
11. RECLAIMING THE SOCIAL VALUE OF PRIVACY

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The protection of privacy has been on the policy agenda since Alan Westin first published his seminal work, *Privacy and Freedom*, in 1967.¹ The book was followed swiftly by a series of governmental studies in France, the United Kingdom, Canada, Sweden, and the United States,² and each of these countries subsequently passed data protection laws based on Westin's definition of privacy as informational control. By 2000, over forty countries around the world had passed similar legislation as part of an ongoing international effort to harmonize the legal regime governing privacy.³

However, critics argue that the legislative activity of the past forty years has done little to constrain the collection of massive amounts of personal information on the part of governments and corporations. Sociologists have been particularly critical of Westin's conceptualization of privacy, arguing that as "appealing and seemingly intuitive as this concept is, it plainly doesn't work."⁴ Their argument

* The author would like to thank Jane Bailey and Marsha Hannen for their insightful comments on an earlier draft of this chapter.

1. Alan Westin, *Privacy and Freedom* (New York: Atheneum, 1967).

2. G.B.F. Niblett, ed., *Digital Information and the Privacy Problem* (Paris: OECD Informatic Studies No. 2, 1971); Great Britain, Home Office, Report of the Committee on Privacy (London, 1972); Canada, Department of Communications and Department of Justice, *Privacy and Computers: A Report of the Task Force* (Ottawa, 1972); Sweden, Committee on Automated Personal Systems, *Data and Privacy* (Stockholm, 1972); United States, Department of Health, Education and Welfare, Secretary's Advisory Committee on Automated Personal Data Systems, *Records, Computers, and the Rights of Citizens* (Washington, D.C., 1973).

3. Colin Bennett and Charles Raab, *The Governance of Privacy: Policy Instruments in Global Perspective* (London: Barnes and Noble, 2002), 102.

4. Felix Stalder, "Privacy Is Not the Antidote to Surveillance," *Surveillance & Society* 1, no. 1 (2002): 121. See also Mark Andrejevic, "The Kinder, Gentler Gaze of Big Brother—Reality TV in the Era of Digital Capitalism," *New Media & Society* 4, no. 2 (2002): 257; and David J. Phillips, "Ubiquitous Computing, spatiality, and the construction of identity: Directions for policy response" in this volume (Insert page number).

is supported by the fact that data protection has been unable to stop the rollout of technologies like closed-circuit television cameras in public places, remote-activated location devices in cell phones, iris scans in school cafeteria lunch lines, and security cameras in bathrooms, hotel rooms, and school buses, in spite of concerns that the surveillance these technologies enable may have deleterious effects on our social and political relationships. The conceptualization of privacy as informational control has also arguably displaced broader—and potentially more empowering—discourses rooted in a human rights model that seeks to protect human dignity and democratic freedoms in the surveillance society.⁵

My own concern that there may be something wrong with our definition of privacy as informational control was underlined a few years ago, when I was asked to give some advice regarding a hospital privacy policy. The patient admission form included a field for religious affiliation. Historically, that information had been passed on to the hospital chaplains so that a member of the appropriate clergy could visit the patient and offer support. The hospital felt that passing on that information without express written consent was a violation of data protection legislation, and they were struggling to come up with a way to satisfy the law and their patients' needs.

Interestingly, the hospital administrators were unconcerned about the fact that data protection laws do little to restrict the flow of patient data for all sorts of other secondary purposes such as research and quality control, both of which occur outside of the social context of the doctor-patient relationship. However, they felt strongly that passing on the information to the chaplain would violate the patient's privacy, in spite of the fact that the requirement of express consent in these circumstances created barriers to the normal flow of social interaction. They acknowledged that the only reason a patient voluntarily affiliates herself with a faith community while in the hospital is to get the support of that community. In fact, one could argue that the chaplain's visit is an example of community in action. If the patient does not want to talk to the chaplain, she can simply say so at the time. In other words, her desire for privacy and her need for community support can be negotiated through normal social interaction. Ironically, the patient's ability to negotiate her own privacy in this way was negated by the hospital's refusal to pass on the information to the chaplain, while her data continued to flow to government managers and the Canadian Institute for Health Information without her knowledge or consent.

The gap between the goal of data protection legislation and the reality of life in the surveillance society is not just a matter of poor implementation.

5. Valerie Steeves, "Under Suspicion: The Cybercrime Convention, Privacy and Canadian 'Lawful Access' Proposals," in *Social Justice and Human Rights in the Era of Globalization: From Rhetoric to Reality*, eds. James Mulvale, Stephan Parmentier, Paul Redekop, and Elmar Weitekamp, (Place: Publisher, forthcoming).

I suggest it reflects the fact that we rely upon a definition of privacy that is problematic because it strips privacy out of its social context. Accordingly, this chapter goes back to the source and revisits Westin's theory of privacy with a view to recapturing the social elements of the privacy equation. I argue that, although Westin's theory is rich in sociality, he limits his insights into the social nature of privacy by focusing on the flow of information rather than on the social interaction of persons seeking or respecting privacy. In addition, Westin equates perfect privacy with social withdrawal; from this perspective, any social interaction becomes a risk to privacy, making privacy not only asocial, but also antisocial.

As a corrective, I draw on Irwin Altman's work on territoriality and George Herbert Mead's work on social interactionism and propose an alternative framework that conceptualizes privacy as a dynamic process of negotiating personal boundaries in intersubjective relations. In doing so, I am not arguing in favor of a collective right versus an individual right. Rather, I am suggesting that by placing privacy in the social context of intersubjectivity, privacy can be more fully understood as a social construction that we create as we negotiate our relationships with others on a daily basis. This conceptualization frees the policy questions from the narrow procedural considerations of data protection, and reinvigorates our ability to question—and limit—the negative impact of surveillance on our social and democratic relationships.

I. WESTIN AND THE SOCIAL VALUE OF PRIVACY

Priscilla Regan's 1995 book, *Legislating Privacy*,⁶ is the most comprehensive attempt to date to examine the weaknesses inherent in Westin's conceptualization of privacy as informational control. She argues that privacy policy has failed because it is based on a notion of privacy that is rooted in a liberal understanding of the individual and society. If privacy is a right held by an individual against the state, then, because no right is absolute, it must be balanced against competing social interests. This leads to a zero-sum game that pits the individual's interest in privacy against society's interest in competing social benefits, such as medical research and protection against terrorism.⁷ However, as Regan points out, privacy

6. Priscilla Regan, *Legislating Privacy* (Chapel Hill: University of North Carolina Press, 1995).

7. Communitarians have long argued that privacy may promote antisocial ends. In 1949, H.W. Arndt wrote, "the cult of privacy rests on an individualist conception of society, not merely in the innocent and beneficial sense of a society in which the welfare of individuals is conceived as the end of all social organization, but in the more specific sense of 'each man for himself and the devil take the hindmost'" (H.W. Arndt, "The Cult of Privacy," *Australian Quarterly*, XXI, (1949): 69–71, 69). Similarly, Hannah Arendt's work was predicated on a rigid separation of public and private; and her interpretation of Kantian "reflective judgment"

is more than an individual right; it is also a social good in and of itself that “serves other important [social] functions beyond those to the particular individual.”⁸ She warns that, if the social value of privacy is not taken into account by policymakers, privacy will continue to shrink in the face of competing claims for security and convenience.

Regan’s critique of Westin is a compelling one. Westin’s analysis is firmly rooted in American liberal legal tradition and the Millian view that society is an aggregate of individuals who seek to establish a sphere of autonomy independent of and in tension with the collective. From this perspective, the need to restrict surveillance is part of the individual’s ongoing “struggle for liberty,”⁹ and technologies are problematic precisely because they erode the “libertarian equilibrium among the competing values of privacy, disclosure, and surveillance”¹⁰ established by the framers of the American constitution in 1789. Westin argues that the role of the law is to articulate a “balance that ensures strong citadels of individual and group privacy and limits both disclosure and surveillance” in order to maintain the conditions necessary for individual autonomy and democratic governance.¹¹

However, Westin’s legislative prescriptions call for much more than an instrumental balancing of individual needs against social needs. Data protection is merely the last step in a five-step process that first seeks to hold surveillance up to public scrutiny. Westin writes, “[w]hat is needed is a structured and rational weighing process, with definite criteria that public and private authorities can apply in comparing the claims for disclosure or surveillance through new devices with the claims to privacy.”¹² To do this, we must ask five questions:

1. How serious is the need to conduct surveillance?
2. Are there alternative methods to meet the need?
3. What degree of reliability will be required of the surveillance instrument?

required that private, egocentric concerns be set aside in favour of those interests that are shared in common (Hannah Arendt, *The Life of the Mind*, 2 vols. (London: Secker & Warburg, 1978)). These views resonate with the perspective of modern communitarians, who argue that a good society must seek “a carefully crafted balance between individual rights and social responsibilities” (Amitai Etzioni, *The Limits of Privacy* (New York: Basic Books, 1999), 5). Since the individual’s right to be let alone detracts from the degree of participation, cooperation, and community necessary to a healthy democracy, it must be balanced against competing social interests (Amitai Etzioni, *Spirit of Community: Rights, Responsibilities and the Communitarian Agenda* (New York: Simon and Schuster, 1994); Etzioni, 1999, *supra*; Fred H. Cate, *Privacy in the Information Age* (Washington, D.C.: Brookings Institute Press, 1997).

8. *Ibid.*, 16.

9. Westin, *Privacy and Freedom*, 67 (n. 1).

10. *Ibid.*, 67.

11. *Ibid.*, 24.

12. *Ibid.*, 370.

4. Can true consent to the surveillance be given?
5. Do we have the capacity to limit and control the surveillance if it is allowed?

Data protection principles are only introduced if the organization seeking to use surveillance first proves to the public that the surveillance should be “allowed.”

Moreover, Westin argues that some collective benefit is not a sufficient reason to invade privacy. The importance of the benefit can only be determined by honestly evaluating the effect of the surveillance on relationships of social power and the potential for discrimination in society at large.¹³ From the start, Westin’s full legislative program accordingly questioned whether or not surveillance should be tolerated by the public, based on its effect on social relationships. However, data protection legislation avoided those questions and focused solely on the last step in his legislative plan, the enactment of procedural protections to ensure, among other things, access to one’s data file and the accuracy of the information found there.

Interestingly, just as Westin’s broader legislative program has been truncated by data protection, the second part of his definition of privacy—the social part—has been dropped from policy discourses. Westin is most often quoted for the definition of privacy as “the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.”¹⁴ However, the definition continues:

Viewed in terms of the relation of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means, either in a state of solitude or small-group intimacy or, when among larger groups, in a condition of anonymity or reserve.¹⁵

The next part of this chapter revisits Westin’s theoretical approach to privacy in order to identify the social elements contained in that definition.

II. SOCIAL ELEMENTS IN WESTIN’S THEORY OF PRIVACY

Privacy and Freedom is, in essence, a legal project that seeks to reinvigorate the mechanisms of democratic governance by articulating legal protections for privacy.¹⁶ However, Westin expressly roots this project in the social psychological

13. *Ibid.*, 370–371.

14. *Ibid.*, 7.

15. *Ibid.*

16. Westin was tasked by the Association of the Bar of the City of New York’s Committee on Science and Law with finding legal and policy responses that would maximize the

TABLE 11.1 WESTIN'S PRIVACY STATES AND FUNCTIONS

States	Functions
1. Solitude	1. Personal autonomy
2. Intimacy	2. Emotional release
3. Anonymity	3. Self-evaluation
4. Reserve	4. Limited and protected communication

literature and seeks to explore privacy's "psychological, sociological, and political dimensions . . . on the basis of leading theoretical and empirical studies."¹⁷ He starts by drawing on Edward Hall's *The Hidden Dimension* and Robert Ardrey's *Territorial Imperative* and concludes that privacy is rooted in human evolution¹⁸ and that privacy norms are present "in virtually every society."¹⁹ Although these norms vary from culture to culture, "a complex but well-understood etiquette of privacy is part of [every] social scenario."²⁰ From this perspective, then, privacy is inherently social—it is part of the way in which social beings interact.

The social nature of privacy is evident throughout Westin's discussion of privacy states (see Table 11.1). For example, small group intimacy is essential to achieve the "basic need of human contact," which is expressed through "close, relaxed, and frank relationships between two or more individuals."²¹ Anonymity is constructed socially by the recognition on the part of others that the anonymous person should not be "held to the full rules of behaviour that would operate if he were known to those observing him."²² The state of reserve—defined as a "psychological barrier against unwanted intrusion"—is dependent upon the interaction between the individual seeking privacy and the others with whom she is interacting: "The manner in which individuals claim reserve and the extent to which it is respected or disregarded by others is at the heart of securing meaningful privacy in the crowded, organization-dominated settings of modern industrial society and urban life."²³

As such, Westin's understanding of privacy is rich in sociality. But this sociality does not come out of a theoretical vacuum. Westin's work is rooted in

benefits of new technologies while minimizing the risks. In Westin's words, his hope was that his work "may help to guide American policy makers" (*Ibid.*, 4).

17. *Ibid.*, 3.

18. *Ibid.*, 8.

19. *Ibid.*, 13.

20. *Ibid.*, 39.

21. *Ibid.*, 31.

22. *Ibid.*

23. *Ibid.*, 32 (emphasis added).

a core group of sociologists who provide touchstones for his thought. He draws heavily on Georg Simmel, particularly in defining the privacy states of anonymity and reserve. For Westin, anonymity is an essential part of Simmel's "phenomenon of the stranger." Westin uses Simmel's insight that strangers "often received the most surprising openness—confidences which sometimes have the character of a confessional and which would be carefully withheld from a more closely related person"²⁴ to explain how anonymity allows a person to "express himself freely" because he knows he will not be "held to the full rules of behavior and role that would operate if he were known to those observing him."²⁵

Reserve is rooted in Simmel's concept of "mental distance": the combination of "reciprocal reserve and indifference" that is exhibited during social interaction to "protect the personality."²⁶ Westin notes that his own conceptualization of privacy as the tension between the individual's desire to withhold or to disclose information was earlier identified by Simmel as the tension between "self-revelation and self-restraint," and between "trespass and discretion."²⁷

Westin's sociological roots are also evident in his discussion of privacy functions (see Table 11.1). He expressly adopts the description of the self developed by Simmel, Robert Park, Kurt Lewin, and Erving Goffman to ground his first function, autonomy, as an aspect of the core self that interacts with others in a series of concentric circles moving outward from solitude to intimacy to general social interaction.²⁸ He also uses Park's and Goffman's work on social masks to explain why forced exposure is so devastating to the individual:

If this mask is torn off and the individual's real self bared to a world in which everyone else still wears his mask and believes in masked performances, the individual can be seared by the hot light of selective, forced exposure . . . [O]nly grave social need can ever justify destruction of the privacy which guards the individual's ultimate autonomy.²⁹

Westin's description of the second privacy function, emotional release, is based on Goffman's work on social roles. Westin writes,

Like actors on the dramatic stage, Goffman has noted, individuals can sustain roles only for reasonable periods of time, and no individual can play

24. Georg Simmel, *The Sociology of Georg Simmel*, trans. and ed. Kurt H. Wolff (New York: The Free Press, 1950), 408.

25. Westin, *Privacy and Freedom*, 31–32 (n. 1).

26. *Ibid.*, 32.

27. *Ibid.*

28. *Ibid.*, 33.

29. *Ibid.*, 33–34.

indefinitely, without relief, the variety of roles that life demands. There have to be moments “off stage” when the individual can be “himself.”³⁰

Westin argues that, from this perspective, privacy is essential because it provides moments when individuals can “lay their masks aside to rest. To be always ‘on’ would destroy the human organism.”³¹ He draws on Goffman’s work on total institutions to support this, and concludes that the privacy function of release allows us “respite from the emotional stimulation of daily life”³² and space in which to manage bodily and sexual functions.³³

The privacy function of self-evaluation is based on Park’s argument that reflective solitude is necessary to provide the individual with an opportunity “to anticipate, to recast, and to originate.”³⁴ For Park, solitude, like religious contemplation, is a time for “organizing the self.”³⁵ Westin argues that contemplation enables the individual “to integrate his experiences into a meaningful pattern and to exert his individuality on events,” and that, “[t]o carry on such self-evaluation, privacy is essential.”³⁶

In his discussion of the last privacy function, limited and protected communication, Westin draws heavily from the work of Simmel and Goffman. Westin begins by asserting that, “[i]n real life, among mature persons all communication is partial and limited, based on the complementary relation between reserve and discretion that has already been discussed”³⁷ in connection with Simmel’s work on self-revelation and self-restraint. He then notes that limited communication is particularly important in the context of urban life and, in support of this, refers to Simmel’s work on the role of reserved communication in preserving the self in the metropolis. Westin’s argument that limited communication enables us to share confidences in relationships of trust relies on Goffman’s ethnographic studies of everyday social relationships, and on Simmel’s analysis of the confessional aspect of sharing confidences with strangers. His conclusion that it also “serves to set necessary boundaries of mental distance in interpersonal situations”³⁸ is drawn directly from Simmel’s discussion of the need to create mental distance in a successful marriage, and Goffman’s studies of the ways in which facial expressions, gestures, jokes, and conversational conventions (such as changing the subject) are used to signal the need to withdraw from others.

30. *Ibid.*, 35.

31. *Ibid.*

32. *Ibid.*

33. *Ibid.*, 36.

34. Robert E. Park and Ernest W. Burgess, *Introduction to the Science of Sociology* (Chicago: University of Chicago Press., 1921), 231.

35. *Ibid.*, 237.

36. Westin, *Privacy and Freedom*, 36 (n. 1).

37. *Ibid.*, 37.

38. *Ibid.*, 38.

III. THE DISAPPEARING SOCIAL DIMENSION

Westin is therefore steeped in the sociological literature, and his work highlights the role that privacy plays in everyday social interaction. Why, then, is the social value of privacy so isolated from the policy debate around data protection?

Regan argues that Westin fails to develop the social meaning of privacy fruitfully because he anchors the concept to a “personal adjustment process” in which the individual decides when and how information about him should be revealed to the general public, unless there is some extraordinary and exceptional social interest at play. In this way, the individual is extracted from the social and placed in conflict with the collective, as he seeks to resist social demands for exposure.

Clearly, the juxtaposition of the individual and the social was built into Westin’s inquiry at an early stage, when the Association of the Bar of the City of New York’s Committee on Science and Law tasked Westin with explaining the “interaction of [privacy] and the competing claims of society”³⁹ in the context of “their underlying, adversary values.”⁴⁰ Moreover, Westin continually refers to the tension between the individual’s right to privacy, on one hand, and society’s interest in invading privacy on the other hand, and Regan’s critique that this makes privacy vulnerable to attack is a cogent one.

However, when Westin speaks of competing interests in privacy, disclosure, and surveillance, the disclosure side of the equation is not imposed *by* the collective *on* the individual in order to obtain some social end; social control is brought about through surveillance that can, in turn, be resisted by the individual through withdrawal and reserve. Disclosure, on the other hand, is the result of the *individual’s* choice to seek out and participate in social interaction, and not the result of a collective decision to invade. Westin writes, “the individual in virtually every society engages in a continuing personal process by which he seeks privacy at some times and disclosure or companionship at other times.”⁴¹ Moreover, the desires for privacy and disclosure are coequal: “[i]ndividuals have needs for disclosure and companionship every bit as important as their needs for privacy.”⁴²

Westin, quoting Murphy, calls the process of balancing these competing interests one of the key “dialectical processes in social life,”⁴³ and sets the stage for Irwin Altman’s development of privacy as a boundary control mechanism discussed below. However, Westin immediately limits his insight into the social

39. Oscar M. Ruebhausen, forward to *Privacy and Freedom*, by Alan Westin (n. 1), xii.

40. *Ibid.*, xi.

41. Westin, *Privacy and Freedom*, 13 (n. 1).

42. *Ibid.*, 39.

43. Robert F. Murphy, “Social Distance and the Veil,” *American Anthropologist* no. 66 (1964): 1257.

nature of privacy in two related ways. First, as Regan argues, he leaves it up to the individual to adjust the balance by himself, in isolation of others. He states, “Although it is obviously affected by the cultural patterns of each society, the process is adjusted in its finer degrees by each individual himself.”⁴⁴ Accordingly, the individual is burdened with the sole responsibility of protecting his privacy, just when technology is permeating traditional boundaries. This leads to the result in the *Tessling* case, where individuals who wish to remain inscrutable are required to take extraordinary measures to retain their body heat within the physical limits of their dwelling house so it cannot be captured by infrared technologies.⁴⁵

Second, by defining privacy as the opposite of social interaction, Westin shifts the focus of his inquiry to the flow of information across the boundary between private spaces and public spaces, rather than on the boundary itself. If privacy is “the withdrawal of a person from the general society,”⁴⁶ then the fullest form of privacy is social isolation. In Westin’s words, “solitude is the most complete state of privacy that individuals can achieve.”⁴⁷ But if this is so, then privacy is asocial, existing on one pole of a continuum in tension with social interaction on the other pole. As the individual seeks to satisfy her competing interest in privacy and in social participation, she must develop mechanisms that allow her to control the consequences of her interactions in ways that do not disclose more than she is willing to reveal as she moves out of solitude. Accordingly, as the individual moves further from “perfect privacy” through interactions with intimates to general social participation, privacy shrinks and “restricting information about himself and his emotions [becomes] a crucial way of protecting the individual in the stresses and strains of social interaction.”⁴⁸ (See Table 11.2.)

Westin accordingly interprets social mechanisms to protect privacy within the context of the disclosure of information. For example, he argues that kinship rules “present individuals with a need to restrict the flow of information about themselves to others and to adjust these regulations constantly in contacts with others.”⁴⁹ “Covering the face, averting the eyes, going to one’s mat, or facing the wall” are seen as ways of “restricting the flow of information about oneself” in the intimacy of the household.⁵⁰ Reserve “expresses the individual’s choice to withhold or disclose information—the choice that is the dynamic aspect of privacy in daily interpersonal relations.”⁵¹

44. *Ibid.*, 13.

45. *R. v. Tessling* [2004] 3 SCR 432 (Canada).

46. Westin, *Privacy and Freedom*, 7 (n. 1).

47. *Ibid.*, 31.

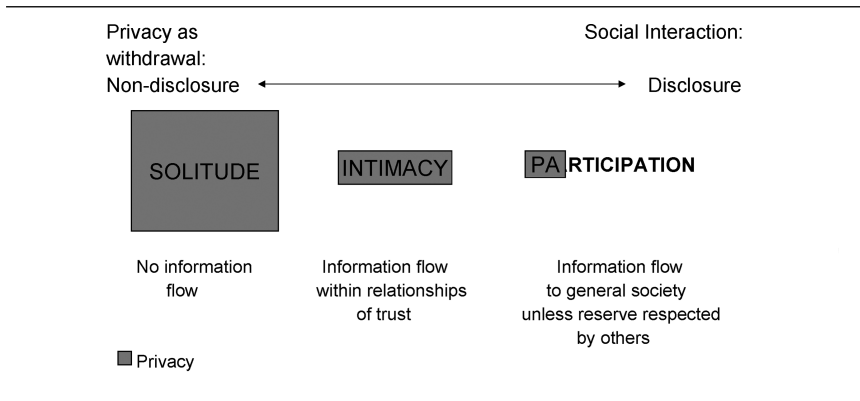
48. *Ibid.*, 13.

49. *Ibid.*, 14.

50. *Ibid.*, 15–16.

51. *Ibid.*, 32.

TABLE 11.2 PRIVACY AS INFORMATIONAL CONTROL



Once the focus shifts to the flow of information, privacy is no longer grounded in the social interaction of subjects, but becomes located in the individual’s unilateral control over keeping information on the internal side of the boundary. As Westin states, “deciding when and to what extent to disclose facts about himself—and to put others in the position of receiving such confidences—is a matter of enormous concern in personal interaction, almost as important as whether to disclose at all.”⁵² From this perspective, privacy is no longer asocial—it is anti-social. Because disclosure is dependent on the trustworthiness of intimate others and the sensitivity of the general public to respect the individual’s reserve, any social interaction poses a risk to privacy, and privacy can only be fully protected by a withdrawal from others. Accordingly, the social roots of Westin’s conceptualization of privacy states and functions, like the social elements of his legislative program, disappear from view.

IV. IRWIN ALTMAN AND PRIVACY AS BOUNDARY

Irwin Altman was an environmental psychologist who was interested in personal space and territoriality. Like Westin, he saw privacy as a cultural universal, and located it in a variety of complex social settings. However, Altman placed special significance on Westin’s insight that individuals and groups seek a balance between openness and closedness. But rather than placing privacy and

52. *Ibid.*, 37.

social interaction at opposite poles, Altman's dialectic juxtaposes openness and closedness to others; privacy becomes the negotiated line between the two. Altman accordingly defines privacy as:

an interpersonal boundary process by which a person or a group regulates interaction with others. By altering the degree of openness of the self to others, a hypothetical personal boundary is more or less receptive to social interaction with others. Privacy is, therefore, a dynamic process involving selective control over a self-boundary, either by an individual or a group.⁵³

In this model, privacy is not equated with social withdrawal. Instead, it is an interplay of opposing forces of being open or closed to others. Privacy is also no longer anchored to the individual's control over the disclosure of information. Instead, it is a bidirectional process that involves both inputs from and outputs to others. In Altman's words, privacy is "an interpersonal event, involving relationships among people."⁵⁴

Altman concludes that privacy has three functions or goals:

1. the regulation of interpersonal boundaries;
2. the development and management of interpersonal roles and dealing with others; and
3. self-observation and self-identity.⁵⁵

Interestingly, all three are tied to identity and the experience of subjectivity. For Altman, identity is the central experience of being human: so long as we can control "what is me" and "what is not me," then we can each come to understand and define who and what we are. He concludes that privacy is the boundary that enables us to do that.⁵⁶

Accordingly, Altman's approach captures many of Westin's insights into the relationship between privacy and identity, but he theorizes them within a fully social framework. For example, Altman draws on Westin's insight that privacy is an essential part of self-evaluation because it is necessary to enable the individual "to integrate his experiences into a meaningful pattern and to exert his individuality on events."⁵⁷ However, Altman expands on this by placing it into the context of a fully social understanding of identity. He writes,

We use other people to help label our feelings and define our perceptions. It might be said, therefore, that one function of privacy is to assist in the social-comparison process—at the interface of the self and others. As such, privacy

53. Irwin Altman, *The Environment and Social Behavior* (Monterey, California: Brooks/Cole, 1975), 6.

54. *Ibid.*, 22.

55. *Ibid.*, 47–48.

56. *Ibid.*, 50.

57. Westin, *Privacy and Freedom*, 36 (n. 1).

regulation may enable the person to decide on courses of action, to apply meanings to various interpersonal events, and to build a set of norms or standards for interpreting self/other relations.⁵⁸

Margulis suggests that Altman's work points to a theoretical framework that has the potential to subsume Westin's theory,⁵⁹ and to capture and develop Westin's insights into the sociality of privacy. However, as an environmental psychologist, Altman was primarily interested in the relationship between human social behavior and the physical environment.⁶⁰ Privacy was important to Altman because he saw it as a key link between territorial behavior and personal space.⁶¹ He accordingly stopped short of developing a "full-blown theory" of privacy, expressly leaving that to others.⁶²

To take Altman's work on privacy forward, the next part of the chapter returns to the source of Altman's conceptualization of identity, the social theory of George Herbert Mead. Interestingly, Mead drew on concepts developed by his contemporaries Park and Simmel, and his social interactionism is the foundation upon which Lewin and Goffman built. Accordingly, his work is at the base of the sociological tradition upon which Westin draws.

V. A SOCIAL THEORY OF PRIVACY—APPLYING GEORGE HERBERT MEAD TO WESTIN AND ALTMAN

Mead, like Westin, was writing at a time when technology was challenging traditional social and political relationships. At the turn of the century, industrialization and rapid growth had led to the disintegration of small communities, and liberal individualism was unable to reorient a public that was overwhelmed by the conditions of modern life. The Chicago School's critique of the technological and economic consequences of modernity, and the attendant concentrations of economic and political power that threatened the democratic project, convinced Mead and his colleagues that the social sciences should create knowledge that would make society visible to itself.⁶³ Accordingly, they sought to retheorize social interaction in a conscious effort to create the self-reflexive conditions necessary for the workings of modern democracy. Mead was therefore occupied

58. Altman, *Environment and Social Behavior*, 47 (n. 52).

59. Stephen T. Margulis, "On the Status and Contribution of Westin's and Altman's Theories of Privacy," *Journal of Social Issues* 59, no. 2 (2003): 411–430, 422.

60. Altman, *Environment and Social Behavior*, 1 (n. 52).

61. *Ibid.*, 4.

62. *Ibid.*

63. John Durham Peters, "Institutional Sources of Intellectual Poverty in Communication Research," *Communication Research* 13, no. 4 (1986): 527–559.

with the same question as Westin—how to theorize democratic relationships so new technologies do not derail the democratic project.

For Mead, the answer to this question is rooted in the social nature of the individual. He argues that individuals are reflexive, intelligent beings capable of knowing themselves and the world. However this reflexivity does not arise in a social vacuum; we become aware of ourselves as individuals only through our social interaction with others. The basic mechanism which allows us to do this is language; during any social interaction, it is language that allows for an adjustment in the actions of one actor to the actions of the other.⁶⁴

From this perspective, there is no conflict between the individual and the social. Rather, the social is a prior condition to the emergence of subjectivity that nonetheless allows each individual to develop her own unique, autonomous personality. Mead's understanding of identity therefore accounts for both the social nature of private experience *and* the potential for individual autonomy so important to Westin: although individual identity emerges from social interaction, it is not determined by the social. Accordingly, the tension between the social and the individual—which is so problematic in Westin's theory—dissolves.

Moreover, Mead's conception of language allows us to posit a theory of privacy that accounts for both Westin's and Altman's insights into the social nature of privacy. Mead argues that the individual subject only comes to know itself if it becomes an object to itself, and that can only occur through language. As Habermas puts it, it is language that enables each social actor to see his own actions from the perspective of the other, and to see himself as the other sees him, a social object.⁶⁵ If the individual's understanding of himself as a subject emerges through the recognition of the other and the self, privacy, as the boundary between the two, is placed at the centre of identity, because privacy is what allows the self to become reflexive.

Mead sets the stage for this when he distinguishes between the "private" nature of subjective experience, which is withheld from others, and the "private" nature of reflexivity. He argues that both are private, in the sense that they are only accessible to the individual. However, this does not necessarily mean that they are the same at a conceptual level: "the self has a sort of structure that arises in social conduct that is entirely distinguishable from this so-called subjective experience of these particular sets of objects to which the organism alone has access."⁶⁶

The first meaning of "private" resonates with Westin's understanding of privacy as the withholding of information by an isolated individual. However, the second meaning of "private" implies that privacy is a necessary condition for

64. George Herbert Mead, *Mind, Self, and Society from the Standpoint of a Social Behaviourist*, ed. C.W. Morris (Chicago: University of Chicago Press, 1934) 9.

65. Jurgen Habermas, "Individuation through Socialization: On George Herbert Mead's Theory of Subjectivity," in *Postmetaphysical Thinking: Philosophical Essays*, trans. William Mark Hohengarten (Cambridge, Massachusetts: MIT Press, 1992), 176.

66. Mead, *Mind, Self and Society*, 167 (n. 63).

reflexivity and intersubjective dialogue because it delineates the boundaries of the self. In Westin's terms, "Every individual needs to integrate his experiences into a meaningful pattern and to exert his individuality on events. To carry on such self-evaluation, privacy is essential."⁶⁷ However, by extending Mead's understanding of the self as a social construction, privacy is no longer tied to an autonomous self acting in isolation of others, as it is in Westin's theory; it is the result of a process of socialization that is mediated through language.⁶⁸ Privacy cannot, therefore, shelter the liberal ego from social interaction, as Westin posits; rather, privacy—as the line between self and others—is intersubjectively constituted through communication. Privacy is therefore possible *across* Westin's spectrum, beyond solitude through to social participation, because privacy is what enables the self to see itself as a social object and to negotiate appropriate levels of openness and closedness to others.

Moreover, Mead argues the process of coming to know ourselves requires us to play a variety of social roles. By trying on these roles and seeing them reflected back at us through our social interactions with others, we come to know who we are. Because role-taking is in essence a social phenomenon, privacy is essential because it allows us to construct lines between roles. It is privacy that allows us to perform one role—as wife or mother—separate and apart from other roles—as teacher or policy maker, for example. From this perspective, surveillance is problematic precisely because it collapses the boundaries between roles and makes the individual accountable for all her actions, independent of the context or the role she is playing.

Goffman⁶⁹ calls this "looping." During his study of mental hospitals, he noted that patients were unable to keep their various roles separate because they were always under observation—their actions in the context of one role were never separated from their actions in the context of other roles. They were, accordingly, "constantly confronted with inconsistencies in their behavior and were fully accountable to the same people for all aspects of behavior."⁷⁰ Altman concludes that this type of boundary violation "may well be a deterrent to rehabilitation, because [it] exposes the self, eliminates a number of normal self-boundary processes, and makes the person extremely vulnerable to others."⁷¹ These are prophetic words for a society in which Facebook pictures are used by employers to decide whether or not to hire someone.

Locating privacy within Mead's social theory accordingly explains Westin's insight that privacy serves to relieve the self of emotions that build up because the self plays a multiplicity of social roles.⁷² It also provides a theoretical

67. Westin, *Privacy and Freedom*, 36 (n. 1).

68. Habermas, "Individuation through Socialization," 153 (n. 64).

69. Erving Goffman, *Asylums* (New York: Doubleday, 1961).

70. Altman, *Environment and Social Behavior*, 40 (n. 52).

71. *Ibid.*

72. Westin, *Privacy and Freedom*, 35 (n. 1).

foundation for Westin's concerns about surveillance. Westin argues that placing people under surveillance is dehumanizing because "the person-to-person factor in observation—with its softening and 'game' aspects—has been eliminated."⁷³ Surveillance is, by definition, nonreciprocal: the actor's actions and words are captured by the watcher without any opportunity for intersubjective interpretation. Surveillance is invasive because, independent of whether or not data protection principles have been respected, the individual's social actions are removed from the intersubjectivity that grounds the identity and enables him or her to enter into social relationships with others.

Altman argued that privacy is a boundary control mechanism that externally allows social actors to negotiate the boundary between self and others. However, if one takes Mead's concept of the self into account, privacy is also internalized, because it is the dialogue between the self and others that enables the self to become visible to itself and identities to emerge. Accordingly, privacy sits at the core of self-reflection and intersubjectivity. Privacy is no longer confined to solitude or procedural control over personal information; instead, it is intersubjectively constituted through social interaction. From this perspective, privacy is the boundary between self and other that is negotiated through discursive interaction between two or more social actors. It is, accordingly, a dynamic process that is exhibited by the individual in social interaction with others, as the individual withdraws from others into solitude or moves from solitude to intimacy and general social interaction. Privacy is no longer juxtaposed against social interaction, as Westin posits, but is a potentiality throughout the full range of human experience. For example, an individual desiring low contact with others is able to obtain privacy through solitude. If others invade that solitude, the individual experiences a sense of trespass, as he or she is unable to negotiate the desired level of aloneness. On the other hand, as both Westin and Altman indicate, there is a difference between privacy and isolation—the latter is experienced when the closeness to others is not satisfying to the individual.

This conceptualization of privacy captures the dialectical nature of privacy identified by earlier theory, but does not inappropriately collapse privacy into solitude. In addition, social interaction no longer poses a risk to privacy that must be managed by individual control over the flow of personal information, because privacy can only be obtained through social interaction. The onus of privacy protection is therefore no longer carried by the individual in isolation of others. Moreover, as Westin first noted, there are a number of privacy states, such as reserve and intimacy, which the individual can negotiate as he becomes more open to others. One can also identify a number of invasive states that are experienced when the individual is unable to negotiate the desired state of privacy with other social actors. Westin's privacy states and functions, therefore, come to life, and questions of privacy protection are focused on the quality of

73. *Ibid.*, 59.

interaction between social actors (including the state and corporations) rather than on the reified flow of information.

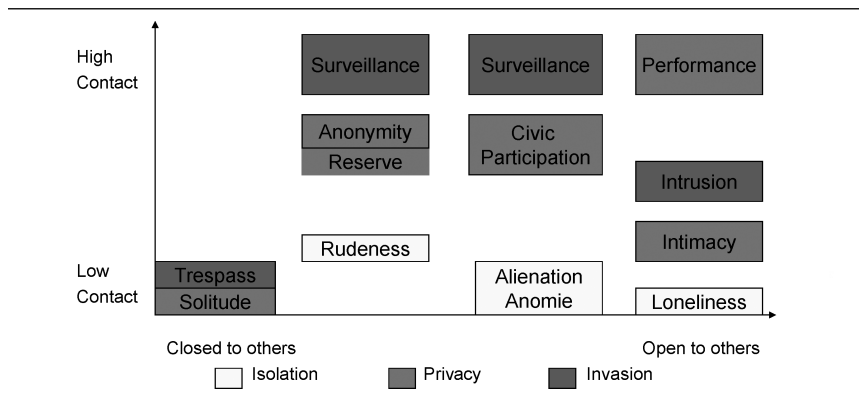
This conceptualization also enables us to conceive of privacy in public spaces. An individual who moves through public spaces in high proximity with others but who remains relatively closed to them can achieve privacy through anonymity or reserve. Excessive crowding may impinge on these states but, as Westin's work indicates, societies that experience physical crowding develop psychological mechanisms to maintain social distance. Privacy is accordingly not dependent on physical separation but on the negotiated interaction between social actors.

Surveillance of public spaces invades the individual's sense of privacy precisely because it identifies him when he wishes to move through public space free of others' recognition. More specifically, the lack of anonymity is perceived of as invasive when the watcher does not ignore what he sees but actively seeks to manipulate or control the person being watched. Accordingly, a surveillance camera in a bank that does not seek to identify customers is more readily accepted than police who take pictures of the faces of people who gather to hear a political speech or employers who use surveillance cameras in the street to record how long people spend smoking cigarettes during the workday. What defines each incident as invasive is the social action taken by the watcher. Anonymity is achieved when *others* agree to respect the individual's wish to remain unidentified. Anonymity, like all privacy states, is dependent upon the social negotiation of a desired boundary between self and other; it cannot be achieved by the individual in isolation. In like vein, an individual who expresses reserve feels invaded by those who fail to respect the social cues he sends and rudely pursues interaction that is too personal or exposing of the self.

As the individual becomes more open to others, she more willingly enters into public activities, including forms of civic participation. However, civic participation is also contextualized by a social agreement regarding the boundary between self and other. There is an unwillingness to accept surveillance in voting booths and public fora because, even though both involve participation in a public process, being watched in these circumstances severely restricts the individual's autonomy. Surveillance of both is perceived to invade the private citizen's democratic space, even though the latter takes place in public. Accordingly, there is an inherent connection between autonomy, privacy and democratic action. On the other hand, individuals who wish to participate in public activities but are unable to negotiate the desired levels of privacy and participation are subject to feelings of alienation and anomie.

The individual who is most open to others seeks interaction within relationships of intimacy. If there is too much contact with non-intimate others in these circumstances, the intrusion into intimate space is a privacy violation because it impinges on the boundary both between the self and unwanted others and between intimates and others. In other words, the intrusion of others into intimate exchanges interferes both with the inviolability of the exposed self and with the social interaction between people who share a level of intimacy. Intimacy can be

TABLE 11.3 PRIVACY AS BOUNDARY



maintained within a broad range of contact levels precisely because others are willing to withdraw from intimate interaction and allow intimates social space that recognizes their closeness, much as people do when they avert their eyes when romantic couples exchange a kiss. When the other does not withdraw, the intimates feel intruded upon. On the other hand, an individual seeking intimacy who is unable to enter into intimate interactions with others feels loneliness.

Conceptualizing of privacy as a social construction therefore enables us to theorize the ways in which privacy states are negotiated throughout a range of social interactions, in situations of low to high contact with others. (See Table 11.3.) It also suggests that privacy cannot be traded off in exchange for some other benefit, such as efficiency, security, or convenience. Privacy is a flash point in the surveillance society precisely because surveillance objectifies the self, collapses the boundaries between social roles and negates the conditions necessary for inter-subjectivity.

Ironically, Westin's original legislative program sought to protect this broader social understanding of privacy. I suggest we need to reinvigorate Westin's program in its totality, and develop a definition of privacy that captures its importance as a social value. If not, surveillance will continue to grow in spite of data protection legislation, and Westin's warning that, "if all that has to be done to win legal and social approval for surveillance is to point to a social problem and show that surveillance would help to cope with it, then there is no balancing at all, but only a qualifying procedure for a license to invade privacy"⁷⁴ may come to characterize privacy policy in the future.

74. *Ibid.*, 370.