Politics of privacy, technologies of the political and the paradoxes of individuality

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Since the nineteenth century, relations between individuals and flows of information have been politically contested. The politics of privacy have been constituted around the problem of channelling flows of information. The line between public and private has become a permeable and mutable interface, coinciding only intermittently with the unsettled boundaries of private property and person. While the political status of privacy in many countries has become confused and ambivalent in the face of technological incursions, the notion of the private itself tenaciously holds onto credibility as a centred locus of subjectivity amidst fragmented and mobile structures of social interaction.

In the background, the thresholds and limits of individuality, of an inviolate personality, is a topic of constant political interest in recent times in western democracies. On this score, we might begin with a critical comment by Gayatri Spivak. Noting the fragmentation and decentralization of the individual’s "putative political and economic control over her own life", Spivak goes on to say that a “paradoxical byproduct of this system is to generate a conviction of individual centrality among most members of the intellectual, bourgeois, as well as managerial classes." Debates over privacy by and large reflect that conviction. They revolve around attempts to supplement that conviction with legal or juridical instruments. Genealogically, the evolution of this conviction and its attempted stabilisations is complicated. One task is to set out a possible genealogy of contemporary politics of privacy.

Aside from sociological debates about the status of the private, something more is at stake: an increasing, still largely unarticulated, presentiment that technological alterations of communication are not incidental to political and social formations, but that technical processes are deeply involved in the

constitution of the political. Technologies are not just objects of political contestation; technologies harbour resources of political differentiation and indifferentiation. What we hope to show is that any account of an individual’s loss of putative economic and political control over he or his life must take into account the constitutive role of the technical in the constitution of the political individual. The politics of privacy offer a chance to reconsider the enfolding of the technical and the political.

I A genealogy of the relation between privacy and the private

Broadly speaking, the genealogy of privacy and the private unfolds in the tension between different social, political and technological changes:

1. the juridical representation of the privacy of citizens in terms of a principle of inviolate personhood;

2. the incursion of images and words as information into the private domains of a mediatised social field;

3. the acceleration and extension of circuits of commodity transactions in markets and commerce requiring that individuality be both preserved and rendered transparent;

4. the intensified representation of individuals through record-keeping and surveillance in the interests of an economic governance of population;

Each of these lineages—mass media, law, governmentality, transaction and communication—entails ensembles of techniques and practices that trigger a different kind of response, and different modes of individuality. The domain of the private lies at the intersection of these lineages. The political representation of privacy presents itself as a mediation of the technical possibilities of communication in the name of a certain mode of individuality. As we will see, the historical constitution of that individuality does not precede the mediations that appear to affect it only secondarily.

(i) The legally private person

Currently, the most prominent strand of the legal protection of the private individual is represented by the so-called “right to privacy.” (In Europe today, the notion of data protection is pre-eminent, although it is still conceived on the
basis of a fundamental human right to privacy.\textsuperscript{2} The claims that privacy is a universal human right owe much to nineteenth century American law where it was first extracted from the common law and later, in the USA, from certain constitutional amendments.

Although this legal representation of the private draws conceptual support from classical liberal philosophy of the nineteenth century, it more immediately stems from an anxiety as to the role of the mass media in creating a public sphere increasingly centred on the circulation of information. Walter Benjamin pointed this out in relation to newspapers when he remarked: "the new form of information is communication. ... Information, however, lays claim to prompt verifiability. The prime requirement is that it appear 'understandable in itself.'":\textsuperscript{3} The photographic image plays an important role in both prompt verification and understandability. Against a background of increasingly reticulated and accelerated circulation of information (post, rail, newspaper, telegraph, photography, telephone, film; later radio and television...) across boundaries between public and private spaces, legal formulations of privacy were elaborated initially in relation to the increasing activity of technical media of communication, particularly the print mass media. From the mid-nineteenth century on, an increasingly transmissible, manipulable and reproducible surge of images and words flows in and out over the thresholds of the private, magnetised by the demands of prompt verifiability. (We will soon come back to this.)

In a famous and still-cited American legal essay on the right to privacy by Justice Samuel Warren of the US Supreme Court and Louis Brandeis, a wealthy Bostonian industrialist, the place of the individual in relation to both the gathering and circulation of images and words in the print media is the principal concern:

\textit{Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that "what is whispered in the closet shall be proclaimed from the housetops."}.

\textsuperscript{2} Reference this
It is significant that the primary legal precedent for a right to privacy in the late nineteenth century stemmed from a case involving the private lithographs of Prince Albert of the British Royal family and the reproductive capacities of the printing press.\(^5\)

If explicit legal rights to privacy were formulated in response to the rapid circulation of news and a mass readership increasingly focused on instant verification through photographic images, the emergence of legal and political questions of privacy during the course of this century was already a response to the socio-technical shock of the surge of signals (images and words) across boundaries between public and private spaces. The construction of a right to privacy was a sociopolitical and legal effort to stabilize the thresholds of visibility and communication of individual lives not just invaded by ‘mechanical devices’ of sound and vision, but re-configured as potential sources of information for mass media circulation and consumption.

In Warren and Brandeis’ argument, privacy is explicitly not derived from property rights. Instead, privacy stems from a representation of selfhood which Warren and Brandeis call "the principle of inviolate personality".\(^6\) This principle attempts to avoid confusion between the laws of copyright, which protect property linked to individual public expression, and personal self possession. Privacy could not be based on copyright without exposing every external sign of the individual to property claims. Instead, legal concepts of privacy sought to objectify a line between public and private on the basis of a difference between inside and outside. But the principle of inviolate personality also consolidated a way of regarding the individual as a source of information. Thereby it served only to confirm the very dynamic of mediatic incursion it sought to resist.

The gradual elaboration of specific legal rights and principles of privacy continues along the same conceptual lines today. Currently the right to

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5 Warren & Brandeis, 80

6 Warren & Brandeis, 82.

7 In his introduction to Philosophical Dimensions of Privacy, Ferdinand Schoeman writes “Some have regarded privacy as a claim, entitlement, or right of an individual to determine what information about himself (or herself) may be communicated to others. Privacy has been
privacy finds formal recognition in various legal instruments such as the European Declaration of Human Rights. It is crucial to civil liberties lobbies concerned with liberalising individual access to technology. Going a step further, the European Union’s Data Protection Act dispenses with any reference to individuals and merely regulates the movements of information across national borders and between corporations.

(ii) Incursions into private space

Juridical formulations of privacy, seeking to thwart the misappropriation of self-expression, revolved around an abstract notion of exclusive possession of self. The industrialisation of words and images clearly did not reach its apex in the nineteenth century; it escalates today. In the meantime, a multiplicity of audiovisual events began to flow, reshaping the thresholds and boundaries defining both property and person, things and self. Cinema and diverse predecessor nineteenth century technologies of the moving image inaugurated anonymous and sometimes intimate public spaces focused on spectacles of movement and sound. The history of cinema early this century shows just how quickly the content of these spectacles began to refer to bourgeois private life in particular. Public life itself expands its horizons considerably to include as much as possible of the private lives adjacent to public events.

The predominant audiovisual technology after World War II – television – continued to proliferate images of individuals and events, but with the important difference that it no longer need rely on the anonymity of a public space to stage its projections. The broadcasting of images from expanding networks of antennae, cables or satellites onto individual television screens introduces a torsion into the very architecture of private spaces, a torsion that

identified also as the measure of control an individual has over:

1. information about himself;
2. intimacies of personal identity; or
3. who has sensory access to him.

Finally, privacy has been identified as a state or condition of limited access to a person.”


8 This right has recently been given legislative embodiment in the field of consumer transactions through the European Union Data Protection Directive.

9 See the later section on cryptography and, for instance the NII Information Privacy Principles or the Privacy Charter

10 See Zielinski, ch 1
can be traced through the advent of open plan living spaces and the large picture windows of postwar suburban home living rooms.\textsuperscript{11} The televisual apparatus constitutes a half-open threshold which continually channels an outside inwards. When the television is on, an exterior both more removed and more intimate than any immediate spatial outside enters, bringing with it a mesmerising flow of perpetually novel and familiar commodity-images coupled with screen personalities, live-events and visual effects.

(iii) Private transactions

The thresholds of the private had already been structurally linked to commodity transactions during the nineteenth century. During the nineteenth century, the processes of accumulation of capital accompanying historical transformations in the scale of production triggered effects at the level of private property relations. The accumulation of wealth is tied to an intensification of these relations between bourgeois individuals. It produces an increasing interdependence of needs, and a multiplication of the linkages which distribute and process needs through relays of transaction. Relations of exchange, and new forms of ‘mobile’ property supported by legal instruments of credit, figure more prominently in the game of transactions that occupies the private individuals of civil society. These forms of property and ownership redefine the attributes of individuals in terms of legally defined identification protocols.

On the other hand, according to liberal theories of modern civil society, relations of individuals to each other in transaction must be partially invisible. That is, if the system of civil society is to work as whole, if the ever-intensified conditioning of interdependent needs is to afford the accumulation of wealth, the system as a whole must have a degree of incalculability based on the invisibility of individual actions and motivations.\textsuperscript{12} It is precisely calculability of the system which would permit some player/s in the game to become too powerful and therefore affect the well-being of other individuals. From this standpoint, the private individual, while certified through protocols of identification, must maintain the necessary invisibility of individual deliberation, calculation and action in relation to transactions and property, an

\textsuperscript{11} Spiegel, L, page reference?

\textsuperscript{12} See Burchell, G. 134 for an account of how this necessity was formulated by Adam Smith.
invisibility which permits the economic processes of linkage and dependency in civil society to extend and intensify.

(iv) Individualising surveillance

The risks of bureaucratic state intrusion into the private domain have often been treated as a major threat to individual privacy and liberty in liberal politics and theory. Beginning at least with Max Weber, sociology in particular has repeatedly described the ways in which the rise of the modern nation-state entails the growth of surveillance and record-keeping bureaucracies.

The growth of record-keeping and surveillance is only one aspect of a more supple and diffuse integration of individual bodies within a field of power of relations distributed between the State and its citizens. According to Michel Foucault, this distribution of power presupposed an inversion in which the locus of individuation moved from sovereigns to their subjects. Bureaucratic record-keeping belonged to an ensemble of relations that sought to continually lower the threshold and diversify the forms of describable individuality in order to ultimately guarantee a productive arrangement of those bodies and forces that compose a national population.

Underneath, through and around the public domains of markets, public institutions such as schools, courts and hospitals, the immense growth during the nineteenth century of what Michel Foucault termed the “apparatuses of disciplinary power” took place. The disciplinary technologies of government took root in techniques that rendered populations and individuals visible and calculable through techniques of observation, statistical normalisation, and examination.

Health, education, family life, work and other kinds of social behaviour were, and are today, subject to these processes (eg. the centralisation of patient medical records in national computer databases is currently occurring in a number of Western countries). The bureaucratisation of the modern liberal-democratic state, and

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15 Foucault, M. Discipline and Punish, xxx

16 Foucault, M. The Foucault Reader, 203

17 Foucault, 188
the corresponding growth in its powers of surveillance and security can be seen as part of the integration of individuals into networks of ordered relations at critical points.

To understand these arrangements as concerned simply with “recording-keeping” or “bureaucratization” would be to miss the point that the insertion of individuals within a diffusely regulated field was a necessary counterpart to the egalitarian juridical frameworks in which a division between public and private life, or an explicit legal right to privacy, could function. In *Discipline and Punish*, Foucault writes that “the real corporal [sic] disciplines constituted the foundation of the formal, juridical liberties.” Dandeker suggests too that “the prior growth of bureaucratic surveillance in modern societies ... provided important preconditions for the generalization of citizenship rights.” In his later work on governmentality, Foucault writes that “the tactics of government make possible the continual redefinition and redefinition of what is within the competence of the state and what is not, the public versus the private, and so on.” In other words, there could be no individuality of a kind susceptible to general legal rationality or political legitimation without the support of the government of individuals in which disciplinary techniques are exemplary.

It is also important to recognise that the techniques of surveillance were more effectively the invention of liberal democracies than an oppression exerted by totalitarian states of this century. Arguably, the success of liberal governmentality, as opposed to totalitarian governments, consists in a capacity to *economically* secure the integration of individuals into the social order at critical points, to guarantee some kind of security (which totalitarian states of the twentieth century could not guarantee) for “the optimal and as far as possible autonomous functioning of economic processes within society.”

This process of integration of individuals is quite heterogenous to the legal-political construct of a right to privacy with its reliance on a concept of inviolate personality defensible through law and administration of justice. The techniques of government are most efficient or economical operate without entering into open contest with the formal juridical aspects of personhood. The

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18 Foucault, 212
19 Dandeker, 216
20 *The Foucault Effect*, 103
21 Burchell, 137 or following
assertion and protection of rights stands above above the writhing ensemble of socio-technical power relations in which specific, selected capacities of individual bodies become the object of techniques of government. The risk for the techniques of government themselves is an excessiveness which would no longer allow the autonomous functioning of economic processes.

From this perspective, one could argue that attempts to defend individual privacy against the growth of surveillance by the state are often predicated on a confusion between two heterogenous orders, that of legal-political rights and that of sociotechnical arrangements of disciplinary power. Although excessive government power is unacceptable in liberal democracies, it is often misapprehended in terms of a legal-political concept of individual privacy. Resisting the intrusion of governments into individual lives in the name of a right to privacy in fact supports the very arrangements it purports to resist: the liberal techniques of governmentality have sought to limit their own extension in the interests of economically regulating individuals.

II The current conjuncture: privacy and the impossibility of communication

Complex tensions and relations between these different lineages are evident today. The case of cryptography, a technology that is currently an object of contention in many western countries, displays a uneasy hybridisation between the different lineages. It brings together transactional, surveillance, mediatic and legal strands of the constitution of the private.

Computer-mediated communications use cryptographic technologies as a means of guaranteeing both individuals’ anonymity and authenticating their identity. First of all, transactions, commercial or otherwise, are coded as information. This in principle entails repeatability and verifiability. Secondly, no matter where they originate geographically, networked electronic communications travel through numerous intermediate computers. Communications are potentially accessible at many points in the network. Even separating the address of the message from its content leaves open the possibility of interception and surveillance. The solution to this problem, right-to-privacy advocates and corporations argue, is to encrypt individual communications and transactions. A variety of encryption systems and they are being built into communications systems of all kinds (digital cellular telephones, credit and electronic funds transfers, entry and access systems, internet transactions, the emerging smart card technologies) in such a way that
they operate automatically, intruding as little as possible into the visible processes of transaction. Security is seen as essential to the growth of transactions mediated by movements of information.

However, electronic commerce, in diverse forms, at the same time borrows extensively from the disciplinary techniques of record-keeping and surveillance. Individuals conduct transactions via identification numbers, authorisation codes and authentication protocols that sign transaction information. The coding and encryption of individual identifying marks generates documents, files, and records of transactions. The process of certifying an identity is very difficult, perhaps impossible, to disentangle from records of the attributes of that identity. The cross-correlation of records and the mining of inferences from the data seeks to model the adverse multiplicity of the anonymous marketplace in terms of individual habits of consumption. In the arena of the privacy debates, correlations between records touches on anxieties concerning the prospect of a unified “data-image” of the individual.

On the one hand, individuals enter into transactional relations with other individuals or corporations under terms which remain ostensibly anonymous and more or less invisible to others. Cryptographic protocols both authenticate and hide individual identities. On the other hand, that very transactional relation becomes the object of intensive observation insofar as its particular attributes can serve as the basis for repeated or extended transactions. The very same protocols that encrypt also identify: they certify an individual identity and attach attributes pertaining to that identity.

Earlier forms of disciplinary surveillance functioned within specific and dedicated institutions such as the prison, factory, barracks, school or hospital where the thresholds between public and private were not clear. However, the surveillance of transactional information inhabits a network of dispersed nodes which are not regulated according to classical liberal democratic divisions between public and private spaces, but laid down across these conventional boundaries in order to attract and channel repeated patterns of consumption and bodily habit.
Contemporary concerns over the power of corporations to intrude on the privacy of consumers stem from this transactional linkage between privacy and private property.\textsuperscript{22} Something like disciplinary power impinges today on the transactional space of the market and begins to precipitate highly ordered lines of movement and regular regimes of contact between the productive output of corporations and the habits, affects and desires of individual bodies. (The lighting, spacing and signage of wares in a contemporary supermarket would be one mundane example that flows from intensive research into the habits and preferences of customers.) Given the globalised growth in commodity production, and the reduction in the circulation time of information, corporations face the ongoing task of introducing asymmetrical gradients of consumption into the market place by intensifying the targeting of individuals or groups. Such targeting becomes optimal when customers are rendered visible as individuals using the techniques of record-keeping, surveying, testing, examining and monitoring that have already proved fruitful in the disciplinary techniques of government and production.

It may be necessary to ask whether this thread in the genealogy of privacy amounts to something different in nature to the disciplinary power formations.\textsuperscript{23} In any case, the conjunction of the individualising effects of disciplinary power with the immersive flows of transaction data introduces an added layer of complexity to the braid of privacy.

The crossing of thresholds is permitted by the constitutive tie between privacy and commodified private property. Electronic credit, funds transfer, and customer loyalty reward schemes, to name a few of the current protocols within

\textsuperscript{22} Two strands of privacy are involved here: that of producers and that of consumers. Growth in output of all kinds of commodity production relies on the techniques of rendering the work of production visible and describable. The contractual relation between employees and corporations usually coexists uneasily alongside a disciplinary power/knowledge nexus known as “management”. Issues of workplace surveillance and performance monitoring arise today in the management of corporate workforces precisely from this disciplinary content which, amongst other things, undermines the notion of an employment contract as the negotiated and reciprocal dependency of two legal individuals.

\textsuperscript{23} G. Deleuze argues this in “Postscript on the Societies of Control”, \textit{October} [1992, 59: 3-7]
the network of transactions, all raise privacy concerns at the same time as they presuppose an extending link between privacy and private transactions.

(iv) Privacy, cryptography and anonymity

Finally, the most recent thread of contemporary privacy comes from the employment of the technologies of secrecy as a means of securing private communication and transactions. The most enduring technique for safely sharing secrets has been the creation of relationships of trust, some of which have been formalised until they have acquired the status of social institutions. The most obvious, and probably the oldest of these is the doctor-patient relationship, which is enshrined in the Hippocratic Oath, whose adherents swear that “[w]hatever, in connection with [their] professional service, or not in connection with it, [they] see or hear, in the life of men, which ought not to be spoken of abroad, [they] will not divulge, as reckoning that all such should be kept secret.” Similar relationships of shared secrecy have come to exist, albeit for different reasons, between priest and penitent within the walls of the confessional, and more recently between client and lawyer, and between journalist and one of their sources speaking “off the record.” In each of these cases, a socially and sometimes legally enshrined expectation of confidentiality constrains the flow of information.

The problem of interception of communicated secrets requires different solutions altogether, and technical means have been developed for the protection of communications and other secrets. Both the techniques of steganography, where information is concealed so that it cannot be found, and cryptography, where messages are rendered unreadable by means of codes and ciphers, have long histories, throughout which their use has been largely the domain of organs of states.

This desire by individuals for secrecy tools has not gone unnoticed by states. While the “black chambers” were brought down by outcry at the opening of


25 One of the key objections of the British Medical Association to a centralised medical database proposed by the British government in xxxx was that inadequate security might result in breaches of the confidentiality of the doctor-patient relationship. See Monitor (full ref?).
public mails,¹⁶ there has been less resistance to the interception of telephone conversations by law enforcement officers, and it has become a standard, if legally-constrained practice. However, as communications become increasingly digitised, and thus able to be rapidly and effectively encrypted, law enforcement bodies are becoming concerned about the possibility of technical obstacles to their interception of individuals’ communications, even in circumstances when legally and socially it might be regarded as appropriate for them to do so. Similarly, military and intelligence organisations are concerned about the wide spread in the public sphere of tools that were previously their exclusive domain. Agencies that have enjoyed cryptological advantages over their foreign rivals, are having to face the possibility that if high-grade encryption systems are available to civilians, the military advantages afforded by their comparative cryptographic superiority may be eroded if foreign powers are able to acquire on the open market better encryption than they previously had at their disposal.

As a consequence, there has been a general tendency for states to attempt to limit both the export of encryption technologies beyond their borders and the use of encryption within them.¹⁷ A representative example is the United States of America, where cryptographic systems are classed as munitions, and are thus subject to tight export restrictions. At the same time, the US government is attempting to limit the use of cryptography within national borders by the proposed use of a government-sanctioned encryption standard, widely known as the “Clipper Chip,” that can be cracked with a numerical “key” held in parts by two government agencies.¹⁸ As the chip’s detractors point out, however, such a system affords government agencies no access to messages encrypted with it

¹⁶ The key developments in cryptography and its related science of cryptanalysis—the breaking of ciphers—came amidst the political intrigues of the fifteenth century, when they became key tools in the repertoire of the emergent European nation-state. This accelerated development culminated in the eighteenth century in the institution of the so-called “black chambers,” specialised cryptographic groups serving the major European powers, whose role was to decipher encrypted correspondence passing through their respective capital cities. See David Kahn. The Codebreakers: The Story of Secret Writing, 1967. New York: Macmillan p.187-188.


¹⁸ A good archive of documents relating to the proposed Clipper Chip is maintained by the Electronic Frontier Foundation, and can be found at <http://www.eff.org/pub/Privacy/Clipper/>., accessed 22 January 1997.
if they have been previously encrypted with another scheme. It seems likely that the next step after the introduction of the Clipper Chip would be an attempt to outlaw the use of all other encryption systems by US citizens.
Technologies of privacy and the limits of communication

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The relentless growth of electronic communications presents us with the problem of how to figure the limits of communication. These limits reflect the pressing political problem of articulating thresholds of individuation and particularity amidst high-bandwidth transmissions and massive migrations of data across institutional, corporate and national boundaries. Elements of a political response to this growth can be detected in recent debates over conflicts between technologies of privacy and surveillance or information gathering, between techniques of anonymity and techniques of disclosure. Recent debates have pivoted on the notion of privacy without accounting for intrinsic ambivalences that characterise that concept.

The liberal tradition has posited the right of privacy as a foundation of the individual. At another extreme, recent strands of postmodern political theory have treated privacy as an obsolescent phantasm, or at best, an irrelevance pertaining to the integration of individuals into flows of information.29 Neither a blithe reassertion nor a simple dismissal is productive, because both extremes tend to deny an intrinsic ambivalence in the concept of privacy. On the one hand, privacy is an easy target for post-Enlightenment objections to foundationalism. Individuation in the current conjuncture does not conform to any substantive, transhistorical distinction between public and private domains. At the same time, the concept of privacy partakes of a sense of corporeal individuation which must be accounted for if particularity and singularity are to be affirmed. In order to respond constructively to this ambivalence, which has been heightened by networks of interrelated communication and control, we need a concept that maintains rather than reduces the tension between the shifting, contingent grounds of politics and the affirmation of particularity.

Towards a non-foundational notion of privacy

There is much to question about prevailing notions of privacy, and the general significance of privacy as a social or political issue. All too many conventional standpoints on privacy stem from the individualism of liberal or neo-liberal philosophy. Broadly speaking, they can be subsumed under some facet of the following general definition: privacy is a right or capacity to control access to some aspect of oneself, or the state of being in such controlled access. In the past decades, theoretical work focused on the liberal philosophical foundations of privacy has strongly questioned the indifference to differences that liberal models of individuals in civil society entail. In such models, private particularity is always secondary to the foundational universality of public life, which governs access to and mobility within modern public spaces. In this context, private life denotes the zone of dependency in which bodily desires and affects find an outlet in intimate intersubjective relations. The particularity of bodies and desires is maintained in the relations of dependence that knit individuals together in the private domain. For theorists of a politics of difference, the cultivation of differences within the hothouse of private dependencies entails a corresponding decline in the diversity of public life. The public sphere cannot possibly measure up to its claims to universality because of the way it confines certain differences to the private domain. Iris Marion Young writes that “the idea of the public as universal and the concomitant identification of particularity with privacy makes homogeneity a requirement

30 In his introduction to Philosophical Dimensions of Privacy, Ferdinand Schoeman writes “Some have regarded privacy as a claim, entitlement, or right of an individual to determine what information about himself (or herself) may be communicated to others. Privacy has been identified also as the measure of control an individual has over:

1. information about himself;
2. intimacies of personal identity; or
3. who has sensory access to him.

Finally, privacy has been identified as a state or condition of limited access to a person.” Schoeman, F.D. “Privacy: philosophical dimensions of the literature”, Philosophical Dimensions of Privacy: An Anthology, ed. Schoeman, F.D. 2-3

31 For carnivals, revelry, riots, feats of arms, and mobs, public order in the context of the early modern nation-state substituted reasonable, impartial spaces, where debate, criticism, exchanges of opinion, deliberation and decision could in principle take place without excess or caprice. See Young, I. M. “Impartiality and the Civic Public”, Throwing Like a Girl and Other Essays in Feminist Philosophy and Social Theory, (Indiana University Press, 1990) 98-100

32 Young, I. M. “Polity and Group Difference”, Throwing Like a Girl, 117
of public participation.” In other words, the model of privacy as a space cut out from the realm of general or universal participation, tends to contain and neutralise differences pertaining to affect, desire and the body. The model of the universal citizen, with its peculiar and privileged bifurcation between universal, rational public *persona* and particular, affective private embodiments, does not grant access to those who cannot or will not leave their particularities behind.

By and large, the critiques of liberal privacy advocate a rejuvenated public sphere that is able to represent and signify particularities. However, this focus on constituting new public spheres and new models of participation in public domains generally assumes that all social-political processes take place within closed contexts of signification. Our perspective, by comparison, focuses on what permanently troubles the closure of any context upon itself, or more specifically, on what resists incorporation into public or political processes. Although privacy is classically defined as what remains outside or excluded from public domains, claims to privacy appear as signifiers within political discourse. The politics of privacy takes place through contesting symbolizations of what can close itself off from communication or social interaction. The status of political claims about what is closed off from the processes of politics is therefore somewhat problematic. Political claims about privacy are only made in a context from which the referent, privacy, is absent. Any experience of privacy as such pivots on this articulation between what seeks to control or limit communication and the process which seeks to legitimate and preserve the non-communicative by figuring it within cultural and political chains of signification.

At stake in any formulation of the public-private dyad is the irreducibility of individuality amidst the variable contours and thresholds of sites of communication. A non-essentialist conception of the individual must account not just for historical and cultural variations, but a constitutive instability in the line between the public and private, and do so without recourse to foundational privileging of either of those latter terms. As well, in the current conjunction, such a conception must remain responsive to new forms of communication and control, for the contingencies of technological embodiment generate tensions, of which the rekindled debates over privacy (especially in the context of the State’s access to individual communication) are symptomatic.

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33 Young, “Polity and Group Difference”, 119
In the first part of this essay, we outline the heterogeneous genealogy of privacy as the regulation of thresholds and access points between particular sites of individuation and the “real universality” transacted today through networks of communication. The genealogy seeks to show that the claims made in the name of privacy arise in response to disparate conjunctural techniques such as the “industrialisation of images,” legal instrumentalities, techniques of governmentality, transactions and corporations, and the individual’s integration into networks of telecommunication. One outcome of this genealogy is to show that the concept of privacy, which is invoked in contexts ranging from Royal media scandals to State surveillance and the Clipper Chip, is overloaded with so many different forces and utilities that its coherence becomes questionable. The second stage of the essay poses the problem, on the basis of the irreducibly heterogeneous forces that make claims on privacy, of how it would be possible to think a non-foundational notion of privacy. It suggests that the inherent incoherence of privacy can be provisionally formulated as an empty signifier in the sense recently proposed by Ernesto Laclau: as a constitutive term of alterity which allows particular social forces to enter into political relations without lapsing into the antagonism of exclusive identity claims or without assume a foundational unity in human collectivities.

II The current conjuncture: privacy and the impossibility of communication

The genealogy of privacy illustrates Nietzsche’s observation in On the Genealogy of Morals that “all concepts in which an entire process is semiotically concentrated elude definition; only that which has no history is definable.” To say that privacy as such eludes definition is not to say that the concept of privacy has no unity. Rather it is a constituted unity, hard to analyse because it is overladen with many different purposes and utilities.

34 “Real universality” is the term used by Etienne Balibar to describe our historical situation where “for the first time, ‘Humankind’ as a single web of interrelations is no longer an ideal, or utopian notion but an actual condition for every individual.” Balibar, E. “Ambiguous Universality”, differences: A Journal of Feminist Cultural Studies, vol 7.1 (1995), 56
Why has privacy been subject to such semiotic concentration? As a signifier, privacy is attached to different signifieds in different contexts; moreover, even in a given context it may ‘float’ or be overdetermined by different meanings. The threads of legal instruments, images and spaces, surveillance and disciplinary power/knowledge dispositifs, the capture of transactions and the individualisation of secrecy wind around each other, forming many of the current privacy tangles in economically-developed countries. It is impossible to separate contemporary Western individuals’ mode of relation to images from their productive capacities as subjects of power/knowledge relations, from their transactional dependencies, or increasingly, from the implementation of encrypted or anonymous forms of identity and signature. Images are channelled around patterns of transaction, processes of transaction mingle with individualising power/knowledge apparatuses, the “privatisation” of governmental agency blurs the lines between transactional and civil aspects of the individual, and in turn, transaction and communication together precipitate novel forms of identity associated more with access codes than with voice, face and place. The five threads of the contemporary conjuncture—image, individualising power/knowledge, capture of transactions and encryption of identity—trouble any notion of privacy as quasi-spatial and individual isolation or enclosure, as the control over access to information about the self. They wash away at the foundations of the individual as self-sufficient, unified and enclosed by attesting to an increasingly self-differing, dispersed and relational processing of individuality in communication.

Given its composition as an ensemble of different positions and particular claims, what status can be accorded to notions of privacy in the contemporary conjuncture? The genealogy indicates that the politics of privacy is intimately tied to the insertion of individuals within networks of technologically mediated images, administration, transaction and communication. In a certain sense, the various symbolisations of privacy that appear in political debates and in cultural narratives of privacy have been triggered by slippages along the fault-line where individuals meet technical networks of communication and control. It would be easy to dismiss privacy on two counts. Firstly, that it is simply incoherent; it seeks to tie together too many things that don't belong together at all. Our sociotechnical genealogy of privacy would support such a dismissal. Secondly, that it is too abstract because it has no content that could not be better analysed in more specific terms. Again, the genealogy could be seen as attempting to do just that: to break down the putative unity of privacy or the
private into a set of particular processes and entities that embody their own dynamics.

There is another, more productive path to be taken here, one that shows that something more is at stake in privacy than either a remnant of an increasingly porous distinction between the public and the private, or a universal property of the individual. This path begins from the proposition that privacy is an “empty signifier” in the sense recently proposed by Ernesto Laclau. According to Laclau’s formulation, any system of signification requires limits, which are necessarily inexpressible within that system, except through a breakdown or blockage in the process of signification. The system is therefore structured around an empty place resulting from the impossibility of producing an object which is nonetheless required by the system in order to draw its own limits. Empty signifiers occupy that unstable and mobile empty place within a context of signification. The notion of the empty signifier provides one way of understanding how privacy can link many different particular claims together, of how it can semiotically condense such different aspects of individual identities and at the same time seem to evacuate itself of any real specificity.

The limits of communication

In what sense is privacy an empty signifier? Assuming that it has no essential ground or foundation, a system of signification is always confronted with the impossibility of representing its limits within its own signifying terms. Such limits are essential to the work of constituting entities within the system, for without them, the work of differentiation in which identities are defined by their differences from each other would be interminable. (This is what Laclau terms 'the logic of difference'.) The systematicity of the system requires limits. Within these limits, diverse identities are linked by their belonging together within a system, and indeed renounce their differences in order to express this belonging. (This is what Laclau terms 'the logic of equivalence'.) Thus, for instance, the incommensurable strands in our genealogy represent different constructions of individual identity, as the operation of the logic of difference tends to multiply the claims and experiences of privacy, and each new form of communication gives rise to further claims. At the same time, these

38 Laclau, "Why..." 38
39 Laclau, "Why..." 38
constructions tend to cancel their differences in signalling that they lie within common and exclusive limits. However, neither the limits nor what is beyond them are directly representable within the system without simply becoming a part of the system.

This tension between necessity and impossibility, between the fact that a system must have at least provisional limits and yet cannot directly represent those limits, opens the unstable place of the empty signifier. This instability triggers a general dynamic that, on Laclau’s account, propels the mobility of contemporary politics. An empty signifier represents the constitutive impossibility of any signifying system. That impossibility derives from the fact that a system must have limits, yet those limits cannot be represented in the system if they are to remain actual limits. Nonetheless, the logic of equivalence requires an expression of equivalence derived in some way from the limits of the system. Hence what is excluded from it, the "pure negativity" of the system, signifies itself as a breakdown in signification. This breakdown takes the form of an empty signifier, a signifier which stands in for the unrepresentable totality of the system at the cost of its detachment from any particular signified.

As our genealogy shows, privacy is so variously applied that it does not have a single signified. The impossibility of finding a unifying signification for privacy can be seen as a product of the kind of logic of equivalence that Laclau describes. Irreducible yet intertwined, the strands of privacy initiate a whole sequence of conflicts and ambivalences with regard to communication.

Privacy, as an empty signifier, is present within the signifying context of mediatised communication as a representation of the limits of communication. A system of communication must have limits which are more than technical. (Indeed, the paroxysmic effort to push back the technical limits of communication apparatus by initiating different forms of convergence, merger and acceleration might be seen as a dynamic symbol of the impossibility of full communication). According to Laclau’s logic, a social field overcoded by telecommunications must, like any other, exclude something. In confronting this exclusion, particular entities within the field of communication are chained together in equivalence; they give up their differences in order to present a common opposition to what lies outside the system. From this perspective, privacy is not just another different claim within the context of contemporary politics of communication. On the contrary, as an empty signifier, privacy stands in for the pure negativity of the tangled systems of communication.
Signifiers of privacy are detached from particular differentially constituted signifieds and, in the form of an empty signifier used to represent the systematicity of the system.

The empty signifier of privacy signifies an absent totality of full communication. The dynamism of privacy as an empty signifier consists in the way in which it simultaneously embodies and masks a signifying impossibility within enhanced communicativity. The imperative for a system to represent its own limits through a breakdown in the process of signification takes a peculiar form in a contemporary communications context. The empty signifier of privacy embodies the necessary process of signifying the limits of the system while at the same time masking the negativity implied by those limits. Furthermore, it masks the signifying process which constitutes the limits on the totality under the guise of internal controls on processes of communication. This latter is the focus of conventional understandings of privacy.

This situation manifests itself in a chain of signifiers. As the strands of the genealogy show, privacy can serve as an empty signifier because of the proliferation of different particular claims to limit communication. Although these claims share no essential unity, they are rendered equivalent in responding to the growth of communication. Only because these claims tend to cancel out their differences in shared opposition to the possibility of full control and communication can the signifier of privacy step in. In their particularities, each of these claims places a different meaning and limit on communication. The kind of privacy associated with transactions is different from the kind of privacy associated with the interaction with surfaces of projection. But these differences collapse into a shared space of communication or community produced by the logic of equivalence precisely in their opposition to the threat of full communication.

**Privacy as an empty signifier**

We are now in a better position to appreciate why privacy is so semiotically condensed and at the same time so empty of specific meaning. It is a semiotic condensation of the processes of individuation occurring adjacent to technological networks of communication. As an empty signifier, it incessantly draws on particular significations associated with different openings and access to communication, and detaches them from sociotechnical contexts in order to make use of them to signify the radical exclusion on which the signifying totality of information, media and communication politics is based. As distinct
from an intrinsic property of the individual, or a remnant of liberal ideology, privacy conceived as an empty signifier embodies the constitutive impossibility of full communication. No matter what communications technologies are developed, no matter how technology expands communications, these constitutive limits must figure within the system. Moreover, the continual shifting of these limits necessitates an incessant signifying process of which privacy can be seen as one dynamic element closely linked to contemporary individuation.

Privacy, on this reading, is a specific historical contingency indissociable from highly mediated communications systems of the last two centuries. Given that communication belongs to any social context, the dynamism of privacy in the current context arises from the fact that diverse and accelerating sociotechnical forms of communications cut across traditionally distinct modes of individuation and places them in unpredictable and mobile chains of association.

Each strand of the genealogy shows a specific individuation in relation to a certain modality of circulation of messages. For instance, claims made against the power of government to intercept and monitor point to point telecommunications posit a certain ideal of telecommunications as a domain of undisclosed individual interactions. Similarly, resistance to full profiling of all commercial transactions conveys an ideal of partial invisibility as a source of ongoing dynamism in the circulation of market commodities. Finally, the private spaces of audiovisual projection open channels for the consumption of images and reports of an ever-expanding zone of public events, but only on the condition that those spaces themselves remain more or less shut off from participation in events. The enchaining of different claims on or against communication by the empty signifier of privacy is not exhausted by just those strands of privacy that the genealogy discusses. The looming problem of access to individual genetic histories could soon be added to the chain of signifiers that privacy extends.

We can expect such contestations of privacy to continue. Technological changes in communication show no sign of abating, and these changes tend to open or decontextualise social contexts, inevitably touching on their subjectifying processes. Simultaneously, the logic of the empty signifier itself predicates ongoing instability in the figuration of the limits of any signifying system. In those terms alone, privacy cannot rid itself of the tension which holds it
between particular differences and general equivalence. As an empty signifier, it functions as a “coping mechanism” that drives a dynamic of closure in the face the impossibility of full closure. It is the interface between these heterogenous forces of technological decontextualisation and closure of signification that imbues privacy with ambivalence and dynamism.

If privacy draws together these different claims, it is only insofar as specific conditions are left behind, and privacy begins to stand in as the empty signifier of something shared between all of these different positions, yet something that cannot be directly represented as such. Within a conjuncture defined by the growth of communication, that unrepresentable commonality, as we have suggested, can only be the limits of the current conjuncture itself, the cancellation of differences in full communication. Why does the signifier of privacy have an exemplary status as the empty signifier of the ‘pure negativity' of the systems of communications?

Giorgio Agamben writes that “what hampers communication is communicability itself; humans are separated by what unites them.” Claims to privacy are predications of particularity and forms of separation that arise in the context of a plethora of communication, an excess of communication that threatens to negate all differences within the contemporary sociotechnical field. But these claims are posited within an equivalential logic that submits itself to the necessity of representing a more general and constitutive set of limits concerning the growth of communication. Seeing the politics of privacy as a response to a global context of communication in which each individual “receives a distorted image or stereotype of all the others” does have certain advantages. Claims to privacy can be articulated in a way that neither limits their scope (to one class, to one sociotechnical context, to one political grouping), nor converts privacy into a universal foundational category, pertaining, for instance, to an apriori essence of the human individual. The status attributable to privacy is certainly not simply that of a particular content or function that can be protected or realised (in the interests of citizens, consumers, etc) or, for that matter, dismantled (in the interests of the public

41 Balibar, E. “Ambiguous Universality”, 56
representation of differences). Any particular content or function for privacy is open to challenge because it might not account for some other particular claim to or experience of privacy, some emergent contingency that affects access to individuals.

However difficult it is to ignore privacy’s liberal lineage, or for that matter to ignore the fact that liberal democratic politics and techniques of governance are very much the order of the day in North Atlantic-style democracies, the concerns of this essay lie in a different direction.

Currently circulating ideas of a crisis or revolution in control of information and communication seem to be at base positing the relation between technological and social processes in terms of divergent vectors of decontextualisation and contextualisation. The decontextualising dynamics of technologies of communication are seen to be more or less at odds with meaning-producing processes of politics and culture which weave relations between entities within sites of relative closure. The social spheres of politics and culture have the task of providing pathways of mediation so that culture can catch up to or moderate the decontextualising dynamics of technological events. (Conventionally, rights of privacy would be one such form of re-closure of context.) Against this disjunctive model, we see privacy as affording an opportunity to think the crisis in communication in more productive terms. Thus our concern is to show how privacy figures in the relations between particularity and universality (as they are specifically actualised in sites of communication and control involved in the reticulation of information) in terms of a troubled logic of closure.