

Designing spheres of informational justice

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Abstract J. van den Hoven suggested to analyse privacy from the perspective of informational justice, whereby he referred to the concept of distributive justice presented by M. Walzer in “*Spheres of Justice*”. In “privacy as contextual integrity” Helen Nissenbaum did also point to Walzer’s approach of complex equality as well to van den Hoven’s concept. In this article I will analyse the challenges of applying Walzer’s concept to issues of informational privacy. I will also discuss the possibilities of framing privacy from the point of the “art of separation” by looking at the intersection of information infrastructures and institutions.

Keywords Privacy · Informational justice · Spheres of justice · Michael Walzer

Introduction: privacy and informational injustice

In “Privacy as contextual integrity” (2004) Helen Nissenbaum presented a benchmark for privacy that builds on Michael Walzer’s “Spheres of Justice” (1983). She argues that within any given society different spheres or contexts ought to be distinguished and that each of these spheres is “governed by *norms of information flow*” (Nissenbaum 2004). Since each sphere is governed by distinctive norms she points out: “What matters is not only whether information is appropriate or inappropriate for a given context, but whether its distribution, or flow, respects contextual norms of information flow.”

In her paper Nissenbaum also refers to M. J. van den Hoven (1997) who suggested that “what is often seen as a violation of privacy has more to do with the information-traffic across the borders of what we... think of as separate social ‘spheres.’” Like Nissenbaum van den Hoven (1997, 1999) builds his concept of privacy on Michael Walzer’s theory of justice. He, too, argues in favour of blocking the exchange of information between different spheres.

In the first part of this paper I will have to demonstrate that it is not as easy to build a concept of privacy on Walzer’s theory of justice as suggested by van den Hoven and Nissenbaum. Although “privacy” as well as “information” might qualify as “social goods”, the application of Walzer’s theory of distributive justice leads to unexpected outcomes. However, I will point to Walzer’s approach to privacy in “*Liberalism and the Art of Separation*” (1984), where the separation of a liberal society’s institutions is presented in a similar approach to the separation of spheres in “Sphere of Justice”.

In the second part of this paper I will argue that the ethical design of information infrastructures ought to consider what Walzer calls the art of separation and has to include ways to block information exchange between institutions.

As Susan Leigh Star and Geoffrey C. Bowker have suggested in “How to infrastructure” (2006) the Internet, the Web and other kinds of networked media are to be considered as communication or information infrastructures. They also stated “that there are significant ethical and political concerns in the design of infrastructures.” In this paper I will argue that an adequate design of information infrastructures, which preserve “contextual integrity”, may contribute to the preservation of the “institutional integrity”¹ demanded by Walzer.

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¹ M. Walzer, *Liberalism and the art of separation*, p. 325.

Focusing on the separation of institutions and not of spheres might not lead to such a comprehensive theory of privacy as presented by Nissenbaum and van den Hoven. But this paper might still demonstrate that reflecting on Walzer's work might be beneficial in the context of information ethics.

Theoretical challenges

Since Michael Walzer does not explicitly address Information and Communication Technologies (ICTs) or privacy in "Spheres of Justice", in the following I will ask how "privacy" could be addressed in the context of the framework suggested by Walzer.²

Walzer's main intent is to present a concept of "complex equality":

Theories of distributive justice focus on a social process commonly described as if it has this form: *People distribute goods to (other) people....* I want to propose a more precise and complex description of the central process: *People conceive and create goods, which they then distribute among themselves.*³

Consequently, we have to assume a plural of "goods" which are to be distributed by the members of a society within this society in a way appropriate for each specific good.

As pointed out in its subtitle, "Spheres of Justice" is about pluralism *and* equality. The approach is pluralistic with regard to the different forms of distribution as well as with regard to different kinds of just societies: "Certainly, justice is better than tyranny; but whether one just society is better than another, I have no way of saying."⁴ This results from Walzer's assumptions that "[a]ll the goods with which distributive justice is concerned are social goods"⁵ and "[t]here is no single set of primary or basic goods conceivable across all moral and material worlds."⁶

The first assumption is unproblematic and almost self-explanatory: a good only valued by one person wouldn't cause any distributional problems. The distribution of a good within a society is only regarded as problematic when many consider it to be significant.

However, the second assumption earned Walzer the reproach of relativism. In the preface to the German edition, written in 1991, he comments on this criticism by pointing out that he already underlined his support of a "minimum theory of human rights" in "Just and Unjust Wars" (1977) (Walzer 1998).

This must be emphasized with regard to privacy as well, since it establishes the option to discuss the right to privacy as a human right in the context of Walzer's work. I tend to support this view, since Walzer highly values privacy in "Liberalism and the Art of Separation" (1984):

... the separation of public and private life creates the sphere of individual and familial freedom, privacy and domesticity.... This is, perhaps, the freedom that we most take for granted—the two-way television screens of Orwell's 1984 are a particularly frightening piece of science fiction—so it is worth stressing how rare a freedom it is in human history.... We greatly value our privacy, whether or not we do odd and exciting things in private.⁷

However, one should be careful to argue in favour of the right to privacy as a human right in the context of Walzer's work, since an infringement of these fundamental rights is perceived as a just cause for humanitarian intervention (Walzer 2002).

But there is no need to stay with an orthodox reading of Walzer's work. We may also follow Nissenbaum and van den Hoven and consider either "privacy" or "information" as social goods within the framework presented in "*Spheres of Justice*".

It seems reasonable to regard "information" as a "social good" within an information society, where "information" is regarded as an important resource. Now, according to Walzer each social good "ought to be distributed for different reasons, in accordance with different procedures, by different agents."⁸ That is to say that each social good ought to be distributed in its own sphere. So, if we consider "information" to be such a "social good", there ought to be a *sphere of information* in which information is distributed according to adequate norms and independently from the distribution of other goods.

Let us further assume that there are distinctive sub-spheres corresponding to the other spheres of a society. This is a crucial point: if there is no connection, information can be distributed within the sphere of information independently from all other spheres. Hence, accessing medical information from the economic sphere would not constitute an act of informational injustice, since the

² However, Walzer does address topics like "*freedom of speech*" and "*freedom of press*". M. Walzer. *Spheres of Justice*, p. 101. Therefore, Nissenbaum's claim, "Walzer's theory does not specifically address...regulations of information", is too strong. H. Nissenbaum. *Privacy as contextual integrity*, p. 140.

³ Walzer, *Spheres of justice*, p. 6.

⁴ Walzer, *Spheres of Justice*, p. 312.

⁵ Walzer, *Spheres of Justice*, p. 7.

⁶ Walzer, *Spheres of Justice*, p. 8.

⁷ M. Walzer. *Liberalism and the art of separation*, p. 317.

⁸ M. Walzer. *Spheres of justice*, p. 6.

information accessed still remains within the sphere of information.

Therefore, let us assume that the sphere of information consists of sub-spheres, which correspond to other spheres. For example, all information needed within the medical sphere would be grouped in a sub-sphere we may call “sub-sphere of medical information”. There might also be a “sub-sphere of business information” and so on. In this case, taking medical information into the sub-sphere of business information can be framed as an informational unjust act. However, the borders of these informational sub-spheres are not independent from the borders of the corresponding spheres, thus information as social good is not distributed independently from other goods and the society as a whole has to be called unjust according to Walzer.

How about “privacy” as a social good? In his later work Walzer actually describes privacy as a good, which is to be distributed equally within a liberal society:

The idea of privacy presupposes the equal value, at least so far as the authorities are concerned, of all private lives; what goes on in an ordinary home is as much entitled to protection, and is entitled to as much protection, as what goes on in a castle.⁹

First of all, we have to recognize that Walzer is particularly concerned about the separation of “private and public life [which] creates the sphere of individual and familial freedom, privacy and domesticity”.¹⁰ In doing so, he emphasizes the importance of a “protected space within which meaningful choices can be made,”¹¹ to afford “individual and collective self-determination”: “But space of that sort can only exist if wealth and power are walled in and limited”.¹² Hence it is wrong, if “the police... invade private homes in the name of morality or law and order”,¹³ since thereby the state abolishes the separation of “private and public life”: “Our homes are our castles, and they are free from official surveillance.”¹⁴

Again, it becomes obvious that we have to depart from Walzer’s original ideas since he is arguing in favour of the classical dichotomy of “private and public life.” It is also apparent that Walzer’s concept of privacy is mainly concerned with intrusion (physical access), even when he addresses the issue of surveillance.

However, it is striking that Walzer argues the case of privacy in his later article, while “privacy” is not mentioned in his entire book on justice. The reason for that seems to be that Walzer in his later article focuses on concrete institutions like churches, universities, families etc.—and not on spheres. Here, the state is playing a main role, “for it is the agent of separation and the defender... of the social map”.¹⁵ But the state can only take this role if it is separated from all other institutions, since the state is to be regarded as an institution as well. And particularly with respect to the separation of “market” and “state” Walzer declares:

As the institutions of civil society were protected from state power, so now they must be protected and the state too, from the new power that arises within civil society itself, the power of wealth.¹⁶

Although the lack of separation between “property” and “power” is criticized in both texts, in “*Liberalism and the Art of Separation*” Walzer focuses on the state as institution and thus creates a discourse on privacy. Hence, one could affirm with regard to Walzer (1984), that privacy in a liberal, democratic society represents a value to be distributed equally to each citizen.

However, even when we assume that privacy may be framed as a social good in a liberal, democratic society, there still is the question if privacy has to be considered a social good in all societies including non-liberal, non-democratic, yet just societies. For example, Walzer states that the Indian caste system may be absolutely conform to “(internal) standards of justice”.¹⁷ In the age of trans-global flows of information this does present a major challenge to the model, since there is no guarantee that each just society does regard “privacy” as a social good. The same must be said with regards to “information”.

Informational justice by design: institutions and privacy

As has been shown, it is not easy to address “privacy as informational justice” while staying close to Walzer’s original writings. The reason for this might be that neither the distribution of “information” nor “knowledge” is addressed in “Spheres of Justice” in a comprehensive sense. Of course, there are considerations about knowledge in the chapters on education and political power. But Walzer does not address the more fundamental questions of how people know about social goods and how to obtain them. On the contrary, he assumes that the members of a

⁹ M. Walzer. *Liberalism and the art of separation*, p. 320.

¹⁰ M. Walzer, *Liberalism and the art of separation*, p. 317.

¹¹ M. Walzer. *Liberalism and the art of separation*, p. 319.

¹² M. Walzer. *Liberalism and the art of separation*, p. 319.

¹³ M. Walzer. *Liberalism and the art of separation*, p. 321.

¹⁴ M. Walzer. *Liberalism and the art of separation*, p. 317.

¹⁵ M. Walzer. *Liberalism and the Art of Separation*, p. 327.

¹⁶ M. Walzer. *Liberalism and the Art of Separation*, p. 318.

¹⁷ M. Walzer. *Spheres of Justice*, p. 315.

society know the meaning of goods, because “[goods] come into people’s mind before they come into their hands; distributions are patterned in accordance with shared conceptions of what the goods are and what they are for.”¹⁸

Due to the difficulties that the status of “information” within the context of “Spheres of Justice” causes, I would like to suggest as an intermediate step to concentrate on institutions in liberal societies. In the article cited above, Star and Bowker have demonstrated the close and interdependent relationship between organisations and information infrastructures. These infrastructures are embedded in different social and technological structures, which have a certain reach or scope and are connected to “conventions of practice”.

Let us assume that “norms of information flow” are part of such conventions. This might not be true for all kind of institutions, but certainly within important areas like medicine and healthcare as well as public administration. By limiting the focus on formal institutions I do not claim that such institutions are the only sources of norms of information flow or that they have the monopoly power to govern such norms. Rather I suggest that we should expect institutions to be governed by appropriate norms of information flow in liberal societies.

Hence, the concept of privacy as contextual integrity may serve us as guide for the design of information infrastructures that are part of specific institutions at least. This argument is not as far-reaching as Nissenbaum’s claim “that there are no arenas of life not governed by norms of information flow”,¹⁹ since there surely are “arenas of life” outside of what Walzer considers as institutions. But at least the claim that there ought to be no free exchange of information between institutions can be supported by Walzer’s arguments (in his paper on the art of separation). Indeed, the proper design of an information infrastructure within a certain institution can be seen as part of the art of separation, when the design deliberately stops the flow of information at the border of such an institution.

Again, it is worthwhile looking at the findings of Star and Bowker concerning the importance of standards and norms of information interchange. While standardization may ease the flow of information, the use of different standards in different institutions may also be instrumental to separating institutions. Thus, I have argued elsewhere that the deliberate construction of semantic interoperability between information systems might be seen as a way to protect contextual integrity in the context of the semantic web (Nagenborg 2008).

¹⁸ M. Walzer. *Spheres of Justice*, p. 7.

¹⁹ H. Nissenbaum. *Privacy as contextual integrity*, p. 137.

Conclusion

As has been shown in the first part of this article, it is not easy to frame “privacy” or “information” as social goods in the context of Walzer’s “Spheres of Justice”. In the second part I suggested to link privacy as contextual integrity, the ethical design of infrastructures and Walzer’s “art of separation”. Bringing together “contextual integrity” and the “art of separation” enables us to base reflections upon information flows in and between institutions on Walzer’s work.

The concepts of “informational injustice” (van den Hoven) and “privacy as contextual integrity” (Nissenbaum) have already helped to sharpen our understanding of privacy. But building a concept of privacy based on Walzer’s approach to justice could also be more acceptable for those opposing ‘privacy’ as a product of Western liberalism. For instance, this might be helpful of the context in intercultural information ethics. As has been pointed out by H. N. Ollinger, J. J. Britz and M. S. Olivier “privacy” is difficult to frame within the African tradition of Ubuntu, which regards communalism and interdependence as core values (Ollinger et al. 2007). Therefore, being able to explain and justify privacy in a less individualistic framework might prove to be beneficial.

However, besides the challenges presented by the status of “information” in Walzer’s original work, the exchange of information between societies should be a key issue in further research on the topic, because even if “privacy” or “information” may be regarded as a social good in one society there is no guarantee that another society might share this view.

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