

‘WHO’S WATCHING? SURVEILLANCE, BIG DATA AND APPLIED ETHICS IN THE DIGITAL AGE’

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The 27th Annual Conference of the Australian Association of Professional and Applied Ethics (AAPAE) was hosted by the Discipline of Philosophy and Religious Studies at the University of New England on 2 and 3 December 2020. All events in 2020 were affected by the COVID-19 outbreak and thus it was not possible to hold the sessions in person. The 27th conference was the first time it was held via video-conferencing and, despite the initial oddness of not meeting in person, the conference was very successful with excellent papers and great discussions.

The main theme of the AAPAE conference was ethical issues around Big Data (although papers on other topics were also delivered). Over the past 20 years, large institutions – be they corporations or government agencies – have developed, via the collection and use of Big Data, a remarkable ability to track and predict individual and group behaviours. The techniques are intellectually impressive and, furthermore, give rise, especially in the arena of health, to many potential benefits. At the same time, there is growing unease about both (i) the surveillance this often seems to involve and (ii) the increasing potential for extensive manipulation of the public at large. It raises *inter alia* the following issues:

- What if anything is wrong with Big Data? Are there genuine reasons for concern?
- Does Big Data represent an unacceptable form of surveillance that threatens our freedom in a significant way?
- What obligations might professionals working with Big Data have with respect to the obtaining of such data and the use to which it is put?
- From an historical point of view, what distinguishes this system of data collection from earlier systems of collection?
- What limits might there be to the collection of such data?

These issues were explored during the conference and four of the selected papers in this collection cover these topics.

Other important normative issues were also discussed at the conference and we have a selection of two of those below (Naimo and Breakey).

We hope that the reader finds the articles as fascinating and enlightening as we did. Below are overviews of the articles.

BRENNAN

In ‘What Might Hannah Arendt Make of Big Data?: On Thinking, Natality, and Narrative with Big Data’, Daniel Brennan defends the surprising thesis that one can find in the work and ideas of Hannah Arendt the resources for a positive evaluation of the potential of Big Data technologies. Such technologies are, he suggests, inherently *morally neutral*. As such they can be employed in the service of positive and progressive intellectual and social projects.

This is surprising because one may have thought that Arendt’s work encourages rather a critique of Big Data as manifestly exemplifying the features of modernity and scientific rationality she famously urged us to find problematic, in works such as *The Origins of Totalitarianism*, and *The Human Condition*.

Whilst Big Data does appear on the face of it to be a classic example of the reductionistic and power-driven tendencies of modern science (or, more accurately, ‘scientism’) in its drive for control and domination, which Arendt identified and decried, this is, Brennan suggests, whilst not incorrect, an overly one-sided picture. The concepts Arendt developed, which Brennan suggests can be employed in the service of a more ‘nuanced’ account of the relation between her ideas and the morality of Big Data, are ‘thinking’ and ‘natality’ (and the related notion of ‘narrative’).

In her final and unfinished work *The Life of the Mind* Arendt characterised ‘thinking’ as the necessarily pluralistic, open-ended and critical process by which the mind, ‘in conversation with itself’, engages with the world of appearance, and as such may help to counter the reductionistic and monistic tendencies of modern science. ‘Natality’ refers to the process of ‘birthing’, both in the literal and figurative sense, whereby human action gives rise to new forms of life that generate radical new social worlds:

For Arendt, in *The Human Condition* (1998), natality can be seen ... in the way in which the actions of people create new beginnings ... Arendt (1998) describes natality as the miracle that saves the world – that is that the natality inherent to political action is the force that resists the decay of the world of human affairs.

In opposition to those who have claimed that Big Data is inherently and unavoidably a force for domination and oppression, Brennan argues that it is in itself neither morally good nor bad. It may be used either to further the agenda of reductionistic science, or as a potential tool for ‘thinking’ in Arendt’s positive and pluralistic sense. In the latter case, it may be ‘a means of presenting alternative insight into the composition of the world’. And if ‘thinking’ can be aided by Big Data, then there is hope for Big Data to contribute to projects representative of

nativity, and hence to social progress. In this connection, Brennan references the recent work of various critics of neoliberal capitalism, who have claimed that there is no reason to suppose Big Data could not be employed in the service of projects of radical or even revolutionary political critique and social transformation.

As well as being a tool *for* thinking, the use of Big Data must be *accompanied* by thinking if its meaning as a technology is to be evaluated and its social and ethical dangers are to be grasped and avoided.

HARRIS

The potentials and pitfalls of Big Data – its ability to be at once ‘villain’ and ‘saviour’ – are also explored by Howard Harris, who draws on the work of Rene Girard. Girard developed an analysis of human cultural practices which may initially seem far removed from the Big Data context, but which, Harris argues, can help us to identify and evaluate the ethical risks and potential rewards of Big Data technology.

Girard claimed that the history of human cultures revealed a common mechanism for social cohesion and conflict-avoidance centred on the *scapegoat*: focusing communal antagonisms onto a particular individual or group within the community works as a kind of safety-valve, discharging built-up tensions, and thereby avoiding the need for greater and more destructive violence. The scapegoat is ‘sacrificed’ in a ritualised manner; this may begin with the infliction of harm or even death on the victim, but over time, this element is removed and replaced by a merely symbolic ritual, taking on a religious character.

Harris discusses three examples of Big Data: the Financial Services Royal Commission, driverless cars and inquiries into the tech giants (Google, Facebook and Amazon), applying Girard’s analysis to each. For the analysis to apply, five aspects need to be present, according to Girard:

that complex systemic issues were in play; that resolution occurs; that scapegoats were identified; that there has been widespread or universal involvement; that elements of ritual or performance could be identified.

All five elements, Harris suggests, are present in the three cases. For example, in the case of the public inquiries into the operations of the tech giants, the *complexity of the issues* was evident from the time taken by the inquiries and the ‘the intersection of privacy, competition, and consumer protection considerations’ at play; *resolution* took place in the form of public approbation of the outcomes of the formal inquiries; the founders or CEOs of the big tech companies became convenient *scapegoats*; *widespread public involvement and engagement* was evident in the coverage in the global news media of the proceedings, and the US House Judiciary Committee investigation which ‘reviewed over 1 million documents and interviewed 240 witnesses’; and finally, elements of *ritual* or *performance* could be discerned in the public nature of the formal inquiries as semi-ritualised ‘events’, at which the heads of the tech companies appeared.

Thus, contemporary public responses to phenomena of Big Data exemplify age-old cultural practises that Girard identified, the function of which is to ensure

social stability through the identification and ritual punishment of scapegoats. This also explains the ‘janus-faced’, hero/villain ambiguity of Big Data. The scapegoat, for Girard, is both hero and villain:

the scapegoat is first victimised as the concerns underlying the crisis are heaped on the scapegoat, and the scapegoat is then sanctified, idolised, or elevated to god-like status as the device through which the crisis has been resolved.

Harris concludes that:

the very problems that make Big Data a concern also provide a mechanism of social cohesion, a mechanism that René Girard sees as lost from contemporary society with the demise of religion and shared values.

BURGESS AND WYSEL

Many observers of contemporary Chinese politics have in recent years expressed disquiet about China’s social credit system and the pivotal role that they see Big Data as playing in such a system. The social credit system involves a central database that assigns social credit scores for all Chinese citizens and all businesses operating in the country and metes out rewards and punishments on the basis of the subjects’ perceived virtue and trustworthiness. The system has been attacked by many such critics for being excessively intrusive into the lives of the citizenry, unduly authoritarian and for attempting to legislate for morality. In ‘China’s Social Credit System: How Robust Is the Human Rights Critique?’, Simon Burgess and Matthew Wysel explore the social credit system and argue that there are genuine reasons for concern because of the potential violation of human rights, especially those relating to freedom of opinion and expression.

Burgess and Wysel begin by providing a useful outline of the social credit system which aims, in the words of official government mouthpieces, to ‘enhance trust, promote virtue, and establish a culture of greater sincerity’. They note that the data collected includes information about gender, qualifications, tax payment history, utility payment history, child support payment history, Communist Party membership and status, court records, traffic violations, instances of academic fraud, evasion of military duty, as well as outstanding achievements, awards and examples of civic behaviour. Based on this information, individuals, businesses and other organisations are given ‘credit scores’ and these scores are intended to reflect the degree of trustworthiness or sense of civic responsibility that the particular individual, business or organisation might possess. Those who do well on the system are on a ‘red list’ whilst those who do badly are placed on a black list.

This all sounds rather Orwellian, and indeed Burgess and Wysel observe that being on a blacklist can severely restrict one’s freedom of movement and access to resources. Burgess and Wysel are, however, cautious not to overstate the dystopian nature of the scheme. They note that practically all of us face an informal kind of social credit system, since we are all subject to moral scrutiny, evaluation and guidance from those around us. They also point out that Big Data does not yet play a substantive role in the system since at the present time most scores are based on ordinary sources such as criminal records, debt repayment and court offences,

rather than on the surveillance records of individual citizens or companies. It is not Big Data which is at play at this stage.

Nonetheless, Burgess and Wysel are highly critical of a system which they argue involves domination and unjustifiable control. It is important to point out that their criticism is not of the Chinese government's aim of promoting or cultivating virtue – which they regard as a legitimate objective of all governments – but rather it is with the way that such attempts to 'legislate virtue' are pursued by the present Chinese regime. Burgess and Wysel suggest that it is possible to promote virtue without being excessively authoritarian. We should also note that their critique here is not based on a general theory of human rights, a move which they believe would be unwarranted and brings with it other undesirable consequences. Instead, they believe that the critique should be based on the notion of a more limited or restricted set of rights – these being individual liberty rights – which they suggest do not place undue material burdens on others.

The upshot for debates about the ethical status of Big Data is that if Big Data is employed extensively within formal systems of social credit run by centralised governments, then such use would be highly undesirable since it would be a key plank in a governmental practice that potentially violates fundamental human rights.

ROWE

Questions about human rights also loom large in Caitlin Rowe's article 'Libraries and Democracy in a Surveillance Culture', in which Rowe explores what role libraries might play in reducing various potential negative effects of the widespread use of Big Data. Like Burgess and Wysel, Rowe is concerned with rights to free speech and with our right to privacy, and that those rights could be under threat across the globe as a consequence of increasing levels of surveillance. The world she describes is one in which data, which has become integral to our everyday patterns of living, threatens individual freedoms and the very core of our democratic culture. It is indeed a bleak vision of the future. Rowe is not opposed to Big Data but she argues that it needs to be properly harnessed.

Rowe begins by noting the ways in which data have become integral to our daily lives. Decision-making of both state and commercial actors is increasingly driven by data. These data are, as she says, commodified. Our personal lives and mundane everyday choices have become the freely given raw material for what is effectively a global data trade. (Her analysis here draws heavily on the work of Shushana Zuboff (2019)). Furthermore, the growth of new technologies and decision-making, that draw heavily on data, means that we cannot avoid exposure to data collection. It is not only commercial agents that make use of data-mining, for the State also draws on Big Data in the pursuit of authoritarian purposes. The world Rowe describes very much resembles Bentham's Panopticon as told by Foucault. There are, at the present time, attacks on individual privacy, authoritarian intrusions into individuals' choices, and a lack of transparency by the state. She notes that: '[T]he implications of continuous monitoring on the free exchange of ideas, intellectual enquiry and dissent remains unknown, but the parallels with authoritarian practice

should be highlighted'. It would seem, if Rowe is correct, that our democratic freedoms are very much under threat.

Where do libraries fit into this story? Libraries as public spaces have, over the past century, been integral to, amongst other things, the provision of information and education for those with few resources, and thus, she suggests, have been important elements of the development of a healthy democratic culture. Access to information is a crucial element for a functional democracy and 'a necessity for navigating the everyday social and political structures of contemporary life'. Libraries also have a significant role to play as enablers of digital literacy, as well as equipping individuals with knowledge that allows them to challenge mechanisms involving behavioural tracking and profiling.

However, surveillance culture provides two great challenges, the first of which is the so-called 'intellectual freedom paradox'. Increased access to information is (perhaps unsurprisingly) often accompanied by an increase in the power of authorities to monitor those making use of such access. Thus, Rowe argues that it is imperative that the library profession develops technical solutions which reduce the possibilities of data collection and incorporate designs driven by principles of privacy. The second challenge facing libraries is that such initiatives might well sometimes lead libraries to be at odds with government expectations that they be politically neutral.

Despite the apparent gloom, Rowe does provide positive programmes of resistance to these Orwellian developments; these are programmes in which libraries have an important function. Libraries, she suggests, will need, in the face of a morally pernicious surveillance culture, to expand the role they currently play as a 'crucial component of an active public sphere' and to deviate from the impartiality that has become expected of many government-funded services.

Rowe's paper, then, explores not only how libraries might provide the public at large with socially and culturally vital information without compromising the public's privacy and autonomy but also raises questions and suggests solutions for anyone who is concerned with the potential downsides of the Big Data revolution.

JOSEPH NAIMO

In Joseph Naimo's paper 'Abuse and Misuse of Substitute Decision-making (SDM) Powers: Guardianship and Administration Law and Associated Governance Institutions in the Spotlight', once again the violation of human rights is a central ethical concern. However, in this instance, rather than being concerned with Big Data, it is threats to the rights of those with disabilities that is under the analytic spotlight. Naimo explores the dangers of reckless guardianship policies which he suggests compromise the well-being of those such policies are intended to protect. The points made here are general ones, but, in order to illustrate those claims, Naimo focusses much of his attention on the *Guardianship and Administration Act of Western Australia*. The paper provides a detailed critique of the current state of Guardianship policies in Western Australia.

Naimo notes early in the paper that those with cognitive disabilities are some of the most vulnerable members of our society, especially with respect to access to

social and economic resources and, as such, are at considerable risk of exploitation and abuse. It is an unfortunate fact that the greater one's dependence, the greater is the likelihood of mistreatment and abuse. Indeed, as Naimo observes, the history of disability is on the whole a story of neglect, misunderstanding and dehumanisation. He writes that '[Th]e pitiful, indeed dehumanising attitude directed towards the disabled in many ways still pervades society not least in the form of institutional ableism'.

Although guardianship policies in general have been drafted with the ostensible purpose of protecting the cognitively disabled, Naimo argues they often fail to do so. He provides two criticisms of such policies as they stand. First, they can be instruments of coercion which subjugate the person with decision-making disability. The powers accorded to the relevant authorities are too sweeping and affect every aspect of the lives of those subject to them. Naimo notes that this is particularly evident in the Western Australian case where substitute decision-makers have powers that extend beyond what is reasonable and authorities are enabled to thwart investigations by family members, remove family members from the life of the person and share incorrect information (to list just a few of the undesirable consequences). Second, Naimo is highly critical of the ways in which guardianship as it is currently practiced normalises the use of chemical and various other forms of physical restraint. This he describes as being both morally abhorrent and questionable from a clinical point of view.

For these reasons, Naimo argues powerfully that the power bestowed upon the plenary guardians extends far beyond what is either sensible or reasonable. Although a great deal of the discussion concerns the laws and policies in place in Western Australia, there is much here of great interest beyond that particular jurisdiction. In particular, Naimo's discussion of the failings of both the 'medical model' and the 'social model' of cognitive disability and the ways that these models serve to undermine the status of those with decision-making disabilities is illuminating and provides an insight into many more general forms of discrimination. As Naimo says, understanding the limitations of these models of disability provides insight into the ways in which 'our laws, policies, institutions, and attitudes fall short of what is required in a just and therefore, inclusive society'. There is obviously much to learn from this discussion.

BREAKEY

In 'The Comprehensive Multidimensional Legitimacy Model: A Methodology for Applied Ethics Evaluation, Institutional Diagnosis, and Practical Reform Development', Hugh Breakey explores the question of ethics and legitimacy in institutions, which is, after all, the central concern of this journal, reflected in its title. This is a matter of assessing both the rightness of specific actions taken within institutional settings and the moral legitimacy of the rules, codes, roles and processes adopted by the institution itself (and the relation between the two).

Breakey defends a 'Comprehensive Multidimensional Legitimacy Model (CMLM)', whose aim is to address the 'complexity of ethical situations confronting

real-world actors who are enmeshed in skeins of overlapping expectations, procedures, loyalties, roles, collective decisions, reciprocal arrangements, and cultural norms’.

Multidimensional legitimacy approaches have been proposed in the literature, but Breakey’s model aims to be more comprehensive and all-encompassing than previous attempts, more widely applicable (applying equally to institutions of all kinds), and of greater practical use in giving us concrete and workable means of assessing the legitimacy of institutions. The model is concerned with the *normative* legitimacy of institutions: whether they *ought* to be morally accepted, as distinct from whether they are in fact morally accepted (descriptive legitimacy).

The model has a number of possible uses: practical normative uses, including the moral evaluation of organisations and institutions, and assisting programmes of internal reform and moral development; and empirical, more theoretical uses, including helping us to study and explain descriptive legitimacy.

The 10 dimensions of evaluation the model recommends are as follows:

1. *Substantive ethical legitimacy*: This refers to the defensibility of actions or operations on standard ethical grounds.
2. *Fairness legitimacy*: This focusses on whether the institution treats people fairly.
3. *Functional legitimacy*: This refers to whether the institution effectively fills a desirable role or achieves a socially necessary task.
4. *Autonomy legitimacy*: This is about whether institutions respect others’ autonomy as rational, ethical agents.
5. *Consent legitimacy*: This refers to whether agents have personally and voluntarily given consent to the institution and its operations and rules.
6. *Decision-making legitimacy*: This is concerned with *process* – the mechanisms by which the decision to act was reached, and the way it was implemented.
7. *Integrity legitimacy*: This refers to an institution’s trustworthiness, knowability and understandability.
8. *Cognitive legitimacy*: This is about whether the institution behaves in a recognisable, expected way.
9. *Communitarian legitimacy*: This focusses on ‘thick’ ethical issues like tradition, etiquette and ritual that are specific to cultures or groups.
10. *Transformational legitimacy*: This is about whether the institution provides agents with a mission, empowering and inspiring them, and imbuing their lives and actions with meaning.

Each of the 10 dimensions are to be understood as coming in degrees: they can be satisfied to a greater or lesser degree, rather than being a matter of yes/no. This provides for a continuum of moral legitimacy, something we should want from our model. Whether an institution has overall legitimacy will then also be a matter of degree, rather than an all-or-nothing affair.

References

- Zuboff, S. (2019). *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. Profile Books, London.