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Collected Abstracts

Articles of contention: Transparency issues in teaching and research in US higher education

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Faculty members of higher education institutions in the United States have received considerable demands for accountability and transparency on the part of the public agencies and private organizations that provide their funding and support, with an “audit culture” permeating some settings. Many of the focuses of these accountability and transparency efforts have centered on teaching, often involving student evaluations. Informal attempts at increasing transparency in teaching contexts (such as students and academic watchdogs capturing and disseminating controversial lecture material with smartphone cameras) have also increased. However, many aspects of research production have also been made more transparent as various technological applications expose detailed aspects of the development and dissemination of academic publications. With these expansions in teaching and research transparency, the aims of maintaining optimal “authenticity” and “integrity” in academic interactions can present new levels of complexity. For example, issues of inappropriate assignment of co-authorships (including the “ghostwriting” of journal articles), citation exchanges, problematic peer- reviewing methodologies, research misconduct, and even the direct purchase of articles are receiving special attention by higher education administrators and governmental agencies as well as observers of academic arenas. This presentation attempts to unpack the basic notion of “transparency” within higher education, It analyzes a set of specific

real-life cases as well as fictionalized scenarios in which transparency has provided new challenges or exacerbated current concerns, comparing and contrasting how teaching and research initiatives have been treated in this regard. It also discusses how faculty members, administrators, and agencies have dealt (and may deal in the future) with the positive as well as negative aspects of such transparency, with their potential challenges to

academic freedom as well as the personal privacy of academic participants.

The presentation also introduces issues of differences in values and perspectives among researchers in various nations, leading to concerns about the quality of academic productions originating from settings in which ghostwriting and articles-for-hire are reportedly more widely and openly conducted. Since research publications are a major factor in promotion and tenure as well as grant money allocations, academic participants are increasingly called upon to analyze the publication outputs of their colleagues both within and beyond their individual institutions. Search capabilities provided by Google Scholar, Microsoft Academic Search, and ResearchGate tools have expanded the means through which individual and group research production can be reviewed and analyzed. Installation of higher education or government-sponsored “collaboration cops” who monitor academic collaborations and related paper productions for authenticity may serve to disturb delicate interactions between and among researchers. In a related set of concerns, “big data” methodologies have afforded detailed analyses of the composition and intellectual impacts of individual articles as well as journals and other publication venues as a whole. Increases in the transparency of higher education can provide challenges as well as benefits as academic participants attempt to make sense of the onslaught of information and analytical capabilities that are available to them relating to intimate aspects of teaching output and research publication development.

Assembling PeerlessU: A Canadian makeover comes to grief

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(for Len Findlay and Toni Samek)

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In its lengthy and eventually successful struggle to join the group of elite, “research intensive” universities in Canada, usually referred to as the U-15, the University of Saskatchewan, for long known as “The People’s University,” had to rebrand and re-assemble itself to resemble and compete with the other members of that group. The U of S had to both exhibit common values and commitments and also commentaries in with its illustrious peers and also affirm itself as in some respects peerless. However, in order to make the grade and find its niche, it had to become, in the view of its leaders, peerless in another sense too, co-opting and when necessary ignoring peer-driven, internal collegial processes when they got in the way of burnishing the institutional brand. This reduction of the notion of peers to peer institutions required the ignoring of academic staff and the controlling of deans, the creation of a community of faculty bit-players and a decanal cohort of scripted and whipped team players. This process, deeply undemocratic and more attuned to corporate and govern- mental interests than to considerations of academic values and social justice, can be seen vigorously at work in the case of Robert Buckingham, a senior administrator in the School of Public Health at the U of S, who belatedly broke ranks and the administrative code of silence, was severely punished, and then had his tenure restored after his firing and prompt police escort from campus went viral.

In this paper we will first track the University’s branding/assem- bling history and the implications of that history for high-level re- cruitment across the institution, including in the School of Public Health, hitherto strongly allied with the idea of The People’s Uni- versity in the home of medicare. We will then consider questions of expressive freedom and academic freedom, and the position of the Canadian Association of University Teachers (CAUT) on how senior administrators ought to comport themselves when they find themselves in disagreement with what is being promoted or en- forced as university policy. Our third section will deal with

the work of Robert C. Dickeson, its uptake at the U of S and other Canadian universities in various processes of program “prioritization,” and the way it was implemented at the U of S. The fourth and final section of the paper will deal with the victimizing of Dr. Buckingham, the extraordinary mobilization in support of him and against the University’s overreaching leaders, the subsequent resignation of the Provost and termination “without cause” of the President, and how these extraordinary events played out among university presidents in Canada, most notably the President of the University of Alberta.

In unfolding our narrative and analysis we will draw extensively on university administration publications and statements, in print and on the web, coverage in the student newspaper, three different kinds of faculty association publication--e.letters, Collectively Speaking, and a range of faculty commentaries in the USFA sponsored but independent VOX—petitions and open letters from groups like Academic Integrity and DefendUS, the minutes of University Council (usually called a Senate elsewhere), a mass of e-mails to and from us, and extensive coverage in local, national, and international media. This will be supplemented by reference to CAUT policy statements and press releases, to the published works of Robert C. Dickeson, and to the extensive scholarly literature on academic freedom and tenure.

This case has important implications for postsecondary institutional governance and resistance movements everywhere. Interim President Gordon Barnhart has repeatedly indicated that, although discussions are taking place among his leadership team. Meanwhile, former Provost Brett Fairbairn noted he has not been queried by any university leader about what happened. As stories and leaks persist in Canadian and international media, the case bears ever more powerfully on the ethics of transparency.

Secrecy, transparency, fact, and falsehood

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Understanding the nature and scope of transparency and secrecy—what they are and what they encompass—is indispensable for properly addressing important ethical and legal questions concerning them. It's evident that secrecy and transparency encompass facts. Such facts can be personal in the sense of pertaining to someone as an individual and also suprapersonal in the sense of pertaining to composite entities such as groups, organizations, states, or governments. But do transparency and secrecy only encompass facts whether personal or suprapersonal? Might they not also encompass more than facts? That is, might they not also encompass personal and suprapersonal falsehoods as well?

In light of such questions, it's worth noting that secrecy and transparency can be broadly understood as opposites or complements: if something is kept secret, it is not made transparent, and vice versa. Interestingly, both secrecy and transparency can be understood in terms of knowledge: the first in terms of closure to knowledge by others, the second in terms of openness to such knowledge by others. Given their relation to knowledge (and thus its opposite ignorance), developments in the theory of knowledge and ignorance bear the promise of shedding light on the nature and scope of secrecy and transparency.

In this paper, I engage in some applied epistemology by deploying some of these developments in providing an account of their nature and scope. In particular, in section 2, I distinguish between ignorance of a proposition and ignorance that a proposition is true, and between knowledge of a proposition and knowledge that it is true. In light of these distinctions, I show how we can fruitfully distinguish between what I call propositional secrecy and factive secrecy, and between propositional transparency and factive transparency. I then argue in section 3 that conceiving of secrecy and transparency as encompassing not just facts but also falsehoods provides us with a broader and deeper account than if we

conceptualize them as being limited to facts alone. I illustrate my case with a diverse array of examples of secrecy and transparency. I conclude in section 4 with some retrospective and prospective remarks.

Shedding light on keeping people in the dark

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We want to keep hackers in the dark about our passwords and our credit card numbers. We want to keep potential eavesdroppers in the dark about our private communications with friends and business associates. And especially after Snowden's revelations, we probably want the government kept in the dark as well. But in order to know whether we are achieving these sorts of goals, we first need to understand exactly what it is to *keep someone in the dark* about something. Several philosophers (e.g., Bok 1983, Scheppele 1988, Mahon 2009, Carson 2010) have analyzed this concept in terms of concealing and/ or withholding information. However, these analyses incorrectly exclude clear instances of keeping someone in the dark. And more importantly, they incorrectly focus on possible *means* of keeping someone in the dark rather than on what it *is* to keep someone in the dark. In this paper, I argue that you keep X in the dark about P if and only if you intentionally leave X without a true belief about P. I then suggest how this analysis can be generalized from a categorical belief model of epistemic states to a degree of belief model. I also use this analysis to give an intuitive epistemic ordering of the different ways in which someone might be kept in the dark. Finally, I show how this analysis can be fruitfully applied to recent work in cryptography and game theory.

Why trust is not enough: Dataveillance and government secrecy

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Today data mining, or dataveillance, through the use of algorithms to identify risk are the foundations of initiatives such as “predictive policing” and what the Department of Homeland Security (DHS) refers to as “predictive identification of criminal and terrorist activity” (Department of Homeland Security, Privacy Office, 2013). When we read a statement such as: “DHS is changing the way it structures its information architecture and data governance to further consolidate information in a manner that protects individuals’ privacy, civil rights, and civil liberties” – it is possible to know exactly what information is being collected and how it is being mined. It is still not clear what amount of raw data is in the original set. For example, wireless data from AT&T and Verizon includes the interactions from a broad set of the public and not only US citizens, but individuals from around the world. Can we trust the assertion that our data is secure?

This paper will examine trust as intertwined with risk and danger (Beck, 1992; Giddens, 1990). I will focus on the question of whether we can trust the government to protect privacy and civil liberties while using ever increasing dataveillance tools to provide national security. There have been many arguments as to why “just trust us” is problematic when it comes to the government (Moore, 2006). The issue of trust and democracy cannot be limited to the past few decades. Whether or not to trust the government and how to trust have are foundational concerns related to democratic society. The social contract could be construed as an example that trust is elusive and our interactions with the government and other citizens must be formalized via some agreement. Hobbes’ Leviathan (1651 / 2013) presents individuals as brutish and willing to take whatever advantage available to them. While Locke’s assertion that society can be based on discussion and agreement for the well-being of the many, he also cautions against blind trust to authority. He realized that no group of thinking individuals would give up decision-making to one great authority - “This is to think, that men

are so foolish, that they take care to avoid what mischiefs may be done them by pole-cats, or foxes; but are content, nay, think it safety, to be devoured by lions” (Locke, 1689 / 1986). Trust then is perhaps not enough; or only part of the equation. It is elusive to have a sense of trust in the actions of a bureaucracy as vast as any government. Or perhaps our conception of “trust” needs to be more clearly understood when we say we “trust the government.” Can I say I trust the government to take whatever steps necessary, within the mechanics of the system, to secure the nation? Isn’t trust a state of a relationship which must constantly be renewed? I can trust in scientific principles or mathematical formula, but when individuals trust each other or bureaucracies it is crucial to remember that expert system, which includes individuals, are fallible and situations change. This is exactly the area that is confused when we consider the use of big data and algorithmic-aided decision making being used in healthcare, insurance, governance, and policing today. On the one hand we have the scientific / mathematical certainty of the equation. On the other we have its design and the decisions made through its use – which are mandated by human-beings.

Government transparency and pragmatic information

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We all wish governments were more transparent. For example, citizens often want to know what information governments have about them. Journalists dream of a more efficient FOIA process. Scholars have spent decades analyzing these exchanges, trying to explain how and why governments communicate with citizens and journalists the way they do.

We are proposing an extension to the traditional models of communication that is called the “Pragmatic Theory of Information.” This theory proposes that government-citizen information exchange is about more than the actors involved, it focuses on the nature of the exchanges themselves. There are elements of the exchange that are required by law (*de jure*), such as the requirement to provide citizens with a statement of their current Social Security benefits. There are other elements that we examine in terms what is actually happening (*de facto*), which may or may not be what is stated in the law, such as the confirmation of the existence of the Utah Data Center, but no official statement about its purpose. Finally we add a new category of analysis: *de vidi*. This refers to the appearance of what is happening. The exchange may be lawful, but there is a clear misleading (*spin*) on the events or a specific framing of the situation.

For our exploration of the value of the Theory of Pragmatic Information, we define transparency as follows: An agent (or an institution) *I* is transparent to another agent (or public) *P* if *I* makes sufficient information about its operation accessible to *P*.

While most discussions about transparency focus on information sufficiency – what information is released and what is hidden – the question about accessibility of information – does the information get to the recipients in a way that makes a relevant difference to their behavior – has received less attention.

Yet, accessibility of information is a necessary condition for communication to take place. Improper conception of accessibility leads to a separation between de facto transparency and de jure transparency. In other words, a government agent may act to seem transparent while not actually being transparent. Since accessibility can be analyzed as an element of the communications process, we can ask the following question: What communications model would block an agent from pretending to be transparent?

We formulate a model that we call a “three-player transparency game.” It consists of an information provider (the government), an information recipient (the citizens) and a transparency oversight agent (e.g. journalists). The citizens want to get the best information about the government to be able to exert control and achieve other goals. The government wants to appear transparent while actually minimizing the information citizens receive. The oversight agent needs to assess the information provider by evaluating the level and type of information accessibility. Can the oversight agent choose an evaluation mechanism such that the government won’t be able to seem transparent while not actually being transparent (i.e. have a winning strategy)?

We examine different communication models and show that a stronger Pragmatic Information model is needed to prevent the government from winning. The Pragmatic Information model must go beyond the conditions of context (as demanded, for example, by Grice) to include conditions about the ability to integrate the information into relevant goal-directed actions. We call these actionability conditions. Actionability conditions have multiple dimensions, including (lower-level) comprehensibility, (high-level) understandability, and applicability.

The Pragmatic Information approach makes the provision of accessibility a more onerous condition. The implication is that understanding how to best setup an institutional structure that promotes transparency requires empirical investigations in cognitive and social science. This contains the concept of transparency and, therefore, suggests novel normative factors that affect transparency and novel opportunities for policy intervention.

We propose to analyze some instances of government communication within this theory and these concepts in order to better explain where the challenges to communication transparency are. We believe that by identifying these challenges we can better understand transparency and propose some remedies.

The rhetoric of transparency in online environments

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In this paper, I examine transparency as a rhetorical construct utilized by online actors to establish credibility and foster discourses of openness and freedom. Rather than seeing transparency as a question of information visibility, I argue that it relates more intimately to the construction of ethos. Specifically, I will explore this issue through a series of short case studies that demonstrate the rhetorical construction of transparency and its effects in various situations. My goal is to illustrate how the deployment of transparency as a rhetorical tactic and the actual achievement of transparency are different, and perhaps fundamentally at odds with one another.

Transparency has long been considered essential to a functioning democracy, the belief being that by increasing the visibility of government actions fosters a degree of accountability. In this ideal model, transparency is a means to an end—a value that feeds a well-functioning democracy. Recently, some have claimed that the current climate around transparency can be properly called a “transparency movement” (Birchall 2011). If we are in fact experiencing a renewed interest in transparency, it is no doubt intimately linked to the internet and digital communication technologies that allow for the wide dissemination of information. However, the public nature of online disclosures can often cover up the tactical use of the rhetoric of transparency, rendering transparency an end in itself rather than a means to an end.

In order to illustrate this point, I will look at several brief examples from various online sectors. For instance, the Electronic Frontier Foundation’s “Transparency Project” utilizes freedom of information lawsuits in order to illuminate rights violations online. While the goal of the project is noble, the EFF constructs a specific vision of transparency that enhances their goals as an organization as well as their vision of an idealized digital rights environment. The rhetoric of transparency also pervades the corporate

sector. For example, Steve Jobs' 2007 "Thoughts On Music" Open Letter deployed the rhetoric of transparency in order to shed light on Apple's FairPlay and call upon record labels to do away with DRM—"locks" on digital music. However, as many soon pointed out, this was potentially a face-saving measure for Apple, who foresaw a significant backlash against vendor lock-in and DRM on digital music.

In addition, the metaphor of transparency has begun to blur the line between digital and governmental systems. Given the general success of transparency in the world of free and open source software, there has been a significant conflation of the goals of open source and the goals of democracy, with some going as far as to say that the free and open source model provides a template for governance. This relies heavily on the notion of transparency as a stand-in for credibility, and illustrates the potential shallowness of transparency as a rhetorical tactic.

Foucault's pendulum: Finding a middle way between vigilantism and the Panopticon

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From liberals to libertarians, there has been near universal agreement that Edward Snowden is a hero for any would-be modern-day free society. While it is true that much of what he revealed is important and useful (in the sense of prompting, rather than stifling, dialogue vis-à-vis the relationship between transparency and security, as well as rampant, hitherto unknown abuses in the name of the latter), it is also true that all nations must maintain intelligence apparatus in order to survive and thrive. But a key issue got lost in the universal acclaim (or the official condemnation): how the outsourcing of our intelligence community led to such a galactic failure in the national security of the most powerful nation in history that a character more akin to the IT Crowd than James Bond was capable—undetected and unscathed—of torpedoing the most ambitious-albeit-nefarious spy program ever conceived, and further why he felt the need to do so and in the manner he did. That is, leaks have happened in the past that negotiated the sensitivity of such information, giving greater attention to the sensitive nature of the revelations, while still maintaining the integrity of the public's right to know. For example: an intelligence whistleblower provided the Washington Post's Dana Priest with the information regarding the CIA's black sites, which was published in spite of incredible pushback by the White House. However, Priest and her editor did redact information regarding specifics, but only after several days of discussions with the White House, and only after they had been given detailed explanations of why such specifics would endanger actual rather than potential persons.) Rather than delve into the vast overarching question of the delicate balance between security and transparency, this paper (1) will provide a background of classical and contemporary philosophical perspectives on the surveillance society (e.g., Bentham, Foucault), (2) will illustrate flaws in the current approach (e.g., the Espionage Act and current whistleblower statutes), as well as successes, (3) in order to propose a better path forward which simultaneously recognizes the potential incapacity of the

layperson to understand the complexity of intelligence (e.g., everything from diplomacy to literal lives being at risk in the revelation of seemingly innocuous or unrelated pieces of disclosed information), alongside the inalienable right of a public to know about its government's practices—which constitutes an existential condition for the possibility of any democracy.

The limits of transparency in promoting intellectual freedom

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Commitments to intellectual freedom and freedom of conscience often come with strong commitments to transparency and the avoidance of secrecy. This is certainly understandable in light of the history of development of liberty of thought and conscience in Europe through the Enlightenment. When Mill argued about the “peculiar evil of silencing expression” his targets ranged from official oppressors to the tyranny of one’s community and society, especially when it experiences great certainty about its convictions, whether they are about acceptable sexual mores or the necessary response to the threat of terror.

But this raises a problem: When does a commitment to intellectual freedom require transparency and secrecy avoidance and when does it require the protection of privacy and secrecy for groups within a society? Mill was aware of this tension in the social realization of intellectual freedom, and his own answers to the problem, which include a kind of philosophical progressivism, are helpful, but carry problematic presuppositions. In this paper and presentation, I want to address this problem, bringing two additional theoretical resources to bear on the problem: a contemporary theory of privacy and some recent work on Intellectual Freedom.

The theory of privacy I draw on defines privacy, somewhat narrowly, not as a “right to be let alone,” but as a right to exercise practical reason. This theory usefully distinguishes fundamental moral rights from prudential concerns in privacy, such as the control of personal information, but it gives too little weight to the social psychology of moral deliberation, which suggests that we form and develop our practical reason in social relationship and through culture as well as through individual abstract reflection. I suggest this theory needs to be modified to account for the social exercise and manifestations of practical reason, thus creating a justification for the protection of the privacy (and secrecy) of groups and coalitions. When we consider how marginalized groups need privacy to develop thought and culture (an example is drawn from Jim Carmichael’s

essay on intellectual freedom and gender expression) or how the international right to freedom of thought, conscience, and religion is adjudicated, we can further appreciate the need to define a social moral right of privacy. Within the context of the modified theory of privacy I propose, a group's social moral right to privacy is violating precisely when surveillance about it comes to be known in such a way that the individual or group's ability to deliberate is impaired. After justifying this perspective, I will try to consider its implications in light of new and future surveillance technologies and revelations.

How important is transparency for democracy? The case of open government data

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"Transparency" has become a buzzword in national and international discussions of good governance. One transparency initiative is Open Government Data (OGD), where almost all data possessed by governments is made freely available on the Internet. OGD is frequently championed on the grounds that transparency is essential to democracy. The claimed connection between transparency and democracy is rarely argued for, however. In this talk, I provide a defense of OGD from the perspective of three prominent normative theories of democracy. I then note a potential objection to this defense—viz., both rational choice theory and empirical evidence suggest that the existence of available information will not necessarily translate to the public being more informed. After considering how the democracy argument for transparency can be adjusted to meet this objection, I make some criticisms of current OGD policy and suggestions for how it might be more effective.

Temporal transparency and the process of lawmaking

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Governmental entities that are labelled with the amorphous descriptor “transparent” are subject to varying interpretations of what is actually being described. At a base colloquial level, it would seem that to be “transparent” one would need to be able to see not just in, but out. Nonetheless, “transparency” is regularly used to denote a wide variety of institutional states that may or may not have anything to do with what is actually known or not known about an institution. Thus, this article seeks to answer a core question: What do we mean when we ask for a governmental entity to be “transparent?”

To get to an answer, this article answers a more narrow policy analogue to that broad query: “When is it time to publicize (to make ‘transparent’) a draft international intellectual property law negotiating text (akin to a Congressional bill) so as to allow public input into the lawmaking process? ” Because the 12 negotiating countries of the international Trans Pacific Partnership Agreement (TPP) – the most important international law negotiation currently underway – would apparently say “not yet” or “never,” despite years of negotiation and some leaks, this article assesses the parameters of that answer from which to draw broader lessons.

The problem of public input, or the lack thereof, has permeated the TPP negotiating process, particularly the highly-controversial intellectual property law chapters that require broad public input in order to achieve balanced and effective law. More recently, the United States-European Union Transatlantic Trade and Investment Partnership (TTIP) has begun negotiations under similar hyper-secrecy. This article suggests that the

primary cause of this informational bottleneck is a misunderstanding of the theory and nature of “transparency.” Thus, this article addresses that misunderstanding by proposing a broad and modernizing theoretical shift in how we view governmental transparency that focuses on an overlooked component of information access theory: timing. Defining the benefits and drawbacks of transparency as a function of timing, it conceives “temporal transparency” as a unifying theory upon which to base analysis of the theoretical and practical desire for transparency in lawmaking processes.

The debate around the governmental surveillance leaks by Edward Snowden offers significant context for this increasingly high-profile conundrum. The current contours of the transparency debate, whether about TPP negotiations or National Security Agency (NSA) surveillance, are characterized by loose application of concepts like secrecy and transparency, and to whose benefit they run. Therefore, this article also reorients transparency assessment to focus on processes like international lawmaking, rather than institutions like the United States Trade Representative that represents the US in the TTP and TTIP negotiations.

As an example of application of this theoretical shift, it proposes a six-factor test for analyzing when, in a lawmaking process, a negotiating text should be made public and when it should remain secret. By reorienting transparency policy away from the amorphous concept of institutional “information sharing” or the public’s “the right to know” and towards “temporal transparency” and the core question of when such information should be disclosed within a process, a modern understanding of governmental transparency and secrecy is developed. Beyond TTP and TTIP, applying this theoretical shift should help create a better understanding of the need for and desire to create transparent decision and lawmaking processes in other highly-controversial governmental law and regulatory processes, domestic and international.

The trouble with institutional facts: Notes toward an epistemology of fact-checking

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What a journalism review called the “fact-checking explosion” in American journalism revolves around a very specific mission: to hold public figures accountable for false or misleading claims. The reporters who practice this often controversial kind of journalism form an increasingly self-aware movement within the profession, one grounded in a shared critique of conventional objective reporting. Professional fact-checkers in turn have been accused of a “naive political epistemology” that fails to distinguish between matters of fact and of political opinion or ideology. I offer an alternative view grounded in the notion of “institutional facts.” Such facts are much less stable than we sometimes suppose, and help to account for both fact-checking practices and the controversy they invite. To develop the argument, I review a fact-check I produced as a participant observer with the best-known national fact-checking organization.

Life beyond big data: Governing with little analytics

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The twenty-first century rise of ‘big data’ appears to mark a significant break with traditional statistical notions of what is “of interest” or concern. The vast expansion of digital data has been closely intertwined with the development of advanced analytical algorithms with which to make sense of the data. Specifically, the advent of techniques of knowledge discovery affords the capacity for the analytics to derive the object or subject of interest from clusters and patterns in large volumes of data, otherwise imperceptible to human reading. Thus, the scale of the “big” in big data is of less significance to contemporary forms of rendering information knowable than what I will call the “little analytics”. Following Henri Bergson’s analysis of forms of perception which “cut out” a series of figures detached from the whole, I propose that analytical algorithms are instruments of perception which allow data to be brought to the surface or rendered invisible. The technologies of analytics focus human attention and decision on particular persons and things of interest, whilst annulling or discarding much of the material context from which they are extracted. Following the algorithmic processes of ingestion, partitioning, and memory, I describe how the invention of analytics engines has transformed the nature of analysis and knowledge and, thus, the nature of how economic, social and political life is governed.