Germany is NOT a democracy!

German Chancellor Angela Merkel has come under intense international scrutiny over authoritizing state attorneys to prosecute a TV comedian over a vulgar, satirical poem he performed lampooming Turkey's brutal dictator Tayyip Recep Erdogan. But the issue goes far beyond Merkel's cozying up to the tyrant in Ankara; Germany's libel and anti-insult laws have long been a weapon of choice for those seeking to suppress the marketplace of ideas. Hitler himself, prior to assuming power, was also a vicious libel plaintiff. In Germany, you can even get into free speech trouble for "libeling" the dead!

The Boehmerman case and the wrong debate about free speech law

Whenever he is not busy having Kurds killed, imprisoning journalists, or denying the Armenian Genocide, Turkish strongman Erdogan is a sensitive, fragile snowflake, easily offended by the many people who laugh at his ridiculous and scary regime. Having Turkish citizens who purportedly compare him to Gollum from Lord of the Rings prosecuted apparently doesn't satisfy his urges; Recently, Erdogan's regime has attempted to muzzle the laughter in Germany to. It started off with calling in Germany's Embassador to Turkey in late March after satire show Extra 3 on Germany's state-owned TV channel NDR had run a song mocking Erdogan's human rights record, saying "a journalist who writes anything that Erdogan doesn't like, he'll be in jail by tomorrow". They had also suggested Erdogan's vision of equal rights for women consisted of cops beating up female anti-government protesters as well as the men.

It was in the context of this row that another state TV comedian, Jan Boehmermann, dedicated his show to discussing the extent of the free speech rights guaranteed on paper by

Article 5 of the German Basic Law. He highlighted that laws draw the limit of the permissible at a legal concept known as *Smäh-Kritik,* vilifying criticism. He said he would perform a poem named after the concept to exemplify that, and introduced it saying "what comes next would be forbidden in Germany". Then he went on to read out a vulgar text hyperbolically accusing Erdogan, among many other things, of fellating with a "hundred sheep", having a small penis, smelling worse than the fart of a pig and watching child porn as well as beating women. He concluded his poem saying, "this is what you can't say in Germany".

The rest is history. Erdogan complained about the poem under two separate German anti-insult laws, firstly the arcane Article 103 of the criminal code, banning "the insulting of foreign heads or institutions of state" (which requires authorization by the government for prosecution to occur) and then secondly filed a legal request for prosecution under the regular law banning insults against persons, Article 185 of the criminal code (which any person can use, without any special authorization). Merkel's embattled government then issued the authorization for prosecution under Article 103, much to the surprise of press commentators. They had argued the second complaint was a "bridge" over politically hot waters that Erdogan had built for Merkel, allowing her to refuse to issue the controversial authorization under the arcane and unpopular Article 103, which even she herself has said she intends to repeal soon, but still ensuring criminal charges against comedian Boehmerman could proceed under a different law

The attack on Boehmerman's speech rights is not the first time Article 103 has been used to suppress democratic speech at the behest of the powerful. In
the 1960s it has used so frequently to persecute pro-democracy movement refugees from Iran that itbecame known as the "Shah-article". In the 1980s it was used tolegitimize police action

against protests who held up a banner describing Pinochet's murderous regime in Chile as a "gang of murderers", a historically accurate statement. The court's chilling justification: if police had not intervened to confiscate the banner, "the correct bilateral relations between Germany and Chile would have suffered to a not insignificant degree". In 2003, the president of police in Potsdam, a suburb of Berlin, wanted to use to law to prosecute an Iraq Waropponent who installed a "Bush Fuck You" placard at his home in an upscale neighborhood close to the German capital. Bush hadn't complained (so no prosecution went ahead), but well-to-do neighbors had not taken to the sign favorably. The threat of prosecution no doubt sent a chill down the war opponent's spine, and put a smile on their face

Despite this, Boehmerman's case also shows how Germany's conversation about free speech is broken. Much of the critical public reaction has not been to defend Boehmerman's right, per se, to engage in such satire, but rather has become an exercise in not-so productive group outrage against Article 103. Politicians have described the law as a "pre-democratic" remnant of an age where insulting kings was still seen as a major crime, highlighting that the law establishes much higher maximum penalties (5 years in jail) than the regular law against insults (one year in jail). The popular Focus Magazine prominently featured a bow-tie wearing constitutional law expert arguing that this violates the principle of equality before the law, making it incompatible with Germany's Basic Law. The problem with this line of reasoning is that every moment spent discussing this redundant law is one not spent discussing the wider host of censorious, unnecessary libel laws that stifle free thought in Germany, including the very same Article 185 that could yet be used to prosecute Boehmermann. The Boehmerman case has already had a knock on effect, with a Berlin administrative court banning the reprinting of his poem for a planned demonstrationagainst "insulting goats" that free speech activists had intended to

hold outside of the Turkish embassy, although the judges did not rule on the legality of his poem more widely.

Germany Anti-Insult and Libel Laws – Anti-Democratic and Stupid

Germany has a plethora of highly restrictive libel and anti-insult laws of the sort one would more expect to find in Hitler's Nazi-Germany than Merkel's supposedly tolerant Germany. Aside from the laws already mentioned, the rarely used Article 189 bans the "disparagement of the memory of the dead", Article 188 establishes particularly high penalties for "smearing and defaming" a "person involved in political life" if the speech in question is connected to the person's political activities and "makes their public work significantly harder". Article 192 explicitly says that the truth of a statement does not preclude it from constituting an illegal, punishable form of expression if it is insulting in the context of the way the statement was made. Underlying these laws is the idea that people have "personality rights" (Persönlichkeitsrechte) that a democratic state is obliged to protect from being compromised by demeaning speech.

Much of this can be traced down to the haste and post-war compromise with which the Basic Law, (then Western-) Germany's quasi-constitution was developed in the late 1940s after the fall of Hitler's Nazi dictatorship. Article 5, its' provision on free speech, reflects this perfectly. It states that everyone shall have a right to freedom of expression, information and art, without the existence of censorship, but then goes on to qualify this, making clear: "These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour". Theodor Heuss, a deputy to the 1948 parliamentary council that drafted the Basic Law, later said Article 5's limiting provisions were consciously vague and implied that the "right to personal honour" arose out of an egalitarian desire to ensure that the same protections against

smears would not just be available to officials of the state (as had de facto been the case in Nazi Germany, where the dignity of dissidents and democrats had not been respected by the state), but to all people.

This ties in with the Basic Law's wider rhetoric of the "inviolability of the dignity of man", a vague and unspecific platitude that would no doubt have been acceptable to both socialists and conservatives in post-Hitler West Germany. The Basic Law was originally, as it itself stated, intended to be only a compromise placeholder until such a time as a reunified Germany could pass a new constitution. But, given that the Basic Law gradually became a powerful emotive symbol of a new, post-totalitarian sense of Germanness, there little chance of this happening, and Germans will remain stuck with its inadequate free speech protections.

But the historical lack of emphasis on true free speech still does not explain the reluctance of Germany's current political, social and literary elites to demand a long-overdue expansion of speech rights. An understanding of this must be found elsewhere. An opinion piece penned by the editor-in-chief of Berlin's well-regarded, intellectual Berliner Zeitung exemplifies what many in Germany's cultural elites think about the Boehmerman case. Peter Huth wrote "Merkel did everything right… Even if there is a guilty verdict, Boehmermann will easily be able to live with the fine". It is unquestionably true that with a good (expensive) lawyer, waves of public support and a well-regarded professional background, no German TV presenter or big-league newspaper editor is likely to face jail or financially crippling fines for any insults he/she may throw at anyone. The almost certain knowledge that they themselves will never face such a predicament is exactly why many in Germany's powerful cultural and political elites find it so difficult grasp the chilling, censoring effect Germany's anti-insult laws can have on those less privileged financially, socially or professionally; Local bloggers, small

town newspapers, court case defendants, dissident refugees and historical researchers who already live on the economic margins of society but are the lifeblood of public debate. To many of these people, even the threat of a time-consuming police investigation or state prosecution can be the determining factor in not pursuing a news story, not expressing their opinion or even not exercising their fundamental due process rights.

Far from the egalitarian impulse that supposedly led to the constitutional "right to personal honour", in practice, Germany's anti-insult laws give immense power to officials to threaten small-time critics and trouble-makers who hold inconvenient opinions with legal repercussions. In 2014, a local court in the Rhineland region of Germany imposed a 6 month jail sentence for "insults" on an elderly man who had spent years writing letters to officials complaining, allegedly in crude and sometimes sexist terms, of inefficiency, ineptitude and of alleged corruption. Meanwhile, In the Schwarzwald region, an unemployed man who was dependent on social assistance received a 3 month jail sentence for using an insulting word in a telephone conversation with a local government official by whom he was told that more paperwork was needed before a permit he had requested could be issued. Last year, Germany's Constitutional Court overturned a guilty verdictissued by a local court under the anti-insults laws against a woman who encountered police while wearing a "fuck cps" sticker. The local court had characterized this as an expression impacting the "social worth of the affected persons in their official capacity and reducing it". In the 1990s, the Constitutional Court famously overturned a similar conviction against someone who had displayed a banner saying in (bad) English " a soldier is a murder [sic]", although the decision appears to be partially based on the reasoning that 'a soldier' did not specify troops from any specific national army or regiment in particular. Nonetheless, a regional higher court found that shouting "ACAB" while pointing at an

individual police officer is an illegal and specific insult.

In 2008, a small-time hotel operator who had been detained on charges of unlicensed commerce, was visited by a police inspector in jail who informed him that prosecutors had just obtained and fulfilled a search warrant for his private apartment. The hotel operator protested vigorously to the police inspector. He said that his lawyer should have been present during the search, and called the state prosecutor who had requested the search warrant a "breaker of the law whose days in the judicial system are counted". He was later investigated, prosecuted and convicted by a county court of "disparaging criticism" and "defamation" towards the state prosecutor for saying this, as well as of other charges unrelated to those comments, but an appeals court eventually overturned the verdict in 2011. Criminal charges of "smearing" (*Verleumdung*) were also used by the state to prosecute a victim of child sexual abuse who has forced to work in an illegal child brothel in the 1990s. Mandy K. had claimed in an interview with prosecutors investigating the case and publically, that that a senior judge had been among those visiting the brothel as a client. Her case sparked a national debate about allegations of judicial corruption as well as police attitudes to victims of sexual assault, and there is no record of her being convicted of the charges. But even being investigated by police and taken to court is a time-consuming, costly experience that discourages critical expression in the face of officialdom.

Germany's libel laws also have an unfortunate history of stifling the discussion of vital political topics. One of contemporary Germany's most prominent far-left politicians, Gregor Gysi, has, since the 1990s, faced allegations of having collaborated with communist Eastern Germany's feared Stasi 'state security' agency to inform on his clients, some of whom were dissidents, while he was a solicitor in Eastern Germany prior to re-unification. He vehemently denies the allegations,

which have never been proven, and became known as the "red law-suit monger" in 1990s over his successful efforts to sue those making such allegations for defamation. Despite the fact that a parliamentary committee of inquiry had deemed the allegations of informal collaboration with state security to be credible and had accused Gysi of being included in an effort to bring about the
"as-effective-as-possible suppression of the democratic opposition in the GDR [Eastern Germany]", Gysi was able to use to the judicial system to obtain an
injunction under libel law banning former Eastern German dissident Freya Klier from repeating comments suggesting that Gysi had 'not represented his clients but had instead spied on them and sought to control them together with his comrades'. Prestigious news-magazine Der Spiegel characterized the efforts to silence (in effect, if not necessarily intent) the debate using the judicial system as ultimately unsuccessful. But it also described the consequences of Gysi's lawsuits for free expression at the time in no uncertain terms; "regional newspapers reacted in a scared manner, in some editors offices one preferred to think twice about whether one should report about Gysi and the Stasi- and then didn't".

Even something as removed from day-to-day politics as historical research has come under attack under the absurd Article 188. In 2000, a Bavarian court issued an injunction banning a newspaper from making claims in a local history article that a deceased World-War-Two-era local figure had been "War-criminal who was sentenced to death". Reviewing the historical record, the court said that the deceased man had only been an "alleged war criminal", not a "Nazi-criminal", and that the death-sentence-carrying war crime conviction had been "only by Czech Courts in 1945", whichaccording to the court hadn't settled the matter of whether he was actually one. Penalties for contravention of the injunction were set at up to one month imprisonment or a not insubstantial 100000 German Marks fine. Other historical researchers have also

found their work scrutinized by Article 188 complaints submitted by angry relatives of the long-dead, although usually with less success. In 2013, a Northern German court ruled that a historical case study calling the notorious First World War German colonial military commander Lettow-Vorbeck a war criminal in regards to his activities in South-West Africa at the time did not constitute a crime, because the historical study was constitutionally protected pursuant to freedom of science. Similarly, in the 1960s, a German appeals court over-turned a five month prison sentence that had been imposed under Article 188 on a journalist who had written a historical piece questioning whether Nazi diplomat Ernst Von Rath, famously assassinated in 1938 in Paris, had been engaged in homosexual activities and had been killed in a sexual dispute. Such pointless legal action not only wastes court time, but is also a clear deterrent to research on important historical issues. If you are on a tight budget or timeline, and receive a legal threat from an incensed relative, wouldn't it seem much easier to avoid all the legal time-wasting by leaving out that sentence about the war-crimes committed by their deceased ancestor?

Of course, when vague laws exist, is there nothing to stop them from being used counter to the way lawmakers intended. Modern German Neo-Nazis have developed considerable expertise in attempting to use anti-insult laws and libel complaints to hassle journalists and anti-racist campaigners, href="http://www.spiegel.de/spiegel/print/d-13683058.html">a strategy they themselves called "penetrant legalism". Even Hitler, prior to taking power in 1933, himself filed a vexatious libel lawsuit in 1930 against Karl Rabe, the editor of the pro-democratic Munich Telegram newspaper. Rabe had been responsible for an article suggesting that Hitler had attempted to bully and threaten Crown-Prince Rupert of Bavaria in case he publically expressed criticism of a ballot measure Hitler has advocating for. Yes, that's correct, a soon-to-be dictator commanding an army of thuggish, Sturm-Abteilung death

squads had his thin skin offended by an editor who documented how he had acted like school-ground bully towards an ageing aristocrat. And the very democratic, judicial institutions he was trying to destroy humoured him by allowing him to bring his vexatious and censorious suit.

Meanwhile, Germany's cultural and political elites love pointing the finger at supposed violations of free speech and press freedom elsewhere in the world, particularly in neighboring Poland. There, their criticisms of the current Law & Justice Party government were perceived to be so out-of-touch that they attracted furious condemnation even from one of the country's main opposition leaders, the maverick Pawel Kukiz. He urged them to look "more closely at democracy in your own country". Perhaps they should take his wise words to heart and start by throwing out Germany's useless, repressive anti-insult laws. All of them.

The Smartphone Society

The automobile was in many respects the defining commodity of the twentieth century. Its importance didn't stem from technological virtuosity or the sophistication of the assembly line, but rather from an ability to reflect and shape society. The ways in which we produced, consumed, used, and regulated automobiles were a window into twentieth-century capitalism itself – a glimpse into how the social, political, and economic intersected and collided.

Today, in a period characterized by financialization and globalization, where "information" is king, the idea of any commodity defining an era might seem quaint. But commodities

are no less important today, and people's relationships to them remain central to understanding society. If the automobile was fundamental to grasping the last century, the smartphone is the defining commodity of our era.

People today spend a lot of time on their phones. They check them constantly throughout the day and keep them close to their bodies. They sleep next to them, bring them to the bathroom, and stare at them while they walk, eat, study, work, wait, and drive. Twenty percent of young adults even admit to checking their phones during sex.

What does it mean that people seem to have a phone in their hand or pocket everywhere they go, all day long? To make sense of our purported collective phone addiction, we should follow the advice of Harry Braverman, and examine the "machine on the one side and social relations on the other, and the manner in which these two come together in society."

Hand Machines

Apple insiders refer to FoxConn's assembly city in Shenzhen as Mordor – J. R. R. Tolkien's Middle Earth hellhole. As a spate of suicides in 2010 tragically revealed, the moniker is only a slight exaggeration of the factories in which young Chinese workers assemble iPhones. Apple's supply chain links colonies of software engineers with hundreds of component suppliers in North America, Europe, and East Asia – Gorilla Glass from Kentucky, motion coprocessors from the Netherlands, camera chips from Taiwan, and transmit modules from Costa Rica funnel into dozens of assembly plants in China.

Capitalism's simultaneously creative and destructive tendencies spur constant changes in global production networks, and within these networks, new configurations of corporate and state power. In the old days, producer-driven supply chains, exemplified by industries like auto and steel, were dominant. People like Lee Iacocca and Boeing legend Bill

Allen decided what to make, where to make it, and how much to sell it for.

But as the economic and political contradictions of the postwar boom heightened in the 1960s and ’70s, more and more countries in the Global South adopted export-oriented strategies to achieve their development goals. A new type of supply chain emerged (particularly in light industries like apparel, toys, and electronics) in which retailers, rather than manufacturers, held the reins. In these buyer-driven models, companies like Nike, Liz Claiborne, and Walmart design goods, name their price to manufacturers, and often own little more in the way of production than their lucrative brands.

Power and governance are located at multiple points in the smartphone chain, and production and design are deeply integrated at the global scale. But the new configurations of power tend to reinforce existing wealth hierarchies: poor and middle-income countries try desperately to move into more lucrative nodes through infrastructure development and trade deals, but upgrading opportunities are few and far between, and the global nature of production makes struggles by workers to improve conditions and wages extremely difficult.

Congolese coltan miners are separated from Nokia executives by more than an ocean — they are divided by history and politics, by their country’s relationship to finance, and by decades-old development barriers, many of which are rooted in colonialism.

The smartphone value chain is a useful map of global exploitation, trade politics, uneven development, and logistical prowess, but the deeper significance of the device lies elsewhere. To discover the more subtle shifts in accumulation that are illustrated and facilitated by the smartphone, we must turn from the process by which people use machines to create phones to the process by which we use the phone itself as a machine.

Considering the phone as a machine is, in some respects, immediately intuitive. Indeed, the Chinese word for mobile phone is *shouji*, or "hand machine." People often use their hand machines as they would any other tool, particularly in the workplace. Neoliberal demands for flexible, mobile, networked workers make them essential.

Smartphones extend the workplace in space and time. Emails can be answered at breakfast, specs reviewed on the train home, and the next day's meetings verified before lights out. The Internet becomes the place of work, with the office just a dot on the vast map of possible workspaces.

The extension of the working day through smartphones has become so ubiquitous and pernicious that labor groups are fighting back. In France, unions and tech businesses signed an agreement in April 2014 recognizing 250,000 tech workers' "right to disconnect" after a day's work, and Germany is currently contemplating legislation that would prohibit after-work emails and phone calls. German Labor Minister Andrea Nahles told a German newspaper that it is "indisputable that there is a connection between permanent availability and psychological diseases."

Smartphones have also facilitated the creation of new types of work and new ways of accessing labor markets. In the "marketplace for odd jobs," companies like TaskRabbit and Postmates have built their business models by tapping into the "distributed workforce" through smartphones.

TaskRabbit connects people who would prefer to avoid the drudgery of doing their own chores with people desperate enough to do piecework odd jobs for pay. Those who want chores done, like the laundry or cleanup after their kid's birthday party, link up with "taskers" using TaskRabbit's mobile app.

Taskers are expected to continuously monitor their phones for potential jobs (response time determines who gets a job);

consumers can order or cancel a tasker on the go; and upon successfully completing the chore, the contractor can be paid directly through the phone.

Postmates – the darling of the gig economy – is an up-and-comer in the business world, especially after Spark Capital pumped $16 million into it earlier this year. Postmates tracks its "couriers" in cities like Boston, San Francisco, and New York using a mobile app on their iPhones as they hustle to deliver artisanal tacos and sugar-free vanilla lattes to homes and offices. When a new job comes in, the app routes it to the closest courier, who must respond immediately and complete the task within an hour to get paid.

The couriers, who are not recognized employees of Postmates, are less enthusiastic than Spark. They get $3.75 per delivery plus tips, and because they're classified as independent contractors, are not protected by minimum wage laws.

In this way, our hand machines fit seamlessly into the modern world of work. The smartphone facilitates contingent employment models and self-exploitation by linking workers to capitalists without the fixed costs and emotional investment of more traditional employment relations.

Selves for Sale

Erving Goffman, an influential American sociologist, was interested in the self and how individuals produce and perform their selves through social interaction. By his own admission, Goffman was a bit Shakespearean – for him "all the world is a stage." He argued that social interactions can be thought of as performances, and that people's performances vary depending on their audience.

We enact these "front-stage" performances for people – acquaintances, coworkers, judgmental relatives – that we want to impress. Front-stage performances give the appearance that our actions "maintain and embody certain standards." They

convince the audience that we really are who we say we are: a responsible, intelligent, moral human being.

But front-stage performances can be shaky and are often undermined by mistakes – people put their foot in their mouth, they misread social cues, they have a piece of spinach lodged in their teeth, or they get caught in a lie. Goffman was fascinated by how hard we work to perfect and maintain our front-stage performances and how often we fail at them.

Smartphones are a godsend for the dramaturgical aspects of life. They enable us to manage the impressions we make on others with control-freak precision. Instead of talking to each other, we can send text messages, planning our witticisms and avoidance strategies in advance. We can display our impeccable taste on Pinterest, superior parenting skills on CafeMom, and burgeoning artistic talents on Instagram, all in real time.

New York magazine recently ran a piece about the four most desirable people in New York City according to OKCupid. These individuals have crafted such attractive dating profiles that they are pummeled with attention and racy requests – their phones ping continually with messages from potential paramours. Tom, one of the chosen four, regularly tweaks his profile, subbing in new photos, and rewording his self-description. He has even used OKCupid's MyBestFace profile-optimizing service.

Tom says all this effort is necessary in our present "culture of likes." Tom considers his OKCupid profile to be "an extension of himself": "I want it to look good and clean so, like, I make it do crunches and shit."

The incredible reach of social media and people's rapid adoption of it to produce and perform their selves are engendering the emergence of new technologically mediated rituals of interaction. Smartphones are now central to the way

we “generate, maintain, repair, and renew as well as . . . contest or resist relationships.”

Take texting rituals, which, with all their complex, unwritten rules, now play a commanding role in the relationship dynamics of most young adults. One need not deal in toxic nostalgia to admit that new, technologically mediated rituals are displacing or radically altering older conventions.

Digitally maintaining, generating, and contesting relationships through smartphones is somewhat different from using phones to complete tasks associated with wage work. Individuals don’t get paid a wage for their Tinder profile or for uploading photos of their weekend adventures on Snapchat, but the selves and the rituals they produce are certainly for sale. Regardless of intention, when a person uses their smartphone to connect with people and the imagined digital community, the output of their labor of love is increasingly likely to be sold as a commodity.

Companies like Facebook are pioneers in the enclosure and sale of digital selves. In 2013, Facebook had 945 million users who accessed the site through their smartphones. It made 89 percent of its revenue that year from advertising, half of which came from mobile advertising. Its entire architecture is designed to guide the mobile production of selves through a platform that makes those selves salable.

That’s why it instituted its “real names” policy: “pretending to be anything or anyone isn’t allowed.” Facebook needs users to use legal names so it can easily match corporeal selves with digital selves, because data produced by and connected to an actual human is more profitable.

Users of the dating site OKCupid agree to a similar exchange: “data for a date.” Third-party companies sit in the background of the site, scooping up users’ photos, political and religious views, and even the David Foster Wallace novels they

profess to love. The data are then sold to advertisers, who create targeted, personalized ads.

The pool of people who have access to OKCupid's data is remarkably large — OkCupid, along with other companies like Match and Tinder, is owned by IAC/InterActiveCorp, the sixth-largest online network in the world. Crafting a self on OKCupid may or may not yield love, but it definitely yields corporate profits.

Awareness is spreading that our digital selves are now commodities. New School professor Laurel Ptak recently published a manifesto called "Wages for Facebook" and in March 2014, Paul Budnitz and Todd Berger created Ello, a fleetingly popular Facebook alternative.

Ello proclaims: "We believe a social network can be a tool for empowerment. Not a tool to deceive, coerce, and manipulate — but a place to connect, create, and celebrate life. You are not a product." Ello promises not to sell your data to third-party advertisers, at least for now. It reserves the right to do so in the future.

However, discussions of the peddling of digital selves by gray-market data companies and Silicon Valley giants are usually separate from conversations about increasingly exploitative working conditions or the burgeoning market for precarious, degrading work. But these are not separate phenomena — they are intricately linked, all pieces in the puzzle of modern capitalism.

iCommodify

Capital must reproduce itself and generate new sources of profit over time and space. It must constantly create and reinforce the separation between wage laborers and owners of capital, increase the value it extracts from workers, and colonize new spheres of social life to create commodities. The system, and the relationships that comprise it, are constantly

in motion.

The expansion and reproduction of capital in everyday life and the colonization of new spheres of social life by capital are not always obvious. Thinking about the smartphone helps us put the pieces together because the device itself facilitates and undergirds new models of accumulation.

The evolution of work over the past three decades has been characterized by a number of trends – the lengthening of the workday and workweek, the decline of real wages, the reduction or elimination of non-wage protections from the market (like fixed pensions or health and safety regulations), the proliferation of part-time work, and the decline of unions.

At the same time, norms regarding the organization of work have also shifted. Temporary, project-oriented employment models are proliferating. Employers are no longer expected to provide job security or regular hours, and employees no longer expect those things.

But the degradation of work is not a given. Increasing exploitation and immiseration are tendencies, not fixed outcomes ordained by the rules of capitalism. They are the result of battles lost by workers and won by capitalists.

The ubiquitous use of smartphones to extend the workday and expand the market for shit jobs is a result of the weakness of both workers and working-class movements. The compulsion and willingness of increasing numbers of workers to engage with their employers through their phones normalizes and justifies the use of smartphones as a tool of exploitation, and solidifies constant availability as a requirement for earning a wage.

Apart from the Great Recession, corporate profit rates have steadily climbed since the late eighties, and not only as a result of capital (and the state) rolling back the gains of the labor movement. The reach of global markets has widened

and deepened, and the development of new commodities has grown apace.

The expansion and reproduction of capital is dependent on the development of these new commodities, many of which emerge from capital's incessant drive to enclose new spheres of social life for profit, or as political economist Massimo De Angelis says, to "put [these spheres] to work for [capital's] priorities and drives."

The smartphone is central to this process. It provides a physical mechanism to allow constant access to our digital selves and opens a nearly uncharted frontier of commodification.

Individuals don't get paid in wages for creating and maintaining digital selves – they get paid in the satisfaction of participating in rituals, and the control afforded them over their social interactions. They get paid in the feeling of floating in the vast virtual connectivity, even as their hand machines mediate social bonds, helping people imagine togetherness while keeping them separate as distinct productive entities. The voluntary nature of these new rituals does not make them any less important, or less profitable for capital.

Braverman said that "the capitalist finds in [the] infinitely malleable character of human labor the essential resource for the expansion of his capital." The last thirty years of innovation demonstrate the truth of this statement, and the phone has emerged as one of the primary mechanisms to activate, access, and channel the malleability of human labor.

Smartphones ensure that we are producing for more and more of our waking lives. They erase the boundary between work and leisure. Employers now have nearly unlimited access to their employees, and increasingly, holding even a low-paid, precarious job hinges on the ability to be always available

and ready to work. At the same time, smartphones provide people constant mobile access to the digital commons and its gauzy ethos of connectivity, but only in exchange for their digital selves.

Smartphones blur the line between production and consumption, between the social and the economic, between the pre-capitalist and the capitalist, ensuring that whether one uses their phone for work or pleasure, the outcome is increasingly the same – profit for capitalists.

Does the arrival of the smartphone signify the Debordian moment in which the commodity has completed its "colonization of social life"? Is it true that not only is our relationship to commodities plain to see, but that "commodities are now *all* that there is to see?"

This might seem a bit heavy-handed. Accessing social networks and digital connectivity through mobile phones undoubtedly has liberatory elements. Smartphones can help battle anomie and promote a sense of ambient awareness, while at the same time making it easier for people to generate and maintain real relationships.

A shared connection through digital selves can also nourish resistance to the existing hierarchy of power whose internal mechanisms isolate and silence individuals. It's impossible to imagine the protests sparked by Ferguson and police brutality without smartphones and social media. And ultimately, most people are not yet compelled to use smartphones for work, and they certainly aren't required to perform their selves through technology. Most could throw their phones into the sea tomorrow if they wished.

But they won't. People love their hand machines. Communicating primarily through smartphones is fast becoming an accepted norm, and more and more rituals are becoming technologically mediated. Constant connection to the networks and information

we call cyberspace is becoming central to identity. Why this is happening is a labyrinthine speculation.

Is it, as media and technology expert Ken Hillis suggests, simply another way to "stave off the Void and the meaningless of existence?" Or, as novelist and professor Roxane Gay recently pondered, does our ability to manipulate our digital avatars provide a balm for our deep sense of impotence in the face of injustice and hate?

Or – as tech guru Amber Case wonders – are we all turning into cyborgs?

Probably not – but it depends on how you define cyborg. If a cyborg is a human who uses a piece of technology or a machine to restore lost functions or enhance her capacities and knowledge, then people have been cyborgs for a long time, and using a smartphone is no different than using a prosthetic arm, driving a car, or working on an assembly line.

If you define a cyborg society as one in which human relationships are mediated and shaped by technology, then our society certainly seems to meet this criterion, and our phones play a starring role. But our relationships and rituals have long been mediated by technology. The rise of massive urban centers – hubs of connectivity and innovation – would not have been possible without railroads and cars.

Machines, technology, networks, and information do not drive or organize society – people do. We make things and use things according to the existing web of social, economic, and political relationships and the balance of power.

The smartphone, and the way it shapes and reflects existing social relations, is no more metaphysical than the Ford Rangers that once rolled off the assembly line in Edison, New Jersey. The smartphone is both a machine and a commodity. Its production is a map of global power, logistics, and exploitation. Its use shapes and reflects the perpetual

confrontation between the totalizing drives of capital and the resistance of the rest of us.

In the present moment, the need for capitalists to exploit and commodify is strengthened by the ways in which smartphones are produced and consumed, but capital's gains are never secure and unassailable. They must be renewed and defended at every step. We have the power to contest and deny capital's gains, and we should. Perhaps our phones will come in handy along the way.

Is God Or Satan The Good Guy?

Lets look at Christian mythology. Who is this "God" character, and who is this "Satan" guy? Lets look at it with a little bit of a critical eye. The first thing we need to remember is that the victors write the history books. So, you've got to look at the Bible as a piece of propaganda for the winning side. Of course the book that God wrote is going to make him the protagonist. But, even his own complete control over the message isn't enough to cover up his defects. Sort of like North Korean propaganda. It might control the message, but it still doesn't make Kim Jong Un look good.

First off, God apparently created everything. He created Tyrannosaurus Rex, which had arms too short to masturbate. Then, he created us, with arms long enough to play with our genitals, and hands that are pretty damn well suited to it. He gave us the capacity to feel pleasure, and he gave us the desire to chase it. He gave us a thirst for knowledge. He gave us a lot of great stuff.

But, he demanded that we not use any of it. Oh, and he

demanded that we love him.

Doesn’t that sound a little bit twisted to you?

This God character sounds more like the psychological profile you’d get if you went to a high school, found the meanest 16 year old cheerleader, and told her that she had absolute power. Imagine if Saddam Hussein could shoot lightning out of his eyes.

But, its even sicker than that.

God creates a “tree of knowledge.” He makes us totally ignorant. He then plants the tree of knowledge where? Is it a thousand miles from the Garden of Eden? Nope. Does it have a fence around it? Nope. It is right smack in the middle of the paradise he made for us. He then says, “*you can eat all this shit, pears, durians, blackberries, anything! But I will fuck your shit up if you eat this fruit that cures your ignorance*.”

He watches us all the time, like the NSA. Oh yeah, he’s watching. Like the Elf on the Shelf and Dick Cheney.

Oh, and he DEMANDS that we love him. If you don’t love me, I’ll burn your ass forever and ever. That sounds more like a stalker than an omniscient being worthy of being praised or worshipped. At best, he’s just got a sick sense of humor. But, “love me or I burn you” is just totally crazy.

On the other hand, we have this Satan guy.

Satan likes us. Satan doesn’t mind if we enjoy ourselves.

Satan doesn’t care if we love him or not. He’s there if we want him. Oh, and he suggests that maybe, just maybe, we ought to come out of the shadows of ignorance and eat from the tree of knowledge. From what I can tell from the mythology, Satan doesn’t watch us unless we request it. Opt-in surveillance, free will, enjoy yourself, and don’t be ignorant.

Does that sound like the **bad guy** to you?

Satan sounds more like Prometheus than the Cylon lord. It sounds like he gave us the gift of rational thought. It is because of him that we can question and reason. Meanwhile, God wanted to keep that from us. What a dick.

The whole Jesus thing doesn’t help his case any. God “sends his only son” to Earth. But, if you read the text, what really happened is he came to Earth and knocked up a married woman. So he cuckolds poor Joseph, then Joseph is stuck raising this other guy’s son. Then, God figures he can kill Jesus FOR US? That doesn’t even make any frigging sense.

If you read between the lines, God came to Earth like so many gods before him, and wanted to get him some mortal trim. He screws Mary, knocks her up, and it takes him 33 years to figure out how the hell to clean up this mess.

Meanwhile, does Satan have any such acts on his record?

Nope.

In fact, Satan showed up in the garden of Eden, and had all this power of suggestion. There’s the hottest chick in the world standing there. Well, the ONLY chick, I guess, but whatever. Eve is there, naked and completely ignorant. Does Satan take advantage and fuck her? No. Hell, the word “rape” doesn’t even exist yet, so he could have conned her, forced her, whatever. Instead, he gives her a gift that allows her to engage in freedom of thought.

In more modern times, when Satan comes to earth, he shows up at the crossroads in Mississippi and makes someone into a great musician. Or he plays in a heavy metal band. Or he whispers in our ear, “go ahead and jerk off watching that donkey show – if you want to.”

God commits genocide at Sodom and Gomorrah. He floods the whole world, because he isn’t quite happy with how his creations are kissing his ass, or not doing so. He is the one who casts souls into the eternal pit of hell. Satan seems to just hang out there making the best of it. And how did Satan get there? Oh, just by rebelling against a despot. Sounds like Nelson Mandela and Thomas Jefferson were “satanists” too – at least in spirit.

Not that I advocate worshipping anyone or anything, but if you’re going to buy in to christian mythology, you might want to reconsider which of the characters is actually the good guy.

Apple Watch – Nobody Needs It

The dream of a five year old.

On Monday March 9, 2015, Apple finalized and solidified the release plans for the Apple Watch, telling customers to get ready to line up for the wearable device on April 24. But for what is this new gadget good for? Nothing! The Apple Watch is expensive, it is bad taste and infantile.

Everything was great, but now it gets even better. After about an hour the Apple event runs at towards its peak: Tim Cook, CEO of Apple since Steve Jobs is no longer with us, has told

us a lot about the Apple Watch, this latest product from Apple, which will change everything again. Cook tries visibly to sound thrilled to awaken enthusiasm, he looks enthusiastic, you get the feeling now something really great is coming.

“You can even with the built-in receiver and microphone …”, says Cook, “you can receive calls with your watch! This is something I wanted to do since I was five years old! We finally made it this far!” Is this guy serious? But the stupids in the audience are eating up every word.

Well, finally, we came that far. A five year old wants to become fire and garbage man, astronaut or perhaps Dino researchers, but after a few years this will fade. And that’s a good thing.

In the eighties, an early evening program, the US series “Knight Rider” was on TV with David Hasselhoff. Whenever he got into trouble, he could lift his watch to his mouth and summoned his talking miracle car “KITT” .

The consumers of this in retrospect amazingly stupid TV series are now around 40 years old, exactly Apple’s target group for the watch: Technology Affine, professionals who want to act as much as possible youthful and they are ready to invest in expensive gadgets of questionable usefulness.

Will they spend money to be cool like David Hasselhoff? Are they excited to lift their wrist to finally talk to their watch: “KITT, get me out of here”?

That’s not cool, that’s an invasion

Apple’s gadgets targeted in the past the child in the man, and the author of this text scraped in the past together enough money to get the latest Apple stuff: From the Apple IIc, the Newton, who looked like a tricorder from “Star Trek” and could (more bad than good) recognize handwriting, to the iPod, perhaps the first product ever that held everything it

promised. I never bought an iPhone. I always thought that the price for the gadget itself and the price for the service was nothing other than rape and robbery.

The Apple Watch has been for decades the first product innovation from Cupertino, which does not cause any cravings to own it. For over a decade, the mobile industry has given us the habit not to wear watches, now suddenly we should buckle on this chunky piece – and still carry an iPhone with us?

Every call, every breaking news, every annoying prompt should now be physically permanently attached to our bodies? That's not cool, that's an invasion.

While the iPhone was a revolutionary reinvention of the phone that it has enriched so many features that its main function, making phone calls, faded into the background, the Apple Watch acts as a dilution of what we know so far as the concept of a watch.

An Apple Watch is not timeless

A high quality watch is timeless, it lasts practically forever, making it a classic heirloom. The Apple Watch, however, is probably in a few years out of date, because it is then replaced by the next version. While the conventional wristwatch will not change its original appearance in a hundred years, Apple's Watch is customizable according to your taste and mood you can have time shown with flowers, numbers or Mickey Mouse. Everybody cross-bred with a chimp will love it.

A watch is the style statement of an adult human. The adaptability of the product, commonly a feature of modern technology, is explicitly not allowed. With the Apple Watch, however, the design turns into a childish arbitrariness.

Maybe that's why Cook refers to the dream of a Five Year Old.

P.S.: Despite my distain for the Apple Watch, I am sure it will be a bestseller. There are just so many morons in this country.

Federal Court Halts DAPA and Expanded DACA Programs

On Monday, February 16, 2015, Judge Andrew S. Hanen of the US District Court for the Southern District of Texas, Brownsville Division **issued** a **preliminary injunction** to temporarily prevent the federal government from implementing the **Deferred Action for Parental Accountability (DAPA) and the expanded Deferred Action for Childhood Arrivals (DACA)** programs.

The order was issued as Judge Hanen continues to consider the lawsuit brought in December 2014 by twenty-six states **seeking** declaratory and injunctive relief against the United States and certain federal officials. The plaintiffs aver that the DAPA and expanded DACA programs violate the Take Care Clause of the US Constitution and the Administrative Procedure Act (APA). In ordering the injunction, Judge Hanen found that the federal government failed to fulfill the APA's "notice and comment requirement." Judge Hanen has not yet issued a final decision on the merits of the case, including whether or not the executive measures violate the US Constitution.

US Citizenship and Immigration Services (USCIS) had planned to begin accepting applications for the expanded DACA program on Wednesday, February 18, 2015. The DAPA program was expected to open sometime in May 2015. Department of Homeland Security

(DHS) Secretary Jeh Johnson has **announced** that, pending an appeal, DHS "will not begin accepting requests for the expansion of DACA…as originally planned." Johnson also said, "Until further notice, we will also suspend the plan to accept requests for DAPA."

The DAPA and expanded DACA programs would have provided temporary relief from deportation and work authorization for up to 5.2 million unauthorized immigrants in the US (Warren 2014). The order will not affect unauthorized immigrants eligible for the DACA program implemented in 2012 because the lawsuit does not challenge the original DACA program (Lind 2015).

In a **statement** released on February 17th, the White House stated, "The Department of Justice, legal scholars, immigration experts, and the district court in Washington, D.C. have determined that the President's actions are well within his legal authority." The federal government is expected to appeal the injunction to the Fifth U.S. Circuit Court of Appeals in New Orleans (Koppel and Meckler 2015; Lind 2015). Should the federal government win its appeal, it is possible that enrollment may open for the DAPA and expanded DACA programs.

Regardless of the success of the appeal or Judge Hanen's final decision, officials, experts, and advocates anticipate an extremely long legal battle that may reach the Supreme Court. Meanwhile, service organizations remain optimistic and are continuing to prepare immigrants for the two programs (Koplowitz 2015; Hennessy-Fiske 2015; Solís 2015).

- The Complaint for Declaratory and Injunctive Relief is available at https://www.texasattorneygeneral.gov/files/epress/files/20141203ImmigrationExecutiveOrderLawsuit.pdf.
- Judge Hanen's Memorandum Opinion and Order is available at

https://www.scribd.com/doc/255994067/Memorandum-Opinion-Texas-v-United-States. His Order of Temporary Injunction is available at https://www.scribd.com/doc/255992850/Order-of-Temporary-Injunction-Texas-v-United-States.

Samsung Ad Injections Perfectly Illustrate Why I Want My 'Smart' TV To Be As Dumb As Possible

Samsung has been doing a great job this week illustrating why consumers should want their televisions to be as dumb as technologically possible. The company took heat for much of the week after its privacy policy revealed Samsung smart TVs have been collecting and analyzing user living room conversations in order to improve voice recognition technology. While that's fairly common for voice recognition tech, the idea of living room gear that spies on you has been something cable operators have been patenting for years. And while Samsung has changed its privacy policy language to more clearly illustrate what it's doing, the fact that smart TV security is relatively awful has many people quite justly concerned about smart TVs becoming another poorly-guarded repository for consumer data.

But it's something else stupid that Samsung did this week that got less press attention, but that I actually find far more troubling. Numerous Samsung smart TV users around the world this week stated that the company has started injecting ads

into content **being watched on third-party devices and services**. For example, some users found that when streaming video content from PC to the living room using Plex, they suddenly were faced with a large ad for Pepsi that actually originated from their Samsung TV:

> *"Reports for the unwelcome ad interruption first surfaced on a Subreddit dedicated to Plex, the media center app that is available on a variety of connected devices, including Samsung smart TVs. Plex users typically use the app to stream local content from their computer or a network-attached storage drive to their TV, which is why many were very surprised to see an online video ad being inserted into their videos. A Plex spokesperson assured me that the company has nothing to do with the ad in question."*

Now Samsung hasn't responded yet to this particular issue, and you'd have to think that the company accidentally enabled some kind of trial ad injection technology, since anything else would be idiotic brand seppuku (in fact it does appear like it has been working with Yahoo on just this kind of technology). Still, users say the ads have them rushing to disable the smart portion of Samsung TVs, whether that's by using a third party solution or digging into the bowels of the TV's settings to refuse Samsung's end user agreement. And that raises an important point: many consumers (myself included) want their TV to be as slack-jawed, glassy-eyed, dumb and dim-witted as possible.

Like broadband ISPs and net neutrality, Samsung clearly just can't help itself, and is eager to use its position as a television maker to ham-fistedly inject itself into a multi-billion dollar emerging Internet video market. But that runs in stark contrast to the fact that most people just want their television (whether it's 720p or 4K) to **simply be a dumb monitor** they *hook smart devices of their choice up to*. Just like people want their broadband ISPs to get out of the way

and provide a quality dumb pipe, many people just want a traditional, dumb television to do a great job displaying the signals sent to it and nothing more.

Dumb TVs just make more sense for most users: many people own televisions for ten years, and the streaming hardware embedded in these sets quickly becomes irrelevant even with updated firmware. Dumb TVs, with less sophisticated internals, should also be cheaper to buy. And if you're any kind of respectable audiophile, you've got game consoles and devices like Roku hooked into a receiver and a decent 5.1 (or above) system, making the set's internals redundant. Swapping out a crop of the latest and greatest (not to mention relatively cheap) Rokus or Chromecasts every few years just makes more sense for most of us.

Last I saw, around 50% of people who buy connected TVs aren't using the connected portion of the set. Yet if you peruse the latest sets (especially the ongoing standards minefield that is 4K or UHD) you'll find that buying a dumb television is getting increasingly more difficult. I won't even get into the problems with HDCP 2.2 DRM stifling 4K growth and confusing the hell out of consumers on the bleeding edge, as that's another article entirely.

Bottom line: I want my pipes dumb, my TVs dumber, and **my choice** of a full variety of intelligent devices and services without bull-headed companies stumbling drunkenly into my line of sight. Samsung's clumsy week simply couldn't have illustrated the growing need for dim-witted television sets any better.

Only a total idiot would have filed a defamation case over the term “total idiot”

The Nebraska Supreme Court reminds us in Steinhausen v. Homeservices of Nebraska, 289 Neb. 927 (Neb. 2015) that rhetorical hyperbole is not actionable as defamation. I can assure you that total idiots nationwide will fail to get the memo.

In this case, someone referred to a home inspector as a “total idiot.”

Download (PDF, Unknown)

> *Nitz argues that in the context of the Hotsheets– which she refers to as a place for HomeServices agents to “express their opinions without pulling punches”38–the phrase “total idiot” is not “a factual statement that [Steinhausen] is mentally defective.”39 Steinhausen responds that “[i]diocy is verifiable” and “can be defined and proved.”40 He notes that “idiot” is defined in one dictionary as “a stupid person or a mentally handicapped person” and asserts that he “is neither stupid nor mentally handicapped.”41 (Op. at 939)*

The Nebraska Supreme Court correctly analyzed its responsibilities in the case – something that I find lacking pretty often in trial courts nationwide.

> *The threshold question in a defamation suit is whether a*

> *reasonable fact finder could conclude that the pub- lished statements imply a provably false factual assertion.44 Statements of fact can be defamatory whereas statements of opinion—the publication of which is protected by the First Amendment—cannot.45 Put another way, "subjective impres- sions" cannot be defamatory, as contrasted with objective "expressions of verifiable facts."46 Distinguishing the two pre- sents a question of law for the trial judge to decide.47 In mak- ing this distinction, courts apply a totality of the circumstances test.48 Relevant factors include (1) whether the general tenor of the entire work negates the impression that the defendant asserted an objective fact, (2) whether the defendant used fig- urative or hyperbolic language, and (3) whether the statement is susceptible of being proved true or false.49 (Op. at 940)*

The court then explained Rhetorical Hyperbole.

> *As noted, whether the language is hyperbolic is relevant to distinguishing fact from opinion. Rhetorical hyperbole—"language that, in context, was obviously understood as an exaggeration, rather than a statement of literal fact"—is not actionable.54 In particular, "[t]he ad hominem nature of abu- sive epithets, vulgarities, and profanities,"55 which some writ- ers "use to enliven their prose,"56 indicates that the statement is hyperbole. (Op. at 941)*

Then the court showed what a total idiot you have to be to file under these facts.

> *Exercises in "name calling" (See Chang v. Cargill, Inc., 168 F. Supp. 2d 1003, 1011 (D. Minn. 2001)) generally fall under the category of rhetorical hyperbole. (See, e.g., Blomberg v. Cox Enterprises, Inc., 228 Ga. App. 178, 491 S.E.2d 430 (1997)). For example, courts have held that " 'idiot,' "(Robel v. Roundup Corp., 148 Wash. 2d 35, 56, 59 P.3d 611, 622 (2002). Accord Blouin v. Anton, 139 Vt. 618, 431 A.2d 489*

(1981)) " 'raving idiot,' "(DeMoya v. Walsh, 441 So. 2d 1120, 1120 (Fla. App. 1983)) " '[i]diots [a]float,' " (Cowan v. Time, Inc., 41 Misc. 2d 198, 198, 245 N.Y.S.2d 723, 725 (N.Y. Sup. 1963)). and more vulgar variants (See Chang v. Cargill, Inc., 168 F. Supp. 2d 1003, 1011 (D. Minn. 2001)) were rude statements of opinion, rather than lay diagnoses of mental capacity. Similarly, courts have held that statements calling the plaintiff " 'stupid,' " (Chang v. Cargill) a " 'moron,' " (Purcell v. Ewing, 560 F. Supp. 2d 337, 343 (M.D. Pa. 2008)) and a " 'nincompoop' " (Stepien v. Franklin, 39 Ohio App. 3d 47, 49, 528 N.E.2d 1324, 1327 (1988)) were not actionable. Courts have also held that statements potentially referring to the plaintiff's mental health, such as "'raving maniac'" (DeMoya v. Walsh, 441 So. 2d 1120, 1120 (Fla. App. 1983)); "'pitiable lunatics'" (Thomas v. News World Communications, 681 F. Supp. 55, 64 (D.D.C.1988)); "wacko," "nut job," and "'hysterical'" (Lapine v. Seinfeld, 31 Misc. 3d 736, 752, 754, 918 N.Y.S.2d 313, 326, 327 (N.Y. Sup. 2011)); "'crazy'" (Stepien v. Franklin, supra note 65, 39 Ohio App. 3d at 49, 528 N.E.2d at 1327); and "crank," (See Dilworth v. Dudley, 75 F.3d 307 (7th Cir. 1996)) were statements of opinion. (Op. at 941-942) (citations added in from footnotes)

Cops use taser on woman while she recorded arrest of another man

“You a dumb bitch,” video captures cop saying after yanking victim from car.

—

A 36-year-old Baltimore woman claims she was tased by police and arrested while filming the arrest of a man with her mobile phone, according to a lawsuit to be served on the Baltimore City Police Department as early as Thursday.

Video of the March 30 melee surfaced online this week. Police erased the 135-second recording from the woman’s phone, but it was recovered from her cloud account, according to the Circuit Court for Baltimore City lawsuit (PDF), which seeks $7 million.

Download (PDF, Unknown)

Kianga Mwamba was driving home from a family gathering in March. Stopped in traffic, she began filming the nearby arrest of a man who she says was kicked by police.

“You telling me I can’t record,” the woman says on the video as police tell her to move on.

“I’ll park. I’ll park. I’ll park,” the woman is heard saying in her own recording.

All of a sudden an officer says, “Out of the car. Out of the car.”

She was yanked out. “He burning me. He burning me,” the woman is heard screaming.

The lawsuit comes as at least one state, Illinois, moves to ban the recording of the police amid calls across the nation for cops to be equipped with body cameras to help prevent future police scuffles resulting in deaths. President Barack Obama has also weighed in on the issue, announcing last week

that the administration would provide $75 million in funding to police departments to purchase body cameras. Even before Obama's announcement, local police departments were gobbling them up as fast as they could in the aftermath of the Ferguson, Missouri death of Michael Brown.

Mwamba was arrested on charges of assault for allegedly trying to run over two officers. Charges were dropped, and she suffered cuts and bruises.

At the end of the tape, an officer says, "You a dumb bitch, you know that?"

"What did I do?" she asks.

"You just tried to run over an officer," the officer responds.

While in custody, she gave her phone to an officer to show the video that she didn't try to run over anybody. The video was allegedly erased from the phone in what her attorney, Joshua Insley, described in a telephone interview as a "coverup."

The police department said in a statement that the language the officer used was "both offensive and unacceptable."

"The video does not capture enough information to draw definitive conclusions about what transpired before, during, and after the arrest," the department said. "What is clear is that the language used is unacceptable and will not be tolerated."

The suit, filed last week, said the police "attacked" the woman, "dragged" her from her vehicle, and "threw her onto the street, handcuffed her, tasered her, called her a 'dumb bitch,' and kept her restrained."

The suit says the officers arrested Mwamba and "threw her face-down on the street" to "prevent the disclosure of the video taken of them beating a handcuffed man."

That handcuffed man was 27-year-old Cordell Bruce, who faces assault charges on allegations of striking an officer outside a nightclub—charges Bruce denies. The video does not capture him being beaten by police.

Class Action Lawsuit Over Apple DRM Stumbles Because Plaintiffs Aren't Actually In The Class

Here is another article "Why Attorneys are Scum Bags".

I have written a few times about the long-running class action lawsuit against Apple alleging that its use of DRM on music (the "FairPlay" system) violated antitrust laws by locking users into Apple's platform. The case is interesting on a few different levels – including the question of whether or not DRM could lead to antitrust violations (very interesting…) and showing how quickly the technology world changes (music DRM is basically long gone). However, with the trial being held this week, a new stumbling block arose late in the game. Apple lawyers have pointed out to the judge in the case, Yvonne Gonzalez Rogers, that neither of the two women named as plaintiffs actually qualify to be in the class.
As you might imagine, that makes for a difficult class action lawsuit, when you don't have any actual plaintiffs.

Specifically, after testimony this week, Apple realized that the iPod that one of the plaintiffs owned was purchased outside of the period of time covered by the class action

lawsuit. Apple stopped using Fairplay in March 2009, so the class action lawsuit only applies to iPods bought between September 2006 and March 2009. That's a problem when the main plaintiff actually bought hers in… July 2009.

> *After plaintiff Marianna Rosen testified on Wednesday, Apple attorneys said they checked the serial number on her iPod Touch and found it was purchased in July 2009. In a letter sent to the court late Wednesday night, Apple lawyer William Isaacson said it appears the other plaintiff, Melanie Wilson, bought iPods outside the relevant time frame or, in one instance, purchased a model that didn't have the specific version of software at issue in the case.*
>
> *Isaacson, who suggested the lawsuit can't proceed without a plaintiff, said he's asked for proof that either woman had purchased an iPod covered by the case. Plaintiffs' attorney Bonny Sweeney said her side is checking for other receipts. She conceded that Wilson's iPods may not be covered, but she also noted that an estimated 8 million consumers are believed to have been purchased the affected iPods.*

In other words, the class action lawyers are admitting that they may not have a plaintiff, but say it doesn't matter because they can find another one without too much trouble.

And of course, this just reinforces what a total scam so many class action lawsuits are. I have written about this for years. While the basic idea may seem sound, the reality is that most class action lawsuits are just about ways for class action lawyers to get super wealthy. They seek out anything they can sue over, find a stand-in plaintiff whose only job is basically to be the name on the lawsuit, and then when the final payout comes, the lawyers take a huge chunk, the stand-in plaintiff gets a small amount, and the rest of the class splits a further tiny amount. It's not about righting wrongs. It's about enriching class action lawyers. The very fact that

the lawyers in this case admit that they can toss out their plaintiffs and bring in others seems to highlight what a total joke this whole thing is.

Still, someone really, really, screwed up on the lawyers' side. How the hell do you set up a class action lawsuit without first confirming that your plaintiff is in the class? That seems like a total and complete fuck up.

Thankfully, Judge Rogers seems to recognize that this is not a good situation:

> *"I am concerned that I don't have a plaintiff. That's a problem," the judge said in court Thursday afternoon at the end of the trial's third day of testimony in Oakland.*

As interested as I am in the idea that DRM might be anticompetitive, I'm still troubled by the abuse of class action lawsuits (and related antitrust efforts in general as well). This particular case just seems like a total mess.

Supreme Court Says Law Enforcement Can't Search Mobile Phones Without A Warrant

The Supreme Court released its ruling in the Riley/Wurie cases that examine whether or not the police can search through your mobile phone without a warrant. Both the Riley and Wurie cases basically deal with the same issue, though one (Riley)

involves a smartphone, while the other (Wurie) is about a more old-fashioned flip phone. I had significant problems with the government's arguments in defending such warrantless searches and so did the Supreme Court, which has made it clear that police **cannot** search phones without a warrant.

In short, the Supreme Court actually believes in the 4th Amendment. This ruling is likely to become a very key one in a number of other upcoming questions about where the 4th Amendment applies to new technologies. The Court recognizes that existing precedent allows for searches of *physical* containers, but thankfully declines to accept the government's argument that searching digital devices is the same thing. First, it notes that a big part of the reasoning that allowed the search of physical containers was to make sure there weren't any dangerous weapons. Here (despite the claims of some rather confused police) the Court realizes this is ridiculous.

> *Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one.*

The ruling basically says that if the data on the phone is important, law enforcement can go get a warrant and then do the search later. It's not an emergency situation that needs to be viewed immediately. The court completely brushes off the argument from the government that remote wiping capability means content searches may be urgent by basically saying that it's not likely to happen very often or to be much of an issue. In short, this hypothetical situation of remotely

wiping phones isn't likely to be a real problem – and notes that police have alternative ways to deal with that hypothetical "risk."

The court digs into just how different a digital device is than a physical container, and how the implications for allowing a search would be extreme.

> *Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term "cell phone" is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.*
>
> *One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy…. Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so. And if they did, they would have to drag behind them a trunk of the sort held to require a search warrant in Chadwick, supra, rather than a container the size of the cigarette package in Robinson.*

More important than that is how this impacts your privacy:

> *The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper*

> *reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone.*
>
> *Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception.*

And, from that, the court notes, the world with smartphones is a very different world:

> *In 1926, Learned Hand observed … that it is "a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him." … If his pockets contain a cell phone, however, that is no longer true. Indeed, a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form— unless the phone is.*

Furthermore, the court notes that it's not just the storage on the phone that's at issue, but the fact that most phones reach out into the cloud:

> *To further complicate the scope of the privacy interests at stake, the data a user views on many modern cell phones may not in fact be stored on the device itself. Treating a cell phone as a container whose contents may be searched incident to an arrest is a bit strained as an initial matter…. But the analogy crumbles entirely when a cell phone is used to access data located elsewhere, at the tap of a screen. That is what*

> *cell phones, with increasing frequency, are designed to do by taking advantage of "cloud computing." Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself. Cell phone users often may not know whether particular information is stored on the device or in the cloud, and it generally makes little difference.*

The ruling then walks through and rejects each of the attempts by the government to offer up ways in which it should be allowed to search phones. One important one involves the government's argument that the ruling in Smith v. Maryland (which we've discussed a lot – covering how there's no privacy expected in data handed to third parties) means retrieving the phone's call log is permitted. However, here the court notes this is **not** the same thing.

> *We also reject the United States' final suggestion that officers should always be able to search a phone's call log, as they did in Wurie's case. The Government relies on Smith v. Maryland,… which held that no warrant was required to use a pen register at telephone company premises to identify numbers dialed by a particular caller. The Court in that case, however, concluded that the use of a pen register was not a "search" at all under the Fourth Amendment. …. There is no dispute here that the officers engaged in a search of Wurie's cell phone. Moreover, call logs typically contain more than just phone numbers; they include any identifying information that an individual might add, such as the label "my house" in Wurie's case.*

The court also – importantly – highlights how attempts by the government to claim that looking through photographs on a phone is "analogous" to looking through photos in a wallet are not, in fact, analogous:

> *But the fact that a search in the pre-digital era could have*

> *turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery. The fact that someone could have tucked a paper bank statement in a pocket does not justify a search of every bank statement from the last five years. And to make matters worse, such an analogue test would allow law enforcement to search a range of items contained on a phone, even though people would be unlikely to carry such a variety of information in physical form.*

That tidbit seems like it could be quite useful in future cases in which the government defends its collection of *bulk* data. That said, the court does note (in a footnote clearly directed at this issue) that this ruling is *not* about such bulk collections:

> *Because the United States and California agree that these cases involve searches incident to arrest, these cases do not implicate the question whether the collection or inspection of aggregated digital information amounts to a search under other circumstances.*

That said, the framework discussed in the ruling does, quite strongly, suggest that the Supreme Court will be fairly skeptical towards the government's defense of bulk collections. Now we just need to wait for a case challenging those programs to actually reach the Court.

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