

Discrimination and Distinction in the Age of Personalization

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The information age has brought about many changes, some of which carry great promise. One of them is the enhanced ability to provide personally customized interfaces. The transition to personalized interfaces constitutes a substantial change in the conduct of businesses as well as state agencies, and it is made possible by several technological developments (such as advanced tracking and enhanced information processing capabilities). The law has a major role to play in the transition to personalization. The law can encourage this transition, prevent it and even compel it in certain contexts. But beyond that, the law itself may need to be customized to address different citizens differently. Moving to personalized law can promote values of efficiency, equality and fairness. On the other hand, there is a rising concern regarding the dangers of discrimination that must be detected and prevented.

In their fascinating articles in Hebrew and English, Porat and Strahilevitz explain how personalization might revolutionize many fields of law. They demonstrate this in several contexts, focusing on setting default rules in contract law and disclosure rules that will be tailored for different people according to their characteristics. Naturally, when a system addresses individuals in a different and tailored manner, discrimination-related issues come to mind. In this article, I address several discrimination-related critiques of legal personalization. Specifically, I focus on issues related to discrimination's expressive function, particularly by way of reinforcing existing stereotypes through distinctions derived from the authors' suggested models. Furthermore, I will examine whether the authors' responses to the discrimination-based critiques are satisfactory or discrimination-based criticism of the personalization practices present a significant challenge in the legal context. I will also consider possible solutions which might allow for the expansion of personalization in legal systems, while providing appropriate safeguards to mitigate discrimination-based concerns.