Today (9/21/20)

• Lecture / Discussion
• Break
• Personal Essay Assignment #2
• Student Presentations
Reading for September 24

• “Differential Privacy for Census Data Explained”, National Council of State Legislatures,
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WHAT PRIVACY IS FOR

JULIE E. COHEN*

I. HOW PRIVACY GOT A BAD NAME FOR ITSELF

Privacy has an image problem. Over and over again, regardless of the forum in which it is debated, it is cast as old-fashioned at best and downright harmful at worst—anti-progressive, overly costly, and inimical to the welfare of the body politic. Privacy advocates resist this framing, but seem unable either to displace it or to articulate a comparably urgent description of privacy harms. No single meme or formulation of privacy’s purpose has emerged around which privacy advocacy could coalesce. Pleas to “balance” the harms of privacy invasion against the asserted gains lack visceral force.

The consequences of privacy’s bad reputation are predictable: When privacy and its purportedly outdated values must be balanced against the cutting-edge imperatives of national security, efficiency, and entrepreneurship, privacy comes up the loser. The list of privacy’s counterweights is long and growing. The recent additions of social media, mobile platforms, cloud computing and artificial intelligence-driven data mining now threaten to tip the scales entirely, placing privacy in permanent opposition to the progress of knowledge.

* Professor, Georgetown Law Center. Thanks to Michael Birnhack, Deven Desai, Laura Donohue, Andrew Clinkenbeard, Jamie Cohn, Frenze, Erdogan Dogru, David Eskenazi, participants in the Harvard Law Blog.

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Why does privacy matter?

• **Privacy**: The state of being free from being observed or disturbed by other people; the state of being free from public attention.

• Privacy provides you a measure of control over things pertaining to you.

• Privacy provides a limit on others’ power over you.

• Privacy enables you to manage your reputation and choices

• **Cohen**: Privacy critical for [democratic citizenry and unfettered innovation](http://example.com)
Terms used in the paper

- **Liberal self [Cohen]**:
  - “In its ideal form, the liberal self possesses both abstract liberty rights and the capacity for rational deliberation and choice, and is capable of exercising its capacities in ways uninfluenced by cultural context.”

- **Liberal democracy [Wikipedia]**:
  - “Liberal democracy, also referred to as Western democracy, is a political ideology and a form of government in which representative democracy operates under the principles of liberalism. It is characterized by elections between multiple distinct political parties, a separation of powers into different branches of government, the rule of law in everyday life as part of an open society, a market economy with private property, and the equal protection of human rights, civil rights, civil liberties and political freedoms for all people. ... After a period of sustained expansion throughout the 20th century, liberal democracy became the predominant political system in the world.”
  - **Constitutional forms of liberal democracies**:
    - Constitutional monarchy: Australia, Belgium, Canada, Denmark, Japan, Netherlands, Norway, Spain, UK
    - Republic: France, Germany, South Korea, Poland, India, Italy, Ireland, Mexico, U.S.
    - Parliamentary System: Australia, Canada, Germany, India, Israel, Ireland, Italy, U.K.
    - Presidential System: Indonesia, U.S.
    - Semi-presidential system: France, Poland, Russia, Romania
Cohen: We live in a modulated democracy

- **Modulated democracy:** “Citizens who are subject to pervasively distributed surveillance and modulation by powerful commercial and political interests”
  - “[The purpose of modulation] is to produce tractable, predictable citizen-consumers whose preferred modes of self-determination play out along predictable and profit-generating trajectories.”
  - “Citizens within modulated democracies ... increasingly will lack the capacity to form and pursue meaningful agendas for human flourishing”
Modulation and Information Technologies

- **Tools of modulation**
  - Surveillance and data collection
  - Nudging
  - Filter bubbles and echo chambers

- **Information technologies often obscure data collection and sharing; promote modulation**
  - Surveillance technologies pervasive and not transparent
  - Prevalent use of black box platforms for access and participation
  - “Seamless” design of products, services, interfaces obscure when information being shared

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**Double-edged sword: Benefits in a surveillance society**

- Increased personalization and services; enhanced products
- Price discounts
- More convenient access
- Heightened social status
Cohen Thesis 1: Privacy is necessary for democratic self-government

• “Conditions of diminished privacy ... impair both the capacity and scope for the practice of citizenship.”

• “freedom from surveillance, whether public or private, is foundational to the practice of informed and reflective citizenship”
How does modulation skew citizenship?

• Networked technologies mediate the world around us and shape the form of citizenship practices – voting, debate, acquisition of information, protest, etc.

  – “the capacity for democratic self-government is defined in part by what those technologies and other widely used technologies allow, and by exactly how they allow it”

• How does privacy impact the exercise of citizenship?
Promoting privacy is a proactive activity – Regulation is part of the solution

- “A society that permits the unchecked ascendancy of surveillance infrastructures cannot hope to remain a liberal democracy.”
  - “Effective privacy regulation must render both public and private systems of surveillance meaningfully transparent and accountable”

- Current U.S. trajectory – “new privacy governance” approach
  - “New privacy governance ... entails reconfiguration of the public/private relationship in regulation, and often, the devolution of regulatory authority to private entities or public-private partnerships.”
  - New privacy governance “rooted in a regulatory ideology that “systematically downplays the need to hold market actors accountable for harms to the public interest.”

How private is the U.S.?
- “According to country rankings published by Privacy International in 2007, the United States was an endemic surveillance society, a distinction it shared with the United Kingdom, Russia, China, Malaysia, and Singapore.”
Cohen Thesis 2: Privacy is necessary for innovation

• “privacy ... shelters the processes of play and experimentation from which innovation emerges”
• “Conditions of diminished privacy also impair the capacity to innovate ... Innovation requires room to tinker.“
• Surveillance infrastructures dampen and modulate behavioral variability
• “privacy is important both because it promotes innovative practice and because it promotes the kinds of innovation that matter most.” (innovation focused on human flourishing vs. consumption-driven needs)
Lack of privacy constraints don’t make us more innovative

• You are less creative when you are being watched

  – “In debates about information privacy, innovation is increasingly positioned as a justification for withholding data protection. ... This simplistic view of the relationship between privacy and innovation is wrong. ... Innovation is ... multidirectional, stochastic [and] full of feedback loops”.

  – “Innovative practice is threatened most directly when circumstances impose intellectual regimentation, prescribing orthodoxies and restricting the freedom to tinker.”

  – “[Innovation] thrives most fully when circumstances yield serendipitous encounters with new resources and ideas and afford the intellectual and material breathing room to experiment with them. ... It is modulation, not privacy, that poses the greater threat to innovative practice.”
Cohen and “Big Data”

- **Not a fan:** “Big data is profiling on steroids, unthinkably intrusive and eerily omniscient.”
- **Cohen:** “[Big data’s] *most avid enthusiasts* do not paint it simply as an improvement in the state of the profiling art; rather they claim that **Big Data will eliminate the need for models altogether.**”
  - “innovation without innovators”
  - “knowledge without visionaries”
Limitations to Big Data approach – Adult supervision needed

• Cohen “[Big Data] techniques cannot themselves decide which questions to investigate, cannot instruct us how to place data flows and patterns in larger conceptual or normative perspective, and cannot tell us whether and when it might be fair and just to limit data processing in the service of other values.”
“Eight (no nine) problems with Big Data”

1. “... although big data is very good at detecting correlations, ... , it never tells us which correlations are meaningful”

2. “... big data can work well as an adjunct to scientific inquiry but rarely succeeds as a wholesale replacement.”

3. “... many tools that are based on big data can be easily gamed.”

4. “... even when the results of a big data analysis aren’t intentionally gamed, they often turn out to be less robust than they initially seem.”

5. “... whenever the source of information for a big data analysis is itself a product of big data, opportunities for vicious cycles abound [echo chamber effect].”

6. “... risk of too many correlations.”

7. “... big data is prone to giving scientific-sounding solutions to hopelessly imprecise questions.”

8. “...big data is at its best when analyzing things that are extremely common, but often falls short when analyzing things that are less common.”

9. “... the hype.”
What should the U.S. do? Cohen’s recommendations for meaningful regulatory reform

- **Limit use of surveillance**: Don’t allow personalization / surveillance / prediction to impair due process (fair treatment of individuals by law)

- **Promote personal boundary management**: Create more “semantic discontinuity”/ explicit boundaries / non-seamlessness with respect to information flow and management

- **Promote more transparency**: Create more operational transparency (and accountability) with respect to information processing practices
Personal Essay #2: Data privacy and you

• 575-625 words / 11 point font / 8 points
• Send .docx to bermaf@rpi.edu by Sunday, October 4 at 12:00 a.m.

• TOPIC: Do you have too much privacy, too little privacy, or just enough?
  — How important is it to you that your data is private?
  — Do you have too much privacy, too little privacy, or just enough?
  — What do you do to keep your data private?
Writing Personal Narratives / Storytelling

• **FORMAT:**
  – **Introduction** -- Grab the reader and summarize your points
  – **Body** – main text that tells the story / provides information / explains and supports your points
  – **Conclusion** – may include a lesson, message, moral, take-away

• **GRADING RUBRIC** (8 points total)
  – 4 points – content
    • Is the story compelling?
    • Does the content comply to the personal essay format?
  – 4 points – writing
    • Is there a clear tone and narrative?
    • Is it well-written (English, grammar, spelling, flow)?

• Look at the comments from Asst. 1 and try to use them to improve your writing in this piece.

Fran Berman, Data and Society, CSCI 4370/6370
Presentations
Upcoming Presentations

• Presentations for September 24

• Presentations for September 28

• Presentations for October 1
Need Volunteers – Presentations for October 5


Today’s Presentations
