Reconfiguring Liberty

Big data, the Investigatory Powers Act 2016 and the concept of liberty in the UK's security state

Dr Lydia Morgan,
l.morgan@bham.ac.uk

University of Birmingham Law School
There is no political power without control of the archive, if not memory. Effective democratisation can always be measured by this essential criterion: the participation in and the access to the archive, its constitution, and its interpretation.
dataveillance and datafication undermines liberty by handing significant power to government archons
Negative (absence of constraint) & Positive liberty (self-mastery over irrational desires)?

Liberty as autonomy (Raz + Nedelsky):
1. promotion and protection of positive freedom: capacity for autonomy and range of adequate life options available
2. state duty to prevent denial of freedom and create conditions for autonomy
3. cannot pursue goals which infringe others’ autonomy unless it promotes/protects social context and structural relations

Liberty as autonomy: the core of a capacity to engage in the ongoing, interactive creation of our selves- our relational selves, ourselves that are constituted, yet not determined, by the web of nested relations within which we live. (Nedelsky, Laws relations: A Relational theory of Self, Autonomy and law, p 45)
• regulates surveillance and investigatory powers
• rooted in big data focuses on collection and interpretation of metadata (except Part 2)
• Amends RIPA 2000 & replaces DRIPA 2014 (which had a sunset of Dec 2016 and was temporary following Digital Rights Ireland)
• DRIPA contested by Tele2 Sverige/ Watson
• Secures and extends powers to:
  • intercept communications, retain and request retention of comms data, equipment interference (government hacking), and bulk and ‘thematic’ data acquisition
• Claims to improve oversight with ’double lock’ for warrants but not all warrants require judicial approval and urgent warrants can receive retrospective approval
• Is generally, though not exclusively, concerned with power used for national security, serious crime, and economic well-being of UK
Dataveillance and datafication is a truly significant power that affects not only privacy but also undermines liberty by handing significant power to government archons.
Value complacency devalues liberty and sees it erroneously as secondary to security.
Consequential complacency about the predictive proficiency of big data surveillance
• Digital life seen as distinct from physical life
• Discussion on surveillance powers takes place in dehumanised and dematerial terms
Thank you!

L.morgan@bham.ac.uk