



What is Privacy?

Keynote talk.

April 4th 2018.

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DART/03/2018

Forfattere

Ingvar Tjøstheim

Dato

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Ingvar Tjøstheim

Norsk Regnesentral

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Summary

This NR-note presents the opening keynote talk in **Awareness Learning Tools for Data Sharing Everywhere** (ALerT), a project funded by Research Council Norway, the IKTpluss-program.

In the project, we will combine serious games techniques with experimental methods from psychology and decision science. ALerT addresses how to increase awareness about the use of these data, and how users can make informed choices and exercise legal rights in this context.

This research note contains the keynote presentation *what is privacy* from the ALerT first meeting, April 4th 2018. Privacy is the underlying theme and motivation for the ALerT project. Although privacy seems to be hard to define, it is regarded as a core value in our society. Privacy is rooted in a Western philosophical tradition that respects the individual and therefore is worth identifying, unpacking and discussing.

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1 Introduction

Technology plays a role in all aspects of modern-day society. As a consequence, we share data with application providers, commercial entities, and social media platforms. Data has become ubiquitous in our digital world, and often we don't really know what is happening with our personal data. The objective of ALerT (Awareness Learning Tools for Data Sharing Everywhere) is to investigate how to **evoke reflection** about sharing of personal data and privacy by means of serious games and scenario tools. In the project, we will develop tools that will be used to gain new knowledge about **how people make decisions** regarding ubiquitous data, on privacy, and sharing of personal information. For researchers, ALerT can be used to study and analyze sharing of personal information, For users, the tools can be used for practicing, for feedback and reflection of what happens with their personal data, including possible misuse of information.

Privacy is an underlying theme in ALerT. In the project, we will develop a privacy assistant, an app for smartphones that can be used to collect information on privacy threats, to control permissions, present information to the user, and to analyze risks. For the research work on awareness the question is how individuals make decisions about sharing of personal data, and whether or not we can influence awareness on how data is used, and the value data has to commercial companies.

For ALerT it is not a goal to define privacy and bring clarification to a concept that is difficult to define, nor to develop a privacy theory. However, we need to reflect on the question why is privacy important. In this keynote talk we discuss privacy from a theoretical point of view. The choice of topic is motivated by the fact that the General Data Protection Regulation (GDPR), article 88, and article that uses the term human dignity. The article reads;.. shall include suitable and specific measures to safeguard the data subject's **human dignity** [my emphasis], legitimate interests and fundamental rights. The term human dignity and the term fundamental rights indicate that there must be a basis for privacy that is worth identifying, unpacking and discussing.

ALerT has an interdisciplinary project team with Norsk Regnesentral (Norwegian Computing Center, NR) as the project manager. The partners in the project are; University of Bergen, Faculty of Psychology, NTNU, Department of Information and Computer Science, Forbrukerrådet (the Norwegian Consumer Council) and Karlstad University.

About the IKTPLUS programme.

The IKTPLUSS initiative is the Research Council's large-scale initiative on information technology and digital innovation. The primary objective of IKTPLUSS is to enhance quality, promote boldness in thinking and increase the relevance of Norwegian ICT research by linking R&D investments to national frameworks and needs for ICT research and innovation. For more information, see www.forskningsradet.no.

2 What is privacy?



What is privacy?

Ingvar Tjøstheim

Awareness Learning Tools for Data Sharing
Everywhere (ALerT)

April 4th 2018
Norwegian Computing Center

The first section – privacy is hard to define but I know it when I see it.



The concept of privacy is embarrassingly difficult to define (Beaney, 1966)

Privacy is vague and evanescent (Miller, 1971)

Privacy is elusive and ill-defined (Posner, 1977)

Nobody seems to have any very clear idea what it is (Thompson, 1984)

It is suffering from an embarrassment of meanings (Scheppelle, 1988)

Privacy is a chameleon-like word (BeVier, 1995)

Like the emotive word “freedom,” “privacy” means so many different things to so many different people that it has lost any precise legal connotation that it might once have had. (McCarthy, 2005)

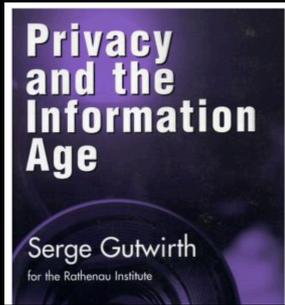
Privacy is a concept in disarray. Nobody can articulate what it means. (Solove, 2006)



22. Scott McNealy, cofounder of Sun Microsystems:

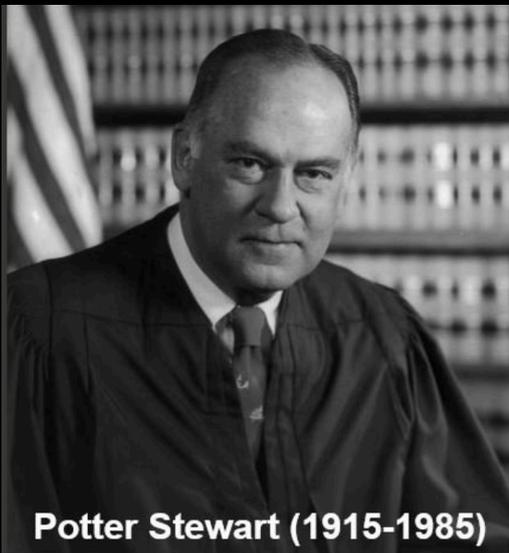
“You have zero privacy anyway. Get over it.”





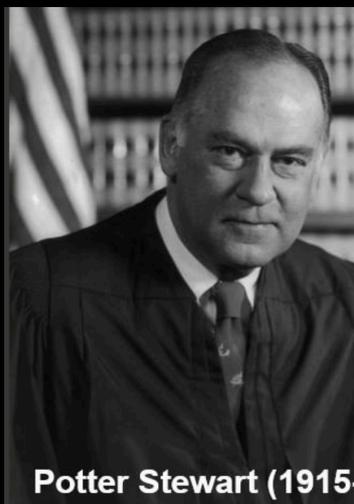
Privacy is *"a cornerstone of contemporary Western society because it affects individual self-determination; the autonomy of relationships; behavioural independence; existential choices and the development of one's self; spiritual peace of mind and the ability to resist power and behavioural manipulation."*

"I know it when I see it"

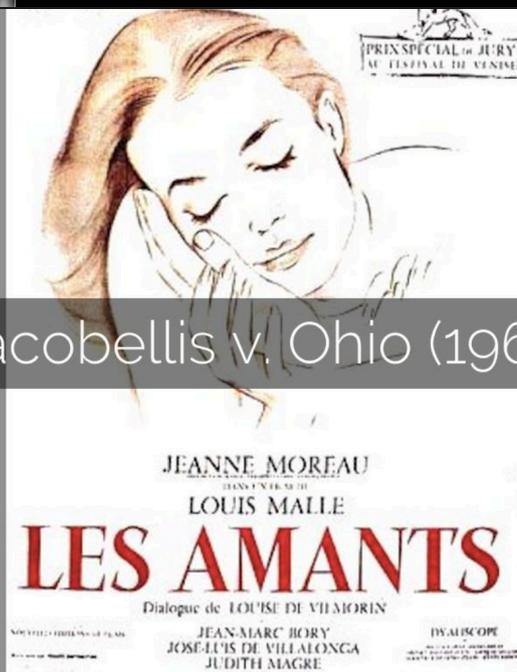


Potter Stewart (1915-1985)

“I know it when I see it”

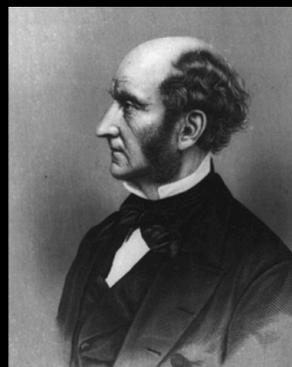
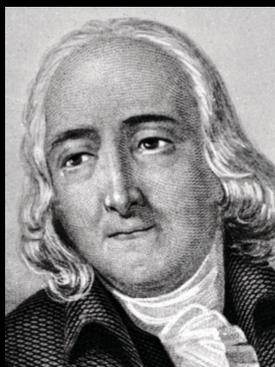
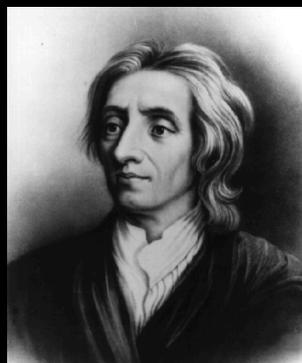
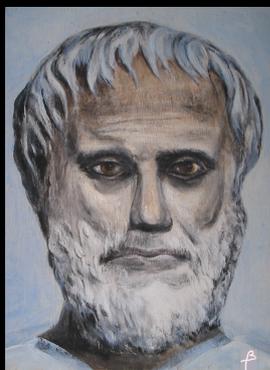


Potter Stewart (1915-1985)

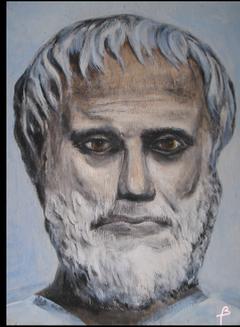


Jacobellis v. Ohio (1964)

The second section - four philosophers of importance for the history of privacy.



Aristotle



In the *Nicomachean Ethics* and *Politics* (460 BC) Aristotle distinguishes between the familial sphere or domain, the oikos as compared to the political domain, the polis. The oikos is the private sphere, a sphere of the (extended) family.

He does not discuss individual privacy, but the distinction is often referred to in the privacy literature.

John Locke

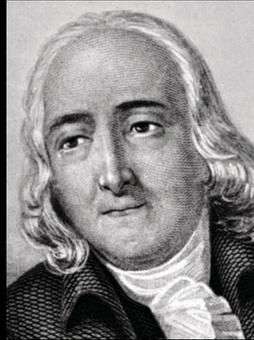


A man's property is "his life, liberty and estate." (1690).

A person's property is more than the objects he possessed.

"Every man has a 'property' in his own 'person' ...[and that]...the labor of his body and the work of his hands... are properly his."

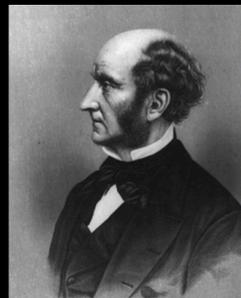
Jeremy Bentham



“Secrecy might be considered as exactly synonymous to privacy, were it not that, upon the face of it, it seems to exclude gradation, and to be synonymous to no other than the greatest possible degree of privacy” (Bentham, 1812/1843, p. 574)

...law is an invasion of privacy that must be justified on the ground of necessary utility.

John Stuart Mill



An individual's "independence is, of right, absolute..... The individual is not accountable to society for his actions, in so far as these concern the interest of no person but himself". a person's conduct affects the interests of no persons besides himself. there should be perfect freedom, legal and social, to do the action and stand the consequences”

That there is, or ought to be, some space in human existence thus entrenched “around”, and sacred from authoritative intrusion...

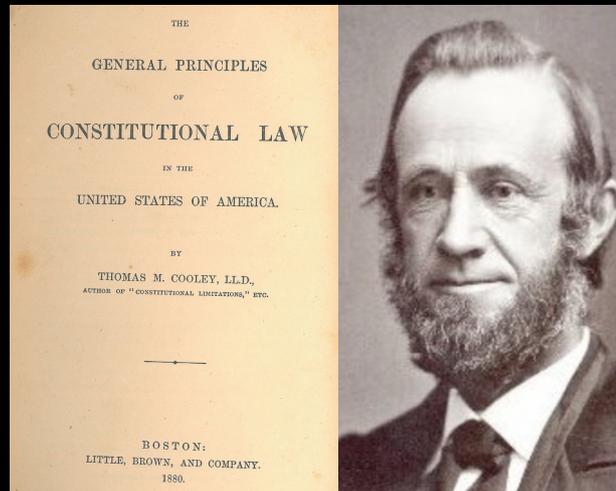
There is a circle around every individual human being, which no government...
On Liberty (1869).

The third section – the advent of (new) technology and privacy definitions.

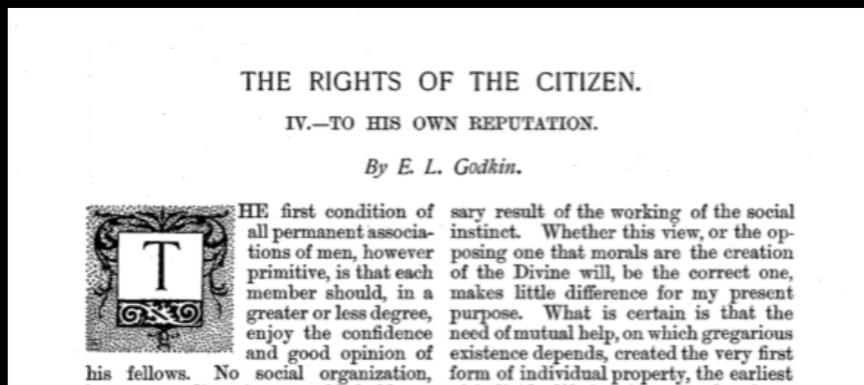
The late 1800



- Prying newspapers and mass media
- Photography



“The right to one's person may be said to be a right of complete immunity; to be let alone” (Cooley, 1879)



Nothing is better worthy of legal protection than private life, or, in other words, the right of every man to keep his affairs to himself, and to decide for himself to what extent they shall be the subject of public observation and discussion.

Privacy constituted the "right to decide how much knowledge of personal thought and feeling..., private doings and affairs the public at large shall have." (Godkin, 1890)

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THE RIGHT TO PRIVACY.

"It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage."

WILLES, J., in *Millar v. Taylor*, 4 Burr. 2305, 2312.

THAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life, — the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession — intangible, as well as tangible.

....emerging technologies necessitated recognition of a legal right to privacy and the necessity for individuals sometimes to "retreat from the world" (seclusion)... the protection afforded to thoughts, sentiments, and emotions.

A persons' personality has to be kept from being inviolated

The privacy literature

Bloustein (1964). "inviolable personality" is the social value protected by privacy. "A man whose ... conversation may be overheard at the will of another, whose marital and familial intimacies may be overseen at the will of another, is less of a man, has less human dignity, on that account."

Westin (1967). defines privacy as (the) claim of individuals . . . to determine for themselves when, how, and to what extent information about them is communicated to others.

Fried (1968/1984). Privacy is the control we have over information about ourselves.

Breckenridge (1970). Privacy is the rightful claim of the individual to determine the extent to which he wishes to share of himself with others and his control over the time, place and circumstances to communicate with others.

Altman (1975).boundary control mechanism for limiting information flows... Primary (has control)...semi-public (moderate control) ...public (no control).

Posner (1978). ...withholding and concealment of information...
...economic interest..... thought of as property that can be bought and sold.



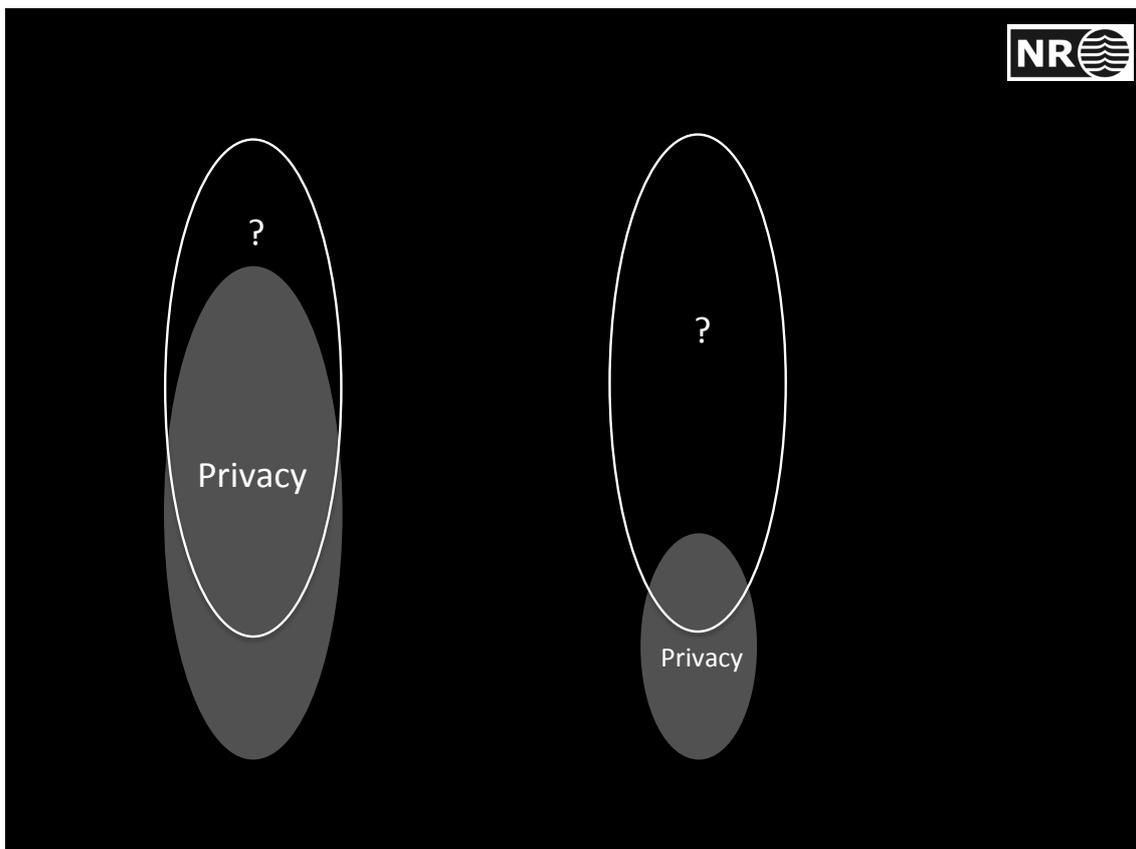
Gavison (1980). Privacy is limitation of others' access'' to information about individuals. What constitute limited access is the three independent and irreducible elements: secrecy, anonymity, and solitude.

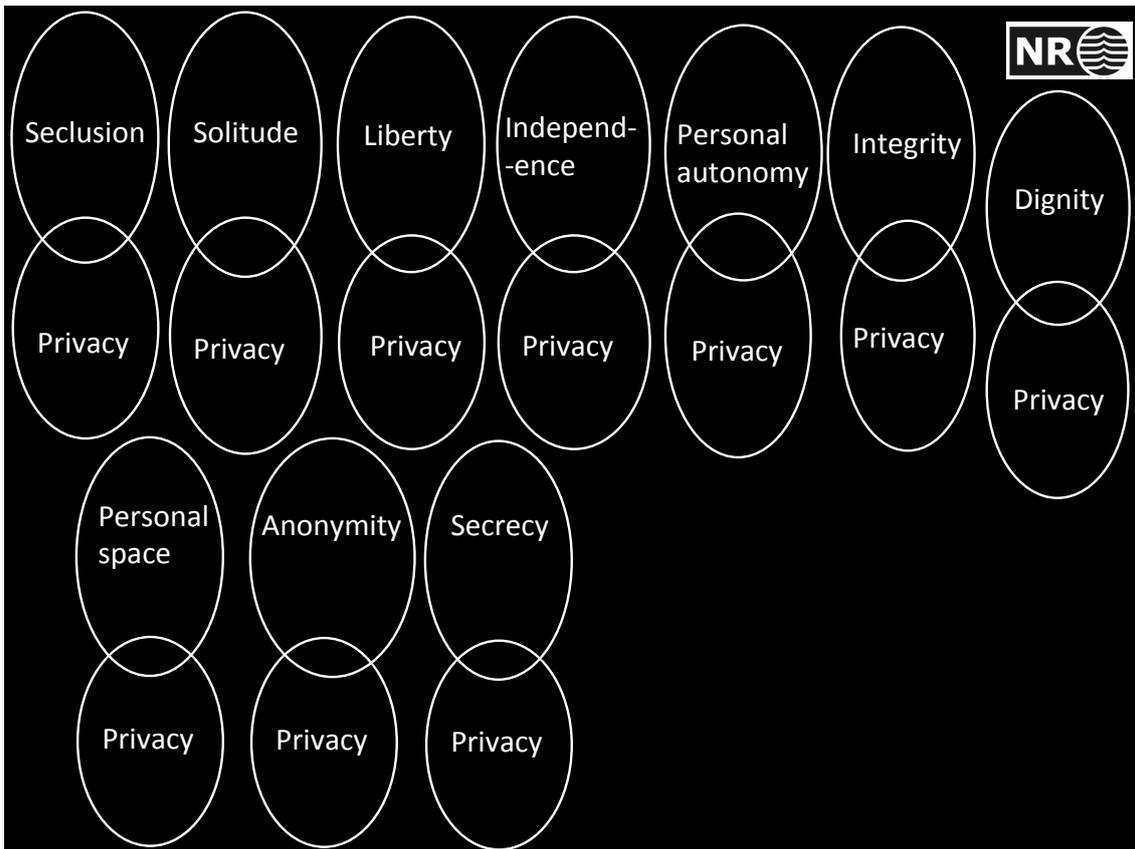
Schoeman (1984). three categories: (i) privacy as a claim, entitlement, or right; (ii) privacy as a measure of control over information, intimacies, or access; and (iii) privacy as a state or condition of limited access to a person.

Moor (1990), Tavani (2007). Restricted access/RALC defines privacy in terms of protection from intrusion and information gathering by others (through situations or zones that are established to restrict access), not in terms of control over information

Solove (2008). argues that privacy is a pluralistic value. Privacy is not reducible to a singular essence; it is a plurality of different things that do not share one element in common.

Cloud (2017). The unifying principle uniting these (Supreme Court) statements describing rights—whether defined by property or privacy theories is that a person's ideas are protected against uninvited intrusions.






EUROPEAN COMMISSION

Brussels, 25.1.2012
COM(2012) 11 final
2012/0011 (COD)

NR 

(Legislative acts)

REGULATIONS

**REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 27 April 2016
on the protection of natural persons with regard to the processing of personal data and on the free
movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)**

Article 88

Processing in the context of employment

1. Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

2. Those rules shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.

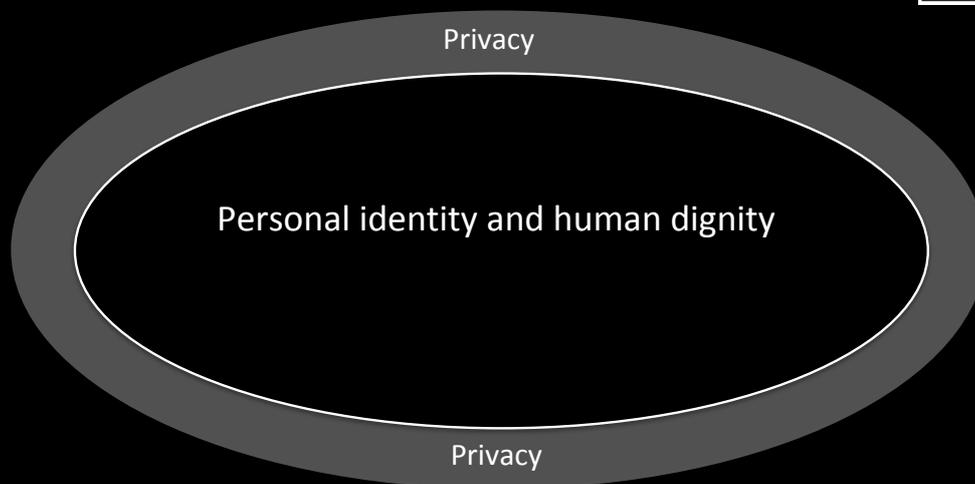
Continental privacy protections are, at their core, a form of protection of a right to respect and personal dignity. The core continental privacy rights are rights to one's image, name, and reputation, and what Germans call the right to informational self-determination - the right to control the sorts of information disclosed about oneself (Whitman, 2006).

“The protection of privacy should be based directly on the protection of human dignity, not indirectly, through other rights such as that to property or to freedom of expression” (Floridi, 2016).

“One’s informational sphere and ones personal identity are co-referential – you are your information. Anything done to your information is done to you, not to your belongings. It follows that right to informational privacy shields ones personal identity” (Floridi, 2006).



Individual human beings have dignity because of their natures, that is beings of a certain kind; rational and autonomous. Autonomy is the ground of the dignity of a human. It is a supreme value and the limiting condition for all other values (Kant, 1795).



Privacy is a limitation of others' access to an individual.. A loss of privacy occurs as others obtain information about an individual, pay attention to him, or gain access to him (Gavison, 1980)

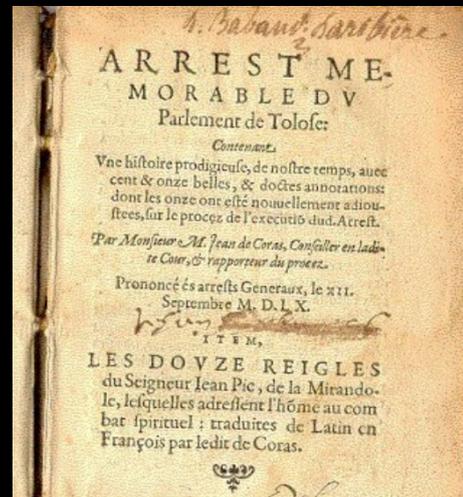
Privacy

Personal identity and human dignity



Commercial companies have free access..... (?)

In a highly computerized culture this is simply impossible (to control information). We don't control vast amounts of information about ourselves. Personal information about us is well greased and slides rapidly through computer systems around the world, around the clock. Therefore, to protect ourselves we need to make sure the right people and only the right people have access to relevant information at the right time. (Moor, 1997)



On September 12. 1560 , the public trial of the imposter Arnaud du Tilh took place. The French peasant Martin Guerre lived in the village of Artigat in the Pyrenees, but in 1548 he left his family and moved to Spain. In 1556 Arnaud du Tilh came to Artigat and claimed to be the long-gone Martin Guerre. Arnaud du Tilh was sentenced to death for having faked his identity in the public trail in 1560.

Questions and comments

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