

Reading notes on Helen Nissenbaum, Privacy in Context

Nissenbaum, Helen. *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (Stanford Law Books). Stanford University Press, 2010. Kindle Edition.

The Thesis

What people care most about is not simply restricting the flow of information but ensuring that it flows appropriately, and an account of appropriate flow is given here through the framework of contextual integrity.

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WE HAVE A RIGHT TO PRIVACY, BUT IT IS NEITHER A RIGHT TO control personal information nor a right to have access to this information restricted.

Instead, it is a right to live in a world in which our expectations about the flow of personal information are, for the most part, met;

expectations that are shaped not only by force of habit and convention but a general confidence in the mutual support these flows accord to key organizing principles of social life, including moral and political ones.

This is the right I have called **contextual integrity** (CI), achieved through the harmonious balance of social rules, or norms, with both local and general values, ends, and purposes.

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It should be clear that the doctrine of "reasonable expectation of privacy," which has usefully served to adjudicate privacy disputes in countless court cases and policy-making settings, is conceptually closely allied to contextual integrity.

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Contextual Integrity (CI) has a prescriptive as well as a descriptive facet

Context-relative informational norms function descriptively when they express entrenched expectations governing the flows of personal information, but they are also a key vehicle for elaborating the prescriptive (or normative) component of the framework of contextual integrity.

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The prescriptive component of the CI framework is based on a claim that if a new practice violates entrenched informational norms it constitutes a violation of contextual integrity

The approach I recommend here is to compare entrenched normative practices against novel alternatives or competing practices on the basis of how effective each is in supporting, achieving, or promoting relevant contextual values.

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For example

The requirement that physicians inform public health officials in cases of specific diseases is flagged as an instance of a departure from absolute patient confidentiality. Upon further evaluation this departure seems acceptable not because of a general trade-off of patients' interests against those of others, but because it supports values of the healthcare context.

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Electoral voting context: Attempts to interject such new technologies, to improve the process, have shown how past practices, now entrenched, have achieved a delicate balance. Albeit imperfectly, these practices have more or less succeeded in maintaining utmost confidentiality for individual voters while maintaining reliability and accountability, and achieving an accurate count while protecting voters against coercion and (the harm of) retaliation.

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The analytical framework

Contexts are structured social settings characterized by

- activities,
- roles, relationships, power structures,
- norms (or rules), and
- internal values (goals, ends, purposes).

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Roles: Teachers, physicians, lawyers, store managers, students, principals, congregants, rabbis, voters, cashiers, consumers, receptionists, journalists, waiters, patients, and clients are among some of the most familiar roles.

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Activities: Examples include browsing goods in a store, singing hymns in church, completing homework assignments, lecturing in a classroom, conducting and undergoing physical examinations, writing reports, entering a vote at a polling station, and interviewing job applicants.

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Norms: Norms define the duties, obligations, prerogatives, and privileges associated with particular roles, as well as acceptable and unacceptable behaviors.

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Values: sometimes more aptly called goals, purposes, or ends; that is, the objectives around which a context is oriented,

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the central point is that contextual roles, activities, practices, and norms make sense largely in relation to contextual teleology, including goals, purposes, and ends.

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For example

Certain contexts are articulated in great detail, for example, voting stations, courtrooms, and highly ritualized settings such as church services.

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The scope and definition of contextual integrity as a tool for assessing privacy issues

Given the myriad norms that govern activities and practices within and across contexts, consider those that are specifically concerned with the flow of personal information -- transmission, communication, transfer, distribution, and dissemination -- from one party to another, or others.

Contextual integrity is defined in terms of informational norms: it is preserved when informational norms are respected and violated when informational norms are breached.

The framework of contextual integrity maintains that the indignation, protest, discomfit, and resistance to technology-based information systems and practices, as discussed in Part I, invariably can be traced to breaches of context-relative informational norms. Accordingly, contextual integrity is proposed as a benchmark for **privacy**.

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More analytical framework and terminology

informational norms regulate the flow of information of certain types about an information subject from one actor (acting in a particular capacity, or role) to another or others (acting in a particular capacity or role) according to particular transmission principles.

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contexts are the backdrop for informational norms.

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Informational norms have three placeholders for actors: senders of information, recipients of information, and information subjects.

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Actors' roles are among those critical variables that affect people's rich and complex sensibilities over whether privacy has been violated or properly respected. Other attempts to articulate privacy principles go awry because they neglect or under-specify actors' roles in explicating both policies and the problematic scenario under consideration.

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The framework of contextual integrity incorporates attributes or type or nature of information (terms I will use interchangeably) as another key parameter in informational norms.

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Informational norms render certain attributes appropriate or inappropriate in certain contexts, under certain conditions.

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One need look no further than the endless forms we complete, the menus we select from, the shopping lists we compile, the genres of music we listen to, the movies we watch, the books we read, and the terms we submit to search engines to grasp how at ease we are with information types and attributes.

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The transmission principle parameter in informational norms expresses terms and conditions under which such transfers ought (or ought not) to occur.

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One of the most salient is confidentiality, stipulating that the party receiving information is prohibited from sharing it with others. Other familiar instances include

reciprocity, by which I mean a principle determining that information flows bidirectionally;

dessert, determining that an actor deserves to receive information;

entitlement (similar to dessert), determining that one party is entitled to know something;

compulsion, determining that one party (often, the information subject himself) is compelled or mandated to reveal information to another; and

need, determining that one party needs to know information of a particular kind.

A transmission principle might determine that information must be shared voluntarily, or consensually; it may require the knowledge of the subject ("notice"), or only her permission ("consent"), or both. Transmission principles may allow for commercial exchanges of information bought, sold, bartered, or leased in accordance with the rules of a competitive free market.

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Using the CI framework to assess privacy concerns of proposed new practices

I am interested in addressing the question of when and why some of these alterations in activities provoke legitimate anxiety, protest, and resistance.

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Although there may, of course, be a host of ways in which novel practices alter the status quo, the framework of contextual integrity focuses our assessment on the key parameters of context, actors, attributes, and transmission principles.

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Imagine these as juggling balls in the air, moving in sync: contexts, subjects, senders, receivers, information types, and transmission principles.

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In order to ascertain what norms prevail, one must determine the prevailing social context.

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Ascertain whether the new practice brings about changes in who receives information (recipient), whom the information is about (subject), or who transmits the information (sender).

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Ascertain whether the changes affect the types of information transmitted from senders to recipients.

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New practices may entail a revision in the principles governing the transmission of information from one party to another.

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----- **Definition for the notion of a violation of conceptual integrity**

If the new practice generates changes in actors, attributes, or transmission principles, the practice is flagged as violating entrenched informational norms and constitutes a prima facie violation of contextual integrity.

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----- **Problematic side of CI assessment as a test**

If conformity with pre-existing informational norms is a measure of contextual integrity, then any new practice that contravenes entrenched norms is flagged as problematic.

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Contextual integrity, as it has been described thus far, is inherently conservative, flagging as problematic any departure from entrenched practice.

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----- **Resolution of the dilemma of CI as a test**

In recognition of this presumption, if a new practice breaches entrenched informational norms, I will say that there has been a prima facie violation of contextual integrity. At the same time, if a way can be found to demonstrate the moral superiority of new practices, this presumption could be overcome and what was recognized as a prima facie violation may be accepted as morally legitimate.

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Augmented Contextual Integrity Decision Heuristic

1. Describe the new practice in terms of information flows.
2. Identify the prevailing context. Establish context at a familiar level of generality (e.g., "health care") and identify potential impacts from contexts nested within it, such as "teaching hospital."
3. Identify information subjects, senders, and recipients.
4. Identify transmission principles.
5. Locate applicable entrenched informational norms and identify significant points of departure.
6. Prima facie assessment: There may be various ways a system or practice defies entrenched norms.
7. Evaluation I: What might be the harms, the threats to autonomy and freedom? What might be the effects on power structures, implications for justice, fairness, equality, social hierarchy, democracy, and so on?
8. Evaluation II: Ask how the system or practices directly impinge on values, goals, and ends of the context. In addition, consider the meaning or significance of moral and political factors in light of contextual values, ends, purposes, and goals.
9. On the basis of these findings, contextual integrity recommends in favor of or against systems or practices under study.

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Additional Points

Dangers associated with the aggregation and commercialization of information

"the transparent society," in which we no longer fight the practices but work to ensure that all are watched and watching equally.

The problem is not that information is being gathered, hoarded, and disseminated, but that it is done so unevenly. Despite the liberating ring of this argument, it is misguided for two reasons, both having to do with a world in which power, as well as information, are unevenly distributed.

One, for which I will offer no further argument, is that information is a more effective tool in the hands of the strong than in those of the weak.

The other is that in a free market of personal information, characterized by omnibus providers, the needs of wealthy government actors and business enterprises are far more salient drivers of their information offerings, resulting in a playing field that is far from even.

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One of the most important contributions contextual integrity can make is to debunk the logic once and for all in the claim that information shared with anyone (any one) is, consequently, "up for grabs," and because of this the activities of information middlemen, such as omnibus providers is, at worst, morally and politically no more problematic than those of the community gossip. What this reasoning fails to recognize is how critical it is to spell out the actual and potential recipients of information.

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I will assume that readers who have stayed with me to this point need no further convincing that "public" is not synonymous with "up for grabs," that even if something occurs in a public space or is inscribed in a public record there may still be powerful moral reasons for constraining its flow.

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Comparison of US and EU privacy approaches

In comparative studies of U.S. privacy law and regulation with other countries, particularly those belonging to the European Union (EU), one key difference that seems generally accepted is that the U.S. approach is "sectoral," while the EU's is an "omnibus" approach.

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The framework of contextual integrity suggests that the U.S. approach to privacy legislation, generally disfavored by privacy advocates, may be the more promising one as, at its best, it embodies informational norms relevant to specific sectors, or contexts, in the law. For a credible commitment to privacy, this general approach would need just one "omnibus" principle: the right to contextual integrity from which the appropriate context-relative rights would be derived on a sector-by-sector basis.

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