

Digital Öffentlichkeit

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Users may be shocked to find that Facebook is sharing information about them that they had never provided it. This shouldn't be possible. If you haven't told Facebook something it should not know it. A number of newspapers and organizations ran with the story and the line that this was an invasion of privacy.¹ As is typical the response in online message boards suggests pulling back from being a part of the public sphere all together, as that is the only way to really protect your privacy.

What these views of privacy seems not to understand is that the social graph is not merely a practice of collection, but an inference technology.² The reason why one would organize the information into the graph is so they might look for commonalities. What the social graph does is use enumerated lists of information about a person and synchronize it with reasonable generalizations about that person. It just so happens that these generalizations tend to be accurate.³

This is nothing new. For decades firms engaged in psychodemographic research have used granular proxies to make inferences about you.⁴ If you subscribe to Guns and Ammo, you tend to be politically conservative. At its peak, the psychodemographic inference was at the heart of a best selling investment advice book.⁵ People have been judging books by their covers for decades – and usually, they are right.

But what does any of this have to do with privacy?

It doesn't. An inference about you is not an expression of your ideas, Facebook is not contractually bound not to think about you, and because of the way that Facebook serves ads, no one knows what Facebook thinks about you. Your privacy is being violated because Facebook is thinking about you? If this is the case – what does privacy even mean? Does privacy mean that you can only ever be thought of alone?

The nested theory of privacy in objections to social inference is symptomatic of something larger. Privacy now means something more than being let alone, or having some framework for resisting the endemic surveillance state. Privacy means something else – something more intense. Privacy can be understood (1) as five distinct ideological

¹ Bede McCarthy and Robert Crookston, "Facebook reveals secrets you haven't shared yet," *Financial Times*, March 11, 2013. The original study has a very different tone and has some great jokes. Michal Kosinski, David Stillwell, and Thore Graepel, "Private traits and attributes are predictable from digital records of human behavior," *Proceedings of the National Academy of Sciences*, 2013.

<http://www.pnas.org/content/early/2013/03/06/1218772110.full.pdf>

² There are any number of sources on this. For a Bayesian approach see: Johan Koskinen and Tom Snijders, "Bayesian inference for dynamic social network data," *Journal of Statistical Planning and Inference*, 137, (2007).

³ The examples in the FT article are particularly weak at exposing risky information, this will become important later.

⁴ Psychodemographic research has been particularly stable as a way to engage in direct mail targeting. This was cutting edge marketing for decades. See: Arthur Asa Berger, *Ads, Fads and Consumer Culture*, 3rd ed. (New York: Rowan and Littlefield), 2007.

⁵ Harry Dent, *The Roaring 2000s*, (New York: Simon and Shuster) 1999.

moves, which are (2) progressively responses to the development of new technologies of observation. Privacy has become a shibboleth for anxiety (3). Privacy has exhausted its potential as both a cultural and theoretical category, as it is broad and confused. Instead the framework of being left alone should be displaced by a framework of relational coordination and boundary negotiation, which offers a superior way of understanding the function of resistance against visibility in the public sphere (4).

What is Privacy?

In Warren and Brandeis original formulation of privacy in 1896, privacy was presented as an extension of an existing set of legal rights to property and contract, with a final extension toward a right to be let alone that would exist independent of those initial arguments.⁶ The exigency for this theory of privacy is the invention of rapid photography – in the past the right of contract would be adequate to see the protection of privacy in as much as one might know. Rapid photography would offer a real chance to capture secrets, and the new distribution media of the late nineteenth century would create a market for formerly secret information. As for the relationship with the photographer, the relationship would be put into stark relief. If one were sitting for a portrait session or publicity photographs there would be a clearly formed contract with the photographer, there would surely be a meeting of the minds. Photographs taken outside of this context for the purposes of sale would be clearly defamatory. What this framework of property and contract misses is the real chance that the image taken would not be defamatory, or worse yet that the agent producing the photograph might conceive of itself as the government.

The creation and extension of privacy rights in the negative sense, the right to be left alone, or as an extension of the ninth amendment, is a necessary construction for understanding the figure/ground relationship of American law.⁷ The default position of the American public sphere is some sort of proto-Rousseauian form of individualism, the general pretense of both major political parties in the United States, and almost all contemporary political movements, assumes an individualistic society. The purpose of the ninth amendment in this context is to create what is known as a decision rule topologically ordering value positions. There can be no cost-benefit analysis in this framework as the right to not be interfered with would seemingly precede the ability to collect knowledge that one would use for analysis. For the most part ninth amendment theory is popular with the Law and Economics movement in their attempt to create a

⁶ Samuel Warren and Louis Brandeis, “The Right to Privacy,” *Harvard Law Review*, 4:5, (1896).

⁷ For a particularly conservative reading of this argument, see Randy Barnett, “Implementing the Ninth Amendment,” in *The Right Retained by the People*, ed. Barnett, (Arlington, VA: George Mason University Press), 1993. For a more general overview of 9th amendment jurisprudence see: Brian Kalt, “The Ninth Amendment in Congress,” *Pepperdine Law Review*, 40, (2012).

legal protection for economic activity.⁸ At the same time, Feminist critiques of privacy have quite rightly pierced the veil of this absolute form of control. A non-porous boundary around the home is the perfect legal shield for violent persons to hide behind.⁹

Technologies have come a long way since Brandeis time. Or in the context of understanding privacy, the progression of media technologies determines what kinds of protections we need. Satellite observation, Carnivore, automated listening devices, National Security Letters, and a host of other panoptic technologies should lead not need enumeration given the framework of the ninth amendment, the negative right to be left alone should be adequate to secure against intrusion.¹⁰ Unfortunately, it is inadequate. In a panoptic society, privacy takes on a new role. William Bogard's formulation of hyper-privacy entails an attention to the ways in which privacy is replaced by a simulacrum.¹¹ What is so distinctive about the simulacrum of hyper-privacy is that it replaces the criteria of being left alone with a reasserted right of property. For Bogard profile control and management is not in fact a form of privacy protection but a form of interpassive activity – as long as I own and control it, it doesn't matter that I have been seen.

Once visibility and thus cultural legibility are inscribed within the privacy framework, the purpose of privacy has reverted to the most basic position that Brandeis saw necessary to extend. Resignation to compensating visibility with property is a description of the post-modern condition more than anything.

In *On Anxiety*, Renata Salecl describes the recent history of anxiety, and anxious times.¹² Not to give away the ending of the introduction but – anxiety is an ontological condition, not an aberration. In a situation where visibility is total, it would seem only natural that forms of visibility manipulation would appear in themselves. Voyeurism finds expression in the ritual violation of privacy in the form of Facebook creeping or stalking. Privacy in this sense is meant to be violated, the very activity of populating a

⁸ Understanding Barnett is the key here. This is why the Law and Economics movement is at its best when arguing for Libertarian ends, and seemingly strange when arguing for cost-benefit analysis above all else.

⁹ The critique and benefits of privacy need to be balanced. Annabelle Lever, "Feminism, Democracy, and the Right to Privacy," *Minerva*, 9, (2005).
<http://www.minerva.mic.ul.ie/vol9/Feminism.html>

¹⁰ This sentence is intended to sketch a rough image of an utterly panoptic mode of affairs. Although it appears that administrative flaws may soon end the National Security Letter program. Ellen Nakishima, "FBI surveillance tool is ruled unconstitutional," *Washington Post*, March 15, 2013. http://www.washingtonpost.com/world/national-security/fbi-surveillance-tool-is-ruled-unconstitutional/2013/03/15/d4796396-8db9-11e2-9f54-f3fdd70acad2_story.html

¹¹ This may be the single strongest post-modern critique of privacy. The key idea that I am not using from this work is the alternative – for Bogard the end state of hyper-privacy and panopticism would be a reality cascade where the legitimation crisis of the visibility would implode the conditions of the public. Although I appreciate his optimism, represented by his Hugh Borg argument, the collective, and panoptic post-modern culture continue. William Bogard, *The simulation of surveillance*, (New York: Cambridge University Press), 1996.

¹² Renata Salecl, *On Anxiety*, (New York: Routledge), 2004.

profile would seemingly require that one would like it to be viewed. In this deformation privacy has come to be mean something different – it is an expression of its inverse, disclosure. It should not be difficult to understand the function of privacy as an empty signifier at this point – you are reading others interpretation of privacy in such a way that they might coordinate boundaries effectively with you, not in such a way that they might not be known.

I am taking a risk by telling you this...

In interpersonal communication research there has been a marked turn from privacy toward self-disclosure as an analytical category. At the forefront of this turn has been the work of Sandra Petronio.¹³ The purpose of changing positions is multiple. Privacy in the most basic form involves a study of what you do not tell others, research on this act of not communicating is difficult as it is a negative in itself. What is far more interesting, and has a much more vigorous archive, is the question of disclosure, especially when it comes to painful or risky information. The analysis of disclosure comes with another robust theoretical commitment in critical interpersonal communication research – to relational dialectics theory. Leslie Baxter and Barbara Montgomery developed the theory as an approach that could appreciate the ways in which communication occurs in context, in a trajectory, over time.¹⁴ Driven by Bakhtin, relational dialectics focuses on the interplay of centripetal and centrifugal forces in a contrapuntal play where meaning is made.

Relational dialectics provides a robust framework for understanding communication in the context of the utterance chain. Petronio's communication boundary management theory uses this approach to understanding the ongoing process of negotiation between people that constitutes their experience of the social network. You are constantly working to determine your linkage to other persons and what information you will share with those people on the basis of criteria both about the information and the likelihood that that person will share your information. Even more interesting, is the way in which persons pre-emptively attempt to set the criteria by which information will be deployed across their networks, this is the use of phrases that would direct your conversation partner not to disclose information.

Given the relatively risky kinds of information that might circulate about someone and the ongoing process of boundary negotiation, users have a great deal invested in their control of information flows. Normally, if one found that someone with a linked boundary had disclosed sensitive information they would elect to renegotiate that boundary. In the case of Facebook, this can only exist in as much as you continue to control your profile settings. Unfortunately, because of the inferential mechanism of the graph itself, the choice is reduced to a binary – exist with a porous partner or extricate

¹³ For an overview of Petronio's contributions see Em Griffin, "Communication Privacy Management Theory of Sandra Petronio," in *A First Look at Communication Theory*, (New York: McGraw Hill), 2008.

¹⁴ Leslie Baxter and Barbara Montgomery, *Voicing Relationships*, (Thousand Oaks: SAGE), 1998.

yourself fully from the social network. Once the only meaningful option appears to be the exit option from a network politics are quickly distorted.

Facebook's Heartbeat: Toward a Contrapuntal Reading of Network Systems

As a communication partner, Facebook depends on centripetal force. The network is designed to stabilize your core network in time and to allow you to have control of who sees your information. On the other hand, Twitter is centrifugal. It sprays your tweets to anyone who wants them. They networks could not be more different.

In the later part of 2012, concerns grew within the advertising community that changes in Facebook's edge rank system would increasingly foreclose free access to networks of people. Mark Cuban, a popular sports team owner and occasional dancer, felt particularly betrayed by the real chance that a great deal of effort was wasted building a fan following for his team on Facebook, only to see the algorithm change.¹⁵ The purpose of the algorithm is to make the experience of Facebook manageable, to deliver the content that you really want, such as new relationships, children, marriages, and deaths. Facebook serves a kin-keeping function, a highly centripetal role. Yet as users exercise control of their profiles and share selective, they choke Facebook's access to saleable insights. This leads to a cycle where your disclosures are widened and then curtailed by the users, the rhythmic vibration of ongoing boundary negotiation is a heart beat.

Twitter on the other hand depends on users need for information. Twitter is not a place for conversation but micro-broadcasting. Consider the case of popular sports opinion journalist Jay Bilas. He follows no one. Aziz Ansari meta-tweeted it thusly: "Would you guys be bummed if I said I never read @ replies anymore cause I felt it was wasting time? [#HowWouldIFindOutIfIDidntReadEmAnyway](#)"¹⁶ This is the truth of the centrifugal network – it only exists in as much as you want to receive. Bilas or Ansari might only need to respond or converse if the legacy media didn't already establish them. Boundaries only exist on Twitter in the decision to engage in turn taking. A retweet from a celebrity indicates that they have chosen, however elusively to form a relational linkage with you. The future of Twitter comes in embedding advertisements into the stream, as they are nothing more than a micro-broadcaster.

These are not symmetrical systems. Twitter only becomes stable in as much as it exists in the moment. On a corporate level they strictly control what information is available for research. Keep this in mind when you read stories about Twitter volume – they elected to release that information. They don't to it every day. The center of Twitter, the figurative mind of the moment, is kept hidden from public view. There is no ground on which to form a centripetal network within Twitter itself, aside from the appeal of broadcast itself.

Many of the methods for revenue creation that Facebook has involve intentionally violating the coordinated boundaries: allowing messages into your inbox, using your

¹⁵ Alex Rameriez, "Facebook's New Edge Rank Algorithm: Mark Cuban v. Brian Solis," *The Content Standard*, January 11, 2013. <http://www.contentstandard.com/content-marketing/facebooks-new-edgerank-algorithm-mark-cuban-vs-brian-solis/#.UUepX1t4b3M>

¹⁶ Stable link, <https://twitter.com/azizansari/status/309811896255647746>

likeness in advertisements, inserting them in between stories about your friends and family. Facebook makes money when they break the relational rules and cause relational turbulence. It is important to note at this point that relationships are not linear. What RDT and CBM reveal is a complex ongoing trajectory of meanings in any relationship. The alternative to this process is not a happy relationship, but stagnation.

Critical Stagnation

Just as relationships stagnate, so too can the grounds for critique become fetid. Asserting ownership of personal information does nothing to understand the utterance chain that has made participation in Facebook meaningful. Privacy as deleting library records seems small to someone who has lived through/is in the state of exception where total surveillance is necessary – this also obviates the right to be left alone – you were never alone. We should disabuse ourselves of the bourgeois Romantic fantasy of being left alone in a strong welfare or warfare state. Not only is asking for the recover of this state of affairs obsolete but hopeless. In the last instance, your only recourse is to take the exit option, to cancel your accounts, and wait at least five years for the hope that the servers will be purged. The price of privacy in this sense is simply too high.

Brandeis is an important figure in developing the theory of privacy in American law, he is also important in understanding publicity. Perhaps his most famous quote – “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” The quote comes from a magazine article where Brandeis argues for the dissemination of relevant facts about financial products to the public. Mere access to facts isn’t enough: they need to circulate throughout the public. In this sense Brandeis foreshadows the Habermasian conception of the public sphere, which is better understood as the process of publicity. The German term for this is *Öffentlichkeit*, a term with no direct English equivalent, referring to the way that people link boundaries, share information, and test ideas with each other.¹⁷ Ideal speech situation this is not.

To truly publicize misdeeds and see their correction through dialectical process for Brandeis would entail the wide diffusion of information, mere knowledge would not be enough. Conversely, privacy would not be infringed upon if someone simply knew something without you knowing it. The mere fact that publicity has a use does not require that all information be disclosed evenly, and the power of publicity for testing arguments is very real, if bounded.

What relational dialectics can do best is provide a way for understanding the ongoing negotiations of counter publics. Michael Warner described this in his list of ideas for understanding counter publics, in particular the idea that they might form by mere attention. Subaltern counter publics function because they have formed centripetal network hubs, persons have moved from positioning counter public spaces as existing as a figure, to an actually existing affective network. In short, we learn a lot more from the times when publics organize themselves around a disclosure than when they fail to form. Privacy would be better understood as a double negative response to the question of disclosure – why are you not, not disclosing? Or in the positive form, why are you taking that risk?

¹⁷ Hans Klensteuber, “Habermas and the Public Sphere,” *The Public*, 8:1, (2001).

In any event, if the nature of privacy in our theoretical constructions requires that we ablate publicity, the cure is far worse than the disease.

Disclosure and the Future

The great potential of publicity is that it produces a reservoir of meanings that could be translated into action, this rhetorical understanding of communication is in sympathy with a theory of interpersonal communication that sees people engaged in an ongoing, constitutive, articulate, process of negotiating boundaries and building meaning together.¹⁸ Understanding that privacy has become an empty signifier stands in contrast with dampening ongoing boundary negotiations – it cleans up the messy, conflicted relationships that animate human life.

In this context Mark Zuckerberg's 2010 statement should be understood differently: "The way that people think about privacy is changing a bit. What people want isn't complete privacy. It isn't that they want secrecy. It's that they want control over what they share and what they don't."¹⁹ Zuckerberg's argument is not that privacy is obsolete, or that all information should be fully public, but that in the context of ongoing boundary negotiations persons often choose to disclose information about themselves for any number of reasons. This is not an uncommon communication decision. What is less productive is the counterfactual view of privacy where persons seemingly existed in an anonymous mass. If Facebook were made for reasons of privacy to stop engaging in relational boundary testing behavior, its heart would stop.

Privacy will remain a term for public debate, just as we have always lived in an age of anxiety. This may be the redeeming quality of privacy – because it is so empty, it can never be settled, it exists in ongoing dialectical play, and in that sense, if privacy becomes a synonym for boundary coordination, it could be very useful for publicity as well.

¹⁸ This is inline with most contemporary critical-constitutive rhetorical theories.

¹⁹ Emma Barnett, "Facebook's Mark Zuckerberg, 'People do not want complete privacy online,'" *The Telegraph*, May 21, 2010.
<http://www.telegraph.co.uk/technology/facebook/7748851/Facebooks-Mark-Zuckerberg-people-do-not-want-complete-privacy-online.html>