Similarly, one can also judge the usefulness of a text like this one by the way it in which it can be applied to real policy decisions. For example, in deciding criminal cases in which there are challenges to government use of data collected by cellular service providers, the court must make a judgment about whether this sharing of information with third parties is knowing and intelligent if they are to decide whether there is a legitimate expectation of privacy in the data. In the case of *United States v. Graham* (2016), the United States Court of Appeals for the Fourth Circuit decided, as a matter of law, that a cell phone user voluntarily shares these data with the phone company and, as such, loses any legitimate expectation of privacy and, consequently, the ability to challenge the use of the data under the Fourth Amendment. Governments are already making the kinds of normative decisions that Marx contemplates, but very little in the opinion of Judge Motz in the *Graham* case suggests that she was thinking carefully about the moral implications of her decision to rely on precedent from the pre-internet age. This reviewer firmly believes that her decision-making process could have been improved by a careful consideration of the principles Marx lays out.

The best part of this book comes in the final chapter. It is here that the moral, ethical, and normative theoretical issues are laid out in a well-organized fashion. It is here that the great critical theories of social science are applied to a modern problem that is one of the most salient in a democracy today. Scholars, who are the main audience for this book, would be well advised to read this final chapter carefully and use it to think about the major issues of surveillance and technology. The technology is there. Law enforcement, intelligence bureaus, and the private sector all want to use it. Additionally, and most hopefully for this reviewer, the "subjects" of the surveillance can also use it. It has been used to bring light on the problems of excessive use of deadly force the police against minority youth in America. It was a key source of power for protesters during the Arab Spring movement. Digital technology is a tool, neither good nor evil, as Marx says in his afterword. In a free and open society, there must be rules for how it is to be used by the government, and by the private sector. These rules and regulations need to be informed by theory and works like *Windows into the Soul* offer the potential for a framework that can be used to shape this debate in ways that are consistent with democratic theory.

Notes on contributor

Craig Curtis teaches courses in judicial politics and public administration. He has a long-standing interest in police behavior, critical criminology, and criminal procedure and is the coauthor of *The Fourth Amendment in Flux: The Roberts Court, Crime Control, and Digital Privacy* (2016, University Press of Kansas), with Michael C. Gizzi of Illinois State University.

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