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Ineffective Policy

Government surveillance erodes liberty whether it is by a three letter agency or by the hometown police. The policies surrounding the use of big data have weakened and the American people have suffered even though the 4th amendment should protect them. American laws surrounding discrimination are all but ignored in the case of data analysis since meta data surrounding socioeconomics have often become the vector of discrimination. In that sense, weak policy surrounding big data allows the government to ignore constitutional protections through data-based, systemic discrimination and inconsistent application of existing law.

The Upturn paper discussed several case studies which government regulation failed to catch up to big data. The authors argue that the data that defines our lives sits in a void of regulation, even when it comes to the government. While civil rights protections exist, the rules of the game have not updated to reflect a world where computers guide human decision making. One of their major examples was using questionnaires and algorithms to make many hiring decisions through E-verify. These practices exacerbate the systemic biases against protected classes by using socioeconomic or race correlated data (Upturn). *The Scored Society* examines credit scoring in relation to policy. In the same way meritocracies benefit those born into privilege, a scored society benefits those who already possess the means to excel in the world. Credit scoring systems may not be designed to unfairly rate people but they target class through class correlated variables (Citron and Pasquale).

These two papers argue against the just-world fallacy or the idea that people get what they are due; moreover, people who act in a morally or ethically positive way will be rewarded and those that do not are punished. That just does not happen. In every scenario, the authors show that data scientist

aggregate the meta information of race and class and miss the interaction. Statisticians either lack the insight or just miss the play between data and race and unknowingly target against vulnerable classes. We expose our systemic discrimination when lumping people into groups based on socioeconomic data.

Since the constitutional explicitly forbids discrimination based on race, it is deplorable that the contemporary government allows advertisers and agencies to target such groups. Upturn outlines an example where an online advertiser would equally show arrest related advertising and then learn the parameters to better identify potential clickers. The most common group arrested are those with black aligned names thus the naive algorithm displays ads without considering the ethical dilemma of targeting vulnerable groups (Upturn). This ultimately blames victims of systemic disadvantages and backs it up with racially charged meta data.

Upturn outlines a number of examples demonstrating the failure of current policy. Government agencies have recently been shown to have little regard for privacy law and little chance for oversight. The most prominent example is parallel construction. In this case, a government entity such as the DEA can use questionably legal surveillance to find an unobserved crime; however, since surveillance would violate 4th amendment protections, the agency often uses that knowledge to find a legitimate reason for obtaining the piece of evidence and conceal their original surveillance (Upturn). This violation disregards privacy en masse while blatantly skirting the law.

Protections exist in every one of these cases and that is the crux of the matter. Both sets of authors allude to this or outright said it in the Citron and Pasquale piece. The law simply needs to extend to these new media of abuse. Citron and Pasquale argue that the transparency akin to the Fair Credit Reporting Act will require data brokers to report their sources and methods and allow people to correct misinformation (Citron and Pasquale). Both believe firmly that oversight and transparency are the best solutions and in several cases, oversight agencies already exist. The FTC oversees credit agencies and can require fair practices in a big data era. The authors offer transparency as the key

aspect for policy makers. Open source software makes all of their changes and decisions apparent and data science would greatly benefit from the same practices. With transparency, systemic bias could become more apparent and cut out by identifying the troublesome parts.

Both sets of authors outline these failings from a policy standpoint. However, it requires the government to make small policy changes. These changes will come in the form of transparency across the board and an acknowledgement of racially motivated meta data. Government failed to update policy to reflect the modern era but they extend existing protections to big data practice.

Works Cited

Upturn. *Civil Rights, Big Data, and Our Algorithmic Future*. Upturn, 2014. Web. 4, Dec. 2015.

Citron, Danielle Keats And Pasquale, Frank. *The Scored Society: Due Process For Automated Predictions*. Washington Law Review. Vol. 89. Web. 4, Dec. 2015.