Life After Privacy: A Response to Two Critics

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1. Introduction

The idea for my book *Life After Privacy* started in 2014, with Edward Snowden's disclosure that the National Security Agency (NSA) was engaged in broad data collection—which meant the U.S. government was spying on its own population. Convinced by Michel Foucault and other philosophers that privacy invasion posed nothing less than a threat to freedom and democracy, I stormed into my political theory class and delivered a scathing lecture to my students. I was shocked by their reply: they did not think privacy was so essential after all, and were happy to share information if it meant they could reap digital conveniences elsewhere. The overall sentiment could be summed up as this: "I have nothing to fear or to hide, so why not share it?" From a political standpoint, this is chilling—Foucault might argue that it indicates we are willing to censor ourselves so that we may continue to have nothing to fear. However, this response alerted me to a larger issue: this digital generation—as well as a broader population enamored by and reliant upon technology—would not likely be galvanized to protect their privacy. We thus must make other plans. We must decide how our democracy can survive, or thrive, with little individual privacy for its citizens—or none at all.

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2. Response to Khawaja

With regard to Irfan Khawaja's comments, I should start by saying that there is actually much I agree with, especially his diagnosis of Big Data. All that I have learned about privacy and its various threats tells me that Big Data is indeed a Leviathan, as he puts it. I wholeheartedly agree with his assessment that "given the asymmetries of power involved . . . and the sheer technical sophistication of the techniques deployed [by Big Data], there is almost nothing we could have done to forestall the outcome and save our privacy."

I also agree with his view that this "asymmetrically powerful actor . . . exploits the necessity of a weaker actor, a person, demanding data as the price"—the price of convenience, in short. He is correct that "[n]ominal consent is obtained for the transaction, but the consent in no plausible way qualifies as informed and is often given . . . under duress."

In sum, we are up against a formidable (invincible?) foe, in the form of Big Data. I do think that Big Data has done much to suck us in, disarm us, and reshape the playing field in its favor so that analysts can invade our privacy and collect our data at will. I am reminded of Mark Zuckerberg's comments: "people have really gotten comfortable not only sharing more information and different kinds, but more openly and with more people . . . . [That] social norm is just something that has evolved over time. We view it as our role [at Facebook] in the system to constantly be innovating and be updating what our system is to reflect what the current social norms are."[1] In other words, Facebook merely happened upon the scene and discovered that our norms regarding privacy had changed, luckily, and the company is merely taking

[1] Bobbie Johnson, "Privacy No Longer a Social Norm, Says Facebook Founder," *The Guardian*, January 10, 2010.

advantage of this new landscape to help us get what we want—and what they want.

This is disingenuous, to say the least. Facebook has pioneered techniques to seduce us to open up and share: such is the famous history of the "like" button. Social media companies have played a seminal role in changing said privacy norms.

Khawaja opens his critique by saying that I blame the victims—that is, us—and that I give Big Data a pass. I do not intend to do the latter. Big Data is up to some chilling things, as I describe in the book, to the extent that I or any laymen can know or detect their plans. I worry that its intentions and its tools and operations are far beyond us, beyond our capacity for understanding, and response. I also do not trust Big Data. It is not looking out for my own interest or good.

I certainly do not mean to blame us victims for the loss of privacy—at least, not wholly or even largely. I just do not see or sense widespread concern over privacy This book started as an attempt to understand our capacity to care about privacy and our capacity to then mobilize to defend it. I grew increasingly pessimistic about it as I wrote the book.

I maintain that we are, or seem, notably content or acquiescent, for the most part, when it comes to sharing our information. We are more content or acquiescent than we should be or than I would expect. Given that we know we are being watched, I would expect us to be more careful or modest in this exchange. I do not think this has been tricked out of us, unwittingly, at least not completely. We know what we are doing, for the most part, when we share; we know that we are watched; we know there may be risks, though we may not be able to specify or articulate them. When not behind the computer screen or mobile phone, we are less inclined to expose ourselves shamelessly—though perhaps less than in the past—but this indicates we are not clueless about standards of modesty. Many of us are willing to

share because we are actually happy for the benefits and conveniences we receive in turn. Yes, many share because we are fatalistic and believe that there is little we can do. Sharing is the price of entry to the digital economy; if you want to take part, you have no choice but to expose yourself.

I came to suspect our ability or interest in defending privacy in large part because I realized how powerful Big Data is and how deep is our subjection to it in the digital economy. I wanted to push back against what I saw as the general focus and approach of privacy advocacy, which is to mobilize *individuals* to push back, as if that could be done. That is why I wanted to describe how little people care about their privacy, how little they can do—how willing they are to share, grudgingly or not. Privacy advocates insist that individuals have to be empowered to protect their data, but that seems like a fool's errand in the face of Big Data. We just have no idea how it operates, how Big Data learns about us, etc.

In that light, it is ridiculous to suppose, as privacy advocates do, that we can reclaim some agency for individuals, who may consent to have their information collected, or not. I wholly agree with Khawaja's critique of this notion. There is a lot of talk of consent in privacy regulations. However, I think that is a distraction; it suggests that there can be parity between me and my spies and analysts, but there cannot be such parity. I have little choice but to consent to data capture, which means it is no consent at all. If I want to be part of the digital economy—if I want to be part of society itself—I must offer and expose data, increasingly a lot. There is little choice involved on my part. It is required of me and I cannot really wield any choice to withhold information from Big Data.

Khawaja says, "We should be pinning the blame for the loss of privacy squarely on Big Data, and only here, and as a society, pushing back on Big Data much harder than we have." I aim to argue that isolated, unaffiliated individual responses to Big

Data—"pushing back"—are, like the bulk of privacy regulations, pretty toothless. They are diversions that might make us feel good, but achieve little as far as I can see, and allow Big Data to proceed apace. The pushing back in question cannot be by lone unaffiliated individuals, who are themselves tasked with defending their privacy (as the European Union's General Data Protection Regulation [GDPR] would do), but it must be by collectives, organized political bodies; they alone can hope to stand up to Big Data, Leviathan that it is, and they operate in the public realm. That is where political organization is traditionally most effective and powerful. Political organizing online has not proven quite so effective, as Zeynep Tufekci points out, though I am open to the possibility that that might change.[2]

Individual citizens whose privacy is intact, discrete, and protected, are not the most important locus of power, politically. I am dubious that they are much of a political force at all. They become politically powerful when they link up with others. This is what leads me to doubt the value of privacy in democracy and why I am critical of political arguments for defending privacy, identified primarily (if exclusively) as a virtue of individuals.

Khawaja says:

> Suppose that we have done the best we can as far as philosophical accounts of privacy and come up short. Regardless . . . we have ample reason to regard Big Data's infringements on our privacy as a threat to us and ample motivation to push back. All we need to know is *that* they are threatening infringements, not *why*. We do not need a

[2] Cf. Zeynep Tufekci, *Twitter and Tear Gas* (New Haven, CT: Yale University Press, 2018).

> deep philosophical account of privacy to come to this conclusion.

Again, I agree with this. I recognize the threat that Big Data poses, insofar as it aims to manipulate if not control us. I do not think we need to be able to define privacy in order to push back or recognize the need to push back. In my book, I am trying to explain how we can mobilize politically in the absence of a firm and articulated or widely understood notion of privacy. We cannot wait around for said definition, because I am dubious that privacy lends itself to much definition at all.

Khawaja holds that we have a "commonsense notion of what privacy is." I am not so sure of this. Our lack of appreciation for privacy suggests that this commonsense notion of privacy is not prominent, or at least, not so common. Many cultures around the world do not have a commonsense notion of privacy, indeed, have no notion of it at all. I am fine with Khawaja's view that privacy is valuable because it "serves a need to preserve and safeguard the separateness of persons." However, I think that is less than what privacy's most ardent supporters would hope for. Like Glenn Greenwald, they favor something that preserves and grounds the autonomy and independence of individuals.[3] Separateness of persons sounds good, simple, and convincing enough. As a philosopher, though, I cannot help but ask: Why must we preserve the separateness of persons? And how? And what is the "separateness of persons"? When are we separate and what makes us separate? I go back to the point, put otherwise, that I am responsible for this separateness, in no small part—I am responsible for feeling sufficiently separate and apart and independent—and thus, this will limit what can be done from the outside (read socially, politically, legislatively) to ensure or

[3] See Glenn Greenwald, *No Place to Hide* (New York: Picador, 2014), p. 174.

enforce this. It is not so self-evident what should or can be done to ensure my separateness.

I would like to make two final points about Big Data. Khawaja says that "it would be nice to have a theory that conceptualizes" privacy and its threats "in a neat and tidy way, but more important is to have the right weapons that protect one's space or drive intruders out of it." Again, I am also eager to move on and move past our conceptual weaknesses, which is why I turn to public organizing and argue that the public realm is more important politically than the private realm. Its value does not need to be proven; history bears countless examples of the power of political organizing in public. However, I would also like to hear more about the "right weapons that protect one's space and drive intruders out of it." I am open to said weapons. It's just that, among the regulatory or technical fixes I researched, I did not see anything that measured up. I admit that I like my privacy, even if I cannot define it, and would appreciate such weapons. Could people be counted on to use these weapons effectively? Who would wield them and how? Would it involve government or would it involve individual citizens? (I doubt it would involve corporations.) I am curious to hear more about all this. It is a bit surprising to hear Khawaja say that such weapons exist, or might show promise, if Big Data is indeed such a formidable force.

My last point says something else about Big Data and I wonder how Khawaja feels about this. From my perch outside the industry, from my perch as a citizen, consumer, and philosopher, I cannot help but be skeptical of Big Data's claims to omniscience and omnipotence. More importantly, I am worried about the pretenses, ambitions, and power of this industry, if it falls short of accuracy. Zuboff invokes these ambitions repeatedly, speaking of the "high priests" of data, that is, the analysts. Are they really so all knowing as they think? Will they know us so thoroughly, utterly, and completely that they can turn us into their unwitting

pawns? This strikes me as a utopian project, but history is littered with the rusted carcasses of such projects.

I published an article on this issue, applying Isaiah Berlin's critique of mid-twentieth century utopianism to Big Data's bold aspirations and pretenses.[4] Humans are crooked timber, Berlin maintains, by which he means we cannot be forced into neat little boxes and squares as positivistic minds would like.[5] Human nature is never so transparent or scrutable as some think. Humans often rebel against attempts to know and control us in extreme fashion, sooner or later. What will Big Data get wrong about us? Where will it err? How might it backfire? Will people ultimately rebel against being shaped, formed, and prodded—treated like straight timber, in other words, to fit into neat boxes?

3. Response to Showler

Paul Showler asks about the phenomenon I describe, where digital panopticism does not have the effect anticipated by Foucault and Jeremy Bentham—namely, that we do not seem to be coerced online. "[W]hat accounts for this shift? How does DeBrabander understand the operation of power within a confessional culture?" I have already said something to the latter: Our supposed freedom online is not worth much, politically. Self-indulgent self-expression online may not actually be such a useful exercise in free speech. It does not necessarily make us willful, courageous, and committed citizens. I suspect it does more of the opposite.

[4] Firmin DeBrabander, "The Hubris of Big Data," *Los Angeles Review of Books,* May 24, 2021.

[5] See Isaiah Berlin, "The Pursuit of the Ideal," in *The Crooked Timber of Humanity*, ed. Henry Hardy (New York: Alfred A. Knopf, 1991) pp.1-19 .

In response to the former question, I ask: Why aren't we more careful or protective of our privacy online? Why are we more apt to share? Why do so many exult in sharing, often embarrassing, intimate facts? I suspect that we feel removed online and somehow protected from others. This may also be behind the stunning animosity online, why people feel emboldened to say heinous things and issue offense. They feel they are safely at a distance: they do not have to see your face when they issue insults. They are also removed from the damage they wreak. Their empathy is also disengaged.

For these reasons, the digital sphere was never going to be the new public realm, as internet evangelizers once proclaimed. We behave very differently online and not in particularly productive fashion or ways helpful for collaboration. Digital communication is misleadingly simple, too simple. It lacks nuance; in it, things are all black and white, people are mean or kind, and our anger is justified and righteous, as are our attacks. As Michel de Montaigne notes, communication is not simply verbal.[6] We communicate with our heads, eyes, hands, etc., all of which is absent online. Zoom is also still limited in this regard.

There is a provocative piece by Megan Garber in *The Atlantic*, arguing that we already inhabit the metaverse.[7] American media and entertainment culture have long disposed us to this metaverse. We are constantly encouraged to see our lives as

[6] Michel de Montaigne, *Apology for Raymond Sebond*, trans. Roger Ariew and Marjorie Grene (Indianapolis, IN: Hackett Publishing Company, Inc., 2003), p. 17.

[7] Megan Garber, "We've Lost the Plot," *The Atlantic,* January 30, 2023, accessed online at: https://www.theatlantic.com/magazine/archive/2023/03/tv-politics-entertainment-metaverse/672773/.

narratives; reality there becomes untidy and uninteresting because it is open-ended and lacks recognizable narrative structure. We gravitate to places and media where we can indulge the need for narrative. That is something we can do on Facebook, of course, and display an utterly unreal and overly cheerful demeanor and life story—or we can don different personae and experiment with this. This is all liberating, allowing us to be less inhibited in what I say, how, and to whom.

Showler also wonders whether, if confessional culture is ascendant, privacy is not worth defending. Well, it may not be worth defending, even if it is not as essential to democracy and freedom as I argue in the book.

However, Showler is also asking about my suggestion that our relationship to privacy is so fraught that it may not be possible to rehabilitate the institution of privacy, and thus that we should move on. Frankly, I am not sure how we can get people to appreciate privacy, even if it were worth protecting. Showler is right in that I feel privacy is doomed. I do not see any appetite or interest in protecting it. To the contrary, people are falling over themselves to give it away. I also arrived at this conclusion, however, after researching Big Data, reading what analysts learn about us and how they do so. Their techniques are so sophisticated, their algorithms so esoteric, we are fatally outmatched, if we want to protect our privacy—which we don't.

This points to my critique of the European Union's GDPR and most proposed privacy regulations: they want to empower us as individuals to protect our data. These regulations are faulty on two fronts. They presuppose that we want to do this when we don't and they presuppose that we can do this, when we can't. To illustrate the latter, it is helpful to consider how analysts learn about us, define us, and identify us. Let us start with a relatively old example from the early 2000s. Data analysts at the retailer Canadian Tire identified one particular purchase when it comes to determining whether customers were creditworthy: felt pads that

prevented furniture from scratching the floor.[8] This makes sense upon reflection. You could imagine that people who are careful with their floors and furniture are also careful to save money, or at least, not spend profligately. Another famous example, also relatively old now, is that of Target, whose analysts studied consumer purchase history to determine when women were in the second trimester of pregnancy.[9] The purchases in question included a combination of vitamins, lotion, and cotton balls. How are ordinary consumers supposed to protect our privacy against data analysis like this? Analysts might be grasping at straws here; their bold "predictions" may be a matter of correlation or happenstance, but that is perhaps more problematic than if they are accurate. Then we are dealing with a false human science that has broad impact, pinned to overweening ambition, which will expand and entrench the impact of analysts' predictions, false or not.

The pretenses of analysts extend beyond data, but involve our metadata, the data of our data. They think they can learn plenty about us from the mere form, if not the substance, of our communications and digital behavior. For example, Shoshana Zuboff tells us that an insurance company will soon determine your premium not on the basis of "*what* you write but *how* you write it. It is not what is in your sentences, but in their length and complexity, not *what* you list, but *that* you list, not the picture but the choice of filter and degree of saturation, not *what* you disclose

[8] Gordon Hull, "Successful Failure: What Foucault Can Teach Us about Privacy Self-Management in a World of Facebook and Big Data," *Ethics and Information Technology* 17, no. 2 (2015), p. 91.

[9] Charles Duhigg, "How Companies Learn Your Secrets," *New York Times*, February 16, 2012, accessed online at: https://www.nytimes.com/2012/02/19/magazine/shopping-habits.html.

but how you share or fail to."[10] Analysts claim they can also identify us by the way we hold our cell phone—at what angle—as well as how we swipe the screen and by the way we move the mouse on our computer screen.[11]

If anyone has ideas about (a) how we can encourage people to care about privacy and (b) actually empower them to do so, in the face of analysts who are supremely confident in their ability to know and predict us, I would very much like to hear it. I am open to the possibility, but have not yet seen it.

I next take up Showler's question about what I take privacy to be—a value, a right, or a practice—as well as whether there is "any meaningful continuity between ancient practices and our current conception." I think there is some partial continuity. I do sense that privacy has evolved over time. This will perhaps be controversial to say, but privacy seems largely or exclusively Western in nature, perhaps even just Anglo Saxon. As many have noted, it is difficult to translate the word "privacy" into languages other than English. Once when speaking with my father-in-law, who is from Syria, and a group of his Arab friends, I asked how to translate "privacy" into Arabic. This caused a major debate to which there was no simple answer. I noticed that my own father's family in Flanders simply uses the word "privacy" when speaking Dutch; they do not even bother translating it.

It was, of course, eye-opening to me to read Hannah Arendt's analysis of the etymology of politically significant terms. She says that the Greek equivalent for the private realm is *idion*, from which we get the word "idiot," which translates literally as

[10] Shoshana Zuboff, *The Age of Surveillance Capitalism* (New York: Public Affairs, 2019), p. 275.

[11] Stacy Cowley, "Banks and Retailers Are Tracking How You Type, Swipe and Tap," *New York Times*, August 13, 2018.

someone who is cut off from society, a kind of outcast.[12] Following that point, she says that privacy is "privative": it deprives us of something. What is that? Well, she argues, for the Greeks, privacy deprives us of what it means to be uniquely human, which is politics, the public realm.[13]

For the Greeks, Arendt claims, privacy has a negative connotation. It pertains to the house, the realm of necessity, where we are engaged in the business of survival, like the nonhuman animals; power structures are hierarchical in the home. In the public realm, by contrast, we are free and equal. That is where we go when we seek to transcend necessity and achieve a kind of immortality in making ourselves known for posterity. We make a name for ourselves in the public realm.

Christianity somewhat rehabilitates the notion of privacy. In the Gospels, Jesus speaks favorably of praying in private, where only God can hear you, rather than making a show of your prayer or general holiness.[14] Augustine deems interiority a virtue, which thereafter becomes an enduring Christian virtue, practiced and elevated in various forms by different Catholic and Reformed traditions.

It is difficult to see, however, anything like privacy such as we know it until the twentieth century, when it is bolstered by abundant private space, which people had previously never had. Throughout this project, I kept thinking about my mother, who was born in the 1950s in Ireland and shared a three-room house with ten people. That is nowadays an uncommon arrangement in

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[12] Hannah Arendt, *The Human Condition* (Chicago, IL: University of Chicago Press, 1958), p. 24.

[13] Arendt, *The Human Condition,* p. 38.

[14] The Gospel of St. Matthew, 6:6.

the West, but it is hardly uncommon in the rest of the world. For that reason, I have been tempted to say that privacy is a luxury. Zuboff speaks glowingly of Gaston Bachelard's *The Poetics of Space*:

> Home is our school of intimacy, where we first learn to be human. Its corners and nooks conceal the sweetness of solitude; its rooms frame our experience of relationship. Its shelter, stability, and security work to concentrate our unique inner sense of self, an identity that imbues our day dreams and night dreams forever. Its hiding places—closets, chests, drawers, locks, and keys—satisfy our need for mystery and independence.[15]

I find this quotation problematic. Who outside the developed world has home space like that? Outside the United States, even? We Americans are the masters of suburban sprawl. Our McMansions host abundant closets and doors behind which you can hide and satisfy your need for independence. What is the rest of the world supposed to do? Shall we conclude they are denied the opportunity to "learn being human"? Is my mother less human in that regard, growing up in a packed cottage with eight siblings? Who has homes full of nooks and crannies where we can "concentrate our inner sense of self"?

We cannot help thinking of privacy in spatial terms. We need space in order to be private. We need no eyes on us, but that is a limiting condition and hardly valid for most of humanity, now and historically. I doubt the suggestion that generations before us who lacked such space were less than free and fulfilled.

As the exhaustive five-volume series *A History of Private Life* points out, notions of privacy greatly expanded as home space

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[15] Zuboff, *Age of Surveillance Capitalism*, p. 476. See Gaston Bachelard, *The Poetics of Space* (New York: Beacon Press, 1994).

expanded.[16] That is to say, it was emphasized as a necessity as more people had more home space, more rooms, a yard, a hedge, and then a private car to travel in. Then it became even more expected that people require privacy, but what is this privacy? We are never so private as we seem or as we think. As I argue in the book, I myself may be the biggest threat to my own sense of privacy. Consider that Louis Brandeis defines privacy as the "right to be let alone."[17] Am I not principally responsible for that? As Jean-Jacques Rousseau notes in his *Second Discourse on Inequality*, I might carry the judging eyes of others with me, all the time, no matter where I am. They do not need to be present and visible to coerce or oppress me. I allow that to happen; conversely, when the eyes of others bear down on me, I am principally responsible for ignoring them and resisting their judgment.[18]

What is the continuity here? Isolation, solitude—even if only brief and momentary—those are the essential features of privacy through history, I think. Thus, I actually favor Daniel Solove's family resemblance concept when it comes to accounts of privacy,[19] but by no means is it a universal value, now or ever.

To Showler's last point, I agree that there could be a viable conception of privacy that dispenses with atomistic individualism. Perhaps I should have given that idea more thought and explored it in the book. In retrospect, I am not sure I am fair to privacy and its political importance. While I stick to my main claim that it is

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[16] *A History of Private Life*, ed. Philippe Aries and Georges Duby, five vols. (Cambridge, MA: Harvard University Press, 1992–1998).

[17] Louis Brandeis and Samuel Warren, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (1890), pp. 193–220.

[18] Jean-Jacques Rousseau, *Second Discourse on Inequality*, trans. Donald Cress (Indianapolis, IN: Hackett University Press, 1992), pg. 49.

[19] Daniel J. Solove, "Conceptualizing Privacy*,"* *California Law Review* 90, no. 1087 (2002).

not all-important, privacy still plays an important role. However, it must be more nuanced than what privacy theory tends to see, which is privacy in materialist terms, that is, abundant physical space and the absence of other people. We need to understand what privacy means when I am in the company of others, which is the case for most of humanity. We need to understand the role I play in attaining or securing privacy, for I think I play an important role, an active role, mind you, not merely a passive role, where others simply "let me be." That is rarely the case. I allow people to influence, impress, or bother me long after they have fled the scene.

What is the political importance of a softer, more nuanced account of privacy? Political powers need to step back and let me be, in some basic sense; they need to give me room to act and operate as I wish, to some degree. Government ought not seek to suffocate and control me and tell me what I may think or say. I may allow a good deal of coercion to sink in, inadvertently, but government ought not actively seek to coerce. There is only so much that can be done in this regard. We cannot hope to utterly purify political powers of coercive elements or appearances. They may always seem that way to some, and by no fault of their own, but of my own.

Again, when it comes to corporate manipulation through surveillance, our demands may seem simple and pragmatic, but are muddled in the end. We would like corporations not to spy on us and then use that information in concert with behavioral science to prod us in certain directions. Again, though, I am the most important agent in this equation, not the corporation that would manipulate me. Manipulation is insanely difficult to pin down. When am I manipulated or not? It is impossible to say. What's more, there are degrees of manipulation: some people are more likely than others to succumb to manipulation. Some may seem to be manipulated or influenced, even when spying agents are aiming at no such thing. My own moral education and training is the

essential feature here; it will help me resist would-be manipulation. One study I quote in the book holds that a reliable foil to manipulation is when people take time to reflect upon the choices or directives before them.[20] That suggests, again, that I, my moral character, am the most significant protection against manipulation. That is what we must cultivate and, in that regard, privacy becomes less important. For, if I have moral fortitude and I can reflect and rebuff my corporate spies, privacy will not be so relevant. I will give myself needed space from them.

4. Conclusion

I would like to thank the scholars who critiqued my book. I am pleased that they appreciated the nature of my project and the scope of my critique. I am grateful to their insights. It is always valuable to understand my blind spots when it comes to privacy and digital technology, which is a sprawling and ever evolving field, to say the least.

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[20] Zuboff, *Age of Surveillance Capitalism*, p. 308.