

Daniel J. Solove

Understanding Privacy.

Cambridge, MA: Harvard University Press 2008.

257 pages

US\$45.00 (cloth ISBN 978-0-674-02772-5)

US\$19.95 (paper ISBN 978-0-674-03507-2)

Daniel Solove suggests that the concept of privacy is something of a philosophical Cheshire cat: Everyone notices its grin, but no one can say much else of any substance about it. The reason for this ‘disarray’ (1), as Solove calls it, is that philosophers, legal theorists, and jurists have vainly searched for an abstract ‘common denominator’ (37) among the profusion of behaviors and interests that crowd under the term ‘privacy’. The resulting theories, he claims, have turned out to be either overly inclusive or overly restrictive. Solove addresses this problem by articulating a pluralist approach to privacy, one which focuses primarily on the wide range of concrete problems that an understanding of privacy should illuminate and possibly resolve.

After a brief introduction (Chapter 1) to the general dismay that many philosophers and legal theorists currently have regarding the concept of privacy, Solove goes on in Chapter 2 to identify his concerns with most of the major theories now in vogue. In each case, he finds most theories at once too broad and too narrow to deal with most of the situations people might regard as raising privacy concerns. One of the most popular approaches to privacy understands it as a fundamental condition for intimacy, personal relationships, and personal development. However, the moment that we begin to define intimacy or intimate relationships problems arise. For example, one way to do this might be to claim that intimacy is a form of limited access to one’s self—to one’s intimate thoughts and feelings. Privacy as intimacy in this sense, however, basically attempts to limit the concept by means of ideas about identity and personal autonomy. And the problem with this, Solove argues, is that it makes privacy over-inclusive: these terms seem to apply to ‘almost every action or decision an individual undertakes’ (36). On the other hand, limiting privacy to intimacy and interpersonal relationships is equally too narrow, Solove argues, because it misses much that a theory of privacy should be concerned with. Most information stored in computer databases or financial records, for example, seem obviously private, but have little or no relationship with personal relationships, love, trust, identity—or any of the other usual ideas associated with privacy as intimacy. Solove then applies this general form of argument to most of the important conceptions of privacy of current interest. The repetition of this general type of argument waxes thin after a few pages. Philosophers in particular will probably find this part of his discussion unchallenging, perhaps even uninteresting. Along the way, however, the reader is given an impressive and helpful summary of the most important prominent privacy theories of at least the last four or five decades.

One might think that Solove would be tempted by privacy reductionism, but if so he resists this temptation. Reductionists (e.g., Judith Thomson) typically argue that privacy is best seen not as a self-standing concept, but as a highly dependent one whose concerns are reducible to other more specific and accepted values like property rights, freedom of speech or religion. But privacy issues, Solove insists, ‘are far too multifarious to be reduced to rights over the person and property’ (38) or any other allegedly more basic concept. While there surely are overlaps with other concepts, Solove argues that privacy has a ‘rich tapestry’ surrounding it which we should not be too hasty to abandon. Furthermore, reductionism is premised largely in relation to the ‘common denominator’ assumptions which inhabit most current approaches to privacy. Solove claims that the solution to this and to most other problems with conceptualizing privacy is to adopt an avowedly pluralist approach, one which owes much to ideas put forward by classical pragmatists (particularly John Dewey) and to Wittgenstein’s notion of family resemblance. But while Solove adapts the basic features of these sources, he does not take his discussion on these matters very much beyond acknowledgement—another disappointment, perhaps, for more philosophically inclined readers.

In Chapter 3 Solove develops his pluralist account in terms of four basic dimensions: a method, the need for conceptual generality, an acknowledgement of variability, and a central focus. Solove’s method, again, follows pragmatist and Wittgensteinian convictions about the need to work out what privacy means contextually, and hence to avoid excessive abstraction or the search for a common essence. An account of privacy must also be of sufficient generality, if, as Solove maintains, it is to be of any assistance in creating law or guiding policy. It must cover the entire range of things we currently find in law and policy that are identified as privacy problems. Privacy is also highly variable culturally. As such, he contends, it must ‘work from within history and culture, not from a position outside’ (41). Finally, any privacy account must have a focus, and for Solove this raises the often confusing and unrelated problems that we currently find in law and policy grouped under the rubric of ‘privacy’.

Also, an account of privacy should justify its value, and Solove defends this in Chapter 4. Since his conceptual account is pluralist, his account of the value of privacy also points to a plurality of values. He notes in particular that while privacy has often been set forth in terms of its relations to individual well-being or rights, it involves important social values frequently overlooked. As an interesting case, he points to the criminalization of blackmail in Victorian England. In context of strong social norms and laws against, for example, certain sexual behaviors, Victorians nevertheless saw that there was social value in protecting someone’s privacy against the blackmailer who sought to profit from the threat of the public exposure of behavior that most would severely condemn. In this way privacy concerns functioned in society to limit the force of its norms.

In what is by far the longest and most insightful section of this book (Chapter 5),

Solove relates his approach to privacy with a taxonomy of all the various legal and policy issues that standardly fall under the concept of privacy. The taxonomy divides privacy concerns into four basic groups: information collection, information processing, information dissemination, and finally invasion. Each of these groups are divided into a total of sixteen conceptual sub-groups. Information collection involves surveillance and interrogation. Information processing involves aggregation, identification, insecurity, secondary use, and exclusion. Dissemination involves breach of confidentiality, disclosure, exposure, increased accessibility, blackmail, appropriation and distortion. And invasions involve intrusion and decisional interference. For each of these groups and sub-groups, Solove details all of their specific aspects in terms of actual moral and legal cases. It is here that Solove provides perhaps the strongest support for his main claims that privacy is essentially a plural concept, and that it is a serious philosophical mistake to think that a singular conception is of any normative use in legal or policy matters.

There is a central problem with Solove's approach, however, which seems to haunt the entire discussion. If a condition of adequacy for any account of privacy is that it must take account of *everything* currently going by that name in legal and policy contexts, then it seems that a pluralist account will be the only reasonable option. The concept of privacy as it has been developed in established statutes, policies, and legal decisions is unmethodical to say the least. Solove's taxonomy discussion makes this point remarkably clear. But comprehensiveness and plurality seem to come at the cost of usefulness in sorting out the conceptual mess that the notion of privacy allegedly is. In ordinary life, however, as well in conceptual contexts, if something is a mess, many things typically are not where they should be and will have to be rearranged or re-categorized. Some things may even have to be discarded. Solove seems much more content to emphasize the confusing state of privacy law and policy, along with all of its unresolved difficulties, than to try to do the conceptual work his own initial diagnosis seems to require.

A balance, it seems, must be struck between the normativity of a theory (how it will guide concrete decision-making) and its justificatory and explanatory features. In various passages, Solove indicates that he is well aware of the need for this balance, but it is not obvious that he has been able to strike it. Furthermore, the challenge—taken up by most of the theories rejected in this book—is one of trying to articulate, in an age of increasing surveillance, data gathering and information exchange, what it is that might be morally at stake in these activities, even when all of the more recognized and identifiable harms or values are accounted for. That task still seems worth doing, and it will undoubtedly be assisted by Solove's efforts in this book to heighten awareness of the more concrete difficulties it faces.

David Elliott

University of Regina