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The Right to Be Unobserved

There are two ways to define privacy, and neither involves the squishiness that begins “a reasonable expectation of ...” The first is what privacy means as a civil construct—what associate justice Louis Brandeis described as “the right to be left alone—the most comprehensive of rights, and the right most valued by civilized men.”¹ The second is what privacy means at its operational core: the effective capacity to misrepresent yourself with de minimus side effects.

According to the first definition, privacy is something that society—meaning you—gives the individual—meaning me. When privacy isn’t given and is thus not available, secrecy is something I can take for myself; secrecy is a functional backstop for the absence of the civil construct.

If privacy is a gift and secrecy is something that is taken, then the possibility of privacy is inversely proportional to the numbers of those who must do the giving for the state of privacy to prevail; hence, privacy is inversely proportional to interconnectedness. This is consistent with a view of risk as proportional to dependency in which dependency, in turn, is proportional to nonoptional interconnectedness. This is where the all-wired world’s “information wants to be free” is most robustly antiprivacy.

The second definition—“privacy is the power to selectively reveal oneself to the world”²—means that in choosing what to reveal, however idiosyncratically, we demonstrate our liberty. As if that weren’t enough, “philosophical and legal analysis has identified privacy as a precondition for the development of a coherent self,”³ which asks the question of whether a person whose life has been without privacy can even comprehend the desire of those who prefer privacy. Raising the young to not expect privacy foreordains that when it’s their turn to run society, they will be just as happy despite privacy’s absence and will legislate accordingly.

If I reject the transparent society⁴ because I acknowledge my inability to sufficiently police its stronger members, then the most important thing I can do is to protect my privacy.

The loss of privacy is irreversible, for information is never unrevealed. Privacy is therefore the paragon of David Hume’s conjecture: “It is seldom that liberty of any kind is lost all at once.”⁵ In the face of the snowballing bigness of the institutions of globalized human life, we must reserve privacy rights explicitly so that we can misrepresent ourselves to those against whom we have no other defense, against those for whom our name is a label on data collected without our consent.

This has nothing to do with whether you have anything to hide.⁶ If for no other reason, we must make it understood that just as “there is nothing sinister in so arranging one’s affairs as to [minimize] taxes,”⁷ neither is there anything sinister in arranging one’s affairs as to minimize observability. ■

References

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