



The Ethics of Privacy

An Introduction by Derek Linney

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“Given how important privacy is for individual and collective wellbeing , it is striking that it has not enjoyed a more central place in philosophy.”

Topics

- What is Privacy?
- History of Privacy
- Legal Recognition of Privacy
- The Right of Privacy
- Privacy and Social Relationships
- Privacy vs. Security
- Waiving rights
- Current challenges
- Readings

What is Privacy?

- We know what it is but cannot easily define it
 - Seems to be a family of overlapping rights and conventions
 - Relatively recent concern of philosophy (and law) except in the concept of public / private space
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a. Private spaces

- Freedom of behaviour within private spaces
- Freedom from intrusion into private spaces

b. Control of your image/voice etc.

c. Control of the dissemination of information about you and your activities

History of Privacy

- Concept of private vs. public sphere existed from ancient times
- Late 19th/ Early 20th Century: Legal Attention (USA)
 - Use of one's image (photographs) for commercial purposes
 - Growth of mass newspapers and printed media
- 1970s onwards
 - concern about government information gathering
- 2000s onwards
 - concern about use (misuse) of data – private & government
- 2020s
 - growing concern about misuse of data by large corporations
 - concern about surveillance: cameras / facial recognition
 - concern about social media, fake news, revenge porn etc. etc.

Legal Recognition of Privacy of Letters - UK

- In 1635, the English Royal messenger service was opened up to public use.
- In 1657 the Royal Mail system was formalised
 - “That from henceforth there be one general office, to be called and known by the name of the Post-office of England and no other, shall have the receiving, taking up, ordering, sending forward, and delivering of all letters and packets which shall from time to time come and go to and from all parts and places of England, Scotland, and Ireland ...”¹
 - Centralised control over written letters meant that a new order of knowledge about crime, political conspiracy, and foreign threats to the realm could be smoothly and secretly obtained, giving rise to new strategies for gathering intelligence, disrupting plots, and prosecuting crimes. From 1657 onwards, the only legal control over this practice was that no one could open a letter in transit except under the authority of a warrant issued by a government minister.²

1. *Postage of England, Scotland, and Ireland settled* (Act of Parliament, 1657 c.30, 9th June 1657)

2. “A very brief history of interception”, *LSE Blog*

Legal Recognition of Privacy - UK

- Other than the interception of mail acts, specific laws on privacy were only enacted by adoption of the *Human Rights Act 1998*
- English law historically recognised no right to privacy per se. In seeking to protect privacy claimants had to rely primarily on the law of breach of confidence, which allows for the protection of confidential information. Other areas of law which might protect privacy include trespass, nuisance, defamation and malicious falsehood

The absence of a right to privacy was in 1991 confirmed by the Court of Appeal in *Kaye v Robertson* and *Sports Newspapers Ltd* when the judge, Lord Bingham, said that the "monstrous invasion of privacy" of the claimant did not entitle him to any relief in English law.

Legal Recognition of Privacy - USA

- 1890: Brandeis and Warren "Right to Privacy", *Law Review*
 - The first publication in the U.S. to argue for a right to privacy.
- 1960: William L. Prosser: "Privacy", *California Law Review*
 - Outlined four torts that would allow someone whose privacy was violated in one of those four ways to sue the perpetrator for damages. These torts are still used today:
 - Intrusion upon seclusion or solitude, or into private affairs;
 - Public disclosure of embarrassing private facts;
 - Publicity which places a person in a false light in the public eye; and
 - Appropriation of one's name or likeness.

The Right of Privacy

- Reductionist
 - There is no distinct right of privacy, but it emerges from other established rights – e.g. freedom from harm, property rights etc.

See: Judith Jarvis Thompson, “The Right to Privacy”,
Philosophy and Public Affairs, 1975

- Non-Reductionist
 - Privacy is a distinct right and cannot be derived from other rights
 - Any attempt to derive it from other rights doesn’t capture the essential sense of intrusion when one’s privacy is violated

See: Thomas Scanlon, “Thompson on Privacy”,
Philosophy and Public Affairs, 1975

- Is privacy purely conventional?
 - We eat in public but defecate in private

Privacy as Fundamental to Social Relationships

The personal information we share is fundamental to distinguishing the differing social relationships we have with:

- Spouse
- Parents
- Children
- Close Friends
- Acquaintances
- Work colleagues
- Work superiors
- Strangers
- Our doctor

If inappropriate information about us is available to all and sundry, then it undermines the nature of our distinct relationships

See: James Rachels, "Why Privacy is Important", *Philosophy and Public Affairs*, 1975

Privacy vs. Security

- Do security issues trump privacy rights?
 - Yes, the security of society / individuals is the more important right
 - No, privacy is fundamental and security issues are about preserving society's values including the right to privacy
- Came to the fore after 9/11 and the rise of terrorism in western cities

See: Kenneth Himma, "Why Security Trumps Privacy" and Adam Moore, "Why Privacy and Accountability Trump Security" in Moore, Privacy, Security and Accountability – Ethics Law and Society, 2016

Waiver of Rights

- If I enter your home uninvited then I am infringing your right to privacy
- But what if you invite me into your home and show me into the sitting room while you go and make coffee?
 - I pick up a magazine from the coffee table
 - I browse along your bookshelf
 - I take down a family photo album from the bookshelf and flick through it
 - I go to the bathroom and take a peek in your medicine cabinet
 - I go into your bedroom and take a look to see what books / magazines you keep in your bedside cabinet

Waiver of Rights

- Waivers of rights in online interaction should not be abused
 - E.g. websites ask about how your information can be used but generally say nothing about how long that data is kept
- A salutary experience:
 - Signed into Google > Account > Data & Privacy > More Options > Download or delete your data > Download your data
 - My download was over 500Mb of data, of which 150Mb were records of my activities
 - E.g. on 18th Nov 2016 I searched, among other things, for
 - “blood pressure and red bush tea”
 - “blood pressure and liqourice”
 - “Musee de la Caricature”
 - “critics of satirical print as social history

Implicit Waiver of Rights?

- Is it an invasion of privacy if A's homosexual affairs are publicised in a tabloid newspaper?
- Does your answer to the above change if I tell you that A is a prominent TV presenter and news reader?
- Does your answer to the above change if I tell you that A is a TV evangelist who espouses traditional family values and condemns homosexuality as a sin?

Rapidly Changing Battleground

- Tech Companies
- Government Surveillance (friendly and hostile)
- Social Media
- Unregulated media companies
- AI technologies – facial recognition, generated content etc

Legislation and the enforcement of privacy laws struggle to keep pace.

Is there sufficient debate on the general principles of privacy (i.e. the philosophical position) as opposed to specifics?

Further Reading / Sources

- Carissa Véliz, *The Ethics of Privacy and Surveillance*, Oxford University Press, 2024
- Steven Cahn & Carissa Véliz (Ed.), *Privacy*, Wiley Blackwell, 2023
- Adam Moore (ed.), *Privacy, Security and Accountability – Ethics Law and Society*, Rowman and Littlefield, 2016
- Mark Tunick, *Balancing Privacy and Free Speech - Unwanted attention in the age of social media*, Routledge 2015
- Jessica Lake, *The Face That Launched a Thousand Lawsuits: The American Women Who Forged a Right to Privacy*. Yale University Press, 2016

“Closing the front door to your home is no longer effective for keeping others out because that is not the preferred entrance of today’s thieves, peeping Toms, and salespeople.”