Technology and Human Rights Enforcement

Building on recent scholarship and advocacy on the transformation of human rights fact-finding in the digital era,[1] Part II considers the opportunities and challenges presented by the use of new technologies to enforce human rights. In Chapter 6, "The Utility of User-Generated Content in Human Rights Investigations," Jay Aronson addresses the integration of user-generated content in efforts to hold human rights violators accountable. Using a series of case studies, Aronson demonstrates how this evidence can be integrated into human rights investigations and why investigators must be careful when doing so. In Chapter 7, "Big Data Analytics and Human Rights: Privacy Considerations in Context," Mark Latonero analyzes the privacy risks of using large aggregated datasets in human rights monitoring and argues for the development of better normative standards to protect privacy in the process.

While the contributions by Aronson and Latonero are primarily concerned with the collection of information for accountability efforts, the other two chapters in this part address the impact of technological advances on the display and use of information in advocacy contexts. Chapter 8, "The Challenging Power of Data Visualization for Human Rights Advocacy," by John Emerson, Margaret L. Satterthwaite, and Anshul Vikram Pandey, considers the use of new data visualization techniques to communicate and analyze human rights problems. They discuss both the historical evolution of data visuals in advocacy and the risks and benefits of using data visualization in this context. Chapter 9, "Risk and the Pluralism of Digital Human Rights Fact-Finding and Advocacy," by Ella McPherson, draws on field research with human rights organizations to address the way in which these organizations

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[1] *See, e.g.*, P. Alston and S. Knuckey (eds.), *The Transformation of Human Rights Fact-Finding* (New York: Oxford University Press, 2016), pp. 399–489. For an exploration of related techniques in the humanitarian context, see P. Meier, *Digital Humanitarians: How Big Data Is Changing the Face of Humanitarian Response* (Boca Raton, FL: CRC Press, 2015).

manage risk associated with the introduction of new technologies. She confronts the reality that not all organizations are equally equipped to manage these risks, and she suggests that unless this is addressed, it could have negative impacts on human rights advocacy in the long term.

The chapters in Part II make clear that one of the most significant challenges in regulating the human rights impacts of technology is that the very same characteristics of technology that present the greatest opportunities also create the greatest risks. For example, the increasing availability of low-cost technology to document abuses means more documentation by human rights organizations, bystanders, victims, and even perpetrators. At the same time, more documentation of violations means the generation of greater quantities of data, leading to significant challenges in collecting, sorting, and storing this information. Crucial evidence may also be lost or collected in ways that render it inadmissible in later proceedings to hold perpetrators accountable or unverifiable for use in historical clarification or transitional justice efforts. Video of human rights violations, whether created and shared by bystanders, victims, or perpetrators, can enhance the efficacy of legal tribunals and other accountability mechanisms, but such video also raises a host of legal and ethical challenges regarding ownership of content and concerns associated with making such material public.

Similarly, greater participation in documentation efforts by nonprofessionals could yield democratizing effects for human rights advocacy and bolster the legitimacy of the human rights project, which is often critiqued as elitist.[2] The reduced role for gatekeepers, however, makes verification of information and protection of victims and witnesses much more challenging.[3] As compared to human rights researchers, nonprofessionals engaging in human rights research may have a much higher tolerance for risk, which can have significant implications for victim and witness safety. The persistence of digital information can also frustrate traditional understandings of the right to privacy and undermine efforts to ensure the informed consent of witnesses who share information about human rights abuses.

Even the solutions that technology offers to address some of these challenges can create new ones. As Aronson's chapter makes clear, the ability of human rights practitioners to gather information about victims of human rights violations from user-generated content increases the likelihood that justice and accountability institutions will hear their cases. At the same time, such information gathering can also expose the creator and those portrayed digitally to discovery or harassment by perpetrators and their allies. Similarly, as the chapter by Emerson, Satterthwaite, and Pandey illustrates, data visualization can be a powerful tool for understanding

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[2] *See, e.g.*, D. Rieff, "The Precarious Triumph of Human Rights," *The New York Times Magazine*, August 8, 1999.

[3] M. Beutz Land, "Peer Producing Human Rights" (2009) 46(4) *Alberta Law Review* 1115–39 at 1126–29; M. K. Land, "Democratizing Human Rights Fact-Finding," in Alston and Knuckey (eds.), *The Transformation of Human Rights Fact-Finding*, pp. 399–424.

and communicating about human rights violations, but it can just as easily obscure or fundamentally misrepresent the details of a complex situation.

Moreover, any democratizing potential that technology might have can be undermined by broad disparities in its distribution, which poses the risk of reinforcing rather than challenging the status quo. Until global power dynamics around technological innovation are changed, these resources will remain unevenly distributed. Some of the most innovative tools, such as satellite imagery, statistical methodology, and sophisticated data analysis techniques, are out of reach for many grassroots organizations, both financially and in terms of expertise. Local groups do not have the resources they need to use technology effectively or safely in their work, and more powerful groups may appropriate the documentation they produce without providing any direct benefit in return. The difficulty of maintaining good digital security is in part a product of poor technological design, but it also reflects preexisting power imbalances and the absence of funders that support the development of technological capacity among small organizations. McPherson argues, in turn, that this unevenly distributed capacity of human rights organizations to manage the risk introduced by new technologies and methodologies is likely to have a negative impact on human rights pluralism – and on human rights.

The chapters in Part II thus question not only the democratizing possibilities of technology, but also its purported objectivity or neutrality. This inquiry can be applied to the design of technology itself. It can also be applied to the activities and processes deployed through or engendered by the physical artifacts of technology, as well as the expertise employed to create it.[4] In the context of big data, for example, this includes the creation of algorithms that make a variety of decisions about information contained in large datasets, including prioritizing or classifying information or creating associations within it.[5] When governments, nongovernmental agencies, or advocacy groups subject data to new forms of analysis, they can introduce algorithmic bias into social and political decision-making. Recent academic and advocacy work has shown the limits of objectivity in data analysis, with respect to both the messiness of real-world data and the fact that an algorithm is just a set of instructions written by humans (who are often prone to bias) to be followed by a computer processor.

Indeed, the destabilizing introduction of new technologies reveals pressures on the idea of "truth" that we often try to ignore. Data visualization techniques, for example, can portray ostensibly "true" material in biased or misleading ways. Much of this indeterminacy is a function of the role of interpretation and perception. Information does not exist in a vacuum, but is constantly interpreted and

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[4] W. E. Bijker, T. P. Hughes, and T. Pinch (eds.), *The Social Construction of Technological Systems: New Directions in the Sociology and History of Technology*. Cambridge, MA: MIT Press, 2012, p. xiii.
[5] N. Diakopoulos, "Accountability in Algorithmic Decision Making" (2016) 59(2) *Communications of the ACM* 56–62 at 57–58.

reinterpreted by its audience, which "might variously refuse, resist, or recode those materials for their own purposes."[6] In an era of "fake news," with heightened pressure on social media companies to remove "false" material from their sites,[7] understanding the impact of technological developments on concepts of truth is crucial.[8]

All of these potential risks and rewards exist in an environment in which cultural factors, convenience, government aid agencies, technology companies, and human rights funders are encouraging technological solutions to human rights documentation and advocacy problems. Human rights advocates and organizations that might benefit from avoiding new technologies until they develop better mechanisms to cope with risks may feel compelled to adopt new technologies so they can continue to be relevant in the field. In his reflection that concludes this volume (Chapter 13), Enrique Piracés picks up on the theme. He worries that the lure of technological solutions also risks focusing our attention on documentation as an end in and of itself, rather than as part of a larger response. Documentation is important, and in some instances documenting a violation may be the only response possible. There may even be a moral obligation to document, albeit one that must be balanced with security and other concerns. Nonetheless, the seduction of "new technology" should not lead us to overemphasize investigation at the expense of other responses, like transitional justice efforts, legislative reform, or community mobilization.

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[6] M. McLagan and Y. McKee, "Introduction," in M. McLagan and Y. McKee (eds.), *Sensible Politics: The Visual Culture of Nongovernmental Activism* (Brooklyn, NY: Zone Books, 2012), p. 13.

[7] E. Asgeirsson, "German Social Media Law Threatens Free Speech," Human Rights First, April 10, 2017, www.humanrightsfirst.org/blog/german-social-media-law-threatens-free-speech.

[8] *See, e.g.*, M. P. Lynch, *The Internet of Us: Knowing More and Understanding Less in the Age of Big Data* (New York: Liveright Publishing, 2016).