

Technology and Privacy

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Modern technologies are making the debate over the scope of privacy almost beside the point. In particular, while this debate focuses on the scope of decisional privacy, major social forces are using new technologies to manipulate the very meaning of informational privacy. As knowledge-based personal and social rights are being reduced to electronic rituals of mass deception, the liberal plan for rational governance is awash.

The liberal plan calls for assuring individual rights through the rule of law that accommodates cooperative interaction of a democratically structured public sphere and an autonomous private sphere made up of family life and business. Towards this end, defenders of civil liberties have been most attentive to the excesses of statism. The U.S. Supreme Court has responded with a constitutional "right to privacy" that limits government regulation of certain personal decisions. In particular, this right has been found to protect some decisions about reproduction, including termination of a pregnancy, and the latter have generated intense public controversy. (Analogous controversies have been raging in other countries, including most recently Poland and reunited Germany.) As a result, the very idea of a right to decisional privacy has come under attack, primarily for moral and ideological reasons, but also because of jurisprudential difficulties with the meaning and scope of a right to privacy. In response, jurists and philosophers have sought a definition of privacy that will facilitate judicial rulings as neatly as do the distinctions between types of felonies or torts. Central to this search is a narrow concept of privacy as the guardian of intimacy.

Meanwhile, an alternative definition of privacy as protector of information is being severely challenged by technological innovations; and legal responses for the most part simply manifest the inability of law to keep up. These legal protections of privacy are concerned especially with access to information. Just during the 1970s, for example, the U.S. Congress enacted seven statutes the purpose of which was to protect the secrecy of records being maintained about a person's performance in school, credit worthiness, financial condition (as determined through bank records and tax returns), and criminal convictions.¹ As part of a larger study on the complexities of the public/private distinction, I propose here to point out by a series of examples how technological innovation affects both the intimacy-related and the information-related definitions of privacy.

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Technology and Intimacy

Technology's record with regard to intimacy is uneven, partly because a perceived need for technological protection is not necessarily a sign of progress. Take burglar alarms, for example, which would be superfluous in a true *Gemeinschaft* but have become increasingly popular in our *Gesellschaft* world.

A burglar alarm system is supposed to enhance its user's privacy. It may not, however, as I learned from personal experience with an early "state of the art" home security system. We had just moved into a house connected to a dedicated line, and saw no reason not to take advantage of this extra protection. After several visits from the police in response to false alarms, we adults decided nonetheless to set it before going out of town one weekend. Mid-afternoon, my son returned from school and, having forgotten that he had, as instructed, left his overnight bag in the garage, he unlocked the door, activating the alarm. He did not have a key to turn it off. Nor did the police, who knew the way by now. Nor did any of our neighbors, who, surprisingly, still speak to us.

What is needed here, the techno-fixer might insist, are more efficient burglary avoidance technologies. Perhaps so; but of what would that consist? Installation of a lock encourages development and use of lock-picking devices; and the latter encourage use of dead-bolts. The more secure doors become, the greater the incentive to improve alternative means of access, say, through windows. This, in turn, requires the security seeker to install a security system that will signal the occurrence of an unwanted intrusion. Unfortunately, the signal may be useless if only local (whether in an urban or in a rural environment, but for different reasons); so the security seeker may have the system connected to a central monitoring service set up to notify law enforcement. This in turn can diminish one's domestic privacy to the extent that the technology is unable to distinguish friendly from hostile intrusions. So to deal with innocent activations of the system one needs a way to transmit a "no-harm-done" message to one's monitoring service. If the system is connected to its monitor by wire (as all earlier vintage and most cheaper models are), a knowledgeable burglar need only cut the wire. Motion-detectors are supposed to eliminate this glitch. But early models were notoriously indiscriminate (both protectors and protectees came to hate flying insects). So more sophisticated (and expensive) electronic detectors are now being counted on for still more reliable safeguarding of domestic (as, of course, of commercial) security. The wire-cutting problem, once soluble only by resorting to a dedicated telephone line, can now be dealt with by coopting one's regular phone just long enough to get the monitor's attention. Perfectly reliable protection is, unquestionably, just a few modifications away.

Conceptualizations aside, such techno-protected privacy is essentially the same as that of a castle which in time is found to be

discouragingly accessible to new castle-crashing technologies (Volti 1988, pp. 169-219) or of a bunker demolished by heat-sensing "smart bombs." But perhaps such examples transcend the rhetorical scope of privacy rights; so consider instead that longstanding battleground of privacy, the telephone.

A telephone--"private" or shared, listed or unlisted--is no guarantor of privacy. Unwanted calls ranging from "wrong numbers" to death threats are a possibility once one is plugged into the system. Caller identification technology, now available in some areas, can block calls from or trace calls to particular numbers. This, however, discourages callers who wish to remain anonymous; and anonymity is advantageous for some purposes (for example, to encourage police tipsters), although not for others (for example, in taking telephone orders and emergency calls). Another round of technology, then, to the rescue: a special service through which (for a fee, of course) one can call anywhere without having one's number disclosed. Not good enough, say civil libertarians. Why should one have to pay for a level of privacy that was free before caller identification came along? They forget, however, as those in secretive lines of work do not, that the public phone is a low cost guarantor of privacy. These special service problems aside, any "live line" remains subject to the electronic intrusion of random calls from telemarketers -- or from fax machines on which one's number has been erroneously dialed, resulting in fierce screeching noises when answered.

Similar intrusions upon intimacy may be traced, but less obviously, to other technologies. Motor vehicles do not simply enhance the individual driver's autonomy; they clog rural highways, transform urban space into traffic jams, distort planning, building, and living patterns, and, in general, reduce the very possibility of life in community. Domestic tranquility is diminished by car, trains or planes passing nearby, by the amplified throb of an "acid party" in the neighborhood, by radio and television receivers that make books increasingly unappealing, and by ever more commercial domination of sports, recreation, entertainment, health, and even education. In short, far beyond the minuscule sphere of legally defensible privacy, there are countless technological intrusions that affect intimacy without being associated with questions about privacy.

Technology and Information

Appropriate as are concerns about technology's impact on intimacy-related privacy, they should not distract us from the incomparably more pervasive impact of technology on informational privacy. This can be illustrated by a few examples, the first being electronic data processing (EDP).

As anyone knows who has ever been arrested or denied credit because of erroneous but determinative information relied upon by a decision-making entity, EDP can very quickly upset one's previous

understandings about privacy. Because computers, unlike earlier modes of data storage, tend "to cut the individual out of the information circuit once his data has been disclosed to the system," they challenge "the traditional notion of" and pose "new technological risks to private life." But reactions seldom rise beyond efforts to strike a balance known as data protection. So, for example, the Council of Europe's committee of experts on data protection seeks to "sensitiz[e] governments on ways of meeting the new challenges" (Early 1989; Council of Europe 1981, 1980). Sensitizing governments is not, however, as simple as it sounds, for the following reasons.

First, it is hard to decide just what sorts of information ought to be protected and at what cost. Computer manufacturers used to say that unauthorized intrusions would be prohibitively expensive; but inventive hacks have proven this to be untrue. As a result, the latter are no longer regarded as high-tech heroes; but their intrusive genius has forced people to acknowledge that not even systems as sensitive as those dedicated to the global transfer of trillions of dollars can be considered immune (Markoff 1990; Mufson 1990; Goldstein 1975).

To be useful, of course, data has to be accessible to those for whose use it has been collected; so there are limits to how effectively it can be protected from outsiders. This has led to proposals to gradate data. According to one proposal, it should be divided according to level of sensitivity. The highest level of protection would apply only to inherently sensitive intimate (e.g., medical or sexual) data; a medium level of protection, to judgmental data misuse of which could cause harm to the data subject; and the lowest protection, to biographical data that are sensitive mainly because they may provide access to data that is on a higher level of sensitivity. (Bing 1972; Wacks 1989, pp. 227-29). Another proposal calls for hierarchizing an organization into levels of responsibility for data protection and utilizing a "seven-stage affidavit" regarding data protection for use in court and to show compliance with statutory requirements (Sizer and Newman 1984, p. 159 fig. 4 and pp. 169-71; Canadian Commission 1980, pp. 403-08).

Second, even if a government does adopt data protection as a goal, its efforts in this regard can have only limited success. Apart from the fact that a government is likely to be part of the problem, reliance on laws as a solution is inevitably flawed and ultimately ineffective. This can be seen, for example, by comparing the provisions of the U.S. Privacy Act of 1974 with its stated objectives. The objectives: openness (public scrutiny of federal agency record keeping activities), individual access and participation; limitations on collection, use and disclosure; information management, procedural requirements, and so on.² The actual legislation, however, exempts most intelligence gathering agencies, ignores the need to constrain the gathering of information, provides for minimal redress under civil or criminal law, and fails entirely to institutionalize compliance monitor (Greenawalt 1975, pp. 56-63).

Third, data protection laws will not prevent ever more consequential applications of EDP. A proposal to establish a national data bank accessible to all agencies of the U.S. federal government has been debated for years, but because of strong opposition has not been carried out—at least not with the public's knowledge. In France, however, the equivalent of a national data bank has existed since a 1951 decree called for "the collection and centralization of political, social, and economic data about which government needs to be informed." As the technology became available, this data base, known as the RG (*Les Renseignements généraux*), was computerized, and now includes not only the kinds of data specified in the original decree but also files on some 370,000 politically important public figures and 70,000 potential terrorists. These files are maintained under a law passed in 1978 that prohibits storing name-linked data which reveals without consent one's racial origins, political, philosophical, or religious opinions, or union affiliation; but the 1978 law allows procedurally authorized exceptions for national defense and public security (Reix 1990; Logcart 1990; Portes 1990; Kayser 1986, pp. 290-99; Kilian 1986, pp. 99-101).

Fourth, some governments have become more "sensitized" than others about data protection; and this creates an imbalance among the countries involved. Italy, Portugal, and Belgium have no data protection laws. Sweden (the first country to enact data protection legislation) requires notifying the data subject, specifies conditions for release of data, and monitors compliance. Canadian statutes covering all citizens and permanent residents focus on economic considerations.³ European statutes that follow the Council of Europe's convention regarding data protection endorse: obtaining and processing data fairly and lawfully; holding it for a specified and legitimate purpose or purposes and not using or disclosing it in a way that is incompatible with those purposes; seeing that it is adequate, relevant, and not excessive; keeping it name-linked no longer than necessary; making it accessible to and correctable by the data subject; and establishing security measures to protect against unauthorized access or destruction (Council of Europe 1982, arts. 5-8).

Signatories of this convention legislate its provisions differently.⁴ In particular, the differences among countries with regard to data protection laws create both opportunities and problems, especially for companies whose profits depend directly or indirectly on the use of computerized data. At issue here is transnational data flow, which can be problematic because of either unequal technology or unequal rules. Data is likely to be processed in the country with superior technology at the expense of the country from which it flows, thus creating economic problems which may generate political overtones. If the technologies are comparable but the data protection rules are not, profit-oriented companies take advantage of the discrepancy in either direction. Clients interested in data protection, such as financial services, will store data in a country with more stringent rules (a "data vault"). Clients more

interested in access, say, for credit reporting or subscription processing, will seek data stored and processed in a country with more lenient rules (a "data haven") (Katzan 1980, pp. vii, 6-8, 81-82). This suggests a kind of cross-national equilibrium; but polarization is just as likely, especially because most transnational corporations are not directly involved in exploiting these inconsistencies and find they hinder their cross-border operations ("Privacy Laws" 1990).

There is, of course, no exact precedent for the problem of computer data protection. But the sense that a technology is diminishing one's control over information about one's self has a long history, as can be seen from court records of public figures who have sought legal enforcement of their zone of inaccessibility.⁵ The technologies involved include etching, painting, print, and especially photography. Today, however, other technologies offer greater challenges.

Communications technologies are especially helpful for obtaining personal information that individuals prefer to keep private. In earlier times governments used postal agents as the front line of their spy network. Communication by the telephone and its progeny was soon being attended to by interceptive devices, and their revolutionary capabilities soon led to efforts to limit their effects. Out of these efforts came the "discovery" of a right to informational privacy. The U.S. Supreme Court declared wiretapping to be constitutional in 1928; but in 1967 it decided otherwise in the famous case of the bugged telephone booth.⁶ A year later, Congress legalized wiretapping but prohibited use of information thus obtained as evidence.⁷ In 1972 the Court declared federal wiretapping without a warrant to be unconstitutional but it acknowledged a president's right under "executive privilege" to withhold taped conversations sought by a subpoena duces tecum.⁸

The effectiveness of these laws is very limited, because of the difficulty of enforcement and the emergence of wireless and non-vocal communications. They in no way restrict agents of one country from electronically monitoring communications originating in another country (Urban 1990). They do little to limit surveillance made possible by the cooperation of one participant without the knowledge of the other. Nor do they prevent a private individual from using any of a number of inexpensive eavesdropping devices now on the market for either remote or proximate surveillance (LeMond and Fry 1975, pp. 26-49, chs. 3-4; Kayser 1986, pp. 120-26). Such devices produce only "bottom of the line" results, of course, unlike the essentially undetectable intrusions that are possible if an institution in control of mass communications, such as a telephone company, is cooperative. This elite private spying is predominantly at the service of corporate interests (O'Toole 1978, chs. 2-4, 8).

The private-sector spy is not constrained by legal sanctions which are aimed almost exclusively at government activities. So long as the

snooping is done under the auspices of a "private sector" entity, it is unlikely to violate any criminal or constitutional law. So what a government is not supposed to do directly it can do indirectly by contracting out its thirst for knowledge to technically private organizations.⁹

Private employers, in turn, have not been backward in their efforts to learn all there is to know about subjects of interest to them, be they internal (involving their own employees) or external (involving especially the activities of their competitors). Long interested in monitoring their employees' on-the-job activities, they now do so with the help of quite sophisticated equipment. Using tiny, fish-eye lenses installed behind pinholes in walls and ceilings, locker room hidden cameras, dashboard computers, and telephone monitoring devices, they attempt to spot everything from below-standard performance to criminal behavior (Rothfeder 1990; Marx and Sherizen 1986). Surveillance of one company's activities by another is potentially much more rewarding but is subject, as are countermeasures, to the same cost-benefit analysis as any other business endeavor. For example, if a company sends encoded data over a common carrier line, it can be recorded. In fact, with sophisticated equipment and technical skill it is possible to record the electronic signals driving a computer printer and from this recording generate the same eye-readable output. Countermeasures are possible but relatively expensive. And, generally speaking, companies tend to worry only about financially sensitive data (Sizer and Newman 1984, pp. 183-96).¹⁰ But now that corporate takeovers have become a global activity in which domestic rules are made to be broken, electronic surveillance one company's corporate headquarters by another may be the fastest growing sector of this rapidly expanding industry.¹¹

By far the most pervasive technological intrusiveness is, arguably, that made possible by the mass media. Yet a number of free market thinkers have argued for an end to their regulation. Ithiel de Sola Pool, for example, long complained that in the United States First Amendment protection of speech and press was being restricted for the most part to print media, which were in place when our Constitution was adopted. The newer communications technologies were being regarded as scarce resources that require government regulation to avoid monopolies that would not be in the public interest. But, Pool maintained, as new communications technologies (notably coaxial cable, satellites, and fiber optics) are developed and improved, the old assumption of media scarcity becomes utterly untenable. Thus he faulted the Court for maintaining an illusion of status quo ante which justified their ruling that the telecommunications industry is not entitled to First Amendment protection because it is only for commerce. In the name of overseeing monopolies, they granted an individual's right to self-deliver messages but proscribed private sector deliveries. Then they appealed to a family's right to privacy in approving government censorship of television. This "game

of mirrors," Pool warned, was leading to a constitutional crisis, because electronic technologies are blurring all the old distinctions between print, wire, and wireless means of transmitting information (Pool 1983, pp. 4, 16, 30, 32-54, 61, 67-73, 98-100, 105-07, 166, 207-08). So he (along with other MIT-based scholars) wanted law to get out of the way and let technology take control.¹² This is now happening on a grand scale -- but it is commerce rather than pure and pristine technology that is taking control.

The interests of major investors in first radio and then television were carefully protected by agencies such as the FCC in the United States. The task of the FCC since its inception in the 1930s was to protect the public's airwaves in the public interest. The way it did this, however, enabled the three major television networks to control outlets to which they fed the same relatively noncompetitive programs. This cozy arrangement all began to come undone, however, with the advent of new technologies, notably cable and communications satellites, that together make the horizontal transmission system obsolete. For several decades the institutions of government protected the "old values" by a series of rulings that kept the new technologies out of the major markets being served by the old.¹³ In time, however, legal discourse learned the language of the increasingly powerful commercial interests (including in time those of the networks) that are tied to the new technologies. During the 1970s a combination of legislation, Supreme Court rulings, and ever more liberal FCC rulings opened the domestic market for cable and domestic satellite broadcasting. The dam gave way only gradually, thus allowing time for investments to be appropriately redistributed, but gave way it did (Swann 1988, pp. 115-18, 155-57, 175-80, 283-87).

Contemporaneous with and in part a *sine qua non* for this deregulation of radio and television was the deregulation of telecommunications, which AT&T had dominated for much of a century as a pro forma regulated monopoly. During most of that time it either coopted or suppressed technological changes that threatened this position. Its exclusive patent rights to the telephone (acquired in 1880), ran out in 1894; but it stifled emerging competitors by agreeing two decades later to function as a common carrier available to independents, to subsidize local service even to unprofitable areas by higher than necessary pricing of long distance service, and to be subject to rate of return regulation of its 80-90% control of the market. To its control of wiring it eventually added that of coaxial cable (narrowband for telephone and radio transmissions, broadband for network television). It was even able, in the short run, to keep both microwave and satellite technology on the periphery of its electronic world. In time, however, the world grew too big even for Bell.

The restructuring of AT&T took place on a number of fronts at the same time. A decade-long antitrust suit was settled by means of a 1982 consent decree that spun off seven regional service companies but preserved the parent company both as common carrier and as principal

provider of long-distance communications. The FCC in the meantime had gradually allowed independent services onto or even apart from the Bell network. Microwave communications (the scientific basis for which had been known since the beginning of the century) were let in, first only for a firm's own use, then to serve as a "specialized common carrier," and eventually to carry computer data through "fully separate" subsidiaries (Swann 1988, pp. 118-22, 157-59, 180-83; Moore 1973, pp. 79-84; Byrne 1981).

Thus has the telecommunications industry been deregulated; but that is not all. In the late 1970s it was granted the First Amendment rights that Pool and others considered its due. This marks not the end of a constitutional crisis but the freeing of the industry from any significant public responsibility. The roots of the change go back to 1886, when the court found that corporations are persons under the Fourteenth Amendment.¹⁴ Upon being reminded of this early ruling, already prominent in other business-favoring decisions, the Court moved quickly to liberate consumers, in the name of "listeners' rights," from the shackles that had limited the number and variety of messages marketers were prepared to beam in their direction. First came a series of decisions that linked the First Amendment and personhood to protect information dispersed by certain public interest organizations.¹⁵ Then came a series of pro-business decisions that effectively surrendered the media to the major corporations.¹⁶ The result is that business now not only advertises but engages in "advocacy advertising" and even provides the media with prepackaged and non-attributed "news" items -- all in the interest of the "free flow of commercial information" (Schiller 1989, ch. 3; Sherrill 1987; Rone and Roberts 1985; Miller 1981).

These examples, though selective, suggest that commercial capture of information technologies debilitates everyone's right to privacy far more comprehensively than do government intrusions on one's intimacy. For, it is making access to information the prerogative of corporate entities, and public exposure, the lot of individual human beings ("Computers and Privacy" 1991; Compaine 1979). Under these circumstances generalizations about technology's impact on privacy can be misleading at best. But they are nonetheless instructive.

On the optimistic side, media analyst Marshall McLuhan assured us that the long term effect of all of this would be an intricately interconnected world in which people everywhere are cognizant of one another's affairs to the point of constituting a "global village" (McLuhan 1962; McLuhan and Fiore 1967). The way the world has watched recent events first in eastern Europe and then in the Middle East might tempt one to say that technology is indeed expanding the public sphere; but in the very process it is undermining the role of all but self-selecting experts.

Speaking for the pessimists, Martin Pawley thinks people not only are being privatized by mass media but are enjoying it as they shed their

sense of responsibility for others. Each "private citizen" (surely an oxymoron) lives for self and ever fewer others. With individuals thus cut off from the public sphere, says Pawley, centralized bureaucracies tend to their social needs, usually through the agency of social workers (Pawley 1975, pp. 49, 99-102). Even Pawley, however, is too optimistic in that the official in charge of "propping up" the privatized individual may be not a social worker but a military recruiter.

The kind of culture that this commercial capture of technology makes possible is barely distinguishable from any other technocracy: no problem, however complex, can escape a technological solution. But the technological fix has now moved, like a thrombosis, from the periphery to the core of the public sphere. Political and social problems of awesome complexity are reduced to disarmingly banal imagery. Even war is reduced to charts and pointers, its success being measured by the number of sorties (not bodies, mind you) and its consequences displayed as homecoming parades. Alternative accounts are attainable; but potentially demythologizing information is concealed from most citizens behind a veil of constructive ignorance. Privacy once again is less the right of the freethan the prerogative of the strong.

NOTES

- 1 These include the Fair Credit Reporting Act (1970), 15 U.S.C. 1691 et seq. provisions of the Omnibus Crime Control and Safe Streets Act of 1974, 18 U.S.C. s. 2510 et seq. Cum Supp. 1985; the Privacy Act of 1974, 5 U. S. C. s. 552a; the Family Education Rights and Privacy act of 1976 (Buckley Amendment), 20 U. S. C. s. 6103; the Right to Financial Privacy Act of 1978, 12 U. S. C. s. 3401 et seq. and the Privacy Protection Act of 1980, 42 U. S. C. s. 2000a.
- 2 Privacy Act of 1974 (U.S.), Public Law 93, 579, s. 2(b).
- 3 Canadian Human Rights Act, July, 1977; Protection of Privacy Act 1973-74 (Canada), c. 50; Privacy Acts of Saskatchewan (c. 80), British Columbia (c. 39), and Manitoba (c. 74).
- 4 The Data Protection Act 1984 (UK), Cmnd. 8539, HMSO, 1982. (See Newman 1984; Austin 1984; Hewitt 1980.)
- 5 Royalty were among the earliest plaintiffs, but creative artists (writers and painters a century ago, more recently stars of stage and screen) have become the principal catalysts in this area of law.
- 6 Katz v. United States, 389 U. S. 347, 353 (1967). In Berger v. New York, 388 U.S. 41, the Court had already enumerated constitutional conditions for court-ordered wiretapping.
- 7 Federal Communications Act, 48 Stat. 1103-04 (1934), 47 U.S.C. s. 605 (1958); 1968 Omnibus Crime and Safe Streets Act. New York prohibits use of information obtained by wiretapping as evidence: N.Y. CPLR s. 4506. Some states have banned wiretapping: Ill. Stat. Ann. ch. 38, ss. 14-1 to 14-7 (1961); Nev. Rev. Stat. s. 200.650 (1957); N. Y. Pen. Law s. 738. (LeMond and Fry 1975, pp. 7, 9-13.)
- 8 United States v. Nixon, 418 U.S. 683 (1974).
- 9 In the United States, these private organizations are likely to include a large number of former government agents, referred to as "Exes." One such organization, the Wackenhut Corporation, provides guards for government agencies which under the law cannot use government employees for this purpose. Others have been hired by the Central Intelligence Agency to do domestic surveillance it is forbidden by statute to undertake. Another, called the Law Enforcement Intelligence Unit (LEIU), acts as if it is a "private--sector" linkage of state and municipal police intelligence units but it is said to depend upon a generous supply of state and federal funds.

¹⁰ Encoding of data is "largely confined to the real-time on-line banking system, where the vast amount of money represented by the electronic fund transfer processes demand the highest possible order of protection" (Sizer and Newman, &&, pp. 202-03).

¹¹ These more high-tech methods of gaining information may not be any more informative than the more mundane approach of simply hiring knowledgeable employees away from one's competitor; and they may be understandable only within a context of broad-based information gathered by researching quarterly reports and other documents that are readily obtainable in the public domain (O'Toole 1978, pp. 48-52).

¹² Pool's argument offers no resistance to the cable industry's insistence that it have no social responsibility for providing access channels or for wiring poorer neighborhoods (Schiller 1989, pp. 56-57; Mininberg 1984, pp. 595-96, 598).

¹³ Initially, lawmakers laid the cornerstone of this protection by restricting the use of communications satellites to international as distinguished from domestic signal transmission. On the domestic scene, the FCC authorized the use of cable only to extend network signals to less populated areas not served by network antenna and, in furtherance of localism, required a black-out of any signal imported into an already serviced area ("exclusivity").

¹⁴ Santa Clara County v. Southern Pacific Railroad, 118 U.S. 394 (1886).

¹⁵ Bigelow v. Virginia, 421 U.S. 809 (1975) (advertisement of birth control facilities); Virginia Board of Pharmacy v. Citizens Consumer Council, 425 U.S. 748 (1976) (information about drug pricing); Linmark Associates, Inc., v. Willingboro, 431 U.S. 85 (1977) (information regarding civil rights and integrated housing).

¹⁶ First National Bank of Boston v. Bellotti, 435 U.S. ___ (1978) (business contributions to a state referendum are protected commercial speech); Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York, 477 U.S. 530 (1980); Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980) (norms for state suppression of corporate speech no higher than for editorial speech).

Philosophers and Social Responsibility in Technological Society

Leonard J. Waks

I. The Problem of Public Intellectuals

A noteworthy phenomenon of our times is the emergence of professional groups promoting themes of "social responsibility." An early example was the Union of Concerned Atomic Scientists. More recently we have heard from Physicians, Educators, and now even Computer Scientists for Social Responsibility.

These groups have focused their attention on the public issues of late industrial society -- particularly on nuclear weapons and the environmental effects of the global industrial enterprise. They have attempted to reinvigorate what Robert Bellah and his co-authors (1985) have called our "second language" -- the language which extends beyond individual freedom and self-interest to address the resolution of public issues and the responsible co-creation of a common good. Group members draw on the knowledge and authority specific to their professions to inform and enrich the debate on public issues.

A second, and contrasting, phenomenon has been the increasing professionalization of our intellectual life within universities and academic disciplines. It is now a commonplace to note the decline -- even the disappearance -- of any robust public intellectual life. Instead of addressing our common public concerns, and hence assuring us in learning and speaking this "second language," our university-based professional intellectuals appear to be speaking -- in smaller and smaller sub-communities -- to themselves.

A recent New York Times "ideas and trends" article with the headline: "The Intellectual Issue for the 1990's Is Why America's Intellectuals Have Faded Away," (Hanan, January 28, 1990) states "the question is no longer whether the intellectuals are in hiding, but why." And an article in a recent Chronicle of Higher Education (Kidder, January 30, 1991) laments that we have managed to "construct a society in which the connections are missing between the age's best minds and its worst problems." Arthur M. Schlesinger remarked at a recent conference (Hanan, 1990) that "we need ideas -- people are starved for them -- because we have so many problems."

Intellectuals for Social Responsibility

So the question arises: where are the Intellectuals for Social Responsibility? How can intellectuals augment their professional practice as university-based scholars by responding, as atomic scientists,