

# **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.