Book Review

Review of Lageson, Sarah Esther. 2020. *Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice*. Oxford, UK: Oxford University Press.

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Sarah Esther Lageson's *Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice* is a rich sociological analysis of the data-driven criminal justice system in the United States. To prevent mass incarcerations, racial profiling, and police brutality resulting from this system, it is often argued that digitally documented criminal records can potentially bring transparency and facilitate robust public watchdogging. The often-underlying rationale stated for employing technology is to bring about fairness, objectivity, and neutrality. On the contrary, Lageson argues that these records cause perpetual harms to people's lives, alongside massive commodification of these records. She concludes this after examining the competing mandates, goals, and diverging responsibilities and consequences of these criminal records in the information age. To arrive at this, she unravels the complex relationship between internet websites (big tech, background check sites, etc.), police, prisons, courts, and people. This exploration is accompanied by sociological analysis of aggrieved individuals' narratives, highlighting the contours of privacy and the harmful and degrading effects on their lives.

Almost half a century ago, Alan Westin (1967: 360) foretold that the excessive reliance on digital records would consequently limit how the society estimates and perceives an individual. This foretelling becomes a reality in Lageson's book, which highlights the legal and social consequences of digitally documented criminal records (such as rap sheets, mugshots, jailhouse rosters, and court documents) in the form of digital punishment. In this digital age, her study finds the unintended repurposing of these records, which are widely made accessible to the public on official websites and social media. Contrary to its mandate, the records serve as a lucrative commodity for background check and mugshot websites. Her exploration reflects that these records serve as a commodity for the companies and are used by the community for profiling as a result of the desire for safety and security. The aggrieved individual faces digital punishment as they become the victim of eternal stigma and labelling, which particularly affects black and poor people. She defines digital punishment as "an enduring form of criminal stigma that travels across mugshot websites, background check services, and Google search results" (6–7).

Julie E. Cohen (2019) has cautioned that understandings of surveillance capitalism will remain incoherent unless they identify the relationship between the commodification of criminal records and transformations in law and legal institutions. Undoubtedly, this was Lageson's cautious approach as she employed

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Bourdieu's "field theory" to conceptualise the interplay and overlap of different "social actors involved with and affected by the political, social, technological and legal fields" in the data-driven criminal justice system (190). She highlights the legal context leading to the commodification of public records and the emergence of "punishment entrepreneurs" (88), which occurred due to the presence of legal immunity under First Amendment and governmental transparency under FOIA. This immunity is exploited by the background check companies and mugshot websites invoking the prevailing anxiety, suspicion, and insecurities among people. Moreover, these companies resort to extorting aggrieved subjects for the removal of their records. These practices are further magnified in Chapter 3, which explores numerous targeting strategies through "nudge marketing" and "clickbait" (75); interestingly, Cohen (2019: 93) conceptualises this phenomenon as an "information laboratory."

The digital space is essentially a space where genuine and reliable information is a needle in the haystack of stale or dead information. It is the latter that lives eternally and multiplies to overpower the former. Lageson gives the account of the data practices surrounding outdated, erroneous, and incorrect criminal records. These practices are magnified in the absence of legal mechanisms surrounding data quality and criminal record sharing, obliterating even the possibility of accessing real information. It is supplemented by a labyrinth of serpentine government procedures to expunge the government records (however, not those in digital space).

In Chapter 4, Lageson gives a vividly gripping account of how "digilanties" (digital vigilantes) share digital criminal records, ensuring that the data subjects face eternal digital punishment in terms of degradation and stigma. This will make the reader ponder upon the moral dilemmas and consequentialist theories of egoism and utilitarianism. This dilemma was highlighted in Dostoyevsky's thrilling account in *Crime and Punishment*: Raskolnikov's act of killing the corrupt and exploitative pawnbroker, Ivanovna. This act was justified as both necessary for his self-advancement and as a utilitarian good for the whole society. In the context of digital criminal records, the innocuous sharing under the garb of safety and security of neighbourhoods by digilantees, which is further intermediated by data brokers and big tech, needs to be cautiously inferred by readers. The caution is required to comprehend whose acts are retributive; who becomes the victim; and who is seeking redemption, rehabilitation, and restoration in this criminal justice system. Lageson has meticulously reconceptualised the functions of criminal punishment in this digital age and articulated them as:

Online records serve as *retribution*—the punishment of a public label and the stigmatizing aftermath. But this *retribution* now attaches to a lifetime of Google searches. Although having a criminal record does not physically *incapacitate* a person, the avoidance strategies illustrated in this book show how records exert considerable control over behavior and choices, leaving many to feel as if they are in a virtual prison. Criminal records do not *rehabilitate*. Each bulk sale of data, each background check, and each Google search brings a record back to life. *Restoration* means bringing a person and society back into harmony or balance. The messy state of criminal record affairs is far from harmonious or balanced, particularly in how it creates new problems for people and society. (184, emphasis added).

This book is a significant contribution to the literature in privacy and surveillance studies that explores the ambiguous and mysterious world of data-driven criminal records. The aggrieved individuals have the least amount of control and autonomy over their own personal data and how those data are being shared, accessed, and consumed in myriad ways. The presence of digital criminal records in digital space stigmatises the identity and etches a permanent scar on the lives of aggrieved individuals. Consequently, they face discrimination in their civil life, particularly in employment, housing, and dating prospects, as they are screened out due to their marked identifiers on background check websites. This has disproportionately affected black and poor people. The aggrieved subjects respond to this by adopting the strategic measure of obscuring either their own record (manipulation of their records) or themselves from their record (digital avoidance) (134).

The traditional sociological theories on stigma and labelling cannot in entirety comprehend this digital phenomenon. As Lageson argues, “previous theories do not reflect this reality [digital punishment].... Cognitive dissonance about one’s identity and digital and social isolation are today’s collateral consequences.... The internet instead becomes a digital prison that discourages the stigmatized person from moving on with their life” (131). She does acknowledge the strong presence of “Orwellian surveillance” in social security regimes and justice systems. However, her observations reflect the presence of “Kafkasque surveillance” in this data-driven criminal justice system, where the person getting arrested does not get to know the alleged crime and also bears guilt prior to conviction.

The significance of this book rests not merely on its highlighting of the privacy interests surrounding digital criminal records; more importantly, it raises questions about the effectiveness of the data-driven criminal justice system in the United States. Additionally, it points to the contentious utilitarian debate about the benefits and harms surrounding the sharing of and greater accessibility to criminal records. As a possible solution, Lageson suggests to restore the intended purpose, and Chapter 7 discusses solutions using reforms through numerous legal mechanisms (such as expungement, anti-extortion law, Fair Credit Reporting Act, civil action, and class action) and non-legal mechanisms such as data collection and sharing practices and the significance of blockchain technology.

To reorient the intended purpose from commodification by private data aggregators towards the effective purpose of supervision and oversight over police, courts, and prisons, Lageson emphasises the need for citizen movement. However, she does not provide a definite answer as to how the cultural or attitudinal change among citizens towards criminal records will occur. On movements and resistance strategies against the privacy violations, this book offers little except the discussion on Right2Remove campaign which aims to make search engines accountable. Yet it leaves issues of movements and resistance (even non-resistance strategies such as digital avoidance) against privacy harms for future studies.

References

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