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Book Review: The Standard Syllabus of Legal Philosophy

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Privacy and Government Data Banks: An International Perspective

David H. Flaherty

London: Mansell Publishing, 1979, pp. 353

There is now a vast international literature on the subject of privacy and its protection or depreciation in the western industrialized nations. One particular aspect of this problem—the risks of privacy invasion generated by the information systems of large bureaucratic organizations, both public and private—has been the principal target of analysis in recent years. The enhanced technological capacity of these systems and the enhanced appetite of such organizations for personal information have given high political visibility to the privacy issue. As a result, many countries, Canada included, have enacted legislation ostensibly designed for the purpose of imposing limitations on the ability of data bank managers to collect, utilize and disseminate personal information. One therefore approaches a volume bearing a title such as that under review with some scepticism. Is it conceivable that there is more to be said on this admittedly difficult and important question of public policy? In fact, however, Professor Flaherty's study tackles an aspect of the privacy issue which the academic community has, by and large, unwisely ignored.

The central question which he addresses is the extent to which contemporary concern to protect the confidentiality of records containing personal information can be reconciled with the public interest in making such information available to the research community for research and statistical purposes. The central thesis of the volume is that much can be done, within the confines of a proper privacy protection policy, to increase current levels of access to personal data for these purposes. Apart from contributing to our understanding of the privacy issue, then,

this study offers a perspective of relevance to the current public debate on the desirability of increasing public access to government records. Indeed, the prospect of facilitating access by the research community to personal data stored by public agencies neatly illustrates the tension between "freedom of information" and "privacy," a tension by no means confined to this particular context.

The bulk of the volume consists of detailed case studies of the information policies and practices of the central statistical agencies or their equivalents in five countries, the UK, Sweden, West Germany, Canada, and the USA. Particular emphasis is placed on the census activity of central agencies, but the study includes a consideration of the information gathering and dissemination practices of a number of administrative agencies whose data banks are likely to be of interest to social scientists and medical researchers. In each case a description of the organizational structure and legal background of the statistical system is provided together with an account of current policy and practice relating to types of information gathered, its internal use for research and statistical purposes, and its dissemination in various forms and under various conditions to the broader research community. A particularly valuable aspect of the case studies is that Flaherty also attempts to bolster his argument for increased levels of access by describing research activity in each of the countries in which access to government personal data and the ability to link data from various data banks play critical roles. The latter point—the linking of data concerning identifiable individuals from various data banks—is perhaps the most controversial practice as far as the advocates of privacy protection are concerned. As Flaherty indicates, however, such linkage is simply essential for the conduct of certain kinds of valuable research. Epidemiology is called upon to provide a number of compelling illustrations.

Though public acceptance of the desirability of medical research may have led the author to emphasize the needs of medical scientists for access to personal data, he also provides ample evidence to support his more general claim that "the same detailed data which threaten privacy also provide social scientists and other researchers with significant new opportunities for the discovery of solutions to major social problems, which, if implemented, can improve the well-being of individuals living in advanced industrial societies" (19).

Although the author does not shrink from pointed criticism of particular agency practices and of what he sees as general failure to respond adequately to the needs of the research community, the study is essentially sympathetic to the problems of government statisticians and sensitive to the constraints, political, legal and otherwise, which limit their capacity to collect and disseminate information. It is of interest that the record of Statistics Canada, when viewed from this comparative perspective, appears to be a relatively distinguished one. Indeed, a major portion of the Canadian case study offers an account of the decision-making process which resulted in the publication by Statistics Canada

Of public use samples-random samples of actual but anonymous survey information concerning particular individuals-which are of much broader utility than aggregated statistical data. In a concluding chapter, Flaherty offers a series of recommendations which have the general objective of creating an environment within which increased levels of access will be and will be seen to be consistent with proper deference to confidentiality concerns. On the vital and difficult question of who should ultimately determine whether access should be afforded, Flaherty recommends that the determination of whether a particular use is consonant with the public interest should not rest

exclusively with the bureaucracy but should involve a review process including representation from professional peer groups and members of the general public. This thoroughly researched and carefully argued study deserves thoughtful consideration by government statistical and administrative agencies handling personal data and by the research community at large.

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