Preface

Almost 30 years ago, a few privacy advocates set about the task of evaluating privacy practices around the world.[1] The project arose as countries were expanding systems for surveillance, creating identification requirements, and proposing limitations on encryption. The framing of the new report was human rights, "Privacy and human rights." The starting point were the annual country assessments, prepared by the US Department of State, to document compliance with international human rights obligations. A single question in the State Department report inquired into each country's privacy practices and provided documentation in support of an assessment.[2]

The advocates added additional questions and conducted independent research. They drew on the expertise of leading scholars in the privacy field and published reports from government agencies. They carefully documented their findings. Although the human rights focus was clear, the tone was objective and authoritative. Readers were left to decide for themselves whether the practices uncovered were favorable or unfavorable.

The first report was a couple dozen pages, hand-stapled in the corner, passed out at conferences among advocates, experts, and government officials. There were many typos. In one stack of collated reports, several pages were missing. Over time the report ***Privacy and Human Rights: An International Survey of Privacy Laws and Developments*** grew. Countries were added, new topics were explored. The network of experts went from a handful in a few countries to several

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[1] The effort was launched by Simon Davies, the founder of Privacy International. *Privacy International – a foundation stone of the global privacy movement – turns 25 today* (Mar. 17, 2015), http://www.privacysurgeon.org/blog/incision/privacy-international-the-foundation-stone-of-the-global-privacy-movement-turns-25-today-privacyint/; *About PI – The Interim Report Members 1990-1991* (Nov. 25, 1991), https://web.archive.org/web/20101202201847/http://www.privacyinternational.org/article.shtml

[2] The question is derived from Article 12 of the Universal Declaration of Human Rights and asks about a country's "Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence." U.S. Department of State, Bureau of Democracy, Labor, and Human Rights, *2019 Country Reports on Human Rights Practices, Appendix A, Notes on the Preparation of Country Practices and Explanatory Materials,* https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/

hundred across more than 50 countries. The report was published online and on a CD-ROM. By the final publication in 2006, the print edition exceeded 1,100 pages and 6,000 footnotes. The printing house reported that it would no longer be possible to print the *Privacy and Human Rights* report in a single volume. The binding capacity of the press has been exceeded.

The annual *Privacy and Human Rights* report was influential. The report was discussed at the annual meetings of the data protection and privacy commissioners. The *Privacy and Human Rights* report called out countries engaged in practices that violated human rights. The report also recognized countries that were passing new laws and creating new agencies to address emerging challenges. *The Privacy and Human Rights* report highlighted the work of NGOs, the activists who led campaigns, pushed for legal reforms, and ultimately strengthened democratic institutions. The country reports provided the basis for comparative assessments. Over time, metrics were developed to provide both ratings and rankings of country practices.[3]

And the *Privacy and Human Rights* report was fiercely independent. No companies sponsored the report. No government could control its content. And the contributors were committed to accuracy. There were occasional mistakes, but they were corrected in subsequent editions. And readers were always invited to share information and updates for future editions. Reporting and evaluations followed lengthy research, discussion, and debate.

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The **AI Social Contract Index** begins with a similar purpose and a similar ambition. We are witnessing today rapid changes in our society brought about the deployment of new technologies, broadly grouped under the banner "artificial intelligence." To be sure, many applications of AI are

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[3] Dave Banisar has continued to map national privacy law to the present day. David Banisar, *National Comprehensive Data Protection/Privacy Laws and Bills 2020* (Nov. 30, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1951416. Graham Greenleaf, also one of the early participants in the project, has since pursued extensive work on comparative privacy law. His most recent survey is Graham Geenleaf, Global Tables of Data Privacy Laws and Bills (6th Ed), SSRN (May 30, 2019) (there are now 132 countries with privacy laws listed in Graham's Global Table), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3380794

promoting innovation, economic growth, and medical breakthroughs.[4] But those achievements often announce themselves. They attract investment dollars and research grants. More difficult is the assessment of controversial systems, such as the use of AI for criminal sentencing, for hiring, or for public administration. AI as *facial recognition* to unlock a cellphone is a wonderful innovation. AI as *face surveillance* to monitor people in public spaces is an Orwellian nightmare.

How to assess these practices objectively and fairly? We begin today, as we did almost 30 years ago, looking for well-established norms and sources of authoritative assessments. The OECD/G20 AI Principles provided a starting point, as did the Universal Declaration for Human Rights, the most widely recognized legal instrument for fundamental rights. We developed a methodology, drawing on the work of international human rights organizations and data protection experts. We revised questions as our work progressed, and new factors were uncovered. We recognized early on the difference between a country's endorsement of a key principle, such as "fairness," and a country's implementation of that principle. Endorsement is easy to measure; implementation, not so much. In highlighting this distinction, we hope others will also look more closely at the difference between what countries say and what they do, all with the larger purpose of closing that gap. And we knew we could not look at the practices of all countries, so we chose those countries (again relying on objective metrics) that we thought would be most impactful.

We also reported the excellent work of civil society groups, particularly in Europe, that have undertaken their own assessment of AI policies and public attitudes, organized public campaigns, and put forward proposals to update the law. Groups such as AccessNow, AlgorithmWatch, Article 19, BEUC, EDRi, Homo Digitales, vzbv, and once again, Privacy International, are shaping the public debate over new technologies and preparing democratic institutions for the challenges ahead.

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[4] And even AI-derived medical breakthroughs should be subject to traditional methods for scientific proof. Nature, *Transparency and reproducibility in artificial intelligence* (Oct. 14, 2020) ("Scientific progress depends on the ability of researchers to scrutinize the results of a study and reproduce the main finding to learn from. But in computational research, it's not yet a widespread criterion for the details of an AI study to be fully accessible. This is detrimental to our progress."), https://www.nature.com/articles/s41586-020-2766-y

In the construction of the methodology, we made clear our commitment to democratic values. In the AI policy field, political leaders often speak of "human-centric AI" and "trustworthy AI." These are key objectives for the age of AI, but progress toward these goals will require new legal instruments, reflecting public concerns, commensurate with the actual impact of these systems. That is a process that occurs through democratic institutions that are open and transparent. This report should help in those efforts.

And those efforts are already underway. We made the best attempt we could to ensure that our summaries and assessments were accurate at the time of publication in December 2020, but it is likely that we missed key developments. We will post addendum for the *2020 AI Index*, prior to the publication of the *2021 AI Index*, at the website of the **Center for AI and Digital Policy** (caidp.dukakis.org).

The first edition of the *AI Social Contract Index* is more than the few dozen pages that comprised the first report on *Privacy and Human Rights*, and there is no staple in the corner. We also have the advantages of the Internet to promote distribution and to translate texts from original languages. Still there is a lot more to do – more countries to cover, more topics to explore, additional metrics, better summaries and visualizations, and other techniques to promote public understanding.[5] The *AI Social Contract Index* is still in the early days.

This was an ambitious project, all the more remarkable that it came together in a few months, late in the year 2020, not one of the great years in world history. It is difficult to describe the gratitude I feel toward the people who worked with me on this project. Leaving EPIC was not in the plan. And I was not sure what would be ahead. On this new adventure, I joined with old friends and made new friends. They made this publication possible. As we were all volunteers in this endeavor, there was nothing to offer other than the possibility of interesting research and a meaningful outcome. Although writers often thank contributors in the context of a particular publication, I also owe deep thanks to those who worked with me during this unusual time. I could never thank them enough. And a special thanks go to my close friend, formerly with the OECD, Anne Carblanc. Out of

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[5] The World Justice Project, for example, provides an impressive model for those studying Rule of Law. https://worldjusticeproject.org/. Other notable projects include the Global Accountability Project run by the One World Trust.

thoughtful argument there is progress. And by the end of this project, we made a lot of progress.

Tuan Nguyen brought me to the **Michael Dukakis Institute** in the summer of 2020 and together we launched the **Center for AI Digital Policy** with a modest mission – "to promote a better society, more fair, more just — a world where technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law." We have set a good course, though the journey will be long.

The extraordinary research team, listed here, is a wonderful group, dedicated, thoughtful, and hard-working. In our weekly meetings, they presented draft country reports, which we all reviewed and discussed in detail. Several sessions were devoted to the methodology, which improved over time. And in many emails and many edits, we went back and forth over various sections of the report, always trying to be sure we had the most accurate and up-to-date descriptions and the most authoritative sources. There was never a shortage of emails! We are grateful also to the outside reviewers for their expert comments and suggestions, which we tried our best to incorporate.[6]

Governor Dukakis has been an inspiration for me since the early days, growing up in Boston. His optimism about the future combined with his passion for social justice resonates deeply.

And the fam was always there. Thanks, Anna, Chaz, and Chloe.

Still, we are not ending a project. We are at the beginning. So, we close the forward to the first report on *Artificial Intelligence and*

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[6] Our reviewers included Suso Baleato, Harvard University; David Banisar, Article 19; Franziska Boehm, Karlsruhe Institute of Technology; Joy Buolamwin, Algorithmic Justice League and MIT; Isabelle Buscke, vzbv; Nazli Choucri and Nechama Huba, MIT; Christian D'Cunha, European Commission; Graham Greanleaf, UNSW Faculty of Law; Yuko Harayama, RIKEN; Joi Ito, Center of Complex Interventions; Amb. Karen Kornbluh (ret.); Gary T. Marx, MIT; Hirsoshi Miyashita, Chuo University; Ursula Pachl, BEUC; Lorrayne Porciuncula, Internet and Jurisdiction Policy Network; Yves Poullet, University of Namur; Katitza Rodriguez, co-editor, *Privacy and Human Rights*; Ben Shneiderman, University of Maryland; Cristos Velasco, Evidencia Digital.Lat; Robert Whitfield, One World Trust / World Federalist Movement; Gabriala Zanfir-Fortuna, Future of Privacy Forum; Marcel Zutter, Boston Global Forum. Several unnamed reviewers offered helpful comments but asked not to be identified. Also, all errors remain the responsibility of the editor.

Democratic Values as we often closed the forward to the annual *Privacy and Human Rights* report, asking for your feedback and advice, and looking forward to the next edition.

Please visit us at caidp.dukakis.org, and send us your suggestions for the 2021 edition of the *AI Social Contract Index* to marcrote@mac.com. You willl find this report and related material at caidp.dukakis.org/aisci-2020/.

Marc Rotenberg
Center for AI and Digital Policy
Michael Dukakis Institute
Washington, DC
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