Debate

Autonomy beyond privacy? A rejoinder to Bennett

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When debating ‘privacy’ we need to distinguish, as Bennett does, between the concept—that is, the framing of the issue—and the regime—that is, the concrete policies and their enforcement in particular contexts. However, the discussion is in danger of becoming self-referential. We fail to consider the changing nature of the practices by which people, acting under various constraints, make personal information accessible to others. In terms of the regime, it is easy to agree with Bennett that we have to work strategically with whatever resources we have at hand within the landscape of constraints in which we happen to find ourselves. It is not much use to wish for a different world. Presently, the privacy regime is capable of mobilizing a powerful set of resources to strengthen ever-threatened individual and collective self-determination against the encroachment of, or manipulation by, powerful institutional actors. These appeals can be relatively effective because that regime privacy is relatively well embedded institutionally, legally, and discursively. It comprises numerous established actors, private and public. They can rely on a patchwork of existing laws, regulations and guidelines to legitimate their agendas, and make widely understood and well-resonating claims on behalf of the public by invoking the right to privacy. It would be foolish to give up such resources in exchange for, well, what? The lack of clearly articulated and implementable alternative is the strongest argument in favour of current privacy regime, and one that also its critics readily acknowledge. There is nobody within this debate—except for the proverbial straw man—that would not favour expanding, or even advocate weakening, the privacy regime.

In terms of the concepts, the problem begins with the lack of even a working definition of what is meant by privacy. Indeed, it seems to be characteristic of the current state of the debate that definitions are not even attempted any more. Helen Nissenbaum, in a recent and innovative attempt to update the concept, states early on that she does not aim to ‘carve a pathway through the conceptual quagmire to claim a definition— [my] definition—of privacy’ (2010, 3). The same goes for Bennett, who, in place of a definition, refers to Solove, stating that

privacy is a convenient conceptual shorthand way to describe a cluster of problems that are ‘not related by a common denominator or core element. Instead, each problem has elements in common with others, yet not necessarily the same element—they share family resemblances with each other’.

However, it remains unclear which problems constitute this particular cluster, or what their family resemblance might be.

Bennett then goes on to defend the undefined concept against a number of common critiques. I focus on two of them to explain why I find the defence not particularly convincing. The first critique taken up by Bennett is that privacy is all ‘about me, me, me’, based on liberal notions of (possessive) individualism. Rather than defend this core element of the liberal conception of politics and civil society, as many continental European privacy advocates do very eloquently (see, for example, Rössler 2002; Sofsky 2008), he claims that the debates have moved beyond this liberal foundation by stressing that privacy is a social, political and thus collective value, rather than an individual one. He paraphrases Regan on the point that we must ‘frame the question in social terms, because society is better off if individuals have greater levels of privacy’. In this, however, I cannot find an indication that the concept is moved beyond its individualistic core. Rather, it is simply an acknowledgement that questions of individuality are to be understood as historically and socially mediated, rather than as essentialist. As such, they are, of course, embedded in social processes, but it is precisely these collective processes that constructed the notion of privacy centring around isolated individuals and their ability to engage in ‘a dynamic process of negotiating personal boundaries’, as Bennett quotes Steeves. Thus, the defence offered here is a shift from a philosophical to a sociological argumentation that does not fundamentally change the central role of the liberal conception of the individual—now rooted in society and history rather than in ‘a sort of state of nature’—to the concept of privacy.

The second point I want to address is the claim that the ‘panoptic sort’ necessarily operates in secret and that the privacy regime allows to make this transparent, leading to the claim that, thus ‘when companies are watched, the “panoptic sort” can be revealed’. While this is not necessarily wrong—there are, of course, plenty of examples where companies had to change their policies after a public outcry over them. The problem is not only that this approach doesn't scale—as Bennett acknowledges—but, more importantly, that social sorting is increasingly communicated to the public as a service, capable of rendering personal and individualized relationships to large institutions. It is precisely here, in the ‘positive’ forms of social discrimination based on institutional control over personal information, where the concept of privacy—even contextual privacy—reveals its most glaring inadequacies.

To understand this, we need to move beyond the concept and the regime and look at the practice, that is, we need to reassess why a majority of people, at least in Western countries, value privacy in theory—that is, when responding to surveys—but are willing today to surrender very private information in unprecedented quality and quantity to the most opaque of institutions. This valuing of privacy reflects, in my view, some more or less explicit shadows of the liberal political theory which established the connection between privacy and personal and collective freedom in the first place. From this perspective, privacy is not an end but a means to our ability to determine for ourselves how to engage with the world. This autonomy is valued both in its individual and collective, political dimensions. Without privacy personal freedom and democratic decision-making—relying on an informed, active, confident citizenry—would be severely weakened. The ‘autonomy of the will’ (to use Kant's expression) is the core of the liberal political theory that still dominates the collective imagination. Thus, when people value privacy, they value personal and political self-determination.

There are numerous instances where people have to provide personal information in situations where they have little bargaining power, and this is well explored in the literature.¹ This is bad enough, but why, then, are people also willingly and voluntarily providing so much personal information in contexts they most likely know they cannot fully control, for example, on social networking sites?² Is it that self-determination at the personal and social level are no longer valued? Or is it that people simply do not

¹ See, for example, the recent study by Maurizio Lazzarato (2010) on the invasive new procedures that the unemployed are subjected to in France.

² For a recent public opinion survey on privacy attitudes and social networking, see <http://press-room.lawyers.com/Lawyerscom-2010-Social-Networking-Survey-Press-Release.html>

understand the grave consequences of their actions until there is an ‘Exxon Valdez of Privacy’ (Felten 2006). We can rule out the former, as personal freedom is more than ever a core value across the political spectrum (collectivist approaches have all faded) and we should also not count on the latter, because assuming people have a false sense of their own day-to-day lives makes for a poor starting point to understanding their behaviour—not least since none of the many privacy incidents of the last decade has had the necessary transformative quality.

But how else can we understand the clear disconnect between what people say when asked about privacy and how they behave in everyday life? I propose to look at this everyday behaviour and see it as the basis for the contemporary construction of personal and collective self-determination, in the limited ways that such autonomy can usually be realized in complex day-to-day situations. This would indicate that, on some level, the link between privacy and autonomy is being transformed.

Self-determination in the network society

To understand this transformation and its particular connection to the notion of privacy, it is necessary to separate the processes at the ‘front-end’ of, say, social networking sites from those at the ‘back-end’. By ‘front-end’, I mean the interfaces that user interact with, and the information that is made accessible through these interfaces. By ‘back-end’, I mean the servers and databases that support the activities of the users, but are only accessible to the owners of the infrastructures and can be used for purposes other than those of the front-end. At the front-end, providing personal information expands the user’s autonomy in two regards. First, she makes herself available for networking with others by providing the raw material for social trust; that is, information about who she is, what she has done in the past, and what she cares about now. Because social collaboration increasingly takes place informally among individuals rather than among institutions, it is necessary to know who that person is, personally, rather than being able to rely on the formal dimensions that govern the relationships of individuals. Increasingly, social networking is becoming the condition through which to pursue individual goals, by connecting people with the resources (information, other people, opportunities, etc.) necessary to act autonomously—that is, to be able to follow their particular agenda for life. There are both a positive as well as a negative scenario driving people to make themselves, as individuals, publicly available. There is the promise to find people and resources to help one achieve one’s goals—whatever these are—and there is the threat that if one is not visible and accessible, society will simply forget about you. Disconnected from the flows of information and resources, one is rendered powerless and invisible. If the implicit threat of disciplinary society was punishment (Foucault 1979), then the implicit threat of the network society is disconnection and redundancy. A node that does not actively contribute to the network’s performance will be disconnected (Castells 2004).

However, it is not only the relationships between individuals being transformed; those between individuals and institutions are also changing. In a complex information environment, institutions have become adept in providing highly personalized services. Rather than treating all users/customers the same, it is their particular promise to treat everyone different, providing just what each of them needs. These institutions no longer appear as bureaucracies, but as personal, almost intimate, service providers. They do so, not only because they are good at spinning their public image,³ but also because the quality of the services provided increases with the amount of personal information provided by the user. The institutions appear to get to know one very intimately. There are very tangible advantages to fine-tuning one’s profile, both in terms of what other people see and what the service provider can offer. Of course, the service providers are actively nudging people into this direction, for example, by providing uniform log-in across the platform, so that users can be more easily tracked for purposes the user might not favour, but even then, there are direct, tangible benefits to the users for going along with it. Thus, there is an perceivable

³ Google still portrays itself as a group of creative individuals, even though it has more than 20,000 employees.

increase in personal autonomy—constructed within networks and communities of resource sharing, leading to a forms of ‘networked individualism’ (Wellmann 2002; Tseng and Li 2007) —that is directly related to giving up privacy, or at least, to making oneself visible to unknown others. What is being created in the process could be called multi-directional, horizontal visibility. People seeing each other, for the better or worse. The notion of ‘contextual integrity’ (Nissenbaum 2010) falls short here, because in many cases the context is extremely fuzzy. How bounded is the social space that comprises friends of friends of friends? Subsequently, at the front-end, there are powerful drivers that, on an everyday level, show that by providing personal information generously and without too much worrying about privacy, individual autonomy—and the ability to act in groups—can be increased.

The situation is very different at the back-end. Here, the relationship between autonomy and privacy is more traditional. Powerful, centralized institutions are amassing very large amounts of very detailed personal data, which is being used to further the interests of the owners of the infrastructures, which may, or may not, coincide with those of the users.⁴ Rather than producing multi-directional, horizontal visibility, what is being created is traditional, bureaucratic one-way, vertical visibility and the power-differential that comes with it. Very few people can see great numbers of people, individually and aggregated, without being seen themselves. The resulting possibilities to use this power at the expense of the front-end users have been well-detailed by introducing the concept of ‘social sorting’, that is the ability to create ‘classifications ... designed to influence and to manage populations and persons thus directly and indirectly affecting the choices and chances of data subjects’ (Lyon 2003, 13).

Yet even here, being sorted through classificatory schemes does not necessary need to be regarded negatively. The ability to treat people differently is formulated as personalized service to enhance the user's autonomy; in fact, it is the very core of personalized institutions. As a result of promoting one's own visibility and receiving personalized services, one can increase personal autonomy. Traditionally, when ‘the iron cage of bureaucracy’ was the primary danger, privacy was a useful means towards this end. But in the highly dynamic information environment, where we need to have some form of filtering in order not to be overwhelmed by the all the information and all the options, this is less and less the case.

The conclusion from this is not to argue that we do not need the privacy regime or that the concept should be abandoned in total. Rather, we should start from the understanding of what privacy is conventionally thought to achieve: individual and social self-determination. We need then to review the contemporary conditions under which this goal can be advanced and assess the role of privacy in advancing it. Today, it requires both the ability to make oneself visible to others in relatively open settings, as well as means of mitigating the resulting power-differentials between the users who provide personal and those institutions which collect, aggregate and act upon this information. The notion of privacy is of limited use in the context first dimension, but remains vital in relation to the second.

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⁴ I detailed the scope of this information gathering in the case of Google elsewhere, see Stalder and Mayer 2009.

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