Curentul Juridic – Juridical Current

2019, Vol. 76, No. 1, pp. 121-132

THE RISE AND FALL OF INFORMATION PRIVACY

Andreea VERTEȘ-OLTEANU[*]
Remus RACOLȚA[**]

***ABSTRACT*:** "*There are no secrets in the modern era. Everything is bared, aired, shared (…). Nothing is secret, privacy is dead, and the funeral will be broadcast live on the Reality Channel", writes Israeli author Eshkol Nevo in his popular novel, Three Floors Up (2015). We are being watched. Big Brother is no longer a remote dystopia. Video surveillance in public spaces, the monitoring of mobile telephones, electronic communications and online activities have become widespread. Sir Edward Coke's famous 17th-century declaration that "a man's house is his castle" has been wildly breached in the digital age. The difference is that today, unlike in Orwell's vision or in Bentham's Panopticon, the all-seeing eye does no longer necessarily belong to the government alone, since many in the private sector "mine" the data collected by others, not to mention the data generously offered by the owners of information themselves. From among the many technological trends that are spurring these developments, the present article shall focus on four: the one device, the cloud, the social media and the collection of Big Data and the European struggle to control the phenomenon, by means of the recent and much acclaimed Regulation (EU) 2016/679, whose efficiency is yet far from being indisputable.*

KEYWORDS*: privacy, zero privacy, information privacy, social media, Big Data, GDPR*
JEL CODE*: K 4*

1. SOCIO-CULTURAL DEFINITION OF "PRIVACY"

Anyone who has attempted to write a universally accepted definiton of the term 'privacy' has met with the same difficulties, i.e. the extraordinary difficulty of defining this term satisfactorily for all human beings across the world. This, as James Q. Whitman aptly puts it, is due to the fact that privacy "is an unusually slippery concept, given the fact that the sense of what must be kept 'private', of what must be hidden from the eyes of others, seems to differ strangely from society to society" (Whitman 2004: 1153). Whitman mentions the cultural norms that govern different societies across the Globe, which do not share a common idea of that which must be kept 'private', proof of this being the fact that some societies "cheerfully defecate in full view of each others" (ibid.) or engage in "public sexual activities" (ibid., 1154).

[*]West University of Timişoara, ROMANIA.
[**]West University of Timișoara, ROMANIA.

The difficulty in giving a universally accepted and valid definition is intrinsically linked to the different cultural renditions of what privacy really is. Additionally to these socio-cultural manifestations of the idea of 'privacy', we have the newly-formed opinion that the present "information age" adds another dimension to the cultural and anthropolgical definitions of what should be kept away from prying eyes, namely the accessing by "the public" of numerous "private aspects" that individuals unwillingly fall prey to, due to the massive outspread of state-of-the-art technology in the last decades. As Renata Salecl sees it, "in a world obsessed with the issue of identity and individuality, *privacy is the hottest theme*" (Salecl 2002: 8, emphasis added).

This in turn has led to a marked deepening of the already existing divide between ardent advocates of privacy and sharing / publicising enthusiasts, thus making the idea of privacy even more socio-politically loaded than ever before. While the former are adamant that no private information regarding their private life should be traceable for state institutions, internet providers or specific websites, the latter group wholeheartedly and willingly shares a vast quantity of private information on social media websites, such as Facebook, Twitter, Snapchat, etc., adhering more or less passionately to the idea of "exposure of privacy" (ibid.). This idea is perhaps best rendered in the adage "there are no more secrets" which must be kept from the community. Best summed up by the Israeli author Eshkol Nevo in his novel "*Three Floors Up*" (2015), secrets and thus privacy are a thing of the past:

"*A word about secrets in the modern era before I tell you […] my secret. There are none. There are no secrets in the modern era. Everything is bared, aired, shared, Twittered and Flickered; you can Snapchat and WhatsApp and Viber and Wiki. Nothing is secret, privacy is dead, and the funeral will be broadcast on the Reality Channel" (Nevo 2006: 95, emphasis added)*.

Socio-cultural phenomena regarding the "death of privacy" are manifold, all of which are based on the idea that our present-day society is motivated by a strong urge to see that, which up till not very long ago, was supposed to be hidden from the public sphere. Not only the unprecedented surge of social media such as Facebook and the production of ever more top-range smartphones play an important role in the dismantling of the concept of privacy, but also, for example, the newly fangled idea of "reality TV" (*Big Brother, Temptation Island, Survivor, Boot Camp, Naked and Afraid*, etc.). The dismantling of privacy can also be easily observed not only in the present-day media, but also in the workplace, e.g. the creation of the open-plan office, where the cubicals separating the employees have been removed, or the ever-increasing demand of "teamwork" in the workplace, even if it proves detrimental to productivity. (Williams, 2012) As the German journalist David Hagendick humorously, yet pertinently, remarks in his article entitled "The Terror of High Spirits"[1] (translation is ours), a behaviour such as that of Niklas Luhman, the famous sociologist, who allegedly back in the day replied to the question what he needed upon accepting his new position in Bielefeld that he would need merely "pencils, writing pads and apart from that, his privacy"[2], would nowadays be simply

[1] In the original: "Der Terror der Guten Laune", *Zeit Online*, 2014.

[2] In the original: "Niklas Luhmann, der nach Dienstantritt in Bielefeld gesagt haben soll, er brauchte nur Stifte, Blöcke und ansonsten seine Ruhe, würde heute mit harmonieförndernden Maßnahmen belästigt werden und müsste seine Sozialkompetenz beim Bergsteigen verbessern", ibid.

unacceptable; the utterer of such a statement, according to Hagendick, would in our day and age be "coerced into taking part in harmony-producing exercising and improving his mountain-climbing skills" (translation is ours).

Similar to the changes in office-design, such phenomena also occurred in a variety of aspects as far as life in general is concerned, not only one's workplace. For instance in modern gastronomy, customers are often able to see the kitchen (which is not separated by any walls from the actual restaurant) and thus observe how and by whom their food is being prepared, or restaurants in which customers are served their food while lying in bed (the so-called "Bed Restaurants"); the field of leisure activities has also been radically transformed, with activities such as "naked cycling" in major European cities or the internationally ever-growing "No Pants Day", in which people are encouraged to ride the metro while wearing no trousers, thus exposing their underwear; news broadcasting has also produced with its idea of "real-time news" a more exacerbated phenomenon of mediatic stalking (e.g. "*paparazzi*"), perhaps the most poignant example would be in this case the car-chase of Princess Di and Dodi Fayed in Paris, which resulted in the death of both Princess Di and Dodi Fayed, and later in the compelling of the Queen of the UK to "show grief" and lower the flag over the Buckingham Palace to half-mast by means of public pressure, which some commentators and politicians labelled at the time as an interference of the British public in the private life of the Royal Family[3].

Portents of the oxymoronic idea of "privacy exposure" can also be easily found in modern arts, such as for example in the case of German artist Gunther von Hagens' exhibition entitled "*Body Worlds*"[4] (translation is ours), which consists of exhibiting numerous bodies of humans without their skins, revealing through what von Hagens called the process of "*plastination*" that which previously has never been seen by a large audience worldwide[5]. In the field of literature, the present adaptation of the feminist motto that "the private is political" (Hanisch, 2006) seems to have become "the private is public" and has produced a world-wide success[6] of the play written by Eve Ensler entitled "*The Vagina Monologues*" (1996), in which the author discusses in separate monologues topics such as rape, menstruation, genital mutilation, masturbation, orgasm, etc.

2. "PUBLIC" VS. "PRIVATE" AS AN ANCIENT AND CONTESTED BINARY

Even if some cultural critics are of the opinion that "the idea of privacy is a strictly modern phenomenon" (Salecl 2002: 1) and that the protection of privacy has evolved "not despite new technologies, but because of them" (ibid.), the dichotomy of private and public spheres is in fact very old. At the core of it seems to always be a rigid and mutually exclusive private vs. public binary, which is clearly reflected in the definition of the term "private". *The Longman Dictionary of the English Language* defines "privacy" as "1.

[3] "Blair defends Royal Family Against Criticism", *BBC*, 1997.
[4] In the German original: "*Körperwelten*", translation is ours.
[5] A similar art exhibition with "split animals" by the British artist Damien Hirst was very popular during the 1990s.
[6] Charles Isherwood named "*The Vagina Monologues*" in the *New York Times* "probably the most important piece of political theatre of the last decade", *The New York Times*, 2006.

being apart from the company or observation of others; seclusion; 2. freedom from undesirable intrusions, esp. avoidance of publicity" (Longman 1995: 1276).

From an etymological point of view, the English term "private", from which "privacy" derives, comes from the Latin noun "*privatus*", meaning "bereaved, set apart from", which itself is a derivation of the Latin verb "*privo*", which signifies "to deprive, to bereave, to release, to set free" (Lewis & Short 1879: 1447). There are also the dictionary definitions of "apart from the State, peculiar to one's self" (in Latin opposed to "*publicus*, *communis*"); referring to a person, it can also have the meaning of "not in a public or official life, private, deprived of office" (ibid.), while when referring to a thing, the Latin term has the meaning of "a private life, withdrawn from State Affairs" (ibid.).

The division or binary between what can be defined as private and what as public is intrinsically tied to the difficulties mentioned in defining the term "privacy" at the very beginning of the paper. The private vs. public dichotomy expands also to other such binaries, such as for instance the idea of a (private) individual and a (public) group or society. The perhaps easiest way to differentiate between these two opposing binary constituents is to ascertain that the public domain and with it, public life, belongs to a given society at large, which is comprised of citizens. These citizens, as was the case of the ancient Greek city-states (πολις), used the public space, best exemplified by the agora (ἀγορά) for communal activities, i.e. state politics, judicial matters, decision-making in matters of public good. Opposed to the public domain, we find the private domain (or private life), which belongs to the individual, the citizen, it being a space deprived of access for either other individuals apart from the family and friends or for the State.

Aristotle defines man as a "political animal" (ζώον πολιτικόν) with the need of a "public life" (πολίτικόν βίον), so that the individual, the citizen can attain full functioning as a part of a whole, the community. The first ideas in this respect, ideas of state governance, come from the Greek philosopher Plato, who has dealt with the idea of the "ideal state" (Καλλίπολις) and its organisation in his seminal "*The Republic*" (Πολιτεία), but also in "*Phaidros*" (Φαίδρος) and other works of his.

Plato's vision of the ideal-state, which would be ruled by a Philosopher-King presupposes the idea that the whole is the sum of its parts, and consequently, the whole functions in the same way as do its parts and vice versa. Differently put, the function and constitutive reason of a family is also that of a city-state, since Plato was of the opinion that the head of the family could be transplanted onto the community. Justice for Plato was represented by the concept of *sophrosune* (σωφροσύνη)[7], meaning "the subjugation of appetitive and spirited parts under reason" (Zhu 2004: 231). *Sophrosune* is manifest in Plato's city through a rigid system of division of labour, which would reflect the social divisions of the Greek classical world[8]. Differently put, according to Plato, "a good city is analogous to a good person, while political justice mirrors personal justice" (ibid., 232). The city and its citizens strive for *eudaimonia* (εὐδαιμονία)[9]; when all citizens (private individuals) attain *eudaimonia*, the just city attains happiness on a social (or public) level

[7] Plato, *Phaidros*, 237c.
[8] Plato, *Republic*, 443d.
[9] A Greek term, consisting of the Greek terms „*eu*" (good) and „*daimonia*" (spirit), sometimes anglicised as eudemonia, its is usually translated into English with the term "happiness". In Aristotle's "*Nicomachean Ethics*", *eudaimonia* is defined as "doing and living well" (1095a15-22).

as well. Thus, according to Plato, there is no difference between individual and public *eudaimonia*, "since there is no individual *eudaimonia* outside the collective *eudaimonia* and viceversa" (ibid., 233, emphases in the original). Aristotle reduces Plato's initial idea of unity between the state (public) and the individual (private) to the latter, claiming that the unity of a family (the private domain and private life) is a life necessity, ensuring the survival of the individual, while the idea of unity is less important when it comes to public life, which is concerned with citizens. These are a special type of individuals: "a citizen pure and simple is defined by nothing else so much as by the right to participate in judicial functions and in office"[10]. Opposed to the (private) citizen, there is the public sphere, that of the city-state: "a state is a *partnership* of families and clans in living well, and its object is a full, *independent life*" (emphasis added)[11]. In conclusion, Aristotle puts forward the idea that the private element of the binary is based on friendship (φιλία), while the public constituent of the binary is based on the idea of a good life, and thus the two binary constituents are not identical, but different from one another. Private life, according to Aristotle, is not the fullest realisation of life of the citizen, and the private person cannot be a full person, if divorced from the public life. The important implication of this is that the two categories, private and public, are not the same.

Similarly, Aristotle claims that the aim of the state is not to create virtuous individuals, such as Plato maintained, but that the main aim of the state is to create *politically* virtuous citizens. The good or the virtuous man also differs from the politically virtuous citizen: while the virtue of the former is manifest across the communities, the virtue of a citizen is moreoften relative to the community he is a part of. Explaining his example by making reference to the sailors of a ship and the differences and similarities between them, Aristotle draws the conclusion that "it is manifestly possible to be a good citizen without possessing the goodness that constitutes a good man",[12] thus reinforcing the private vs. public constituents of the given dichotomy.

3. LEGAL IMPLICATIONS OF THE TERM "PRIVACY". "YOU HAVE ZERO PRIVACY. GET OVER IT." (SUN MICROSYSTEMS, INC., CEO SCOTT MCNEALY) (RADCLIFF, 1999)

In terms of legal implications of the term privacy today, James Q. Whitman discusses, as mentioned before, the great difficulty of defining privacy not only from a more recent point of view, but also a more generally accepted one, with direct implication for the law-makers of today. He differentiates between the two conceptions of privacy in Western thought, namely the European concept of privacy "as a form of protection of a right to respect a personal dignity" (Whitman 2004: 1161) and the American conception of privacy as a form of "liberty against the State", or "the right to Freedom from intrusion by the state, especially in your own home" (ibid.).

As previously stated, privacy is, from a legal point of view, a portmanteau concept, including searches and seizures, public records, private records, the property rights of the famous in their fame, the rights of those who do not want to be famous, and the like (Sommer 2000: 1216). Given the range of problems packed into the privacy portmanteau,

[10] Aristotle, *Politics*, 1257a
[11] *Ibid*., 1280b34.
[12] *Ibid*., 1276b-1277a14

any in-depth legal, as well as conceptual, treatment would be impossible. Privacy is vulnerable to intrusive technologies, be it a policeman's crowbar, a printing press, the camera or the Internet. Even if impossible to pin down, the classic "legal" characterization of privacy as "the right to be left alone" was penned by Louis Brandeis and Samuel D. Warren in a 1890 famous commentary, published in the influential Harvard Law Review, as a reaction to the invention of the inexpensive and portable "snap camera" by Eastman Kodak, that had changed the world. "The common law," they argued, "secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others" (Brandeis 1890: 198). The beginning of the end of privacy was nigh (Wacks 2010: 53). In their article, Warren and Brandeis explain the utter necessity that the law adapt to the recent inventions, as well as the practices of the journalists of their time – particularly the gossip pages, which had contributed to the invasion of an individual's privacy.

The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. (Brandeis 1890: 193)

Privacy is a chameleon that shifts meaning depending on context. Jerry Kang distinguishes three clusters: space, decision and information, the last being of interest for our present paper. The first cluster concerns space, and it involves mainly the distinction public vs. private territories or the degree to which an individual's solitude is protected from the invasion of unwanted objects or signals. The second cluster, which has incited many contentious constitutional and political debates, views privacy as basically a choice, a person's right to make certain decisions without external interference. At last, the third cluster deals with privacy concerns regarding the flow of personal information, i.e., the acquisition, disclosure and use of personal information (Kang 1998: 1202).

Information privacy is "an individual's claim to control the terms under which personal information - information identifiable to the individual – is acquired, disclosed, and used", a definition which comes from *Principles for Providing and Using Personal Information* ("*IITF Principles*")[13]. Not surprisingly, the key component of information privacy is the term personal information, in other words, information identifiable to the individual (ibid.).

In Europe, information privacy has been recognized for a long time, or at least since the European courts began to recognize a right to informational self-determination. The term "informational self-determination" was used for the first time in the context of a decision of the German Constitutional Court regarding the personal data collected upon the occasion of the 1983 census, the German term being "*informationelle Selbstbestimmung*". The objective right of data protection seems to be based on the idea of informational self-determination which, in turn, is rooted in the idea of free will. The philosophy of data protection implies the following: any person should have the right not

[13] The Privacy Working Group, Information Infrastructure Task Force, *Privacy And The National Information Infrastructure: Principles For Providing And Using Personal Information*, 1995.

to be the subject of a processing of their data, unless such processing is done based on a legal basis and if it is controlled by the appropriate safeguards.

On the occasion of that decision, the Federal Constitutional Court in Germany stated: "In the modern context of data processing, the protection of the person against the collection, storage, use and unrestricted disclosure of his personal data is covered by the general personal rights of the German Constitution. This fundamental right guarantees, in this respect, the ability of the person to determine, in principle, the disclosure and use of his or her personal data. Limitations to this information self-determination are only allowed in the case of non-public interest."[14]

The right to informational self-determination is a huge achievement in recognizing users' rights. It was included in Article 12 (b) of the Data Protection Directive by the rule that allows the data subject to request the operator to "rectify, erase or block data the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data". The newly coined "right to be forgotten", enshrined in the already famous Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the *General Data Protection Regulation*), only translated the right to informational self-determination into the digital domain, finding that search engines perform a data control and, therefore, they must be considered as "operators" within the meaning of Article 2 letter (d) of Directive 95/46/EC, thus complying with the provisions of the Directive. The right to informational self-determination empowers individuals against data processing entities, such as advertisers, insurers, supermarkets, Big Pharma, and data brokers, by guaranteeing the "authority of the individual in principle to decide for himself whether or not his personal data should be divulged or processed." (Poullet & Rouvroy, 2009)

Last but not least, in the British legal tradition, the essence of privacy is framed within the field of ownership, and not so much from a human rights perspective: "if information is my private property, it is for me to decide how much of it can be revealed to the public or should be published"[15]. In more recent times, this fundamental right has been described as one which pertains to human dignity and, respectively, serves as the foundation for the right to privacy. The aforementioned GDPR, in its Article 88, states that the rules [for processing in the context of employment] "shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights." Furthermore, for the entire post-89 Europe, the possibility of being "forgotten" online and having one's personal data protected is seen as an additional measure in consolidating democracy and pluralism, whilst the collection of personal information is still perceived as a powerful tool in the hands of totalitarian regimes[16].

---

[14] BVerfGE 65, 1 vom 15.12.1983 (Volkszählungs-Urteil) (translated into English by Eibe Riedel in 5 HUMAN RIGHTS L. J. 94, 94–116 (1984)), in Giancarlo F. Frosio, "Right to Be Forgotten: Much Ado About Nothing", *Colorado Technology Law Journal*, 2017, 313.

[15] McKennit v. Ash [2006] EWCA (Civ) 1714, § 55 (Eng.) in Giancarlo F. Frosio, *ibid*., 314.

[16] Notwithstanding the danger that, precisely due to its newly implemented GDPR, Europe risks to be perceived as "exporting censorship all over the world". For a debated discussion on this idea, see Edison Lanza, "142 Cases on the Right to be Forgotten, What Have we Learned?", *Internet Governance Forum,* 2015.

4. PRIVACY-DESTROYING TECHNOLOGIES: AN OVERVIEW

When focusing our attention on a different topic, namely the question "which are the main threats to information privacy?", the answers are manifold: the fragility of the online environment *per se*, biometrics, CCTV surveillance, blogs, social media, the hunger for gossip as a constant fuel for glossy magazines (and, nowadays, their online versions) and, in a word, celebrity as a licence to intrude (Wacks 2010: x).

When attempting to classify these threats into categories, several taxonomies emerge, stemming from different criteria applied. A first useful distinction can be made between technologies that facilitate the collection of raw data and those which enable the owner of the acquired information to process and collate such data in interesting ways. When taking as a criterion the social context, one could focus on the individuals whose data is being collected (e.g., citizens, patients, employees, consumers, etc.) or on the different types of observers (e.g., intelligence agencies, law enforcement or tax authorities, insurance companies, commercial sites, brands, parents, fans, ex-husbands, etc.) (Froomkin 2000: 1468).

At the most basic level, these collectors and observers of data can be largely categorized as either governmental or private (including a grey area, since private entities can have access to government databases, just as governments can purchase privately collected data). Initially, the primary form of data collection belonged to the state which led to a possible definition of privacy as a right to deny government access to relevant information[17]. At present, whether the government may engage in surveillance, collection and processing of data under the Constitution or whether latter protects citizens from such actions, considered as violations, turns on whether the national courts will recognize or not that the subject of the surveillance has a reasonable expectation of privacy. Nowadays, however, state intervention represents only part of a bigger picture, since this "all-seeing eye" no longer needs to belong to the government, as many in the private sector find it extremely helpful and valuable to conduct different forms of data processing or to mine data collected by others.

Consistently, more and more businesses, particularly those that also encompass online services, spend enormous sums of money developing new functions and features which track, store, and offer to others the words, webpage-movements, clicks and even unexpressed thoughts of their clients. These obtrusive services have nevertheless turned out to be compelling to the customers, who have voluntarily embraced them in an age of ever-growing self-disclosure. Millions of people presently own state-of-the-art tracking devices, constantly connected to the World Wide Web. They are the real-life "victims" of a Pavlovian conditioning to use these gadgets at all times in order to access fun or useful services and, thus, to share even more information. All Smartphone users become, to

[17] There is, also, an oppposing stance, which critiques privacy, stating that if one is innocent, they have absolutely nothing to hide. However, this may prove a very dangerous perspective over the issue, and we will limit ourselves at quoting Benjamin Franklin, who said "they who can give up essential liberty to obtain a little temporaty safety, deserve neither liberty nor safety" (Benjamin Franklin, William Temple Franklin, *Memoirs of the Life and Writings of Benjamin Franklin,* London: A.J. Valpy, 1818 in Raymond Shih Ray Ku, "Privacy is the Problem", *Widener Law Journal,* 2010, 875.

name but one category, knowingly or unknowingly, the inhabitants of a virtual surveillance society.

This recent virtual surveillance society is not that different from the one anticipated by Gary Shteyngart, a fiction writer who described a dystopian bleak near future in his novel *Super Sad True Love Story* (Shteyngart, 2010):

(...) the lives of the (mostly young) New Yorkers focus on their "äppärät"; handheld devices recognizable as the offspring of today's smartphones, but smaller and sleeker, which buzz with information and constantly stream information out to the world. Not only does this make every person the potential host of a live-streaming television show about his or her life, but also it makes every social interaction an opportunity for awkward self-revelation by telling each person who walks into a bar, for example, who does (and does not) want to sleep with him, and how highly he ranks in the crowd in categories like "hotness" and "personality." (Ohm, 2012)

In relation to the surveillance society and the main privacy-destroying technologies, we are going to briefly present only four of the potentially intrusive innovations of the 21st century: the "one device", the cloud, social media applications and "Big Data"[18].

What Steve Jobs called "the one device" (Merchant, 2017), the life-unifying little computer that one could carry in one's pocket and incidentally use as a telephone, is equipped with an always-on, high-speed connection to the Internet and includes a camera (or multiple cameras), a microphone, a GPS chip, and a digital compass (Strandburg, 2011). The one device knows your whereabouts, as well as who you are with, what you are doing, saying and even looking at[19], not to mention, also, that it also stores all the data thus collected. Then, there is the "cloud", namely the delivery of computing services, servers, storage, databases, networking, software, analytics, intelligence and more, over the Internet in order to offer flexible resources and economies of scale. This means that millions of users now store their e-mails, accounting workbooks, contracts, formal correspondence, spreadsheets (with the rise of Google Docs, for instance) with third parties, presumably exposing their data to surveillance.

The social media applications, most importantly Facebook but also Instagram, Twitter or Google+, are developed based on the people's natural desire to connect to others. The act of enabling people to see what others are doing can trigger feelings of trust and entertainment. And here, self-disclosure, the act of freely revealing personal information to others, is at its best: "From expressing deep personal feelings and opinions to documenting mundane details of daily life, this type of public self-disclosure shared with multiple, diverse, and often ill-defined audiences blurs boundaries between publicness and privacy" (Bazarova 2014: 2). People tend to reveal more and more of their thoughts, feelings or private actions, including things they might have before chosen to hide, and to more people than ever before.

Big data refers to large amounts of data produced very quickly by a high number of diverse sources. Data can either be created by people or generated by machines, such as

[18] For a more detailed analysis, comprising surveillance in public spaces: cameras, cell phone monitoring, vehicle monitoring; monitoring in the home and office: workplace surveillance, electronic communications monitoring, online tracking, hardware; biometrics; sense-enhanced searches: satellite monitoring, seeing through the walls, seeing through clothes, see Michael A. Froomkin, "The Death of Privacy?", *Stanford Law Review*, 2000.

[19] Ohm, *ibid*., 1314.

sensors gathering climate information, satellite imagery, digital pictures and videos, purchase transaction records, GPS signals, etc (European Commission. Digital Single Market 2017). But here come the data privacy and data protection risks associated with the use of Big Data, such as discrimination, absence of anonymity, large scale data breaches, data brokerage, etc. With its profound impact on privacy (see the Facebook - Cambridge Analytica data scandal, to mention only one example), Big Data promises to have the biggest impact of all on law enforcement[20].

In *The Transparent Society*, futurist David Brin argues that the time for privacy laws passed long before anyone noticed: "[I]t is already far too late to prevent the invasion of cameras and databases… No matter how many laws are passed, it will prove quite impossible to legislate away the new surveillance tools and databases. They are here to stay." (Brin, 1998) Instead, perhaps anticipating smart dust[21], he suggests that the chief effect of privacy laws will be "to 'make the bugs smaller.'"[22]

As we witness the rapid decline of privacy, we should be prepared to rebuild the concept using tools different from the classical ones. Even in the past, privacy was not the given medium of home life, but rather one that had first to be brought about: "To gain privacy, one has to do something. One court resident, for example, moves his chair to the front rather than the court side of his apartment to show he doesn't want to be disturbed." (Hollingsworth 1956: 352) Technological change has not yet moved so far or so quickly as to make legal approaches to privacy protection irrelevant. The EU General Data Protection Regulation is a first promising step in the right direction. There is still much the law can do.

REFERENCES

"Blair defends Royal Family Against Criticism", *BBC*. 1997. <https://www.bbc.co.uk/-news/special/politics97/diana/royal1.html> Web. 13. October 2018.

European Commission. *Digital Single Market 2017. Big Data.* https://ec.europa.eu/digital-single-market/en/big-data> Web. 22. October 2018.

Phaidros. Plato in 12 volumes: with an English translation. transl. Paul Shorey. Harvard: Harvard University Press. 1935.

Politics. *Aristotle in 23 volumes*, transl. Harris Rackham, Cambridge MA: Harvard University Press. 1944.

Republic. Plato in 12 volumes: with an English translation. transl. Paul Shorey. Harvard: Harvard University Press. 1935.

The Privacy Working Group. Information Infrastructure Task Force. *Privacy And The National Information Infrastructure: Principles For Providing And Using Personal*

[20] "Computer scientists have demonstrated that they can often take a database full of anonymized data - data in which things like names, social security numbers, and photos have been intentionally removed to protect privacy - and restore identity by studying patterns in the data". Paul Ohm, "Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization", *UCLA Law Review*, 2010, 1703.

[21] The term "smart dust" refers to a project funded by the Pentagon back in 2001, whose goal was "to demonstrate that a complete sensor/communication system can be integrated into a cubic millimeter package" capable of carrying any one of a number of sensors. See Kris Pister, Joe Kahn, "Smart Dust: Autonomous Sensing And Communication In A Cubic Millimeter", 2001.

[22] Brin, *ibid.*, 13.

Information. 1995. <https://aspe.hhs.gov/privacy-and-national-information-infrastructure-principles-providing-and-using-personal-information> Web. 22. October 2018.

"Privacy". *Longman Dictionary of the English Language*. Brian O'Kill (ed.). London: Viking. 1995.

Aristotle. *Nicomachean Ethics*. *Aristotle in 23 volumes*, transl. Harris Rackham, Cambridge MA: Harvard University Press. 1944.

Bazarova, Natalya; Hyung Choi, Yoon. "Self-Disclosure in Social Media: Extending the Functional Approach to Disclosure Motivations and Characteristics on Social Network Sites". *Journal of Communication*. Vol. 64 (4). 2014. pp.635-657.

Brin, David. *The Transparent Society*. Perseus Books. 1998.

Ensler, Eve. *The Vagina Monologues*. New York: Villard. 2001.

Froomkin, A. Michael. "The Death of Privacy?". *Stanford Law Review*. Vol. 52. 2000. pp. 1461-1543.

Frosio, Giancarlo F. "Right to Be Forgotten: Much Ado About Nothing". *Colorado Technology Law Journal*. Vol. 15 (2). 2017. pp. 307-336.

Hagendick, David. "Der Terror der guten Laune". *Zeit Online*. 14. November 2014. <https://www.zeit.de/2014/47/karriere-ratgeber-glueck-arbeit> Web. 13. October 2018.

Hanisch, Carol. *The Personal is Political*. 2006.1969.

Hollingsworth, William. *The Organization Man*. New York: Simon and Schuster. 1956.

Isherwood, Charles. "The Culture Project and Plays That Make a Difference". *The New York Times*. 2006. 3. September 2006 <https://www.nytimes.com/2006/09/03/theater/03ishe.html> Web. 13. October 2018.

Kang, Jerry. "Information Privacy in Cyberspace Transactions". *Stanford Law Review*. Vol. 50. 1998. pp. 1193-1294.

Ku, Raymond Shih Ray. "Privacy is the Problem". *Widener Law Journal*. Vol. 19 (3). 2010. pp. 873-891.

Lanza, Edison. "142 Cases on the Right to be Forgotten, What Have we Learned?". *Internet Governance Forum*. 2015. <https://www.intgovforum.org/cms/wks2015/index.php/proposal/view_public/142> Web. 22. October 2018.

Lewis, T. Charlton & Short, Charles. *A Latin Dictionary*. Oxford: Clarendon Press. 1879.

Merchant, Brian. "The Secret Origin Story of the iPhone. An exclusive excerpt from The One Device". *The Verge*. 2017. <https://www.theverge.com/2017/6/13/15782200/one-device-secret-history-iphone-brian-merchant-book-excerpt> Web. 22. October 2018.

Nevo, Eshkol. *Three Floors Up*. New York: Other Press. 2017.

Ohm, Paul, "Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization", *UCLA Law Review*. Vol. 57. 2010. pp.1701-1777

Ohm, Paul, "The Fourth Amendment in a World Without Privacy", *Mississippi Law Journal*, Vol. 81 (5), 2012. pp.1309-1356.

Pister, Kris; Kahn, Joe. "Smart Dust: Autonomous Sensing And Communication In A Cubic Millimeter". 2001. <http://robotics.eecs.berkeley.edu/~pister/SmartDust/> Web. 22. October 2018.

Plato. *Republic. Plato in 12 volumes: with an English translation*. transl. Paul Shorey. Harvard: Harvard University Press. 1935.

Radcliff, Deborah. "A Cry for Privacy". *Computer World.* 17. May 1999, <http://www.computerworld.com/home/print.nsf/all/990517privacy> Web. 22. October 2018.

Rouvroy, Antoinette; Poullet Yves. "The Right to Informational Self-Determination and the Value of Self-Development: Reassessing the Importance of Privacy for Democracy, in *Reinventing Data Protection?* Serge Gutwirth et als (eds.). Springer. 2009. pp. 45–76

Salecl, Renata. "The Exposure of Privacy in Today's Culture". *Social Research*, Vol. 69 (1). 2002.

Shteyngart Gary. *Super Sad True Love Story: A Novel.* Random House. 2010.

Sommer, Joseph H. "Against Cyberlaw", *Berkeley Technology Law Journal*. Vol. 15 (3). 2000.

Strandburg, Katherine J. "Home, Home on the Web and Other Fourth Amendment Implications of Technosocial Change", *Maryland Law Review*. Vol. 70. 2011. pp.614-680.

Wacks, Raymond. *Privacy. A Very Short Introduction*. Oxford: Oxford University Press. 2010.

Warren, Samuel D.; Brandeis, Louis D. "The Right to Privacy". *Harvard Law Review*. Vol. 4 (5). 1890. pp. 193-220.

Whitman, Q. James. "The Two Western Cultures of Privacy: Dignity vs. Liberty". *The Yale Law Journal*. Vol. 113 (6). 2004.

Williams, Ray. "Productivity often hindered by teamwork". *Financial Post*. 12. April 2012, <https://business.financialpost.com/executive/careers/why-teamwork-can-hinder-productivity> Web. 13. October 2018.

Zhu, Rui. "Distinguishing the Private from the Public: Aristotle's Solution to Plato's Paradox". *History of Political Thought*, Vol. XXV (2). 2004.