Discrimination, Algorithms and Privacy

Faculty advisor
Jack Balkin (jack.balkin[at]yale.edu)

Student organizer
Ignacio Cofone (ignacio.cofone[at]yale.edu)

Reading Group Statement

This reading group is a bottom-up take on the broad question of how and when technological change affects our social norms. It does so through the examples of privacy norms and antidiscrimination norms—norms that are long standing but changing along humanity's history. And it does it for the technological change that has shaken social interactions the most in the last quarter of a century: big data.

Everyone seems to agree that discrimination is undesirable and should be eradicated from our society. But in the times of big data, sometimes it is not a person who discriminates, but an automatic algorithm that was programmed without the intention of doing so. What happens when an algorithm discriminates? Is it still discrimination, even without intent or bias? For example, is it ok for people of a minority to be searched more in airports than others? Is it ok for overweight people to be hired less, when it is not a deliberate decision? If it is ok, should we have to compensate the people that were hurt? If it is not ok, who is responsible? For some, the answers to these questions will seem obvious, but participants will note that these seemingly obvious answers will all be different.

The connections between privacy and discrimination will then be explored. For some, discrimination is a problem of not having enough information about others. This insufficiency makes us use heuristics to judge them, which can easily derive in false opinions. Increasing the amount of information about one that is available to others would therefore reduce discrimination, and having more privacy would worsen it. The LGBTQ movement, for example, implicitly used this rhetoric with coming out as a political strategy. Their idea being that the more LGBTQ people that are out, the more the general population will notice that they interact with LGBTQ people daily, and the fewer prejudices that will prevail. We will challenge the universal applicability of this conventional belief and show how privacy can in most situations be used as the reverse: a tool to fight discrimination.
In the end, we will go back to the broader questions. We will ask: did technology generate new problems for privacy and discrimination, or did it merely make more salient problems that they already had? Did it change our social norms about them, or did it just change the context in which those social norms operate?

The reading group represents one unit of credit (C/F). According to YLS guidelines, members must attend 750 minutes (12.5 hours) to obtain the credit. The reading group will meet 8 times during 2 hours to allow each member to miss one meeting if needed. All reading material will be provided to participants.

I will invite some of the authors of the cited material to Skype in and discuss their text with us.

Syllabus

Week 1: Big Data
In this meeting we will explore what is Big Data and how it changed the ways in which we interact with each other

- Stacey Higginbotham, “ISPs Really, Really Want to be Able to Share your Data,” Fortune (2015).

Week 2: Biased-based and Statistical Discrimination
In this meeting we will discuss the information dynamic of discrimination and its psychological undertones

• Angela Onuachi-Willig and Mario Barnes, By Any Other Name?: On Being ‘Regarded As’ Black, and Why Title VII Should Apply Even If Lakisha and Jamal Are White, 5 Wis. L. Rev. 1283 (2005).

Week 3: Algorithmic Discrimination
In this meeting we will see how, counter-intuitively, algorithms and other automatic processes can discriminate


Week 4: Looking for Solutions for Algorithmic Discrimination I
In this meeting we will discuss how to approach discrimination in the context of these technologies. Should we focus on biases or disparate impact?

• Solon Barocas, “Data Mining and the Discourse on Discrimination,” Conference on Knowledge Discovery and Data Mining (2014).

**Week 5: Looking for Solutions for Algorithmic Discrimination II**

*In this meeting we will discuss how to approach discrimination in the context of these technologies. Should we focus on biases or disparate impact?*


**Week 6: Privacy and Discrimination: Psychology**

*In this meeting we will see the informational and psychological aspects of privacy that link to discrimination*


**Week 7: Privacy and Discrimination: Law and Social Norms I**

*In this meeting we will address the normative aspect of privacy and discrimination. We will then go back to the broader questions that puzzled us initially*


Week 8: To be agreed (related topics)
Having completed the required number of hours, the content of this meeting will be a related topic determined by the participants. We could discuss Internet speech, revenge pornography, or another topic that interests the group and relates to the ideas discussed so far. An equivalent amount of readings will be assigned once the topic is finalized.

General reference: