

Book Note

UNDERSTANDING PRIVACY, by Daniel J. Solove¹

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THE CURRENT INFORMATION AGE has witnessed the creation of technology that has revolutionized the manner in which we interact with each other and the world around us. While the advent of sophisticated technology has brought humankind many significant benefits, it has also given rise to concerns regarding the survival of personal privacy as we know it. Even though scholars and social commentators have been voicing fears for decades about the negative externalities that technological progress will have on the sphere of personal privacy, many argue that the concept and value of privacy are poorly understood today. In *Understanding Privacy*, Daniel J. Solove argues that this reality has rendered privacy law ineffective—even unresponsive—to the ever-evolving problems it must resolve. To address this unsatisfactory state of affairs, Solove articulates a conception of privacy that accounts for the nebulous term's seemingly endless breadth and complexity, in the hopes that this will help improve the reader's understanding of privacy issues and assist efforts to craft legal frameworks for dealing with privacy problems.

Solove begins his intellectual quest to redefine privacy by canvassing the attempts of numerous writers, philosophers, and jurists to conceptualize the term. In so doing, he rejects some of the most common theories of privacy. The familiar notion that privacy “constitutes the secrecy of certain matters” is deemed inadequate by Solove, for example, because “many commonly recognized privacy invasions do not involve the loss of secrecy.”² Solove also finds the popular “Limited Access to the Self” view of privacy to be unsatisfactory; he claims that, insofar as “not all access to the self infringes upon privacy,” this “theory provides no understanding as to the degree of access necessary to constitute a privacy

1. (Cambridge: Harvard University Press, 2008) 272 pages.

2. *Ibid.* at 24.

violation.”³ Ultimately, Solove rejects virtually all extant conceptualizations of privacy as unsatisfactory on the basis that they are either too narrow or too broad in scope. He thus sets the stage for the introduction of his own theory of privacy, which abandons the attempts of traditional theorists to define privacy abstractly in relation to some essential common characteristic (*i.e.*, secrecy, personhood, et cetera) in favour of a pluralistic and practical definitional approach.

Solove argues that, instead of trying to understand privacy from the top down, we should develop our understanding through a contextual, bottom-up examination of problems commonly perceived of as privacy violations by seeking an overarching conception of the term. By understanding “privacy” as encompassing the various elements that are common to the privacy issues raised by information collection (*i.e.*, surveillance and interrogation), information processing (*i.e.*, storage, use, and analysis of personal data), and information dissemination (*i.e.*, breach of confidentiality, blackmail, *etc.*), Solove argues that we will be able to approach privacy issues more effectively as we will grasp more soundly what is at stake when the term is invoked. For Solove, the establishment of a bottom-up framework for isolating and analyzing privacy problems will assist courts and lawmakers in dealing with such problems as they will be able to “better balance privacy considerations against countervailing interests,” such as security and transparency.⁴

Ultimately, in Solove’s view, his theory of privacy is most conducive to a true comprehension of the term because it is sufficiently labile to handle the “new technologies and ways of living [that] will create new privacy problems and transform old ones.”⁵ Because the concept of privacy is constantly evolving, Solove maintains that his theory cannot be the final word; rather, he argues that it provides a new beginning for thinking about privacy in an age where a more clear and comprehensive understanding of the concept is greatly needed.

3. *Ibid.* at 20.

4. *Ibid.* at 196.

5. *Ibid.* at 197.