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Privacy and Politics in the Age of Technology

Writers: Sophie Ashford, Daniel Gayne, Connor MacDonald, Joshua Watts

The Wilberforce Society
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www.thewilberforcesociety.co.uk
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Abstract

This paper discusses the challenges associated with data use in both political and commercial contexts. In particular, we discuss how organizations and corporations (particularly political parties and telecommunications firms), have used data in recent controversies and elections. In addition, we consider the legal regimes governing data arrangements and usage in a number of jurisdictions, notably Canada, the United Kingdom, Australia and the United States. In particular, we note that legal regimes have not kept pace with data usage, particularly in the political sphere. In some cases, notably Australia, this takes the form of under-regulation. In other cases, including both Canada and the United Kingdom, this involves improper regulation or regulation not fit for the purposes of electioneering, with the result that political parties are unnecessarily impeded while electors are not properly protected. In terms of commercial settings, the paper highlights that current regulation disempowers consumers and provides companies with ample opportunity for abuse. In Part 1, the paper details policy proposals to improve political data usage regulations. In part 2, policy proposals are put forward to empower consumers and protect privacy, with a particular emphasis on privacy agreements and customer-corporate relations.

About The Wilberforce Society

The Wilberforce Society was founded in 2009 by students at the University of Cambridge. It is the University's student-run think tank, and aims to provide a forum for dialogue between students and leading policymakers.

This core aim is achieved by three key functions: the promotion of public policy debate amongst the wider student body, the publishing of students' policy research to a professional audience, and reaching out to policymakers across the UK to work with students on the formulation of new policy.

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Introduction

This paper will examine the collection, storage and use of data by political and commercial organizations, with a view to improving the quality of citizen and consumer privacy. We develop a critical understanding of privacy as based on a degree of agency over the use of one's data, and, most importantly, the ability to make informed choices about what information it is suitable to disclose. We feel that these issues are particularly pertinent for young people, as our generation will be the first to live their entire lives in both the material and digital worlds. Whilst concerns about privacy infringement by the state and other organizations have been long running, and are often linked to new technologies, from early photography[1] to CCTV, the scale of data disclosure brought about by digital technology is unprecedented, but risks being normalized for a generation who have grown up 'online'.

Privacy is a vexing issue, a single value or right stretched across the full spectrum of public life is likely to become diffuse. We reflect this by structuring this paper in two parts. The first will consider privacy in an explicitly political sphere, the purest form of which is represented in liberal democracies by the institution of the political party. The second section examines the privacy of citizens in their capacity as consumers and customers of commercial organizations.

In both spheres it is apparent that the use of data is far more complex than a simple opposition between organizations and the individual's whose data they hold. Political and commercial organizations have yet to fully adapt to the possibilities of the digital age, and, as our case studies demonstrate, have done so to varying degrees. In our eyes, this represents an opportunity for dialogue and reflection on the appropriateness of data collection, which may yet result in an appropriate balance between privacy, technology, and the state.

[1] *Warren and Brandeis, (1890) The Right to Privacy, Harvard Law Review Vol.5*

Thinking about data privacy: Nissenbaum's contextual integrity

In thinking about issues of Privacy in relation to political and non-political self-expression it is useful to establish a theoretical basis. Such a framework can be usefully provided by Nissenbaum's conceptualization of privacy as conditional on two competing norms. A 'norm of appropriateness' is breached when information is disclosed of a nature which would not be considered appropriate given the relation between the discloser and the person with whom the information is shared. Additionally, a 'norm of information flow' is breached when the disclosure of information results in it spreading in ways that the discloser had not or could not have anticipated. Essentially, "personal information revealed in a particular context is always tagged with that context and never "up for grabs". [2] Both of these norms can be considered under threat as technology, and the actions of the state, undermine privacy, and it is with reference to these that we now proceed. We thus understand privacy through the lens of agency: policy proposals will be made which, we feel, would increase the ability of users to make informed decisions about what information to put online, by identifying how the current handling of sensitive digital information undermines the agency of those users who generate it, and how this could be redressed.

Part One: Technology, Privacy, and Politics

Our first section looks at the influence of data on the relationship between citizens and parties during election periods, and the concerns this raises for privacy. While there has been a great deal of academic and policy work on the problem of privacy in relation to governance, comparatively little has been written in to relate this problem with the party bureaucracy. Central this discussion of privacy is R.K Nielson's descriptive, 'minimalist' interpretation of liberal democracy; in which the involvement and activity of the average citizen is relatively limited. From such a starting point, the party emerges as the central institution in a democracy, mediating between citizen and government.

[2] Nissenbaum (2004) 'Privacy as Contextual Integrity', *Washington Law Review* Vol. 79:119 pp.119-158

Rosenblum's definition of political party is useful, as it relies on a literature consensus to create a helpful definition: "parties are associations organized for political conflict…a group organized to contest for public office…that claims a substantial number of followers, a base". [3] It is important to note further that during an election period, the 'contest for public office' takes on a Weberian hue in which the parties seek to satisfy this one rational goal, paying little regard to the effect of their electioneering methods on the integrity of democracy itself. In this section, we will examine how political parties collect personal information in both Canada and the United Kingdom. Thus, we will examine political parties purely in the context of election campaigns, and how they use data to manage and allocate resources during an election. In addition, we notice that Canada has a data regime and laws regarding communication between electors and political parties that make it easier to collect data with voter's consent, compared to the United Kingdom. To study both systems, the 2015 Canadian election is examined, with an in depth focus on the Liberal Party of Canada's efforts in the Province of New Brunswick. As this was the first major electoral campaign fought by the party using a substantial online data system (known as Liberalist), the campaign offers important insights into the future of data use for political purposes. It is important to note how much more 'advanced' North American countries, like Canada, are in this regard. Whilst Bennett and Bayley state that "…the direct targeting of potential voters by political parties is still not a widespread practice" they do point out the notable exception of the United Kingdom. However, even in the UK privacy laws prohibit the use of data, if not its collection. [4]

Case Study: Canadian Election 2015

Firstly, the Liberal Party campaign was unique in that it was digitalized at every stage of the data collection. The central database (Liberalist) was synced with an online application known as miniVAN, designed by American firm NGP Van. This application could be uploaded with names and addresses of electors, shown in Appendix 1. Each

[3] Rosenblum, Nancy L. *On the Side of the Angels: An Appreciation of Parties and Partisanship*. Princeton: Princeton UP, 2008. Print.

[4] Bennett, Colin J., and Robin M. Bayley. *"Canadian Federal Political Parties and Personal Privacy Protection: A Comparative Analysis." CANADIAN FEDERAL POLITICAL PARTIES AND PERSONAL (2012):* 10. Web.

elector would have a series of questions attached to them, including what party they would likely support, number of children, important issues for them, etc. Using this application on the tablet, volunteers canvassed and selected answers for each voter. At the end of a canvassing cycle, this information was uploaded via the cloud to Liberalist. From here any party employee with access could view the information of any voter that had been canvassed.

This represents a large departure from previous practice for two reasons. Firstly, previous campaigns were predominantly managed by pen and paper – meaning that more time was spent transferring data into a computer system. The use of digital technology drastically reduced the required labor. Secondly, data is now transferable, in the sense that it can be shared between campaigns horizontally and vertically. Prior to this election, data was largely primitive in nature, given the time spent entering it into the system. As such, it was harder to share information between campaigns because very little of it was digitized and placed on internet servers. Now, data has become instantly transferable and collectible meaning that access and use has become far simpler.

This in turn has changed the nature of political campaigns in Canada. As a National Field Worker noted, previous campaigns had been about 'exposure', being present and visible within the constituency to reach as many voters as possible. [5] Since there was no way of accurately acquiring the voting preferences of local voters, save through polls done by the national campaign, old style campaigns tried to maximize the exposure of local candidates through signs, radio appearances and large rallies – essentially mediated events that limited direct contact with the politician in favor of being able to reach large numbers of people simultaneously. The resulting difficulty to gauge support was heavily stress by the national field worker. Digitalized data, on the other hand, allows you to do this instantly, though not without problems. It also allows a political party to estimate support prior to an encounter – for instance, if a certain demographic such as 'single mothers making between $30,000 and $50,000' has a tendency to vote for a certain party, the party can automatically and more reliably target this demographic.

[5] "Interview with Provincial Field Director - Liberal Party." Online interview. 28 Nov. 2015.

Additionally, the Campaign Chair, seconded by the Field Director, recognized that this method "made human resources more efficient."[6] As Election Day approached, political parties were able to target 'undecided voters' who as the Field Director emphasized, "are extremely valuable because you can return to them". [7] In other words, in a bid to switch them to 'your party' you could devote further canvassers and mail drops at those residences who declared themselves undecided. The Campaign Chair also stressed that this focus on data allowed the parties to 'outsource' simple data harvesting, such as voter identification, to call centers while focusing community volunteers on reaching out to the undecided. Unlike previous campaigns, where it was impossible to target resources, data allowed the campaigns to use their human resources optimally and reach out to as many voters as possible.

The Figure shown in Appendix 1, taken from one of the constituencies Liberal campaign teams, demonstrates how in the later months of August, when parties had accumulated enough money to pay for call-center (human) calls, there was a corresponding increase in canvassing attempts. In this case, volunteers were being employed to canvass residents that had declared themselves undecided on the phone, and, importantly, the number of respondents declaring themselves Liberal increased from 64 people the week of August 3, 2015 to 303 the week of August 24, demonstrating the effect of human contact on the electoral process, made possible by data. This may seem counter-intuitive, but is a natural outgrowth of the targeting that data allows. Most political parties, the Liberal Party included, ranks support based on likelihood to vote and commitment to a political party. By accumulating data through human and robo-calls prior to volunteer 'doorstep' contact, political parties are vastly more likely to target undecided and wavering households, while reaching out to strong supporters to volunteer. In essence, political parties are more capable of responding to the needs of individual voters and give more human volunteer contact time to voters who remain ambivalent

[6] "Interview with Provincial Campaign Co-Chair – Liberal Party" Online interview. 14 Nov. 2015.
[7] Ibid.

or unsure. In the 2015 election, the first to use widespread data, turnout actually increased by 7.3 percentage points, and achieved the highest turnout since 1993. While this cannot solely be attributed to data use by political parties, it should be noted that in the constituency considered in the case study, which operated one of the most successful data operations in the country, turnout increased 13.2 percentage points. Thus, on both a local and national level, the use of data did have a role to play in greater voter engagement.[8,9,10]

Case Study: United Kingdom

The positive impact of data has important electoral implications, and may provide an important model for the UK to adopt more extensively. In the United Kingdom, the young and the poor have increasingly removed themselves from politics over the last 30 years. In 1987, the turnout rate for the poorest was four points below the wealthiest income group, but by 2010 this had grown to 23 points. Similarly, an 18-point gap could be seen in 1970 between the 18-24 range and the over 65s, compared to the 32 point gap seen in 2010. What is more, non-voters were noticeably more pessimistic than voters, with 40% believing that life will be better in 2020 compared to 45% of voters. [11] It is worth noting that according to the blog, Survation, the most likely thing to encourage non-voters to vote was ‘receiving a leaflet about a candidate’, which is made more likely if data is collected and targeted.[12]

Thus, given the data’s positive impact on elections, and the potential for greater engagement, this is a tool that political parties appear likely to continue to use. However, there are some significant concerns that arise from this use of data:

- There is a potential conflict of interest between politicians in a governing capacity, between their governing duties and compilation of private data in their duties as a Member of Parliament

[8] "Voter Turnout at Federal Elections and Referendums." *Elections Canada*. Elections Canada, n.d. Web. 13 Dec. 2015.

[9] "Federal Election 2015: Voter Turnout Highest in Decades." *Global News Federal Election 2015 Voter Turnout Highest in Decades*. N.p., 20 Oct. 2015. Web. 13 Dec. 2015.

[10] Liberal Party Provincial Records, Anonymized for Privacy Protection Reasons

[11] Flinders, Matthew. "Look beneath the Vote | OUPblog." *OUPblog Look beneath the Vote Comments*. N.p., 04 Mar. 2014. Web. 05 July 2016.

[12] Barker, Nicholas. "Apathy in the UK - A Look at Attitudes." *Survation.com*. Survation.com, n.d. Web.

- Political parties have the capacity to store data without the oversight of a Privacy Commissioner,
- Similar data has been used in been used in the past to commit potentially illegal acts.

To analyze how these concerns might impact on the Canada case study, we recognize that on the first score this applied not to the Liberal Party but to the party then in power, the Conservative Party of Canada and their database system, the Constituent Information Management System (CIMS). As first reported in 2007, Conservative MPs were encouraged to input constituent information, gleaned in the course of their duties, into the database. In the words of MP Garth Turner: “any time a constituent is engaged with a member of Parliament, they get zapped into the database”. [13] While the Conservative Party and its officials flatly denied this, it is important to note that simultaneous to these revelations, the Prime Minister’s Office was mailing Rosh Hashanah well-wishes to Jewish constituents and constituents with Jewish sounding names through the CIMS system. In late 2012, similar events occurred with members of the public with ‘Chinese sounding last names’ being sent Chinese New Year cards on behalf of the Prime Minister.[14] The recipients of these well-wishes, most of whom were not members of the Conservative Party, described the communication as ‘very unsettling’. Most importantly, this interaction, while facilitated by the Conservative Party, was sent on behalf of the Prime Minister’s Office – demonstrating how the use of data can potentially be used by the governing party to electioneer or gather information that they would not be able to use through governmental institutions. [15] Finally, staffers of Members of Parliament were directed on a number of occasions to feed constituency information into the CIMS database. Thus, not only are Members of Parliament able to access this information, but the multiple aides and staffers (a considerable number of people) are able to manipulate it through government channels.[16] Better data and security training is in fact a recommendation we discuss further in Part 2 (commercial uses of data). Thus,

[13] Staff. "Someone Is Watching You." *The Telegram*. N.p., 20 Oct. 2007. Web. 11 Dec. 2015.
[14] The Canadian Press. "Tory Database Draws Ire of Privacy Experts."*CTVNews*. The Canadian Press, 18 Oct. 2007. Web. 11 Dec. 2015.
[15] The Canadian Press, 2007
[16] Delacourt, 280

not only are political parties using data in government offices, but ostensibly non-partisan government employees are actively engaging in data harvesting.

This is particularly concerning when considering the legal regime in Canada under which this behavior is being carried out in the absence of any parliamentary oversight. The Privacy Commissioner, whose mandate includes the power to "summon and enforce the appearance of persons before the Privacy Commissioner and compel them to give oral or written evidence on oath", does have the power to investigate the vast majority of government departments, except the Office of the Prime Minister and the Offices of Members of Parliament, who are exempt from the Act. Additionally, political parties themselves are exempt from the provisions of the Act and the Privacy Commissioner has no authority to investigate or penalize political parties for the mishandling or misuse of data. [17] This is a similar legal situation to Australia, where political parties are explicitly exempted from the Privacy Act. To rectify this situation, the Australian Law Review Commission recommended that the Privacy Commissioner [Australia] should "develop and publish guidance to registered political parties and others to assist them in understanding and fulfilling their [voluntary] obligations under the Act". [18] To date, no such guidance has been issued.[19,20,21]

Evidently, some of this information is of somewhat limited use in the context of the United Kingdom, since data has come relatively late to the British politics. As Labour MP Daniel Zeichner noted in an interview we conducted in late November 2015, the strongest motivator for recruiting remains 'political rather than organizational', in essence meaning that volunteers "will come to you" and little effort is placed on a large scale data effort. [22,23] Thus, it is important to examine the Canadian case because, like

[17] Privacy Act, Last Amended July 2015 33 §§ 31 (Government of Canada 2015). Print.
[18] Ibid, 10
[19] Ibid., *Schedule*
[20] "Fact Sheets." *Office of the Privacy Commissioner of Canada*. N.p., n.d. Web. 13 Dec. 2015.
[21] Bennett, Colin J., and Robin M. Bayley. "Canadian Federal Political Parties and Personal Privacy Protection: A Comparative Analysis." (2012): 10. Web.
[22] "Interview with Daniel Zeichner." Interview. 24 Nov. 2015: n. pag. Print.
[23] Ibid, 2015

the United Kingdom, it is a Westminster democracy while demonstrating a more advanced data landscape similar to the United States. For example, Canadian political parties actively converse with their American counterparts, and the Liberalist is actively sourced from Democratic technology in the United States. [24] This is in contrast to the United Kingdom where party constitutions often prohibit the use of "off-the-shelf" data tools. [25] In addition, the UK systems are not vertically integrated, meaning that different procedures and systems are used at different levels of the party, with 4 different databases being employed. [26] In other words, data is still employed in Britain, but in the coming months it may come to resemble the more efficient North American model as the United Kingdom, through the use of MERLIN and other databases, 'catches up' with its North American rivals. In this way Canada offers some insight into possible future developments.

Additionally, the UK has stricter privacy laws governing data use by political parties. In particular, the Information Commissioner has purview over the actions of political parties and their use of data, governed by the Data Protection Act, 1998 and promulgated by the Information Commissioner as the *The Guide to Data Protection*. Unlike both Australia and Canada, the United Kingdom publishes guides for political parties, entitled Guidance on Political Campaigning. Importantly, the Data Protection Act empowers users to inquire as to if data is being collected and the nature of the data, rights not granted in Australia or Canada. This is also further discussed with regard to commercial organizations in Part 2. [27]

However, there are limitations to the current system in the United Kingdom. In particular, the United Kingdom's legislation is relatively strict in terms of how political parties communicate with voters, but significantly laxer on how the data is actually harvested. For example, the Information Commissioner's guidelines state that MPs should

[24] "Interview with Provincial Field Director - Liberal Party." Online interview. 28 Nov. 2015.
[25] Abbott, Paul. "Paul Abbott: Scrap VoteSource. Empower the Digital Team. Sync Databases. How to Maximise CCHQ's Use of IT." *Conservative Home*. N.p., n.d. Web. 20 Dec. 2015.
[26] Ibid.
[27] Data Protection Act, 1998, § 7(1) (Government of the United Kingdom). Print.

not use for "direct marketing any contact details they obtained when carrying out casework…" yet makes no mention of the use of other details amassed by an MP, such as likely religious practice, occupation, etc. [28] In a similarly nebulous manner, in section C-(17), the Information Commissioner states that direct marketing consists of a telephone call which seeks an individual's opinions in order to use that data to identify those people likely to support the political party or referendum campaign at a future date in order to target them with marketing.[29]

It is not clear whether this proscribed behavior could include party volunteers phoning members of the public to 'ID' them– which is common practice in North America. [30] Indeed, the two major legal concerns raised with this and similar provisions pertained to robocalls. The first, resulting in the legal decision *Scottish National Party and the Information Commissioner*, declared that robocalls on behalf of political parties without the prior consent of those contacted was in contravention of the Data Protection Agreement and the European Privacy Directive, 2002. Similarly, the Liberal Democrats were also found to be in violation of privacy laws when they initiated 250,000 'cold' calls to members of the public without consent. [31] However, the issue of political parties calling voters to ascertain levels of support, which is a vital tool as we have seen in North America, remains unanswered. It should be noted that in both the case of the SNP and the Lib Dems, the violation in question occurred because the robocalls were clearly promoting one party. [32] However, ID calls are made on behalf of a political party not to convince voters, but to see if they are likely to vote for the political party in question on election day, which would seem to be prohibited by legislation, but has not resulted in a clear ruling to that effect.

[28] "Guidance on Political Campaigning." *Information Commissioner of the United Kingdom* (2011): n. pag. *Ico.org*. 2011. Web.
[29] Ibid, 8
[30] The process of determining the party that the voter in question is likely to support.
[31] United Kingdom of Great Britain and Northern Ireland. Information Tribunal.*Scottish National Party and the Information Commissioner*. By Vivian Bowern and Elizabeth Hodder. Edinburgh: n.p., 2005. Print.
[32] Carrell, Severin. "Lib Dems Broke Privacy Rules with Cold Calls." *The Guardian* [London] 25 Sept. 2008: n. pag. Print.

Of particular concern is the inclusion into Direct Marketing rules (which limit the capacity of political parties to communicate with the public) of the language that prohibits political party research "…intended to gain support now or at some point in the future". [33] Since political parties are always attempting to gain support, this language would seem to severely limit the communication available through data. Adding further confusion, advice given to local councilors would suggest that all political campaigning falls within direct marketing, yet this is not the case in information submitted to political parties. Thus, it would seem that political parties are very limited in their ability to directly canvass and acquire data from the electorate. However, as we have seen in the Canadian example, data is actually an exceptional tool used to engage voters and such limitations may actually continue the divide between the engaged and the disengaged.[34]

Furthermore, the current regime makes no mention of political party databases and how information is amassed. For example, the The Data Protection (Processing of Sensitive Personal Data) Elected Representatives Order 2002, under which current guidelines operate, makes no mention of the ability of political parties to use databases, even as they now operate effective, large-scale systems. For example, the Conservative Party's former use of 'VoterVault' a tool first used by the US Republican Party, identifies over 400 social characteristics when carrying out activities. Now, they use MERLIN (Managing Elector Relationship through Local Information Networks), that was modelled off the Canadian CIMS system, which allows direct input by party employees[35.] When there was a MERLIN database breach in 2008, with 8500 voters' information becoming compromised, no punitive action was taken. This mirrors the Canadian system, where

[33] United Kingdom of Great Britain and Northern Ireland. Information Commissioner of the UK. *Warning to Political Parties: Compliance with the Data Protection Act*. London: Information Commissioner, 2015. Print.

[34] United Kingdom of Great Britain and Northern Ireland. Information Commissioner of the UK. *Advice for Elected and Prospective Local Councillors*. London: n.p., 2015. Print.

[35] Watt, Nicholas, and Julian Borger. "Tories Reveal Secret Weapon to Target Voters." *The Guardian* [London] 9 Oct. 2004: n. pag. Print.

political parties are not required to notify and not responsible for data breaches.[36,37] This is in particular a divergence from commercial models, where companies are liable and have a fiduciary responsibility for data breaches. Furthermore, many experts have declared the practice of using psychographic and geographic data (included in the 400 social characteristics) as 'probably unethical', yet there are no laws governing them.[38]

A final concern of the current system is that a strict reading of privacy laws in the United Kingdom would indicate that political parties could only "process political data on members, former members or on persons 'who have regular contact'". [39] As Bennett notes, this is very ambiguous, since no law defines what exactly a person 'with regular contact' is. Furthermore, this reading of the Data Protection Act would imply that political parties are not allowed to engage in unsolicited campaigning with non-supporters, which seems to negate the very purpose of political parties. This, coupled with the fact that British political parties are actively using data not explicitly given by electors (such as marketing data, census information etc.) means that the public remains largely unaware of the data being collected, as much of it is derived from social media and marketing software purchased from the private sector. For example, the Conservative Party (UK) will use NationBuilder software, which includes data on any voter in contact with Conservative or Conservative-affiliated Facebook pages. Indeed, in the 2010 campaign, the UK Conservative Party alone had more than 200 million separate historic records. [40] Returning to the Canadian example offered at the beginning, where most of the data arose from interactions between political parties and electors, the British legal

[36] Hodgson, Martin. "Investigation Launched into Tory Database Bungle." *The Guardian* [London] 22 May 2008: n. pag. Print.
[37] Howard, Philip N., and Daniel Kreiss. "Political Parties and Voter Privacy: Australia, Canada, the United Kingdom, and United States in Comparative Perspective | Howard | First Monday." *Political Parties and Voter Privacy: Australia, Canada, the United Kingdom, and United States in Comparative Perspective | Howard | First Monday*. First Monday Journal, 11 Nov. 2010. Web. 13 Dec. 2015.
[38] Ibid, 3
[39] Bennett, Colin. "The Politics of Privacy and the Privacy of Politics." *The Politics of Privacy and the Privacy of Politics: Parties, Elections and Voter Surveillance in Western Democracies | Bennett | First Monday*. First Monday Journal, 28 June 2013. Web. 13 Dec. 2015.
[40] Strategies, EMC. *The Conservative Party*. 2010. EMC Strategies Paper. EMC Corporation, London.

framework encourages parties to use methods of data collection over which the public has little control, while preventing political parties from easily collecting face-to-face or phone data with the immediate consent of electors. [41]

Policy proposals

With these problems in mind, there are two separate problems that need to be addressed: the first, are the limitations placed on political parties that may in fact unnecessarily impede political parties from communicating with voters and acquiring data from them. A variety of proposals should be considered including

1. Updating the Data Protection Act, to include exemptions to allow political parties to canvass voters over the phone by using a simple question "are you planning on supporting the X party on election day" or a similar sentence thereof.
2. Updating the Data Protection Act and the Data Protection Order, 2002 to more clearly define Direct Marketing, to explicitly exclude communications made on behalf of political parties to survey the public in order to encourage support at a later date
3. Allowing political parties to communicate for the purposes of acquiring personal data of a political nature from households – this would include robocalls.
4. Requiring political parties, in all communications, to continue to respect the TPS list.
5. To update the Information Commissioners guidelines in defining "people who have regular contact with political parties". This should consist of two parts
    a. In between election campaigns, to prevent nuisance soliciting, include only members, affiliated members or equivalent designation of political parties in question
    b. In the context of election campaigns, include any person eligible to vote
6. In order to achieve suggestion 3, political parties should be able to maintain data on non-members collected during election campaigns, but may not collect any more data in between election campaigns except with the explicitly consent of the subject in question

[41] Ibid.

Secondly, political parties should also be limited in the secondary sources that they can access to increase their data set. Additionally, political parties should be held responsible for any breaches in privacy that occur on their servers. Political parties should be

7. Prohibited from using data acquired by a representative at any level of government acquired through his work as a representative
8. Prohibited from using data from any third party source that is not governed by the Privacy Act or the Personal Information Protection and Electronic Documents Act
9. Continuing to observe the right of an elector or citizen to require political parties to hand over any data records held on him/her
10. Required to declare any and all third party sources used to create a database (censuses, Hansard petitions, social media companies etc.)
11. Held criminally and/or civilly responsible for breaches of data that occur in databases excluding breaches that occur due to the criminality or negligence of a third party
12. Include the TPS (do not call) list as part of any data set

In sum, the proposals would achieve two major purposes: Firstly, political parties would have a greater ability to actively canvass and extract data from the electorate due to the loosening of Direct Marketing rules imposed by the Information Commissioner and the provisions of the Data Protection Act. However, at the same time, there is also a recognition of the enormous amount of data already collected by political parties, often in circumstances where citizens are unaware, a situation with problematic consequences for norms of information flow. Thus, there should be increased regulation on how political parties are able to access third party information and increased responsibility placed on political parties in recognition of the enormous amounts of data that is held by them.

Thus, political parties will find it easier to communicate with voters directly, hopefully increasing engagement in the long run, as seen in Canada. At the same time, however, political parties will also see their ability to datamine through the backdoor, in marketing data, social media dumps and other methods curtailed if they do not adhere to basic privacy standards. This combination will allow political parties to continue their important work, while preserving the privacy rights of citizens.

Part Two: Privacy and Technology in a Commercial Setting

We now move to examine issues of privacy and data technology beyond explicitly political purposes. Similar questions about the explicitness of consent, the consequences of data collection for privacy and responsible handling of data emerge in this different context of the commercial world. Indeed, this sphere poses especially vexing privacy issues for two reasons: Firstly, the activity of political parties tends only to figure significantly in the lived experience of most citizens around election times, the activities of commercial organisations form a constant, and necessary, backdrop. Secondly there may be a qualitative difference in privacy expectations in the two spheres; politics is a discursive, communal activity, necessitating the sharing of at least some views- in terms of commercial life, or people's 'personal' lives, there is less of an expectation that information will spread widely.

The widespread and increasing trend for data to flow from users to the providers of digital services and platforms is thus a possible cause for concern. This flow is integral to the business model of some of the integral elements of user experience in digital life. Referencing Facebook, Fuchs goes so far as to class the consumer as in fact a 'prosumer' consuming content whilst simultaneously producing the real commodity- data. [42] When consumers download free applications for their phone or for their computer they essentially pay instead by surrendering their data. Data is increasingly considered as valuable by companies who seek greater profits in a competitive world. Such business models, we argue, are not inherently problematic, and indeed make possible the vibrant social media and online world which so many, especially young people, enjoy today.

[42] Fuchs, C (2011) 'An Alternative View of Privacy on Facebook', *Information* 2, 140-165

Likewise, in many instances, notably the political participation discussed above, users are actively engaged in sharing and promoting information, often intentionally beyond their immediate social circle, about their views and preferences. However, following an understanding of privacy as constituted by contextual integrity, by the ability of users to exercise judgment and control in the disclosure of their information, there are several causes for concern.

State agencies and illegal hackers: rendering norms of information flow obsolete?

The simplest reason for this is that the online environment makes a mockery of the concept of a norm of information flow. Regardless of the intention of the user or, indeed that of the provider, once personal information is placed online, or stored by providers, it is vulnerable. In particular, we highlight the leakage of data via state activity, but also the risk of hacking. In recent years it has become increasingly apparent that the degree of state information collection is greater than most members of the public might have imagined. In the UK this has resulted, for instance, in 4500 data requests to Facebook alone in the first half of this year, representing a 92% increase on the same period in 2013, and placing the UK third for data requests, after only the US and India. Proposed new legislation could heighten this leakage; with the Draft Communications Data Bill aiming to require providers to store internet data for up to twelve months, internet users will have reduced control over what information is 'disclosed' even beyond the information they may intentionally 'share' online. [43] It is not our intention in this paper to redraw state security policy, a topic which has been covered by previous publications from the Wilberforce Society. Indeed, with sufficient democratic oversight of surveillance practice (though this is not yet in evidence) the potential extraction of online information is reduced as a threat to agency. It is indisputable, however, that the current perception gap between those who generate data, and those who consume it poses a challenge to norms of appropriateness and information flow.[44]

[43] "Government Data-requests to Facebook." *The Economist*. The Economist Newspaper, 17 Nov. 2015. Web. 05 July 2016.

[44] http://thewilberforcesociety.co.uk/how-can-we-trust-intelligence-agencies/

This is demonstrated in less fraught terms by the vulnerability of online information to hackers, which is exacerbated by the collection and storage of personal data by service providers. Most recently some 157,000 customers of TalkTalk saw the norm of information flow violated by the hacking of the service, leading to the loss of personal financial information. As an illegal activity, it is difficult to make policy recommendations to limit the extent of cyber-hacking, thus a concern about preserving contextual integrity must focus on the type of information being placed online by customers and users, as limiting or being selective about this is the best means of exercising agency over information flow. One of the most striking concerns which emerged from the TalkTalk scandal was the underpinning question of who is really in charge of our data. The ignorance of TalkTalk's CEO in the aftermath to state whether the data stolen had been stored in an encrypted form or not is startling. [45, 46] When even a company's CEO is inadequately informed as to the security of customers information, it seems unlikely that customers themselves have had enough information to make informed judgment about what information to disclose.

Everyday erosion of information flow norms: the perceptions gap

It is apparent that the embrace of digital technology has led to increased exposure of personal information, and, crucially, reduced certainty over its destination. This is evidenced most clearly by the vulnerability of data to interception both by state agencies, by professional criminal groups and by rogue individuals acting illegally. However, it is more widespread in the everyday collection of data by service providers themselves. As noted above, this is not a legal crisis as such, given that services such as Facebook are willingly engaged with by users who, through agreeing with privacy clauses, consent to their data being collected and used. However, we argue that, from a concern with contextual integrity, there is cause for concern about the extent to which users are aware of the regulation of their data flows. While on the one hand the consumer is somewhat happy to experience a more personalized and tailored experience on the internet, this

[45] "TalkTalk Hack 'affected 157,000 Customers'" *BBC News*. BBC, 06 Nov. 2015. Web. 05 July 2016.

[46] Naughton, John. "The TalkTalk Hack Can't Be Shrugged off | John Naughton." *The Guardian*. Guardian News and Media, 15 Nov. 2015. Web. 05 July 2016.

is not necessarily accompanied by a complete awareness of just how much personal data they are sharing.

It is apparent that many users have inadequate understandings of where personal data or information which they provide online may flow. This is not entirely the fault of providers, as a degree of disinterest or even wilful ignorance appears to persist amongst users, with Solove detailing that almost 90% of Facebook users have never read its privacy agreement. However, this is not simply a case of self-inflicted ignorance over data flows, and thus a wilful relinquishing of information flow norms. Many consumers may find information about how their data is used or what elements are stored difficult to find, thus restricting their ability to exercise judgment over disclosure. Fuchs demonstrates this in an analysis of Facebook'sprivacy agreement, finding it to be obfuscatory and ultimately to illuminate little about the flow of user's data once it has been collected. [47] Indeed, in this instance "the main form of privacy on Facebook is the in transparency of [advertisers'] use of personal user data that is based on the private appropriation of user data by Facebook." [48,49] This is clearly not limited to simply Facebook, through the popularity of the firm makes it a useful metonym. In some instances, the difficulty of users in ascertaining what aspects of their personal data are flowing where is compounded by the undermining of existing data legislation by firms. This is highlighted by a 2014 study undertaken by the University of Sheffield under the EU funded Increasing Resilience in Surveillance Societies (IRSS) projected, which highlights widespread inadequate compliance with the spirit of existing UK data laws. As discussed in section one, under UK law, members of the public are entitled to contact data controllers and request information on what data the organization holds on them. However, the study reported that in nearly a fifth of the organizations sampled they were unable, after repeated attempts over various mediums, to locate contact details for the data controller.

[47] Solove, D '*The Future of Reputation: gossip, rumour and privacy on the internet*' (2007) New Haven, Yale University Press
[48] Fuchs, C (2011) 'An Alternative View of Privacy on Facebook', *Information* 2, 140-165
[49] Ibid, 157

In addition, the study highlighted a generally poor knowledge about data rights within the organizations contacted, which formed an impediment to contacting the (generally knowledgeable) data controllers. If knowledge about data protection and management is restricted to specialized employees within an organization, then it becomes harder for members of the public to ascertain where their information is flowing. Widespread lack of knowledge about data privacy may also increase the risk of data leaks, as staff are ill-informed about best practice, or what types of information it is appropriate to disclose. Here, we note that similar concerns have been raised within this paper regarding political parties, with data harvested for explicitly campaigning purposes being integrated into databases accessible by a wider pool of MP's and staffers. In one instance the convoluted nature of data requests was such that the authors state that: The obscurity, ambiguity and ultimately the failure to clearly identify the data controller and/or data protection department and its contact details appear to demonstrate not only bad practice on Facebook's behalf but also bad faith."[50,51,52] Such bad practice, if not bad faith, is clearly problematic with regards to enabling, or even allowing, users to exercise well-informed judgment on their information sharing.

The study identified a generally higher standard of best practice regarding data access in the public sector. This indicates that there is clearly scope for private organizations to improve access to knowledge about the holding of personal information, and thus to facilitate clearer understandings by users of information flow. For instance, the right to be forgotten or to remove shared information is significantly under-regulated and difficult for consumers to achieve. As young people who are currently sharing views all over the internet, and for younger generations who live their entire lives online there is often little long term mindedness about the potential repercussions their statements and data might have on their futures. Once that information is put into the web it is very difficult to control just how it is used or how to remove it completely. This raises

[50] Norris, Clive, Prof., and Xavier L'Hoirry, Dr. "Increasing Resilience in Surveillance Societies (IRISS)." *International Legal Materials* 5.2 (2014): 1-65. 29 Apr. 2014. Web.
[51] Ibid, 19
[52] Data Protection Act, 1998, § 7(1) (Government of the United Kingdom). Print.

the difficult question of who is responsible for securing the Internet? Only through an active government, transparent and accountable private sector companies, and well informed citizens can data be more carefully handled.[53]

The problem is threefold. For not only are consumers unable to easily access what data is being collected, unable to have the power to avoid being profiled and remove their past shared data, the companies themselves often collect the data without clear objectives of what exactly this data is being collected for. Brookman has persuasively argued that a perception that it is essential to collect this data to gain the upper hand over competitors and more effectively target consumers and win business dominates online companies. The idea prevails among companies that they have ‘the right to collect this data on behalf of our client and we'll figure out what to do with it later.[54] But with the pace and dynamism of the technology world this poses significant problems for data and concerns for the individual about where their information goes. For example, the mergers of smaller companies being bought by the giants of the technology world means it is difficult for the consumer to ascertain where their information is being gathered and for what means it is being used. As has already been suggested in the Talk Talk example, ignorance among companies themselves about why they are collecting data and what they are doing with that data are unanswered questions.

A more chilling thought altogether is the lack of oversight over the algorithms and code which construct pinpointed advertisement and manage data. Governments allow firms to essentially self-regulate this. But as Samir Chopra has discussed autonomy might well lie beyond not only the company but beyond the initial programmer. Without a human mediator it is hard to envisage just what their rights, duties and obligations are

[53] Herre, Trey, and Eric Ormes. "Understanding Cybersecurity Part 2."*AFPC.org*. N.p., 15 Apr. 2015. Web.

[54]Thompson, Cadie. "Companies Aim to Cash in on Your Intimate Social Data." *CNBC*. N.p., 30 Oct. 2013. Web. 05 July 2016.

to the individual's [55] privacy concerns. This must be the subject of more extensive research and The Wilberforce Society is conducting further research into Artificial Intelligence and its repercussions.

Policy proposals

With regards to privacy in the flow of personal information online we have thus far identified several issues which we feel compromise privacy. Whilst some of these cases, notably the extraction of data by state security services and by illegal hackers, are clearly difficult to address, we believe that some action can be taken more broadly. This stems from our understanding that modern privacy online is compromised by a lack of situational judgment by users, who are unable to properly assess the likely flows of their data once they render it online. In order to ensure that users are better able to exercise real agency in the flows of their private information we suggest the following:

1. A simplification or standardisation of privacy agreements, perhaps with a standardised template or checklist. This would enable users to more easily determine what might happen to the information they choose to share online. Greater transparency and standardisation may also allow customers to distinguish more easily between the levels of privacy on offer by firms, incentivising greater respect for information flow norms by companies competing for users. Firms must be legally obliged to outline publicly precisely what data they are collecting and for what purpose.
2. Improved accessibility of data controllers to members of the public, in order to further enable users to ascertain where their information is ending up, and to gauge the scale of their 'online identity'. This would ameliorate one of the major flaws identified by the IRSS study, flaws which could be further reduced by:

[55] A Legal Theory for Autonomous Artificial Agents

3. Greater institutional awareness of data laws and rights. This is essential to support data requests, whilst fostering good practise in terms of data and privacy management. Greater learning opportunities will also enable employees to make more informed choices with regards to their own online presence.
4. A national dialogue on security and data sharing. In order for members of the public to understand the level of risk the government must initiate a public awareness and education campaign. In particular this must be directed at young people building on existing programmes in schools. Undoubtedly the private sector and the public sector have to work together to mount a serious defence and to secure the data of individuals and to educate the public more broadly about the implications of sharing their data.

Conclusions

This paper has aimed to draw out some of the complexity of contemporary debates surrounding privacy and data collection technology. Where such debates are lacking we hope that we have stimulated thought. International case studies have provided particular emphasis on the as-yet-unformed nature of the accommodation between the vast potential of data technology for both commercial and political organisations, and the understated degree of agency and knowledge currently afforded to consumers and citizens.

A common theme across the issues we have discussed is that of consent. Whilst organisations are currently able to claim widespread consent for data collection form their users, we argue that the largely tacit or assumed consent that this constitutes is not strong enough. This is an especially acute concern given the apparent vulnerability of data to hacking or state interference, and given the ill-defined parameters of how organisations will sue this data. In some cases, this remains a mystery even to those within the organisations, leaving individuals unable, in our view, to exercise sound judgment. Instead, we have argued, policies ought to be instigated which will increase both awareness of the flows of data beyond the simple interaction between users and organization, and the judgments which this will enable must be empowered by a stricter understanding of consent to data collection.

When users entrust their data to organizations, there must be a sounder structure of practice and policy to support this trust. The burden in this case lies with organizations to ensure that their practices do not breach the reasonable expectations of the consumers who hand over their data, and to properly safeguard data collections against breaches.

Clearly the dynamic and fast changing nature of the digital technology world will necessitate regular revisions of policy in this area. Establishing a more substantive dialogue and common understandings of the duties, as well as opportunities, which come from data technology, is the best way to empower individuals with the information and agency that they require. Doing so, and doing so soon, offers the best chance to establish a sound and flexible framework to manage the interactions of privacy, politics and data technology.

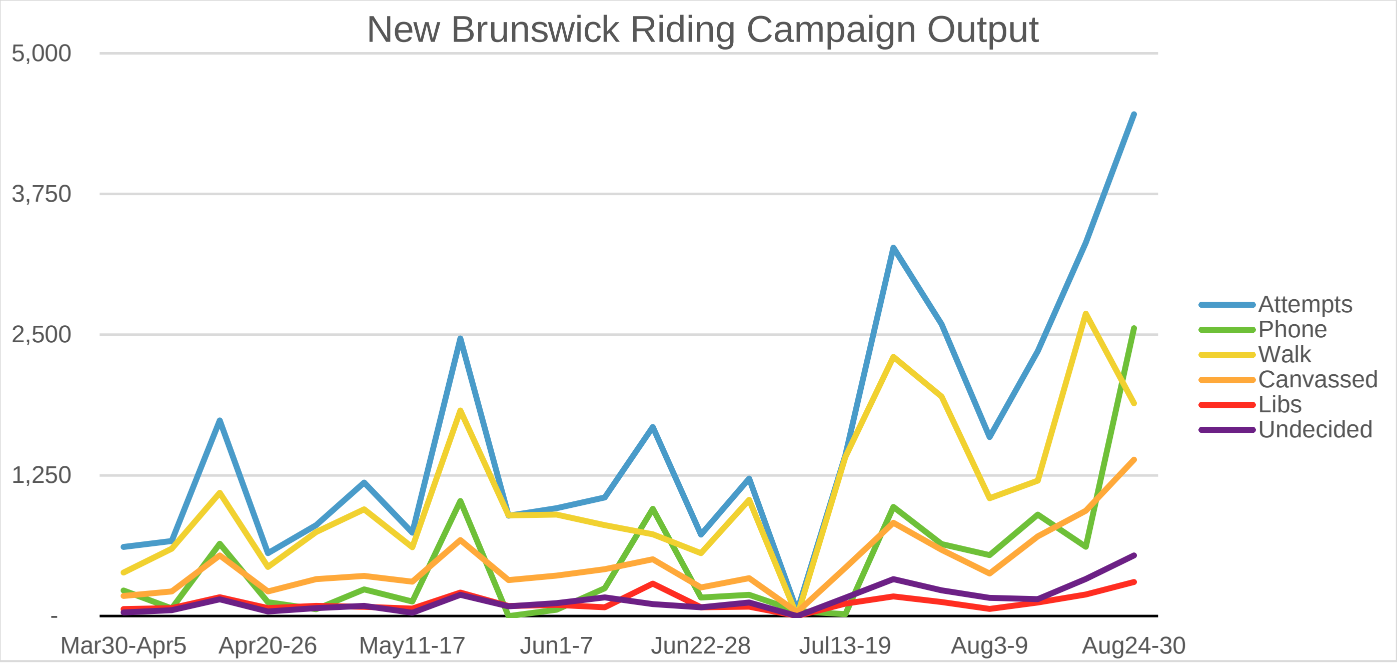
Appendix 1 – Example use of data – Constituency in New Brunswick, Canada

Attempts denote total attempts to contact voters using Liberalist software. Walk denotes in-person canvassing attempts and Phone denotes contact made by telephone. Canvassed includes successful contacts made with voters through attempts. Libs denotes voters who identified as Liberals and Undecided denotes voters who remain undecided. Results tabulated using Liberalist (database) software.

Dates	**Mar30-Apr5**	**Apr6-12**	**Apr13-19**	**Apr20-26**	**Apr27-May3**	**May4-10**	**May11-17**	**May18-24**	**May25-31**	**Jun1-7**	**Jun8-14**	**Jun15-21**
Attempts	614	667	1,738	559	807	1,186	740	2,466	891	959	1,054	1,680
Phone	227	68	643	123	61	237	129	1023	-	57	247	953
Walk	387	599	1,095	436	746	949	611	1826	894	902	807	727
Canvassed	178	219	538	218	328	357	305	675	319	360	416	505
Libs	62	71	168	71	90	82	66	208	89	99	77	288
Undecided	32	52	149	41	70	90	30	189	86	115	166	106

Dates	Jun22-28	Jun 29-Jul5	Jul6-12	Jul13-19	Jul20-26	Jul27-Aug2	Aug3-9	Aug10-16	Aug 17-23	Aug24-30	Total	Average
Attempts	723	1,221	44	1,430	3,273	2,593	1,590	2,354	3,318	4,458	24,235	1,562
Phone	164	189	44	16	970	639	542	902	616	2,557	6,332	473
Walk	559	1,032	-	1,414	2,303	1,950	1,046	1,203	2,687	1,890	18,283	1,094
Canvassed	254	337	35	429	829	588	378	708	936	1,389	7,268	468
Libs	77	83	1	110	175	125	64	120	191	303	2,006	119
Undecided	77	120	0	163	328	228	161	150	329	539	2,203	146

Appendix 2 – Graphic Representation of Appendix 1



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