Do Americans Want a Right to be Forgotten? Estimating Public Support for Digital Erasure Legislation

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With the increasing salience of online privacy as an issue, concern has focused on the ability to delete outdated personal information. In response, several varieties of a law mimicking the European “Right to be Forgotten” have been introduced at the state and federal level in the United States, despite limited measurement of public opinion on the issue. Because policymakers and courts often consider public opinion when deciding what laws to make and how to interpret those laws, public opinion is an important consideration when thinking about the potential for a right to be forgotten in the United States. In order to determine likely levels of support, as well as what predicts public backing of such a law, we analyze survey data collected from Amazon’s Mechanical Turk (N = 1380). We find that women are more likely to support such a law, as are those who are particularly concerned about online privacy, and those who express greatest confidence in Google. Those who think the government is too large are less likely to support such legislation. This suggests a complicated road forward for a Right to be Forgotten in the United States, with coalitions of support crossing traditional political boundaries.

KEY WORDS: Right to be Forgotten, digital erasure, public opinion, survey research, digital privacy

Con la creciente importancia que ha adquirido la privacidad, ha habido un enfoque en la habilidad de borrar información personal desactualizada. En respuesta, se han presentado a nivel estatal y federal en los Estados Unidos varias versiones de una ley que imita la ley europea de “derecho al olvido” a pesar de que ha habido poca medición de la opinión pública en este tema. Ya que los
creadores de políticas y las cortes tienen en consideración la opinión pública cuando se decide qué leyes crear y cómo interpretar esas leyes, la opinión pública es una consideración importante cuando se piensa en el potencial del derecho al olvido en los Estados Unidos. Para poder determinar niveles probables de apoyo, así como lo que predice el respaldo público de esta ley, analizamos datos de encuestas que fueron obtenidos de Amazon Mechanical Turk (N = 1380). Hallamos que las mujeres son más propensas a apoyar esta ley, así como lo son los que están particularmente preocupados por la privacidad en línea, y los que expresan la confianza más alta en Google. Los que piensan que el gobierno es demasiado grande son menos propensos a apoyar la legislación. Esto sugiere un camino complicado por recorrer para una ley de derecho al olvido en los Estados Unidos, inclusive habiendo coaliciones de apoyo que cruzan las fronteras políticas tradicionales.

PALABRAS CLAVES: derecho al olvido, eliminación de datos, opinión pública, investigación de encuestas, privacidad digital

Introduction

Princess Matthews is a mother of four and works to stop domestic violence, but you would not have known it before a 2013 New York Times article shone light on how her arrest records for assault, theft, and drug possession shaped her online identity. Although all the charges were expunged or designated criminal mischief, Matthews and her family—since out of the abusive relationship related to her arrests, and trying to help other victims—continue to suffer the stigma of the digital criminal information generated by her past arrests (Segal, 2013). In 2015, after ending her relationship, a woman with a very unique (but not disclosed) name sued Google and Bing after their search engines continued to retrieve numerous sites hosting intimate content posted by her ex. She is so desperate to limit access to the content (she argues she could not even get an internship) that she is asking a judge to order her name be entirely removed from the search engine databases (Marsh, 2017). In October 2016, Comet Ping Pong in Washington, D.C. was falsely and virally accused of serving as a hub for child sex trafficking. While American law provides monetary remedy when lies are spread to negatively impact one’s reputation, the owner of the “Pizzagate” pizzeria, like so many in online claims, did not have easily accessible, financially viable targets to sue, nor did he have the time or resources to pursue such a claim. For these individuals, the continued access to the false information needed to be addressed to mitigate the harms they suffered (Feldman, 2016).

Private data are increasingly made public in a world in which the two spheres are often joined entirely (Marwick & boyd, 2010; Nissenbaum, 2009; Solove, 2004). While existing research, which we will outline below, has considered the legal possibilities of a right to be forgotten in the United States, little research has considered how Americans feel about the issue, and what predicts support or opposition. We use this article to bridge two areas: (i) that related to the law itself, and the legal possibilities and implications for such a law in the United States; and (ii) that related to public perceptions of such a law. While most existing research restricts itself to the former, we think there is
something to be gained by incorporating public opinion analysis into such a project. First, as the United States increasingly considers types of laws like these, it is important to understand whether the public supports such policies. Second, there is strong evidence that lawmakers and courts alike consider public opinion when making decisions about what laws they will introduce, how they will structure them, and how they will be interpreted (Bond & Fleisher, 1984; Mishler & Sheehan, 1993). Third, empirical research has been particularly valuable in policy debates about privacy, its definition, its implementation, and its legal protections (Acquisti & Grossklags, 2005; McDonald & Cranor, 2008; Turow, Hennessy, & Draper, 2017). For these reasons, we first describe the legal framework and history surrounding the Right to be Forgotten, and then consider how different individual characteristics—including demographics, privacy concerns, attitudes about the government, and attitudes toward corporations—predict support for such a law.

**A Right to be Forgotten in America: Background**

It is not easy to manage personal information today. Data are collected, processed, and shared as we move through pages, apps, and physical environments. These data are governed by terms of service, discoverable by clicking the “privacy policy” link at the bottom of many sites or by digging through the settings of a device. The sheer number of policies presented by each and every information exchange, the complexity and length of such policies, and the inability to predict risks based on these policies are a few of the reasons why it is difficult to manage one’s digital identity (Solove, 2013). But, we are also at the mercy of others online. A post in one place may be “re-mediated” online (Chadwick, 2013), ending up in another space or used in an alternative context. Photos may be scrutinized by unforeseen audiences. Or, it may not be information you created at all. Friends, foes, scorned lovers, disgruntled employees, competitors, and strangers may have enough to say about us—and the means and motivation to say it—to cause significant harm. In the United States, the online platforms or data controllers are not required to resolve such issues because the Communication Decency Act Section 230 immunizes platforms from liability or responsibility (47 U.S. Code § 230; Citron, 2014).

On February 8, 2017, New York state assemblyman David Weprin and New York state senator Tony Avella introduced a bill (Bill A05323, http://assembly.state.ny.us/leg/?default_fld=&bn=A5323&term=&Memo=Y) that would provide a right to be forgotten, to help individuals suffering in the complicated Digital Age. In articulating its justification, the bill explains:

This bill seeks to rectify damaged reputations of individuals whose lives have been affected through inaccurate information found online. Currently, the statute of limitations provides that a person may sue within one year of being defamed by a publisher. While this was sufficient when publishing was limited to television and news print, today’s online
publications can resurface in perpetuity through online search engines. This bill would allow an individual to remedy their situation when the damaging information is found to be inaccurate. (N.Y. A05323, 2017)

Bill A05323 would remedy the harms by requiring online search engines and other publishers to remove information about individuals upon their request when such information is “inaccurate, irrelevant, inadequate, or excessive” (N.Y. A05323, 2017). According to the bill, these terms characterize information that is “no longer material to current public debate or discourse, especially when considered in light of the financial, reputational and/or demonstrable other harm that the information, article or other content is causing to the requester’s professional, financial, reputational or other interest” (N.Y. A05323, 2017).

Much of N.Y. Bill A05323 is modeled on the European Union’s (EU’s) right to be forgotten. The EU made waves in 2010 when it announced that the right to be forgotten would be central to its new General Data Protection Regulation (GDPR), but the EU Court of Justice (CJEU) established a right to be forgotten before the final version of the GDPR was even agreed upon, by using various Articles in the 1995 Data Protection Directive—the document the GDPR is to replace in 2018. In 2014, the CJEU found Article 12 (right to access, rectification, and erasure) and Article 14 (right to object) had created a right that allowed users to request the removal of links retrieved when searching their names from search engines (Google v. Spain, 2014). If the links pointed to information that was inaccurate, irrelevant, inadequate, or excessive, the user had a right to its removal from search results (Google v. Spain, 2014). So, today an EU resident can fill out an online form, enter the URLs to be removed, and Google will assess their request (Google, 2017). As of March 22, 2017, Google has removed over 700,000 of the almost two million URLs requested (Google Transparency Report, 2017).

The EU GDPR includes exceptions in Article 17, which provides an explicit Right to Erasure (GDPR 2016/679). The right to erasure will not apply if processing the information is necessary for exercising freedom of expression, or for public interests such as health, historical, scientific, or statistical purposes. The New York law similarly includes exceptions for information regarding legal matters relating to felonies or violence and any “matter that is of significant current public interest, and as to which the requester’s role with regard to the matter is central and substantial” (N.Y. A05323, 2017).

American responses in 2010, when the right to be forgotten was included in plans for the new EU GDPR, were not positive. Criticized as technologically impossible (Masnick, 2011) and an affront to free speech (Krulwich, 2012), U.S. commentators tore down the idea. In addition to the right to continue to express, communicate, or host truthful information, American commentators insist there is a strong right to access information. Emma Llansó, free expression activist, explained, “When we’re talking about a broadly scoped right to be forgotten that’s about altering the historical record or making information that was lawfully public no longer accessible to people, I don’t see a way to square that with a
fundamental right to access to information” (Manjoo, 2015). In defending online mugshots, one operator said, “No one should have to go to the courthouse to find out if their kid’s baseball coach was arrested, or if the person going on a date with tonight has been arrested” (Segal, 2013). This sentiment points to the rising American “right to know” that has developed over the mid-20th century (Schudson, 2015). That said, the right to be forgotten has found stateside support (NPR, 2015). One 2015 survey found nearly nine in ten U.S. voters wanted a right to be forgotten (Trujillo, 2015); with another survey from 2014 putting the figure lower, at 61 percent (Software Advice Industry View, 2014).

While in 2015, 84 percent of Americans wanted “to have control over what marketers can learn from them,” 58 percent believed they had no such control (Turow, Hennessey, & Draper, 2015). In a 2015 Pew research survey, 74 percent of Americans stated that control over personal information is “very important,” but only 9 percent stated that they “had control” (Madden & Rainie, 2015). In 2016, the TRUSTe/National Cyber Security Alliance Consumer Privacy Index initiative found that Americans worry more about data privacy than they do about losing their main source of income (TRUSTe, 2016). A 2016 Pew research survey found that 68 percent of Internet users did not feel that laws were currently doing enough to protect online privacy from advertisers, and 65 percent said the restrictions on government surveillance were inadequate (Rainie, 2016).

Americans care about privacy, but that does not always mean laws pass or rights are created to protect that privacy. For instance, the California state legislature passed a law that took effect in 2015 to address the regrettable things that children do online. For Californians under the age of 18, posts on sites that require a sign-in must be deletable upon request of the minor who posted them. This does not require platforms to delete the data held privately—only what can be accessed by the public—or for the removal of re-postings or comments on the original content (Cal. Bus. & Prof. Code §§ 22580–81, 2015). At the federal level, however, Senator Markey (D-Massachusetts) and Representative Barton (R-Texas) have been unsuccessful finding support for their Do Not Track Kids amendments to the 1998 Children’s Online Privacy Protection Act. The amendments would define minor as children between 12 and 16 and obligate the Federal Trade Commission (FTC) to promulgate rules that would require operators to implement mechanisms permitting a user to erase content that is publicly available.

Most scholarship on the right to be forgotten, including that which has been produced beyond U.S. borders, has focused on the legal practicalities of such a right (Ambrose & Ausloos, 2013; Bennett, Parsons, & Molnar 2014; Koops, 2011; Rustad & Kulevska, 2014; Tsesis, 2014). In the United States, early scholarship on the right to be forgotten challenged its potential constitutionality in light of the First Amendment (Carbone, 2015; Larson, 2013; McNealy, 2012; Rosen, 2011; Walker, 2012), but other scholarship has looked for ways to consider the right to be forgotten within existing American law and/or to bridge the divide it creates with EU law (Cohen, 2012; Jasanoff, 2016; Jones, 2016; Schwartz, 2013). Privacy, including the right to privacy, is a moving target, and public opinion is relevant to the way in which that target moves. A growing and important body of
empirical research in privacy law scholarship has come from various social science methods. Privacy behavioral economists Acquisti and Grossklags (2005) have run numerous experiments and developed analysis explaining the difference between privacy preferences and actual behavior. Privacy engineers McDonald and Cranor (2008) established that it would take 76 work days of every year to read all the privacy policies encountered by the average American Internet user. Communication researchers Turow et al. (2017) have continued to study the way the existence of privacy policies shape users' expectations of privacy protections. Law scholar Citron (2016) has interviewed attorneys general and staff to understand how they develop and implement policies for their states. Public opinion polls and surveys are regularly cited by the FTC (Ohlhausen, 2016), which serves as a sort of de facto privacy agency, and the Congressional record. If we do not engage in empirical privacy research, particularly public perceptions research, as it relates to constitutionally relevant topics, we will not know how constitutional law may be influenced by the changing norms and political philosophy of the people.

Transforming public information into private information is a complicated privacy issue with many potential motivators. One of the motivations for passing a law related to this issue is certainly related to public opinion. Decades of research show that policymakers consider the needs and desires of their constituents when deciding what bills to introduce and to support, and courts also seem to weigh public opinion when deciding how to interpret laws brought before them (Bond & Fleisher, 1984; Mishler & Sheehan, 1993). Despite this, only limited research has looked at public support for a right to be forgotten in the United States (S, 2014; Trujillo, 2015), and then only at the level of support, or the provisions of the law that garner the greatest support (Bode & Jones, 2017). It is therefore not clear what drives support for such a law: demographics, privacy concerns, attitudes about the government, and attitudes toward corporations.

**Expectations**

Demographics—including gender, race, age, and partisan identification—are often associated with political attitudes and behaviors (Verba, Schlozman, & Brady, 1995). Given the particular challenges women face with regard to information privacy online, they tend to be more aware of risks related to online privacy (Garbarino & Strahilevitz, 2004; O’Neil, 2001; Youn & Hall, 2008), and may therefore be more supportive of a right to be forgotten. We therefore expect those who identify as women will be more supportive of the proposed law than those who identify as men (H1).

Partisan identification often affects political attitudes and behaviors (Bartle & Belucci, 2009). In general, Republicans prefer a smaller and less involved government, whereas Democrats prefer a larger government that does more to regulate (Grossman & Hopkins, 2016). Because the right to be forgotten represents
additional regulation, we might expect that Democrats are more likely to support such a law as compared to Republicans (H2).

We have no particular expectations for race or age, but include them as control variables in order to ensure we are not omitting potentially important variables.

Privacy concerns should affect support for the right to be forgotten by making the issues it affects more salient and of greater concern. Concerns about privacy, particularly online, are rampant, but vary dramatically within the population (Garbarino & Strahilevitz, 2004; Madden & Rainie, 2015; Malhotra, Kim, & Agarwal, 2004; Rainie, 2016). Because the right to be forgotten deals explicitly with questions of privacy online, we would expect that those (i) who are more concerned about privacy online, and (ii) who take greater actions to protect themselves online, are more likely to support such a law (H3).

Beyond partisan identification, attitudes about the appropriate role of the government and confidence in the institutions of government should affect how respondents think about the role government might play in online privacy protections. Trust in the government, as well as other societal institutions, has plummeted in recent decades (Pew Research Center, 2015). However, trust or confidence in government institutions is often related to other political attitudes, and the more one has confidence in the government, the more likely one might be to value government involvement in issues. Therefore, we expect confidence in government to be positively related to support for the law (H4).

Relatedly, opinions about the role of the government might also play a role. The right to be forgotten represents a new foray into the world of government, which would represent a nonnegligible expansion of the role of the federal government. Those who think the government is too large, interfering, and burdensome should therefore oppose this move (H5).

Finally, attitudes toward Internet corporations might also play a role, given that they are in control of the manner in which online privacy is currently executed. Greater confidence in those institutions might suggest less need for a law regulating online privacy. We therefore expect that confidence in (A) Google and (B) Facebook should negatively relate to support for the law (H6).

Methods

In order to test our expectations and consider who most supports a right to be forgotten, we executed a survey between May 9 and May 12, 2015. Survey respondents were recruited via Amazon’s Mechanical Turk Service, which pays workers for small tasks like taking surveys. While this is not a random sample, it has been shown to be about as good as other convenience samples that are commonly used in the social sciences (Buhrmester, Kwang, & Gosling, 2011; Casler, Bickel, & Hackett, 2013). A total of 1,380 responses were collected, limited only to those living in the United States, those with at least 500 hits (tasks completed), and those with at least a 95 percent approval rate (Peer, Vosgerau, & Acquisti, 2014). The sample comes close to the national breakdown in terms of
race (76 percent Caucasian, 10 percent African American, 7.5 percent Asian American, with nonmutually exclusive race categories) and gender (52.9 percent male, 46.3 percent female; nonbinary gender options were also offered), but is a bit too young (mean age of 36 years old) and too Democratic (48 percent of respondents identified as Democrats, and only 19 percent identified as Republicans). Respondents gave informed consent, were asked several questions, exposed to a potential right to be forgotten law,8 and answered additional questions before being thanked. Descriptive statistics for each measure are shown in Table 1.

Measures

The key outcome of interest is support for the proposed right to be forgotten law, measured by an item asking: “Given what you’ve just read, to what extent would you support or oppose this law?”

Independent variables are divided into four different categories: demographics, Internet use and opinions, government attitudes, and corporate attitudes.

Demographics

Demographics include age, gender,9 race, and partisanship.

Internet Use and Opinions

Internet use and opinions include several variables related to behaviors and attitudes about the Internet. First, we include a simple measure of frequency of

<table>
<thead>
<tr>
<th>Measure</th>
<th>Range</th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>α</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support for RTBF</td>
<td>1–5, strongly oppose to strongly support</td>
<td>3.70</td>
<td>1.01</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>8–77</td>
<td>35.75</td>
<td>11.98</td>
<td></td>
</tr>
<tr>
<td>Gender</td>
<td>53.3% female, 46.7% male</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Race</td>
<td>75.8% white, 24.2% nonwhite</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Partisanship</td>
<td>3 point scale; 21.1% Republican, 27.3% moderate, 51.6% Democrat</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Social networking</td>
<td>1–4 less often to several times a day</td>
<td>3.08</td>
<td>1.11</td>
<td></td>
</tr>
<tr>
<td>Info sensitivity</td>
<td>1–4 not at all sensitive to very sensitive</td>
<td>2.94</td>
<td>0.57</td>
<td>0.90</td>
</tr>
<tr>
<td>Online confidence</td>
<td>1–5 strongly disagree to strongly agree</td>
<td>2.44</td>
<td>0.59</td>
<td>0.65</td>
</tr>
<tr>
<td>Social media privacy</td>
<td>1–5 strongly disagree to strongly agree</td>
<td>2.18</td>
<td>0.68</td>
<td>0.82</td>
</tr>
<tr>
<td>Govt too large</td>
<td>1–5 strongly disagree to strongly agree</td>
<td>3.22</td>
<td>1.04</td>
<td>0.77</td>
</tr>
<tr>
<td>Govt confidence</td>
<td>1–5 no confidence to quite a lot of confidence</td>
<td>2.89</td>
<td>0.84</td>
<td>0.84</td>
</tr>
<tr>
<td>Facebook confidence</td>
<td>1–5 no confidence to quite a lot of confidence</td>
<td>2.49</td>
<td>1.08</td>
<td></td>
</tr>
<tr>
<td>Google confidence</td>
<td>1–5 no confidence to quite a lot of confidence</td>
<td>3.60</td>
<td>1.05</td>
<td></td>
</tr>
</tbody>
</table>

Notes: Mean, standard deviation, and Cronbach’s α (a measure of how well different items scale together) included only where appropriate. RTBF, right to be forgotten.
social networking use, since such use might affect perceptions of information in those spaces.

Second, we include two measures related to attitudes about information online. The first—“Information Sensitivity”—is an index measuring concerns about information sensitivity online, composed of 16 items asked with the following prompt: “There is a range of information that others might learn about you in daily life. For each kind of information, please indicate how sensitive you consider that information to be—even if some people and organizations already have access to it.” The second—“Online confidence”—reflects concerns about privacy online, and is composed of 10 items using the prompt: “Some people aren’t too worried about privacy today and others are concerned about privacy. We’d like to know how you feel about the topic. For each of the following statements please indicate the degree to which you agree or disagree.”

Finally, we ask a behavioral measure, “social media privacy,” asking what behaviors respondents have taken to protect their information on social media. It averages answers to the following prompt: “Thinking about the ways people might use social networking sites, do you ever.”

**Government Attitudes**

First we asked about the respondent’s preferred size of the government, averaging three measures: “America’s government has gotten way too big,” “The federal government today has too much power,” and opinions on gun control and gun ownership: “What do you think is more important—to protect the right of Americans to own guns OR to control gun ownership?” For this measure, higher numbers indicate a preference for less government in general.

We also asked about confidence in the government, with three measures asking “How much confidence do you have in each of the following institutions in American society?” Answers for the Federal Communication Commission (FCC), FTC, and the Environmental Protection Agency (EPA) were averaged.

**Corporate Attitudes**

Corporate attitudes are measured with regard to two different corporations—Google and Facebook—currently involved in online information protection, and plausibly involved in executing a hypothetical right to be forgotten. Specifically, respondents were asked “How much confidence do you have in each of the following institutions in American society?”, and confidence in Google is a fair amount higher than confidence in Facebook.

**Analysis and Results**

Overall, support for the proposed law is strong—67.1 percent support or strongly support it, whereas only 13 percent oppose or strongly oppose it (the
remainder “neither support nor oppose”). In order to determine which variables influence support for a right to be forgotten law being adopted in the United States, we estimated an ordinary least squares regression with support for the law as the dependent variable. This allows us to see what variables are meaningfully related to support for the law. Results are shown in Table 2.

Several things stand out. First, as predicted (H1), women are more supportive of the law offering a right to be forgotten than are men—70.3 percent of women support the proposed law (either support or strongly support), whereas only 64.7 percent of men do. Concerns and attitudes about information online also seem to play a role, supporting H3. Information sensitivity—that is, how sensitive you perceive your own information to be—is positively related to support for the law. Those that think information is particularly sensitive are more likely to want to see it protected. And online confidence—where higher numbers reflect lower concerns about online privacy—is negatively related to support for the law. Those who are less concerned about online privacy are less likely to support a right to be forgotten.

Attitudes about government control also predict support for the law (preferring a smaller government leads to decreased support for the law), supporting H5. This may suggest a general tendency to approve or disapprove of government regulation or government protection.

Finally, confidence in Google is positively related to support for the law, which is the opposite of what was predicted by H6A. Rather than confidence in Internet corporations reducing the perceived need of a law, perhaps it suggests to respondents that they would be willing collaborators in executing a right to be forgotten.

Notably, this means that we found no support for H2 (party differences), H4 (confidence in government), or H6B (confidence in Facebook).

### Table 2. Ordinary Least Squares Regression Predicting Support for a Right to be Forgotten

<table>
<thead>
<tr>
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<th>β (SE)</th>
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<tbody>
<tr>
<td>Age</td>
<td>0.01 (0.01)</td>
</tr>
<tr>
<td>Gender (F)</td>
<td>0.17 (0.06)***</td>
</tr>
<tr>
<td>White</td>
<td>−0.10 (0.07)</td>
</tr>
<tr>
<td>Party (R)</td>
<td>−0.01 (0.04)</td>
</tr>
<tr>
<td>Social network use</td>
<td>−0.01 (0.04)</td>
</tr>
<tr>
<td>Social media privacy</td>
<td>−0.05 (0.05)</td>
</tr>
<tr>
<td>Information sensitivity</td>
<td>0.11 (0.06)**</td>
</tr>
<tr>
<td>Online confidence</td>
<td>−0.19 (0.06)***</td>
</tr>
<tr>
<td>Confidence in government</td>
<td>0.06 (0.04)</td>
</tr>
<tr>
<td>Government is too large</td>
<td>−0.06 (0.04)*</td>
</tr>
<tr>
<td>Confidence in Facebook</td>
<td>0.03 (0.03)</td>
</tr>
<tr>
<td>Confidence in Google</td>
<td>0.08 (0.03)**</td>
</tr>
<tr>
<td>N</td>
<td>1,047</td>
</tr>
</tbody>
</table>

*Notes: Betas reported, with standard error in parentheses.*

*p < 0.10, **p < 0.05, ***p < 0.01.*
Discussion and Conclusions

Overall this is an important first step in better understanding American attitudes about the right to be forgotten, and how those attitudes are distributed between different segments of the population. While it is important to note that support for the right to be forgotten says nothing of its potential constitutionality, the role of public opinion in acknowledging new or newly conceptualized rights is an ongoing debate and area of research (Fishkin, 1997; Friedman, 2009; Rehnquist, 1975). In any case, American policymakers will continue to be confronted by the issue as more countries around the world establish the right (Jones, 2016).

While most communication law scholarship has discussed the unconstitutionality of an American right to be forgotten (Carbone, 2015; Larson, 2013; McNealy, 2012; Rosen, 2011; Walker, 2012), those who support such a right in the United States have more legal footing than is often acknowledged. American courts have recently and previously found privacy sentiments that prevent the disclosure or continued disclosure of personal information from one’s past. For instance, the Restatement (Second) of Torts from 1977 states that liability is appropriate if secrets are published in a way that “would be highly offensive to a reasonable person... and not of legitimate concern to the public” (American Law Institute, 1977, § 652). A great deal of old, tedious personal information may be harmful to an individual but not newsworthy, and thus potentially an area for further development of an American right to be forgotten. In fact, the Restatement specifically includes “past history that he would rather forget,” and references the burden of criminal pasts, as relevant private information and the American concept of privacy (American Law Institute, 1977, § 652D cmt b). These general principles come from over one hundred years of developments around American privacy—much of which has toiled with right to be forgotten-like concepts.

In 1845, the Supreme Court found that letters critical of a public figure’s past could constitutionally be litigated if “calculated to make [him] infamous, or odious, or ridiculous” (White v. Nicholls, 1845, p. 290). And in 1931 the famous case of Melvin v. Reid (1931) was decided along similar lines by a California appellate court that protected a reformed prostitute from being identified by her real name in a film version of her story in order to protect and promote her rehabilitation. Similarly, in 1971, California’s highest court held that one’s criminal past (namely the plaintiff’s past as a carjacker over a decade before) published by Reader’s Digest was actionable unless the individual had somehow reattracted the public eye to himself in an independent fashion (Brisco v. Reader’s Digest, 1971, p. 40). Even Prosser (1960) admitted in his 1960 “Privacy” law review article, which outlines the modern privacy torts, that the publicness of public records is an important factor but not conclusive. In reflecting on the “troublesome question” of past personal information, Prosser (1960) explained that the issue had not been resolved. Scholars are right to be skeptical of these older cases and commentary, however. In the midst of these redemptive decisions, in 1940, the Second Circuit held The New Yorker liable for invasion of privacy, claimed by a former child prodigy covered in
his youth by the magazine and again, in less flattering light, later as a “where are they now” feature (Sidis v. FR Publishing Corp., 1940). A series of Supreme Court cases protecting the press and media’s right to publish legally acquired truthful information, including Cox Broadcasting v. Cohn (1975), Florida Star v. B.J.F. (1989), and finally Bartnicki v. Vopper (2001), have shaped modern First Amendment jurisprudence. Still, the Court has not granted the press freedom to publish any and all truthful information under any circumstances, and in fact, refused to do so in Bartnicki v. Vopper (2001). These cases also do not speak to intermediary liability law, which changes the conversation around access to information in a world where much speech is mediated through private entities (Balkin, 2014; Klonick, 2018). Thus, the relationship between privacy and speech is an ever-evolving legal terrain ripe for new forms of conceptualizations and/or clarity.

We think this article is an important contribution to privacy scholarship, as it gives legal scholars, policymakers, and courts more information about what support for this policy looks like in the United States, where policymakers and judges have struggled with this issue since the country’s inception (Friedman, 2007). While public opinion is only one factor to examine, it is an important element worth considering, and offers information not just to researchers, but also to policymakers and courts charged with deciding whether this is appropriate policy for the United States. The analysis we present here gives insight into how support for new and relatively unknown policies relates to other attitudes people have about information privacy and the government’s role writ large.

Support for the Right to be Forgotten in this sample is strong, with about two-thirds (67.1 percent) of people backing the proposed policy change. Importantly, this support seems to be somewhat gendered. Although high among both women (70.3 percent) and men (64.7 percent), women express significantly more support. This could be due to the vulnerable state of women online, and specific gendered situations that the policy would be able to address. For example, so-called “revenge porn,” in which a former partner posts embarrassing photographs online, would presumably be covered by this law, and disproportionately affects women (Citron, 2014). This tends to make women more aware of privacy concerns online than are their male counterparts (O’Neil, 2001; Youn & Hall, 2008; though for a notable exception see Hermstrüwer & Dickert, 2013).

This broader finding—that those with more to lose from negative effects of online content are more supportive of the law—is consistent with our results showing that those who perceive their online information to be more sensitive, as well as those who are most concerned about online privacy, feel more strongly that it should be protected via something like the Right to be Forgotten. For example, those who think that online information is not at all sensitive (measured 1 on a scale of 1–4) support the law only slightly (3.25 on a scale of 1–5, where the mean for the entire sample is 3.70). Those who think their information online is extremely sensitive (the 4s on the same measure), are quite a bit more supportive of the law (4.00 as compared to 3.25). This suggests that support for the law, though already high, could even increase as online literacy campaigns (see, e.g., the Data Privacy Project, https://dataprivacyproject.org/) work to make people
more aware of online privacy concerns, especially among younger generations (Marwick, Fontaine, & boyd, 2017).

From that perspective, it is somewhat surprising that age did not play a role in support of the policy, at least in our sample. While young people may have a reputation for ignoring privacy concerns online, recent research shows that they are actually quite savvy in this regard (Marwick et al., 2017). It seems that people of all ages are increasingly aware of privacy issues online (Rainie & Maniam, 2016), perhaps as a result of more ubiquitous use, or perhaps in response to awareness campaigns more specifically. As a result, age may be less of a driver of opinions regarding privacy, and related policy positions like support of the Right to be Forgotten as well. It is also worth noting that race was not related to support for the proposed law. Given the experience that minorities often have with law enforcement in general, and surveillance more specifically (Browning, Cullen, Cao, Kopache, & Stevenson, 1994; Nakamura & Chow-White, 2012; Romero, 2006), we might have expected that nonwhite participants would feel differently about this sort of law. Given that we found no differences, it might suggest that these experiences are already reflected in perceptions of privacy online (which we also measure), or that this particular aspect of privacy is not related to race.

Our finding that feeling the government is too large or intrusive is predictive of support for the law makes sense. Compared to those who are most strongly in favor of a large government role, those who are least in favor are, on average, 21 percent less supportive of the law (3.39 as compared to 4.09). As we predicted (H5), it seems that those who prefer a smaller role for the government are more likely to oppose the introduction of a new policy that could well entail a substantial expansion of the government and its role in our lives.

Finally, confidence in Google positively predicts support for the law (those who have “no confidence” in Google support the law less than average [mean = 3.55], whereas those who have “quite a lot of confidence” support the law more than average [mean = 3.82]). This could represent the specific role that Google might play in enacting a Right to be Forgotten—in Europe, for instance, Google is one of the major players responsible for acting on take-down requests. Greater confidence in it therefore suggests greater comfort with the nuts and bolts of the law itself. Alternatively, people’s confidence in Google may reflect a more general positive disposition toward or understanding of technology, thus leading to greater openness toward management of that technology.

This study is limited in several ways. First, we rely on a convenience sample, which is not representative of the broader population of the United States. Having said that, research shows that samples such as ours are generally unbiased, and as good as other frequently used samples in social sciences (Buhrmester et al., 2011; Casler et al., 2013). This bias may also manifest in that Mechanical Turk workers, by definition, use the Internet. Our sample is therefore more representative of Internet users in the United States as compared to the broader population. As Pew has noted, Internet users are younger, wealthier, more educated, and more likely to live in an urban area than the population as a whole (Anderson & Perrin, 2016).
Second, we cannot tell the difference between people who really care about the right to be forgotten—those who might be activists on the issue—and those who do not really care, but who are simply answering the questions posed to them (Zaller, 1992). Policymakers likely care more about the loud voices on an issue than they do about the relatively apathetic, so for the purposes of understanding public opinion in order to tailor policy to the wishes of the public, our research may be lacking. Relatedly, supporting or even promoting a Right to be Forgotten on the books does not mean it will actually be used. Recent research shows that people only use such a right about 25 percent of the time in a simulated game in which privacy and profit are put in conflict with one another (Hermstrüwer & Dickert, 2013). The existence of the right also did not affect sharing behaviors, suggesting that people are no more cautious with their information when they know that it can be removed.

Finally, this is only one snapshot in time. Our data were collected in mid-2015, and since then several significant events have happened in the United States, including a change of administration, major revelations about how technology platforms like social media have been used nefariously to spread misinformation and foreign propaganda, major data breaches including that of Facebook and Cambridge Analytica, and the #metoo movement. It is very possible that such events have changed perceptions of government, online privacy, and gendered issues, and may likewise impact our findings, were we to replicate the survey in the current political environment.

The lack of support for theoretically driven expectations may actually suggest that this law cuts against traditional divisions in American politics. Rather than a left–right divide, it seems to draw on broader opinions about the role of government and corporations, as well as concerns about privacy online. This could suggest an uphill battle in gaining support for such a policy, since traditional coalitions might not work to mobilize support.

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Notes

1. Notably, some platforms take responsibility for certain categories of information posted on their sites. For instance, Google allows users to request removal of revenge porn and Facebook removes hate speech targeting specific individuals.

2. EU GDPR 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, “GDPR”), Article 17(3).


6. The right to be forgotten is a very broad concept. A right to be forgotten may refer to a number of different circumstances including deleting personal information from a computer database, delisting search results online, or limiting the continued public reference to an individual on television. We asked participants to declare support for various forms of the right to be forgotten which were administered by different parties (government or private organization), applied to different categories of people (those with criminal records, children, etc.), and altered the length of time the information was available (number of years). Thus, we did not define the right to be forgotten explicitly, but instead used a number of scenarios.

7. Participants were paid 50 cents for a 10 minute survey, gave informed consent before beginning the study, and they were allowed to skip any questions they did not wish to answer. They were assured that the study was entirely voluntary, that declining to participate or withdrawal from the study at any time would not result in a loss of any benefits to which they were entitled, that their data would not contain identifying characteristics, and that it would be protected in a number of ways from improper use and disclosure. This is consistent with recommended ethical best practices as outlined in Mason and Suri (2012).

8. Full text of the law, including prompt given to respondents: “Please read the following text about a proposed law carefully. To ensure you have time to read the whole thing, the ‘next’ button will not display for 35 seconds. The U.S. Congress is considering passing a law to address negative impacts of [children’s] personal information found online. The law would require the operator of a [site/search engine] to delete or otherwise prevent public access to [old or outdated] personal information [of a minor under 18] when the subject of the information informs the operator of his or her objection, except when the individual is a public figure (celebrities, politicians, etc.), [including/excluding] information related to criminal activity. Under the law, individuals who object to their personal information being available online will submit their objections to the [site/search engine/new government agency in charge of executing this law] to assert their claim, where the validity of the objection will be assessed. If the [site/search engine/new government agency in charge of executing this law] determines the objection is valid, the [site/search engine] must take the information in question down. If the user disputes the [site’s/search engine’s/government agency’s] determination, the claim may be pursued in state court.” Note that the proposed law itself was manipulated in several ways to determine how small changes (who it affected, who was in charge of execution, how old information had to be to be eligible) affect support. For the purposes of this study, however, we are interested in predicting overall support, rather than focusing on small differences in the text of the law. For that reason, we collapse across all experimental conditions, and any effects of the manipulation should wash out over the larger...
sample. For more information on the experimental design, see Bode and Jones (2017). We do estimate our model with and without experimental condition control variables included, and it makes no substantive difference for interpretation of our key variables (see Appendix, Table A1).

9. 53.3 percent male, 46.7 percent female; options including trans (0.6 percent) and other (0.2 percent) were offered but are dropped from analysis for clarity of interpretation.

10. Items included: Your basic purchasing habits—things like the foods, clothes, and stores you prefer; Who your friends are and what they are like; The state of your health and the medicines you take; Your relationship history, including people you have dated or were romantically involved with in the past; Searches you have made using online search engines; The Websites you have visited; Your religious and spiritual views; The content of your phone conversations; Your political views and the candidates you support; The numbers you have called or texted from your phone; The content of your text messages; The media you like—such as your tastes in music, movies, books, Websites, magazines; Your birth date; The content of your email messages; Details of your physical location over a period of time, gathered from the GPS data from your cell phone; Your social security number. All items were presented in a randomized order. This measure comes from a Pew survey fielded in 2014—http://www.pewinternet.org/2014/11/12/public-privacy-perceptions/.

11. The items are: “I appreciate that online services are more efficient because of the increased access they have to my personal data. I am willing to share some information about myself with companies in order to use online services for free. It is hard to avoid surveillance cameras when I am out in public. If inaccurate information about me got posted online, it would be very difficult to get it removed. American citizens should be concerned about the government’s monitoring of phone calls and Internet communications. Consumers have lost control over how personal information is collected and used by companies. It is easy for me to be anonymous when I am online. It is a good thing for society if people believe that someone is keeping an eye on the things that they do online.” One additional item (“When I meet new people, I assume that they might search for information about me on the internet”) was originally included but dropped because it was sufficiently unrelated to the others. The order of all items was randomized. This item comes from a Pew survey fielded in 2014—http://www.pewinternet.org/2014/11/12/public-privacy-perceptions/.

12. Items include “Delete or deactivate a profile or account, Delete or edit something that you posted in the past, Set up your profile or account so that it automatically includes your location on your posts, Block people, Delete people from your network or friends list, Remove your name from photos that have been tagged to identify you, Delete comments that others have made on your profile or account, Post fake information like a fake name, age, or location to help protect your privacy, Post updates, comments, photos or videos that you later regret sharing, Share inside jokes or coded messages that only some of your friends would understand.” This item comes from a Pew survey fielded in 2013—http://www.pewinternet.org/2013/05/21/teens-social-media-and-privacy/. Items rescaled where appropriate such that higher levels reflect doing more to protect privacy.

13. These measures were included in a battery with two additional unrelated statements: “Government uses tax dollars to provide things we all need (e.g., highways and parks),” and “The First Amendment goes too far in the rights it guarantees,” which are not used in this analysis.

14. These items were included in a larger battery which also included Facebook, Google, the health care system, Comcast, and the United States Government, in addition to these three measures. The order in which institutions were presented was randomized.

15. These items were included in a larger battery which also included the FCC, the health care system, Comcast, FTC, EPA, and the United States Government, in addition to Google and Facebook. The order in which institutions were presented was randomized.

16. Note that the measure has five categories, which makes it roughly continuous. Ordinary least squares is robust and easier to interpret than an ordered logit, which is why we prefer this model specification. Ordered logistic regression produces identical results in terms of significance, with the exception that confidence in government is also significant. Full results available upon request from the authors.

References


Sidis v. FR Publishing Corp. 1940. 113 F.2d 806 (2d Cir. 1940).


White v. Nicholls. 1845. 44 U.S. 266 (U.S. Supreme Court, 1845).


## Appendix

Table A1. Ordinary Least Squares Regression Predicting Support for a Right to be Forgotten, Including Controls for Experimental Conditions

<table>
<thead>
<tr>
<th></th>
<th>β (SE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>0.01 (0.01)</td>
</tr>
<tr>
<td>Gender (F)</td>
<td>0.16 (0.06)**</td>
</tr>
<tr>
<td>White</td>
<td>−0.09 (0.07)</td>
</tr>
<tr>
<td>Party (R)</td>
<td>−0.01 (0.04)</td>
</tr>
<tr>
<td>Social network use</td>
<td>−0.01 (0.04)</td>
</tr>
<tr>
<td>Social media privacy</td>
<td>−0.05 (0.05)</td>
</tr>
<tr>
<td>Information sensitivity</td>
<td>0.12 (0.06)**</td>
</tr>
<tr>
<td>Online confidence</td>
<td>−0.19 (0.06)**</td>
</tr>
<tr>
<td>Confidence in government</td>
<td>0.05 (0.04)</td>
</tr>
<tr>
<td>Government is too large</td>
<td>−0.06 (0.04)*</td>
</tr>
<tr>
<td>Confidence in Facebook</td>
<td>0.03 (0.03)</td>
</tr>
<tr>
<td>Confidence in Google</td>
<td>0.08 (0.03)**</td>
</tr>
<tr>
<td>Exp condition: kids</td>
<td>0.07 (0.06)</td>
</tr>
<tr>
<td>Exp condition: crim info</td>
<td>−0.02 (0.06)</td>
</tr>
<tr>
<td>Exp condition: search engine</td>
<td>0.16 (0.07)**</td>
</tr>
<tr>
<td>Exp condition: website</td>
<td>0.22 (0.07)**</td>
</tr>
<tr>
<td>Exp condition: time</td>
<td>−0.02 (0.06)</td>
</tr>
<tr>
<td>N</td>
<td>1,041</td>
</tr>
</tbody>
</table>

*Notes: Betas reported, with standard error in parentheses.  
*p < 0.10, **p < 0.05, ***p < 0.01.*