Are We Getting Privacy the Wrong Way Round?

Kieron O'Hara • *University of Southampton*

In a celebrated passage, political philosopher John Stuart Mill argued that

> The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or to forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise or even right.[1]

In short, don't interfere with other people's decisions solely for their own good. If your friend wants to do something stupid that harms only herself, then that's her problem, not yours, or public opinion's, or the government's.

That principle — let's call it the Mill test of whether coercion is justified to prevent harm — has become increasingly influential as freedom has become a prized political good. It defines an area of private life in which you have, in the classic account of the US jurists Warren and Brandeis, the right to be let alone.[2] This presents an irony for the digital citizen because applying the Mill test specifies a space for *decisional* privacy in a world where people often decide to sacrifice their *informational* privacy for free or useful services — despite the fact that many commentators (apparently, even including the CEO of Facebook, whom we shall meet later[3,4]) believe that to do so is hardly wise or right at all.

Applying the Mill test, we would address our friend, were we in an insufferably pompous mood, thus:

> History tells us that giving away details of your whereabouts, spending patterns, or religious and political beliefs is unwise. Long experience tells us that showing everyone photographs of your naked bottom at that party, agreeable and amusing though they undoubtedly are, will eventually lead to embarrassment and mortification. However, it is you risking political repression, lowered job prospects, shame, and blushes. You will be the one to suffer, but on your own head be it.

Naturally, such sanctimonious counsel would be ignored completely, but my point is that this application of the Mill test assumes that privacy benefits the individual. We can trade it off against security (all those closed-circuit TV cameras in the UK), efficiency (intelligent traffic management), sociality (sharing intimate photographs), commerce (targeted marketing), fairness (preventing illegal immigrants receiving state benefits), the environment (smart grids), and public health (crunching health data). This trade-off is always against a social good whose beneficiary is a group or even the community as a whole. Privacy is supposedly a human right (see www.un.org/en/documents/udhr/), but it seems to be a license to free-ride on others' efforts. Shame on you!

The Individual and the Community

This analysis is shared by two usually antagonistic ideologies. On the one hand, liberals, libertarians, and individualists champion the Mill test to support the freedom of individuals to do things that the community frowns on. If you're

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only harming yourself, then it's only your business. Meanwhile, they say privacy is important because it protects autonomy, the ability to make informed decisions free of coercion. Without control over access to my person, my reflections, my decisions (following those reflections), and information about me, I'm not fully informed about my environment, I can't avoid coercion, and I can't be authentically myself.[5]

Against this, communitarians argue that freedoms make sense only against the background of a culture that maintains them. Rights entail responsibilities to ensure that communities function properly and humanely, and when individuals pursue their own rights beyond a certain point, the community suffers.

Communitarians and individualists agree that the gains of privacy accrue to the individual, while its costs are felt by wider society.

Although they're important, privacy rights produce harm by undermining community cohesion, so when a community faces a well-documented threat (not just a theoretical one) to the common good, the Mill test doesn't rule out steps to curb privacy.[6]

In their joint support for the Mill test, communitarians and individualists agree implicitly that the gains of privacy accrue to the individual, while its costs are felt by wider society. Privacy is a private good, like life, wealth, and freedom. Unlike clean air, clean water, and democracy, it isn't a public good whose benefits accrue to the community at large.

Zuckerbollocks

Another view makes a meaningful contribution to this debate: a self-serving (but no less plausible) technological determinism that takes seriously how people behave online and that I like to call "Zuckerbollocks." The ur-text of Zuckerbollocks is the famous statement by Scott McNealy, then CEO of Sun Microsystems, that "You have zero privacy anyway. Get over it."[7] The cult's high priest is — oh, you guessed! — Mark Zuckerberg, Facebook's chairman and chief executive, who argued in 2010 that "People have really gotten comfortable not only sharing more information and different kinds, but more openly and with more people. That social norm is just something that has evolved over time."[8]

Now, it really is disingenuous to maintain that high-volume social networking sites (SNSs), of which Facebook is the most prominent example, have had no effect on behavior, merely passively reflecting and serving evolving social norms. People have moved from documenting their lives to living them online, and the traces they leave are an important part of the business models of the Facebooks and Googles of this world. But disingenuous or not, it's hard to maintain that Zuckerberg was incorrect in substance.

Such determinism implicitly supports the view that privacy is a private good. It's a bit like hula hoops, eating dinner at the table with the family, typewriters, and the Fonz. It used to be popular and even thought essential; but society has moved on, and people aren't really interested in it any more.

Where's the Harm?

Communitarians are okay with this. If people are prepared to leave giant data trails behind, so much the better when the community needs to know what they've been doing. But it's worrying for the individualist — as the Nobel-prizewinning Bulgarian thinker Elias Canetti argued, "Personal freedom consists largely in having a defence against questions. The most blatant tyranny is the one which asks the most blatant questions."[9] For the digital citizen, the only real defense against constant third-party data mining is to cease to be online.

For the "get over it" brigade, privacy is an option that people are at liberty to protect or otherwise. They assess its benefits and costs, and make decisions accordingly. This might not be easy — how do you compare the immediate benefits of putting an amusing photo on the Web with the theoretical risk, several years down the line, that a spouse or employer will discover it? — but it's no different in principle from many decisions we make in the ordinary course of events. We can even quantify the benefits: in 2010, the value of free services funded by surveillance-based advertising, minus a discount for foregone privacy, was estimated at more than €100 billion.[10] The novelty is that, for the first time in history, we can derive positive benefits from being visible to our networks.

For the individualist, however, autonomy goes beyond free choice or economic benefits. In Aldous Huxley's prophetic dystopia *Brave New World*, although everyone's desires are satisfied, no one is autonomous because how they form their preferences is tightly controlled. One means of control — which critics don't often remark on — is the nonexistence of privacy. Characters who crave solitude are ridiculed, and most have been conditioned to

avoid it. The conditions for developing an authentic set of preferences have been bred out of the system.

I say *Brave New World* is prophetic, and I mean that seriously. It foreshadows many aspects of modern life, including the pressures of always-on sociality, which worry some commentators.[11] Yet the issues it brings up are philosophical — maybe even redundant. What use is *Brave New World* in a world without autonomy? Its readers will be conditioned not to be persuaded by it, and so of necessity it could only ever preach to the converted. If Facebook has made you into a zombie, then *Brave New World* isn't going to snap you out of it.

Hold on; surely this is overstated. We can certainly talk of the diminished autonomy that SNS structures afford — for instance, if you choose your relationship status from a menu, then you're adapting yourself to someone else's template.[12] And if Facebook dictates that you have a timeline, then a timeline you will have; its ultimate purpose is to generate more data and add value to Facebook, not necessarily to benefit you. However, complaints about autonomy sound increasingly hollow as more people flock to SNSs, and see benefit in playing with identities and self-descriptions or exploring new types of meaningful interaction. Most people are reasonably clued up about SNSs' artificialities (that is, they know the difference between a real-world friend and a Facebook friend), and are prepared to experiment — few are completely passive consumers.[13] Loss of autonomy might be compensated for by increased control over identity and self-presentation.

Privacy as a Public Good

Even if individualists don't lose the argument, the best they can do is wrestle their opponents to a draw. Visibility brings the wonders of personalization and easy communication. The distinction between private and public life is dissolving — private life leaves trails owned by SNSs, which can use them to give us services and introduce us to new contacts and experiences. Privacy in the old sense of obscurity and invisibility is attractive to ever fewer people. Those who forego their privacy perceive little harm. The result is an always-on world in which influence can be quantified, commoditized, and marketed. More data accumulates about more things. The Mill test discourages action. Is privacy therefore doomed, and if so, who will care?

Unless we can unpick the Mill test's underlying assumptions, the answer to the second question will be "nobody." But we should unpick them, because one key idea has so far gone unchallenged. All sides tacitly assume that the benefits of privacy go to the individual. Is this true? Might my exhibitionism affect others detrimentally?

There are good reasons to think that privacy's benefits are distributed more widely. Even when the individual would rather be transparent and open to scrutiny, exposure will affect others. Here are five ways in which that happens.

Accountability

An individual's autonomy has a social function — only autonomous persons are properly accountable. The greater the element of coercion (however disguised), the harder it is to hold people to account. When people's privacy is diminished, the question about their responsibility for the outcomes of their actions becomes muddied, and the loser is wider society, not the people themselves.

Profiling

Many decisions are framed by using data to classify people and "personalize" (or, put another way, "restrict") choices. Although this affects autonomy, profiles come from processing other people's data. When others forego privacy, their data can create a stereotype against which a privacy-sensitive individual might be matched despite his or her attempts to maintain control.[14]

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Security

Much writing on privacy assumes a security/privacy trade-off. Privacy is a right, but security is a primary state function. Yet even if this trade-off sometimes exists, is it the usual condition? Arguably not: a loss of privacy can result immediately in a loss of security when data become public or are leaked. If rehabilitating offenders is harder because the (public) data about their convictions is ubiquitous, this could negatively affect crime rates. And where the rule of law is weak, data might be a tempting prize — for instance, the Chinese Communist Party is no doubt intrigued by the mass of data that the Alibaba Group must hold on its citizens.

Trading Data

Because data is economically valuable, we could make a case for commodification to allow the data subject to profit alongside data processors.[15] Yet, without the measure of control that privacy brings, asymmetries of knowledge would make such a market function inefficiently. Could citizens meaningfully consent to their data being used without any idea of how it will be used or what it will be mashed together with?

Chilling Effects

As privacy decreases, behavior will adapt. Even in the absence of overt censorship, people will experiment and innovate less, and express themselves less freely. In a recent UK case, a teenaged girl in a high-profile youth liaison position with Kent Police was excoriated in the press and hounded out of office because of distasteful tweets she had written (and deleted) as an adolescent — and what adolescent isn't distasteful?[16] (Viktor Mayer-Schönberger presents several similar examples,[17] although his proposed technical solution doesn't convince this particular digital citizen.) In our get-over-it world, a young person who wishes to become the nation's president or prime minister in 30 years must start planning now. Censor and conform; censor and conform.

Given all this, we surely must admit that privacy isn't a private benefit like health or champagne, but a public good like clean air or scientific research. If so, giving away our privacy might be similar to polluting the atmosphere or refusing to publish our results. It's a sin of commission or omission, to which the Mill test doesn't apply.

Where does that leave us? We must acknowledge the enormous social good to be had from big data, whether gains go to government, civil society, or business. We shouldn't try to suppress e-commerce or social networking. But a case can be made for greater transparency — for instance, as regards profiling — so that people are aware of not only what happens to their data, but also how decisions are made about them based on data analysis. We need tools and protocols to support control of our personal data.

Most of all, however — with a nod to Zuckerberg's insight — we must ensure that our social norms reflect not only the pleasure we get from visibility to the network, but also the important benefits that protecting privacy will produce for society as a whole. This can't be a matter of regulation, but rather depends on us all taking our responsibilities seriously.

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Kieron O'Hara is a senior research fellow in the Web and Internet Science Group in the Electronics and Computer Science Department at the University of Southampton. His research interests include trust, privacy, open data, and Web science. O'Hara has a DPhil in philosophy from the University of Oxford. Contact him at kmo@ecs.soton.ac.uk.