Reconstructing Privacy: Remarks on *Life After Privacy*

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1. Privacy and Confession Culture

We contemporary North Americans inhabit what Firmin DeBrabander dubs a "confessional culture." Our willingness to share on social media details of our private lives is practically limitless. In fact, many people cheerfully reveal things about themselves—from incessant relationship updates to unsolicited "brelfies"—that could have caused their recent forebearers to die of shame or embarrassment.

For DeBrabander, our increasing embeddedness within a confessional culture is a primary reason why the fight for privacy is impractical. As he explains, attempts to preserve privacy in the digital age are "ultimately doomed so long as the majority no longer understands or appreciates privacy—clearly, convincingly, and self-consciously."[1] As our confessional culture continues to take hold, we are only more likely to lose sight of such an understanding or appreciation.

Although I agree that ours is a confessional culture, I would like to raise two critical questions about this insight. The first concerns the nature and exercise of power within a confessional culture. The second involves a more substantive objection to the normative implications that DeBrabander draws from this observation.

First, DeBrabander draws parallels between confessional culture and two related ideas: "panopticism" and "disciplinary power."

[1] Firmin DeBrabander, *Life After Privacy: Reclaiming Democracy in A Surveillance Society* (Cambridge: Cambridge University Press, 2020), p. 20.

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The former term refers to the "surveillance scheme" introduced by Jeremy Bentham (originally in his designs for a modern prison)[2] and famously analyzed by Michel Foucault. As Foucault puts it, the central function of the Panopticon is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."[3] The latter phrase picks out a distinctive operation of power that "produces subjected and practiced bodies, 'docile bodies'."[4]

As DeBrabander points out, aspects of our confessional culture "fly in the face of dire predictions about panopticism."[5] Critics warn that mass surveillance will stifle individual expression as our digital panopticon induces us to monitor and regulate our own behavior. Yet, despite the well-known fact that social media companies are busy gathering, storing, and analyzing swaths of user data, these platforms do not seem to be producing disciplined, self-regulating subjects.

Although DeBrabander doesn't quite put it this way, his observations about our confessional culture point to a striking revelation: the mechanisms of disciplinary power appear to be in play, yet its effects do not appear to be working in their usual ways. For example, the constant internalization of digital surveillance seems to be producing not normalized "docile bodies" but eager exhibitionists. We appear to be surrounded by digital panopticism, yet our online behavior could not be further from Foucault's predictions.

Hence, my first set of questions are: If our digital confessional culture involves a detachment of panopticism from the effects of disciplinary power, what accounts for this shift? How does DeBrabander understand the operation of power within a confessional culture? Is

[2] Jeremy Bentham, *Panopticon: The Inspection House* (1791; repr. Whithorn, UK: Anodos Books, 2017).

[3] Michel Foucault, *Discipline and Punish*, trans. Alan Sheridan (New York: Vintage Books, 1995), p. 201.

[4] Foucault, *Discipline and Punish*, p. 138.

[5] DeBrabander, *Life After Privacy*, p. 11.

disciplinary power still a useful model for understanding our online world or do we need to look elsewhere?

My second question concerns the role of confessional culture in DeBrabander's overall strategy for showing that privacy is not, ultimately, worth defending. As I understand him, the idea is that we are so thoroughly ensnared in a world in which privacy norms have been disrupted that it is pointless to hope for popular support in resuscitating those norms. One might agree that the dominance of a confessional culture poses formidable practical problems for defending privacy rights, but it is not clear what is supposed to follow from this.

Consider an analogous situation in which a society that once broadly supported a right to religious expression undergoes a cultural shift toward secularism. As a result, many people in that society lose their motivation to defend the rights of their religious neighbors and friends from increasing infringements on the part of governments and corporations. These people need not exhibit animosity toward members of the religious community. They may even pay lip service to the importance of a right to religion. Nonetheless, they ultimately fail to offer any serious resistance to the erosion of those rights. Intuitively, it seems that the thing to do in such a situation would not be to abandon religious rights, but to come up with strategies for spurring people's motivations to defend them.

If there is something to these intuitions, then what makes the erosion of privacy rights any different? I agree that there are presently practical challenges to defending privacy. However, why should we accept that—taken on their own—they support the normative conclusion that we ought to abandon its defense?

2. Historical Continuity

My second set of critical remarks targets the historical component of DeBrabander's argument. I should note that I commend the historicism that DeBrabander offers in response to essentialist conceptions of privacy, so my thoughts are best taken as an invitation for him to elaborate on this important part of his book.

On the one hand, *Life After Privacy* argues that privacy—at least in its current form—is a recent invention. In fact, its recency undermines

the claim that privacy is a necessary condition for democracy to function (as many defenders would claim). On the other hand, there is a meaningful sense in which privacy (or something akin to it) forms a part of institutions going back centuries, if not millennia. For example, we are told that it is expressed in the writings of the Stoics and early Christians. Thus, whatever benefits or virtues one associates with privacy may be attainable without the comparatively recent (legal, architectural) edifices that our society has constructed in pursuit of it.[6]

On the face of it, there is a straightforward tension here: How can privacy be both a recent invention and an age-old relic? The answer is that it undergoes some sort of evolution or transformation, but this requires some general account of what exactly is being transformed, what the continuity consists in, etc.

My first question, then, is: What exactly does DeBrabander take privacy to be, such that it has undergone a series of historical transformations? At one point, he refers to privacy as a value,[7] but at other times it seems the term refers to rights or practices.

Without a more robust account of what exactly is undergoing a change, I worry that little prevents DeBrabander's view from devolving into a much more radically historicist position that threatens his claim that privacy has, in some sense, been around for a long time. To put this point in the form of a skeptical question: Why should we think that there is any meaningful continuity between ancient practices and our current conception of privacy?

In response, DeBrabander might appeal to the contextual view of privacy developed by Daniel Solove.[8] On this account, privacy is not a concept that can be captured by a set of necessary and sufficient conditions, but is best construed as a family resemblance concept.

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[6] DeBrabander, *Life After Privacy*, p. 75.

[7] DeBrabander, *Life After Privacy*, p. 75.

[8] Daniel J. Solove, *Understanding Privacy* (Cambridge, MA: Harvard University Press, 2008), p. 9.

That is, far from being a unified, unchanging phenomenon, privacy involves a set of contextually defined norms that evolve over time. Given, however, that DeBrabander explicitly distances himself from Solove's account, it is unclear how his own view can capture privacy's historical continuity without lapsing into a form of essentialism.[9]

3. The Public-Private Distinction

The final chapters of *Life After Privacy* assail the philosophical underpinnings of privacy theory. DeBrabander advances two main arguments against standard conceptions of privacy.

The first is that these views presuppose an implausible liberal notion of the subject, according to which we are autonomous, self-determining agents, whose essence can only be discerned by stripping away the distortions of social influence. In particular, this presupposes the "Romantic lie," the idea that a person can be "independent and utterly self-determining," owing their essence to no external force.[10] Call this the "atomism objection."

The second argument targets the idea that privacy is required for democratic flourishing. Proponents of this view maintain that citizens cannot properly participate in the public sphere until they have been left alone to work out their views and get their values in order. In other words, "Privacy is that purifying element that allows citizens to exercise consent, and be free in the state."[11] DeBrabander goes to considerable lengths to cast doubt on these assumptions. For example, there is no good reason to think that leaving citizens alone will produce politically virtuous citizens (as opposed to, say, reclusive sadists). Moreover, one can imagine authoritarian governments relishing the prospect of political subjects who prefer their own private spaces to the thrill of public demonstrations. Thus, we should stop assuming that privacy is a

[9] DeBrabander, *Life After Privacy*, pp. 34–35.

[10] DeBrabander, *Life After Privacy*, p. 110.

[11] DeBrabander, *Life After Privacy*, p. 117.

necessary condition for democracy. Call this the "indispensability objection."

I am sympathetic to the spirit of both objections. That is, I am just as suspicious of atomistic individualism as DeBrabander is and I share his skepticism that leaving people to their own devices will somehow make them better citizens. Nonetheless, I wonder whether there is still some viable version of the public-private distinction to be worked out. In particular, I want to insist that there is something valuable about the Romantic ideal of private projects of imaginative self-creation and that such projects need not presuppose an objectionable atomism. In other words, I am holding out hope for a more honest Romanticism.

On my view, there is an available conception of the public-private distinction that avoids both DeBrabander's atomism and indispensability objections. This conception has been defended (albeit not always very carefully) by Richard Rorty.[12] The basic idea is that in liberal democracies the public and the private are important for different reasons, but they are best understood as mutually independent of one another. In Rorty's terms, public pursuits of *solidarity* with others ultimately have no intrinsic connection to private pursuits of imaginative *self-creation*.

The first thing to notice about Rorty's pragmatic reconstruction of the public-private distinction is that it automatically concedes DeBrabander's indispensability argument. That is, *pace* privacy theorists, there is no necessary public benefit to be gleaned from allowing citizens to pursue their wildly different private projects. On the Rortyan view I am considering, the kinds of public practices and democratic habits for which DeBrabander is calling are of the utmost importance for liberal democratic societies. However, they are not predicated on promoting privacy, at least not in any straightforward sense.

If there is a substantive difference between DeBrabander's view and Rorty's, I suspect it comes down to the question of whether one can endorse the Romantic ideal of private projects without buying into the

[12] Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989).

Romantic lie. In other words, can there be a viable conception of privacy that does not lapse into atomistic individualism?

Here, I would like to propose a distinction between self-discovery and self-creation as the goal of private projects. The former, I take it, *does* presuppose something like a fixed individual essence that needs to be recovered from the distortions of social influence. In his criticisms of the Romantic lie, DeBrabander seems to have something like this model in mind.[13] However, an alternative conception of the private that emphasizes self-creation need not endorse this atomistic view of selfhood. Self-creation is a decidedly social undertaking, in which a person takes as their starting point the various influences on their beliefs and values and reweaves them into a new and interesting sense of who they are. Rather than spurn societal influence, the self-creator is someone who actively seeks out alternative perspectives and ideas in order to enrich their sense of what is possible and important. To say that such endeavors are private, on this view, is just to say that they need not have any connection to one's broader responsibilities to others.

[13] DeBrabander, *Life After Privacy*, p. 110.