



Revisiting Social Contract Theory in the Age of Digital Surveillance

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Abstract

The social contract, a foundational concept in political philosophy articulated by thinkers like Hobbes, Locke, and Rousseau, traditionally delineates the relationship between the individual and the state. Its core premise involves the voluntary surrender of certain natural liberties to a sovereign authority in exchange for security, order, and the protection of remaining rights. This paper argues that the advent of pervasive digital surveillance constitutes a fundamental transformation of this historical bargain. The scale, nature, and actors involved in contemporary data collection have created a paradigm that classical social contract theory is ill-equipped to describe. Today, citizens subject themselves to monitoring not merely by the state but by a complex of corporate entities, often with the state's tacit approval or active collaboration. This new digital social contract is frequently implicit, non-voluntary, and characterized by a radical power asymmetry. The paper concludes that a reimagined social contract is urgently needed, one that explicitly addresses digital personhood, redefines the boundaries of consent, and establishes new mechanisms for accountability in the digital sphere to prevent the erosion of the very liberties the original contract was meant to secure.

Keywords: Social Contract, Digital Surveillance, Privacy, Data Sovereignty, State Power, Corporate Power.

Introduction

For centuries, social contract theory has provided the normative justification for political authority. The hypothetical transition from a state of nature to civil society, as conceptualized by classical theorists, involved a calculated trade-off. Individuals consented to be governed, accepting constraints on their absolute freedom, to escape the perpetual insecurity and violence of an anarchic existence. In return, the Leviathan, whether absolutist as in Hobbes or limited as in Locke, guaranteed their safety and protected their fundamental rights, notably property and life.

The digital age has inaugurated a new, de facto state of nature, not one of physical violence, but of pervasive visibility and data extraction. The contemporary individual navigates a world where their movements, associations, preferences, and even thoughts are continuously tracked, recorded, and analyzed. This monitoring is dual-pronged, conducted by state agencies in the name of national security and by corporate platforms in the pursuit of profit. The



traditional quid pro quo of the social contract has been dramatically altered, often without the explicit, conscious consent of the citizenry. The security offered is now frequently framed as cybersecurity or protection against terrorism, while the liberties being surrendered extend deep into the realm of personal privacy and autonomy.

This paper contends that the classical social contract has been silently rewritten, creating a crisis of legitimacy. It explores how digital surveillance challenges the core assumptions of consent, the monopoly of state power, and the very definition of the protected private sphere. The analysis proceeds by examining the theoretical foundations of the contract, the novel features of the digital panopticon, and the emergent power dynamics between states, corporations, and citizens. The ultimate aim is to articulate the necessary contours of a revised social contract fit for the 21st century.

The Theoretical Foundations of the Social Contract

To understand the rupture caused by digital surveillance, one must first recall the original premises of the contractarian tradition. While differing in specifics, the key philosophers shared common concerns about power, liberty, and consent.

Hobbes and the Trade of Liberty for Security

For Thomas Hobbes, the state of nature was a war of "every man against every man," making life "solitary, poor, nasty, brutish, and short" (Hobbes, 1651/1985). The primary motivation for forming a commonwealth was the overwhelming desire for self-preservation. Individuals, rational and fearful, would willingly alienate all their rights to an absolute sovereign—the Leviathan—in exchange for a guarantee of security and order. The Hobbesian bargain is stark: total submission for absolute safety from communal violence. In this framework, surveillance by the sovereign could be seen as a logical extension of its role in maintaining order, a price worth paying for peace.

Locke and the Protection of Pre-existing Rights

John Locke presented a more liberal vision. The state of nature was not inherently chaotic but was inconvenient due to the lack of a neutral judge to enforce the law of nature (Locke, 1689/1988). Individuals entered into society to better preserve their pre-existing natural rights to life, liberty, and property. The government established by the social contract was thus a trust, with power held conditionally. If the government violated that trust—for instance, by seizing property without consent—the people had the right to rebellion. For Locke, the government's power was limited, and a private sphere immune from state intrusion was a crucial component of liberty.

Rousseau and the General Will

Jean-Jacques Rousseau focused on the problem of legitimacy. He argued that the true social contract required the alienation of all individual rights to the entire community, forming a collective sovereign (Rousseau, 1762/1997). Legitimate law was not the command of a separate ruler but the expression of the "general will," which aimed at the common good. The individual, by obeying the general will, was thus "forced to be free." This collectivist vision raises profound questions about the role of individual privacy and dissent when the "general will" is interpreted or enforced through a system of totalizing surveillance.

The Digital Panopticon: A New Paradigm of Power

The contemporary landscape of surveillance bears little resemblance to the models imagined by classical theorists. Its characteristics create a power dynamic that fundamentally distorts the social contract.



The Shift from Intermittent to Perpetual Surveillance

Traditional state surveillance was largely intermittent and targeted. It required significant resources and was often triggered by specific suspicion. Digital surveillance, in contrast, is perpetual and ubiquitous. It operates on a logic of mass data collection, where everyone is monitored by default. Technologies like closed-circuit television (CCTV), facial recognition, internet traffic analysis, and the Internet of Things (IoT) create a seamless web of observation that operates continuously, regardless of an individual's actions or intent. This constitutes a qualitative shift from a society under the law to a society under observation (Lyon, 2018).

The Corporate Sovereign and the Privatization of Surveillance

Classical social contract theory posits a single sovereign. Today, corporate entities have emerged as powerful, non-state sovereigns in the digital realm. Platforms like Google and Meta build extensive profiles of their users, effectively governing digital behavior through their terms of service and algorithms. Shoshana Zuboff (2019) terms this new logic "surveillance capitalism," where human experience is treated as free raw material to be translated into behavioral data for prediction and modification. The citizen is now also a "data subject," whose relationship with corporate sovereigns is governed by lengthy, unread end-user license agreements (EULAs) that function as contracts of adhesion, offering services in exchange for data. This creates a dual sovereignty, where corporate data collection often feeds state apparatuses, and state policies enable corporate data extraction.

The Problem of Tacit and Manufactured Consent

The legitimacy of the classical social contract rests on the notion of consent, whether explicit or tacit. In the digital age, consent has become a fiction. The "choice" to use a social media platform or a smartphone is, for most, a practical necessity for social and economic participation. This is not a voluntary agreement but a coerced one. Furthermore, consent is manipulated through dark patterns in user interface design and obfuscated through complex privacy policies (Zuboff, 2019). Citizens are often unaware of the scope of data collection, and even when they are, they lack meaningful alternatives. This manufactured consent violates the liberal principle that contracts require a meeting of the minds and the absence of duress.

Implications for the Liberal Democratic State

The new surveillance paradigm has corrosive effects on the foundations of liberal democracy, challenging the very rights the social contract was meant to protect.

The Chilling Effect and the Erosion of Civil Liberties

Pervasive surveillance creates a chilling effect on freedom of speech, association, and thought. When individuals know they are being watched, they are more likely to self-censor, conform, and avoid dissenting or exploring controversial ideas (Penney, 2016). This undermines the deliberative processes essential for a healthy democracy. The private sphere, which Locke saw as a bastion against state power, is systematically invaded, reducing the capacity for autonomous individual development.

The Asymmetry of Power and Knowledge

The social contract requires a rough balance of power, or at least mechanisms to check the sovereign. The digital panopticon creates a radical asymmetry. The state and its corporate partners possess an unprecedented depth of knowledge about the population, while citizens have little knowledge of how this data is



collected, used, or shared. This knowledge gap translates directly into a power gap, making meaningful accountability and the Lockean right of rebellion a practical impossibility. The subject is rendered transparent, while the sovereign remains opaque.

The Redefinition of Security

The Hobbesian trade of liberty for security has been redefined. The "security" offered is now often pre-emptive, based on algorithmic risk assessment aimed at predicting threats before they materialize. This logic justifies the dismantling of privacy as a necessary sacrifice. However, this pre-emptive security state often targets political dissent and marginalized communities, creating a system of social sorting and control that bears little relation to the collective security envisioned by Hobbes (Lyon, 2018). The state secures itself against its people, rather than securing the people from each other.

Case Studies in the Revised Contract

The theoretical implications of digital surveillance are manifest in concrete political and legal developments.

The Five Eyes Alliance and Mass Meta-Data Collection

The revelations by Edward Snowden detailed the extent of global surveillance programs operated by the Five Eyes intelligence alliance (US, UK, Canada, Australia, New Zealand). Programs like PRISM involved the bulk collection of internet communications, effectively placing the entire digital population under suspicion. This represents a Hobbesian bargain executed on a global scale without public deliberation or specific consent, where the state assumes expansive surveillance powers as its default right.

The European Union's General Data Protection Regulation (GDPR)

The GDPR represents a significant, though incomplete, attempt to forge a new digital social contract through law. By establishing principles like "data protection by design and by default," the right to erasure ("the right to be forgotten"), and requiring explicit consent for data processing, the GDPR seeks to rebalance the power relationship between data subjects and data controllers. It implicitly recognizes the individual's sovereignty over their personal data, a concept alien to classical contract theory but essential for the digital age.

China's Social Credit System

The most explicit revision of the social contract is China's emerging Social Credit System. This system integrates government and corporate data to assess the "trustworthiness" of citizens and businesses. Behaviors deemed favorable are rewarded, while behaviors deemed unfavorable can result in restrictions on travel, access to finance, and other social goods. This is a totalizing form of surveillance-based governance that explicitly links compliance with social norms to access to public life, realizing a form of Rousseau's general will through algorithmic enforcement, with stark consequences for individual freedom.

Towards a New Digital Social Contract

The challenges posed by digital surveillance necessitate a fundamental rethinking of the social contract. This revised framework must be explicit, democratic, and built on new foundational principles.

Asserting Digital Personhood and Data Sovereignty

The new contract must begin by recognizing a right to digital personhood. This entails framing personal data not as a commodity to be extracted but as an inalienable aspect of the self. The principle of "data sovereignty" should be established, granting individuals genuine ownership and control over their



digital traces (Hintz & Dencik, 2019). This is a logical extension of Locke's theory of self-ownership into the digital realm.

Re-establishing Meaningful Consent and Transparency

The fiction of notice-and-consent must be replaced with robust mechanisms for genuine choice. This includes promoting data-minimalist alternatives, enforcing strict limits on data collection and retention, and mandating radical transparency from both states and corporations about their data practices. Audits and public oversight boards for surveillance technologies are essential to reduce the knowledge asymmetry.

Legislating New Fiduciary Duties

Corporate data holders should be legally recognized as "information fiduciaries," with a legal obligation to act in the best interests of their users regarding their data (Balkin, 2016). This would prevent them from exploiting user data in ways that cause foreseeable harm, creating a legal duty of care, loyalty, and confidentiality akin to that held by doctors or lawyers.

Conclusion

The age of digital surveillance has rendered the classical social contract obsolete. The voluntary exchange of liberties for security has been replaced by a non-negotiable, asymmetrical system of data extraction operated by a dual sovereignty of states and corporations. This system undermines the autonomy, privacy, and democratic freedoms that the original contract was designed to protect.

Revisiting social contract theory is not an academic exercise but a political imperative. The path forward requires a conscious, democratic project to draft a new contract. This project must be grounded in the principles of digital personhood, meaningful consent, and strict accountability. It demands legal and regulatory frameworks that reassert the sovereignty of the individual in the digital sphere. Without such a renewal, the promise of the social contract—a legitimate government that secures liberty—risks being lost in the silent, pervasive gaze of the digital panopticon.

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