

The History of Privacy

Introduction

What is privacy? How did our contemporary understanding of privacy come about? This project looks at changing perspectives on privacy in Western Europe and the U.S. from the Renaissance to the present day.

My conclusions reject the view that privacy is a uniquely modern notion, arguing that the desire for privacy is a universal human one.

But **what constitutes 'privacy' varies enormously across time and place.**

It is the *constitution* of the contemporary notion of privacy that is unique.

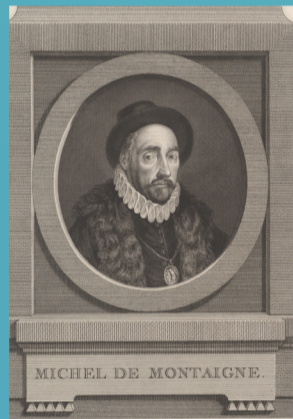
To defend privacy today, we must first recognise what is distinctive about our current understanding of privacy. We must also acknowledge the tension between privacy and other important values.

The Renaissance

By examining the writings of renaissance humanists such as Montaigne and More, we are able to piece together their understanding of privacy, and consider its similarities and differences to our own.

The Neo-Stoic movement exerted a huge influence on these thinkers' views on privacy. Ideas about being a good citizen, what the best state was, and the desirability of public life were all intertwined with thoughts on privacy. Due to the common humanist argument about whether we should pursue a life of *otium* (freedom from public activity) or *negotium* (The life of public engagement), there was new interest in the realm outside of the *vita activa*. Some saw private life as one of the most important aspects of a good life, to be defended against the temptations of fame or glory:

"Miserable, to my mind, is the man who has no place in his house where he can be alone, where he can privately attend to his needs, where he can conceal himself!"
(Montaigne).



courtesy of the Metropolitan Museum of Art

But others defended a more classical, civic idea, that to not serve the state and others is to do wrong. This conflict between private and public, the inner and outer, is a continuously reappearing motif in the history of privacy.

A new language of self-ownership also developed. The vocabulary of property relations began to pervade discussions of selfhood. A central concern was whether public life was a threat to successful ownership of ourselves.

Overall, **whereas our primary privacy concerns today are about the outer world concerning itself with our lives, these humanists were far more concerned about our lives becoming overly concerned with the outer world.**

The Enlightenment

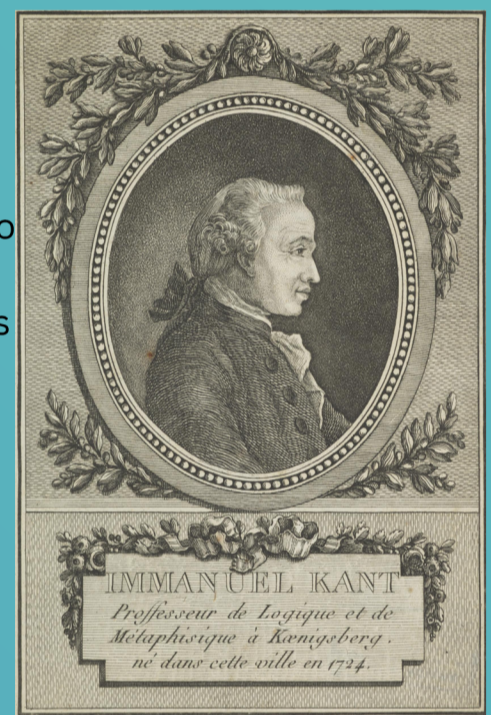
Privacy underwent a radical transformation in the Enlightenment. It became central to many of the most central issues of the time.

The principal influences on this transformation were:

- **religious heterodoxy and ensuing tolerationism:** religion's place as a public matter slowly changed. The tolerationist philosophy of John Locke is particularly important for the history of privacy.
- **changing living conditions:** Urbanization changed how privacy could be achieved.
- **reinvigorated republicanism:** Privacy was sometimes viewed suspiciously, as a form of betrayal of enlightenment republican values.
- **changing cultural norms:** newspapers, novels, and visual art all began expanding the scope of the legitimate public sphere.

Both Rousseau and Kant recognised the importance of protecting privacy. Rousseau's views on privacy were in line with his general social contract theory, and heavily distrustful of the state - privacy was slowly and regrettably surrendered to the state. Kant held a more nuanced position, and acknowledged the inevitable tension between privacy interests and those of public engagement and the interests of the state. His writing also reveals the increasingly close bond between privacy and private property.

In the Enlightenment, privacy came under extreme new pressures. However, these pressures provided motivation for increased attention to privacy, and for a novel defence. The intellectual currents of religious toleration provided the tools for such a defence.

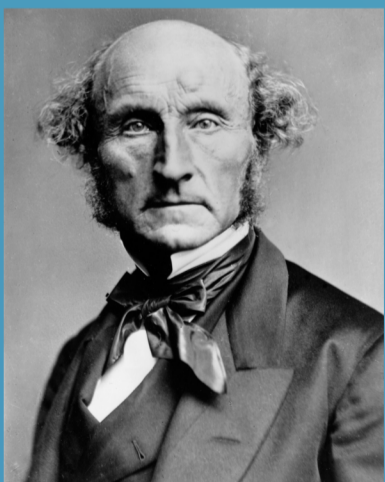


courtesy of the National Galleries of Scotland

Mill's On Liberty

The radical consequences of religious toleration were gradually secularised, such that the 'private sphere' slowly expanded. Mill's *On Liberty* (1859) represents an important point in this development of liberal enlightenment values - arguably the culmination.

Mill proposes a hard line between the public and private. His 'harm principle' asserts that "the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others."



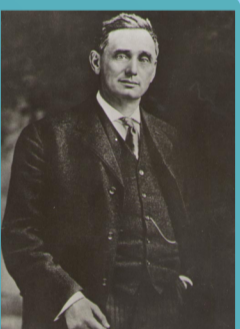
courtesy of Wikipedia

Freedom and privacy had become deeply intertwined. Violations of privacy were viewed as violations of a fundamental freedom - freedom *from* interference. The central importance of being *individual* necessitated a rich conception of privacy. **This laid the groundwork for the late 19th century innovation of the right to privacy.**

20th century

In 1890, Samuel D. Warren and Louis D. Brandeis published "The Right to Privacy".

This article set the course of the 20th century's treatment of privacy. **It recognised the need for an independent, explicit legal defence of privacy.** Although its influence on actual US law, certainly for the first half of the century, is unclear, it had a huge influence on the theorizing of privacy.



courtesy of Brandeis university

Ascertaining the nature of this right, finding a suitable definition of it, and questioning the universality of the desire for privacy through anthropology all became important strands of the 20th century's approach to privacy.

Technological developments represented a significant threat to legal treatments of privacy, and the law's difficulties in responding to these changes explains many of the privacy problems salient today.

Whether the law was successful in protecting privacy is unclear, particularly in light of philosophical arguments that maybe there is no single 'privacy'. But these new philosophical approaches to privacy themselves represent a significant achievement, partly spurred on by activity in the law.

21st century

Many of the central privacy problems today are due to failures to protect privacy in law in the last century. This problem has only been compounded by new technologies (e.g. Generative A.I., Social media), which apply ever more pressure to privacy.

One of the most important lessons to learn from the 20th century is the importance of flexibility in law. Protecting privacy through legislation aimed at specific technologies will only last until the next innovation. **Creating technology agnostic privacy law is of crucial importance.**

The EU's GDPR (2016) and California's CCPA (2018) are so far the most substantial attempts to protect privacy in law in light of new technologies. They are also crucial in granting more powers of litigation of private parties against private parties (the 'horizontal effect'). In this, the immense suspicion of the state so distinctive of the history of privacy is finally being directed (partially) to businesses.



Please Scan for full paper and references.

I would like to thank the Laidlaw Foundation for the opportunity to undertake this research. I would also like to thank my supervisor, Dr. Waldmann, for his advice and guidance.