

Understanding Privacy

By Daniel J. Solove

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Privacy. The word privacy is used often and is extremely valuable to many people. Despite the fact that this word is so prevalent throughout people's daily vocabulary and lives, crafting an exact definition of exactly what privacy is has proven to be extremely challenging and has stumped even the brightest of scholars. Most modern definitions of privacy are not complete, either casting a net that is far too broad or is overly narrow and too exclusive in its definition. The concept of what is and is not considered to be private is even more challenging into today's high tech culture. This evolving idea of privacy is especially apparent in today's society as individuals hold more and more "personal" information out for the public to see. Social networking sites such as Facebook have over 175 million active users,¹ social securities numbers can be sold by brokerage firms for nothing more than a small fee, even the advertisements we see online have been personally tailored to our personalities; companies know exactly what type of music we listen to, movies we watch and groceries we buy.

Even though society as a whole is increasing the amount of personal information available to the public, there is still an expectation of privacy. People believe, sometimes falsely, that they can "control" the personal information they hold out to the public by determining who can access the information and how the information will be used. It is extremely challenging to define a fluid concept like privacy because it touches almost every aspect of a person and society

¹ See Facebook.com, <http://www.facebook.com/press/info.php?statistics>.

to one degree or another. In *Understanding Privacy*, George Washington University Law School professor Daniel J. Solove has worked diligently to answer and provide a structured framework to define privacy. While Solove has not completely answered the question of what is privacy, he has provided a much deeper understanding of what privacy is and what is at stake if privacy continues to erode. Solove is known internationally as an expert on issues of privacy, particularly privacy concerns in the current advanced technologies.² He serves on the board of the Electronic Privacy Information Center³ and has written numerous books including *Information Privacy Law: Cases and Materials*,⁴ *The Future of Reputation: Gossip, Rumor and Privacy on the Internet*,⁵ and *The Digital Person: Technology and Privacy in the Digital Age*.⁶

Privacy issues are of particular importance today not only because people are making personal information more readily available but also because our own government is actively seeking citizens' personal information; often times without their knowledge or consent.⁷ The concept of "privacy" encompasses many ideas relating to the proper and improper use and abuse of information about people within society. Privacy is what protects information and allows individuals within society to have a "personal bubble." Solove's general belief on the value of privacy is best expressed when he states, "society involves a great deal of friction and we are constantly clashing with each other. Part of what makes a society a good place in which to live is the extent to which it allows people freedom from the intrusiveness of others. A society

² See Daniel J. Solove CV, available at <http://docs.law.gwu.edu/facweb/dsolove/files/CV.pdf>

³ See EPIC Website, http://epic.org/epic/advisory_board.html

⁴ Daniel J. Solove, *Information Privacy Law: Cases and Materials* (Aspen Publishing, 3rd ed. 2009)

⁵ Daniel J. Solove, *The Future of Reputation: Gossip, Rumor and Privacy on the Internet* (Yale University Press 2007)

⁶ Daniel J. Solove, *The Digital Person: Technology and Privacy in the Digital Age* (NYU Press 2004)

⁷ See John Dean, Why, Even If You Have Nothing To Hide, Government Surveillance Threatens Your Freedom: *The Case Against Expanding Foreign Intelligence Surveillance Act Powers* (Findlaw Oct. 19 2007) available at <http://writ.news.findlaw.com/dean/20071019.html>

without privacy protection would be suffocation, and it might not be a place in which most would want to live.”⁸

The main objective set forth in *Understanding Privacy* is “to set forth a theory of privacy that will guide our understanding of privacy issues and the crafting of effective laws and policies to address them.”⁹ Solove introduces a new approach to the idea of privacy that requires the reader to abandon the traditional ways in which privacy has been considered. Solove is aware that nailing down a definition of privacy is extremely difficult, referring to privacy as a “conceptual jungle.”¹⁰ In fact, a whole chapter is dedicated to the analysis of the successes and inadequacies of more than a half dozen different privacy theories. He boldly asserts that past attempts to define privacy have failed because of the need to “locate the ‘essential’ or ‘core’ characteristics of privacy.”¹¹ Solove rejects the traditional and abstract approach of crafting a theory of privacy and introduces a more pragmatic way to tackle privacy issues.

By taking a problem solving approach and looking at individual privacy issues from the “bottom up,”¹² Solove believes that privacy issues can be solved by balancing privacy conflicts against other fundamental rights such as free speech and security. He also astutely points out that not all privacy interests are equal. He further explains that privacy as an abstract theory does not offer the workable answers that could be expunged in direct and candid conversations about why privacy interests are more important or less important than other rights and how they can be reconciled with one another. Solove’s new non-abstract and problem based approach to privacy issues is refreshing. The approach avoids the vagueness of privacy theories that rely on words

⁸ See *I’ve Got Nothing to Hide and Other Misunderstandings of Privacy*, Daniel J. Solove 44 SAN DIEGO L. REV. 745 (December 2007)

⁹ See Daniel J. Solove, *Understanding Privacy* (Harvard University Press 2008) at page 2

¹⁰ *Id.* 196

¹¹ *Id.* 6

¹² *Id.* 75

such as “personhood” and “intimacy.” The definition of these terms can be as elusive as the definition of privacy itself. While this new approach is certainly innovative, thought provoking, and adds to the concept of privacy, it fails like the theories it criticizes to give a complete definition of privacy.

The problem-based approach championed by Solove still allows for large amounts of subjectivity. Society must determine in this problem based approach what rights privacy trumps and which rights trump privacy. Coming to a general consensus about the value of privacy compared to other rights in varying situations seems almost impossible; this is because no one person holds rights in the same ideological hierarchy. One example of an inability to come a consensus is illustrated when privacy comes up against the right of free speech. Technology blogger Adam Thierer blogs “I feel quite passionately about the First Amendment and free speech rights. And, in all but the most extreme cases or circumstances, I will argue that speech rights should trump privacy rights.”¹³

What Solove overlooks is that at some point someone, most likely the legislature, will have to decide where privacy falls among various rights. Privacy issues looked at through the problem-based approach will be helpful to legislatures tackling this problem but will not be complete; the legislature must still rely on some abstract omniscient definition of “privacy” before the problem-based application can begin. I believe it is unwise and hasty to completely devalue past conceptual theories of privacy because they may not encompass every aspect of the word. Instead of trying to find one “complete” definition of privacy by viewing each individual theory of privacy individually in a vacuum, the past theories should be considered concurrently. If viewed concurrently, there would be an opportunity for the theories to compliment and

¹³ See The Technology Liberation Front Website, <http://techliberation.com/2008/11/08/book-review-soloves-understanding-privacy/>

supplement one another. This would create a web of definitions encompassing the most complete meaning of privacy. Solove should allow for a complete view of privacy theories as a whole to lay a foundational ground before engaging in problem-based application to privacy issues. I believe the combining of abstract and problem-based theories provides the most effective means for dealing with privacy issues. While I may not agree with Solove's stance that the problem-based approach is the only approach that will work in solving privacy issues, I do believe that this book is ground breaking in its new outlook to tackle privacy problems.

Understanding Privacy is not just a book for academic scholars. This book should be read by any person who has ever experienced an invasion of privacy. It provides a deep understanding of the importance of privacy and the erosion of privacy that is currently taking place. I think the book is especially helpful to those interested in privacy issues in the midst of the information era. I also believe that this book would serve as a word of caution to Generation Y who have become so grown up in the information era and sometimes foolishly brandish detailed personal information without a deep understanding of the consequences that may follow.