



Why privacy keeps dying: the trouble with talk about the end of privacy

Nicholas A. John & Benjamin Peters

To cite this article: Nicholas A. John & Benjamin Peters (2017) Why privacy keeps dying: the trouble with talk about the end of privacy, *Information, Communication & Society*, 20:2, 284-298, DOI: [10.1080/1369118X.2016.1167229](https://doi.org/10.1080/1369118X.2016.1167229)

To link to this article: <https://doi.org/10.1080/1369118X.2016.1167229>



Published online: 31 Mar 2016.



Submit your article to this journal [↗](#)



Article views: 1961



View related articles [↗](#)



View Crossmark data [↗](#)



Citing articles: 5 View citing articles [↗](#)

Why privacy keeps dying: the trouble with talk about the end of privacy

Nicholas A. John^a and Benjamin Peters^b

^aDepartment of Communication & Journalism, The Hebrew University of Jerusalem, Jerusalem, Israel;

^bDepartment of Communication, University of Tulsa, Tulsa, OK, USA

ABSTRACT

It is a curious fact how much talk about privacy is about the end of privacy. We term this ‘privacy endism,’ locating the phenomenon within a broader category of endist thought. We then analyze 101 newspaper articles between 1990 and 2012 that declare the end of privacy. Three findings follow. First, claims about the end of privacy point to an unusually broad range of technological and institutional causes. Privacy has been pronounced defunct for decades, but there has never been a near consensus about its causes. Second, unlike other endist talk (the end of art or history, etc.), privacy endism appears ongoing and not period specific. Finally, our explanation of the persistence and idiosyncrasy of claims to the end of privacy focuses on Warren and Brandeis’s 1890 negative conception of privacy as ‘the right to be let alone’: namely, modern privacy talk has always been endist because the right to privacy was born out of the conditions for its violation, not its realization. The conclusion comments on implications of that basic proposition.

ARTICLE HISTORY

Received 8 September 2015

Accepted 11 March 2016

KEYWORDS

Privacy; endism; rights; discourse; press

Why privacy keeps dying: the trouble with talk about the end of privacy

Truly, though our element is time,
We are not suited to the long perspectives
Open at each instant of our lives.
They link us to our losses: worse,
They show us what we have as it once was,
Blindly undiminished, just as though
By acting differently, we could have kept it so.
Philip Larkin. (Reference Back, *The Whitsun Weddings*, 1964)

In January 2015, *Science* magazine published a special issue with the title, ‘The End of Privacy.’¹ The articles therein featured, *inter alia*, drones, facial recognition, and location-based apps. This was not the first time that privacy’s end had been postulated on the cover of a major magazine – in August 1997, for instance, *Time* magazine’s cover announced ‘The Death of Privacy’² – suggesting to us that the ‘end of privacy’ is a trope, a popular rhetorical device through which to conceptualize change. We analyze this trope by

characterizing over 100 claims in the popular press about the end of privacy. The analysis then serves as the basis for our argument that it is not by chance that privacy's end is so frequently declared, but that this is actually a feature of the modern right to privacy. Modern privacy discourse is endist, we submit, because unlike other rights, the modern right of privacy was born out of the conditions for its violation, and not its realization.

Keen observers of the twentieth century have noted that mass media have long driven public lamenting of the loss of privacy. In 1932, for example, the man of letters Lewis Mumford presciently dubbed, in a photographic metaphor, a new culture of the 'exposure of the self,' in which

the change is significant: not self-examination but self-exposure; not tortured confession but easy open candor; not the proud soul wrapped in his cloak, pacing the lonely beach at midnight but the matter-of-fact soul, naked, exposed to the sun on the beach at noonday, one of a crowd of naked people. (Mumford, 1934/1962, pp. 243–244)

Among the literary prophets of their age, perhaps Kafka's *The Trial* and Orwell's 1984 come closest to describing the dark twentieth century preoccupation with privacy as a rearguard bulwark against the rising tides of the surveillance state, while, a few decades later, McLuhan and Powers (1981) declared the dawn of electronic banking as no less than spelling the 'death of privacy.'

More recently, increasingly popular techniques for sharing online information have normalized media users to claims of the continual degradation to privacy (Mayer-Schönberger, 2009; Nissenbaum, 2010; Solove, 2008). The modern high priests of information technology freely admit as much: Scott McNealy, when CEO of Sun Microsystems, famously quipped, 'You have zero privacy anyway. Get over it,' a sentiment echoed in later comments by Google's Eric Schmidt and Facebook's Mark Zuckerberg, among other captains of social media industry. In 2009, for instance, in talking about Facebook's shift to public by default, Zuckerberg asserted that people 'have really gotten comfortable not only sharing more information and different kinds, but more openly and with more people,' adding that this was a 'social norm' that had 'evolved over time.' Bestselling books have also been contributing to this discourse: two books published in 1999 – both titled *The End of Privacy* – enjoyed great success (Sykes, 1999; Whitaker, 1999), as has a fairly recent popular treatment of social networks as the harbinger of the proposed death of privacy (Andrews, 2012). More recently, Edward Snowden's 2013 exposé of the NSA's surveillance programs unsurprisingly gave rise to a flurry of new endist assertions. To judge by all this talk alone, the reality of privacy, to say nothing of the right to privacy, appears to have all but disappeared in the modern-day information age.

Given that the premise of this article is that privacy's end has been declared over and again, it is only fair that we acknowledge that we are neither the first to have noticed that privacy's end has been repeatedly announced, nor the first to observe that such claims do not necessarily reflect on the state of privacy per se. Indeed, privacy expert Bruce Schneier once observed that 'The death of privacy has been predicted for ever,'³ and media historian Josh Lauer has noted that 'privacy has died many deaths' (Lauer, 2012, p. 567). We do believe, though, that this article represents the first attempt to theorize the many ends of privacy.

Yet it is not only privacy whose end is nigh, suggesting that when talking about the end of privacy, we ought also to take into account not only privacy, but ends in general. From

the start of 2011 to the time of writing, no fewer than five major prophecies predicting the end of the world have come and gone; the historical record suggests that modern humans have long lived at the beginning of the end (Newman, 2010; Pettman, 2002; Strozier, 1994). Our daily diet of reading alerts us to many other less apocalyptic endings – the end of art, of etiquette, of history, of ideology, and – the subject of this article – the end of privacy. The reader will quickly recognize the rhetorical pattern: (1) the end of something important is declared, (2) the conditions that led to that end are decried (or, more rarely, celebrated if that end is considered good), and, whenever appropriate, (3) some alleviating or ameliorating solution to the problem brought about by the end of the phenomenon in question is proposed. The pattern holds for the end of all manner of phenomena – from the everyday, such as what we say when the toothpaste runs out ('We've run out of toothpaste! You used it last. I'm going to get some more!') – to the grandiose, such as varying visions of the end to (modern) history itself (Fukuyama, 1989, 1992; Hegel, 1837/1956; Kojève, 1980; Marx & Lenin, 1845/1932). For convenience, we call this teleological discursive pattern, not without some negative tinting, 'endism,' defined by Sadık Ünay as 'a tendency to prematurely declare the end of a presumed unilinear path' (Ünay, 2009, p. 3).

As mentioned, this article presents an analysis of endist claims around the curiously modern bellwether topic of privacy. Although interest in what may be called privacy dates back to ancient times (see, for instance, Arendt, 1958; Rykwert, 2001), we conceive of privacy as a distinctly modern right that has taken its present shape, alongside rights to education and healthcare, over the long twentieth century. Its emergence as a modern right is generally associated with the 1890 publication of Warren and Brandeis's seminal article, 'The Right to Privacy,' rumored to have been sparked by the intrusion of journalists into the private lives of public figures (Warren & Brandeis, 1890). As a traceable social value broader than legal discourse, then, privacy emerges as a concern at about the same time that modern liberal democracies do; at the moment, that is, when individual citizens, *qua* individuals, begin to constitute a powerful public – and thus find both the reason and the means with which to demand some separation from that public (see Habermas, 1989, esp. Chapter 6). The nineteenth century demarcates a radical period of mixed sociotechnical and sociocultural innovation, in which modern industrialization unleashed a host of popular copy technologies – mass printing techniques, the electric telegraph, the portable photographic and film cameras – and increasingly efficient means of distribution – roads, canals, railways – that brought the individual subject into the public eye. A contemporary of Warren and Brandeis, Edward Godkin, observed that '[t]o some people it causes exquisite pain to have their private life laid bare to the world, others rather like it' (Godkin, 1890, p. 65). Twentieth-century mass media and contemporary digital media have extended and sped this trend.

In short, it does not seem unreasonable to suggest that modern privacy – understood as a codified right on the books as well as a social value resting on deep-seated human values for decency and dignity, the individual and the intimate, shame and the sacred – appears to have a beginning, however complex it may be. In this paper, we try to understand the converse – or what it means to claim that privacy has come to, or is about to come to, an end. Our basic argument is this: the claims about the current state of privacy cannot be separated from the conditions that birthed it as a modern right – namely the sociotechnical and cultural conditions that threatened the very existence of modern privacy. The

dominant paradigm for understanding modern privacy is, and perhaps has long been, endist. This curious fact deserves assertion and critical reflection.

Our strategy is twofold. First, we describe and summarize a corpus of popular press records that repeat pronouncements of the end of privacy. Our findings draw from an evidentiary base of 101 English-language newspaper articles, published between November 1990 and May 2012, that claim that privacy has ended, or warn of its imminent demise. In so doing, we are primarily interested in uncovering how popular authors deal with (or ignore) the fact that others before them have routinely declared privacy dead. Who or what do these articles blame as bringing about the end of privacy? Second, we analyze and interpret these specific textual claims for what they can teach us about privacy as a modern value and a right. In conclusion, we reflect on how the perennial assertion that privacy stands on the brink of obliteration colors, shapes, and helps rethink the peculiarities of modern privacy discourse.

Methodology

The research presented in this article uses methods associated with grounded theory, whereby the field is approached without a preformed theory to be tested in light of the data (Corbin & Strauss, 2008; Glaser & Strauss, 1967). Grounded theory – a social scientific method of quantitative study that proceeds in reverse order from most methods from the data collection to codes, to concepts, categories, and theory formulation – is especially suitable for the inductive research presented here: the stimulus for the research was the observation of repeated pronouncements regarding the end of privacy, and the preliminary objective of the study was to understand and characterize this phenomenon with no prior commitment to any particular theory, aside of course from that grounded in the empirical observation of recent press discourse on the end of privacy.

Searches for ‘end of privacy’ in LexisNexis Academic produced the aforementioned 101 newspapers articles. Searches were restricted to ‘Major World Publications’ and timelines from 1980 to the present day.⁴ After removing duplicates, we were left with 275 articles, only a minority of which actually concerned the end of privacy. After removing irrelevant articles from the sample, as well as short notices about new books and letters to the editor, we were left with 101 articles, the corpus of this study, which were imported into the qualitative content analysis software package, Atlas.ti, for coding and classification.

The coding process involved closely reading the articles and extracting shared themes and ideas. In the first round of reading the articles, we raised questions that we tried to address in the second round of reading. Such questions included: What or who is held responsible for bringing about the end of privacy? Has the change been brought about by new technologies, laws, shifts in culture, or some combination? Has privacy actually ended, or is it set to end? If it has not yet ended, on what is its end predicted to depend? (Is its end just a matter of time, or has the end of privacy been conditioned on certain events, such as the widespread adoption of a new technology or the passing of new piece of legislation?) We also noted any evidence the journalists showed of being aware that privacy has been repeatedly declared over, with an interest in discovering how, if at all, such historical self-consciousness influenced claims made about the end of privacy.

Findings

The vast majority of analyzed privacy endist claims break into three descriptive categories or endist formulas: assertions, questions, and contingencies. In other words, some of the sampled articles make unambiguous, definitive claims that privacy has ended; others question whether privacy has died, or is about to; and still others argue that *if* a certain event comes to pass, then *that* will mean the end of privacy. Characteristic examples of explicit declarations about the end of privacy include statements such as ‘The fact is that the rise of the Internet heralds the end of privacy in modern life’ (Nahmod, 1997).

Alongside such fairly straightforward assertions, some articles question whether the end of privacy has come. This more modest discursive strategy appears to come with several advantages for the author: specifically, it lets the author raise an attention-grabbing claim without the responsibility of having to either admit to having claimed it outright or without having to provide empirical support for it. Direction questions read, for instance, ‘Will privacy become as extinct as the dodo?’ (Gardner, 2001). Here, then, by *not* insisting that privacy has ended or will definitely end, the journalists can hold out cause for hope, while still pressing morally anxious questions upon the public’s attention.

Other articles adopt a contingency strategy by referring to the end of privacy by way of some future contingent threat and caution. Here, the claim is not that privacy has ended or will end, but rather that *if* certain events occur, *then* privacy will (or could) end. For instance, ‘Recording every detail of your life on digital gadgets could one day replace the need for memories – or mean an end to privacy’ (Harvey, 2010).

In short, not every article that raises the possibility of the end of privacy makes clear-cut statements about its demise. Some writers (approximately 60% of them) state quite definitively that privacy has ended or will do so shortly. Others (about 15%) ask whether privacy has ended, or will end, as an anchor for discussing another more specific piece of news. Still others (the remaining 25%) seem content to wish to alert us to the possibility of an end to privacy.

Who is to blame anyway?

Almost everything ends modern privacy. Even the kitchen sink, once fitted with the right sensor, can log our water usage. A striking feature about the claims analyzed here is the rich variety of causes held responsible for contributing to the end of privacy. As we argue below, this is not by chance. It follows as an artifact of how privacy was conceived in the conditions of the modernization of technology, institutions, and culture. Accordingly, our analysis outlines three main cause categories of offending factors claimed to be ushering in the end of privacy: technology, institutions (both state and corporate), and culture – specifically and the rise of a nothing-to-hide celebrity and tell-all reality TV mass media culture.

Technology, as a category, is the most frequent culprit in the ongoing mystery describing the murder of privacy. Some articles have witnessed in the abstract: ‘Digital technology will mean the end of privacy’ (Philipson, 2006), one declares; or, ‘The villain is not television or the tabloids, but the wonderful new technology which was meant to bring such benefits to the world and has caused unemployment, confusion and the end of privacy’ (Mortimer, 1995). More frequently, articles mention the end of privacy along the way

of featuring a particular piece of technology news – a new technology. The scope of new media technologies held responsible for the end of privacy is staggering, if not surprising. To list a few alphabetically: biometrics, cash registers, CCTV cameras, computers, cookies, credit cards, databases, DNA databases, Facebook (among other forms of social networking), facial recognition, Google street view, Intel's Pentium III chip, the iPhone, key logging software, loyalty membership cards, mobile phones with cameras, mobile phones with GPS, national ID cards, RFID, smart cards, sub-cutaneous chips, telephone bugs, Wi-Fi networks, and X-ray cameras, and more.

The state is also seen as crucially responsible for bringing about the purported end of privacy. In a newspaper article from 1993 about a proposed computer networking project in Canada – a project which 'calls for one system to link more than 27,000 government microcomputers and terminals in 200 towns and cities through 15 administrative service centres' – the interviewee, a former Quebec access-to-information commissioner, is quoted as saying, 'What that means is the end of our privacy' (McIntosh, 1993). Following 9/11, and worrying legislative initiatives such as the USA PATRIOT Act, journalists regularly criticized governments' new security measures for ending privacy. For instance, a 2002 headline in *The Washington Times* read, 'The end of privacy; The Patriot Act's un-American incursion on liberty' (Hentoff, 2002). Or, in the British context, a 2008 article, under the headline 'The all-seeing state is about to end privacy as we know it,' reports plans for 'a centralised database that will track, in real time, every call we make, every website we visit, and every text and email we send,' before commenting that, 'It will mean the end of privacy as we know it' (Russell, 2008).

The state, however, is not the only institutional culprit to stand accused of killing privacy. The private sector is also held to account. Here too we identify a shift in the focus of critical attention. In particular, earlier articles in the 1990s tend to hang the end of privacy on the exploitation of consumer databases. For example, in an article about 'micro-marketing,' this new targeted-advertising technique is berated as follows: 'What it amounts to is the end of privacy as we perceive it, with huge compilations of data base material based on tastes and preferences of individual households instead of neighborhoods or cities' (Plume, 1990). Likewise, a newspaper article that reviewed a feature piece about future technologies in *Consumer Reports* magazine notes that, 'While it's all cutting-edge, the magazine wonders if the information age means the end of privacy' (Howard Price, 2000).

More recent articles critical of the private sector unsurprisingly focus on the Internet in general and, in particular, the exploitative business model of selling for a profit what social media users freely share. An article from as early as 1997, for instance, quite unambiguously states: 'The fact is that the rise of the Internet heralds the end of privacy in modern life' (Nahmod, 1997). In the more specific context of social network sites, one article asks, 'Does the growth of social networking mean the end of privacy?' before going on to imply that it in fact does, based on an explanation of its business model as provided by an expert interviewee: '[T]he more you reveal about yourself online [...] the more that data can be used to create value for the social networking company ... A lack of privacy becomes a fundamental part of their business models' (Regan, 2007).

Still others point to the apparently recent cultural preoccupation with celebrity scandals, where such cultural voyeurism comes prepackaged in the most recent mass media spectacles, whether talk shows, reality TV, or ChatRoulette. In an article from 1999, for

instance, we read of how ‘critics have complained that the steady incursion of the media into the private lives of public figures has eroded privacy until nothing is off-limits’ (Gabler, 1999). Others lay responsibility at the feet of celebrities themselves: while they erect high fences around their large houses, once in front of camera they become ‘garrulous, happily spilling the most intimate details of their lives to millions of viewers or listeners’ (Gardner, 2001). Articles discuss the sex scandal involving Bill Clinton and Monica Lewinski as an emblematic case in point, with both her appearance on Barbara Walters’ show and Bill Clinton’s public statements later being attributed as the signal of – or at least a pivot point toward – the end of privacy. Neal Gabler commented, for example: ‘If ever one needed an event to mark the end of privacy in North America, last week’s interview with Monica Lewinsky would certainly qualify. For two hours, under the gentle prodding of Barbara Walters, young Lewinsky cheerfully bared everything’ (Gabler, 1999). Although any number of other celebrities could also be listed, Tiger Woods also gets a special mention, with his sexting scandal said to make ‘a fitting coda to a decade that seemed to define “decadence” [...] and the end of privacy’ (Hanley, 2009).

Another review of the naughty noughties argues that reality TV carries some of the blame: ‘[Big Brother] was the phenomenon that prefigured a main feature of the decade: the end of privacy’ (Sheridan, 2009). Not only celebrities are baring all, or having it all bared, but, in this view, the population foregoes privacy by emulating on social media these mass televised repeals of reticence and decency: ‘We have erased the line between public and private,’ wrote Judith Timson for the Canadian *Globe and Mail*, ‘creating a look-at-me society in which people no longer think twice before tweeting about the panini they had for lunch’ (Timson, 2009).

Unsurprisingly, the young make up another subject of contradictory concerns: they are at once those most in need of the most protection from, as well as those most eager to participate in, a post-privacy culture. For example, a long feature piece from 2007, under the headline, ‘Kids, the Internet and the End of Privacy’ (Nussbaum, 2007), argues the familiar trope that ‘kids’ live online in ways the preceding generations did not. This is not always an act of handwringing against but of quiet acquiescence to the digitally lit change afoot: ‘Younger people ...’ the article continues, ‘are the only ones for whom it seems to have sunk in that the idea of a truly private life is already an illusion.’

Historicizing the end of privacy

Of particular interest are those newspaper articles that demonstrate awareness of previous assertions of the end of privacy, and whose claims about privacy self-consciously take up and get caught up among other competing endist claims about privacy.

In this regard, let us start with what began as an off-hand remark and has since grown mimetically in the sounding out of other claims to the end of privacy online: namely, Scott McNealy’s aforementioned quip: ‘You have zero privacy anyway. Get over it!’ McNealy was in fact referring to online commerce when he made this comment, although his statement has since found new life in underscoring other elements of privacy endism online. For instance, an article from 1999, when McNealy’s comment was still fresh in the memory, cites his statement approvingly, if its delivery less so: ‘As Scott McNealy [...] declared arrogantly earlier this year: “You have zero privacy. Get over it”’ (Hills, 1999,

p. 1). However off-putting the delivery, the journalist repeats the claim as authoritative and accurate. Later articles have misquoted McNealy (“‘Privacy is dead – deal with it!’ Scott McNealy [...] is once said to have remarked’ (Glover, 2005, p. 1)), before proposing, in an obvious awkwardness of the death-life metaphor, that privacy is even more dead now than before: ‘Even McNealy could have had little grasp of quite how dead privacy will be by the end of the first decade of the 21st century.’

Privacy endist discourse finds itself repeatedly raising the specter of privacy’s awkward afterlife. How, if at all, does one foresee and decry a future worse than the present, when a virtue lies already ‘dead’? Glover, above, shows his awareness of earlier pronouncements about the end of privacy but cannot avoid the sense that, whatever privacy violations McNealy had in mind back in 1999, they must pale in significance next to those in the mid-2000s. Herein again lies a trouble with endist declarations: while the past declarations about the death of privacy may be correct, current commentators are repeatedly discovering that those endist claims, made in the past, also fail to adequately describe the endist present. The way to differentiate between the pile-up of past and present privacy ends leads to historical incongruities and poor comparisons: Glover misquotes McNealy declaring privacy to be already ‘dead’ in 1999, before predicting that, in five years time, privacy will be deader than ‘even McNealy’ could imagine. Our present-day privacy worries, writes Glover, ‘will seem as quaint and antiquated as a Victorian maiden’s blushes at a man’s glimpse of her neat ankles.’ When a social quality, such as privacy, is only understood in the cultural contexts of its loss, it seems that only its loss – and not degrees of change in quality – can be declared definitively.

Similar historical double-takes surface in a 2009 article on a new piece of hardware: ‘Enfiltrator’s new Black Box computer security monitoring system.’ The journalist writes with a subtle sense of irony, if not also sarcasm, that ‘One of the oldest saws in the computer world is the one about how the computer will eventually make privacy obsolete, revealing users’ most intimate secrets to the mercies of a database’ (Hamilton, 2009). Two phrases are particularly notable here: the first is the turn of phrase ‘the one about,’ which introduces a note of mockery to ‘one of the oldest saws in the computer world.’ The other striking phrase is, ‘the mercies of a database.’ Here comic effect arrives by attributing malicious intent to databases in exaggerated moral terms. Indeed, reading this sentence in isolation gives the impression that the claim that computers might ‘eventually make privacy obsolete’ is absurd, or even laughable. The journalist takes care to chide those fretting about the eminent demise and obsolescence of privacy exactly because they have been doing so, uninterrupted, ever since computers were first invented. Observing that the impending end of privacy has been a recurrent theme over a period of years, we, the authors of this article, cannot help but join the journalists in doubting whether privacy has ever ended: the journalist adds, ‘Of course, no such thing has happened.’ And then he takes it one step farther with a twist, adding: ‘Of course, no such thing has happened – yet. That may be about to change, though, thanks to Enfiltrator’s new Black Box computer security monitoring system.’

In this example, journalists distance themselves from past rehearsals of privacy endism only in order to lodge the very same claim with a surprisingly straight face. Self-reflexive irony gives way to unreflexive concern about privacy: faced by the possibility of a privacy endism discourse, the commentators rarely find more than two ways about it: one can either derisively assume with the insight of the preacher in Ecclesiastes that ‘there is

nothing new under the sun' or claim just the opposite that today is a new day, and the past need not apply. Even these historically reactive tropes, however, make up only a small set of the many claims that repeatedly declare the end of privacy without acknowledging that other people have done the same before. Public discussion on privacy endism is not just short on history, it is importantly blind to it. This puzzle deserves brief discussion.

Discussion and conclusion

These 101 articles employ a rich vocabulary for declaring the end (absolution, banishment, collapse, death, etc.) of privacy. Perhaps the key observation that organizes this panoply of public commentaries is that they point to no single cause: tectonic shifts in technology, regulatory and corporate creed, mass media spectacles, and cross-generational differences all illuminate what appears as the powerful rhetorical trope and at once empty signifier that is public discourse about the end of privacy. In this concluding section, we pick up on the scattergun approach to explaining the end of privacy described above to develop an argument about the particular nature of privacy endism. Before that, though, a few broader comments on endist discourse are presented.

For literary critic Frank Kermode, endist thinking is an attempt to 'humanize the common death' (Kermode, 1967, p. 7) and reflects 'our deep need for intelligible Ends' (p. 8). Endism, he says, has an 'apocalyptic pattern' (p. 12): by positing an end, we are able to look back on the whole and make sense of it from the outside, something that, living *in media res*, we can never actually do with our own lives or epochs. Endism, then, in its eschatological moment, is a mode of thinking that structures the modern (often monotheistic) world in which we live. 'Men in the midst,' writes Kermode, 'make considerable imaginative investments in coherent patterns which, by the provision of an end, make possible a satisfying consonance with the origins and with the middle' (p. 17).

Indeed the modern era is flush with declared ends consonant with the past. It is by drawing on this longer tradition of endist discourse that we might understand, for example, the apocalyptic expectations in the run-up to the year AD 1000 (Newman, 2010); the seventeenth-century settlement of America by the Protestant divine errand to build a new world (De Santis, 1996), among other latter-day religions to spring forth from the Second Great Awakening in the American nineteenth century; Francis Fukuyama's end of history hypothesis following the collapse of the Soviet Union (1989, 1992); the millennial bugs during the latest *fin de siècle*, and much else. There is indeed something suggestively apocalyptic about the claim of the collapse of privacy. Its *telos* is absolute; its implications for the moral fabric of society, severe, even violent. Not unlike Benjamin's destroying angel of history, the way we talk about the end of privacy blindly swoops down upon the present, eyes fixed on the 'one single catastrophe which keeps piling wreckage upon wreckage' that is the past (Benjamin, 1969, p. 257), irresistibly hurtling forward into the unseen future. The claims may vary widely in their details, topic, and formulation, as noted above, but one thing seems nearly certain: the end is always near. Perpetually stuck abreast the beginning of the end, modern-day privacy discourse – like much of the nervous twentieth century before it – lurches forward blindly feeling its way from one crisis to the next.

This observation will come as no surprise to the historically informed observer of information, communication, and society, since surely the echoes, repetitions, and reverberations of public discourse reach back to the first draft of history itself. The historian's sensibility is preconditioned by there being a patterned record upon which to build, even if the rushed deadlines of the journalists who turn out the current record create a barrier to recognizing that pattern. There is a vicious if unsurprising symmetry between the relentless deadlines of the journalist, where future deadlines are ever pressing upon the present, and the public discourse about privacy whose past appears to be ever collapsing in the present. The punch clocks of deadlines and modern privacy endism press share a character of crisis that repeatedly injects rupture into our sense of the passage of time.

Of course, not all strands of endism imply crisis. We have already mentioned Fukuyama, for whom the 'end of history' is a positive development, signifying the victory of liberal democracy over Soviet state communism. Similarly, McNealy's and especially Zuckerberg's pronouncements would have us believe that the end of privacy is nothing to bemoan. Likewise, a 2001 opinion piece, for example, waxes utopian that 'Orwell got it wrong. Big Brother may not necessarily be bad for us' (Riddiford, 2001), before elaborating: 'While this surveillance can be clumsy and intrusive, much of it is essential for good public and corporate governance. [...] Put simply, surveillance works, at a number of levels.' But even if it does not, rather than a 1984 scenario, 'something much more interesting has occurred,' argues author and journalist Saunders (2010): specifically, modern technologies of sousveillance (Mann, Nolan, & Wellman, 2003) enable a belief in a 'technological power reversal ... In an online world, there are many more of us to watch them than there were of them to watch us.' (But surely trust in the counterforces of sousveillance is as dangerously naive as an undifferentiated sky-is-falling moral panic about surveillance.)

History itself suggests that modern discourse has long been characterized by, as Adam Gopnik (2011) put it, the back-and-forth unfolding crisis between the 'Better-Nevers' (pessimists), 'Never-Betters' (optimists), and 'Ever-Wasers' (historians). In short, we find nothing peculiar about how the modern press talks about the end of privacy. Most popular endist discourse on modern privacy is fairly predictable: cultural critics use endist claims to decry the present state of things, while extoling the halcyonic virtues of the past, while tech entrepreneurs, on the other hand, promise brighter futures while dismissing as old fashioned our present social values. Perhaps this, then, is the most peculiar thing about privacy: its particularly strong fit with endism discourse altogether. This leads us to ask: Given that not all modern rights are endist, what is it about privacy as a social value that brings commentators to so readily declare its end?

Here is our proposition: modern privacy discourse is endist because the modern right of privacy was born out of the conditions for its violation, not its realization. Privacy as a modern value was formulated at the moment that the conditions for its perpetual undoing came about: the conception and the conditions of the destruction of privacy are inseparable from one another; Warren and Brandeis sowed the negative 'right to be let alone' into the social fabric of modern-day communication technologies and society. This negative right invoked emotional rather than physical injury, with Warren and Brandeis noting that 'modern enterprise and invention have, through invasions upon [a person's] privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.' With the invention of the snap camera and candid

photography in mind, they continue in *The Right to Privacy*: ‘now that modern devices afford abundant opportunities for the perpetration of such wrongs without any participation by the injured party, the protection granted by the law must be placed upon a broader foundation’ (Warren & Brandeis, 1890, p. 211). The ways to invade privacy run as deep as the ways one can injure a person’s emotion and dignity – as well as, perhaps far more pressingly, to encroach on and chill the structural contributions that individual rights make to the welfare of the community.

Not all rights are like privacy. Take the right to education, for instance, from Article 26 of the (1948) Universal Declaration of Human Rights. The right to education came about in the context of the postwar reconstruction of education systems. Once there were institutional conditions and motivations for upholding universal education in theory, the right to education could be – and was – articulated. Much the same can be said about the right to a ‘fair and public hearing,’ the freedom of religion, social security, and many other positive rights recognized once the conditions for upholding them had come about.

Privacy as a concept and a negative right is different: privacy, understood at its modern inception in 1890 as the state or condition of being free of the disturbance of others, is defined negatively – by that which is absent. Historically, Warren and Brandeis first articulated privacy because the conditions upholding and protecting a right to be let alone were being threatened by the intrusions of the yellow press and then new mass media. Using more recent conceptual tools, we can read Warren and Brandeis as talking about *access* to people and to people’s *control* over information about themselves. Indeed, the elucidation of the notions of access and control has been a key development in privacy theory since Warren and Brandeis. Ruth Gavison has argued that our interest in privacy ‘is related to our concern over our accessibility to others: the extent to which we are known to others, the extent to which others have physical access to us, and the extent to which we are the subject of others’ attention’ (Gavison, 1980, p. 423), while Alan Westin defined privacy as ‘the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others’ (Westin, 1967, p. 7). It takes little imagination to conceive of how significant changes to access and control swept the nineteenth century, particularly in the vastly expanding cities of Europe and North America. Specifically, the conditions of modern living were offering a new range of social promises (e.g., living quarters for the nuclear family; a new, secular control over one’s life) at the same time that modern social conditions (e.g., crowded city neighborhoods; the new ability of personal information to travel, unbidden, far and wide) were threatening to retract and erode those promises. The conditions for privacy – the social and cultural context in which the modern demand for privacy makes sense – and the threats to it do not subsist in a chicken and egg relationship; rather, they are two sides of the same (modern) coin.⁵

It is hardly surprising that the right to privacy has since appeared existentially embattled and at once an increasingly popular topic, for the modern concept has never been articulated as a positive value independent of modern media conditions that threaten its undoing. The result is a concept that was broken before it was built.

Negatively defined concepts tend to fragment. Indeed, leading privacy scholars, such as Daniel J. Solove, also find the term in ‘disarray.’ An antidote to the all-or-nothing language of endism, the burden of much contemporary privacy scholarship has been to make intelligible the many ways the word *privacy* applies across distinct media (institutional and

technological) conditions. A breach of privacy can mean a host of wildly distinct unauthorized uses of personal information from a violation of confidentiality to an invasion of reproductive rights or other private affairs, to publicity that disadvantages or slanders a plaintiff, to, in Solove's taxonomy of privacy, at least a dozen other forms of unauthorized information collection, processing, dissemination, or invasion (Solove, 2008). Given this disarray, it is perhaps not surprising that not many languages have stand-alone lexemes for the concept (most Indo-European languages import the word directly from English, while a few retain variations tracing back to shared roots behind the English terms *confidentiality* and *intimacy*).

The conditions of its violation thus define privacy as a negative concept. With this in mind, it becomes clear why public talk attributes so many perceived causes for its decline: any concept that begins with its end must admit all takers, all explanatory forces of that end – technology, institutions, cultural decline, and others. Almost any cause, situated in the right media conditions, could be linked with the end of privacy. The popular press should not be blamed for endlessly announcing the end to privacy; this is not necessarily lazy journalism, so much as it is a hearty rehearsal of the generative paradox underlying privacy: that the conditions invoking the end of privacy precede the beginning of the concept. Unlike, say, claims about the end of art, which flare up at particular times (the 1860s, the turn of the twentieth century, the 1980s, etc.), claims about the end of privacy are conceptually prior to claims about privacy itself. As a simple Google Ngram search will suggest, claims to the end of privacy have been on rise since 1890 – and they have risen since (and skyrocketed in the period covered by this study). The end of privacy is no bug of privacy talk; nor is it a mere feature. It is the negatively defined essence of what it means to talk about privacy itself. We cannot talk about privacy without talking first about its erosion. The end of privacy has always already been baked into privacy.

This insight, if more or less correct, has considerable implications, at least for sorting through the new questions it raises: if talk about privacy is preconceptually endist, how can observers critically assess the real changes – both improvements and threats – that beset the optimal spacing between social actors? What public privacy language is left if ending claims can tell us nothing new? What is the appropriate response to the frequent lamentations about privacy's end dulling public sensitivity to take account of the genuine changes to modern-day media conditions? (For example, how are we to appraise the after-life of privacy in the wake of, for example, Edward Snowden's NSA revelations?) We are not sure, except to call for redirecting attention from the discussion of its ends and toward a more granular bundle of sticks approach, where modern privacy, like modern property, is not understood as a thing or a concept at all, and rather, as privacy scholars have begun to do, as a set of empirically testable and separate practices.

Not all is doom and gloom. In fact, from a sideways glance, the endism of privacy talk comes with a few enduring benefits, unlike, say, the end of history or the end of art talk, which has fairly short shelf lives as phenomena of interest. In a 1969 book entitled – what else? – *The Death of Privacy*, Rosenberg (1969) argues that liberty, and especially the liberty from others' encroach known as privacy, 'is never gained once and for all. It is forever in conflict with civilization – a conflict which has no clear-cut solution but which reappears in cycles, usually in different forms.' Because of this, '[e]ach succeeding generation must win it [liberty] anew. Each must defend it against ensuing dangers.' Rosenberg then goes on to state that, 'This is necessary because we are continually

changing our life environment; society may be altered so frequently that safeguards that in the past adequately protected our liberties become obsolete' (p. 14). A testament to vivaciousness of the liberal tradition, itself negatively defined, the fact that many continue to proclaim the end of privacy remains on balance reasonably good news, despite the concerns outlined above. According to this reading, talk of the end of privacy should not be taken literally – it should be taken as a sort of public service announcement about the deleterious impacts that ongoing and emerging alliances of information technologies and institutional powers may have. Meanwhile, we should seek, as Rosenberg did half a century ago, to recognize the conceptual limitations of our current vocabularies for articulating the real dangers outside forces introduce into our lives.

Finally, by claiming the end is always near, modern privacy talk injects a productive sense of instability into our view of the past. It ensures that even the most at-ease chroniclers and commentators of cultural change have need to look over our shoulder – not out of anxiety, although that surely is the consequence for most, but out of a sense of wonderment at the actual, undeniably open present. The end of privacy does not somehow throw everything up for grabs in the courts, markets, and public squares of current culture. Rather the present – and with it, privacy and other means of asking fundamental communication questions about the proper spacing between the self and the other – remains excitingly open exactly because it may be backlit (far more brightly than begun here) by the recurrent, yet uncertain patterns of the past. Perhaps by the line 'blindingly undiminished,' the poet in the epigraph urges us not just to dimly mourn after 'what we have as it once was' but rather to internalize its blindingly bright corollary that, however close the end may appear, and no matter how profoundly today differs from yesterday, the end has not yet come.

Notes

1. See <http://www.sciencemag.org/content/347/6221.toc>, accessed on 4/3/2016.
2. See <http://content.time.com/time/magazine/0,9263,7601970825,00.html>, accessed on 4/3/2016.
3. See <https://www.schneier.com/news-055.html>, accessed on 4/3/2016.
4. See <http://www.lexisnexis.com/hottopics/lnacademic>.
5. This is not to say that these changes spread evenly or impacted members of all social strata in the same way. By way of example, richer families had houses with separate bedrooms before poorer families. For this reason, privacy has long been suspected of being a bourgeois value.

Acknowledgements

The authors would like to thank Michael Birnhack, Bill Dutton, Paul Frosh, Brian Loader, Helen Nissenbaum, Michael Zimmer, the 2014–2015 fellows of the Oklahoma Center for Humanities at the University of Tulsa, and the anonymous journal reviewers for their extremely helpful comments and suggestions.

Notes on contributors

Nicholas A. John is a lecturer in the Department of Communication and Journalism at the Hebrew University of Jerusalem. [email: n.john@huji.ac.il]

Benjamin Peters is an assistant professor in the Department of Communication at the University of Tulsa and affiliated faculty at the Information Society Project at Yale Law School. [email: bjpeters@gmail.com]

References

- Andrews, L. B. (2012). *I know who you are and I saw what you did: Social networks and the death of privacy* (1st Free Press hardcover ed.). New York: Free Press.
- Arendt, H. (1958). *The human condition*. Chicago, IL: University of Chicago Press.
- Benjamin, W. (1969). *Illuminations*. New York: Knopf.
- Corbin, J. M., & Strauss, A. L. (2008). *Basics of qualitative research: Techniques and procedures for developing grounded theory* (3rd ed.). Los Angeles, CA: Sage.
- De Santis, H. (1996). *Beyond progress: An interpretive odyssey to the future*. Chicago: University of Chicago Press.
- Fukuyama, F. (1989). The end of history. *The National Interest*, 16(4), 3–18.
- Fukuyama, F. (1992). *The end of history and the last man*. New York, NY: Free Press.
- Gabler, N. (1999). The primacy of privacy at an end. *The Toronto Star*.
- Gardner, M. (2001). Will privacy become as extinct as the dodo? *Christian Science Monitor*.
- Gavison, R. (1980). Privacy and the limits of law. *The Yale Law Journal*, 89, 421–471.
- Glaser, B. G., & Strauss, A. L. (1967). *The discovery of grounded theory; strategies for qualitative research*. Chicago: Aldine.
- Glover, T. (2005). The end of privacy is nigh as use of radio chips spread. *The Business*, p. 1.
- Godkin, E. L. (1890). The rights of the citizen, IV – to his own reputation. *Scribner's Magazine*, 8(1), 58–68.
- Gopnik, A. (2011). The information: How the internet gets inside us. *The New Yorker*, pp. 124–130.
- Habermas, J. (1989). *The structural transformation of the public sphere: An inquiry into a category of bourgeois society*. Cambridge, MA: MIT Press.
- Hamilton, G. (2009). Big Brother has nothing on this. *National Post*.
- Hanley, W. (2009). I say good riddance to a bad decade. *Financial Post*.
- Harvey, M. (2010). Save your life... digitise. *The Times*.
- Hegel, G. W. F. (1837/1956). *The philosophy of history*. (J. Sibree, Trans). New York: Dover.
- Hentoff, M. (2002). The end of privacy; The Patriot Act's un-American incursion on liberty. *The Washington Times*.
- Hills, B. (1999). Someone's watching. *Sydney Morning Herald*, p. 1.
- Howard Price, J. (2000). Smart appliances may put your life on easier street. *The Washington Times*.
- Kermode, F. (1967). *The sense of an ending; Studies in the theory of fiction*. New York: Oxford University Press.
- Kojève, A. (1980). *Introduction to the reading of Hegel*. New York: Cornell University Press.
- Lauer, J. (2012). Surveillance history and the history of new media: An evidential paradigm. *New Media & Society*, 14(4), 566–582. doi:10.1177/1461444811420986
- Mann, S., Nolan, J., & Wellman, B. (2003). Sousveillance: Inventing and using wearable computing devices for data collection in surveillance environments. *Surveillance & Society*, 1(3), 331–355.
- Marx, K., & Lenin, V. I. (1845/1932). *The German Ideology Capital: The Communist Manifesto, and Other Writings* (Vol. 202). New York: The ModernLibrary.
- Mayer-Schönberger, V. (2009). *Delete*. Princeton, NJ: Princeton University Press.
- McIntosh, A. (1993). How open can access watchdogs be? *The Gazette*.
- McLuhan, M., & Powers, B. (1981). Electronic banking and the death of privacy. *Journal of Communication*, 31, 164–169.
- Mortimer, J. (1995). Once we had a secret love but not any more ... *Mail on Sunday*.
- Mumford, L. (1934/1962). *Technics and civilization*. Chicago, IL: The University of Chicago Press.
- Nahmod, D. (1997). Computer pro to Internet User: Take care. *Christian Science Monitor*.
- Newman, S. (2010). *The real history of the end of the world: Apocalyptic predictions from revelation and nostradamus to Y2 K and 2012*. New York, NY: Berkley Books.

- Nissenbaum, H. F. (2010). *Privacy in context: Technology, policy, and the integrity of social life*. Stanford, CA: Stanford Law Books.
- Nussbaum, E. (2007). I'm naked on the internet. *Weekend Australian*.
- Pettman, D. (2002). *After the orgy: Toward a politics of exhaustion*. Albany: State University of New York Press.
- Philipson, G. (2006). Brave new afterworld. *The Age (Melbourne)*.
- Plume, J. (1990). Marketing makes privacy passe: Big brother knows what you buy. *Adweek*.
- Preston, P. (2011). Twitter and WikiLeaks have made a mockery of the courts. Is this the end of privacy as we know it? *The Observer*.
- Regan, T. (2007). Facebook faces up to privacy concerns – Again. *Christian Science Monitor*.
- Riddiford, M. (2001). Orwell got it wrong. *The Australian*.
- Rosenberg, J. M. (1969). *The death of privacy*. New York: Random House.
- Russell, J. (2008). The all-seeing state is about to end privacy as we know it. *The Guardian*.
- Rykwert, J. (2001). Privacy in antiquity. *Social Research*, 68(1), 29–40.
- Saunders, D. (2010). Just watch us. *The Globe and Mail*.
- Sheridan, K. (2009). A tale of two booms. *The Irish Times*.
- Solove, D. J. (2008). *Understanding privacy*. Cambridge, MA: Harvard University Press.
- Strozier, C. B. (1994). *Apocalypse: On the psychology of fundamentalism in America*. Boston, MA: Beacon Press.
- Sykes, C. J. (1999). *The end of privacy* (1st ed.). New York: St. Martin's Press.
- Timson, J. (2009). Forget Tiger's privacy. What about yours? *The Globe and Mail*.
- Ünay, S. (2009). Beyond 'under-theorizing' and 'endism': Towards a new social science perspective on global orders and civilizations. In S. Ünay & M. Şenel (Eds.), *Global orders and civilizations: Perspectives from history, philosophy and international relations* (pp. 1–9). New York: Nova Science.
- Warren, S. D., & Brandeis, L. D. (1890). The right to privacy. *Harvard Law Review*, 4, 193–220.
- Westin, A. F. (1967). *Privacy and freedom*. New York: Atheneum.
- Whitaker, R. (1999). *The end of privacy: How total surveillance is becoming a reality*. New York: New Press: Distributed by W.W. Norton.