

# Designing Spheres of Informational Justice

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## TOWARDS AN INTERACTIVE, NON-RELATIVIST UNDERSTANDING OF PRIVACY

In my book on privacy (2005) I suggested to understand closing off the private from the public sphere as an interactive process. In my opinion this is also the reason why privacy may be considered a matter of ethics, as keeping the protected zone of privacy requires a way of acting which is guided by norms. We do not have any field which is labeled “private” by nature but must demand privacy and in many cases must give reasons to this demand.

It looks to me as if the necessity of reason-giving and thus of giving reason to this demand have recently been increasing. At least two reasons must be given for this: first, manners, which in former times contributed to successfully demanding privacy, have lost their significance. Second, in the past we were able to give third parties to understand that they should keep distance. When acting by way of information and communication technologies (ICTs) we often do not know how to give to understand that this now is a private action or how we should keep distance (see Phillipps 2003, 2006).

Due to this, it becomes increasingly problematic that we cannot speak of a common understanding of privacy within a society (quite apart from intercultural differences). One solution of this problem is in declaring the private a private matter and in having each individual deciding by way of technical devices about which information he/she wants to disclose to whom. Kuhlen (1999) called this the “interactive understanding” of the private. E. g. Lessig (2002) could be named here as a prominent representative.

If in the following I will speak out for an interactive but non-relativist understanding of the private, this is due to my understanding of privacy as a social good. On the one hand, this results from the fact that we must give reasons to others for demanding privacy (and we should be able to give convincing reasons), on the other hand it results from the fact that determining the private also at the same time determines the boundaries between the private and the public. And in my opinion that what must be considered public is something concerning every member of a society.

## PRIVACY AND INFORMATIONAL INJUSTICE

In respect of empirical research, but also due to our everyday experience, there may be the question if there is a dichotomy of private and public at all. Rather, is it not that in different contexts we must assume different concepts of privacy and that the boundaries between the private and the public are changing?

Although from the point of view of philosophy I am convinced that within the different, context-dependent ideas of privacy there is a core of the private, in respect of drafting and judging on ITCs there is the question of how we could do justice to the fact that by demanding privacy we combine different expectations in different contexts.

Regarding this, Van den Hoven (1999), while following Walzer’s “spheres of justice” (1983), suggested to analyze privacy under the aspect of “informational injustice”. The idea of distinguishing different spheres within society from each other was taken up a. o. by Nissenbaum (2004) who for her suggestion of “privacy as contextual integrity” directly refers to Van den Hoven and Walzer. Doing this, she emphasizes that within different spheres there are different norms regarding the collection and processing of personal information and that due to this particularly the exchange of information among these spheres must be considered.

One advantage of this sphere concept is that it fits to our intuition that it makes a difference if we disclose certain information to a doctor (within the medical sphere) or to an employer (within the economic sphere) and that we expect e. g. the doctor not to pass on the information that we are suffering from a certain illness to the employer. Thus, we expect information not to get from the medical sphere into the economic sphere without good reason.

## SPHERES OF INFORMATIONAL JUSTICE: THEORETICAL PROBLEMS AND PRACTICAL ADVANTAGES

If in the following I will point out to the theoretical problems coming along with such a concept of spheres, this is most of all due to the fact that I think they might prove to be very useful for practice, as I have already explained in some essays (2005a, 2006). Particularly, I do not think it is enough to simply refer to Walzer (1983).

### **Theoretical problems**

The crucial problem with the concept of spheres is that we determine the number of relevant spheres and want to close them off from each other.

Walzer (1983) distinguishes different social goods from each other, each of them being supposed to be equally distributed among the members of a society, according to their own rules and being as independent from each other as possible. One important premise in this context is that unequal distribution of a good among a society is not a problem as long as this does not result in considerable (dis)advantages in respect of any other good. As examples of social goods he gives a. o. "money, office, education, ... political power, [and] free time" (Walzer 1983: 184). Furthermore, it is important that he emphasizes that the question of what must be considered a social good within a community can only be decided on within a community. Having been criticized of being relativist for this, in the preface to the German edition, written in 1991, he thus comments on this criticism by pointing out to having made clear particularly in "Just and unjust wars" that he supports a "minimum theory of human rights" (Walzer 1998: 14).

As Walzer himself (1983) does not comment either on ICTs or on privacy, I would like to ask the question of how privacy is supposed to be included into this model. For this, there are at least three alternatives:

- 1) privacy itself is a social good,
- 2) privacy is a good being closely connected to one or several social goods, or
- 3) privacy is a human right.

My project is less aimed at a clear solution of the problem but at stimulating a debate on embedding privacy into the model of complex justice.

### **Practical advantages**

Finally, particularly because of these theoretical difficulties I would like to also speak about the practical advantages, while also discussing the connection between spheres and ICTs. While doing this I would like to discuss the significance of infrastructures (Star/Bowker 2006) for single spheres, particularly following my own thoughts (2005a, 2006) regarding the medical sphere.

Another practical advantage might be in the fact that this way of understanding might serve as the basis for designing "artificial moral agents" which may not only be supposed to react while being dependent on the context and while doing so "should be able to make decisions that honor privacy ..." (Allen/Wallach/Smit 2006).

## CONCLUSION

I think that the concept of spheres may be helpful for designing and developing ICTs which contribute to constructing spheres and guaranteeing their separation from other spheres. It may be that this model is a limited one. But in my opinion both the practical advantages for designing ICTs within certain spheres and the possibilities to analyze problems at the boundaries of the single spheres more closely suggest investing further theoretical work with the sphere model of informational justice.

## REFERENCES

- Allen, C., Wallach, W., Smit, I. (2006): Why Machine Ethics? IEEE Intelligent Systems, 1541-1672/06, pp. 12–17.
- Kuhlen, R. (1999): Die Konsequenzen von Informationsassistenten. Frankfurt am Main: Suhrkamp.
- Lessig, L. (2002): Privacy as Property. Social Research, Vol. 69, No. 1, 247–269.

- Nagenborg, M. (2005): *Privatheit unter den Rahmenbedingungen der IuK-Technologie*. Wiesbaden: VS Verlag.
- Nagenborg, M. (2005a): *Datenschutz und der Verlust der Bedeutungslosigkeit*. S. 61-71 in: Martin Woesler, Hrsg.: *Ethik in der Informationsgesellschaft*. Bochum: Europäischer Universitätsverlag.
- Nagenborg, M., El-Faddagh, M. (2006): *Genetische Informationen: Eigentumsansprüche und Verfügbarkeit*. In: *International Review of Information Ethics*. Vol. 5 (9/2006): *Ethics of Information Technology in Medicine and Health Care*.
- Nissenbaum, H. (2004): *Privacy as Contextual Integrity*. In: *Washington Law Review*, Vol. 79 (2004), S. 119-158.
- Philipps, D. J. (2004): *Privacy Policy and PETs*. In: *New Media and Society*, 2005, Vol. 6, No. 6, 691–706.
- Philipps, D. J. (2005): *From Privacy to Visibility*. *Social Text* 83, Vol. 2, 95–108.
- Star, S. L., G. C. Bowker (2006): *How to infrastructure*. In: L. A. Lievrouw, S. Livingstone (eds.): *The Handbook of New Media*. Updated Student Edition. London; Thousand Oaks; New Dehli: Sage.
- Van den Hoven, M. J. (1999): *Privacy or Informational Injustice?* In: Pourcia, L. J. (ed.): *Ethics and Information in the Twenty-First Century*. West Lafayette, Indiana: Purdue University Press, pp. 140–150.
- Walter, M. (1998): *Sphären der Gerechtigkeit*. Frankfurt am Main: Fischer TB 1998.
- Walzer, M. (1983): *Spheres of Justice*. New York: Basic Books.