
Behavioral Data and the Right to Strike

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tl;dr

- Our data contributions to internet platforms are a kind of labor (Data as Labor)
- Indeed, data relations and labor relations exhibit similar bargaining dynamics.
- In the case of labor a right to strike is a useful corrective to these bargaining dynamics; so too a right to data strike
- The right to data strike is an instance of a more general freedom to disconnect

Data as Labor (DaL)

Eric Posner & Glen Weyl, *Radical Markets* (2018):

“The powerhouses of the digital economy, firms like Facebook, Google, and Microsoft, exploit the lack of public understanding of AI and ML to collect for free the data we all leave behind in our online interactions. This is the source of the record profits that make them the most valuable companies in the world.

... People’s role as data producers is not fairly used or properly compensated.

... Data work, like ‘women’s work’ and the cultural contributions of African Americans at one time, has been taken for granted.”

The data relationship

Internet users exchange their behavioral data for internet services. Discomfort with this crystallizes into outrage with e.g. the Cambridge Analytica scandal.

GDPR, CCPA and other recent regulatory effort diagnose this is a problem of *privacy* and *consent*

But: another problem is exploitation resulting from bad bargaining dynamics.

The Data/Labor Analogy

The analogy: users and workers are involved in similar **bargaining dynamics**.

- The interaction is **relational** i.e. temporally extended or repeated.
- The 'buyer' (platform/employer) exercises **open-ended authority** over the interaction and receives an **open-ended power** to use a derivative of the capacities of the seller.
- This temporally extended and open-ended interaction gives rise to **characteristic vulnerabilities** (e.g. safety/privacy) which are difficult to avoid, especially given the relative replaceability of 'sellers'.

The Data/Labor Analogy

- Ignore the **passivity** of the word 'data.'
We are not concerned with data 'as manure' (Kim et al.), but with an interaction between user and platform.

To reflect that, call the user a 'dator' and the platform a 'datee'.
- Do data and labor share the **non-financial goods of work** (after Gheaus and Herzog)? Not necessarily.
- Do users see their interactions as **deserving compensation**? Too much status quo bias.

The Right to Strike

Abstractly: a right of workers to withhold labor (for some constrained period and subject to conditions) without terminating the labor relation and for the sake of renegotiating its terms.

What grounds it?

- **Liberal rights** e.g. the right to association and right to free expression? But why do these outweigh other liberal rights of property and contract?
- A **relational ideal** e.g. non-domination or equal status and authority? Yes: since unequal bargaining power in relational contracts of the above kind result in domination or abuses of authority.

The Right to Data Strike

- A **relational ideal** e.g. non-domination or equal status and authority? Yes: since unequal bargaining power in relational contracts of the above kind result in domination or abuses of authority.

This argument applies to the dator-datee relationship as much as the firm-worker relationship.

The challenge: what would a right to **data strike** look like, given that users cannot unilaterally withhold their part of the bargain?

- data unions?
- a right to suspend data?
- decentralized mechanisms of data ownership?

Does this have anything to do with labor law?

I've drawn on an analogy with labor law to argue for a right to strike in *data policy*. You, who are interested in labor law, will be asking yourselves: so what?

First, I want you to consider that there is not just an analogy, but that giving our data to train the AIs really is a form of labor. Why not?

Second, I think the right to data strike is an important instance of a more general freedom that is a neglected but crucial part of a 21st century labor law.

The Everywhere Workplace

A paradox: just as technology seems to threaten the future of work, it is also making work pervasive. It seems harder than ever to demarcate spheres of work and life.

A contributing trend is the **virtualization** of the workplace i.e. the workplace involves less collocation with co-workers and is harder to distinguish spatially and functionally from private and public spaces.

e.g. the work from home office

e.g. the outsourced call center

e.g. the rideshare vehicle

e.g. the coworking space

Network Power

What identifies a virtual workplace as a workplace, if not the presence of coworkers, or being spatially or functionally distinct from other spheres of life? It is that the norms and requirements of work are communicated and enforced by communication networks.

So the virtual workplace is characterized by **network power**.

Of course network power is also a matter of network governance (e.g. surveillance by keylogging), but it can be much more subtle...

If your colleagues view commenting on each others' preprints on a shared slack channel as a marker of collegiality, then you'd better have your slack notifications on.

The Freedom to Disconnect

In general, labor law needs to think more about protecting workers against network power. Here I propose a general category of rights and liberties: the **freedom to disconnect**.

Some specifications:

- freedom from communications and notifications after hours
- freedom from unnecessary surveillance
- rights against nudging algorithms that keep one in service
- the right to data strike! (*The data relationship occurs in many workplaces too—consider the use of work-for-hire and non-disclosure clauses to capture the intellectual labor of workers and turn it into an organizational asset.*)

The Right to Data Strike

Another specification of the freedom to disconnect:

- the right to data strike.

The data relationship occurs in many workplaces too—consider the use of work-for-hire and non-disclosure clauses to capture the intellectual labor of workers and turn it into an organizational asset.

So the right to data strike is not an interesting analogy between data law and labor law, but a model for thinking about labor law in a network economy.