

ON PRIVACY

by GARY T. MARX

Privacy, like the weather, is much discussed, little understood and difficult to control. It is a multi-dimensional concept with fluid and often ill-defined, contested and negotiated borders, depending on the context and the culture. Along with its opposite, *publicity*, it is none-the-less a cornerstone of modern society's ideas of the person and of democracy.

As the impacts of computerization on society (and the reverse) become ever more apparent, issues of privacy and publicity are vital for understanding society and for the creation of the good society.

Privacy and *publicity* are nouns. For purposes of explanation they can be seen as polar ends of a continuum. This perspective draws attention to the moral or normative aspects of withholding and disclosing of information and asking, or not asking, for information. Depending on the context, social roles and culture, individuals or groups may be required, find it optional, or be prohibited from engaging in these activities.

These in turn involve a broader area called the sociology of information. Governing rules here vary from situations where information must be kept private to those where it must be made public (or, perhaps better, must be revealed – whether as part of a confidential relationship or to the public at large). There is considerable subjectivity with respect to expectations about how information is to be treated.

In contrast, *private* and *public* are adjectives that can tell us about the status of information. They describe whether or not the information is known. This has an objective quality and can be relatively easily measured. For example, the gender of persons we pass on the street is generally visible and known. The information is “public.” In contrast, the political and religious beliefs of pedestrians are generally invisible and unknown.

This essay is forthcoming as an entry in *Blackwell Encyclopedia of Sociology*, G. Ritzer editor.

Of course, normative expectations of privacy and publicity do not always correspond to how the adjectives public and private are applied to empirical facts. Thus the cell phone conversations of politicians and celebrities that have privacy protections may become public. Information subjected to publicity requirements such as government and corporate reports and disclosure statements may be withheld, destroyed or falsified. Information not entitled to privacy protections, such as child or spouse abuse, may be unknown because of the inaccessibility of the home to broader visibility. Confidential or classified information may be leaked, hacked or mistakenly released.

Privacy and publicity can also be thought of in literal and metaphorical spatial terms involving invisibility-visibility and inaccessibility-accessibility. The physical privacy offered by a closed door and walls and an encrypted email communication share information restriction, even as they differ in other ways. Internet forums are not geographically localized, but in their accessibility can be usefully thought of as public places, not unlike the traditional public square.

Privacy needs to be separated from related terms. *Surveillance* simply involves scrutiny (often using technical means that extend the senses) for a variety of goals such as control, protection, management, documentation and entertainment. It is a way of discovering information. It might involve the obvious invasions of privacy as with selling the results of DNA and other testing to insurance companies, illegal wiretapping or spyware placed on a computer. Yet surveillance can also be the means of protecting privacy. Consider biometric identification and audit trails required to access some databases or defensive measures such as a home security video camera.

Privacy is inherently social. The term was irrelevant to Robinson Crusoe when he thought he was alone on the island. It is social in the sense that it implies an “other” from whom information is withheld, or to whom it is supplied and who might, or might not, be under equivalent expectations to reveal and conceal.

Social roles structure the treatment of information and this often involves issues of power. Thus close friends in an equal relationship are expected to reveal parts of themselves that they would not reveal at the mall or at work. Sharing one’s inner thoughts and feelings is expected to be reciprocal. A relationship of intimacy is partly defined by the mutuality of revelation. This contrasts with the more impersonal roles of doctor and patient. Thus the revelations of a patient to a doctor are not likely to be reciprocated.

Rules regarding who can collect personal information, what is collected,

the conditions under which it is gathered and how it is used (and by whom) are very much connected to social stratification. Rose Coser (1961) uses the felicitous phrase “insulation from observability” to describe the norms and resources that protect the actions of higher status roles in bureaucratic organizations.

Many contemporary concerns over privacy invasion involve large organizations and their employees and customers or police and suspects, professionals and clients, as well as interpersonal relations as with parents and children. In these contexts the rules are relatively clear about who can ask or observe, and who is expected to reveal or is entitled to conceal. Situations involving power differences with respect to gender and ethnicity can also reflect information inequality. On the other hand, maids, valets, butlers, chauffeurs, personal assistants often know a great deal about the private lives of those they work for and this tends to be unreciprocated.

Confidentiality often accompanies expectations of privacy. It reminds us that information issues are fundamentally social. It refers not to the initial revelation or creation of information, but to an expectation that personal information, once legitimately known by others, will be treated appropriately. This may involve sharing it according to established rules (e.g., as in medical treatment involving several specialists who discuss a patient), but otherwise keeping the information *secret* (as with social security numbers that must be given to an employer).

Secret is an adjective like private which can be used to describe the status of information. In restricting information, *secrecy* overlaps privacy. But it goes beyond it to characterize the information protecting activities of organizations, as well as individuals. It generally has a culturally and morally more ambiguous status than privacy.

When personal privacy is viewed as a *right*, it calls attention to the individual’s ability to control the release of information. This does not mean that it cannot be shared, but that the individual has a choice. The 5th Amendment for example does not prohibit individuals from offering information, it simply prohibits this from being coercively obtained.

In contrast, the rules applying to secrecy are more likely to involve an *obligation* which prohibits the release of information. This is often accompanied by sanctions for violation. In principle, individuals and organizations don’t have a choice about divulging information appropriately deemed to be secret. Such protective rules, along with the fact that the very existence of the secret may be unknown to outsiders, can protect untoward behavior. As Georg Simmel (1950) suggested, the secret, whether legitimate or illegitimate, can also be a factor contributing to group solidarity.

Some Types of Privacy

In the age of new surveillance we increasingly see techniques that break through borders that previously protected personal and organizational data, whether involving computer databases, internet monitoring, video-cams, drug testing, RFID chips or DNA analysis. As a result, questions of *informational privacy*, or the ability of individuals to choose what information about themselves will be offered to others and how this will be treated, are important social issues. Rights to freedom of religion and thought, association and speech are fundamental here.

Another form of privacy calls more explicit attention to behavior itself (rather than information about it) this involves *decisional privacy*. Consider, for example, personal choices involving reproduction and the refusal of medical services, as well as lifestyle issues such as sexual preference. The right to liberty is fundamental to this.

A concept encompassing both of the above involves privacy as *access* to the person. The metaphor of a border or wall surrounding the person can be applied. Is it (and when should it be) impenetrable or porous? To what extent can the individual, in principle and in actuality, control information flowing *outward* involving telephone or computer communication, credit card and other transactions, beliefs and feelings, location, facial appearance, or biometric data such as DNA, voice print, heat and scent?

Conversely, to what extent can the individual control information and stimuli going *inward* sent from others? This goes in the other direction – entering rather than leaving the person. The desire for solitude, often viewed as an aspect of privacy, can be seen here. Individuals seek to screen out undesirable sounds, smells and sights, whether these involve propaganda and advertisements, or unwanted music and cooking smells from an adjacent apartment. This is part of an expectation to be left alone.

The telescreen in George Orwell's novel *1984* illustrates both forms. It transmitted the viewer's image and communication to Big Brother, while simultaneously broadcasting propaganda to the individual. There was only one channel and it couldn't be turned off.

A more descriptive definitional approach simply looks at the institutional setting. Thus we can speak of privacy as it involves consumption, finances, employment, medical, religious, political and national security arenas. We can also consider a particular means used or activity (e.g., locational privacy, communication privacy – whether involving computers, telephones or television). Distinct types of data may be involved – e.g., financial,

genetic or beliefs and these can be expressed in different forms – e.g., as numbers, narratives, images or sound. While there are commonalities, expectations and practices vary depending on the setting, means, activity, content and data form. Social science and philosophy have only begun to disentangle these.

Some Cross-cultural Aspects

While information control is a factor in all societies, and some activities such as procreation and elimination are generally shielded from others, there is enormous historical and cultural variability. (Moore 1984) The Greeks, for example, placed the highest value on public life. One's sense of identity was found there. Privacy, being the realm of slaves, women, and children who were restricted to the home, was not valued. To be private meant *deprivation*. In traditional communal societies where life is lived in close proximity to others, the distinction between privacy and publicity has little meaning.

We also see differences in how contemporary societies protect privacy. With respect to personal information issues, relative to Europe, in the United States there is greater emphasis on the liberty to choose behavior and less government regulation – whether of monitoring in the workplace or of organizations that buy and sell personal information. Large organizations warehouse and sell vast amounts of personal data on the most intimate of subjects, generally without the consent, and with no direct benefit to the subject.

In contrast, the secondary use of information in Europe generally requires the informed consent of the subject. In much of Europe citizens are offered general protection from new, potentially privacy-invasive technologies through Constitutional guarantees involving (a rather unspecific) right to personhood or personal dignity. Europe, Canada and many Asian societies also have privacy commissions charged with protecting privacy and anticipating future problems.

The approach in the U.S. is to regulate technologies on a case-by-case basis as they appear, rather than on the basis of a broad inclusive principle. This is particularly the case for new forms which are dependent on judicial review or legislation specifically crafted for the technique. This in turn is often dependent on some indignation-raising misuse becoming public and a drawn-out political process. Individuals also have greater responsibility for protecting their own privacy, whether through using protective technologies or suing privacy invaders (assuming the invasion can be discovered).

Conceptions of privacy (and publicity as well) are relatively new and are related to the emergence of the modern nation-state and the economic and political rights associated with capitalism and democracy. Rules requiring privacy and publicity are very much a part of the modern state and, while going in opposite directions, developed in tandem.

Private property, particularly the home, suggested a location to be protected from outsiders. A laissez faire marketplace where participants pursued their self-interest required strategic control over information and the idea of information as property. The metropolis, with its social and geographical mobility and larger scale, offered a kind of anonymity unknown to the small village and new means for validating the claims of strangers. Larger living quarters meant more physical privacy as societies became richer. Most homes now have more than one bedroom and individuals have the possibility of their own bed.

Political democracy required both openness in government as a means of accountability and public discussion of issues. The latter required citizens with the liberty to form associations who were free to express their views in the public forums of civil society and who needed protection from government interference. Yet government was also given limited powers to cross personal borders to gather information relevant to health and safety, criminal justice and national security in an increasingly complex and interdependent world.

Privacy is usually thought of as something belonging to individuals. The ability to control information about the self is central to the personhood and dignity implied in the notion of the modern citizen. However the ability to control information is also significant to group and organizational borders. Privacy is a social as well as an individual value. (Regan 1995) For example a legal oppositional political group (or indeed any group) needs to be able to control information about members, resources and plans and to feel that freedom of expression within the group is respected. To the extent that a group's borders are porous – punctured by informers and intensive surveillance – its ability to act strategically is weakened and of course democratic ideals are undermined.

Privacy can be seen either as a commodity or as a right to which individuals are entitled. The social implications of the view taken are quite different. As a commodity, individuals may sell, trade or be coerced into giving away their private information (e.g., for frequent flyer miles or the convenience of using a credit card). They may pay for privacy protection, as well as purchase personal information on others – note the large number of internet sites offering this service.

The U.S. constitution is seen by many scholars to imply a right to privacy, although this is not explicit. Justice William Douglas in *Griswold v. Connecticut* (1965) used the term “penumbra” in identifying various places where “zones of privacy” were guaranteed (e.g., 1st, 3rd, 4th and 5th Amendments to the constitution). Some state constitutions (particularly in the Western states) guarantee a right to privacy, as do the constitutions of most European countries. Privacy is also protected by organizational policies and privacy protecting technologies (e.g., encryption, shredders and devices to discover eavesdropping bugs).

The notion of unrestrained, all-powerful, privacy invaders with ravenous and insatiable information appetites waiting to pounce on the unsuspecting individual is too one-sided. Most organizations are inhibited by values and by concern over negative publicity, should they go too far in crossing personal information borders. Furthermore as the work of Erving Goffman (1956) suggests, through manners and rituals we also cooperate, to varying degrees, with each other to maintain individual privacy and self-respect.

WORKS CITED

- Alderman, E. and Kennedy, C. 1995. *The Right to Privacy*. New York: Knopf.
- Allen, A. 2003. *Accountability for Private Life*. Lanham, MD: Rowman and Littlefield.
- Bennett, C. and Grant, R. (eds) 1999. *Visions of Privacy*. Toronto: University of Toronto Press.
- Brinn, D. 1999. *The Transparent Society*. New York: Perseus.
- Coser, R. “Insulation from Observability and Types of Social Conformity.” *American Sociological Review*. 1961. 26: 28-39.
- Flaherty, D. 1972. *Privacy in Colonial New England*. Charlottesville: University Press of Virginia.
- Gandy, O. 1993. *The Panoptic Sort: A Political Economy of Personal Information*. Boulder, CO: Westview Press.
- Goffman, E. 1956. *The Presentation of Self in Everyday Life*. New York: Doubleday.
- Lyon, D. (ed) 2003. *Surveillance as Social Sorting*. London: Routledge.
- Marx, G. *Windows Into the Soul: Surveillance and Society in an Age of High Technology*. Chicago: University Chicago Press, forthcoming.
- “Murky Conceptual Waters: The Public and the Private,” *Ethics and Information Technology*, 2001, vol. 3, no.3.
- Marguilis, S.T. (ed.) “Contemporary Perspectives on Privacy: Social, Psychological, Political” *Journal of Social Issues*, 59 (2003): 243-261.
- Moore, B. 1984. *Privacy: Studies in Social and Cultural History*. N.Y.: M.E. Sharpe.
- Regan, P. 1995. *Legislating Privacy: Technology, Social Values, and Public Policy*. Chapel Hill: University of North Carolina Press.
- Rule, J. 1974. *Private Lives and Public Surveillance: Social Control in the Computer Age*. New York: Schocken Books.
- Shils, E. 1956. *The Torment of Secrecy. The Background and Consequences of American Security Problems*. Glencoe, Ill.: Free Press.
- Simmel, G. 1950. “The Secret and the Secret Society” in K.W. Wolff (Ed.) *The Sociology of*

Georg Simmel. New York: Free Press.
Solove, D. 2004. *The Digital Person*. New York: NYU Press.
Westin, A. 1967. *Privacy and Freedom*. New York: Atheneum.
Whitman, J. 2004. "The Two Western Cultures of Privacy: Dignity Versus Liberty," *Yale Law Review*. 113: 1151-1222.
Zureik, E. and Salter, M. 2005. *Global Surveillance and Policing*. Devon, UK: Wilan.