Privacy: Plural, Contextual, Contestable

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Conceptualizing the New

• **Goal**: Develop a model for analyzing and categorizing privacy concerns/harms that existing theories do not adequately address.

• **Approach**: Study up from on-the-ground concerns about privacy and use these as basis for formulating new concepts and theories.

• **Starting Point**: Building on existing pluralist and contextualist approaches to privacy.
Starting Point: Solove’s Pluralism

• We agree. Our analytic is meant to further press out Solove’s pluralism.

• Solove’s six-concept taxonomy of different meanings of privacy + his sixteen-concept taxonomy of different privacy harms.

• His analysis offers a multiplication of meanings (or semantics). To this we add a multiplication of functions and practices (or pragmatics) in context.
Starting Point: Nissenbaum’s Contextualism

• We agree. Our analytic is meant to further the sort of contextualism that the CI model focuses attention on.

• Thus, our project further explicitates what is meant by ‘context’ in CI and the many shapes that ‘context’ might take w/ respect to privacy.
Approach: From Practice to Theory

• Attending to actual privacy complaints raised by users of OSNs, email services, etc..

• These concerns are not exhaustively comprehended by the existing family of privacy theories (so we agree with Solove & Nissenbaum).

• These concerns demand a more explicit mapping of what counts as ‘context’ (so, e.g., we want to push beyond the four sites of harm named by Solove).
Goal:

Studying Up toward Privacy Design

• By developing an analytic (we might also call it a diagnostic) that begins on the ground...

• ... we hope to work up (rather than talk down) toward the goal of...

• ... a broader and better idea of what concepts (principles, theories, et.) might be actionable in design (both legal design and technical design).
Why It Matters: Conceptual Vacuums

• Langdon Winner’s notion of a ‘social vacuum’ and James Moor’s idea of ‘policy vacuums’ helps explain why it may be important to study up to new privacy concepts.

• Conceptual vacuums occur when we experience new kinds of harm (not just a new instance of an old harm) that we cannot yet comprehend.

• Without conceptual grip, it is difficult to build legal & technical remedies for new kinds of harm.
Conceptual Vacuums

• Essentially-contested concepts (Gallie).

• Every concept is reasonably contestable.

• Some contests are trivial, but many (even many that seem trivial) are politically charged.

• This is why we want an analytics for ongoing conceptual development, rather than a fixed set of principles of an essentializing theory.
Analogy: Environmental Ethics

• We start with a **new kind** of harms (all the birds dying off, a la Rachel Carson).

• Then we ask: How can we **specify** that harm? How do we define what, or who, is being harmed?

• Then we begin to **study up** to new concepts like ‘ecosystem’, ‘ecology’, ‘biodiversity’, and ‘niche’ that help us grasp what is at stake & why it matters.
Working with Contestability

• Producing new concepts in this way is not ‘once-and-for-all’ (i.e., it is not ‘essentialist').

• Plurality, contextuality, and contestability remain.

• These become strengths rather than weaknesses – they become sites of debate rather than sources of vacuums.

• Analogy: we still debate about the precision of a concept like ‘biodiversity’ at the same time that we employ the concept as a heuristic to help design new legal and social remedies for environmental harms.