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# Privacy Ethics in Biblical Literature

Benjamin Glass

*Harvard University*, [benjaminglass@college.harvard.edu](mailto:benjaminglass@college.harvard.edu)

E. Susanna Cahn

*Pace University, Lubin School of Business*, [ecahn@pace.edu](mailto:ecahn@pace.edu)

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# Privacy Ethics in Biblical Literature

## **Cover Page Footnote**

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## INTRODUCTION

In 1890, Samuel Warren and Louis Brandeis published “The Right to Privacy” in the *Harvard Law Review*. They extended the idea of a “right to life” to mean “the right to enjoy life” and extended the term “property” to include intangibles. Warren & Brandeis argued that the right to privacy not only “prevent[s] inaccurate portrayal of private life, but ... prevent[s] its being depicted at all”.<sup>1</sup> Legal researchers over the next one-hundred plus years came to consider the paper’s identification of privacy with “the right to be let alone” as the birth of the concept of the right to privacy.<sup>2</sup>

Bloustein suggested that the modern right to privacy, associated with the Warren & Brandeis definition, became a legally significant issue with urbanization and mass publicity, modern issues that posed an everyday threat to personal dignity through the loss of privacy via the development of new technologies and social trends.<sup>3</sup>

Other scholars extended (or limited) the definition of right to privacy discussed by Warren & Brandeis. Prosser separated the definition of privacy into four different interests: intrusion into private affairs, public disclosure of embarrassing private facts, publicity creating a false light in the public eye, and appropriation of name or likeness.<sup>4</sup> Benn echoed Prosser’s definition of private affairs, noting that what is done “in-private” encompasses any activity it would “be inappropriate for others to try to find out about” or report on without consent.<sup>5</sup> Benn’s definition of private affairs is expansive including personal relations, political freedom, and moral autonomy.<sup>6</sup>

Bloustein called undue publicity concerning private life “an affront to ... human dignity”.<sup>7</sup> In Bloustein’s view the right to privacy is a universal human right, a concern for individual dignity and independence of will, and a safeguard of individual integrity and freedom. Moreover, he saw privacy as a spiritual interest, not simply a property interest; the spiritual characteristic is individuality

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<sup>1</sup> Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” *Harvard Law Review* 4 no. 5 (Dec. 15, 1890): 193, 218.

<sup>2</sup> Benjamin E. Bratman, “Brandeis and Warren’s The Right to Privacy and the Birth of the Right to Privacy,” *Tennessee Law Review* 69 (2002): 624.

<sup>3</sup> Edward J. Bloustein, “Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser,” *New York University Law Review* 39 (1964): 984.

<sup>4</sup> William L. Prosser, “Privacy,” *48 California Law Review*, (1960): p. 389.

<sup>5</sup> Stanley I. Benn, “Privacy, Freedom, and Respect for Persons,” in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman (Cambridge University Press, 1984), 223.

<sup>6</sup> *Ibid*, 234.

<sup>7</sup> Bloustein, “Privacy as an Aspect of Human Dignity,” 979.

or freedom.<sup>8</sup> Without privacy a person loses individual dignity, integrity, freedom, and independence.<sup>9</sup> Reiman goes so far as to say that privacy is a precondition of personhood.<sup>10</sup>

Privacy of information is particularly important because it gives us the liberty to manage relationships with different people in different ways.<sup>11</sup> People use privacy to control access to information about themselves.<sup>12</sup> In turn, control over one's own privacy is limited by the rights of others.<sup>13</sup> Parent describes privacy as having undocumented information about oneself and protecting that information from others.<sup>14</sup> Hartman sees control as a key feature of privacy, the "ability to be autonomous in controlling one's personal information."<sup>15</sup> Moor understands privacy as protection from intrusion, observation, and surveillance; he suggests that privacy can be protected by restricted access.<sup>16</sup> Alfino & Mayes summarize these various definitions as "the right to restrict access to a personal domain"; sometimes that domain is defined by one's person, sometimes by one's information.<sup>17</sup> In the digital age, restricted access to personal information is becoming increasingly difficult to accomplish.

Nissenbaum introduces the concept of contextual integrity, refining the idea of a right to privacy by arguing that privacy norms vary by context. Some contexts are likely to remain outside the legal system and can be handled by societal or professional norms. Applying the idea to public surveillance, however, she argues that "when violations of norms are widespread and systematic ... when strong incentives of self-interest are behind these violations, when the parties involved are of radically unequal power and wealth, then the violations take on political significance and call for political response."<sup>18</sup>

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<sup>8</sup> Ibid, 1002.

<sup>9</sup> Ibid, 971.

<sup>10</sup> Jeffrey H. Reiman, "Privacy, Intimacy, and Personhood," *Philosophy & Public Affairs* 6, no. 1(Fall 1976): 39.

<sup>11</sup> James Rachels, "Why Privacy Is Important," *Philosophy & Public Affairs* 4, no. 4 (Summer 1975): 326.

<sup>12</sup> Charles Fried, "Privacy," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman (Cambridge University Press, 1984), 219.

<sup>13</sup> Ibid, 213.

<sup>14</sup> William A. Parent, "Privacy, Morality, and the Law," *Philosophy & Public Affairs* 12, no. 4 (1983): 269.

<sup>15</sup> Laura P. Hartman, "Technology and Ethics: Privacy in the Workplace," *Business and Society Review* 106, no. 1 (March 2001): 10.

<sup>16</sup> James H. Moor, "The Ethics of Privacy Protection," *Library Trends* 39, no. 1-2 (Summer & Fall 1990): 77, 79.

<sup>17</sup> Mark Alfino and G. Randolph Mayes, "Reconstructing the Right to Privacy," *Social Theory & Practice* 29, no. 1 (2003): 3.

<sup>18</sup> Helen Nissenbaum, "Privacy as Contextual Integrity," *Washington Law Review* 79 (2004): 157.

Solove is heavily concerned with information problems created by emerging technology. Solove's taxonomy includes four basic groups of activities that harm privacy: (1) information collection, (2) information processing, (3) information dissemination, and (4) invasion.<sup>19</sup> Even if each specific data item is protected, elements of these four groups of activities can be combined to breach privacy. Solove notes that protecting privacy requires careful balancing, as neither privacy nor its countervailing interests are absolute values. Interestingly, he argues that while technology enables breaches of privacy, it is the activities of people that cause privacy problems.<sup>20</sup> Solove argues that privacy rights are not well protected because the harm caused by breach of privacy is not well articulated.<sup>21</sup>

Sometimes personal information has economic value. Acquisti, Taylor, and Wagman emphasize the often uneven relationship between individuals' information and the technology organizations that may want to use that information to economic advantage.<sup>22</sup> Lipman outlines some areas where personal information may be collected from poorly or uninformed consumers for economic reasons; for instance, some online services are offered without charge because valued personal data is collected in the process.<sup>23</sup> Economic issues are at the heart of the business applications of privacy ethics. It is noteworthy that the writing of Warren and Brandeis about privacy was prompted by a newspaper report about Warren's family.<sup>24</sup> The newspaper, of course, was in the information business. There are countervailing interests between businesses which profit from information and those individuals whose information it was originally. Individuals want to control whether and when information about themselves is made public. A business may want that information because it can generate profit, either directly by selling the information as a newspaper might, or indirectly through marketing.

Erlich and Narayanan discuss the tension between value of medical information for research and the privacy of the patients.<sup>25</sup> Here again information has economic value. Even if the medical researchers are not business people as

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<sup>19</sup> Daniel J. Solove, "A Taxonomy of Privacy," *University of Pennsylvania Law Review* 154, no. 3 (2006): 488.

<sup>20</sup> *Ibid.*, 560.

<sup>21</sup> *Ibid.*, 480.

<sup>22</sup> Alessandro Acquisti, Curtis R. Taylor, & Liad Wagman, "The Economics of Privacy," *Journal of Economic Literature*, 52, no. 2 (2016), Sloan Foundation Economics Research Paper No. 2580.

<sup>23</sup> Rebecca Lipman, "Online Privacy and the Invisible Market for Our Data," *Penn State Law Review* (2016): 1–34

<sup>24</sup> See description of the event in Prosser, Note 4.

<sup>25</sup> Yaniv Erlich and Arvind Narayanan, "Routes for Breaching and Protecting Genetic Privacy," *Nature Reviews Genetics* 15, no. 6 (2014): 409–21.

such, nevertheless they rely on suppliers of research materials. There may be clinical trials using human subjects for research. Tissue samples and genetic data sets may be stored and used in numerous experiments. Identities of the human subjects are often confidential, but rarely anonymous. Medical research depends on an information “business”. Researchers are both consumers and suppliers of information.

Orts and Sepinwall as well as Pollman discuss the possible extension of property rights to corporations and other organizations in addition to individuals.<sup>26</sup> Most of the organizations of concern in this regard are business corporations including, for example, news media protecting confidential sources and software companies protecting private code.

## AN ETHICS VIEW OF PRIVACY

In their work, Warren & Brandeis trace the legal support for the right of privacy as far back as the fourteenth century and give no indication of considering themselves trailblazers. The claim then that Warren & Brandeis are the fathers of the right of privacy is disingenuous given how widely studied “The Right to Privacy” is and cannot be explained away as a fault of simple oversight. The disparity between the manner in which Warren & Brandeis treat their own study and the fashion in which later researchers view “The Right to Privacy” demands an alternate explanation. The above scholars approach privacy primarily as a legal matter; the right to privacy is treated as the backdrop for laws regarding control of information. This is particularly relevant in today’s technology and information age in which new devices and software make it ever easier to breach privacy rights. Typically though, there is an ethical lag in writing laws to address problems triggered by new technologies. Where new technology is the enabling mechanism, the dilemma is apparent long before there are laws written to protect against breach of privacy. The decisions about how and when to introduce new technology into common use rests with either product designers or product sellers, generally engineers and business people. Any safeguards of privacy rights are considered (if at all) by them first.

Pollach notes that the law may lag behind what is technologically feasible, and consequently advocates for a corporate social responsibility approach to addressing privacy issues because there is an imbalance of power between

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<sup>26</sup> Eric W. Orts and Amy Sepinwall, “Privacy and Organizational Persons,” *Minnesota Law Review* 99 (2014): 2275–2323.

Elizabeth Pollman, “A Corporate Right to Privacy.” *Minnesota Law Review* 99 (2014): 27-88.

companies as data collectors and users as data providers.<sup>27</sup> To address privacy issues as they emerge, include consideration of privacy rights in corporate and government decisions regarding private information, and inform the writing of appropriate laws, we must of necessity rely on long-standing ethics to provide a framework within which to treat technology-driven problems.

An illustration of an ethics view of privacy is Bloustein's view of privacy as a spiritual interest.<sup>28</sup> It is the right (as opposed to wrong) way to treat people with dignity. Wall also emphasized the ethical basis of privacy rights, defining privacy as "the moral right to consent to access by others to one's personal information".<sup>29</sup> Hartman notes that we turn to ethics for guidance when law does not yet provide the answers.<sup>30</sup> There may be a time lag between the advent of a breach of privacy and any laws that may be written to protect against such breach of privacy. Decisions in this ambiguous area will need to rely on ethics arguments since recourse to relevant laws will at best be relying on legal precedents that were originally intended for other kinds of situations or older technologies.

Privacy as an ethical principle predates Warren & Brandeis' article not only by centuries, but by millennia. Warren & Brandeis' innovation was the conglomeration of disparate precedents to present the first legal case for a right to privacy. The line between the ethic of privacy and the legal right to privacy has come to be blurred in the past century of writing on the subject favoring a largely legal focus. It is as a result of this attention to privacy as a legal issue that Warren & Brandeis have come to be seen as the fathers of concern over privacy. Warren & Brandeis themselves, however, were able to cite centuries of precedents because as an ethical issue privacy is an age-old concern.

This paper examines the development of privacy from an ethical value to a legal right through the Hebrew Bible and rabbinic texts stemming from biblical literature, many of which serve as guides to ethical behavior. The following discussion draws from millennia of religious texts universal values that lie at the heart of the debate over privacy rights. Understanding the general issue of privacy through the particular lens chosen here can provide a set of principles with which to approach emerging privacy dilemmas and inform the writing of laws to handle these dilemmas.

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<sup>27</sup> Irene Pollach, "Online Privacy as a Corporate Social Responsibility: An Empirical Study," *Business Ethics: A European Review* 20, no. 1 (2011): 89.

<sup>28</sup> Bloustein, "Privacy as an Aspect of Human Dignity," 1002.

<sup>29</sup> Edmund Wall, "Privacy and the Moral Right to Personal Autonomy," *International Journal of Applied Philosophy* 25, no. 1 (2011): 69.

<sup>30</sup> Hartman, "Technology and Ethics," 16.

## PRIVACY IN BIBLICAL LITERATURE

Biblical privacy ethics can inform contemporary privacy ethics, in spite of the obvious differences. Solove compares ancient physical invasions of privacy with modern informational invasions of privacy, concluding that while different both can be considered “privacy”.<sup>31</sup> While not called privacy explicitly, and of course in the framework of different technology and a different level of business development, nevertheless treatment of privacy dilemmas in biblical literature has something to say of relevance to contemporary society. Life in the flimsy dwellings of biblical communities made privacy fragile, not easy to safeguard, just as today electronic communication and storage of information makes privacy difficult to safeguard. Today, personal data collected for legitimate business purposes may end up in the wrong hands with unintended consequences more often than we would like.

Because of its fragility, individual privacy will exist only to the extent that privacy is considered a moral right of inherent value that is important to protect.<sup>32</sup> Development of a moral code and guidelines for right behavior are an important part of biblical literature, making it a good place to find guidance on privacy as a moral right.

Biblical literature is particularly instructive for our purposes through its attention to the development of rules of ethical behavior. Today we rely on civil law codes to redress abridgement of well-established norms of ethical conduct. However, especially when newer technology is involved, norms of ethical behavior may not have coalesced sufficiently to be written into law. In these ambiguous circumstances, it can be instructive to follow the debates and examples by which biblical literature develops ethical values.

The discussion of privacy now turns to considering sources in the Hebrew Bible. This is followed by a survey of Talmudic dialogues and debates that contribute to the rabbinic legal and broader ethical approach to privacy.<sup>33</sup> The codifiers’ refine Talmudic dialogue to practical law, completing the evolution of biblical discourse from ethics to legal practice.<sup>34</sup>

## PRIVACY IN THE HEBREW BIBLE

This section is divided into four subsections: commandments concerning privacy in the Pentateuch, similar commandments in the Prophets and Writings, Privacy

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<sup>31</sup> Solove, “A Taxonomy of Privacy,” 560.

<sup>32</sup> Indeed Bloustein, 971, views privacy as inherent to human dignity.

<sup>33</sup> Milton Steinberg, *Basic Judaism* (New York: Harcourt Brace Jovanovich, 1975), 144-147.

<sup>34</sup> Solomon Grayzel, *A History of the Jews* (New York: The Jewish Publication Society of America, 1968), 224.

in Pentateuch narrative, and privacy in Prophets and Writings narrative. The primary dichotomy in these subdivisions is between commandment and narrative.

### *Privacy commandments in the Pentateuch*

The Pentateuch contains few commands that indicate an expectation of individual privacy. The primary relevant command does not explicitly address privacy, but forbids gossip: “You shall not go around as a slanderer among your people” (Leviticus 19:16).<sup>35</sup> Gossip is a breach of privacy, the act of publicizing one person’s personal information and affairs without his knowledge or consent. Recall Bloustein’s definition of privacy, citing undue publicity concerning private life as “an affront to the plaintiff’s human dignity”.<sup>36</sup> Unbridled gossip in newspapers was the original concern of Warren & Brandeis.<sup>37</sup> In forbidding such practice, Leviticus 19:16 understands a pre-existing principle valuing privacy. Why must one not act as a talebearer? The reason is that the individual is entitled to expect privacy.

Two more verses in the Pentateuch assume an expectation of privacy. These two verses comprise a brief passage in Deuteronomy 24: “When you make your neighbor a loan of any kind, you shall not go into the house to take the pledge. You shall wait outside, while the person to whom you are making the loan brings the pledge out to you.” (Deuteronomy 24:10-11). As in Leviticus, the command in Deuteronomy assumes an individual’s expectation that his privacy be respected. The house is treated as a private domain, as later defined similarly by Alfino & Mayes.<sup>38</sup> According to Deuteronomy 24:10-11, the privacy of a borrower must not be infringed upon by the lender seeking his pledge. Currently under debate is the question of whether the notion of private domain should be extended from one’s home to one’s electronic data storage devices. Who is entitled to enter these electronic domains and see what private information is there?

### *Privacy commandments in the Prophets and Writings*

Proverbs 11:13 reads: “A gossip goes about telling secrets, but one who is trustworthy in spirit keeps a confidence.” The first half of the verse is the negative, the second half is the positive, and the two are contrasted by the parallelism. He that “goes about telling secrets” is compared to he that is

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<sup>35</sup> English translations of verses from the Hebrew Bible are from the New Revised Standard Version.

<sup>36</sup> Bloustein, “Privacy as an Aspect of Human Dignity,” 979.

<sup>37</sup> Warren & Brandeis, “The Right to Privacy,” 195-196.

<sup>38</sup> Alfino & Mayes, “Reconstructing the Right to Privacy,” 3.

“trustworthy in spirit.” In so comparing these two personalities, the verse degrades he that “goes about telling secrets” as an unfaithful spirit, while lauding he that “keeps a confidence” as demanding higher regard. Proverbs here treats favorably those who are reticent with regard to the information of others.

Proverbs 25:9 provides the following advice: “Argue your case with your neighbor directly, and do not disclose another’s secret” (Proverbs 25:9). This verse is explicit with regard to respecting another’s privacy. Not only is it understood in this verse that one is entitled to privacy, but the act of breaching another’s privacy is openly censured. Proverbs advocates for privacy of information, the privacy right discussed by Fried, Parent, Hartman, and Solove.<sup>39</sup>

### *Privacy in Pentateuch narrative*

Several narrative passages shed light on the issue at hand. These passages do not directly offer statements concerning privacy, but in composition--tone, character portrayal--allude to underlying understandings of the value of privacy.<sup>40</sup>

The first such passage appears at the close of the flood narrative. Noah, having become a vintner after the end of the flood, becomes intoxicated and is found naked in his tent by his son Ham. Ham plays the talebearer and informs his brothers of Noah’s state: “And Ham, the father of Canaan, saw the nakedness of his father, and told his two brothers outside.” (Genesis 9:22). Ham is a talebearer, the behavior forbidden in Leviticus 19:16, and is punished severely, receiving a zealous curse from Noah (Genesis 9:24-25). As evidenced by this scene, the Pentateuch recognizes the fragility of privacy. The Pentateuch is aware that privacy is easily breached, and in chronicling Ham’s admonishment evidences a strict aversion to tale bearing.

Later in Genesis, in the narrative relating Isaac’s sojourn in Gerar, the Pentateuch again recognizes the fragile nature of privacy. Traveling to Gerar, Isaac tells his wife Rebekah to inform any authorities that may inquire that she is his sister; this was done to avoid Isaac’s murder for the sake of acquiring Rebekah (Genesis 26:7). The following verse illustrates the local king Abimelech’s incidental breach of Isaac and Rebekah’s privacy: “When Isaac had been there a long time, King Abimelech of the Philistines looked out of a window and saw him fondling his wife Rebekah.” (Genesis 26:8). It seems no mistake that the Pentateuch concludes verse eight with the word wife. Abimelech having simply “looked out of a window” realized Isaac’s falsehood and was able to conclude on

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<sup>39</sup> Fried, “Privacy,” 219; Parent, “Privacy, Morality, and the Law,” 269; Hartman, “Technology and Ethics,” 10; and Solove, “A Taxonomy of Privacy,” 488.

<sup>40</sup> In addition to the passages noted here, Numbers 24:5 is also interpreted as relating to privacy. However, since the interpretation that links the verse to the issue of privacy is Talmudic-Midrashic in origin, it is discussed below in the Talmud section of this paper.

his own that Rebekah was Isaac's wife and not his sister. The ease with which privacy is breached, even incidentally, is illustrated in this verse.

The incident in which Laban confronts Jacob about the disappearance of his household gods provides further insight into the Pentateuch's view of privacy. While searching Jacob's camp, Laban comes upon Rachel, who is responsible for the theft of the idols. Sitting on his household gods, Rachel is reluctant to move as Laban searches for the idols, lest her crime be revealed: "And she said to her father, 'Let not my lord be angry that I cannot rise before you, for the way of women is upon me'" (Genesis 31:35). Laban's reaction is telling: he respects Rachel's request. Rachel pleaded with her father on the grounds of personal privacy to avoid being implicated in the theft of his household gods, and the argument carried sufficient weight to convince Laban not to forcibly move her.

Exodus 2 records the young Moses witnessing an Egyptian beating a Hebrew slave and Moses' reaction. The language of the verse is particularly important to the issue here being discussed: "He looked this way and that, and seeing no one he killed the Egyptian and hid him in the sand" (Exodus 2:12). Moses' looking "this way and that" indicates his attempt to hide his action, to maintain the secrecy of his act. Seeing "no one," Moses thought that he could repay the Egyptian taskmaster for his behavior toward the slave without arousing others' attention. Verse 12 provides an overall sense that Moses acted in utter secrecy—he saw there was "no one." However, in verse 14, after Moses has rebuked two quarreling Hebrews, it becomes evident that the secrecy of Moses' act was breached. One of the Hebrews whom Moses rebukes asks Moses if he will mete out further punishment as he did to the Egyptian; Moses' reaction is encapsulated in his statement "surely the thing is known" (Exodus 2:14). Though Moses took the necessary precautions to ensure the secrecy of his act, somehow his action became generally known. In relating this narrative, the Pentateuch assumes that no matter the precautions taken, secrecy cannot be guaranteed. Secrecy is not equivalent to privacy; secrecy carries with it a more negative connotation. Nevertheless, the lesson of the Pentateuch regarding the impossibility of guaranteeing secrecy even under seemingly ideal circumstances extends to this discussion of the Pentateuch's approach to privacy. From the Pentateuch's perspective, absolute privacy is not preserved under all circumstances; though there may appear to be "no one," privacy is not always assured.<sup>41</sup> It is interesting to note that Moses observed the slaves at work, in a relatively public place. In this regard the circumstances are different from the

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<sup>41</sup> It must be noted that in cases of divine intervention in biblical narrative, absolute privacy can be guaranteed. Deuteronomy 34:6 records that God buried Moses "in a valley in the land of Moab, opposite Beth-peor, but no one knows his burial place to this day." God can guarantee complete privacy; however, on the human level, privacy cannot be expected to be absolute.

Laban/Rachel situation, which even though apparently out-of-doors, is a personal rather than a “work” event. Rachel’s privacy is protected; the slave taskmaster’s is not. A modern analogy to this story might be the expectation that privacy of one’s person should be respected even outdoors while not at home, although one may not expect very much privacy in the workplace. Regard for privacy is contextual.<sup>42</sup>

### *Privacy in Prophets and Writings narrative*

Two particularly illustrative narrative examples in which the issue of privacy implicitly plays a part appear in the Prophets and Writings. The first is a scene from 2 Samuel, the second from Esther.

In 2 Samuel 11, David remains in Jerusalem as his generals wage war with Ammon (2 Samuel 11:1). The subsequent scene is well known. At home in Jerusalem, “walking about on the roof of the king’s house,” David saw a beautiful woman bathing (2 Samuel 11:2). The implication of this chance sighting of Bathsheba is parallel to the implication in a number of the Pentateuch narratives cited above. The text frames the sighting as incidental. Walking on the roof of the palace, David incidentally caught sight of Bathsheba. Bathsheba’s privacy was invaded upon by David by chance. The chance sighting was an inadvertent intrusion into her private affairs, bathing being one of those activities that would be inappropriate for others to see, consistent with Benn’s privacy definition.<sup>43</sup>

The book of Esther contains a scene that carries allusions regarding privacy similar to those found in 2 Samuel 11. Mordecai, “sitting at the king’s gate” becomes aware of a plot against the king Ahasuerus (Esther 2:21). Bigthan and Teresh, responsible for the plot, were those “who guarded the threshold” (Esther 2:21). Mordecai, as one who sat in the “king’s gate” was in close quarters with Bigthan and Teresh regularly and thus it is reasonable that Mordecai came to be aware of the plot. This is the first of two indications in the narrative of the fragile nature of privacy. The second indication is that Mordecai takes it upon himself to report the plot to Esther who in turn informs the king. Public disclosure of private facts embarrassing to Bigthan and Teresh invades their privacy, following Prosser’s definition.<sup>44</sup> At the same time, the disclosure safeguards Ahasuerus.

Privacy in the Hebrew Bible is interpreted as a strongly held value, a right, but difficult to guarantee. The Bible does not treat lightly any breach of privacy, whether intentional or incidental. The Bible directs that one should avoid invading another’s privacy, understanding that each person expects his privacy to be

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<sup>42</sup> As noted more recently by Nissenbaum, “Privacy as Contextual Integrity.”

<sup>43</sup> Benn, “Privacy, Freedom, and Respect for Persons,” 223.

<sup>44</sup> Prosser, “Privacy,” 389.

respected. The Bible thus offers a two-sided approach to privacy: it is understood to be fragile and easily violable, but at the same time recognized as a right of high regard.

## PRIVACY IN THE TALMUD

Where the Bible is terse, the Talmud is expansive. The Talmud elaborates at length on the commandments set forth in the Bible.<sup>45</sup>

### *Centrality of Leviticus 19:16 and Proverbs 11:13*

In the Talmudic discussions on privacy, Leviticus 19:16 emerges as the primary Bible source outlining a right to privacy. Proverbs 11:13 likewise is indicated as a particularly relevant source in Talmudic deliberations on privacy. The Mishnah on Sanhedrin 29a offers the following question and answer:

“And whence do we know that he [one of the judges] when leaving [the court], must not say, ‘I was for acquittal whilst my colleagues were for conviction, but what could I do, seeing that they were in the majority?’--of such a one is it written: thou shalt not go about as a talebearer among thy people, and again, he that goeth about as a talebearer revealeth secrets.”<sup>46</sup>

The case described in this Mishnah is straightforward: a judge must not release to the public his opinion in the case. A judge’s opinion in a case of conviction is intended to be private.<sup>47</sup> In support of this ruling concerning privacy, the Mishnah cites two verses. The first is Leviticus 19:16, the source that forbids gossip and thereby provides an opening for Bible-based law regarding privacy. The second is Proverbs 11:13, which censures tale bearing.

<sup>45</sup> Grayzel, *A History of the Jews*, 194-196, 219, 222. Grayzel explains the reason for the sheer volume of material in the Talmud. The Talmud is the record of many generations of rabbinic study. The Talmudic method of teaching began with a master teaching his disciples. The generations of teachings and discussions developed into what was ultimately compiled into the Talmud. Around the year 200 C.E., rabbinic codes that had long been transmitted orally were written down in the terse form of the *Mishnah*. From then until approximately 500 C.E., rabbinic scholars elaborated on the *Mishnah* via dialectical teaching. The Talmud comprises the combination of the *Mishnah* and accompanying elaboration of the *Gemara*, together covering some 500 years of rabbinic teaching stemming from the commands of the Hebrew Bible.

<sup>46</sup> *Hebrew-English Edition of the Babylonian Talmud*. (Soncino Press, 1969), Sanhedrin 29a. All other Talmud citations are from this translation.

<sup>47</sup> Sanhedrin 2a. The court was composed of a panel of judges. While the court verdict was reported, each individual judge’s opinion was private.

Privacy of the judges, both for and against, are protected this way. The court is a workplace situation, not a private domain. Still, privacy of an exonerated defendant is enhanced by keeping individual judges' opinions secret.

### *Privacy as a biblical concern*

Recognizing Leviticus 19:16 as an indication of the value of privacy to an individual, the Talmud understands a biblical expectation of privacy springing directly from God.

As a biblical principle, privacy protection is treated in the Talmud as a highly sensitive issue deserving meticulous attention. The opening Mishnah of tractate Baba Bathra states that adjacent properties should have walls separating them and that windows and doors of adjacent properties must not allow residents to visually invade the privacy of their neighbors.<sup>48</sup> The concern in Baba Bathra is for personal privacy. The Rabbis engaged in these discussions recognize that privacy is fragile and that for those in the position of neighbors to one another, opportunities for intentional and incidental breaches of privacy are to be anticipated and avoided. Foreshadowing Moor, the Talmud advocates that privacy be protected from intrusion.<sup>49</sup>

### *Privacy as a modesty concern*

Concern over protection of privacy in the Talmud is buttressed by the concept of modesty as a virtue. A case appears in tractate Baba Metziah that relates to privacy via modesty. The Talmud states that one case in which it is permissible to "conceal the truth" is a case of the "bed." The commentator Rashi offers explanation of this somewhat cryptic statement, expanding that one is permitted to conceal the details of personal affairs, as between man and wife, for the sake of modesty. In other words, for the sake of protecting sensitive private information, one may indulge in white lies.<sup>50</sup> According to this discussion, privacy is a modesty-based right, reminiscent of Benn's definition of private affairs as those activities that would be inappropriate for others to find out about or report on without consent.<sup>51</sup>

A similar discussion in the Talmud appears in Baba Bathra. In the course of discussing a Mishnah outlining the requirement that windows and doors of neighboring houses not face each other for the sake of privacy, as discussed above, a quote from Numbers arises as a source.

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<sup>48</sup> Baba Bathra 2b, 59a, 60a.

<sup>49</sup> Moor, "The Ethics of Privacy Protection," 77.

<sup>50</sup> Baba Metziah 23b.

<sup>51</sup> Benn, "Privacy, Freedom, and Respect for Persons," 223.

*Mishnah:* In a courtyard which he shares with others a man should not open a door facing another person's door nor a window facing another person's window. If it is small he should not enlarge it, and he should not turn one into two. On the side of the street, however, he may make a door facing another person's door and a window facing another person's window, and if it is small he may enlarge it or he may make two out of one.

*Gemara:* Whence are these rules derived? --R. Johanan said: From the verse of the Scripture, *And Balaam lifted up his eyes and he saw Israel dwelling according to their tribes*. This indicates that he saw the doors of their tents did not exactly face one another, whereupon he exclaimed: Worthy are these that the Divine presence should rest upon them!<sup>52</sup>

The Gemara on Baba Bathra 60a thus introduces a citation from Numbers to link the concern of privacy rooted in modesty to the Bible. Why, the Rabbis ask, did Balaam bless Israel saying “how fair are your tents, O Jacob, your encampments, O Israel” (Numbers 24:5). The reason is that the tents were arranged in a fashion that was modest. Balaam perceived, as Rachels does, that privacy is important to interpersonal relationships.<sup>53</sup> The value of modesty is thus considered to have derived from the Bible. The value of privacy, concern over which can be seen as an outgrowth of concern over modesty as seen above in the cases from Baba Metzia and Baba Bathra, is thus rooted in the Bible via considerations of modesty.

A modern corollary to those privacy-sensitive buildings would be businesses that collect a minimum rather than a maximum of information when dealing with their customers and other stakeholders. Customers can be prompted to opt in to information sharing rather than being offered the option to opt out. It is the less invasive option.

### *Breaches of privacy*

The Talmud makes clear through presentation of these legends, that privacy is a concern of the utmost gravitas.

The Talmudic sensitivity to privacy and breach of privacy is seen in Baba Metzia 58b, in which Rab Nahman ben Isaac is quoted as stating that he who speaks ill of another in public is as if responsible for “shedding [the subject's]

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<sup>52</sup> Baba Bathra 60a.

<sup>53</sup> Rachels, “Why Privacy Is Important,” 326.

blood.”<sup>54</sup> In recording this statement, the Talmud elevates breach of another’s privacy to a crime considered in essence to be on the level of a capital offense.<sup>55</sup>

Treating breach of privacy as a heinous crime, the Talmud demanded strict measures of punishment for the offense. On the issue of punishment for breach of privacy, the case of a disciple who failed to keep secret sensitive information discussed before his teacher; the teacher expelled the disciple for his privacy-breaching misconduct.<sup>56</sup> This passage in the Talmud indicates that even for a breach of privacy that may seem benign, strict punishment is justified.

By extension to contemporary parallels, this incident reported in the Talmud suggests an ethical mandate to avoid customers who will not respect the privacy rights of others. A particular burden falls on media businesses, whose “product” is information. The Talmud’s perspective would advocate for protection of confidential news sources and for the privacy of professional-client relationships.

As with the Bible, the Talmud recognizes the fragility of privacy; however, the Talmud is more emphatic in its treatment of the subject. Where the Bible tersely forbids going “around as a slanderer,” the Talmud provides illustrative narratives and discussions that not only forbid playing the talebearer, but dictate punitive measures that a talebearer merits in response to his actions.

## PRIVACY IN THE CODES OF LAW

The codes of law translate the ethical dictates of the Hebrew Bible into concrete law via the precedents set by the dialogues in the Talmud. Grayzel writes that “not finding exact duplications” to their contemporary legal concerns, Jews throughout the generations searched for parallels in the Talmud that could serve as the bases for practical religious law and codes of conduct.<sup>57</sup> Two of the most widely-referenced rabbinic codifiers, Moses Maimonides and Joseph Karo, are referenced in the following discussion.<sup>58</sup>

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<sup>54</sup> Baba Metziah 58b.

<sup>55</sup> See also Sanhedrin 44b on not exposing the secrets of another.

<sup>56</sup> Sanhedrin 31a.

<sup>57</sup> Grayzel, *A History of the Jews*, 224.

<sup>58</sup> *Ibid.*, 300-302, 407-408. Maimonides was born in Cordova, Spain in 1135 and was living in Cairo, Egypt at the time of his death in 1204. His law code, the *Mishneh Torah* (*Repetition of the Teaching*) was the first “topically” organized compilation of rabbinic law. Karo was born in Toledo, Spain in 1488 and died in Safed, Israel in 1575. He wrote a code of law, known as the *Shulhan Aruch* (*The Prepared Table*) to guide daily behavior. Karo’s code soon became a primary standard and continues to be referenced as such.

### *Laws derived from Leviticus 19:16*

Maimonides, in his *Book of the Commandments*, refers to Leviticus 19:16 as a biblical negative commandment that speaks for itself in prohibiting gossip.<sup>59</sup> In his *Repetition of the Teaching*, however, Maimonides expands on Leviticus 19:16 providing ethical insight into the law derived from the verse. He states that not only is gossip forbidden, but it “brings about the destruction of the world,” it is an offense equal in enormity to the three grand offenses of murder, illicit sexual relations, and idolatry.<sup>60</sup> The anti-gossip polemic continues with the assertion derived from Psalms 12:5 that one who engages in gossip “kills” the speaker, listener, and subject.<sup>61</sup> To Maimonides, the legal right to privacy is grounded in sacred ethical principles.

The step from Talmudic debate to law is evident in Karo’s code, just as the bridge between ethics and the law is evident in Maimonides’ code. Working with the passages in Sanhedrin 29a and Sanhedrin 31a discussed above, Karo records prohibitions against the public release of the identities of litigants in a lawsuit.<sup>62</sup> The suits may be revisited for the sake of developing case law, but discussion must proceed guardedly, protecting the identities of the parties involved.<sup>63</sup> Karo only allows confidential use of this personal information for the purpose of developing law to protect others, otherwise the privacy of personal information is protected. By modern analogy, Karo’s point of view would support using “anonymized” personal data for medical research that might benefit others, but would not support the use of private data for targeted marketing.

These codes of law are in agreement that the prohibition against tale bearing and the understood requirement to protect individual privacy are rooted in a biblical commandment. Legal protection for privacy in the law codes is thus derived from Leviticus 19:16. Basing these codes on earlier biblical moral literature is an ancient illustration of how ethics precedes formal laws.

### *Laws derived from Deuteronomy 24:10-11*

The practical law derived from Deuteronomy 24:10-11 corresponds exactly with the words of the verses. The verses outline a number of prohibitions and requirements: (i) not entering a borrower’s house to exact payment, (ii) standing

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<sup>59</sup> Moses Maimonides. *Mishneh Torah*. (Jerusalem: El Hamekoroth Ltd., 1956), *Sefer Hamitzvot*, Negative Commandment 301.

<sup>60</sup> *Ibid*, *Hilkhot Deot*, 7:2-3.

<sup>61</sup> *Ibid*.

<sup>62</sup> Joseph Karo. *Shulhan Arukh* (Jerusalem: El Hamekoroth Ltd., 1956), *Hoshen Mishpat*, 19: 1-2. These laws are discussed in greater depth below.

<sup>63</sup> *Ibid*.

outside the house in dealings with the borrower, and (iii) waiting for the borrower himself to enter his house and deliver his payment (Deuteronomy 24:10-11).

In his work, Karo codifies the commandments in these verses into law, stating that neither a lender nor messengers of a court may force entry into the domain of a borrower for restitution.<sup>64</sup> Judges and court representatives must remain outside the house while the borrower himself is responsible for production and delivery of due payments.<sup>65</sup> These laws concretize the ethic of the sanctity of the private domain, as it is expressed in the Pentateuch. Alfino & Mayes, writing more recently, echo the importance of the privacy of the personal domain.<sup>66</sup> If the right to a private domain is extended to digital devices, a court may require turning over needed data, such as information needed by police to investigate a crime, but the court may not require keys or passcodes to the device itself (which is a private domain).

#### *Laws derived from Proverbs 11:13*

The law derived from Proverbs 11:13 is similar to a portion of the law derived from Leviticus 19:16. This is to be expected given the similarity between the two verses. Leviticus 19:16 forbids the act of tale bearing and Proverbs 11:13 censures the talebearer himself.

Karo condenses the Talmudic discussion of Proverbs 11:13 into concise laws. He states that after passing judgment in a legal case and leaving the courtroom, a judge may not disclose his opinion on a case or his deliberation on the case with his fellow judges.<sup>67</sup> Further, Karo writes that in the codification of law, a judge must maintain the anonymity of the parties involved in the legal precedent he uses as his basis.<sup>68</sup> The law protects the personal privacy of parties involved in a lawsuit regardless of the significance of the case. Here the privacy of personal information is protected even though it may be of value to others.

### IRREVERSIBILITY AND FRAGILITY OF PRIVACY

Two universal themes emerge from the treatment of the value of privacy in biblical and rabbinic literature. The first is the irreversibility of privacy and the second the potential for privacy rights to conflict with other ethical rights.

The Hebrew Bible and successive rabbinic works demonstrate that privacy looms large as an ethical concern because a breach of privacy is irreversible. A

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<sup>64</sup> Ibid, 97: 6, 14.

<sup>65</sup> Ibid.

<sup>66</sup> Alfino & Mayes, "Reconstructing the Right to Privacy," 3.

<sup>67</sup> Karo, *Hoshen Mishpat*, 19: 1-2.

<sup>68</sup> Ibid.

single invasion of privacy embodies a permanent removal of information from a personal to a larger, more public, domain. This concept is demonstrated through several of the biblical and Talmudic narratives cited above, along with the notion that privacy is fragile and can be breached inadvertently to grievous consequences.

In happening upon Noah and shaming him, Ham breaches his father's private domain (Genesis 9:22). The consequences of Ham's actions are irreversible not only for Noah, who has been humiliated before his sons even after being saved by God for his prior record of virtuous behavior, but for Ham himself. The descendants of Ham are eternally cursed as a result of their progenitor's indiscretion (Genesis 9:25).

The story of Isaac's sojourn in Gerar demonstrates the fragility of privacy and the ease with which privacy can be invaded. Abimelech looks out of a window and discovers, seemingly inadvertently, that Rebekah was Isaac's wife and not his sister as Isaac had told him (Genesis 26:8). Once the truth is known, it cannot be made private again, and Abimelech makes a public declaration that Isaac must not be harmed by any locals (Genesis 26:9). Abimelech's public declaration guarantees that Isaac and Rebekah's secret is irreversibly divulged. Isaac and Rebekah's privacy was fragile; their relationship was discovered by chance, yet the knowledge is irreversible.

Moses, "seeing no one" metes out vigilante justice against an Egyptian taskmaster, expecting his action to remain undiscovered (Exodus 2:12). Yet soon "the thing is known" (Exodus 2:14). When Moses learns that his act was not hidden as he expected, he flees the wrath of Pharaoh, never to regain his former status (Exodus 2:15-16). Believing that one is acting in private does not guarantee that it is so according to this narrative.

David sights Bathsheba bathing by chance, invading a private affair if from a distance (2 Samuel 11:2). Bathsheba's privacy was fragile. David's mere sighting of Bathsheba inspired him to set in motion a chain of events with dire, irreversible consequences for Bathsheba as well as himself.<sup>69</sup>

Mordecai, simply sitting "at the king's gate", becomes aware of a plot by Bigthan and Teresh against King Ahasuerus (Esther 2:21). He uses this information which he happened upon by chance to blow the whistle on the conspirators. The privacy of their plot was fragile, and the inadvertent invasion of their privacy led to their executions (Esther 2:23). These biblical narratives are all situations where information believed to be private was inadvertently made public with irreversible consequences.

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<sup>69</sup> David arranges the death of Uriah the Hittite in order to marry Bathsheba (2 Samuel 11:21). This brings the wrath of God upon David from which he cannot escape (2 Samuel 11:27, 12).

The rabbinic scholars of the Talmud recognized the implications couched in this list of narrative examples regarding the fragility and irreversibility of breaches of privacy. Hence, Baba Bathra anticipates breaches of privacy and demands that neighboring properties have walls and windows situated to guard the personal domain. Privacy-sensitive buildings should be designed so that there is a low likelihood of breaching a neighbor's privacy by chance.<sup>70</sup>

The common moral lesson running through these biblical scenes is that the individual deserves to be protected from public encroachment into the personal domain. As a counterpoint to this expectation, there exists an obligation for every individual and organization to respect other individuals' privacy.

Even before protective laws are written, each individual's privacy should be respected by everyone from the passerby on a public avenue, to the corporate executive, to the government official. One failure to live up to the ethical obligation to guard another's privacy rights, however benign, could irreversibly impact and invade the affected individual's personal domain.

Mindful of the ease of transmission of contemporary digital information, maintaining anonymity of private information requires cognizance of Solove's admonition that people can breach privacy not only by collecting lists of data but also by combinations of events that enable the connection of data elements that are revealing when looked at together.<sup>71</sup>

Once something is public you lose control over it. This is especially true of information on the internet. Data can be either useful or anonymous but not both.<sup>72</sup> Even when data has been "anonymized" some outside data can be combined with it to reveal its source, to "deanonymize" it.<sup>73</sup> In fact, the term "anonymized" is a misnomer; such data is merely confidential, it can be uncovered. The only way to truly keep data anonymous is not to reveal it in the first place. In this regard opt-in to data sharing is preferred to opt-out. Data storage with personal control is preferred to cloud storage which inherently lacks privacy. Transparency is key; it should be clear to the person whose information is being collected which information is collected and what will be done with that information. Privacy rights are particularly vulnerable to abuse when there is size asymmetry between an individual's information and a large organization.<sup>74</sup>

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<sup>70</sup> Baba Bathra 2b, 59a, 60a.

<sup>71</sup> See note 19.

<sup>72</sup> Paul Ohm, "Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization," *UCLA Law Review* 57 (2010): 1701.

<sup>73</sup> Dan Grech, "Those Prying Eyes," *Princeton Alumni Weekly*, January 8, 2014.

<sup>74</sup> Nissenbaum, "Privacy as Contextual Integrity."

## PRIVACY AND VALUE CONFLICTS

As careful as the Hebrew Bible and rabbinic literature are to emphasize the value of privacy, they recognize that privacy is only one of an array of values. As such, it is inevitable that the values underlying the right to privacy will on occasion come into conflict with values underlying other rights. In fact the possibility of conflicting rights and the resultant need to prioritize some over others is true of all rights; if there are multiple rights there may be occasions when those rights conflict. Biblical and rabbinic literature provide case studies that guide the management of value conflicts of this kind and provide a template for how to prioritize rights in conflict.

Genesis 31 and Deuteronomy 24 indicate that privacy supersedes property rights. The former source is the narrative in which Laban, out of respect for Rachel's privacy, does not compel her "rise before" him in his search for his household gods (Genesis 31:35). The latter source is the commandment that the right of a lender to collect what is due him by a borrower is subordinated to the right of the borrower to maintain the privacy of his home (Deuteronomy 24:10-11). These two cases accord the rights of privacy priority above property rights and in such cases, privacy even takes priority over transparency.

In cases of criminal prosecution, privacy is relegated to a subsidiary position. Moses was unable to maintain the privacy of information about the murder he committed (Exodus 2:12, 14). Mordecai in an analogous narrative was rewarded greatly for his passing along of Bigthan and Teresh's plotting against the king (Esther 6). In both scenes, a breach of privacy uncovers a life-threat. As precious as privacy is, life is more so. The biblical narrations here are raising the right of the public to security and protection from harm above the right to privacy in cases where life is threatened.

The above biblical excerpts appear to prioritize privacy rights at an intermediate level between civil and criminal rights. Where information has economic value, then privacy takes precedence over economic usefulness. Only where there is an immediate threat to life is the right to privacy superseded.

It seems unlikely, however, that any future practical case would fit such strict and easily defined boundaries. It is difficult to anticipate how multiple rights may conflict in a future situation. Individuals may disagree about the relative value of their privacy in conflict with other rights. Particularly in situations where private information has an imputed economic value, individuals may differ in their monetary estimates of the value of private information.<sup>75</sup>

In the case of group or joint ownership private property or private information may be shared among several individuals. Since individuals may

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<sup>75</sup> This is the economic concept of utility.

place different relative values on their privacy rights, there may be honest disagreement over what to do, which in turn will infringe on the rights of at least one of the owners. In the question of privacy rights of organizations there will almost certainly be differences of opinion.

The Hebrew Bible treats privacy value conflicts through several unique narratives, approaching such issues on a case-by-case basis. Analogously contemporary value conflicts should be accorded the importance of a unique event because of the hazard of irreversibility. The general priority pattern expressed in biblical literature and legislated in rabbinic literature, valuing life above privacy which is in turn above economic value can inform treatment of contemporary value conflicts. All the same, for privacy problems triggered by emerging technology relying on ethics to weigh relative values offers the possibility of recognizing unique new issues, where laws may have been developed with older technology in mind.

Recent scholars discuss privacy value conflicts without coming to systematic conclusions. Westin discusses the difficulty of balancing privacy and competing interests, particularly in areas not yet covered by law.<sup>76</sup> He addresses the conflict between the right to privacy and the right to transparent information, as well as the conflict between privacy and surveillance, a clash that is progressively heightened as advancing technology makes it easier and cheaper to gather information without participation and consent. Solove also discusses the need to balance values that are not absolute.<sup>77</sup> Bloustein concludes that in each situation we are still left with the dilemma of deciding whether some countervailing public policy or social interest justifies an invasion of privacy.<sup>78</sup> Solove notes that combinations of events might abridge privacy, even if any one alone does not.<sup>79</sup> The lingering ambiguity argues in favor of the biblical approach of treating each privacy conflict as a unique event demanding moral scrutiny, keeping existing laws in mind but recognizing in each conflict its own inherent priorities and unique resolution.

## CONCLUSION

Concern over privacy has been growing in recent years in the face of an apparent impending loss of privacy. With every new device that makes the world a more networked place, opportunities for loss of privacy are also created.

Recent business examples with privacy ambiguities are dominated by information technology. Cloud computing and information storage puts vast

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<sup>76</sup> Alan F. Westin, *Privacy and Freedom*. (New York: Atheneum 1967), 369.

<sup>77</sup> Solove, "A Taxonomy of Privacy," 560.

<sup>78</sup> Bloustein, "Privacy as an Aspect of Human Dignity," 1004.

<sup>79</sup> Solove, "A Taxonomy of Privacy."

amounts of personal data in a place where even if collection and storage of data elements is privacy-protected the data can be processed and linked to be very revealing. Social media both collects and reveals personal information. Online health records are a convenience for health care workers and a treasure trove for medical researchers, but their economic value makes them a tempting business resource either to target customers for product marketing or to deny service to potentially high risk clients. Personal robots (once the stuff of science fiction movies) hold the promise of extending health care services to underserved communities such as the remote or the elderly, but they also collect troves of personal behavior information. Companies market products designed to collect information by parents, employers, or suspicious spouses from target individuals who may not be aware of it. Businesses may use claims to privacy rights as a defense to safeguard their relationship with their customers.<sup>80</sup> Differential privacy is a recent privacy protection technique for digital data.<sup>81</sup> But this algorithm-based protection of confidential information may also turn out to be another iteration in the anonymization—reidentification cycle.

One generation of technology develops a way to protect confidential information while the next generation of technology finds a way to uncover the identity of its source. The anonymization—reidentification cycle is never ending as science and technology move ever forward. Surveillance of all sorts is becoming easier, less expensive and more pervasive; personal information is collected by remote data gathering in nontransparent ways. Big data collected robotically can be used to scoop up private information that has economic value. Social media spread information rapidly making private information irreversibly public. Cameras in public places and chips in a wide array of products can track nearly every move. Information can be easily reused without permission and sometimes even without knowledge. The lines between public work life and private home life are more and more blurred; carrying smartphones from place-to-place makes it hard to disconnect one from the other. Often technology-enabling collection of information precedes the development of technology that can safeguard that information. Tools for guarding information are born only after tools for collecting information have already begun to invade the personal domain.

Encroachments on privacy may emerge before laws can be crafted to regulate where privacy is to be protected and where public interest takes

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<sup>80</sup> For recent examples see Katie Benner, and Nicole Perloth, “For Apple’s CEO, a Journey to Bulwark for Digital Privacy,” *The New York Times*, February 18, 2016, and Julia Angwin, “What They Know,” *Wsj.com* doi:<http://www.wsj.com/public/page/what-they-know-digital-privacy.html> (accessed February 21, 2016).

<sup>81</sup> Dwork, Cynthia. “The Promise of Differential Privacy: A Tutorial on Algorithmic Techniques,” in *Proceedings - Annual IEEE Symposium on Foundations of Computer Science, FOCS* (2011): 1-2.

precedence. Business decision makers and crafters of public policy make choices in this ambiguous time between the appearance of privacy-breaching concerns and the development of laws protecting privacy. Thoughtful choices on the part of these decision-makers, in the absence of laws, require reliance on a framework of long-standing ethics. Where the law is unable to keep up with the change of the times, ethical codes passed from one generation to the next provide guiding insight. As the ethical treatment of privacy in the Hebrew Bible preceded the legal treatment in the rabbinic codes of law, so must an ethical standard be adhered to in modern times as the law struggles to keep up with privacy-invasive technologies and social structures.

Given the fragile nature of privacy and the irreversibility of information disclosure, it is best to err on the side of privacy protection. The irreversibility of the release of private information must be born in mind when privacy rights conflict with other values. The default assumption regarding an individual's expectation of privacy should be that he or she would *prefer to opt in rather than opt out* of information sharing. A business would be taking the ethical high road to offer customers the opportunity to opt into sharing information rather than to collect personal information up front and leave the possibility to opt out in the fine print. Once shared, information cannot be made private again and it is imperative that this irreversibility be recognized and respected.

The right to privacy and the obligation to respect others' privacy are ethical values held dear among other strongly held ethical values. It is inevitable that privacy and other ethical rights will sometimes clash. The ethical teaching of biblical literature is that privacy must be carefully protected, short of facilitating loss of life. Extending the biblical generality to contemporary privacy rights conflicts would justify abridging privacy rights for the sake of protecting life. But privacy protection should take precedence over non-life-threatening issues, such as protecting employers' property rights, commercial value of information, and even transparency.

It is important to recognize, however, that there is no one-size-fits-all solution and that privacy is not an absolute right. Any decision in a value-conflict case dealing with privacy issues—governmental, corporate, media—must, at a minimum be transparent about how the values involved are prioritized. Information collection must be justified to those individuals who are relinquishing their right to privacy in such a way that the individuals are aware of what value overrode their right “to be let alone.”<sup>82</sup>

The right to privacy is an extension of the right to be treated with respect and extends the definition of the self outward including one's body, dignity, information, and property. The biblical ethic supports this sentiment. Upholding the right to privacy as an avenue of self-protection and defense of personal

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<sup>82</sup> Warren & Brandeis, “The Right to Privacy,” 193.

modesty is central to the biblical ethic and should inform the contemporary ethic of privacy.

Nevertheless, to the biblical mind, privacy is not absolute; it is understood that God is omniscient. Attempts to hide from God recorded in the Bible are futile.<sup>83</sup> The biblical ethic does not recognize a state of absolute privacy, as according to biblical philosophy all men stand before omniscient God. The demand of community life is the balance of the openness of the family and the distance of impersonal society. In such an environment, one is aware that in public one must conduct oneself properly, as the public is the realm of communal eyes. In private, however, the biblical approach recognizes solely the ever-watchful eyes of God.

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<sup>83</sup> As with Adam and Eve who failed to hide from God after their sin in the Garden of Eden (Genesis 3:8-24) and Jonah who failed to flee from his commission (Jonah 1:3-2:1).