

MVV1368k

Right to Privacy: History,
Concepts and Method

Jakub Míšek

11. 10. 2018

Privacy

What is “Privacy”?

“Right to be let alone”

- Warren & Brandeis
- *Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the right "to be let alone."*

“Right to be let alone”

VOL. IV.

DECEMBER 15, 1890.

NO. 5.

THE RIGHT TO PRIVACY.



**some PRIVACY
please!**

Grounds of privacy I - Freedom

- Right to freedom of thought and consciousness
- Right to freedom of religion or belief

- Example – surveillance
 - Big Brother
 - Big Other (Little brothers)
 - Chilling effect

Grounds of privacy II

Informational self determination

- 1983 – Germany
- The right to decide about information about one's privacy
- Freedom of speech and scientific work
- Protection of privacy, personality and right to a active family life
- Furthermore:
 - Right to education
 - Personal Data Protection
 - Public sector information

General remark – Information rights

- 3 basic rights
 - Obtain information
 - To get the information from outside
 - To have information
 - Have control over information
 - Process information
 - Create, share and communicate information

LET'S GET BACK

TO BASICS

Different approaches to privacy

- Normative and Non-Normative Accounts of Privacy
 - Normative: “You should not be here, respect my privacy!”
 - Non-Normative (Descriptive): “We do not have shared toilets, therefore I have some measure of privacy.”
- Reductionist and Non-Reductionist Accounts of Privacy
- Notion of Control
 - Normative: Moral aspects
 - Descriptive: Power to manipulate with objects/ information
- *Moore. A. (2008)*

Alan Westin's typology (60s)

- Privacy as a need of an individual
- 4 basic states of privacy
 - Solitude
 - Separation from others, the inner dialogue with mind and conscience
 - Intimacy
 - Person as a member of a small unit – a family, friends, colleagues, lovers
 - Relaxed and frank relationship
 - Anonymity
 - Public place, but freedom from surveillance
 - Reserve
 - “creation of a psychological barrier against unwanted intrusions”
 - A person decides

Roger Clarke's Classification (90s)

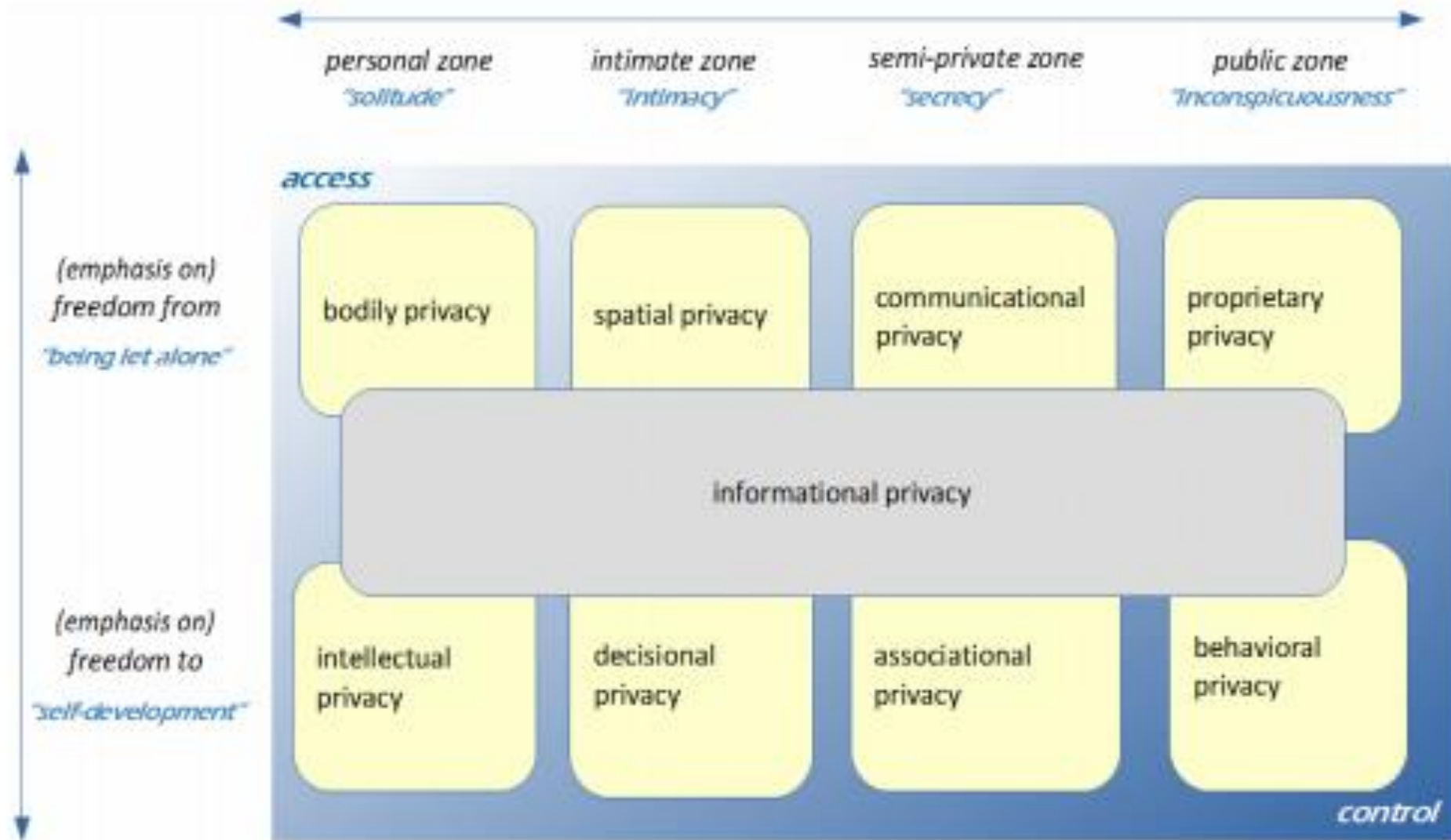
“Interpreted most broadly, privacy is about the integrity of the individual. It therefore encompasses all aspects of the individual's social needs.”

- Privacy of a person – Bodily privacy
 - Physical privacy, physical and unsolicited harms to the body
- Privacy of Personal Behaviour
 - Behaviour in private space (home), or privacy as a protection against surveillance
- Privacy of Personal Communications
 - Communication without surveillance
- Privacy of Personal Data
- Privacy of Personal Experience (added 2013)
 - Web 2.0, contextual ads, content tailoring

Daniel Solove's Taxonomy of privacy (2006)

- Privacy violations
- 4 areas:
 - Information Collection
 - Surveillance, Interrogation
 - Information Processing
 - E.g. Aggregation, Insecurity, Secondary Use
 - Information Dissemination
 - E.g. Breach of Confidentiality, Disclosure, Exposure, Blackmail...
 - Invasion
 - Intrusion, Decisional Interference

Bert Jaap-Koops et al. (2016)



Privacy v. Personal Data Protection

- Private v. Public law
- Restitutive v. Preventive
- Court v. DPA
- Distributive v. Non-distributive right

- Personal data
 - Disconnected from privacy protection
 - Disconnected from a man

A problem with time

- Right to be forgotten?
- Forgetting – natural and useful process
- Internet does not forget
 - Collective memory
 - Past made present
 - Examples:
 - Osint (<http://stalkscan.com/>, <https://inteltechniques.com/menu.html>)
 - Streisand effect
 - Long past misconducts



**WHEN YOU'VE HAD A ROUGH DATE BUT
YOU'RE TRYING TO STAY POSITIVE**



**"IT'S FINE. I'M FINE.
EVERYTHINGS JUST FINE."**

Positive law

European Convention on Human Rights

- Art 8

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

European Convention on Human Rights

- Art 9

- 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

European Convention on Human Rights

- Art 10

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Charter of Fundamental Rights of the European Union

- Article 7
 - Everyone has the right to respect for his or her private and family life, home and communications.
- Article 8
 - 1. Everyone has the right to the protection of personal data concerning him or her.
 - 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
 - 3. Compliance with these rules shall be subject to control by an independent authority.

**WHY ARE YOU CHANGING
THE NAME TO CZECHIA?**

**SOME PEOPLE STILL
CALL IT CZECHOSLOVAKIA**

Czechia

- Protection of a person – personal rights
 - Right to life
 - Right to protection of health and personal integrity
 - Prohibition of torture
 - Protection of human remains
 - Protection of human dignity
 - Prohibition of discrimination
 - Freedom of thought
 - Privacy protection
- Special personal rights
 - E.g. author's right

Collision of basic rights

- Typically information rights
 - Privacy v. Right to free access to information
 - Privacy v. Freedom of speech
- Privacy v. Public interest
- Privacy v. Security

Collision of basic rights

- Typically information rights
 - Privacy v. Right to free access to information
 - Privacy v. Freedom of speech
- Privacy v. Security
 - Important – Security of “What”

Balancing test (Test of proportionality)

1. Criterion of suitability

- Does the institute restricting a constitutional right allows the achievement of the desirable aim (protection of another constitutional right of public interest)?

2. Criterion of Necessity

- Can the same objective be achieved by another less intruding method?

3. Comparison of conflicting constitutional rights

Thank you for your attention.

Questions?

@jkb_misek