

# The Changing Meaning of Privacy, Identity and Contemporary Feminist Philosophy

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**Abstract** This paper draws upon contemporary feminist philosophy in order to consider the changing meaning of privacy and its relationship to identity, both online and offline. For example, privacy is now viewed by European Court of Human Rights (ECtHR) as a right, which when breached can harm us by undermining our ability to maintain social relations. I briefly outline the meaning of privacy in common law and under the European Convention on Human Rights (ECHR) in order to show the relevance of contemporary feminist thought, in particular the image of selfhood that stresses its relationality. I argue that the meaning of privacy is in the process of altering as a result of a number of contingent factors including both changes in technology, particularly computer mediated communication (CMC), and changes in the status of women. This latter point can be illustrated by the feminist critique of the traditional reluctance of the liberal state to interfere with violence and injustice within the “privacy” of the home. In asking the question: “how is the meaning of “privacy” changing?” I consider not only contemporary legal case law but also Thomas Nagel’s influential philosophical analysis of privacy. Nagel’s position is useful because of the detail with which he outlines what privacy used to mean, whilst bemoaning its passing. I agree with his view that its meaning is changing but am critical of his perspective. In particular, I challenge his claim regarding the traditional “neutrality of language” and consider it in the context of online identity.

**Keywords** Privacy · Feminism · Law · Identity · CMC

## Introduction: The Traditional Image of Privacy

The feminist philosopher Hampton (2007, 8) comments that philosophy often relies upon unacknowledged pictures of the world and that it is these mental images that

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form the basis of written arguments. I want to look at a particular image that lies at the heart of the traditional view of privacy in the West in order to examine ways in which our experience of privacy is now changing. The traditional image of privacy evokes a picture of an individual, who sits at the centre of a series of concentric circles that range from the most private to public. In the first circle is the individual's innermost thoughts and those actions that Mill (2008, 18) describes as "self-regarding" (i.e. that do not encroach directly upon others). In the next concentric circle is the family and home. Outer circles then include work and civil society and in the outermost circle lies the realm of politics. In this image, the divide between public and private appears clear and is often related to a particular place: the home, work place, public buildings, parliament.

It is necessary to look more closely at the second sphere that surrounds the individual, which is associated with the family and domestic home. In this picture, the home is private property, i.e. a place from which others can be legally excluded. The "individual self" is not gender neutral in this traditional image of privacy. In his recent book *Self comes to mind: Constructing the Conscious Brain*, Antonio Damasio comments on James (1957, 291),

James thought that the self-as-object, the material me, was the sum total of all that a man could call his - 'not only his body and his psychic powers, but his clothes, his wife, his children, his ancestors and friends, his reputation and his works, his lands and horses, and yacht and bank account.' Leaving aside the political incorrectness, I agree<sup>1</sup> (Damasio 2010, 9)

For my purposes, the historical "political incorrectness" is relevant. My aim is to consider the changing meaning of privacy in Western society and also to illustrate that this is intimately associated with our cultural understanding of selfhood, which, in association with privacy, is also changing. In this traditional image of privacy, the individual is generally imagined as male. The private sphere of the home included *his* family but he was then able to go outside of this domestic sphere (into work, civil society and the realm of politics) and to act in public. In contrast, women were envisaged as situated within the private sphere of the home. (This is an ideal sketch and not a claim that working class women did not have to work.) Ironically, as Woolf (2002) points out, the home was not straightforwardly a private place for women, who had to fight for a "room of one's own" within the home itself.

The concept of the public/private divide allowed political theorists to trivialise women's struggles against abuse of power by men. Such abuse was characterised as concerning only "private", personal issues, which lay in contrast with civil society and with the grand affairs of state. Hence, political theory concerned itself with the relationship between the individual and state. In modernity, this has meant paying attention to the question of the legitimation of the state, whilst ignoring the abuses of power that took place in "private". Gender hierarchy continued to be viewed as natural well after the naturalness of class hierarchies between male (white) citizens

<sup>1</sup> Online selves could now be added to this list as there is no reason to assume that these are any less "me" than my bank account. I will discuss online identity below.

had been challenged by early modern political thinkers from Hobbes (1994) in 1651 to the liberal social contractarian tradition.

In the West,<sup>2</sup> we now live at a time when our view of privacy has altered as a result of both women's struggles, which have successfully challenged the idea that women's place is in the home and by the separate development of technology, in particular CMC which gives rise to online identities. Both these changes are in the process of undermining the traditional picture of the individual, described above. This is a change with political implications. This image of the private individual, cut off from others in *his* private property has been central to liberalism. It is associated with the early modern liberal desire to delineate an area of self-development in which individuals were not to be subject to state interference. It is not necessary to hold onto this traditional image of privacy, which left no space in which to challenge injustice within the home, in order to defend individual legal rights generally. However, liberals, such as Rawls (1971), despite their potentially progressive ideal image of free and equal persons, have still to learn that the family is not always a just or even a voluntary association. It is certainly not a voluntary association as far as children are concerned. Hence, the patriarchal family may teach children a lesson in the "naturalness" of subordination that undermines other liberal ideals such as moral education and democracy (Okin 1989, 89–108; Nussbaum 2002).

I will illustrate how this traditional image of privacy is being rethought by looking at two areas in which it is being analysed in detail today: in the law courts and in philosophy. My choice of examples is necessarily selective. However, I have not chosen bodies noted for their willingness to embrace radical change in order to support my view that the meaning of privacy is changing. On the contrary, the common law courts, by virtue of following precedent, are necessarily backward looking, leaving aside the conservatism of judiciary (in the UK) that arises because of the way in which they are selected (Griffith 2010). Similarly, I examine Nagel's (1998) arguments, which are self-consciously conservative, albeit that they recognise change. Both the courts and Nagel's analysis provide subtle descriptions of the phenomenology of privacy. They are sources of information as to how particular attitudes to privacy have been lived out, rather than providers of abstract definitions of the term. The common law courts tend to leave their definitions open. For example, as I will discuss below, the UK common law test is circular, defining privacy rights as existing when the claimant has "a reasonable expectation of privacy" that is not outweighed by public interest in free speech. The courts thereby leave themselves discretion to take into account new situations that give rise to litigation, arising from new technology or changes in social mores, for example. Similarly, Nagel discusses specific examples of "our" experience, drawing upon both literature and anecdote to illustrate how he perceives the loss of certain values inherent in traditional respect for privacy.

Having made this point, it is useful to situate these analyses of privacy within the considerable literature that does attempt to define the term. The meaning of privacy

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<sup>2</sup> For a useful examination of Eastern approaches to the self in the context of privacy see Hongladarom (2009).