

Identity Crisis: Face Recognition Technology and Freedom of the Will

BENJAMIN HALE

Department of Philosophy, University of Colorado, Boulder, CO, USA

ABSTRACT *In this paper I present the position that the use of face recognition technology (FRT) in law enforcement and in business is restrictive of individual autonomy. I reason that FRT severely undermines autonomous self-determination by hobbling the idea of freedom of the will. I distinguish this position from two other common arguments against surveillance technologies: the privacy argument (that FRT is an invasion of privacy) and the objective freedom argument (that FRT is restrictive of one's freedom to act). To make this case, I suggest that autonomy itself is predicated on the possibility of acting ethically, of freely willing moral laws. I then claim that autonomous self-determination is established as self-determination via social interactions with others. If we conceptualize self-determination as a relation of establishing a claim to individual autonomy in a community of others, we can see how planned uses of FRT subvert possibilities for the establishment of socially recognized agency. FRT not only confuses the process of asking ethical questions but it also imposes the immanent likelihood that all actions are taken not by self-directed, free agents, but by passive subjects in the interest of abiding by the institutionally enforced law.*

We don't regard ourselves as 'Big Brother'. We're more like a friendly uncle or aunt watching over you.¹

As thousands of football fans streamed into the first Superbowl of the 21st century, each unwittingly ran through a gauntlet of computer hurdles equipped to identify them by their faces. Cameras lodged near turnstiles snapped a shot of each person, matched the shot against a database of millions, and sifted out spectators according to their criminal histories. The general public was alerted to the use of this technology a day after the Superbowl, and officials promptly explained that the technology was used 'to ensnare terrorists and other criminals'.² Many were surprised to learn later that the Superbowl was not the first use of such innovative surveillance technologies. The first broad implementation of distance-based biometric technology began in the UK approximately two years before. The London borough of Newham has had a network of 140 street cameras and 11 mobile camera units since 1998.³ Since then, casinos have implemented similar technologies to catch cheaters. In the wake of 11 September 2001, discussion over the potential problems with and promise of implementation of such technology has

Correspondence Address: Benjamin Hale, Department of Philosophy, University of Colorado, Boulder, Campus Box 232, Boulder, CO 80309-0232, USA. Tel.: +1(303)492-6132; Fax: +1(303)422-8386; Email: bhale@colorado.edu

finally taken to public forums. In this context, however, and in the opinion of this author, the discussion has been sorely lacking.

Our faces are the most consistently public aspects of our personalities and our lives: we carry them wherever we go, they alert people to our feelings and our thoughts, and we visually identify others almost exclusively by appealing to facial features. Just now, at the beginning of the 21st century, computer technology has made it possible to identify a person by the unique configuration of her face. This technology can quickly scan a crowd of people and within seconds determine names, family backgrounds, birth records, and addresses of randomly selected faces in the crowd. It enables law enforcement agencies, private security outfits, financial institutions, and small businesses to gather information about any person simply by snapping a quick shot of her face.⁴ More than this, it enables interested parties to track activities and behaviors, to gather enough information on one person to determine where she has been and what places she has visited.⁵ As it grows in prevalence, its presence alters the way in which we think about who we are and what options we have available to us.

In this paper I present the position that the use of face recognition technology (FRT) in law enforcement and in business is restrictive of individual autonomy because it usurps the power of individuals to act morally. I argue that the threat of perfectly enforced external repercussions has a deleterious effect on a citizen's capacity to make decisions for moral reasons, and that this, not reasons of privacy or objective freedom, presents a strong reason to object to the use of such technology. To make this case, I first present two commonly held positions that, I argue, clarify some of the problems with FRT but do not make a compelling case against the technology.⁶ I dub these the 'privacy argument' and the 'objective freedom argument', respectively. The task of the first two sections of this paper, then, is briefly to elaborate these two popular arguments for the purpose of providing a platform from which to begin discussion of what I will be calling the 'subjective freedom argument'. In this third argument I reason that FRT severely undermines autonomous self-determination by hobbling the idea of freedom of the will. I defer to Kant to explain the concept of autonomy, reasoning that autonomy itself is predicated on the possibility of acting ethically, of freely willing moral laws. I then borrow from Hegel's position on recognition to reason that autonomous self-determination is established *as* self-determination via social interactions with others, and not by the private deliberations of a single subject alone. If we conceptualize self-determination as a relation of establishing a claim to individual autonomy in a community of others, we can see how planned uses of FRT subvert possibilities for the establishment of socially recognized agency. FRT imposes the immanent likelihood that all actions are taken not by self-directed, free agents, but by passive subjects in the interest of abiding by the institutionally enforced law.

Clarifications of Identity

We will be speaking a lot about identity in this paper, so it may help to make a few preliminary terminological clarifications. This paper distinguishes between institutional identity, picture identity, and practical identity. *Institutional identity* is intended to isolate that institutionally established identity associated with meticulous file keeping. Institutional identity therefore refers to the *facts* of one's public

identity: things like social security numbers, medical records, tax returns, addresses, criminal histories, telephone numbers, and so on.⁷ A *picture identity* also refers to the facts of one's identity, though only to the physical facts of one's identity. That is, for our purposes, a picture identity suggests a snapshot or a 'faceprint' of how one appears at a given time and, as should be obvious in discussion of FRT, is the way in which FRT might identify the person under consideration. So, for instance, to use the terminology of Gary Marx, one might distinguish picture identity from institutional identity by suggesting that picture identity involves the 'identification' of a person, where the institutional identity involves the composite 'identity' of the person. Finally, and most importantly, *practical identity* will refer to the conceptual and normative assumptions that accompany one's own conception of oneself. This sort of identity is a little more difficult to understand than the first two, and so we should take a bit more care to establish just what we mean by it.

Christine Korsgaard uses the term 'practical identity' to refer to the concatenation of normative roles that individuals take up over the course of their lives. She considers practical identity to harbor something like an individual's personally held, though reasonably adopted and socially validated, normative commitments:

Practical identity is a complex matter and for the average person there will be a jumble of such conceptions. You are a human being, a woman or a man, an adherent of a certain religion, a member of an ethnic group, a member of a certain profession, someone's lover or friend, and so on. And all of these identities give rise to reasons and obligations. Your reasons express your identity, your nature; your obligations spring from what your identity forbids.⁸

Each of these practical identity roles will include certain normative commitments that themselves may sometimes conflict. When there are conflicts of practical identity roles, individuals must reconcile the roles on pain of being inconsistent with themselves. Korsgaard's full explanation of practical identity is not important for us. What is important, however, is that we understand that practical identities (1) give rise to normative commitments and (2) are themselves the outgrowth of a reflective individual's capacity for autonomous self-determination. As Korsgaard notes, we take action and make claims by reflecting upon our commitments and then endorsing particular positions. This kind of identity, it should be clear, is not at all the same as the institutional identity and it is inaccessible via a quick glance at, or extensive tracking of, one's picture identity.

The Privacy Argument

There is a sense in which we presently live our lives outside the scrutiny of others. Outside observers do not follow us into the bathroom, into restaurants, into gas stations, down highways, or around shopping malls. When people do this, we think that they are creepy and deranged, even potentially dangerous, and we do our best to avoid their untoward observation. With the advent of FRT, a system that makes it possible to instantaneously link picture identity to institutional

identity, the line between our private histories and our public lives becomes somewhat blurrier. So-called ‘public’ information (like where one has been, what one is wearing, whom one is with) that one might otherwise desire to keep private (indeed, that many take to be quite private and personal) can quickly be made available to any who have access to FRT. We can imagine any number of uses for such a technology, and we can see how the technology might dip into the private world of citizens. If we turn our attention to the well-publicized possibilities of insurance companies seeking medical records, or of employers seeking information about personal habits, we can imagine that insurance companies and employers might have an interest in digging through a catalogue of private information about their patrons.⁹ Love affairs, religious affiliations, drinking habits, political associations, sexual practices—all the foibles of modernity—could potentially be called under the heat lamp of extensive scrutiny.

The privacy argument supposes that FRT enables a new type of technologically aided spying into the lives of individual citizens.¹⁰ It emphasizes the consent of the individual, and reasons that since individuals do not formally give their consent to have their picture identity matched with their institutional identity, curious observers who take the extra step of doing so effectively act against the private will of the individual in question.¹¹ But privacy arguments do not quite capture the problem, since from a legal standpoint FRT just efficiently and quickly compiles already-public information. The difference between what a computer might do to make the connection between two publicly available data sets (like a publicly captured faceprint and a mugshot) and what a police officer, an insurance representative, or a private agent might do is only a matter of speed. It is not, after all, as though utilizing FRT to identify a person is like dog-earring their diary or rummaging through their underwear drawer. Thus, detractors of FRT might do better to argue that it is a restriction of freedom, and not privacy alone.¹²

The Objective Freedom Argument

The crude way to think about the conflict between FRT and freedom is to imagine that FRT will enable the monitoring of all citizens in public settings such that one will never, or will rarely, be able to escape the penetrating gaze of the curious. The problem, goes the story, is that once the government (or any other organization with extensive surveillance technology) has the capacity to delve into the moment-to-moment lives of citizens, the potential for abuse is tremendous.¹³ After all, what is to stop a government, or any interested organization, from arbitrarily passing and enforcing laws if citizens who might otherwise object to those laws can be monitored to the degree that any dissent might be quashed before it becomes dissent worth worrying about?¹⁴ This position, perhaps most commonly advanced by civil libertarians, but also advocated in some respects by readers of Foucault, proposes that as FRT becomes more prominent, it will begin to pervade every public aspect of our lives.¹⁵ As it does so, it holds the potential to make *all* laws fully enforceable, regardless of whether the laws themselves are just. Under this picture, FRT is a means to the total administration, a way of controlling citizens, of keeping them in line. We can imagine a ‘Big Brother’ scenario in which video cameras, already prevalent throughout the modernized world, are stationed on every corner, linked to

a central computer network equipped with a simple face recognition system. We can imagine that such FRT would enable the police officer to enquire into the time and space location of a given citizen, giving a precise readout of the time-space coordinates of anybody, at any time, in any space.

Privacy concerns intermingle with freedom concerns here, as under this high-tech tracking scenario a curious observer could simply type a name into a database, and then arrive at a precise timeline of a marked person's actions. We can see how this would invade the privacy and the freedom of the individual by making it virtually impossible to walk from point A to point Z without having curious observers capable of plotting points B through Y. How a marked person might approach a trip to the store when his actions are followed from the door of his house, to the post office box, to the fruit stand, would vary depending on whether he wanted it known that he was going to the store or to another, more incriminating locale. Privacy might be violated by enabling observers to extrapolate potentially false conclusions about one's political leanings or private motivations (if one visits an activist organization or an ashram, for instance), or one might simply be found 'guilty by association' (having affiliated with an identified rogue). Citizens would rarely be able to act in public without there being some record of rough, or perhaps exact, time-space locales. The threat to privacy comes about as stated above, as one's private life is directly linked to public records. The threat to freedom—and in this crude sense we might clarify by calling this a 'freedom of action'—comes about in two ways: (1) by restricting the behaviors of individuals so that they either (1a) can no longer *in fact* break the law and get away with it or (1b) begin to *feel as though* they can no longer break the law and get away with it, and thus start policing themselves; and (2) by opening up the possibility that law enforcement could abuse such biometric information and selectively harass some citizens for political or personal reasons. Or at least, so goes the story.

Let us use the example of an unfaithful husband to make this point more clearly.¹⁶ Imagine that Fred, a cool-headed married man living in the world of FRT, has recently taken an interest in a woman with whom he works. He knows, of course, that outside of his home his actions are always documented and made available for public scrutiny. He knows that his departure from his house will be documented, as well as his trips to the hair salon, to the baker, and to the wine shop. He also knows that his partner-in-marital-depravity, Ginger, will have her actions documented. If, say, an angry spouse reports the two of them, then it would only be a simple matter of dredging up records to determine where and when the two lives and paths had intersected. Should the intersections be great enough to arouse further suspicions, the two could easily be held accountable by the state for their extramarital mingling. FRT would provide significantly more incriminating evidence against the adulterers than, say, would be available in a world without FRT. According to the objective argument, Fred and Ginger would stand a very strong chance of being caught and penalized for their perfidy.

Fred's concern here rests on his acknowledgement that upon taking the vows of marriage he effectively signed a marital contract, binding himself legally to his wife via a state-sanctioned institution. Knowing that he has done so, and knowing that this contract is more easily enforceable now that FRT and surveillance technologies predominate, Fred will have some second thoughts about stepping into

extramarital relations with Ginger. From a public standpoint, this may indeed be a desirable outcome; just as it would if a murderer, bank robber, or shoplifter were forced to reconsider his actions on threat of imminent capture. His second thoughts, however, will relate directly to the sorts of legal, personal, or political repercussions that such an affair would accord him. He will ask himself questions not simply about his chances of being caught—since he can *expect* to be caught—but about the costs that he will have to confront as soon as he *is* caught. We might imagine that Fred would not so much fancy this new technological development, since FRT would make it very difficult to have his affair. He might, in his frustration, even call it a restriction of his freedom.

The sort of freedom restricted according to the objective argument is the sort of freedom that enables one to break the state-imposed law and to get away with it. Under a scenario of total documentation by the state, lawbreakers like Fred must either be much, much sneakier, or they must accept that if they break a law or violate a moral principle, they will eventually pay the price of doing so. Now, while this certainly is a sort of restriction of freedom, it is difficult for many people to imagine that this is the sort of freedom that a ‘nearly just society’ ought to continue allowing. Just because one *can* break the law and get away with it now does not mean that one *ought* to be able to break the law and get away with it in an ideal society. The freedom to do illegal or morally suspect things, one might even think, suggests that the state should in fact be *more* successful at gathering evidence and prosecuting criminals.¹⁷ If the law could be more accurately and evenly enforced through FRT, then crime and moral offense—even offenses as private and relatively harmless as marital infidelity—would decrease dramatically. Indeed, the argument for the improved efficacy of enforcement is one that we hear from proponents of increased surveillance. Defendants of the objective argument (critics of FRT) are thus forced to defer to the second part of the objective freedom argument; namely, to the concern that biometric information could be abused if it fell into the wrong hands, that it could be used by corrupt governments, self-interested businesses, sleazy politicians, or spurned lovers to ruin or damage a person’s possibilities. But this position depends on an empirical claim about the state of governments, businesses, politicians, and spurned lovers—just because it *could* be used in such a way does not mean it *will*—and so demands clear evidence that governments, businesses, and so on, in a nearly just society, do and will abuse such technology.¹⁸ Since evidence of far-reaching corruption is difficult to substantiate—and even more difficult to generalize across districts, states, companies, and so on—the objective argument fails to be convincing.

The Subjective Freedom Argument

The more sophisticated argument—which also imagines a world in which FRT and other surveillance techniques are used as deterrent threats to keep citizens in line—does not focus so much on the efficacy with which laws are administered or the tendency of the populace to police themselves. The subjective freedom argument instead centers around an individual’s capacity to make decisions that are themselves ways of generating a moral law.¹⁹ The point of the subjective argument is that though one may lament the increase in efficient application of laws, this does

not constitute a breach of freedom *per se*. It argues, rather, that the really significant eclipse of freedom rests on the potential of making autonomous, and thus moral, decisions at all. This point finds its footing in Kant, but its elaboration in Hegel. (Let me stress at the outset that, given the legalistic rigidity of both theorists, what follows is neither a 'true' Kantian nor a 'true' Hegelian argument.²⁰ Strict adherents to one or the other system will undoubtedly balk at the conclusions I draw. For this I can only apologize and suggest that though I do not give a close theoretical reading, I believe my conclusions about FRT to stand on their own merit.²¹ I should also stress again at this point that the subjective freedom argument differs markedly from Foucault's analysis of power and panopticism in *Discipline and Punish*.²²)

Kant makes some rather explicit overtures to delineate between the law as it is heteronomously written (as it is objectively or positively enforced from the outside, as Hegel will later say) and the law as one autonomously arrives at it (*autonomy* literally translates from the Greek as: *auto*, self; *nomos*, law).²³ He distinguishes between the two in order to make the claim that there is a qualitative difference between ways of acting. We can think of law-abiding behavior as either according with the law as it is written (acting according to duty) or as generated by the willed behavior of individual agents (when one acts out of duty). As those familiar with Kant well know, one acts *according to* duty when one follows the law because it is the law imposed from outside. By contrast, one acts *out of* duty when one acts according to principles or maxims that one simultaneously wills to be universal (in other words, when one acts by appeal to the categorical imperative). The familiar idea, of course, is that subjective agency is not the passive experience of being bumped around by rules and laws, but rather an agent's active participation in the determination of ends and the means to those ends. For Kant, a 'free will must be entirely self-determining'.²⁴

Yet there is something of an equivocation in the Kantian conception of freedom. In numerous places in the *Critique of Practical Reason*, Kant calls freedom the 'condition of the moral law'. He means two things by this: (1) that the very possibility of acting freely enables us to speak of ethics and autonomy in the first place;²⁵ and (2) that though it is possible that agents are causally determined, the free will must necessarily act under the *idea of freedom*. Both senses of freedom are important for us. First, much of the question of autonomy presupposes a significant degree of freedom and, specifically for us, a freedom to choose one's identity and one's course of action. Kant writes: 'The less man can be physically compelled but the more he can rather be morally compelled (through the mere mental representation of duty), the more free he is'.²⁶ Kant here links freedom to ethical action, to moral decision making, arguing that a will is truly *free* only when it acts reflectively and then acts according to the principles of practical reason. Second, Kant reasons that an autonomous will need not necessarily be causally free (as it could be the case that individual bodies are slammed around in a deterministic universe of physical laws), but only that what is critical is that the will acts under the *idea of freedom*.²⁷ Kant's discussion of the idea of freedom, which occurs primarily in *Groundwork III*, is his attempt to address the then-timely question of whether humans are physically and causally determined. By invoking the idea of freedom instead of freedom itself, Kant draws a line between causality in the phenomenal, external world and causality in the noumenal world. He intends to

demonstrate that regardless of the question of physical determinism, humans must act, *a priori*, under the 'idea of freedom' in order to act morally at all. The will, for Kant, is itself a 'kind of causality' that necessarily depends on the idea of freedom. For this paper, it is important that we understand that acting under the idea of freedom is neither a psychological claim (that one needs to feel free) nor a right granted by the state.²⁸ This second point is Kant's way of differentiating between physical determinism and what we might call 'heteronomous' determinism, the latter of which we will be addressing here.

Let us return to our example of Fred, the marital rascalion. In the above section on objective freedom, Fred recognizes that he has conscripted himself into rules against marital infidelity by means of contract, and we can see quite easily that Fred's so-called 'freedom' to be a rascalion is eclipsed by the possibility of FRT. Fred's ability to engage in extramarital affairs is greatly restricted because he is held subject to positively enforced laws that exist outside of his control. What is important to see here is that FRT does not change the substantive import of the law, but only affects the way that the law will be enforced; that is, it enables the efficient administration of the law.²⁹ Now, generally, laws in nearly just societies are thought to be pretty good laws, provided they have come onto the books through the right process; and law enforcement is also thought to be a pretty good follow-up to these laws, since, provided that the laws are good, it would behoove a society to enforce them. This is why the objective argument fails, and why proponents of FRT as an instrument of law enforcement can easily justify such a use of power.³⁰

If we apply what we have discussed regarding autonomy, we can see that it is not the sudden increase in accountability that leaves Fred to assume that he has no freedom to break the law (or social rules), but instead that he has very little freedom to *will it to be the case* that he not break social rules. Since there is now a 95% likelihood that he will be held accountable for his actions, where before there was a 10% likelihood, he can now reasonably assume that being a rascalion is something that he does under the ineluctable scrutiny of curious observers. As we noted above, he no longer asks himself whether it is ethical that he cheat on his wife, but he asks himself whether cheating on his wife is worth the penalty that he will surely incur. The ethical question is transformed from an enquiry about the best way to act, about what he ought to do, into a blunt operationalism. That is, it is transformed from Q₁: 'What ought I to do in X situation?' to Q₂: 'If I do X, I will incur Φ penalty. Is X worth Φ to me?'³¹ When Fred knows that he will be held accountable for his actions, when he assumes that someone is watching him at all moments, recording his time-space locale, he is compelled to act not because he deliberates over a particular right course of action. Instead, Fred is compelled to act according to a hypothetical imperative, the consequent of which is imposed from outside, imposed from the mandates of a nearly just society.³²

Now then, acting according to operationalisms is not itself a restriction of freedom. Indeed, free people do so every day, in all sorts of situations. The simplest cases, of course, are exemplified in exchange relations: 'If Ginger wants a bar of chocolate, then she must pay the price on the label'. Ginger need only ask herself if the bar of chocolate is worth the \$1.50 that she has in her pocket—money that she might otherwise spend on a bag of water balloons. If it is, she will hand her cash to the shopkeeper, take her chocolate, and gobble it up. But if Ginger gets an inkling

that she could have both the chocolate *and* the water balloons, say by paying the \$1.50 for the bar of chocolate and then *stealing* the bag of balloons, we can see that she would need to ask a very different question than that which she asked herself when she deliberated over the chocolate. The question that Ginger should be asking, before her five fingers artfully slip the bag of balloons into her pocket, is whether it is *right* for her to shoplift the balloons. If she can honestly answer this question in the affirmative, then she would effectively will it to be the case that she steal the bag of balloons. In the world of FRT, Ginger does not have to ask the question of rightness—though she *could*³³—because the consequences are figured for her by the law. She is handed a simple operationalism: steal the bag, pay the price. Operationalism acts *in lieu of* ethical deliberation, and in this sense, in lieu of reflective consideration of practical principles.

What is important to recognize here is that the very idea of being a rapsallion or a shoplifter depends on a certain amount of duplicity. This relates to the idea of freedom, which depends on the possibility of acting wrongly, of willing moral laws that could be false. When Fred or Ginger, or anyone, does not maintain the *possibility* for duplicity, they cannot entertain the possibility of infidelity or shoplifting. They cannot, in effect, seriously entertain the possibility of asking themselves the critical question of whether a particular action complies with reasons that they might (collectively) endorse. It is as if the Kantian categorical imperative—which states that ‘One ought to act only according to that maxim that one can, at the same time, will to be a universal law’³⁴—has been truncated half-way through. One need no longer will maxims to be universal laws, because the question of universal law has been supplanted by the positive authority of institutional law. The categorical imperative, in a nearly just society of perfect enforcement, will read instead: ‘One ought to act according to that maxim that *is* the positively enforced state law’.³⁵ There is, in this latter case, no willing to be done. Because Fred and Ginger are recorded wherever they go, they are effectively forced (compelled) to comply with the rules of the land (or, at least, they exact great costs in breaking them). The problem here is that the operationalization of ethical deliberation transforms the meaning of freedom altogether, shifting it from the free establishment of self-imposed rules about how to act (from autonomy) to a calculable choice between a list of externally provided ends (to heteronomy). Notes Terry Pinkard: ‘Choice based simply on what we want cannot be identical with freedom. If being free is doing what one wants, then one must have some criteria for selecting what it is that one wants’.³⁶

Recognition and Freedom

Curiously, children are among the first to point the above distinction out. They quickly recognize an eclipse of their freedom and, without all the technical mumbo-jumbo, will tell us that they feel cramped and controlled if a parent or a teacher stands over them when they must do certain things. (Typically they grow red in the face, scream, and stomp their feet, but this is beside the point.) How many children have refused to do their homework *simply* because they have been told to do so? How many times have we heard them complain (in so many words): ‘I don’t like it when you tell me to do my homework, because when you do, it is almost as

though you take responsibility for making me do my homework'. Though it is of course not the case that parents who request that their child do her homework *actually* take responsibility for having done the homework, we can see quite easily that the child is appealing to an important facet of self-legislation and self-determination. The child is struggling to establish herself as an agent and, particularly, to show that she is capable of engaging in adult activities without the oversight of adults. This all-too-recognizable 'youthful rebellion' could be misunderstood as 'just' a psychological stage, something without reasonable basis. But when parents and pop-psychologists suggest this, they imagine that there is nothing to the claim that parental oversight amounts to taking responsibility for the imposition of a rule of action. What a child is really saying is 'I am a self-legislator, and when you stand over me to ensure that I do X, Y, and Z, you trump my powers of self-legislation'. The child struggles to have the parent recognize her as a responsible student, a burgeoning adult, a self-legislator—she seeks to establish a practical identity that her superiors will recognize in her and that she can recognize in herself. And the parent, having seen the child grow from birth through adolescence, struggles with the child to balance (1) the child's development of a practical identity against (2) the potentially disastrous and misguided practical identities that the child could adopt.

The struggle for recognition exemplified by the parent-child relation points to a second freedom-inhibiting element of FRT. FRT makes it possible to identify people by their institutional identity almost exclusively. As people wander through social settings, any records that might incriminate them will follow them by the heavy hand of digital technology. Computer screens will flash when a recorded shoplifter enters a store, alarms will sound when a violent offender enters a building, and lights will flicker when previously arrested drug users enter nightclubs. Indeed, this is ostensibly one of the very reasons that FRT was used at the Superbowl—to identify potential terrorists by isolating known offenders, convicts, and political extremists.³⁷ FRT, as a means of attaching institutional identity to picture identity, brings past actions into present situations, and then drags all present actions into future scenarios. In effect, it stabilizes institutional identity. When such institutional identity is stabilized, this raises further questions about self-determination. How, for instance, is one to begin the transformation from child to autonomous moral agent, from youthful goof-off to respected member of society, if all actions are documented in such a way that previous errors and statements follow one around from Time A to Time B? 'Youthful indiscretions', pranks, experiments with illegal substances, and illicit activities, all of which would otherwise stand a very slim chance of ever coming to light, suddenly stand a much greater chance not only of coming to light, but also of following a person around for the rest of her life.³⁸ While it may be true that such technology would therefore have a discouraging effect on mischief, such technology presupposes that the passage from naïve child to enlightened adult is nothing more than the physical persistence of the individual body through time. It supposes identity to be passive, to consist only in what Robert Nozick and Derek Parfit call 'closest continuers', and it does not acknowledge that much of making sense of identity roles means actively learning through and from conflicts in practical identities.³⁹ But it would be a mistake to think that mischief and moral error are only prevalent in children and poorly

attuned adults. We can easily see with Fred and Ginger that moral error resides happily in quite complicated, adult social relations.⁴⁰

The above paragraph calls attention to the reductive dangers of labeling identities. The paragraph notes that ‘computer screens will flash when shoplifters enter stores, when violent offenders enter buildings, when drug users enter nightclubs’. The point, in this case, is that differentiation between the one-time shoplifter and the chronic shoplifter, between the down-and-out drug user and the out-and-out murderer, will only be made via a quantitative list or a criminal record. Most, if not all, of these institutional characterizations of one’s identity have little to do with what Korsgaard calls the practical identity. In the world of FRT, the institutional identity provides a surrogate practical identity, supplanting (1) the reflectively reasoned and willed adoption of normative stances about how to act with (2) a characterization of an individual’s institutionally recognized past actions. One’s self-determined identity, then, is recognized by curious observers as consisting in one’s actions, and not in one’s reflectively endorsed stances. One is either a lawbreaker or a law-abider, and when one is a lawbreaker, one is a lawbreaker according to what one has already done. Since practical identity (not institutional identity) gives rise to, and is itself a source of, normativity, the ossification and stabilization of identity in record keeping can never provide the framework around which one might be recognized by observers as anything but a passive subject. Recognition of autonomously established practical identity, thwarted by the imposition of institutional identity, will be continually dogged by the observation of outside enforcers. That is, taking responsibility for one’s actions by claiming that the action accords with who one is—‘I stayed true because I love you, because I am your companion and I am honest’—can never be uttered without the attendant: ‘I did it because someone else was watching’.

Subjective freedom, unlike objective freedom, is primarily a normative concept. It is the freedom to make decisions that comply with socially upheld and verified conceptions of reasoned, ethical action. In short, it is the freedom of self-determination, the freedom to develop a coherent practical identity. Freedom in this sense is the hallmark of modernity. As governments and agencies gain the possibility of tracking movements with God’s-eye precision, like so many minions of the kingdom of physical law following the movements of men, enforcers become equipped with the potential to treat institutional laws like physical laws. Though interested agencies and organizations may aspire to enforce an institutional law (a law of right) such that it behaves like a physical law (a law of nature), when individuals cannot escape the thumb of the state just as they cannot escape the thumb of a God, prospects for acting against these laws are severely eclipsed.⁴¹ In these cases, threats to freedom occur on two levels: the objective and the subjective. At the objective level, freedom is eclipsed because people are no longer able to break the law and to succeed at breaking the law. This restriction of freedom is the aim of such technologies as FRT for, indeed, extensive freedom of this nature is a threat to social institutions. At the subjective level, however, freedom is eclipsed because people are no longer able to will laws and principles for themselves and, consequently, to be recognized as independent rational agents. In eclipsing the possibility to disobey the law, the idea of freedom is clouded by

operational reasoning, which ultimately subverts self-determination and practical identity formation.

It goes without saying that, in a nearly just democracy, one ought to obey the law.⁴² But it is precisely in saying that one ‘ought to obey the law’ that we find the crux of the dilemma in FRT. With highly and heavily administered FRT, the suggestion that one ‘ought to obey the law’ is transformed into the more binding mandate that ‘one cannot avoid obeying the law’. In the latter, there is no ‘ought’ at all. The question of ought, the question of ethics, is transformed into a descriptive and external command. This point can be summarized in the following way: the idea of freedom necessarily implies that one maintain the possibility of deliberating over courses of action, of acting according to practical reason. When state law becomes so rigidly enforced that penalties follow immediately from actions, state law acts as natural law, urging dogmatic adherence on the part of citizens. Such dogmatism rewrites the ethical questioning of autonomous agents from enquiring into the good into posing rigid operationalisms, thus transforming normative questions from categorically to hypothetically binding. When normative positions are adopted hypothetically, they take on the nature of calculable preferences. This reduction does violence to modern conceptions of autonomy by supplanting the social (and private) recognition of practical identity with the state recognition of institutional identity. The threat to individual autonomy is therefore twofold: first, regarding possibilities for setting individual laws; and, second, regarding possibilities for the social recognition of self-determination and public establishment of autonomous agency. FRT provides the means for men to undo the progress of modernity. It makes real the previously unimaginable prospect that free will, that darling of the Enlightenment, will henceforth be dogged by cameras.

Notes

¹ Statement by Bob Lack, who manages security for the east London borough of Newham. See ‘Face recognition technology raises fears of Big Brother’, *Boston Globe*, 23 February 2000.

² Note that this quote finds its way into public discourse prior to 11 September 2001. (‘Firm defends ‘snooper bowl’ technology’, American Civil Liberties Union (*ACLU*) *NewsWire*, 9 March 2001.) Since the terrorist attacks later that same year, justifications for employment of FRT for security reasons have grown immensely. (See, for instance, David Lyon, *Surveillance after September 11* (Malden, MA, Polity Press, 2003.) Meanwhile, public discussion of freedom concerns has been largely flipped on its head. Where it was once common to hear arguments that overzealous government surveillance would cripple freedom (as evidenced by this somewhat cynical citation from the ACLU), it is now commonly argued that government surveillance will *enable* freedom, because it keeps citizens from living in fear and from being overrun with terrorism. This is a curious transformation in public acceptance of the technology, though it highlights the cultural sensitivity of this issue, the competing and conflicting concerns (security vs. freedom), and the confusion over just what is meant by ‘freedom’ when these arguments are employed.

³ ‘Candid Camera for criminals’, *BBC News*, 13 October 1998.

⁴ Should anyone doubt the extent to which biometric technology could and already does reach, one need only glance at the long list of companies and law enforcement agencies already devoting hefty resources to advancement in these areas. (To cite just a few occurrences: private companies offering services: ImageData, Infoglide, Photonics, Acxiom, Viisage; affiliated US government agencies and programs: DoD (Department of Defense), DEA (Drug Enforcement Agency), FBI (Federal Bureau of Investigation), NIST (National Institute of Standards and Technology), DARPA (Defense Advanced Research Products Agency) with the FERET

(Face Recognition Technology) Database; academic institutions with government research grants: Massachusetts Institute of Technology, Rutgers University, University of Illinois at Chicago, University of Southern California.)

While biometrics itself includes many more technologies than simply face recognition (including, among others: retina and iris scanning, fingerprint identification, voice recognition, hand scanning), FRT promises the possibility of identifying individuals from distances of up to 500 feet or more (without their consent). For more information on this, read the government document released from the Defense Advanced Research Projects Agency: *Human Identification at a Distance (HumanID)*, BAA00-29, proposer information pamphlet, 10 February 2000.

⁵ John Woodward, 'And now, the good side of facial profiling', *Washington Post*, 4 February 2001, p. B04.

⁶ The argument in this paper applies to more than just FRT. It applies to almost any biometric identification and tracking surveillance technology. However, there are at least two reasons for addressing FRT specifically. First, FRT opens the door to speak intelligibly of the confusion between the institutional and the practical identity, since FRT relies on the outward identification of an individual alone. This is not so clearly true with other forms of surveillance technology. Global positioning systems that track automobiles, credit cards that track purchases, and finger- or iris-activated door locks that track entry and exit patterns almost always track institutional identity alone, and therefore depend on an abstract notion of identity that must be extrapolated from a series of behaviors and generalized to infer who was conducting which behaviors when and for what reason. FRT, however, introduces the possibility that the behaviors of bodies can be tracked and followed according to a person's inescapably public visage. While it is certainly true that the individual's visage, correlated with her actions, does not necessarily reveal the intentions of the individual, it is also true, I would claim, that one's practical identity is fairly often confused with one's picture identity, particularly when associated with institutional action patterns.

Second, not only does this close relationship to identity make FRT an ideal candidate for discussion, it also makes authorial sense to focus on only one of the many emerging biometric technologies. If this paper were about biometric technologies generally, the paper would risk being overly broad and not applicable to the vast array of non-invasive surveillance techniques, like security technologies for protecting valuables. Clearly there are needs for such technologies. It would be wrong to suggest that the argument offered here speaks against all biometric identification or surveillance. For this reason, FRT plays the role of beating horse and primary example, and the reader is left to her own devices to find relationships and distinctions between FRT and other surveillance technologies.

Finally, the argument here depends on the somewhat implausible assumption that FRT tracking technologies can be employed nearly perfectly. This is clearly an exaggeration of present technological capability. FRT is currently limited by exceptionally difficult technical hurdles that will not be adequately addressed for many years to come. However, there is value in entertaining the exaggerated case of the employment of FRT: doing so exposes the distinction between objective and subjective freedom addressed in this paper. Couple this with Foucault's point that the panoptic society need not be under 'perfect' surveillance to *behave* as though it is under perfect surveillance (discussed in note 21 below) and there is yet further reason to exercise the notion of a world in which FRT is used perfectly.

⁷ Sociologist Gary Marx breaks the identity into the 'unique' (or 'core') and the 'composite' identity, where the unique or core identity indicates who one is as a numerically distinct individual and the composite identity indicates the concatenation of facts about an individual. (Gary Marx, 'Verities of personal information as influences on attitudes towards surveillance', *The New Politics of Surveillance and Visibility*, University of British Columbia. Available at: <http://www.garymarx.net>) There are, of course, many ways to slice up identity, and many disputes about the nature of identity. For the purposes of this paper, however, only the three notions of identity discussed in this section are important.

⁸ Christine Korsgaard, *The Sources of Normativity* (Cambridge, Cambridge University Press, 1996), p. 101.

⁹ See Laurent Belsie, 'Slide toward surveillance society', *Christian Science Monitor*, 26 February 1999.

¹⁰ Helen Nissenbaum has done some very interesting work detailing the flaws in legal theories of privacy as related to public surveillance. She argues in numerous places that privacy laws,

as presently conceived, cannot be sufficient for addressing the new concerns brought about by extremely efficient surveillance technologies. See, for instance, Helen Nissenbaum, 'Privacy as contextual integrity', *Washington Law Review*, 79 (2004); and 'Protecting privacy in an information age: the problem of privacy in public', *Law and Philosophy*, 17 (1998), pp. 559–596.

¹¹ For extensive, if somewhat popular, articulations of this argument see Reg Whitaker, *The End of Privacy: How Total Surveillance is Becoming a Reality* (New York, New Press, 2000); David Lyon (Ed.), *Surveillance as Social Sorting: Privacy, Risk and Automated Discrimination* (London, Routledge, 2002); and Simpson Garfinkel, *Database Nation: the Death of Privacy in the 21st Century* (London, O'Reilly, 2001).

¹² One might argue that speed makes all the difference here. This concerns one reviewer of this paper and is also the concern of Helen Nissenbaum in her interesting piece 'Protecting privacy in an information age: the problem of privacy in public', *Law and Philosophy*, 17 (1998), pp. 559–596. I am inclined to agree. Speed makes the difference in many areas, including ability to process medical files, prison records, scofflaw databases, and so on. The important point here, however, is that the privacy argument could go either way. It is not so clearly enriched by appeals to the efficiency of the technology. In fact, many advocates of the use of FRT argue strongly that it is precisely the efficiency of the technology that is its major asset, since for the first time law enforcement officers can readily analyze volumes of criminal databases to quickly and efficiently identify and neutralize potential offenders. Privacy arguments fall prey to the simple confusion that what is at issue is what is done behind closed doors and what is done in public. Since FRT really only tabulates 'public' information more efficiently, those who argue along privacy lines must make the very difficult case that the speed of the technology enables the possibility of public information being transformed into private information. So, while I agree that the speed of the technology is the 'difference that makes all the difference', I do not think that the speed difference is enough to cross the public–private barrier. Instead, this paper supports a quite different thesis, but nevertheless depends on the marked efficiency of these surveillance technologies.

¹³ One reviewer has rightly noted that I do not explicitly address the usual suspects in the dystopia literature. Orwell, Huxley, Zamyatin, and Atwood are, of course, prowling in the background here. The problem with citing these authors, however, is that they have been so interpreted over the years, and so terribly misinterpreted, that their primary hypotheses get lost in the public discourse. Orwell, for instance, is commonly thought to be griping simply about one's lack of mobility in a totalitarian society analogous with Soviet Russia. Astute readers recognize this not to be the case—or, at least, not the only totalitarian regime of concern—but the common perception of Orwell resonates much more strongly with the claim that the total surveillance society is a society in which one is not objectively free. This paper hopes to get beyond this simple concern.

More to the point, Huxley's delightful tale of happiness-maximizer Mustafa Mond and John, the self-flagellating noble savage, can be read as a parable not about freedom and surveillance, but about hedonism and perfectionism. Huxley's intuitions about freedom, self-determination, and recognition are probably more in accordance with the arguments in this paper than, say, Orwell's, but it would be a distraction to tie this paper too closely to his arguments either. In fact, the main similarity that this paper has with the literature on dystopia is that it raises a concern about a current technology and extrapolates to the extreme in order to make a point.

The reviewer goes on to offer many excellent sources of cultural criticism related to surveillance technology, including Thomas Levin (Ed.), *CTRL Space* (Boston, MA, MIT Press, 2002). This fantastic book offers titillating and incisive examples, criticisms, and even attempts to subvert current surveillance technologies. The reviewer then mentions that 'Artist Vito Acconci's artworks that involved following strangers in New York City, Yoko Ono's film "rape" in which she does this and nearly destroys a woman... Antonioni's film "Blow Up", John Frankenheimer's film "Seconds" and John Woo's "Face Off", all deal with facial recognition'. These are great examples of cultural skepticism about FRT and surveillance technologies. However, even with these great examples, there are nuances of each work that would too dramatically distract the reader from the overarching hypothesis presented here. It is the express intent in this paper to clarify matters related to the two common arguments surrounding surveillance technologies, and to do so in a way that does not conflate them with the third and important freedom of the will argument.

- ¹⁴ Indeed, the technology has already been used to identify and track the actions of political activists. See 'Firm defends 'snooper bowl' technology', *ACLU Newswire*, 9 March 2001.
- ¹⁵ Civil libertarians deserve a degree of hat tipping here. The suggestion in the above paragraph should not be that there is no merit to the objective argument (indeed, excellent philosophers ranging from George Orwell to Robert Nozick have taken more or less this position on freedom and its curtailment). Rather, the caricatured idea here is intended simply to offset the subjective position presented later in the paper. It will be demonstrated that the objective position is partly a manifestation of the subjective position on freedom.
- ¹⁶ Marital infidelity may not seem like the best example to use when making a quasi-Hegelian point, given Hegel's feelings about women, their role in society, and the family. However, Hegel repeatedly characterizes subjective freedom as a relation of trusting the other. (He uses the terms *Vertrauen* or *Zutrauen* (*Enzyklopädie der philosophischen Wissenschaften*, §515; *Philosophy of Right*, 129). For more on this point, see Fred Neuhouser, *Foundations of Hegel's Social Theory* (Cambridge, MA, Harvard University Press, 2000), p. 85.) The situation of marital infidelity, a bond of intersubjectively maintained trust more than a bond of externally enforced contract, serves illustrative purposes well. First, it is not enforced in the same way that laws prohibiting murder are enforced, and so it does not entreat us to the same sorts of suppositions about perfect enforcement. Second, however, it is also not so clearly deplorable. One might object that it is obviously not the sort of thing that an efficient state would be interested in ever enforcing, and that a state with strong constitutional protections would prohibit such enforcement. But it is part of the point of this paper that advanced surveillance technologies introduce the possibility that people not only begin policing themselves when subjected to an environment such as this, as is the Foucaultian observation, but also that the very possibility of acting morally depends on suppositions about freedom that are undermined by the threat of external repercussions.
- ¹⁷ In *The Limits of Privacy* (Basic Books, 2000), Amatai Etzioni argues that testing and surveillance can in fact be used to enhance freedom. He reasons that extensive state surveillance and information gathering can provide an unprecedented level of protection for citizens, warding off such socially undesirable crimes as terrorism and murder.
- ¹⁸ In *The End of Privacy* (New York, St Martin's Press, 1999), John Sykes presents the position that surveillance technologies, though often put to beneficial uses, *could be* mishandled or abused.
- ¹⁹ Allen Patten provides a trenchant analysis of subjective and objective freedom in his recent book *Hegel's Idea of Freedom* (New York, NY, Oxford University Press, 2002). He views subjective freedom as the freedom to reflectively ratify and endorse one's subjective determinations; while he views objective freedom as the freedom to have one's principles prescribed by reason. He writes: 'Roughly speaking, an agent (or "will") enjoys subjective freedom to the extent that he reflects on, and is able to find some subjective satisfaction in, his actions and relationships (his "determinations"). He enjoys objective freedom, by contrast, to the extent that his determinations are prescribed by reason: they are the determinations to which a fully rational agent, in the circumstances, would be committed. The subjectively free agent, then, is the agent who stands back from his determinations, reflects on them critically and independently, and is able both to endorse them and to find some subjective satisfaction in them. The objectively free agent, on the other hand, is the agent who, quite independently of whether he engages in reflection, has the correct determinations—the determinations that are prescribed by reason. The fully free agent—the agent who enjoys what Hegel terms "concrete" or "absolute" freedom—is free in both the subjective and the objective senses' (p. 35).
- ²⁰ Indeed, Kant is famous for having claimed that if society were to end tomorrow, justice would not be done until the very last criminal had been punished (Immanuel Kant, *Metaphysical Elements of Justice*, trans. John Ladd (Indianapolis, IN, Bobbs-Merrill, 1964), p. 100). This poses somewhat of a problem for the position that I take in this paper, since for Kant freedom of the will is a *purely* negative concept. This pure negativity is partially resolvable by appeal to Hegel's struggle for recognition and his account of identity formation. Unfortunately I do not have the space to tease this claim out on these terms.
- ²¹ Because of space limitations and a general desire not to delve too deeply into Hegelian terminology, I will not be explicating Hegel's position in this paper. Rather, I will use both the example of a parent-child relation and Korsgaard's conception of practical identity to allude to

Hegel's position on recognition. Those familiar with Hegel will recognize the struggle for recognition as critical to the public establishment of freedom.

²² Much of Foucault's analysis emphasizes the proliferation of power throughout a panoptic society, such that individual citizens take on the principles and laws of the state by means of indoctrination and feelings of powerlessness. Being subject to a set of affairs in which they can never tell when or if they are being watched, and knowing only that they might at *any time* be under observation, generates for them the fear that they are under observation *at all times*, and thus they assume, rightfully, that they had best abide by the law. In effect, then, the state can exert its power over the citizen by employing the 'soft walls' of the eternal observation station, even if observation technologies are imperfect and intermittent. This is not what I am arguing with the subjective freedom argument, though the subjective freedom argument does depend upon the supposition that citizens act under the Foucaultian presumption that they could be penalized, and will be penalized, for any lawbreaking. Thus, Foucault's analysis of panopticism bears on this matter very heavily, though it does not necessarily account for the eclipse of subjective freedom. For his analysis, see Michel Foucault, *Discipline and Punish: the Birth of the Prison* (New York, Vintage Books, 1995), pp. 195–228.

²³ A particularly poignant passage: 'Looking back now on all previous attempts to discover the principle of morality, we need not wonder why they all failed. It was seen that man was bound to laws by duty, but it was not observed that the laws to which he is subject are only those of his own giving, though at the same time they are universal, and that he is only bound to act in conformity with his own will; a will, however, which is designed by nature to give universal laws. For when one has conceived man only as subject to a law (no matter what), then this law required some interest, either by way of attraction or constraint, since it did not originate as a law from his own will, but this will was according to a law obliged by something else to act in a certain manner. Now by this necessary consequence all the labour spent in finding a supreme principle of duty was irrevocably lost. For men never elicited duty, but only a necessity of acting from a certain interest. Whether this interest was private or otherwise, in any case the imperative must be conditional and could not by any means be capable of being a moral command. I will therefore call this the principle of autonomy of the will, in contrast with every other which I accordingly reckon as heteronomy' (Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, trans. Thomas Kingsmill Abbott, 1785, p. 35).

²⁴ Christine Korsgaard, 'Morality as freedom' in *Creating the Kingdom of Ends* (Cambridge, Cambridge University Press, 1996), p. 163.

²⁵ 'Physical necessity is a heteronomy of the efficient causes, for every effect is possible only according to this law, that something else determines the efficient cause to exert its causality. What else then can freedom of the will be but autonomy, that is, the property of the will to be a law to itself?' (Kant, *Fundamental Principles of the Metaphysics of Morals*, p. 45).

²⁶ Immanuel Kant, 'Metaphysische Anfangsgründe der Tugendlehre', *Die Metaphysik der Sitten*, in two parts (Königsberg, Nicolovius, 1797), 2:6.

²⁷ Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, Section III.

²⁸ For a more complete discussion of these points, see Thomas Hill, 'The Kantian conception of autonomy' in Thomas E. Hill Jr, *Dignity and Practical Reason in Kant's Moral Theory* (Ithaca, NY, Cornell University Press, 1992), pp. 76–96.

²⁹ To make the following point, we will be considering that FRT enables not just the efficient administration of the law, but the *nearly perfect* administration of the law. We will be assuming that FRT will enable extensive and pervasive documentation of all public actions of all citizens, and that all public actions will be tracked over the course of a significantly relevant period in the life of the citizen.

³⁰ Indeed, writes John Woodward, a face recognition enthusiast: 'But while all these fears are understandable, we should not allow perceived or potential threats to our privacy to blind us to the positive uses of biometric technologies such as facial recognition. Perhaps Osama bin Laden's henchmen were nowhere to be found in Tampa's Raymond James Stadium, but law enforcement officials at the Super Bowl were taking prudent steps to identify them if they were'. See John Woodward, 'And now, the good side of facial profiling', *Washington Post*, 4 February 2001, p. B04.

³¹ Many rational choice theorists would characterize the question according to expected levels of apprehension, such that there is no qualitative difference between the first and the second option

(Q_1 and Q_2). Q_2 could be modified to read: 'If I do X, there is η percent chance that I will incur Φ penalty. Is X worth η percent chance of Φ to me?' In cases where η is 5%, η acts as a steep discount rate, and increases the likelihood that an agent will commit act X. In turn, a state intending to curtail commission of X will have incentive to increase Φ penalty. Where η is 95%, η continues to act as a discount rate, but not necessarily as a steep enough discount rate for criminals to discount the full import of the penalty. In turn, a state intending to curtail commission of X will have incentive to keep penalties as low as possible. What is important to see, however, is that in this case the ethical question, question Q_1 , is fully operationalized and incorporated into question Q_2 . As should become evident later in this paper, there is a qualitative difference between Q_1 and Q_2 , such that Q_1 cannot in fact be reduced to the operationalism of Q_2 .

³² One might further object by suggesting that the discount rate should be lower than the 95% I am claiming above. Fred could, after all, reason that as long as he and Ginger do not plan to pop any banks, rip off old people, or destroy property—that is, as long as they do not break the formally codified law—they work within the bounds of the institutionally established law, and cannot therefore be said to be worthy of state interest. State action against marital rapscallions is relatively rare even though there are legal prohibitions against infidelity. But Fred would still be running the very high risk that should anyone find his case compelling (like his spouse), there would be more than enough evidence to condemn him for his actions. The point here is only that oversight on the part of interested observers changes the nature of action, though not the actual actions themselves. If the chances of Fred being caught for his infidelity are somewhat exaggerated, it is nevertheless still the case that Fred should reasonably anticipate a much greater likelihood of being nabbed.

³³ That Ginger could ask questions of rightness is important to understanding how acting under the idea of freedom means more than just believing oneself to be free. Kant's point when he speaks of the idea of freedom is to allow for phenomenal determinism, for natural causation, while also allowing that the will, a kind of causality that acts according to reasons, can act freely. It is true that Ginger can *think* or *believe* anything she wants about her own freedom, as she can indeed ask herself questions of rightness, but she no longer is compelled to ask herself the same sorts of questions that she was asking herself before. That is, she can now rely simply on hypothetical practical reasoning to arrive at her ends.

³⁴ Immanuel Kant, *Fundamental Principles in the Metaphysics of Morals*, trans. Thomas Kingsmill Abbott (1785), p. 27.

³⁵ 'In every case where an object of the will has to be supposed, in order that the rule may be prescribed which is to determine the will, there the rule is simply heteronomy; the imperative is conditional, namely, if or because one wishes for this object, one should act so and so: hence it can never command morally, that is, categorically' (Immanuel Kant, *Fundamental Principles in the Metaphysics of Morals*, p. 43).

³⁶ Terry Pinkard, *Hegel's Dialectic* (Philadelphia, PA, Temple University Press, 1988), p. 119.

³⁷ The suggestion of 'political extremism' isolates a particularly nefarious problem associated with the objective argument against FRT. The question of *what* constitutes 'extremism' (whether extremism is characterized by one who makes bombs in his basement or by one who has simply held a protest sign in the street) will be left up to the unaccountable and often inconsistent criteria-setting of law enforcement agencies. The standards by which people will be 'fairly' singled out from the crowd could easily change from one situation to another.

³⁸ To some degree, lawmakers have attempted to acknowledge that children are somehow less capable of culpable action. However, attempts to circumvent harsh judgements on children result in the generally accepted, but weakly stipulated, demarcation between childhood and adulthood (say, age 18), mostly for the purpose of concretely delineating the point at which individuals are said to have already developed into responsible moral agents.

³⁹ See Robert Nozick, *Philosophical Explanations* (Cambridge, MA, Harvard University Press, 1981), pp. 60–68 and Derek Parfit, *Reasons and Persons* (Oxford, Oxford University Press, 1984), pp. 477–479.

⁴⁰ Kant makes a very similar point in his *Was ist Aufklärung?*: 'If I have a book to have understanding in place of me, a spiritual adviser to have a conscience for me, a doctor to judge my diet for me, and so on, I need not make any efforts at all. I need not think, so long as I can pay; others will soon enough take the tiresome job over for me. The guardians who have kindly taken

upon themselves the work of supervision will soon see to it that by far the largest part of mankind (including the entire fair sex) should consider the step forward to maturity not only as difficult but also as highly dangerous' (Immanuel Kant, *An Answer to the Question: What is Enlightenment?* (1784).

⁴¹ 'Since the conception of causality involves that of laws, according to which, by something that we call cause, something else, namely the effect, must be produced; hence, although freedom is not a property of the will depending on physical laws, yet it is not for that reason lawless; on the contrary it must be a causality acting according to immutable laws, but of a peculiar kind; otherwise a free will would be an absurdity. Physical necessity is a heteronomy of the efficient causes, for every effect is possible only according to this law, that something else determines the efficient cause to exert its causality. What else then can freedom of the will be but autonomy, that is, the property of the will to be a law to itself?' (Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals*, p. 45).

⁴² ...most of the time. Even in a nearly just democracy, some forms of civil disobedience may be justified.