Toward a Genealogy of Information Privacy:

From Biopower to Infopower

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Inquiries into "the information society" have been rapidly growing in response to a widespread cultural obsession with the meanings of our emerging internet age. I propose a presentation drawn from a broader research that focuses on the increasing overlay of politics and information in our internet age. I argue that not only are politics (e.g., electioneering) and political issues (e.g., intellectual property) today changing, but also that a new form of power is emerging. I frame this argument through recent debates in new media studies drawing on the political theory of Michel Foucault (on whose work I have recently published a book and an article in 'Critical Inquiry'). Following the Foucaultian leads of W. Chun, A. Galloway, and T. Terranova, I seek an alternative to incipient liberal (L. Lessig) and Marxist (J. Dean) political theories of information. Going further, and pressing Foucault beyond Foucault, I argue that we need to reconceptualize power today beyond biopolitical societies. I outline what I call 'infopower' as a new consolidation of energies that has to do with the very formation of information. I focus my presentation on a brief overview of the genealogy of privacy of information, a new form of privacy that emerged in liberal societies in the 1890s in response to the Kodak camera and Hearst newspaper, rapidly expanded in the 1970s in response to powerful new database practices, and in the 2000s has once again become an object of focus midst the internet.

Infopolitics

Today I would like to discuss one fragment from a genealogy of our infopolitical present(s) drawn from a much larger project. In the broader project my focus is on *how* infopolitical practices have inflected familiar pockets of our cultural consciousness. *How* did the intersection of information and politics recondition what we think of as privacy, as publicness, as

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property? Here I shall focus on only one of the many such shards the wider project invokes. *How*, I shall be asking, did infopolitics come to recondition what was once thought of as privacy? Today we effortlessly invoke the idea of 'information privacy' but there was not long ago a time when even the most canonical statement of privacy, John Stuart Mill's 1859 *On Liberty*, contained no discussion of privacy *of information*. This major shift in the dynamics of privacy, which is only one in a series of such shifts throughout culture, has to do both with familiar foci such as about shiny new 'information technologies' as well as with furtive forms of selfhood involved in the creation of 'information persons'.

I would like to begin, however, by stepping back so as to frame my fragment on informational privacy within the broader project on information politics.[1] The broader project concerns our contemporary status as an 'information society': a hollow cliché that deserves theoretical interrogation. Recent years have seen a range of theoretical and empirical work that assumes a refreshing stance toward the radical cultural transformations implicated in our contemporary fascination with fashions of information and data. Much of the fresh work I have in mind involves a patient interrogation of the informatic contours of contemporary political reality.

A brief review of recent such work taking place under the necessarily broad and helpfully amorphous banner of "new media studies" helps situate my core claims here. There is a vein of work in critical new media studies today in which we can discern this argument: one of the most crucial factors of our contemporary political transformations is a shift in the very nature of power itself. Not only are politics (electioneering or lobbying) and political issues (intellectual property, trespass, and privacy) changing with new media, but also indeed the very nature of power itself. Much of this work frames itself with reference to two prominent figures in recent French philosophy, namely Michel Foucault and Gilles Deleuze.

New media theorists have made productive use of Foucault's and Deleuze's insights to diagram the form of power appropriate to our current moment, arguing that the forms of power expressed in new media can be properly seen as extensions of Foucault's idea of biopower (see Foucault [1976]) and Deleuze's idea of control societies (see Deleuze [1990]). Some of these

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[1] The remainder of this section is drawn from my companion paper "Infopolitics: A Genealogy of Contemporary Political Conduct". The other portions of this paper (i.e., all other sections) are drawn from a longer version of my ongoing genealogy of information privacy currently titled "The Personal Information of Informational Persons: A Genealogy of Information Privacy Law."

theorists, most notably Galloway (2004), and Lazzarrato (2006) closely follow Deleuze (1992) in referring to societies of "control power"—Galloway emphasizes *protocological control* and Lazarrato develops a novel idea of *noopolitics* drawing on Deleuzian control. Others such as Tiziana Terranova (2004) more closely follow Foucault, as does Tiziana Terranova (2004) in theorizing *communication biopower*, and Bernard Stiegler (2013) in writing of *psycho-socio-power*. Others, such as Wendy Chun make productive use of both Foucault and Deleuze: in earlier work Chun developed an account of the power of new media and networks in terms of the play of Deleuziean control with freedom (2006), while in her more recent work she develops an account of the power of software programming as intersecting with Foucaultian biopower and neoliberal governmentality (2011). Others have drawn on conceptual territory nearby to Foucault and Deleuze, though not always naming it. For instance, Grégoire Chamayou (2013) describes a "technology of power" that is "less an apparatus of *surveillance* than one of *control*" though he does not cite Deleuze in developing his control-centric concept of *datapower*. See also Davide Panagia's forthcoming work on *datapolitik* for an exemplar of a political-theoretical perspective drawing much of its inspiration through Continental political theory to ask important new questions of our data societies. I would finally note, only in passing, that much of the literature under survey here draws on both Deleuze and Foucault productively, though without always being clear about the relation between Deleuzian and Foucaultian accounts.[2]

Now, I prefer an informatics-focused angle to a media-centric perspective, and so I here draw on new media theory only as an analogy. But new media theory is an important analogy, and precedent, for my argument in that it involves a rethinking of the very modes of power at stake in our new media (or new informatic) conditions. The import of the intervention of the new media theory, it thus must be underscored, occur against a much broader backdrop of retaining traditional concepts of power, as expressed in the work of numerous neo-marxist (see Wark [2004] and Dean [2009]) and liberal (see Lessig [2000]) theorists of new media politics

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[2] Some of the Deleuzians present their work on control societies as continuous with a Foucaultian biopolitical analysis (see Galloway and Thacker), while others present the control power diagram concept as a break from the biopower paradigm (see Lazarrato and Niedich on Lazarrato). In my view, the differences between the two perspectives of Deleuzian control power and Foucaultian governmental biopower may be slighter than appears, especially if political theorist Thomas Nail (forthcoming) is right in his claim that Deleuzean control power just is an attempted conceptualization of Foucaultian biopower, an argument that Nail develops in a scholarly engagement with Deleuze's only-recently-transcribed lectures on Foucault. Regardless of the true relation between Deleuze and Foucault on power (and I think Nail is right), all of the Deleuzian and Foucaultian new media theorists named above employ varying conceptualizations of control and biopower in order to make sense of an emerging field of political conduct.

(see more generally the contributions to Lovink and Dean [2006]). What these traditional approaches leave unexamined is the question of whether or not the politics of new media and new informational regimes involve a fundamental shift in the modality of the operation of power. I follow the Deleuzian and Foucaultian new media theorists alike in thinking that we need to rethink power itself beyond both liberalism and neo-marxism (not to mention neo-liberalism), and the overall analytical strategies on which they rest. We find ourselves, without doubt, well beyond the juridico-discursive mechanisms of sovereign power—neo-marxist and liberal theory has still failed to seriously confront this possibility.

My intervention within this broader Foucaultian-Deleuzian intervention surveyed above is then just the following: these efforts at reconceptualizing power need to be further radicalized. My claim is that we need to really rethink power beyond not only sovereign juridico-power but that we also need to press beyond both biopolitical-centered and control-focused conceptualizations of power too. Or at least we need to do so in order to comprehend the politics of the internet, the politics in our cell phones, and the politics of massive new corporate and governmental data processing projects (so called 'big data'). The basic biopolitical paradigm remains useful, especially vis-à-vis large scale population-management initiatives such as public health, but it is today far from comprehensive. So too the sovereign power paradigm remains useful, especially vis-à-vis state-centric political mobilizations such as wars against drugs and terror, but it too is not singularly exhaustive of the contemporary workings of power. In short, neither sovereign-centric nor biopower-centric analytics of power are sufficient for assessing the politics of new informatics assemblages. It is also worth mentioning that radicalizing the diagnostic theory of Foucault and Deleuze also suggests a corollary radicalization of the normative (or prognostic) theory associated with it—unfortunately, I cannot here develop this argument, which is too bad given that it would be quite controversial.[3]

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[3] If Foucaultian biopolitical societies are the social correlates of the administrative state, then they have met their normative theorization in the work of theorists of communicative democracy from Habermas to Rawls to Dewey. Public reasons liberalism, as it has come to be called, is our best theoretical response to the biopolitical machinations of the administrative state (I also happen to think it is a sufficient theoretical response, but that is a further argument, and involves pointing out that what suffices in theory can still leave a great deal of room to what would suffice in practice). But, I argue, if we need to radicalize Foucault's diagnostic apparatus of biopower, as I have already suggested, then it follows that we will also need to reconceive the basic normative project associated with the administrative state, which may have become a governmental form whose social correlates are no longer *exhaustively* representative of the society we find ourselves in. That we are no longer entirely inside of biopolitical societies, in other words, also means that we are no longer entirely inside of a problematic to which communicative democracy would be an answer. It is not that we are *beyond* biopolitical power and communicative democracy in the sense of having left it behind, it is rather that we are now enmeshed in other forms of power too, and so in a

Though a number of the Deleuzian and Foucaultians I have referenced are themselves pressing for a radicalization, on the whole their work remains too indebeted *at a conceptual level* to either Deleuze or Foucault or both. My concern is that this is a debt that can never be paid back. Why? Simply because Deleuze and Foucault themselves lacked the means of inquiry necessary for understanding the contours of our contemporary politics of information. This is not a criticism of Deleuze and Foucault. My point is only the simple observation that they did not live in our present (and so they could not have even tried to theorize the internet or the cell phone). It is rather a criticism of theorists today who remain within the shadow of conceptual material that was designed for other purposes (and remains useful for those other purposes, because we really still do find ourselves midst practices of biopower and control). We need to press outward toward new conceptual facilities.[4]

We can do this, however, without fully abandoning Deleuze and Foucault insofar as we draw on their work *for methodological guidance*. Making use of a distinction between *concepts* and *methods* (which I have elaborated elsewhere in collaboration with empirical social science)[5] that would be crucial for any contemporary usage of a moment from the history of philosophy, I thus propose to take from Foucault especially, and Deleuze less so, a *methodological* inspiration that teaches the need for moving beyond Foucault's, and Deleuze's, own *concepts* in the project of theorizing domains that French philosophy in the late 20th century could simply not have come to terms with for the simple reason that, for example, the internet as we know it did not yet exist.[6]

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sense beyond the univocity of biopower-and-communications. In other words, though we may very well still be within biopolitical-communicative spaces, we are also *in other spaces* too. These other spaces are those that the biopolitical-communicative paradigm (as well as the sovereignty-liberation paradigm) can hardly comprehend and even serve to distract us from recognizing.

[4] I develop this argument at greater length in "Michel Foucault's Critical Empiricism Today" in James Faubion (ed.), *Foucault Now* (Polity Press, April 2014).

[5] See Colin Koopman and Tomas Matza, "Putting Foucault to Work: Analytic and Concept in Foucaultian Inquiry" in *Critical Inquiry*, v39n4, Summer 2013: 817-840.

[6] And again, analogously, I argue the same for the normative theory here under consideration: we can set to the side Deweyan and Habermasian *conceptions* of communicative democracy but still benefit from the *methodology* of a reconstructive pragmatism that is their shared impulse.

The Emergence of Information Privacy

With this broader panorama in place, allow me to turn back now to the more focused fragment I shall concentrate on today. The broader picture is that of information politics. The focused fragment is that of the information politics of personal information privacy.

One familiar site for the first emergence of information privacy was the legal context. Privacy scholars today almost unanimously agree that American iterations of information privacy law begin in an 1890 *Harvard Law Review* article by Samuel Warren and Louis D. Brandeis entitled "The Right to Privacy".[7] Soon thereafter information privacy gained official legal status about 1905.[8]

Privacy theorists and legal scholars are correct to discern in Warren and Brandeis one of the first stabilizations of a legal conceptualization of what we would later come to call *informational privacy*, as distinct from other species of privacy such as Millian *decisional privacy*.[9] These scholars and theorists, however, too often look to Warren and Brandeis themselves for an explanation of how they arrived at a specifically *informational* privacy.

Two methodological concerns, both drawn from Foucaultian genealogy, disrupt this typical approach.[10] In the first place is the thought that we are rarely able to transparently account for the conditions of what we are doing.[11] Rather than rely on Warren and Brandeis to

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[7] Warren and Brandeis, "The Right to Privacy", *Harvard Law Review*, 4, 193, Dec. 1890.

[8] By the Georgia State Supreme Court in *Pavesich v. New England Life Insurance Co.* (122 Ga. 190; 50 S.E. 68;), but see also the much more limited New York state privacy statute passed by the legislature in 1903 (NY CLS Civ R § 50).

[9] Information privacy should not be confused with decisional privacy (canonical liberal privacy of conscience, belief, and decision as theorized by John Stuart Mill in *On Liberty*), bodily privacy (another more recent liberal notion as instantiated for instance in the Supreme Court cases leading up to *Roe v. Wade*), and associational privacy (which is yet another area of constitutional law in the U.S. context).

[10] Both of my methodological cautions, I would argue, can be seen as flowing from the genealogical analytic I here adopt from Michel Foucault. The *first methodological concern* can be put in terms of Foucault's archaeological and genealogical attention to the depths that condition the surfaces of our lives. Foucaultian genealogy, we might say, speaks to depth complexes of power-knowledge (*pouvoir-savoir*) that condition surface disturbances of particular acts of power and knowledge (*puissance-connaissance*). A genealogical or archaeological perspective thus looks beneath what is said on the surface so that we might attend to the very conditions in virtue of which it would even be possible to say such a thing as that. The *second methodological concern* can be put in terms of Foucault's abiding commitment to accounting for new regimes in practice in terms of the whole welter of conditions informing them, not just technologies, not just knowledge, not just power, not just ethical self-relations, but all of this and more. See for instance *Discipline and Punish*.

[11] My view, by contrast, is that social actors are infrequently able to account for the conditions according to which they act, at least when they conduct themselves in new ways. This is why the hindsight of history is invaluable. When we are dealing with new forms of human action, as exemplified by new regimes of privacy, we can rarely see the conditions facilitating what is emergent. Fortunately, we can look back, not only to explain why actors in the past came to say the then-strange new things that they said (as I shall do here for Warren and Brandeis), but also to

account for the conditions of their new conceptualization, we should leverage the benefit of our distance and ask ourselves to specify these historical conditions of possibility. A second worry is that the particular historical narrative that Warren and Brandeis themselves construct is an exemplification of a technologically determinist historiography according to which new ethical concerns are wholly engendered by new technical achievements.[12] Rather than accounting for new ideas as inevitable reactions to technological innovations, we should seek to explicate a wider array of conditions.

New Technologies: Early Information Technologies

Warren and Brandeis famously cite the Kodak camera,[13] the Hearst newspaper,[14] and "other modern devices" as spawning a new informational species of privacy concern.[15] Among the other devices to which Warren and Brandeis silently nod must have been the nineteenth-century electrical marvels of the telegraph and the telephone.[16] One other "device" at play then but in some ways forgotten now was a strange new machine spawned by the 1890 U.S. Census. While the census has rightly been regarded as a privileged site of biopower, the census that particular year showed signs of the machinations of a new form of infopower whose original context was to be sure biopolitical but which could also not be wholly contained by that context.

Warren and Brandeis published their article in December of 1890. In June of that year zealous census surveyors had taken to town and country in an effort to enumerate every citizen, their property, and certain of their attributes such as mental health status.[17] This raised a number of privacy concerns familiar to nineteenth-centurians who had been through it all before.[18] But the specifically informatic concern voiced by Warren and Brandeis has less to do with the age-

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explain to ourselves how things that were once-strange are now seemingly-natural (as is the case for some present ideas of information privacy).

[12] See Langdon Winner on technological determinism.

[13] The Kodak, the first consumer camera, was released in 1888 and almost immediately thereafter there emerged "the amateur photography craze". See for a view contemporary with Warren and Brandeis an editorial by M.G., "The Photograph Nuisance", in *The Nation*, Feb. 20, 1890, p. 153.

[14] The golden age of Pulitzer-and-Hearst-style yellow journalism was technically the mid-1890s, but the practices were already well underway by 1890. See for a view contemporary with Warren and Brandeis a short essay by John Bascom, "Public Press and Personal Rights" in *Education: An International Magazine*, Vol. IV, 1884: 605-611.

[15] See Warren and Brandeis 1890, p. 195, 206.

[16] On electricity's cultural confusions see the historical account by Linda Simon, *Dark Light: Electricity and Anxiety from the Telegraph to the X-Ray* (New York: Harcourt, 2004).

[17] For a relatively contemporary history of that census see Wright and Hunt, *History and Growth of the United States Census*, 1900.

[18] See for an exemplar the editorial by E.L. Godkin, "The Census Questions" in *The Nation*, June 5, 1890, p. 445.

old annoyance of nosy questioners, and everything to do, so they tell us, with new devices. The most attention-grabbing invention of the year 1890 was the census tabulating machine, built by a young electrical engineer named Herman Hollerith expressly for the 1890 tabulation. Hollerith's tabulators helped make possible the first mechanically-counted census in human history.[19] People found it fascinating. In its August 30, 1890 issue *Scientific American* featured a front-page spread of illustrations of the new machine in action and a story inside in which it was proudly asserted that "the work of this census is the first ever executed by electricity."[20] The massive statistical output of the new machine enabled all kinds of new demographic views of the nation before the year's end. After the census drew to a close a few years later, Hollerith went on to found the Tabulating Machine Company in 1896, which merged with three other corporations in 1911 to become Computing Tabulating Recording Company, which was then renamed in 1924 to International Business Machines Corporation.

Allow me to now step back from this micro-infopolitical details to raise again my methodological worries. Warren and Brandeis did not reference Hollerith's proto-computer. But surely it was one factor in the emergence of concerns over informational privacy threats. The example thus shows just how deaf social actors can be to the clattering conditions within which they themselves act. But even if Warren and Brandeis had discussed every conditioning device with exhaustive compunction, my second methodological concern remains. While technologies were surely an important factor in the emergence of privacy, any set of technologies that Warren and Brandeis could have cited, and which numerous historians of privacy have in fact cited after them, are by themselves insufficient for engendering new kinds of problems.

Technologies, devices, and gadgets do indeed matter. Technologies of information deserve our attention in puzzling through the history of the politics of information. But technologies come to matter only in the context of human conduct. It is what we do with technologies, and the practices that they figure in, that matters most. What we make technology do depends in part on possibilities inherent in devices themselves, but it also depends on an array of other factors, including what we do with our devices. One crucial vector for the difference that any technology makes concerns the ways in which users of those technologies envision themselves as agents capable of making use. In considering the use of technologies, then, it

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[19] On the use of tabulating machines in the 1890 census see Margo J. Anderson, *The American Census: A Social History* (New Haven: Yale University Press, 1988), 102ff..
[20] *Scientific American*, Vol. LXIII, No. 9, August 30, 1890, p. 132

matters much who users understand themselves to be. This brings us to the history of the subject or what Foucault often wrote about in terms of history of forms of subjectivation.[21]

<center>*New Subjects: Early Informational Persons*</center>

Where information came into contact with politics through new information technologies, this contact was conditioned in part by new users of new technologies. In this case, those new users were themselves subjects of the information they sought to master. Info-politics emerges, at least in part, on the basis of informational persons, or info-persons.

Allow me to return to Warren and Brandeis to attend to another conspicuous aspect of their article that many commentators continue to find puzzling. In the midst of making their claim for technologies as causal *factors* in the emergence of a new form of privacy concerns, Warren and Brandeis quietly invoked a new kind of *justification* for that old right to privacy which they referred to in liberal terms as "the right to be let alone."[22] They argue that, "the right to an inviolate personality affords alone that broad basis upon which the protection which the individual demands can be rested."[23] How did this *personality-based* justification for privacy come to supplant the extant *property-focused* rationales for privacy that Warren and Brandeis also explicitly argued against?[24]

To us today the idea of "personality" seems quite natural. But this idea too has its history. We all have personalities now—it is a quip about dullness to say of someone that they do not. But not long ago nobody had personalities—there just were no personalities, and no personality traits, to be had.

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[21] See Foucault.

[22] This term appears three times in Warren and Brandeis 1890 (193, 195, 205) including on the first page. They attribute the term to Judge Thomas McIntyre Cooley who coined it a few years previous in his influential *The Law of Torts, 2d Ed.* (Chicago: Callahan 1888), p. 29. Subsequent writers of the period cite Cooley in connection with the phrase in defense of an idea of privacy, for instance John Gilmer Speed in a July 1896 *North American Review* article titled "The Right of Privacy" (1896, 64). Speed, following Warren and Brandeis, describes this right as needful in the face of new practices of photography, reporting, and the "Röentgen ray" (or X-Ray) (1891, 67). Indeed, for Speed, our pursuit of the defense of this right is our moral duty (1891, 74).

[23] Warren and Brandeis 1890, 211; see also 205 for another use of this term.

[24] The central problematic to which the article is addressed is the need for a new justification of privacy in light of the fissures running through the old property-based regimes of justifications for privacy. Much of the first half of the article is devoted to a criticism of the prevailing regime of property-based justifications. The second half is thus addressed to the issue of what might take the place of property, as well as, I would argue, property's correlative form of subjectivity as *homo oeconomicus*.

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Personality emerged, in a sense that we today would recognize, as late as the 1880s and 1890s as part of a broader shift of sensibility of selfhood.[25] These understandings came into play against the background of entrenched, and thus competing, conceptions of persons. Invoking "personality" as a justification for privacy was thus by no means innocent in 1890. So we ought to regard personality not only as *a rational term* in Warren and Brandeis's argument, but also as itself *a conditioning factor*, alongside the new technologies they explicitly claimed as factors, for a new set of privacy problems. My claim, mindful of my first methodological worry, is not that Warren and Brandeis were themselves aware of this conditioning factor, but only that they themselves were conditioned by it.

Fortunately, other historians have excavated personality's emergence, including other historians who adopt the broadly genealogical analytic (in Foucault's sense) I here employ. Arnold Davidson excavates a shift that he says amounts to "the inauguration of whole new ways of conceptualizing ourselves" involved in the late-nineteenth century emergence of psychological, sexual, and medical categories that "went under the name of *personality*."[26] Davidson calls attention to Richard von Krafft-Ebbing, who argued in his 1886 *Psychopathia Sexualis* that getting a stable scientific grip on perversions of the sexual instinct required that "one must investigate the whole personality of the individual."[27]

Ian Hacking, in his history of multiple personality disorder in 1874-1886, considers too the history of personality. The French psychologists (Voisin, Azam, Charcot, Janet) who first conceptualized "double personality" located it in something more active that seemed to connote who a person is: "[N]o longer is it consciousness, a rather passive thing, that is doubled. It is *life, personality*, all that is active in the human soul."[28] The first explicit appearance of "multiple personality" (not joust "doubled") arrived in 1885 (Bourro and Burot) as a conception of differential constellations of tendencies of behavior inhering in the same body.[29] While

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[25] The term itself in its modern sense dates from at least the late eighteenth century (see the *Shorter Oxford English Dictionary* entry), our contemporary understandings of personality did not come into play until the later decades of the nineteenth.

[26] Davidson, *The Emergence of Sexuality* (Cambridge: Harvard University Press, 2001), 24, 13.

[27] Krafft-Ebbing 1886, 53 as cited in Davidson 2001, 23; see also Davidson 2001, 13 on personality in Legrain.

[28] Hacking 1995, 160. Whereas Hacking's account does feature the emergence of personality, he does not, like Susaman, take this to involve the depletion of a notion of character. Hacking makes much of an idea of "the soul" throughout his book (cf. 258, 260) in terms that seem to evince character. These points, while interesting, are not crucial for my argument, which concerns only the emergence of personality, and informational personality.

[29] Hacking 1995, 172

personality-centered diagnoses found their first niches in France,[30] American psychologists quickly caught on. The Harvard psychologist William James (before he saw himself as a philosopher) cited Janet in his 1890 *Principles of Psychology*, including in a long discussion of "alternate personality" in his chapter on self-consciousness.[31] The Boston clinician Morton Prince later wrote up two enormously influential cases of multiple personality in 1905 and 1908.[32] Boston in the first part of the twentieth century soon became, says Hacking, "the world capital of multiple personality."[33] Boston, we might now note, was also the city from which Warren and Brandeis wrote of their "inviolate personality."

To Davidson, Hacking, and other historians,[34] I aim only to add a connection to the thematics of information that are my concern here. What I call "informational persons" were just beginning to come into being in the 1880s. Warren and Brandeis's clinching justification of privacy cast in terms of "personality" had everything to do with these new kinds of persons.[35] Personality was a kind of receptacle or container in which were held instincts, tendencies, dispositions, or (using a slightly later but presently more influential idea of personality) traits. The elements in this container were thought to hold a clue to who someone is. Foucault offers a crucial conceptual clue to the incipient informatic dimension of personality psychology when he notes of Freud that he "turned the verbal expressions of illness, hitherto regarded as noise, into something that would be treated as a message" such that there would henceforth be "a message

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[30] See Hacking 1995, 161-3 on the role of hypnotism and hysteria in the French reception of the idea of personality.

[31] Hacking 1995, 223

[32] Hacking 1995, 132

[33] Hacking 1995, 133. It is worth noting that Hacking's focus in his study is on why early diagnoses of double personality "almost completely subsided by 1910" in both France and America (1995, 132). This moment in the history is, of course, fascinating. But for our purposes what matters is not the temporary disappearance of multiple personalities in the early decades of the twentieth century (vis-à-vis, some argue, psychoanalytic theories of repression) so much as the early emergence of multiple personality diagnoses at the site of the emergent psychological category of "personality" in the late-nineteenth century (a category that psychoanalysis profited from enormously).

[34] See Warren I. Susman, "'Personality' and the Making of Twentieth-Century Culture" in *Culture as History: The Transformation of American Society in the Twentieth Century* (New York: Pantheon Books, 1984), 271-85; on the role of psychological ideas of personality specifically for Warren and Brandeis see the excellent article by Robert E. Mensel, "'Kodakers Lying In Wait': Amateur Photography and the Right of Privacy in New York, 1885-1915" in *American Quarterly* 43, no. 1, Mar. 1991: 24-45.

[35] I thus disagree with a recent argument by Rosen and Santesso (2011, 16) that the conception of personality central for Warren and Brandeis, and presumably their contemporaries, was an eighteenth century invention rooted in Romantic poetry. Rosen and Santesso are of course correct to note that there was an important eighteenth-century conception of personality that persists in mid-nineteenth century literature, law, and politics. My argument is just that this conception was subject to transformation around the 1880s and split for a time into two separate streams. See David Rosen and Aaron Santesso, "Inviolate Personality and the Literary Roots of the Right to Privacy" in *Law and Literature* 23, no. 1, Spr., 2011: 1-25.

of illness."[36]   See how easily the language of personality psychology translates into the core categories of information theory: message and noise. The task of the emerging psy-disciplines would be to interpret or decode the messages that were figured as elements of personality. The units of personality are thus codes or messages. Personalities and traits, in other words, were figured as *essentially informational phenomena*.

The psychological idea that a person is a function of a personality which can be construed in terms of informatics messages was a crucial connector for later productions of informational personhood. Selves soon began to be constituted by all manner of informatic apparatus: not only medical files and psychological assessments, but also governmental identification documents such as social security cards and passports,[37] evaluational dossiers such as educational transcripts and economic profiles, and of course criminal records as instantiated in glorious biometric technologies like fingerprints.[38] From here, the emergence of the selves of online social media profiles and vast big data centers is not long off.[39] A conception of personality as a code or a text that others could scrutinize for clues as to who we are continues to resonate with these and other information-based conceptualizations of selfhood.[40] What is notable is that this very conception of informatic personality was operative as a factor, or again, a connector (perhaps a Latourian mediator) in the emergence of informational inflections of the morality and law of privacy.

In referring to the informatic naturalization of personality as a connector, my claim is decidedly not that the informationalization of the mind through the idea of personality forms the psychological foundation for informational persons. My claim is better seen in terms of the idea

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[36] Foucault, "Message ou bruit?" in Foucault, *Dits et Ecrits*, vol 1. (Paris: Gallimard, 1994), 559.

[37] See John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge UP, 1999).

[38] See Simon Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* (Cambridge: Harvard University Press, 2001).

[39] See on more recent aspects of digital personhood, including its surreptitious surveillance as well as its clamorous publicizing, work by Daniel Solove, *The Digital Person: Technology and Privacy in the Information Age* (New York: NYU Press, 1994).

[40] The hermeneutics of personality is thus only one among a suite of instances indicative of a major shift in the shape of selfhood. This informatic suite would later expand to include a wide range of other matters of concerns connected with, but not reducible to, the self. This later expansion is the one described by Donna Haraway as the mid-century "*translation of the world into a problem of coding*" in "A Cyborg Manifesto" in Haraway, Simians, Cyborgs, and Women: The Reinvention of Nature (New York: Routledge, 1991), 164. Prior to Haraway's encoding of the world in the golden era of information theory from the 1920s through the 1970s (an era whose emblem is the Bell Labs technician and information theorist Claude Shannon, who was for a few decades very much a household name), there was the encoding of selfhood, or the informationalization of the person, from the 1880s to the 1910s (an era whose emblem remains Freud).

of personality as one crucial node in a whole network of such relays. This network, like any other mesh of sufficient complexity, does not stand in need of a 'foundation'. What matters is a burgeoning problematization beneath all the surface noise in virtue of which all that disorientation up above is somehow tied together deep down. That deep knot had everything to do with the emergence of information, which is clearly a knot with which we are still reckoning. Information, its handling, production, and dissemination, was increasingly a kind of depth knowledge conditioning from below in difficult-to-see ways the surface knowledge of new psychologies, medicines, pedagogies, crimonologies, and soon a whole range of other elements of encoded worldhood.

To return in conclusion to privacy, then, we should note well one crucial feature of the personality traits whose *fin-de-siècle* emergence I have drawn attention to: personality traits were theorized such that they can variably be held in check privately or let loose publicly.[41] People in the late nineteenth century began to have personalities, and these personalities were expressly figured as capable of concealment or exposure, privacy or publicity. The aspects of those personalities that were most… well… personal were inviolate, or so some might have reasonably thought. Thinking so, some might feel pressure to insist on their inviolate status in the face of new technologies capable of surreptitiously invading our personalities. Perhaps we even need laws to protect our inviolate personalities. But to be capable of surveillance, harvesting, and distribution by "modern devices" and "recent inventions" the data that constitutes our "personalities" must first be taken to be there. Technologies thus matter, but so too do the users who use those technologies and the manner in which they conceive of themselves.

Conclusion

My too-brief argument here can now be summarized as follows. For there to be a concern over *personal information privacy* there must be *personal information*; and for there to be *personal information* there must be *informational persons*. Finally, then, we can say that *informational persons* are precisely the kinds of subjects over whom, and by whom, *informational power* can be exercised.

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[41] Freud, for instance, theorized crucial instances of the concealment of personality features in terms of repression, which is a kind of ultimate privatization.

We live in a milieu where informational grasping, programming, and projecting have become decisive modes of power in part because we live in a milieu where persons, we ourselves, are not only informationally saturated but also in part informationally constituted.[42]

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[42] Acknowledgments note [to be completed later].