
The Open Society as an Enemy

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Outline

- 1 Introduction
- 2 Individualism and the private sphere
- 3 The open society as an enemy
- 4 Conclusion

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The Open Society

What is the “Open Society”? Why is it viewed as desirable?

We need to disambiguate the phrase “open society”:

- ① Open, as in opportunities for vertical mobility
- ② Open, as concerns freedom of movement
- ③ Open, as in “the future is open” (to be created)
- ④ Open, as in open access to information
- ⑤ Open, as in informational transparency

I will concentrate on the latter two conceptions.

Democracy and the Open Society

Democratic societies are often said to require openness:

- Open societies lead to better informed decisions by voters (through open access to information).
- Open societies hold governmental officials accountable to the will of the electorate (through informational transparency of what decisions the government makes, and why).

Example: Failures of openness

Blair's "sofa government", the decision to invade Iraq, monitoring by the NSA and GCHQ.

Popper's "Open Society"

Not the same sense of "open" as what I am concerned with.

Popper identifies two developmental stages of society, the last of which is characteristic of the "Open Society":

- 1 No distinction is made between natural and normative regularities.
- 2 Normative regularities (i.e., social ones) are conventional and can be altered by humans.

Popper's "Open Society"

"[N]orms and normative laws *can* be made and changed by man [...] Norms are man-made in the sense that we must blame nobody but ourselves for them; neither nature, nor God. It is our business to improve them as much as we can, if we find that they are objectionable." (Popper, 1945)

My claim: the open society (in my sense) is a threat to democracy by transforming the relationship between individuals and society.

The open society (in Popper's sense) means that the threat can be stopped, if we act accordingly.

The open society, revisited

Consider the rise of social media.



The resulting informational transparency is often said to reveal “a generation who in many cases simply have no understanding of privacy, or of what was once perceived as its value.” (Marina Hyde, *Guardian*, 29 November 2013)

In a sense, we are only getting started: Google Glass, lifeblogging.

Is this bad?

The World Until Yesterday

Early human societies were maximally open.



The World Until Yesterday

Some say we are merely returning to our natural state.

That is, our ability to lead private lives was, when compared to most of human existence, an anomalous form of life.

Yet many of our current institutions and social practices are ones which have been created to address aspects of social existence which *were not present* in small-scale societies.

It is by not obvious that returning to the degree of openness found in early human societies, in the modern world, will be harmless.

The World Until Yesterday

Small-scale societies are typically characterised by many features lacking from the modern world:

- Widespread egalitarianism
- Informal decision making (often consensual)
- Systems of restorative, rather than punitive, justice
- Few social institutions

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The origins of 'individualism'

Historians and social scientists have pointed to many sources as the beginnings of individualism (Lukes, 1973):

- Epicureanism
- Early Christianity
- The emergence of Protestantism and the rise of capitalism
- The development of natural law theory, from the mid-seventeenth to the early nineteenth century
- From de Mandeville through the classical, and then neo-classical, economists.

What are some key characteristics of individualism?

Characteristics of individualism

- 1 The intrinsic value, or dignity, of individual human beings.
- 2 The *autonomy* of the person, whereby one's thought and action is one's own, not determined by factors outside one's control.
- 3 A *private* existence within a social world.
- 4 A notion of *self-development*.

Individualism and privacy

Privacy is an important requirement of individualism: it is implicated in many of the characteristics listed.

Freedom of thought and modest exercise of freedom of expression require privacy, in order to prevent the individual from being subject to excessive social pressure.

Individualism and privacy

Privacy also seems a prerequisite if society is to feature “experiments in living”, as Mill suggested.

“As it is useful that while mankind are imperfect there should be different opinions, so it is useful that there should be different experiments of living, that free scope should be given to varieties of character short of injury to others, and that the worth of different modes of life should be proved practically.”

Mill, *On Liberty*

The origin of the modern conception of privacy

Interestingly, privacy was not always viewed as a value:

“In ancient feeling, the privative trait of privacy, indicated in the word itself, was all-important; it meant literally a state of being deprived of something [. . .] We no longer think primarily of deprivation when we use the word ‘privacy’, and this is partly due to the enormous enrichment of the private sphere through modern individualism.”

Hannah Arendt, *The Human Condition*

The origin of the modern conception of privacy

A speculative claim: the emergence of the value of privacy, and the right to privacy, is connected with urbanization.

As cities grew, the possibility of anonymity, and the separation of the personal from the public, became real.

City	1500	1600	1650	1700	1750	1800
Berlin		12,000	6,500	70,000	90,000	172,000
Copenhagen			29,000	65,000	80,000	100,000
London	50,000	200,000	350,000	600,000	700,000	861,000
Naples	124,000	224,000	400,000	207,000	310,000	430,000
Paris	185,000	245,000	455,000	530,000	556,000	547,000
Rome	50,000	100,000		150,000		163,000

The origin of the modern conception of privacy

A link between urbanization and the right to privacy explains the absence of any mention of privacy in the U.S. Constitution.

City	State	Size
New York	New York	33,131
Philadelphia	Pennsylvania	28,522
Boston	Massachusetts	18,320
Charleston	South Carolina	16,359
Baltimore	Maryland	13,503
Northern Liberties	Pennsylvania	9,913
Salem	Massachusetts	7,921
Newport	Rhode Island	6,716
Providence	Rhode Island	6,380
Marblehead	Massachusetts	5,661
Southwark	Pennsylvania	5,661

Largest U.S. Cities in 1790

What we talk about when we talk about privacy

“Perhaps the most striking thing about the right to privacy, is that nobody seems to have a clear idea what it is.”

Judith Jarvis Thomson

For example: Warren and Brandeis defined privacy as “the right to be let alone.”

This is clearly too broad.

Let’s think of privacy along the lines of Wittgenstein’s “family resemblance” idea.

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The Accidental Terrorist

Zero-risk culture meets the internet



Data collection and subsequent data mining with regard to national security, in a zero-risk culture, favour false positives instead of false negatives.

The Accidental Terrorist

Lost in Translation

The 26-year old bar manager Leigh Van Bryan and his friend Emily Bunting were denied entry to the U.S. in 2012 after he tweeted¹:

"Free this week, for quick gossip/prep before I go and destroy America."

¹<http://goo.gl/IeFrK>

The Accidental Terrorist

Zero-risk culture meets the internet

Currently, the U.S. “no fly” list contains 21,000 names.

In the past, the list included: Senator Ted Kennedy, Nelson Mandela, and Cat Stevens (now Yusef Islam)².

Walter F. Murphy, McCormick Professor of Jurisprudence at Princeton, was denied a boarding pass because he was on the Terrorist Watch list.³ The airline employee asked, “Have you been in any peace marches? We ban a lot of people from flying because of that.”

²<http://goo.gl/EOMVDu>

³<http://goo.gl/Wp8DVK>

The “Policing” of the Personal

According to a recent Kaplan survey of 381 admissions officers, more than 30 percent said they had looked up applicants on Facebook or other social media⁴.

30 percent said that they had found negative information which affected the application.

In some cases, results of Facebook and Twitter searches have led to student's applications being rejected.

⁴<http://goo.gl/j9iv1m>

The “Policing” of the Personal

Corporations are increasingly adopting “social media policies.”

According to IT research firm Gartner, corporate monitoring of Facebook, Twitter or LinkedIn will rise to 60 percent by 2015.⁵

People have been fired as a result of companies finding “inappropriate” Facebook comments⁶ or Twitter remarks⁷.

⁵<http://goo.gl/VoCoZc>

⁶<http://goo.gl/GRgAv>

⁷<http://goo.gl/2hET>

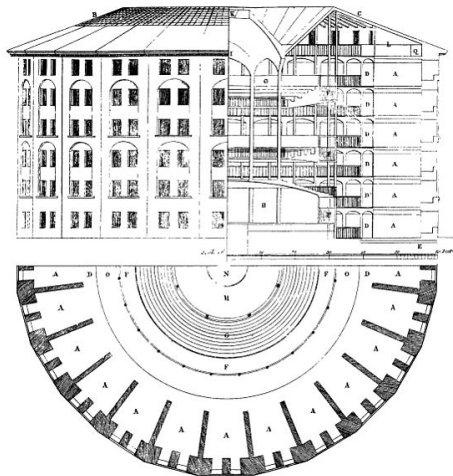
The “Policing” of the Personal

This intrusion of the corporate sphere into personal space suggests a key change in labour relations.

Not only does mobile technology erode the work/life balance, but monitoring of social media requires people to restrict their freedom of speech (and perhaps association) based on their employer's perceived interests and the threat of being fired.

The “Policing” of the Personal

A Panopticon of the Mind



The Bully Pulpit

The ubiquity of social media enables bullying on an around-the-clock basis, with greater reach.

You can now be bullied inside your home: there are no longer “safe spaces” to which one can retreat.

This has led to a number of documented suicides. E.g., Rehtaeh Parsons, after photos of her being sexually assaulted were circulated online⁸, and Hannah Smith, after being cyberbullied on Ask.fm⁹.

⁸<http://goo.gl/LbBVkq>

⁹<http://goo.gl/L6djCE>

The Bully Pulpit

Widespread information about the personal sphere enables random individuals to be targeted for manufactured “moral outrage” on a scale which would have previously been very difficult.



Asymmetries of power and wealth

“Dude, you can't take something off the Internet. . . that's like trying to take pee out of a swimming pool.”

(Joe Rogan, NewsRadio)

Injunctions, superinjunctions, and the advantages of being wealthy in the age of information.

The transparency of the open society is largely transparency of the masses: the powerful and wealthy remain as hidden and protected as always.

“If you are innocent, you have nothing to hide”

“If you are a law-abiding citizen of this country going about your business and your personal life you have nothing to fear about the British state or the intelligence services listening to your phone calls or anything like that.”

William Hague^a

^a<http://goo.gl/67R5Ki>

The “nothing to hide” argument is frequently offered as a forceful argument as to why widespread informational openness, and violations of privacy, is unproblematic.

“If you are innocent, you have nothing to hide”

The argument essentially identifies the desire for privacy with either the intention to conceal illegal activities, or negative information about the person.

“[W]hen people today decry lack of privacy, what they want, I think, is mainly something quite different from seclusion: they want more power to conceal information about themselves that others might use to their disadvantage.”

(Posner, 1983)

“[Privacy involves a person's] right to conceal discreditable facts about himself.” (Posner, 1998)

“If you are innocent, you have nothing to hide”

Let's challenge some of its presuppositions.

First, what constitutes law-abiding? In *Three Felonies a Day*, Harvey Silverglate identifies a shift towards removing the requirement of *intent* from criminal law (in the U.S.).

This, along with vague laws, means people can unintentionally violate the law, creating opportunities for selective enforcement of law for political reasons.

Stiff penalties incentivise the risk-averse to pleading guilty (even if actually innocent).

"If you are innocent, you have nothing to hide"

Second, innocent *now* doesn't mean innocent *later*.

Although the U.S. forbids *ex post facto* changes to the law, the UK does not.

Recently, the UK government introduced *retroactive* changes to DWP legislation requiring jobseekers to work unpaid in order to receive benefits, which was found unlawful by the court of appeal. This change prevented affected claimants from receiving a £130 million payout.¹⁰

¹⁰<http://goo.gl/4ju49t>

The Human Stain

Yet another problem is that the open society risks creating a world in which nothing is forgotten, and our every mistake is made available for all to see.

Yet forgetting is an important part of the mutability of personal identity.

In the past, people could emigrate to the New World, or “go west, young man,” and start again with a clean slate.

Such opportunities are in risk of being eliminated.

Restorative vs. punitive justice

Small-scale societies, in which openness was the default position, had judicial models built around *restorative* justice. It was important to return to a liveable, practical state.

Large-scale anonymous societies have judicial systems built around *punitive* justice, as a deterrent.

An open society, in which past transgressions are made known, without corresponding mechanisms for restoration, thus creates conditions for great harm.

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The Open Society as an Enemy

Widespread information transparency of persons threatens to:

- Vastly reduce the dignity, autonomy, and ability of individuals to engage in self-development.
- Reduce freedom of expression and freedom of association.
- Create internalised systems of self-censorship, discouraging freedom of thought.
- Increase the power of political elites and the wealthy, who will not be held to the same kind of accountability.

And thus the foundations of liberal democracy are undermined.

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