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Reimagining Privacy

As we saw in Chapter 5, a viable understanding of privacy for the networked information society must consider the complexities of the self-society relation and must confront the assumptions that underlie the information-processing imperative—the culturally-determined urge to collect more and more information. At the same time, it must avoid conceiving of either subjectivity or privacy in purely informational terms; both subjectivity and privacy have important spatial and material dimensions. Building on those insights, this chapter develops an alternative account of privacy interests and harms that is based on the emergent, relational development of subjectivity within social spaces that are increasingly networked.

As in Chapter 4, I begin by developing a decentered model of subjectivity organized around three sets of considerations: the evolution of experienced "selfhood" from the situated subject's perspective, the collective dimension of subjectivity, and the play that overlapping social and cultural networks afford. Next, I consider the ways in which the emergence of networked space and the development of surveillance practices within that space affect the processes of evolving subjectivity. In particular, I draw attention to some informational, spatial, and normative dynamics of the networked information society that U.S. privacy jurisprudence and theory have tended to overlook. Finally, I offer a working definition of "privacy" as room for socially situated processes and practices of boundary management.

A Decentered Model of Subjectivity

A comprehensive and robust formulation of the interests that privacy protects requires an account of subjectivity that does not avoid the interactions between self and culture but instead embraces them. Important recent work in privacy theory asserts the importance of context in structuring privacy expectations and interests.[1] Yet that mode of recognizing context also marginalizes it. Context is not simply the background against which separate, autonomous subjects' expectations about privacy emerge; rather, subjectivity is intrinsically marginal, a phenomenon that emerges at the interface between individual and culture. The real danger for privacy theory is not that it might lose the individual irretrievably within the social, but that it might fail to appreciate the ways in

which evolving subjectivity subsists in a continual intermingling of external and internal factors.

Situated Subjects

Models of experienced selfhood within U.S. privacy theory typically have emphasized purposive, often solitary activities. Within that scholarly tradition, one way to explore experienced selfhood from the individual perspective might be to list the activities that U.S. constitutional jurisprudence identifies as central to self-development: expression, secluded contemplation, and voluntary association. Without question, those activities are vitally important to the sense of self. Beginning with them, however, returns us to the vision of the autonomous, solitary, disembodied individual that has animated the mainstream of U.S. privacy theory and that has proved to be a theoretical dead end.

If we return, instead, to the framework developed in Chapters 2 and 4, a very different baseline emerges, rooted in the everyday world that situated, embodied individuals and communities inhabit and in the patterns of everyday practice. As in the case of creative practice, the everyday practice of selfhood is constrained and channeled by the fact of situatedness within one's own culture. The contingencies and path-dependencies that shape the content and material forms of cultural knowledge also shape the content and material manifestations of evolving subjectivity. Like creative processes, the processes of individuation that mark the development of experienced selfhood are processes of working through culture; they cannot work in any other way. In examining evolving, socially situated subjectivity, however, we must pay even greater attention to interpersonal behaviors and relationships.

From a baseline of situated, embodied practice, each component of the constitutional model of self-development is incomplete. Equally important is what each leaves out: the culturally specific learning that informs expression; the embodied, socially embedded behaviors that together with contemplation produce identity; and the affiliations that precede and inform voluntary associational decisions. So read, the constitutionally privileged forms of purposive self-development function as markers for larger categories, each of which denotes a different mode of interaction between self and culture. These categories are not mutually exclusive; rather, they represent different dimensions along which the processes of evolving subjectivity can be described.

The first category consists of activities involving the intake, processing, and outflow of cultural goods. Although constitutional jurisprudence treats self-expression as the leading indicator of individuality in this category, the formation of opinions and expressions requires a preexisting cultural substrate. To account for that substrate, we need to include in the culture category all the various interactions with artistic and intellectual goods described in Chapter 4—consumption, communication, self-development, and cultural play—as well as interactions with the artifacts and practices that make up society more generally. Just as artistic and intellectual creativity develops within a web of preexisting semantic entailments, so subjectivity is infused with the ways of knowing embodied in the texts, artifacts, and practices of the culture(s) into which an individual is born. A child born in Boston will come to believe some very different things than a child born on the same day in Beijing or another born in a

mountain village in Pakistan. Culture—informational, material, and social—structures what we know and how we come to know it.

Activities in the second category relate to the development and performance of identity. Privacy theorists tend to advance accounts of a selfhood that is solidified through solitary cultivation. Without a doubt, one's sense of self is inextricably intertwined with one's considered intellectual and moral commitments. What I want to emphasize here, however, is the equally foundational importance of performance and performativity. Studies of performance in everyday life meld the methodologies of speech act theory, which emphasizes the performative force of utterances; cultural anthropology, which describes culture as arising through embodied behaviors; and deconstruction, which regards language as encoding multiple texts rather than universal truths.[2] According to performance theorists, identity in a social world exists only insofar as it is performed to and for others. Opinions, commitments, habits, and dispositions solidify over time through the trial and error of performance, just as styles of dress do. This is true whether or not anyone else is present to witness particular actions and whether the actions are intended to demonstrate conformity or difference; all performances of identity, from conduct on the job to behavior at a nightclub to written entries in a private diary, imagine a public of some sort.[3]

Importantly, identity development through performance is multivalent, constituted through and by performances that are directed at different audiences for different purposes. Each of us exploits the inherent ambiguity of language to fine-tune the performances that we enact. What Erving Goffman called the "presentation of self in everyday life" is a more variable phenomenon than Goffman himself appeared to recognize. And for that reason, identity play is both more and less serious than contemporary privacy theory generally tends to suppose. It is less serious because assumption of a particular identity need not entail full-on commitment to that identity to the exclusion of all others, but it is more serious precisely because it enables the trying-on of multiple subjectivities.

The third category consists of activities of individuation and affiliation. While the constitutional model seems to presume associations created ex nihilo by voluntary choice, critical constituents of evolving subjectivity are the networks of relationships within which individuals are born and grow to adulthood. Some feminist critics of the liberal model of isolated individualism argue that we are constituted predominantly by our relationships and only incidentally by our (nominally) separate choices. Yet the feminist model of the relational self is also incomplete. Research in cognitive theory indicates that an important part of early childhood development is the process of differentiating oneself from surrounding objects and processes.[4] This literature suggests that boundaries and boundedness are as important to the development of subjectivity as care and affiliation are.

The answer to this seeming contradiction lies in the processes of social psychology. Socially, interpersonal boundaries of various sorts function to enable differential control over flows of information and affiliation. Alan Westin's pathbreaking discussion of privacy interests, which identified "reserve" as a critical aspect of privacy, implicitly recognized as much.[5] Ultimately, however, reserve is too one-dimensional and intellectual a notion to be useful in characterizing the range of social processes that result from selective

withholding and selective disclosure. A richer conceptualization of the differential control that social processes entail is the social psychologist Irwin Altman's model of privacy as a dialectical process of boundary regulation by embodied subjects. Although roughly contemporaneous with Westin's work, Altman's model—a product of the University of Utah rather than the Ivy League, and of the young field of "environmental psychology" rather than the august discipline of law—has not received nearly as much attention in legal and policy circles.

While Westin presented a relatively static taxonomy of types of interpersonal separation, Altman crafted a dynamic model designed to encompass the range of behavioral processes by which privacy in its various forms is created and maintained. Altman characterized privacy as "a central regulatory process by which a person (or group) makes himself more or less accessible and open to others," and identified "the concepts of personal space and territorial behavior" as the principal regulatory mechanisms in the process.[6] He observed that the concepts of personal space and territorial behavior inform a range of privacy-regulating behaviors; together, those behaviors constitute a coherent system for personal boundary management that responds dynamically to changing circumstances, needs, and desires.

Altman's work showed that privacy-regulating behaviors mediate human interaction both physically and conceptually; our understandings of selfhood are shaped by the embodied habits of boundary management that we develop. Importantly, moreover, while the term "privacy" carries with it specific cultural baggage, the processes he described have a more universal character. Although different cultures have different conventions about personal space and territory, people in every culture use personal space and territory to manage interpersonal boundaries.[7]

In sum, when experienced selfhood is examined through the lenses of culture, identity, and affiliation, it encompasses much more than the effort to leave one's intellectual imprint on the world through the force of disembodied will. Experienced selfhood is more accurately described as evolving subjectivity, formed and re-formed out of productive tensions between intake and outflow, performance and reflection, contact and separation. The processes of evolving subjectivity are mediated by the space-making mechanisms, both literal and metaphorical, that enable situated, embodied individuals to create connections and separations between themselves and others.

Networks of Knowledge, Networks of Performance

Emphasizing the culturally situated nature of experienced selfhood reminds us that subjectivity has a significant collective dimension. Situated subjects grow to adulthood and develop what they experience as selfhood within extended networks of collective knowledge. Consequently, much of what passes for subjectivity is more properly understood as a sort of collective subjectivity, or collectivity—the cultural consciousness within which individual subjects are located. Put differently, the subjectivity that results from the processes described above is predominantly intersubjective, informed by existing, socially situated conventions, practices, and ways of knowing.[8]

In developed Western societies, and particularly in the United States, conceptions of the self derived from liberal political theory play an important role in constructing our socially situated notions of both selfhood and privacy.

Although liberal theorists resist describing liberalism at the level of culture, liberalism is itself a cultural construct. In particular, the understanding of selfhood as autonomous, fully individuated, and essentially immaterial is a product of the collective culture of liberal individualism.[9] That culture supplies the components of the constitutional model of self-development discussed above. It also informs the collective discourse about selfhood more generally by providing reference points against which the evolution of knowledge, the development of identity, and the formation of networks of affiliation are evaluated.

The social and material practices that express selfhood also supply situated users with important information about the nature of both selfhood and privacy. Important strands in contemporary social theory examine the ways in which culturally and historically situated practices of self-improvement—or what Foucault called "technologies of the self"—have emerged and disappeared, shaping understandings of what selfhood means and how it is best developed.[10] Practices of self-improvement are diverse, ranging from reading to fashion and grooming to diet and exercise. Some of these practices are undertaken in public and others in private; even private practices of self-improvement, however, reshape the self for an imagined audience. Shared assumptions about which practices belong where inform collective notions of how selfhood is best fulfilled and how privacy is appropriately asserted.

Both public and private processes of self-construction are geographically mediated. In contemporary Western societies, practices of self-improvement and identity play are situated in particular places. Different places, such as the public square, the shopping mall, the fitness club, or the place of worship, figure differently in relation to both subjectivity and privacy. The confessional affords great scope for privacy, but does so in the service of molding subjectivity along a prescribed path; the shopping mall provides little privacy but great scope for identity play. Each place also functions as a situs for the development of collective identity; we are, after all, a nation of church-going shoppers. The objects that we purchase (or worship) and the bodies that we improve and adorn express and reinforce the collective sense of the well-appointed self.

Finally and importantly, collective culture is neither monolithic nor singular. Individuals may claim membership in multiple, often overlapping groups and communities, and those memberships inform the sense of selfhood at the most basic level. Different groups will have different understandings of the appropriate modes of self-improvement and the appropriate boundaries between self and community, and their practices will embody different norms of identity performance and relational obligation. Not all groups will embrace to the same extent the assumptions that inform the liberal model. In addition, information about members will flow differently within a community than outside it. These differences introduce fruitful tension into the ongoing collective conversations about self and privacy. They make collective understandings of the self, and of the types of privacy to which the self is or should be entitled, more fluid.

Acknowledging the informational and material frameworks that define collectivity need not negate the reality of experienced selfhood. Instead, it complements that perspective in a way that is particularly useful for the project of theorizing privacy. It reminds us that surveillance technologies and the expecta-

tions (or fears) that they generate are not the only source of privacy norms and practices. Privacy norms and practices are complex and dynamic, and we should pay careful attention to the social patterns and values they express. Locating subjectivity as a cultural construct that has ascriptive and normative dimensions makes it easier to have a conversation about the kinds of subjectivity that we value and about the extent to which privacy and privacy-promoting behaviors play a role in producing it.

The Play of Subjectivity

As in the case of creativity, subjectivity is both substantially determined and incompletely determined by cultural context. A model of subjectivity therefore must consider not only the ways in which subjectivity is culturally determined, but also the ways in which the evolution of subjectivity and collectivity eludes prediction. That question returns us to everyday practice and to play. Just as it does in the context of artistic and intellectual culture, play figures importantly in the production of subjectivity and of collective culture more generally.

In general, the legal literature on privacy has not considered selfhood as a function of play, but rather has preferred to speak more soberly of "experimentation" and its connection to the values of liberal individualism. Thus, for example, both theories of constitutive privacy and theories of intellectual privacy advanced by legal scholars stress the importance of freedom to experiment with commitments and affiliations.[11] The notion of carefully considered personal experimentation as opening new possibilities for individual development is important, but it only incompletely apprehends the connection between collective culture and the production of self. As we saw in Chapter 2, play does not occur only within the realms of artistic and intellectual culture; it pervades all human activity. Play with texts, artifacts, personae, and social conventions can be serious or frivolous, conformist or perverse, and its consequences extend far beyond purposive self-development. Play is both an agent of cultural production and the means by which membership in social networks is learned and claimed.

Here again, moreover, focusing only on deliberate play yields too narrow a perspective on the ways that play shapes the development of subjectivity. Deliberate play moves within a universe of already-contemplated possibilities. Despite their differences, play theorists agree that a distinguishing characteristic of play is its dual character; play is open ended but also constrained. Equally important for the development of subjectivity are the possibilities that are not already contemplated by either the individual players or the rules of the game.

As before, we can round out our understanding of the relationship between subjectivity and play by drawing on the concept of the play-of-circumstances. From the standpoint of the solitary, autonomous subject, the Gadamerian conception of circumstantial play described in Chapter 2 might seem wholly external, and even alien, to subjectivity. Certainly, to the extent that play moves collective culture in ways that were neither intended nor anticipated, subjectivity plays a more modest role in that process than some accounts suggest. But circumstantial play coincides with the absence of subjectivity only if one understands subjectivity as a fixed point around which play occurs. If one understands subjectivity as itself an emergent quality, the idea of circumstantial

play coexisting with (rather than negating or subsuming) subjectivity becomes more tenable. On this view, an important function of play is the opening of spaces or gaps into which evolving subjectivity (and so evolving collectivity) might move. Evolving subjectivity, or the everyday practice of self, responds to the play-of-circumstances in unanticipated and fundamentally unpredictable ways. As it does in the domain of artistic and intellectual culture, the play-of-circumstances operates as a potent engine of cultural dynamism, mediating both evolving subjectivity and evolving collectivity, and channeling them in unexpected ways.

Linking evolving subjectivity with the play of everyday practice suggests a complex relationship between subjectivity and surveillance. Because the play of everyday practice is unpredictable, the processes of evolving subjectivity are robust in a way not envisioned by the most dystopian models of surveillance. It does not necessarily follow, however, that evolving subjectivity is impervious to constraint. Surveillance alters the playing field; whether and to what extent it also alters evolving subjectivity remain to be considered.

Surveillance and Subjectivity in the Networked Information Society

The increasingly dense web of interconnections in the networked information society has three interlinked effects on the processes of evolving subjectivity described above. These effects are, respectively, informational, spatial, and normative. First, the information collected from and about people is used to constitute individuals and communities as transparent objects of others' knowledge. Second, surveillance practices reorder the spaces of everyday life in ways that channel embodied behavior and foreclose unexpected behavior. The resulting norm of exposure alters the capacity of places to function as contexts within which subjectivity is developed and identity performed. Third, norms of transparency and exposure are deployed to legitimate and reward practices of self-exposure and peer exposure. These practices are the morality plays of contemporary networked life; they operate as both spectacle and discipline.

This section draws on the emerging field of surveillance studies to explore the informational, spatial, and normative effects of pervasive surveillance. Scholars in that field have brought a variety of allied disciplines—including sociology, urban geography, communication theory, and cultural studies—to bear on the institutions and subjects of surveillance. Their work enables a richer understanding of how surveillance functions, and a correspondingly richer understanding of what privacy interests in the networked information society might include.

Transparency

As we saw in Chapter 5, developing a viable conceptual framework for privacy interests requires more than a decentered model of subjectivity; it also requires rethinking the information-processing imperative, which drives the collection of ever greater amounts of personal information and which conceives of such information as disclosing ever more precise truth. Exploring "information privacy" issues through the theoretical and empirical lenses supplied by

surveillance studies reveals the ways that information collection and processing operate as socially situated practices of truth construction, which in turn mediate evolving subjectivity. The privacy interest in information processing encompasses not only the individualized information that surveillance collects but also the informational frameworks that it imposes.

Much work in surveillance studies builds upon Foucault's landmark study of the prison and its role in the emergence of modern techniques of social discipline. U.S. privacy theorists have drawn on that work primarily for its discussion of Bentham's Panopticon; as we saw in Chapter 5, they have understood the Panopticon as reinforcing the conceptualization of privacy in terms linked to visibility. They have tended not to notice that Foucault offered the Panopticon as a metaphor for a different and more comprehensive sort of discipline, which is concerned more fundamentally with normalization. One of his central insights was that in modern societies, social discipline is accomplished by statistical methods: "[W]hereas the juridical systems define juridical subjects according to universal norms, the disciplines characterize, classify, specialize; they distribute along a scale, around a norm, hierarchize individuals in relation to one another and, if necessary, disqualify and invalidate."[12] These processes do not require a centralized authority to administer them; instead, they are most powerful when they are most widely dispersed among the civil institutions that regulate everyday life. These observations, which have obvious application to a wide variety of statistical and actuarial practices performed in both government and private sectors, have served as the foundation for elaboration of the work of modern "surveillance societies."[13]

Surveillance in the panoptic sense functions both descriptively and normatively. It does not simply render personal information accessible—a trivial extension of the privacy-as-visibility metaphor—but rather seeks to render individual behaviors and preferences transparent by conforming them to preexisting categories. Panoptic surveillance simultaneously illuminates individual attributes and constitutes the framework within which those attributes are located and rendered intelligible. For this reason, the logics of transparency and discrimination are inseparable. Surveillance functions precisely to create distinctions and hierarchies among surveilled populations.[14] Surveillance theorists also identify another inequality embedded in the logic of informational transparency. Transparency within surveillance society typically runs only one way; there is little public transparency about the algorithms and benchmarks by which people living in surveillance societies are categorized and sorted.

Within modern surveillance societies, panoptic surveillance functions both prospectively and retrospectively. From a prospective standpoint, panoptic surveillance enables the formation of statistically based public policy, informing everything from early childhood education to the delivery of health care to the structure of the criminal justice system. But in seeking to mold the future, surveillance also shapes the past. In creating fixed records of presence, appearance, and behavior at particular places and times, surveillance constitutes institutional and social memory.

Importantly, however, surveillance in postindustrial, digitally networked societies is more radically decentralized and resilient than Foucault's work suggests. Building on Gilles Deleuze's and Felix Guattari's work on systems of social control, Kevin Haggerty and Richard Ericson describe the pre-

vailing modality of surveillance as the "surveillant assemblage": a heterogeneous set of public and private processes that are interlinked and seek to harness the raw power of information by fixing flows of information cognitively and spatially. Surveillant assemblages grow rhizomatically, "across a series of interconnected roots which throw up shoots in different locations," and for this reason they are extraordinarily resistant to localized disruption.[15] Of critical importance within Haggerty and Ericson's framework, the surveillant assemblage operates upon its subjects not only by the "normalized soul training" of Foucauldian theory, but also by seduction. Its flows of information promise a cornucopia of benefits and pleasures, including price discounts, enhanced services, social status, and entertainment. The surveillance society is not the grim dystopia that privacy advocates have assumed—and that privacy skeptics argue has failed to materialize. In return for its benefits and pleasures, however, the surveillant assemblage demands full enrollment.

Some scholars use performance theory to interrogate the effects of networked databases and cameras on the performance of identity. Recall that according to performance theorists, "identity" develops through performance and varies contextually. From this perspective, the problem with surveillance is that it seeks to constitute individuals as fixed texts upon which invariant meanings can be imposed. The struggle for privacy is recast as the individual's effort to assert multiplicity and resist "norming."[16] This account emphasizes agency to a far greater degree than the Foucauldian and Deleuzian accounts. It too is concerned with normalization and transparency, but it argues that human nature is much more impervious to normalization and transparency than those literatures suggest, and that the subjects of surveillance are knowing and only partially compliant participants in their own seduction.

These accounts of the effects of informational transparency differ from each other in some respects, but the overlap is substantial. Together, they address many of the difficulties with privacy theory identified in Chapter 5. They recognize, first, that subjectivity evolves as a function of socially situated practices, including information-processing practices. They also recognize that the truth conveyed by personal information can be simultaneously accurate and contingent, constituted in significant part by the logics that inform the enterprises of sorting and classification. To an extent, therefore, they might be read to support the argument that the principal threats to privacy in the networked information society are informational in nature.

The account of privacy as consisting in relative informational opacity runs into difficulty, however, when we consider the problem of visual surveillance in public places. An informational-transparency framework for conceptualizing privacy harms suggests that purely localized visual surveillance is relatively innocuous. The real danger to privacy comes from databases; visual surveillance creates pressing privacy threats only when it is digital, networked, and combined with other sources of information. Yet the theory doesn't align with the practice: surveillance cameras produce effects that are experienced by real people as altering levels of experienced privacy. This suggests that the informational-transparency framework is incomplete.

Exposure

Linking privacy exclusively to informational transparency tends to mask a conceptually distinct privacy harm that is spatial and concerns the nature of the spaces constituted by and for pervasive, continual observation. Those spaces are characterized by a condition of exposure. Exposure is not an invariant feature of either real or digital geographies, but rather a design principle that can be deployed to constrain the range of available behaviors and norms. Neither privacy law nor privacy theory has recognized an interest in limiting exposure uncoupled from the generally acknowledged interest in limiting observation, and in general we lack a vocabulary for conceptualizing and evaluating such an interest. I will characterize the spatial dimension of the privacy interest as an interest in limiting or controlling the conditions of exposure. This terminology is intended to move the discussion beyond both visibility and transparency to capture the linked effects of architecture and power as experienced by embodied, situated subjects.

Consider an individual who is reading a newspaper at a plaza café in front of a downtown office building. The building's owner has installed surveillance cameras that monitor the plaza continuously. Let's assume the cameras in this example are clearly visible, and clearly low-tech and analog. It would be reasonable for the individual to assume that they probably are not connected to anything other than the building's own private security system. Most likely, tapes are stored for a short period of time and then reused. The consensus view in U.S. privacy theory tends to be that there is essentially no legitimate expectation of privacy under these circumstances and that the surveillance therefore should not trouble us. But those surveilled often feel quite differently. Even localized, uncoordinated surveillance may be experienced as intrusive in ways that have nothing to do with whether data trails are captured.

Because information-based analytical frameworks don't recognize these dimensions of the spatial privacy interest, commentators operating within those frameworks tend to question whether they are real. Yet that conclusion denies the logic of embodied, situated experience. Surveillance infrastructures alter the experience of places in ways that do not depend entirely on whether anyone is actually watching. Governments know this well; that is part of the point of deploying surveillance infrastructures within public spaces. Recall also the ways in which spatial metaphors continually recur in discussions of privacy. As we saw in Chapter 5, even in contexts that are not thought to involve spatial privacy at all, judges and scholars refer to "spheres" and "zones" to describe the privacy that the law should attempt to guarantee. The insistent recurrence of spatial metaphors in privacy talk suggests that something about the experience of privacy, and that of privacy invasion, is fundamentally and irreducibly spatial. It seems sounder to conclude that the information-based frameworks are incomplete. Conceptualizing the privacy interest as having an independently significant spatial dimension explains aspects of surveillance that neither visibility nor informational transparency can explain.

Work in surveillance studies suggests that direct visual surveillance affects the experience of space and place in two ways. First, surveillance fosters a kind of passivity that is best described as a ceding of power over space. As the geographer Hille Koskela puts it, visual surveillance constitutes space as a "container" for passive objects.[17] She distinguishes the spatial shaping that pro-

duces "container-space" from the "power-space" constituted by panoptic strategies of normalization, which depend on access to particularized information. But the "containerization" of space is itself a panoptic strategy. Panopticism in the Foucauldian sense is architectural as well as statistical; it entails the rearrangement of space to obviate the need for continual surveillance and to instill tractability in those who enter the space. Our newspaper-reading individual cannot see whether anyone is watching her, but she can see that the plaza has been reconfigured to allow observation secretly and at will, and that there is no obvious source of information about the surveillance and no evident method of recourse if she wishes to lodge a complaint. The reconfiguration places individuals under a twofold disability: the targets of surveillance cannot entirely avoid the gaze (except by avoiding the place) and also cannot identify the watchers. We can say, therefore, that surveillance alters the balance of powers and disabilities that obtains in public places. It instills an expectation of being surveilled, and contrary to the conventional legal wisdom, this reasonable expectation and the passivity that it instills are precisely the problem.

Performance theory reminds us that individuals surveilled are not only passive bodies, and this leads us to the second way in which surveillance affects the experience of space and place. Like identities, places are dynamic and relational; they are constructed over time through everyday practice. Surveillance alters important parameters of both processes. Koskela argues that surveillance alters a sense of space that she calls "emotional space." She observes that "[t]o be under surveillance is an ambivalent emotional event," because "[a] surveillance camera . . . can at the same time represent safety and danger."[18] This point contrasts usefully with U.S. privacy theorists' comparatively single-minded focus on the "chilling effect"; it reminds us that surveillance changes the affective dimension of space in ways that that formulation doesn't address. One may feel safer from crime, but also more vulnerable to other unpredictable actions.

Marc Augé has argued that the defining feature of contemporary geography is the "non-place": places are historical and relational; non-places exist in the present and are characterized by a sense of temporariness, openness, and solitariness. Augé does not discuss surveillance, but the distinction between places and nonplaces maps well to the affective dimension of space that Koskela identifies. Augé's critics observe that "placeness" is a matter of perspective; for example, airports may be places to those who work there, while wealthy residential enclaves may be nonplaces to those whose entry incites automatic suspicion.[19] It may be most accurate to conceptualize "placeness" both as a matter of degree and as an attribute that may be experienced differently by different groups. Along this continuum, surveillance makes places more like nonplaces.

In short, spaces exposed by surveillance function differently from spaces that are not so exposed. With respect to space, surveillance employs a twofold dynamic of containerization and affective modulation in order to pursue large-scale behavioral modification. Koskela observes that surveillance makes public spaces less predictable for the watched. The relation is reciprocal: surveillance also attempts to make those spaces more predictable for the watchers. By altering the balance of powers and disabilities, exposure changes the conditions that shape the ongoing construction and performance of identity, community, and place.

The effects of exposure and transparency are complementary, and the genius of surveillance appears most clearly when one considers them together. Transparency alters the parameters of evolving subjectivity by imposing normalizing categories and distinctions; exposure alters the capacity of places to function as contexts within which identity is developed and performed. Surveillance directed at transparency seeks to systematize, predict, and channel difference; surveillance directed at exposure seeks to prevent unsystematized, unpredictable difference from emerging.

This understanding of the spatial dimension of privacy is relevant not only to physical spaces, but also to the ongoing debate about privacy interests in online conduct. Recall that the mismatch between online conduct and fixed physical place is one of the principal reasons that privacy theorists have resisted spatial formulations of privacy interests and have supported a purely information-based understanding of privacy interests. Privacy skeptics, meanwhile, assert that whether or not online forums correspond to physical places, online conduct that is visible to others is not private in any meaningful sense. Both arguments overlook the extent to which online conduct and online surveillance are experienced spatially.

Let us now zoom in on our café-sitting individual as she uses her laptop computer to explore the Web, view and download content, write pseudonymous blog posts, and send e-mail. Privacy rules derived from ownership and expectation suggest that she can have no legally cognizable expectation of privacy in most of those activities. The software is licensed, the communication networks are owned by third parties, and it is increasingly common knowledge that online activities are potentially subject to pervasive surveillance by governments and commercial interests. Federal statutes carve out limited zones of privacy, but as their definitional frameworks are challenged by rapid technological change, those statutes more often serve to highlight the absence of a generally applicable privacy interest in online activity.

Here again, the reasonable-expectation standard begs the question: when does surveillance of online activities change expectations in a way that we as a society should find objectionable? As the hypothetical suggests, the question cannot be answered simply by invoking an expanded conception of the privacy of the home. Information-privacy theorists have objected, rightly, that this move tethers spatial privacy interests to a fixed physical space and ignores the fact that many online activities occur outside the home. A privacy analysis for the information age must focus on something other than physical location. The question also cannot be answered by reifying communication networks as separate "spaces." As we saw in Chapter 2, online space is not separate from real space. Communication networks are layered over and throughout real space, producing a social space that in totality is more accurately understood as networked space. Actions taken in physical space have important consequences online, and vice versa. In ways that real space does not, online space contains material traces of intellectual, emotional, and relational movement, but privacy law and policy must be crafted for those who live in the real world.

A viable theory of privacy for the networked information age must consider the extent to which the "privacy of the home" has served as a sort of cultural shorthand for a broader privacy interest against exposure. The home affords a freedom of movement that is both literal and metaphorical and that has

physical, intellectual, and emotional dimensions: we can move from room to room, we can speak our minds and read whatever interests us, we can pursue intimacy in relationships. The advent of networked space challenges privacy theorists to articulate a more general account of the spatial entailments of intellectual, emotional, and relational activities. By analogy to what Altman described as the "invisible bubble" that surrounds each embodied individual, we might envision a zone of personal space that permits (degrees of) unconstrained, unobserved physical and intellectual movement.[20] That zone furnishes room for a critical, playful subjectivity to develop. This account of spatial privacy matches the experience of privacy in ways that the purely informational conception does not.

When the spatial dimension of privacy is understood in this way, it becomes easier to see that surveillance of online activities alters the experience of space in the same ways that surveillance of real places does. From the standpoint of Foucauldian theory, surveillance of online activities is a logical extension of the panoptic gaze, and not only for purposes of imposing transparency and normalization. To be most effective, the "containerization" of space must extend to intellectual, emotional, and relational processes conducted online. As in physical space, the exposure of online activities alters the affective dimension of online conduct. From the standpoint of Deleuzian theory, surveillance of online activities furthers the goals of the surveillant assemblage; it hastens the conversion of bodies and behaviors into flows of data. These process in turn affect the ongoing construction of self, place, and community within networked space more generally.

Coveillance, Self-Exposure, and the Culture of the Spectacle

Other social and technological changes also can alter the balance of powers and disabilities that exists in networked space. Imagine now that our café-sitting individual engages in some embarrassing and unsavory behavior—perhaps she throws her used paper cup and napkin into the bushes, or coughs on the milk dispenser. Another patron of the café photographs her with his mobile phone and posts the photographs on an Internet site dedicated to shaming the behavior. This example reminds us that being in public entails a degree of exposure, and that (like informational transparency) sometimes exposure can have beneficial consequences. (It also reminds us, again, that online space and real space are not separate.) Maybe we don't want people to litter or spread germs, and if the potential for exposure reduces the incidence of those behaviors, so much the better.[21] Or suppose our café-sitter posts her own location on an Internet site that lets its members log their whereabouts and activities. This example reminds us that exposure may be desired and eagerly pursued; in such cases, worries about privacy seem entirely off the mark. But the problem of exposure in networked space is more complicated than these examples suggest.

The sort of conduct in the first example, which the antisurveillance activist Steve Mann calls "coveillance," figures prominently in two different claims about diminished expectations of privacy in public. Privacy critics argue that when technologies for surveillance are in common use, their availability can eliminate expectations of privacy that might previously have existed. Mann argues that because coveillance involves observation by equals, it avoids the troubling political implications of surveillance.[22] But if the café-sitter's photograph had been posted on a site that collects photographs of "hot chicks," many

women would understand the photographer's conduct as an act of subordination. And the argument that coveillance eliminates expectations of privacy vis-à-vis surveillance is a non sequitur. This is so whether or not one accepts the argument that coveillance and surveillance are meaningfully different. If they are different, then coveillance doesn't justify or excuse the exercise of power that surveillance represents. If they are the same, then the interest against exposure applies equally to both.

In practice, the relation between surveillance and coveillance is more mutually constituting than either of these arguments acknowledges. Many employers now routinely search the Internet for information about prospective hires, so what began as "ordinary" coveillance can become the basis for a probabilistic judgment about attributes, abilities, and aptitudes. At other times, public authorities seek to harness the distributed power of coveillance for their own purposes—for example, by requesting the identification of people photographed at protest rallies.[23] Here what began as surveillance becomes an exercise of distributed moral and political power, but it is power called forth for a particular purpose.

Self-exposure is the subject of a parallel set of claims about voyeurism and agency. Some commentators celebrate the emerging culture of self-exposure. They assert that in today's culture of the electronic image, power over one's own image resides not in secrecy or effective data protection, which in any case are unattainable, but rather in the endless play of images and digital personae. We should revel in our multiplicity, and if we are successful in our efforts to be many different selves, the institutions of the surveillant assemblage will never be quite sure who is who and what is what. Conveniently in some accounts, this simplified, pop-culture politics of the performative also links up with the celebration of subaltern identities and affiliations. Performance, we are told, is something women and members of racial and sexual minorities are especially good at; most of us are used to playing different roles for different audiences. But this view of the social meaning of performance should give us pause.

First, interpreting self-exposure either as a blanket waiver of privacy or as an exercise in personal empowerment would be far too simple. Surveillance and self-exposure bleed into each other in the same ways that surveillance and coveillance do. As millions of subscribers to social-networking sites are now beginning to learn, the ability to control the terms of self-exposure in networked space is largely illusory: body images intended to assert feminist self-ownership are remixed as pornography, while revelations intended for particular social networks are accessed with relative ease by employers, police, and other authority figures.[24] These examples, and thousands of others like them, argue for more careful exploration of the individual and systemic consequences of exposure within networked space, however it is caused.

Other scholars raise important questions about the origins of the desire for exposure. In an increasing number of contexts, the images generated by surveillance have fetish value. As Kirstie Ball puts it, surveillance creates a "political economy of interiority" organized around "the 'authenticity' of the captured experience." Within this political economy, self-exposure "may represent patriotic or participative values to the individual," but it also may be a behavior called forth by surveillance and implicated in its informational and spatial

logics.[25] In the electronic age, performances circulate in emergent, twinned economies of authenticity and perversity in which the value of the experiences offered up for gift, barter, or sale is based on their purported normalcy or touted outlandishness. These economies of performance do not resist the surveillant assemblage; they feed it. Under those circumstances, the recasting of the performative in the liberal legal language of self-help seems more than a little bit unfair. In celebrating voluntary self-exposure, we have not left the individualistic, consent-based structure of liberal privacy theory all that far behind. And while one can comfortably theorize that if teenagers, women, minorities, and gays choose to expose themselves, that is their business, it is likely that the burden of this newly liberatory self-commodification doesn't fall equally on everyone.

The relation between surveillance and self-exposure is complex, because accessibility to others is a critical enabler of interpersonal association and social participation. From this perspective, the argument that privacy functions principally to enable interpersonal intimacy gets it only half right.[26] Intimate relationships, community relationships, and more casual relationships all derive from the ability to control the presentation of self in different ways and to differing extents. It is this recognition that underlies the different levels of "privacy" enabled (at least in theory) by some—though not all—social-networking sites.Accessibility to others is also a critical enabler of challenges to entrenched perceptions of identity. Self-exposure using networked information technologies can operate as resistance to narratives imposed by others. Here the performative impulse introduces static into the circuits of the surveillant assemblage; it seeks to reclaim bodies and reappropriate spaces.

Recall, however, that self-exposure derives its relational power partly and importantly from its selectivity. Surveillance changes the dynamic of selectivity in unpredictable and often disorienting ways. When words and images voluntarily shared in one context reappear unexpectedly in another, the resulting sense of unwanted exposure and loss of control can be highly disturbing. To similar effect, Altman noted that loss of control over the space-making mechanisms of personal space and territory produced sensations of physical and emotional distress.[27] These effects argue for more explicitly normative evaluation of the emerging culture of performance and coveillance, and of the legal and architectural decisions on which it relies.

Thus understood, the problems of coveillance and self-exposure also illustrate a more fundamental proposition about the value of openness in the information environment: openness is neither neutral nor univalent, but is itself the subject of a complex politics. Some kinds of openness serve as antidotes to falsehood and corruption; others serve merely to titillate or to deepen entrenched inequalities. Still other kinds of openness operate as self-defense; if anyone can take your child's picture with his mobile phone without you being any the wiser, why shouldn't you know where all of the local sex offenders live and what they look like? But the resulting "information arms races" may have broader consequences than their participants recognize. Some kinds of openness foster thriving, broadly shared education and public debate. Other, equally important varieties of openness are contextual; they derive their value precisely from the fact that they are limited in scope and duration. Certainly, the kinds of value that a society places on openness, both in theory and in practice, reveal

much about that society. There are valid questions to be discussed regarding what the emerging culture of performance and coveillance reveals about ours.

It is exactly this conversation that the liberal credo of "more information is better" has disabled us from having. Jodi Dean argues that the credo of openness drives a political economy of "communicative capitalism" organized around the tension between secrets and publicity. That political economy figures importantly in the emergence of a media culture that prizes exposure and a punditocracy that assigns that culture independent normative value because of the greater "openness" it fosters.[28] Importantly, this reading of our public discourse problematizes both secrecy and openness. It suggests both that there is more secrecy than we acknowledge and that certain types of public investiture in openness for its own sake create large political deficits.

It seems reasonable to posit that the shift to an information-rich, publicity-oriented environment would affect the collective understanding of selfhood. Many theorists of the networked information society argue that the relationship between self and society is undergoing fundamental change. Although there is no consensus on the best description of these changes, several themes persistently recur. One is the emergence and increasing primacy of forms of collective consciousness that are "tribal," or essentialized and politicized. These forms of collective consciousness collide with others that are hivelike, dictated by the technical and institutional matrices within which they are embedded. Both of these collectivities respond in inchoate, visceral ways to media imagery and content.[29]

I do not mean here to endorse any of these theories, but only to make the comparatively modest point that in all of them, public discourse in an era of abundant information bears little resemblance to the utopian predictions of universal enlightenment that heralded the dawn of the Internet age. Moreover, considerable evidence supports the hypothesis that more information does not inevitably produce a more rational public. As we saw in Chapter 2, information flows in networked space follow a "rich get richer" pattern that channels ever-increasing traffic to already-popular sites. Public opinion markets are multiple and often dichotomous, subject to wild swings and abrupt corrections. Quite likely, information abundance produces a public that is differently rational—and differently irrational—than it was under conditions of information scarcity. On that account, however, utopia still lies elsewhere.

The lesson for privacy theory, and for information policy more generally, is that scholars and policy makers should avoid investing emerging norms of exposure with positive value just because they are "open." Information abundance does not eliminate the need for normative judgments about the institutional, social, and technical parameters of openness. On the contrary, it intensifies the need for careful thinking, wise policy making, and creative norm entrepreneurship around the problems of exposure, self-exposure, and coveillance. In privacy theory, and in other areas of information policy, the syllogism "if open, then good" should be interrogated rather than assumed.

Privacy as Room for Boundary Management

Reimagining privacy for the networked information age requires that we take account of both the processes of evolving subjectivity and the ways in which the emergence of networked space enables practices of surveillance and self-exposure to intensify. Subjectivity evolves as individuals and communities engage in practices of self-definition that are both culturally embedded and open ended. Surveillance presses against those practices and against the play of subjectivity, in ways both metaphorical and literal. The interest in privacy, which operates at the interface between evolving subjectivity and surveillance, should be understood as an interest in preserving room for socially situated processes of boundary management to operate.

The mainstream public debate about privacy typically portrays privacy as a good infinitely amenable to being traded off against other goods. That debate reflects the powerful influence of Westin's taxonomy of individual preferences about privacy. According to the taxonomy, the production of which was funded in part by businesses that engage in direct marketing, the U.S. population consists of three groups of people: the "privacy unconcerned," "privacy pragmatists," and "privacy fundamentalists."[30] On Westin's account, the privacy unconcerned do not care what happens to information about them, while privacy fundamentalists will not be satisfied with anything but the most stringent, and therefore unrealistic, level of privacy protection. That leaves privacy pragmatists—those willing to make reasonable compromises when the gains outweigh the costs—as the group to whom privacy policy should be targeted. The taxonomy sounds innocuous, but it does important normative work. To be a Westin-style pragmatist is to consent to the continual erosion of privacy in the name of convenience. To want more privacy than the "pragmatists" want is to be a "fundamentalist," a term tarred with myriad negative connotations.

The exploration undertaken in this chapter allows us to formulate a revised conception of what privacy is about and what purposes it serves. As in the case of copyright, the law of privacy must balance a type of fixity against a type of mobility, and the nature of that balance is widely misunderstood. Privacy law does not exist to protect fixed, exogenously constituted selves from the effects of technological and social dynamism; it exists to shelter dynamic, emergent subjectivity from informational and spatial constraint. Both sides of the balance are valuable. Subjectivity requires some stability and predictability; similarly, the development of relationships and communities requires the ability to know and remember certain facts about one another and to coexist in defined spaces. But a society that wishes to remain democratic, vibrant, and innovative cannot hope to do so based solely on practices and architectures directed toward transparency and exposure.

Choices about privacy are choices about the scope for self-articulation. They are, therefore, choices about room to pursue the (unattainable, yet vitally important) liberal ideals of autonomy and critical independence. By this, I do not intend either to romanticize privacy or to readmit the liberal conception of privacy for fixed, autonomous selves through the back door. I mean only to make a narrower claim about the importance of some of liberalism's cultural and political aspirations. In a society committed at least to the desirability of the liberal ideal of self-determination, pervasive transparency and exposure are

troubling because they constrain the range of motion for the development of subjectivity through both criticism and performance, and these conditions do not automatically cease to be troubling when the subjects of surveillance have indicated their willing surrender. Such a society values neither the docile bodies of Foucauldian theory, the assimilated denizens of Deleuzian systems of social control, nor the fragmentary, infinitely protean selves posited by performance theorists.

It follows that choices about privacy are constitutive not simply of civil society, as some privacy theorists would have it, but of a particular type of civil society that prizes particular types of activities and particular types of subjects. In this respect, privacy functions as a sort of social Rorschach test, and not simply because norms about acceptable levels of privacy vary from culture to culture. Privacy exemplifies a culture's normative, collective commitments regarding the scope of movement, both literal and metaphorical, accorded to its members.

The privacy that emerges as most important for fulfilling these commitments is best described as an interest in breathing room to engage in socially situated processes of boundary management. Privacy is not only about refusing access, visibility, or interference with particular decisions. It is also and more generally about preventing the seamless imposition of patterns predetermined by others. The privacy embedded in social practices of boundary management by situated subjects preserves room for the development of a critical, playful subjectivity that is always-already intersubjective—informed by the values of families, confidants, communities, and cultures. In a world with effective boundary management, however, there is play in the joints, and that is better than the alternative. And on this understanding, privacy implicates not only individual interests, but also collective interests in human flourishing and in the ongoing development of a vibrant culture. Privacy's goal, simply put, is to ensure that the development of subjectivity and the development of communal values do not proceed in lockstep.

This understanding of the relationship between subjectivity and boundary management dovetails well with Foucault's later statements positioning subjectivity as a sort of critical-ethics-in-operation.[31] To the extent that the subject exists outside the framework of social shaping, it exists precisely in the possibility of change through the problematization of existing subjectivities and collectivities. That possibility always exists in the interstices of the informational and material architectures of social discipline, but it exists more fully to the extent that the interstices are larger and the linkages less complete.

Some intriguing new strands in the scholarly literature on privacy lend additional support to a definition of privacy as room for boundary management in the service of always-emergent subjectivity. Jonathan Kahn's provocative reading of the Georgia Supreme Court's decision in *Pavesich v. New England Life* (1905) against *Plessy v. Ferguson*, decided by the U.S. Supreme Court nine years earlier, shows that for the turn-of-the-century legal thinkers who developed the quintessentially American understanding of privacy as a right to be let alone, privacy and slavery were conceptual opposites. To similar effect, scholars in surveillance studies have documented the use of surveillance systems to control underprivileged populations. A conception of privacy as the opposite of subordination also underlies David Matheson's argument that privacy invasion

is a "wrongful relational interference" with one's person, liberty, or property, a species of informational assault on the self.[32]

Implicit in all these scholarly treatments of privacy, moreover, is a recognition that processes of boundary management operate along dimensions that are spatial and material as well as informational. Slavery operates by control of bodies and spaces. Modern social welfare systems operate via similar principles, albeit for rather different purposes. The systems are alike in their casual abrogation of the physical, spatial, and emotional boundary principles that ought to prevail in the state's interaction with its citizens. In Matheson's treatment, the idea of a wrongful relational interference suggests the absence of breathing space, in both the informational and the spatial sense, that deprivations of privacy can produce.

It is worth noting that the understanding of privacy as a set of boundary-management practices is intimately related to the cluster of values that I have argued should inform our understanding of copyright law. The play of culture and the play of subjectivity are inextricably intertwined; each feeds into the other. Creativity and cultural play foster the ongoing development of subjectivity. Educators in particular have long recognized that engagement with the arts promotes both cognitive development and transformative learning. Evolving subjectivity, meanwhile, fuels the ongoing production of artistic and intellectual culture, and the interactions among multiple, competing self-conceptions create cultural dynamism.

But the enabling relation between privacy and creativity is even more fundamental. Privacy is an indispensable enabler of processes of creative engagement. Creative workers self-report that the ability to create boundaries and separations is an essential one at all stages of the process.[33] Freedom of intellectual exploration similarly presupposes and requires the ability to exact a degree of intellectual privacy from one's surroundings. My intent here is not to reintroduce the model of solitary romantic authorship that Chapter 4 took pains to discredit; rather, my claim is the comparatively modest one that boundaries matter in creative practice as they do elsewhere, and perhaps more so. Creativity thrives on a mixture of connection and disconnection; for both creative individuals and creative collaborations, bringing creative practice to fruition requires breathing space.

To restate privacy's role in terms of ongoing processes of boundary management is to confront, once again, the insuperable difficulties of expressing privacy interests in the abstract language of rights theories. But this should not trouble scholars nearly as much as it has done. Rights theories help us articulate important aspirations that privacy serves, including the Millian liberty to develop one's convictions without fear of social tyranny. Those aspirations do not become irrelevant simply because the background assumptions of liberal political theory fail to hold. At the same time, rights theories fail privacy advocates and privacy policy in at least two ways. First, the abstract language of rights without contexts establishes an implicit baseline that is manifestly inaccurate. As we have seen, there are good reasons that privacy is so resistant to the abstractions that dominate most rights theories; it cannot be separated from the contexts and places that give it meaning. Second, "privacy" is itself an abstraction, and a potentially dangerous one. The protections necessary to safeguard processes of boundary management within the systematic, rhizomatic

architectures of the surveillance society need to be conceptualized systemically and concretely if they are to be effective.

Economics and behavioral approaches to privacy, meanwhile, risk mistaking satisficing behavior for normative judgments about the socially appropriate extent of transparency and exposure. Those approaches are therefore extraordinarily useful for predicting the directions that surveillant assemblages will take, but at the same time extraordinarily useless in countering them. Measuring the costs and benefits of privacy within a framework that takes satisficing behavior as the baseline tends to elide the systemic externalities that the loss of privacy imposes. Economic insights are valuable, but only to the extent that they might inform a hybrid methodological stance. The challenge for a law and politics of privacy is to ensure that collective practices of surveillance and information processing cohere with other collective aspirations for self-development.

Finally, the conflation of human flourishing with open access to information in all its forms is far too simple and needs to be carefully reconsidered. In some contexts, human flourishing demands reduced openness; in particular, human flourishing requires a reversal of the dynamic of one-way transparency, a rethinking of the principle of exposure, and a critical, revisionist stance toward the normative underpinnings of the culture of exposure. Human flourishing requires both boundedness and some ability to manage boundedness. Respect for privacy does not require absolute secrecy for personal matters. Rather, it entails something easier to imagine but more difficult to achieve: more openness about some things and less openness about others.

Notes

[1] See Nissenbaum, *Privacy in Context*; Nissenbaum, "Privacy as Contextual Integrity"; Solove, *Understanding Privacy*.

[2] See, for example, Parker & Sedgwick, *Performativity and Performance*.

[3] See Warner, *Publics and Counterpublics*.

[4] See, for example, Spelke, "Origins of Visual Knowledge"; Wang & Spelke, "Human Spatial Representation." For a representative and eloquently argued example of the feminist critique, see Nedelsky, "Law, Boundaries, and the Bounded Self."

[5] Westin, *Privacy and Freedom*, 32-42.

[6] Altman, *The Environment and Social Behavior*, 3.

[7] See Altman, "Privacy Regulation."

[8] For useful discussions of collective subjectivity, see DiMaggio, "Culture and Cognition"; Holland et al., *Identity and Agency in Cultural Worlds*; Zerubavel, *Social Mindscapes*.

[9] On liberal individualism as culture, see Paul Kahn, *Putting Liberalism in Its Place*; Taylor, *Modern Social Imaginaries*.

[10] See, for example, Foucault, "Technologies of the Self"; Giddens, *Modernity and Self-Identity*.

[11] See, for example, Cohen, "A Right to Read Anonymously," 1006-07; Cohen, "Examined Lives," 1406-08; Richards, "Intellectual Privacy," 416-21.

[12] Foucault, *Discipline and Punish*, 223.

[13] For useful overviews, see Lyon, Surveillance Society; Wood, A Report on the Surveillance Society; Ball, "Elements of Surveillance."

[14] The sources cited in note 13 elaborate in detail the relationship between surveillance and discrimination. In addition, see Gandy, *The Panoptic Sort*; Gandy, "Data Mining, Surveillance, and Discrimination."

[15] Haggerty & Ericson, "The Surveillant Assemblage," 614-15.

[16] See for example McGrath, *Loving Big Brother*, 12-16; Koskela, "Webcams, TV Shows, and Mobile Phones," 206-07; Phillips, "From Privacy to Visibility," 101.

[17] Koskela, "The Gaze Without Eyes," 250.

[18] Ibid., 257.

[19] See, for example, Merriman, "Driving Places."

[20] Altman, *The Environment and Social Behavior* 6, 53–62.

[21] For a utilitarian argument in favor of social discipline through structured shaming, see Strahilevitz, "'How's My Driving?.'"

[22] Mann, Nolan, and Wellman, "Sousveillance," 348.

[23] See, for example, Wayne Harrison, "CU Posts Pictures of Pot-smoking Event: Reward Offered for Information about People in Photos," *ABC 7 News Online* (Apr. 28, 2006), http://www.thedenverchannel.com/news/9063737/detail.html.

[24] See, for example, Bailey & Kerr, "Seizing Control?," 132, 137; Alan Finder, "When a Risque Online Persona Undermines a Chance for a Job," *New York Times*, June 11, 2006, 1.

[25] Ball, "Exposure," 641, 643-45.

[26] For representative examples, see Fried, "Privacy," 484; Inness, *Privacy, Intimacy, and Isolation*, 74-94.

[27] Altman, *The Environment and Social Behavior*, 6, 156-61.

[28] See Dean, *Publicity's Secret*, 3-13.

[29] On tribal or essentialized identity, see Barber, *Jihad vs. McWorld*; Castells, *The Power of Identity*. On hivelike identity, see Alexander Galloway, *Protocol*; see also Baudrillard, *Simulacra and Simulation*.

[30] For a useful historical overview of Westin's privacy surveys and methodology, see Kumaraguru & Cranor, "Privacy Indexes."

[31] See Foucault, "The Subject and Power," 222-26; see also Reiman, "Privacy, Intimacy, and Personhood," 310-13.

[32] See Jonathan Kahn, "Controlling Identity"; Matheson, "A Distributive Reductionism about the Right to Privacy." Studies of the use of surveillance techniques in social welfare systems include Gilliom, *Overseers of the Poor*; Monahan, *Surveillance and Security*. Notably, Gilliom criticizes the "privacy rights paradigm" for its insensitivity to the power dynamics of surveillance (121-34).

[33] See Amabile, *Creativity in Context*, 115-20, 231-32; Csikszentmihalyi, *Creativity*, 120-21.