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ON TECHNOLOGY

Facebook and the 'Dead Body' Problem

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Senator Richard Durbin could scarcely contain himself as he placed his trap for Mark Zuckerberg. "Would you be comfortable," the senator asked the Facebook chief executive, peering over his glasses with campy solemnity, "sharing with us the name of the hotel you stayed in last night?"

Zuckerberg seemed at first to have been caught off guard. "Um," he began, and paused for a brittle laugh. In an instant, however, his furrowed brow relaxed into a shrewd smile at the corner of his mouth. "Uh, *no*."

Laughter rippled through the gallery. The senator pressed what he may have taken to be his advantage: Might Zuckerberg, he continued, share the names of people with whom he'd recently messaged? But Zuckerberg wasn't bothered to admit that there were things he would rather not divulge for unlimited American consumption. "I think that may be what this is all about," Durbin replied, in a triumphal tone. "Your right to privacy. The limits of your right to privacy. And how much you give away in modern America in the name of, quote, connecting people around the world."

Durbin seemed to think he had exposed Zuckerberg as a hypocrite. The occasion for the hearing, after all, was Facebook's sharing of data with third-party apps, which critics saw as an obvious violation of user privacy. But Zuckerberg seemed

to perceive, rightly, that there was no shame in conceding that certain kinds of data should be kept private. He was one of the world's richest men, and there were plenty of third parties — beginning with the protesters on the steps outside — who might be happy to exploit the public exposure of where he slept. It was easy to imagine the possible security consequences: further protests, bomb threats, kidnapping or worse. Durbin might as well have introduced into the Congressional Record an image of an upscale hotel room soaked in Mark Zuckerberg's blood.

Violence, or its absence, has long been at the center of debates among privacy advocates. When the privacy scholar Daniel Solove, for example, published a taxonomy of privacy infringement in 2006, a fellow law professor, Ann Bartow, was unimpressed. Though she agreed with his overall argument, she felt that the paper "frames privacy harms in dry, analytical terms that fail to sufficiently identify and animate the compelling ways that privacy violations can negatively impact the lives of living, breathing human beings beyond simply provoking feelings of unease"; his taxonomy, she complained, lacked "enough dead bodies."

"Most privacy problems," Solove argued dryly in response, "lack dead bodies." They also lack most of the other egregious consequences that people tend to emphasize when they want to up privacy's perceived stakes. Elsewhere, Solove has pointed out that such arguments are more often than not made with reference to the dire intrusions of George Orwell's "1984," a convenient shorthand for the crises of authoritarian omnipotence. The villain invoked is the rapacious watcher — the bilateral, panoptic "telescreen" in Winston's home — backed by ruthless violence. "Under this paradigm," Solove wrote, "privacy is invaded by uncovering one's hidden world, by surveillance and by the disclosure of concealed information." Durbin himself is a lawyer, as he reminded Zuckerberg, and implicit in his prosecution was the basic distinction of privacy law as conceived in the late 19th century: There is information that is private and information that is public, and the transgression of that boundary is a slippery slope to murder.

What Durbin discovered is that Zuckerberg was delighted to argue on that terrain. Facebook has no trouble endorsing an argument for privacy in the terms of revelation — the revelation of location information that might be seen by a knife-

wielding antagonist, at an extreme, or simply the drunken photos that might be seen by your boss. Our company, he said countless times over the course of his own interrogation, has menus upon menus of options to restrict the information other people might see and has limited third-party access since 2015. Besides, most users believe that they know what they are and aren’t broadcasting: If despised billionaires don’t post their hotel information, they won’t be killed, and if everybody else doesn’t post drunken photos, they won’t lose their jobs. All of this creates the impression that the adverse consequences of Facebook usage are only matters of disclosure, and that any breaches over the past few years are probably the user’s own fault.

Illustration by Jon Han

Solove proposed we relinquish our “1984” fixation and find metaphorical support in Franz Kafka’s “The Trial”: “a more thoughtless process of bureaucratic indifference, arbitrary errors and dehumanization, a world where people feel powerless and vulnerable, without any meaningful form of participation in the collection and use of their information.” In part this is about the difference between state and corporate power, but it’s also about effects subtler and further-reaching than the simple surveillance of what we mutter in bed.

We ought to worry, on his view, much less about the Thought Police and much more about how our informational profiles harden into the invisible architecture of our everyday lives. It's not that we might be observed or killed in our sleep, but rather that the availability of loans or jobs or romantic partners or upscale hotel rooms are already being silently and automatically withdrawn from "people like us" — people with our politics, people of our skin color, people with certain friends or predispositions, people without the wealth and power of Mark Zuckerberg. Or, in the case of the Cambridge Analytica scandal, it's that our political affiliations are being arranged on the basis of our greatest vulnerabilities. Zuckerberg is more than happy to grant Durbin a victory that leaves all of this potential intact.

The best recent definition of privacy doesn't require hotel-room carnage to make a case for why we should still pay attention to our persistent feelings of unease. The philosopher Helen Nissenbaum defines privacy not as one right to be balanced with others but as the condition of what she calls "contextual integrity." When we talk about privacy, she says, we're not talking about the difference between the intimacy of the bedroom and the scrutiny of the park, but rather the specific norms and expectations that govern communication among various parties at different times and places. The old public-private distinction, she writes, postulates "only two contexts with distinct sets of informational norms for each — privacy constraints in the private, anything goes in the public. The framework of contextual integrity, by contrast, postulates a multiplicity of social contexts, each with a distinctive set of rules governing information flows." There are things we discuss with lovers that we don't discuss with bosses, and things we discuss with doctors that we might not discuss with lawyers, and so on.

There are a variety of possible policy implications — beginning with the idea that a one-size-fits-all legal-consent model, where clicking "I agree" signs all your data away, should be regarded as nonsense. But the idea of contextual integrity is most immediately useful as a diagnostic aid in the absence of dead bodies, a way to render precise our otherwise vague sense of agitation. It does a lot, for example, to explain exactly what's so unsettling about the Cambridge Analytica issue, and why the congressional hearings were so unsatisfying. Many of the questions from our

elected officials seemed to turn on the epiphany that what seemed like a service to connect friends was actually a service to sell ads, but most Facebook users are neither that stupid nor that naïve; everybody knows at this point that if you're not paying for something, you're the product being sold. Yes, that omnipresent shoe ad might be creepy, but as autonomous subjects we feel more than capable of simply not buying the shoes. Our decision to purchase one shoe over another doesn't seem to have broad social consequences.

Until all of a sudden we weren't talking about shoe ads anymore, and we weren't talking about minor personal decisions that could easily be reversed. It turned out we had been prepared to accept some intermingling of the norms of personal communication with the norms of the commercial marketplace, but even the most cynical among us didn't quite realize the implications of letting all that bleed into the political. There was at last clear evidence to support a notion of privacy as a social good rather than an individual right — and, finally, a way to talk about why privacy matters without recourse to sensationalism. The "dead bodies" of the privacy debate might finally be laid to rest.

Gideon Lewis-Kraus is a writer at large for the magazine. He last wrote about the business of private jets.

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