Ex-post Approaches to Privacy: Trust Norms to Realize the Social Dimension of Privacy

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Extended Abstract

Privacy is often valued concerning the value that it has for individuals. The value of privacy for individuals is understood from different perspectives, from being an aspect of human dignity (Bloustein 1964) to having a relationship to personhood: privacy is a condition of the original and continuing creation of "selves" or "person" (Reiman 1976: 40). Privacy is also conceived as a condition for realizing autonomy: the true realization of freedom, that is, a life led autonomously, is only possible if there are protected private realms and dimensions in one's life; we need and value private spaces and dimensions because in these (symbolic and literal) spaces and dimensions we want to develop, design, and exercise our autonomy (Roessler 2005: 72). Furthermore, privacy is understood as a necessary condition for human flourishing, which is attained through setting, pursuing, and completing life goals and plans suitable for beings like us (Moore 2010). As a result, the significance of privacy is justified by the individual interests it protects; protecting the privacy of personal data and communications is significant for preserving dignity, personhood, autonomy, and flourishing.

The traditional view of privacy as protecting individual interests is a weak basis for the protection of privacy in political practice when individual privacy conflicts with broader social interests such as law enforcement, public security or the implementation of social justice. To address this issue, a number of scholars have developed a social approach to privacy, arguing that an important aspect of the significance of informational privacy is that it goes beyond the interests of the individuals it protects; protection of individual privacy at the same time serves the interests of society, then the alleged conflict between privacy in terms of individual interests and the interests of society should be reconsidered (Beate Roessler and Mokrosinska 2015: 3).

A social approach to privacy describes the value of privacy in terms of its role in facilitating harmonious social interaction. Privacy is necessary if we are to maintain the variety of social relationships with other people that we want to have. The sort of relationships that people have with one another involves a conception of the kind and degree of knowledge concerning one another that it is appropriate for them to have. Our ability to control who knows what about us allows us to form different sorts of relationships with other people that we will have, it is one of the most important reasons why we value privacy (Rachels 1975). Although the relationship model takes a step toward a sociological theory of privacy, the person themselves is at the centre of its explanation. According to this viewpoint, the significance of privacy is justified by the individual interest, which is an interest in limiting other people's access to information about themselves, that it protects. The importance of the interests can be defined in terms of how valuable it is to the individual as an isolated individual who can satisfy them without regard for the interests of others.

Instead of discussing the value of privacy for a society based on a notion of privacy that is rooted in a liberal understanding of the individual and society in which autonomous individuals are independent of and in tension with society as an aggregate of individuals, privacy can be more fully understood as a social construction that we create as we negotiate our relationships with others on a daily basis. By placing privacy in the social context of intersubjectivity (Steeves 2009), privacy is conceived as a dynamic process regulating interpersonal boundaries through drawing a negotiated line between openness and closedness to

others (Altman 1976; 1975). The dialectical approach to privacy, in which privacy can only be obtained through the negotiated interaction between social actors, captures its importance as a social value (Altman 1975; Steeves 2009).

The dialectical approach to privacy neglects the fact that privacy is a social phenomenon not only because other people exist but also because privacy is about the social circumstances in which information flows from one party to another. The contextual integrity model of Nissenbaum (2010) elaborates on socially embedded privacy in the digital age. Nissenbaum argues that different social contexts are governed by different social norms that govern the flow of information within and outside of that context. Protecting privacy entails ensuring the appropriate flow of information between and among contexts. Privacy is a norm that regulates and structures social life (Nissenbaum 2010).

Although Nissenbaum (2010) succeeds in the socializing theory of privacy in terms of social interactions and the possibility for individuals to be properly embedded in social relationships, it begs the question of what is a 'private context'? Waldman responds to this question by arguing that "private contexts are defined by relationships of trust among individuals …. Disclosures in contexts of trust are private" (Waldman 2015: 559). According to Waldman, privacy in the context of information sharing revolves around sociological principles of interpersonal trust. Privacy is a social fact—a constant in our lives—based on trusting relationships between individuals and between individuals and institutions (Waldman 2015).

With regard to the relationships between trust and privacy, the important thing is to distinguish between necessity and dependence relation. In literature, it has been argued that there is a relationship of necessity between trust and privacy, and two deliberately contradictory claims have been presented regarding such a relation. On the one hand, it is argued that privacy is necessary to develop trust. Fried (1984) and Rachels (1975) suggest that privacy is necessary to develop and maintain relationships of trust with different people by giving one the ability to mediate various social relationships. According to this, privacy is necessary if we are to maintain the variety of social relationships with other people that we want to have, and that is why it is important to us. On the other hand, trust, in Waldman's view, is a necessary condition for privacy: it is necessary that trust must be respected if privacy is to be preserved. Because of this, we cannot have privacy or private context without preserving our trusting relationships. Privacy is invaded if trust is betrayed or damaged in an information-sharing context (Waldman 2015: 598).

In contrast to the above views, which is a necessary relation between trust and privacy, I defend a dependence relation: trust is an essential property of (the social value of) privacy. According to Fine, "for we take x to depend upon y if y is a constituent of an essential property of x … The being or essence of x will depend upon y in the sense of involving y that will appear as a constituent of a component proposition or property of x … We understand a defined term (x) through the terms by which it is defined (y)" (Fine 1995). In my view, trust is a constituent of privacy which follows that privacy depends upon trust; privacy is constituted by the trust-based relationships that produce it. To clarify, consider the contrast between 'clean street' and 'friendship.' Although the action of sweepers produces clean streets, clean streets are not constituted by the activity of sweepers that brings them about. By contrast, friendship is constituted by the relations of those who produce it. Similarly, privacy is constructed through the interaction of different actors or agents in the social context of intersubjectivity based in trust. Privacy is a social construction, like a cultured society, that we cannot have unless we work together, which is what Altman (1975) and Steeves (2009) argue for.

The value of privacy is (functionally) dependent on the value of trust. Hence, the significance of privacy in disclosure contexts derives from interest in the trust-based social relationships that it protects. Two points concern this claim. First, given that trust is a relational value that is dependent upon the nature

of relationships between individuals, social circumstances, and contexts, as Nissenbaum (2010) considers in her socializing theory of privacy, are associated with the value of privacy. Second, what makes this particular kind of relationship is not merely sharing, revealing, or exchanging personal information, but rather caring for what has been shared. As Reiman (1976) indicates, consideration of caring rather than revealing of information in developing relationships implies that the purported relationships are not necessarily limited to those persons with whom one can be intimate, such as friends or lovers, but rather to our capacity to care deeply for others. In this view, it is of little importance who has access to personal information about me. What matters is who cares about it, to whom I care to reveal it, and, importantly, how to care about it, which constitute the core idea of this chapter. I conclude that privacy is a social value because cannot be constituted individually but rather depends on relationships that involve many, and it is not individually valuable, even
though it is enjoyed by individuals, because its value derives from interaction with those who share interests in caring for what one cares about.

A critic might argue that senders and receivers of personal data are not needed to trust each other, but rather act on contracts that cover every possible contingency bearing on analyzing, processing, and using data to determine whether or not privacy is invaded or disvalued. According to this viewpoint, trust and contracts are mutually exclusive. However, as Foorman (1997) suggests, it is the purpose of contracts that is inconsistent with trust, whereas the content of contracts can be used to aid trust. The obvious purpose of contracts in disclosure contexts, according to proponents of contracts, would be to provide records of how parties care about shared personal data and to serve as a reference to guide parties' activities regardless of whether there is a history of trust between them. Nonetheless, in my opinion, the content of the contract emphasizes factors of how caring about shared data should be taken from trust-promoting norms. Not only is the content of contracts not an impediment to trust, but it also considerably refines and completes norms of how receivers care for something senders (or data subjects) care about. Hence, trust and contracts are similar to intersecting spheres, with the content of the contracts making up the volume of the intersection. This is why I believe that those who argue for contracts and agreements can adopt my ideas because it would provide them with specific instructions regarding contract terms.

My research findings have both theoretical and practical implications. First, it can be used to regulate trust-promoting norms that govern the relational duties of trustee parties in how to build and cultivate trusting relationships with others. With regards to the dependence account discussed above, regulation of trust-promoting norms makes the context sustainable for disclosure and realizes the social value of privacy. It is important to note that privacy scholars have been working on trust norms and identified some norms such as protection, discretion, honesty, and loyalty (Richards and Hartzog 2020). What makes the current study different from those works, which often consider trust and privacy from a legal perspective, is that I will take a philosophical, epistemic in particular perspective to identify trust norms. Second, the findings of the research help specify design requirements by translating trust norms that help to realize the social value of privacy.

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