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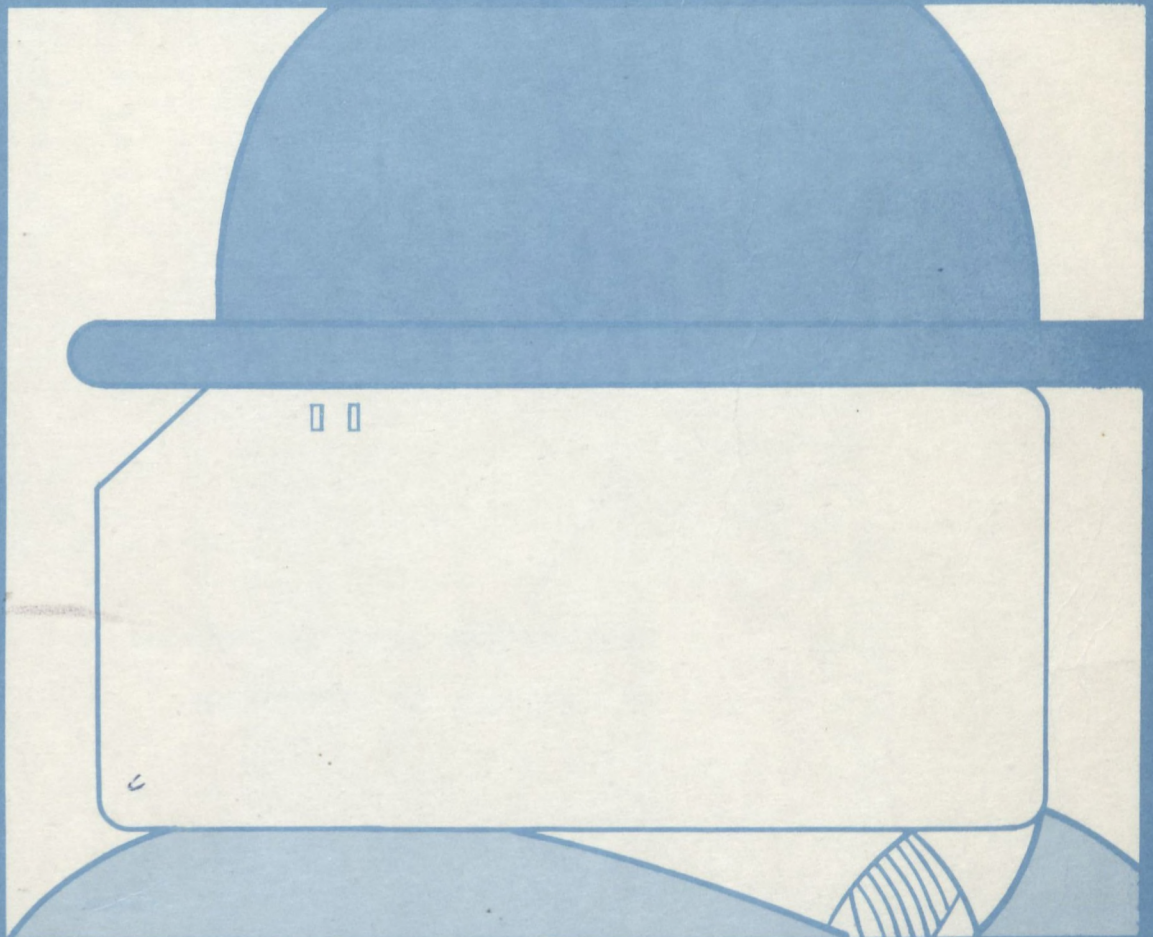# OF PRIVACY
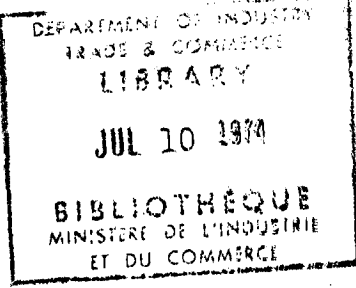
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A study by the Privacy and Computer Task Force

THE NATURE OF PRIVACY

A STUDY FOR THE

PRIVACY AND COMPUTERS TASK FORCE

DEPARTMENT OF COMMUNICATIONS

DEPARTMENT OF JUSTICE

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PRIVACY IN THE CANADIAN CONTEXT

Privacy is a contemporary issue born of an industrial age.[1] Although it is the nature of rational man to seek knowledge and to control his environment by using the power inherent in the process of integrating information, it is only recently, within the democratic orders of post-industrial societies, that the crisis of information has become a major societal issue. With the availability of novel techniques for the sharing and distribution of data, the expectations of modern man for increased knowledge have, in various institutions, reached unmanageable proportions. Throughout our society information claims are being made against the established power structure. Within the family unit children request information about the criteria for family decision-making in a manner entirely unknown and unprecedented a generation ago. Educational institutions face inquiries from student populations about objectives and goals, dossier-keeping, and review techniques, that have radically altered the relationship between teacher and student. The movement towards open disclosure affects the economic life of the nation both in the corporate and governmental environments. Within the burgeoning credit economy men are demanding the right of access to files and exposure of the nature of surveillance and investigative devices. In a democratic order, where the individuality of man and respect for his person is perceived as the ultimate end of the life of the body politic, it is necessary to reflect on the range of human experience where the issue of privacy is pressing.

The argument is made, that a machine-oriented age, a societal complex which produces and reproduces information explosions, renders impossible a social order in which classic notions of privacy may be protected. The right of spatial privacy has been disembodied by the vertical society of the skyscraper city, and now psychic privacy is stripped bit by bit, through the necessity of maintaining centralized and decentralized bureaucracies that accomplish greater efficiency in managing the produce of information systems. Although it is not the case that the assault on personal privacy only appeared with computerization, privacy has become a deep social issue at this time and not before. Does this reflect the fact that now more people have suddenly become concerned about an issue previously only known to a few? Or, is it rather the case that the issue is deeply connected to a pluralism which has awakened a growing number of citizens to a novel conception of power distribution and authority, and hence of privacy?

In political terms we have observed a shift from privilege to right in a host of power relationships. Whereas a number of decades ago the right to certain human needs, minimum material conditions for survival, was perceived as a privilege distributed in charitable goodness from the established classes to the impoverished masses, the social-political perspectives of the post-war years have altered mass perceptions of social welfare. So it is that there have been

progressions of political insights that have radicalized large
numbers of people in our society to look upon the right to
a minimum wage, the right to work consistent with one's
education and capability, the right to vote, to housing and
equal opportunity, as the rights of every man and not as mere
privilege. This turn of events is mirrored in privacy.

During the past few years both England and the
United States have, from varying cultural perspectives,
responded to the issue of privacy with a series of government
studies, group reports, and individual publications.[2] In
viewing the spectrum of anxiety that has permeated the social
life of other nation-states, and reflecting on its own processes
of industrialization, the Canadian Government has moved to
sponsor a comprehensive review of the impact on the Canadian
public of growing centralization and efficiency in data gathering,
storage, and dissemination.

In Canada, the momentum for a concentrated effort
in this area has emanated, by and large, from the sources of
elite leadership, the Ministers of the Crown of the Departments
of Justice and Communication, and not from a grass roots
libertarian appeal to the corridors of power. This must give
cause for thought on why it is, by contrast with the United
States, for example, that traditionally Canada has had less of
a body of commentary on the privacy topic, while at the same
time sharing in some aspects of the libertarian ethos of the
American Constitutional process.

By the late nineteenth century the United States had already received the break-through effort of Warren and Brandeis,[3] had been exposed to the creeping aggravations of yellow journalism, and the necessities of protecting the rights of ownership in one's name and person. By contrast, in this very same period, Canada was largely a rural society,[4] with strong deference to authoritative institutions in the good tradition of its English colonial life.

While Canadians have, in the past few years, been abreast with other nation-states in their concern for understanding the issue of privacy, nevertheless, it must strike the average Canadian that privacy is not a topic which has exploded as everyman's concern. Is this due to a lack of developed consciousness in responding to rife political questions, or is it rather that the variables of Canadian sociology alert us to cultural differences that are deserving of careful study?

It may well be that even accepting the fact of cultural lag, it is only in turning to the unique aspects of Canadian social and political life that the Canadian response level in the privacy area, may be given meaning. By contrast with the United States, the Canadian social fabric is at once more hierarchical and deferential to a tradition of reserve and political tranquility, accepting of monarchical symbolism, less motivated by the zeal of unified nationalist ethos, and more receptive on the highest levels of government to a political system which is not based on a delicately structured model of the separation of powers.[5]

Canada's dual traditions, English and French, are typified by elitist conservatism. In the English sector, the early populations of Canada were added to by the stock of Empire Loyalists, veterans of the Confederate War,[6] and a constant stream of English citizenry dedicated to Church and Crown. In the French Canadian regions of Canada, the social fabric, until very recently, has been heavily moulded by the world view of the ancien regime, a social order strongly under the influence of deferential authority systems, both of Church and State. Canada has been characterized as a country where the Anglo-Saxon elites have controlled the positions of economic and political power, in contrast to the more egalitarian social stratification of the United States.[7] The Canadian personality has been described as a politically passive one, slow to anger, and quick to defer to authority.[8]

These perceptions of Canadian society are rapidly becoming outdated. Although beset by problems of regionalism, isolation, and ruralism, Canada has emerged as a prominent industrial nation sharing in the intellectual traumas of the day, and, indeed, is quickly learning to assimilate global trends and to indulge in social planning but from a position of relative calm and social cohesion. Suddenly, the Canadian mosaic has become a politically conscious and economically reflective one, providing newly-defined opportunities for the diverse political stratifications. It is no surprise that Canada, a nation-state undergoing radical social and economic transformations, would turn to study the issue of privacy.

On a day-to-day level of existence Canadians have
not learned to suspect the environment of the city and the
offices of government in any magnitude similar to the breakdown
of authority witnessed in the United States.[9] In the corporate
sphere, one cannot perceive an inherited fear of industrial
espionage, or widespread negative response to the uses of
surveillance techniques of management over the employee. Yet,
Canada is indeed an industrial nation and a nation that shares
in the concern about the privacy issue. It behooves the
government to consider the impact of its new information services
and of the services available to the corporate sphere upon
the individual's right to protect his private information
system, to determine what information he wishes to make known
about himself, to whom, and under which circumstances.

Already two provinces have come forward with privacy
legislation (British Columbia, and Manitoba) and a third (Quebec)
has spoken to the privacy issue from the point of view of judicial
remedy in the civil law context.[10] On the political level there
has been a rude awakening to the powers of government to contain
and share information systems relating to the political dissidents
in lieu of the F.L.Q. crisis of October 1970, and the Solicitor
General's Office has informed the public of new services provided
by that department for the administration of dossiers on
threatening political elements.[11] The Canadian Government has
responded on the federal level to eavesdropping and the imposing
threats of electronic surveillance under the guise of privacy.[12]

On the academic level, the Queen's Conference[13] has documented the wide-ranging concerns of men from the diverse vantage points of government, the corporation, the computer industry, and the professions. The provinces have begun to respond piece-meal to the problem of privacy, directing energy to clearly defined potential and actual areas of abuse in the sphere of our credit economy.[14] The Canadian Institute of Public Affairs[15] has involved a broad spectrum of the Canadian community in a well-publicized conference on the privacy question. Privacy is not a fermented issue in Canada, but has captured the interest of both government and the informed citizen.

HISTORICAL AND IDEOLOGICAL PERSPECTIVES

Our most fundamental cultural inheritances in
Western civilization, the Judeo-Christian tradition and the
Grecian democratic and rationalist experiment, both reveal
privacy maps. The Hebrew culture would make little sense
without the notion of the inner sanctuary, or the stories of
the stark loneliness of a people and its prophets communicating
with their deity in the desert. Moses walked away from his
people in order to gain the information to lead them; the
information received by the prophets was top-secret until
the moment of full disclosure. To be party to private information
in fact determined the status and position of leadership and
was a necessary condition for maintaining effective control
over the populus.

No less than the Hebrew civilization did the Greek
Athenian democratic experiment reflect class distribution
and power in terms of privacy. The Greek civilization
cannot be appreciated without an understanding of the nature
of oracular truth and elite rulership. In this society
of aristocrats the slave had limited opportunity to block
out the intrusion of his master and societal observation
of his activities. Although both the Hebrew and Greek
civilization underscore the point that a culture, by its
very nature, establishes public and private realms,[16] and

that elite leadership is shrouded in secrecy, apart from
the mass, it must be emphasized that the relative value
attached to the private and public realms in these two
civilizations present contrasting perspectives. In the
contex of the Greek city state the public sphere was the
forum through which a man identified himself. In a
curious sense it is possible, within a culture, to
experience one's true identity (private self) within
specified public contexts. A man's powers of rhetoric
and his political personality defined him within the
community. Through the open forum he was able to express
his loftiest thoughts and determine his role as zoon
politikon, political man.[17] The private sphere of family
life which contained a world of family ritual was looked
upon as a lower form of human conduct, identified with
primarily physical labour and the bodily functions. This
was the forum of children, women and slaves. By contrast,
the Judeo-Christian model sanctified the sphere of human
conduct related to familial life. Further, the notion of
goodness in the Judeo-Christian tradition was expressed
in its highest form where good deeds were done anonymously.
Goodness, in this context, was radically separated from
the office of politics and the arts of persuasion.

However, there is an interesting similarity
between the Greek and Hebraic cultures in the function of
man's contemplative nature in relation to privacy. Both

cultures reserved a sphere for the philosophic and the otherworldly. The highest form of achievement for the searcher of wisdom, in the Greek city-state, is expressed through the ideologies of Platonic and Aristotelian learning where man's ultimate dedication to the highest conceptions of goodness and truth lay in the contemplative life where man was liberated from the banal necessities of animal survival. In the Hebraic tradition man's relationship to the Deity was the fullest expression of life's meaning. The function of prayer and communication with the Deity was the reserve of a highly private and removed sphere of human conduct. The philosopher and the prophet, who epitomize virtue in both cultures, are personalities who express radical privacy within the community of men.

The trauma for modern man is that he at once has lost both the private sphere of the public life and the otherworldly experience of private fidelity to the Deity. Mass technological society has stripped man of his political and spiritual identity. Amorphous bureaucracy and the secular city-state have replaced clearly defined identity roles.

Historically man has experienced a number of dimensions in his exploration of private spheres of human conduct. In ancient societies privacy was bound to taboo.[18] On the cosmological level we can observe that the universe

was divided up into discrete categories which admitted no movement between or among them.[19] In the Greek cosmology the dwelling places of the gods are clearly designated. No less in the Hebraic heritage is man's place in the universe separated from the spiritual sphere or dwelling place of the Deity.[20] Ancient cosmologies supported the view that the universe was divisible and hierarchical, and the higher realms signified mystery and the unknowable.

In Western civilization, as man ventured forth to create spiritual communities, wherein it was possible to develop covenantal or socially sanctioned spiritual relationships, taboo privacy was translated into the otherworldliness[21] of the Christian model of monastic community. For centuries Western man has served at the altar of spiritual privacy. The universe of prayer and church ritual expresses the need for a private sphere of human relationship with the Deity, unthwarted by the earlier forms of taboo, where the Deity existed either in the antagonistic environment of polytheism, or as an all-powerful Being evoking fear and submission.

As the nuclear family came to dominate the socialization patterns of Western man, the fulfilment of a privacy need, either taboo or spiritual, was realized and explored in the context of familial relationship. With the evolution of complicated societal structures, of institutions,

professions, and political groupings, the family unit

has represented a retreat from the intrusion of the powerful

into the sphere of the intimate.[22] Within the family, man is

able to experience the sanctified relationship which in human

life reflects his otherworldly quest for a private relation

with the Deity. In the context of the bond of shared blood

and ownership as the necessary condition for the experience

of trust and love, man is able to express his innermost

thoughts and sensitive feelings without fearing the reprisal

of competing elements in a possessive and hostile market

environment.

Beyond the ground of family lies the privacy of

extended family or friendship. As man achieves security in

his own identity he is able to give of himself to others and

to share intimate feelings with members beyond his own immediate

family grouping. Cultures provide the cues for such experience.

This dimension of privacy is manifest in the breadth of

relationships that are engendered by man's entrusting confidence

in others, either in an institutional or casual framework.

Most recently, a novel dimension of privacy has

been realized, the assertion of radical self. This view

of privacy prescribes that man must achieve a heightened

sense of intimacy and self reflection, even at the expense

of institutional stability or political cohesion, that man's

greatest responsibility is to develop a reflective awareness

of the nature of his own self, whether it be in isolation
from others or through limited chosen experiences of trust
and familiarity. The exploration of self is, in these terms,
the meaning of privacy. This is the embodiment of a new
consciousness of the post-industrial society which argues
for the affirmative right to radical individuality and
life style. Many perceive this view of privacy as a form
of political anarchy.

With the radical existential quality of
contemporary civilization, a novel form of individualism
has been born, which, for the first time in history, has
made the full spectrum of the population curve open to the
experience of identity trauma. The rapid redefinition of
roles in our authority structures, whilst creating the
conditions for the existential need for a perception of
private self, has produced the condition where man fears
his neighbours' capacities to observe and question his
conduct. Privacy has never emerged as a mass issue due
to the fact that for centuries, indeed from the period of
the inception of revelation and rationalism, man existed
with a static conception of the universe. Static, in the
sense that class structures could be more clearly defined
than now, and even though societies were continually being
upheaved and destroyed from within through social revolution,
man was class identified rather than radically individual.

The mark of pre-industrial civilization is the lack of
mobility and change between or among class structures.
Even where representative government was the system of
adjudication and legislation, true pluralism did not
manifest itself until recent decades.

SOCIAL-PSYCHOLOGICAL FRAMEWORK

Privacy is suddenly now perceived as a larger issue because the individualism of the controlling classes is being qualified by the rapid expansion of the capacity for wider numbers of people to develop individuality and concern for personal dignitary rights. In Canada the young high school graduate is able to mobilize himself to travel the breadth of the country and to derive the satisfaction of freedom of movement and individuality of dress and outlook, hitherto the domain of established and upwardly mobile members of the population.

The tendency towards more disclosure of information is experienced by the welfare or working populations as well as the power elites.[23] Those who can afford to behave individually have turned to define wider contours of expressive communication on the one hand, while at the same time allowing less observation and intrusion into the world of the private sphere than a generation ago. The nuclear family has been extended to the experimental form of the commune, indicating a widening of information flow and sharing in the family unit. There is a greater demand in the corporation by middle management for encounter groups and expressive sessions with the dominant leadership of the organization.

It is nevertheless a matter of serious interest
that the vocation of seeking privacy has been most
heightened among the members of the leisure class.
The educated university population and professional elite
transcended political ideologies of right and left in the
period of Congressional debates and hearings in the United
States a half decade ago. Members of society who were able
to place great attention on individuality joined ranks in
making claims for the right of the person to self-determination.
This articulation of values is now spreading to wider
populations in varying circumstances. The consolidation
of the power interests of the large corporation which
culminated in the elite symbol of the organization man of
the nineteen-fifties has been put under heavy attack by the
upwardly mobile and educated population which observes a
loss of aesthetic and moral satisfaction (two senses of
privacy) in life style.

The question that is most puzzling is the extent
to which the novel demands for privacy are in fact a
reflection of elite types, or whether these manifestations
have a potential adaptability for the majority of our citizens.
If the issue of privacy reflects the deep ferment of the
alienation of the upwardly mobile from the world of the
monolithic corporation and state, is privacy the luxury
of a few non-conforming personalities who have experienced
sufficient material satisfaction to indulge in a life of

aristocratic reflection and individuality? The aristocratic attribute is to be able to choose one's friends and avoid one's enemies, to be able to escape to a paradise of physical and mental space where one's thoughts may roam free, untouched by bureaucracy and intense interaction with an ever overpopulating mass. Is it the case that suddenly, through the enhanced wealth of our post-industrial culture, men have come to realize that individuality and private life-style are not the just desert of an aristocratic few but the right of every man? And, insofar as there is a greater trend towards more expressive behaviour, has the virtue of privacy of the Victorian era extended to a wider terrain mentally, physically and politically? It is difficult to determine the answer to these puzzlements. For man is experiencing a greater population concentration, thereby losing physical privacy ground, whilst at the same time growing material benefits are widening the possibilities for expressing individuality.[24]

Through the possession of knowledge and increased mobility greater numbers of people are able to distinguish themselves as individuals, despite the overwhelming trends towards conformity.[25] In a pluralistic model of community, where men are forced to struggle for distinctiveness and identification, the privacy problem is highly sensitive. In sharp contrast stands the model of the harmonious universe where, in a profound sense, man has no identity. This focus is established for Western man in the legend of the Garden of Eden.

In the State of Paradise the problem of privacy
is non-existent, for it is unnecessary for man, in order
to survive, to negate his environment or another human
being. Resources are abundant and man's personality is
not influenced by a reflective knowledge of his surroundings.
Insofar as there is no antagonism between or among the species of
of human or animal life, total happiness is achieved through
a harmony of parts. At the very moment that man negates
the pre-established harmony of paradise, he posits his
identity[26] and thereby experiences the primordial trauma of
privacy, shame.[27] The legend establishes some of the ground
rules for privacy taboo, the shame attached to man's sexuality,
and his desire to act unobserved by others. The capability
to distinguish between good and evil, between the powers of
affirmation and negation, is connected to knowledge. Herein the
eyes of man are opened to reality. His acceptance of reality
is reflected in his struggle for self-identity in the context
of conflicting forces.

This description affords the basis for understanding
why it is that privacy is not a difficulty for the utopian model
of social organism. Insofar as the social order is perceived
merely as a mirror of interrelated and complementary principles
and goals, the lack of conflict between or among the parts
dictates that the public order is not divisible, but rather that
the whole represents an organic unity.

Social cohesion, in its ideal form, reflects a civil
order where the political participants are entirely interdependent
and do not question the authority vested in the established
leadership. This model of social cohesion, it might be argued,
is, from the point of view of human reality, not reflective
of actual social conditions at any time during man's
historical process of evolution. However, it would be
short-sighted to avoid stressing the importance of the model
of 'organic integration' that has had such an enduring
effect upon the development of social organization in the
West.

The utopian inheritance embodied in the vision
of Eden has its parallel in the idealist tradition of Western
political thought. The ideal state of the Platonic Republic
is one where all members of the community have been educated
to accede to surveillance from the defined authority
structure.[28] Artistic production, cultural values, and principles
of government are derivative from absolute postulates of
ultimate goodness and justice. In such a state, the guardian
rulers are dominated themselves by an idolatrous relationship
to the ideal forms of reality. Privacy is no more or less
an issue than in the totally ordered universes of the programmed
societies painted by Skinner and Orwell. Religious institutions,
such as the monastery or indeed the medieval church, underscored
the principles of the harmonious universe. Privacy would not
have been a deep issue for the Catholicism of the thirteenth

century, for the world view presented by civilization in those times was that of an organic universe[29] where man's responsibility was to follow the highest principles of virtue and his moral obligation was to confess his every private failing in achieving those virtues before a tribunal vested with the ultimate authority known to man, short of the Deity. The history of caste ideology has been pervasive in the West and has covered the gamut of rigid clerical hierarchies, the doctrine of the divine right of kings, the aristocratic leadership of the industrial revolution, and the educated and professional elitism of the globally developing post-industrial meritocracies.

Privacy must be understood from the point of view of our re-interpretation of the sets of principles afforded by each culture, which establish the relationship between the ruler and the ruled, the powerful and the powerless. In most civilizations the need for survival outweighed the human requirements of man to reflect on his right for inner sanctum. Reserve is a feature of the human character which sits best with the aristocratic description of virtue found in the Nicomachean Ethics of Aristotle, the courtly manner of the Venetian Ambassador of the Renaissance (who specialized in secrecies) or in the social climate of the English Garden Party of the latter days of the British Empire. Privacy has historically been a possibility for the powerful, those who had an independent sense of destiny and self-control.

It was the assumption of socialist ideology that man's alienation and sense of intrusion on his private rights by the managerial classes would cease with the introduction of a classless society.[30] Viewing man's alienation or his state of loneliness as a question of class struggle, privacy was conceived as an issue of power. In a social order where one class was alien to another, whole universes of information stood in opposition. Wherever the archetype of social cohesion has been described, pursuant to a stable distribution of power, privacy is resolved as a political issue.

Social ideologies of a thorough nature carry with them strong leaning towards social planning. Premised on the view that man's nature must be consistent with the aims and requirements embodied in the prescribed ideology, it is necessary for participating members of a given community to come under close surveillance in order to be identified with the highest goals and virtues of the system.[31] This model of systematization is the continuation of the Platonic paradigm. For purposes of our theoretical discussion on privacy, it follows that in principle, the model of the monastery does not commend an essentially different set of premises as to the nature of privacy from that revealed through the recent turmoil of the cultural revolution in China. Any institution that is able to express a set of propositions as to the nature of man and the universe, and includes all participating members of the specified

community within the jurisdiction of these principles, has the right to educate and reeducate the identities of participating members until such time as they are consistent with the general aims.

A rigid or hierarchical society is antagonistic to the pluralistic perspective attached to a constitutional framework of checks and balances in a democratic order. The fluidity of representative government that predictably changes its class of rulership emphasizes the issue of privacy for modern man. Although social orders may be said to be as diverse as their citizenries, in a society where minimum conditions for material survival have been satisfied for the vast majority of its participants the conditions for reflection as to private identity are made possible.

Within the pluralistic society there exist many variations on the utopian model of social cohesion. Privacy varies according to the level of functional relationship. Each social unit that man experiences provides privacy rules by which the unit has learned to function and the rights to privacy must be understood in the light of these rules.[32] There is no one privacy game, but many varying ones, some of which are related and others not, and above all, the rules change according to which objectives the participants choose in the light of their own experiences.

Insofar as privacy is connected to the notion of trust or intimacy, it is instructive to review the sort of privacy that is intrinsic to the family relationship. Within any given family the young child receives a host of cues that regulate his behaviour with immediate relations and with outsiders.[33] Very quickly a child learns to distinguish for himself acts which are sanctioned for openness and those which are not. Once the child has learned to perceive certain areas of his personal behaviour which he does not wish to share or communicate with others (for example, toilet habit) a public-private dimension is established. As the child moves into the outer world, he brings with him a subtle combination of idiosyncratic variables of privacy and qualifies these with the culturally sanctioned spheres of private acts, some of which he has already been taught within the nuclear family. The dimensions of privacy, altered through the diversity of space-time relationships, personality growth patterns, and cultural modes of adaptability, are part and parcel of every human being's development.

The child is the model for understanding the growth pattern of privacy. As he reaches out into the world he creates a boundary for the territory which he learns to regard as his very own. He learns to discriminate that which he is entitled to possess, physically and mentally. Within the specified milieu, a child becomes disoriented when the cues that he learns in his immediate environment

are not reflected in reality. Survival necessitates that
the child learn socially sanctioned conditions of privacy.
This evolutionary growth is inherent in the very act of
being human in a community.

The concept of an open family is not essentially
different from that of the open society.[34] A family that
is open to the world, which does not harbour the child
and isolate him from experiencing the intimacy and
familiarities of the regions beyond the nuclear family,
abides by the principle that the family exists for the
development of the child and the nurturing of his
identity in the world, rather than restricting him to
the sole end of dedication to family cohesion.

At the very earliest stages of development,
the child, like Adam in Eden, does not have a unique sense
of privacy insofar as he does not possess a real human
identity, that is, he is incapable of positing his existence
against the world. The process of human development, in
its interconnection with privacy, makes possible the boundary
conditions both of involvement and disinvolvement with the
world. Each man learns to check and balance himself in his
relationship with others.

It is natural for man to learn, very early on, the pleasure of establishing intimate contact with the world. It is, indeed, through intimacy that man is able to discriminate a satisfying private sphere.[35] Early in a child's life, a retreat into self at the expense of intimacy exemplifies a form of privacy that is unhealthy and counter-productive to an open and trusting personality. As the child proceeds through various phases of development he learns to make qualitative distinctions about the right of others to intrude on his territorial domain and learns to assert his personality in the world of human relationships. The ultimate sign of maturity is manifest when, as a young adult, a person is able to demarcate the commitments owing to various groups and personalities. To commit oneself to others means to expose part of one's private self and, under certain circumstances, may involve the total giving of private self (love) without the expectation of a return commitment of self or information.

One of the major problems with contemporary society is the breakdown of the nuclear family as a cohesive unit. Those families which survive in the large urban centres tend to be closed units set discreetly apart from other families. By necessity, in highly populated areas, families exist as isolated islands. This contributes to the feeling of insecurity of the family unit and hence weakens the social fabric in terms of trust and openness.[36]

Insecurity, in the individual, the family, the group, and the nation-state, lends itself to the model of the closed social unit. Where fear of betrayal or lack of commitment to social cohesion exists, a set of heavy penalties or sanctions for the assertion of self will be the inevitable result. The totalitarian society is defined by a tightly enclosed model where there is heightened anxiety about the intrusion of non-committed members into the sphere of precarious intimacy.

For the normally functioning members of society, privacy is a measurement of psychic balance. The person who is at home with his patterns of information sharing, who is able to come to grips without guilt or discomfort with his own store of information about his private person, will be composed in terms of his own identity and social relationships. A paranoid personality, by contrast, experiences great distrust and conflict with his own self-image in relation to others. A paranoid person lives with heightened anxiety about others observing and wanting information that he perceives as matter absolutely private. This raises the difficulty of the perpetuation of certain types of relationships in our contemporary society that contribute to the stripping away of personal identity, thereby sustaining the tendency to treat impoverished groups or dependent persons (prisoners, mental patients, welfare recipients) as subjects for total observation. When

observation occurs in a total sense in a restricted
community, where the conduct of an individual is totally
defined by that community, persons are highly vulnerable
to intrusions that alter self-perception.[37] In such a
situation a person is hampered in creating intimate
relationships which allow him to define a minimum threshold
of a private self. When a man gives up the belief in
the possibility of intimacy he not only, in withdrawing
into himself, loses the normalizing functional quality
of privacy, but loses his very sense of identity.

More generally, large numbers of people in
society who fear the increased capacity of information
systems for surveillance, are asserting claims for the
reinterpretation of identity roles. The alteration of
perception of self is deeply embedded in the attention
placed on life-styles in our contemporary psychological
and political literature. Man has, in recent decades,
reacted to the compartmentalized Victorian view of social
and political interaction. The concept of self in the
post-industrial civilization of North American technology
no longer affords a static or non-interactive view of
organic unity: man is perceived as an organism in flux.
Men are continually redefining their self-identity in terms
of their particularized human experiences which do not
necessarily entail a definition or description of family
origin, ideological commitment, or professional status.

Each man in our universe of interactive information and value explosions is increasingly learning to build an independent psychic universe. Such is the trend of our generation, emphasized through the styles and fashions presented in the media, current films, and the symbols of elite political leadership.[39] Non-conformity is a new symbol of success. This is in fact represented in the Canadian culture from the dress and appearance of Canadian youth to the voting patterns which result in the election of the individual stylist.

Privacy has become the symbol of the counter-culture to the age of bureaucracy.[40] It is expressed as an inherent right of man to determine his self-definition and perception. Privacy may serve as the focal point of the challenge of one generation to another, of young to old, of the powerless to the powerful, of the unskilled to the technical, of the artist to the technocrat. The psychic and political transformation in our perception of privacy are felt too in the introduction of new styles of behaviour and living arrangements. The most familar definition of privacy, found within the Common Law, of the "right to be let alone", must be understood in the context of a novel generational consciousness, which insists upon a qualitative alteration in the communicative acts of discourse. Insofar as the legal and traditional regulatory communities are confronted with changing

expressions of human individuality, it is necessary to discern the conflicting facets of privacy demands in the social order.

PHILOSOPHICAL AND LEGAL ANALYSIS

The claims made as to the nature and purpose
of privacy within both the historical and analytic contexts
of philosophical discourse are manifold, ranging from
the assertion that the definition of privacy must afford
an intrinsic or univocal meaning to the assertion that
the meaning of privacy varies according to the context of
the social usage of the term.[41]

In the context of democracy, the right of privacy
must be perceived as a double-edge sword. For the "right to
know" of the individual must be forever balanced against
the right of the state to enjoy an open relation with
its citizens. The historic balance of privacy in the
practical development of state life, swings on the pendulum
from the model of the closed system to the model of open
disclosure. And depending upon the perspectives of the
individuals in question, who comprise the arena of political
life, privacy in democracy has ranged from right to
privilege. It is possible to reinterpret the historical
evolution of political doctrine to ascertain whether any
given system increases or decreases privacy determining it
as a right of the individual, an imposed duty on the state
to the individual, or a privilege which exists at the
dispensation of the sovereign.

Privacy has enjoyed alliances stretching from totalitarianism to utopianism depending upon the conditions established for the rights of the state to survey its citizens, and the degree of trust shared among the members of the political model. It may be viewed as the signpost against which individual rights are assessed. Neither the political model of social contract nor that of authoritarian rule can escape the dictum that privacy is the basis upon which deserts and benefits are distributed in the social order. Privacy thereby becomes the mirror of the status predicates of the social system in question. For example, in classic bourgeoisie economies, privacy is the desert connected to the cornerstone of the political system, namely property.[42] In the socialist model, by contrast, privacy is connected to the dedication of its citizens to the shared goals of the collectivity. In a socialist model the level of trust placed by the collectivity in an individual, which reflects his dedication to shared group interests, will be inversely related to his fear of surveillance by the group. The private sphere in a socialist environment, as much as in a capitalist model, is a designated area of liberty. In the historical framework of normative political theory and ideology, privacy may be viewed as a mirror system or snapshot of the status or hierarchical relationships within the specified systems of ideologies.

It is instructive to consider the formal structures
of claims that might be made about the nature of privacy.
The most grandiose assertion is that privacy is not a
derivative but a primary right, that it is an end and
not a means, and furthermore, that it is a natural right
for all men. Although natural law is by no means a
fashionable point of departure for contemporary analytical
jurisprudence it is nevertheless a perspective on the
nature of rights which enjoys an undying reputation. The
natural law view is an outgrowth of a teleological conception
of nature which suggests that man's nature is defined
according to his tendency to behave in a certain fashion.[43]
The span of natural law thinking ascends from a description
of man as a survivor (the necessity of biology) to the
description of man as a rational animal tending towards the
good, a modality of perfection, or the Deity. Philosophers
have countenanced the argument that, because man's nature
defines him in a prescribed fashion, his natural tendency
is good or right. The naturalist argument has been noted
for its particular moral compulsion to prescribe that
certain absolute rights or attributes be appendaged to
man's very being.

In what sense does the acceptance of an inalienable
right to human life, to take one primary example of classic
natural right, hold similar or equal status to the claim that

every man has an inalienable right to privacy? In practical

contexts the right to life as a universal claim is complicated

by the fact that choices must be made between or among the

lives of men. There are times when men have been sacrificed

in order to make possible life for others.[44] But, the naturalist

would surely argue, the inalienable rights doctrine must

negate the sacrifice of life, for sacrifice makes of man

a means and not an end. It is the logic of the absolute

claim to natural rights that no man's rights may be altered

by pragmatic considerations. The natural right to life, if

made absolutely, must admit no exceptions. For if there are

exempting conditions, the assertion must be made that

certain men do not have or, because of certain actions, have

foregone an inalienable right. This would be a contradiction

in terms. But it might be argued that the defence of

inalienability may be made - a social order might accept

the right for all men while at the same time admitting,

because of the fallible requirements of government, that

it is necessary to sacrifice one's principled commitments

in order to achieve a certain level of human conduct in

the society. If a man takes a life of another, although

the man has the inalienable right to life, and the society

must respect that in principle, practical demands of educating

people to the norms of human conduct which forbid murder,

that is, violating the inalienable right of another to

life, might dictate capital punishment for the murderer.

This type of dialectic throws into question the practical power of the natural law standpoint. For absolute rights vary in their application, depending firstly upon pragmatic conditions, and secondly on the scope of application and definition. That is, where natural rights have been part of society, it is still possible that certain members will not be defined as human for the purposes of asserting these rights. Therefore, both practice and definition have historically severely qualified the integrity of the natural rights doctrine.

Privacy has, for modern man, become a cornerstone requirement for human sanctity. It is perceived, with greatly increasing focus, as a fundamental value which alerts us to the threshold requirements necessary to contain civilized existence in an environment where ever-increasing demands are being made on the individual in relationships that he encounters in a technotronic age. The span of privacy claims is similar to those made in the sphere of the naturalist claims to life, liberty, equality, or other classic fundamental values.

On the modest level, the argument may be made that, in order for man to survive as a human being, it is imperative that some sphere of privacy be maintained. But, in the arena of natural rights, the modest level of assertion widens depending on one's perception of the quality or range of application necessary for civilization as opposed to mere survival.

It has never been clear in what sense the transfiguration of absolute natural rights claims into notions of fundamental values must radically alter the use of the word "nature". For it seems that the interpretation and application of fundamental values is consistent with a pragmatic or check and balance process of adjudication, whereas absolute assertion of man's nature ought to admit no exceptions or role for discretionary application.

There are a number of natural rights which have classically served as the foundations of Western democracy. And although the distinction between private and public life has been a concern of philosophers, privacy has not held equal status in the canons of natural rights doctrine until recently when it has come to designate modern man's crisis with respect to the control of his own information system and the quality of his relationship with organization and government.[45] Historically, privacy must be viewed as a mirror or parallel to whichever values have been fundamental to survival or the perfection of human existence - man's inalienable rights to life, liberty, and property. In the modern era a novel claim has emerged that has asserted privacy as a fundamental value which demands equal status to the inalienable rights that he has hitherto inherited in the evolution of the principles of Western democracy.[46]

Until recently, Western citizenship has sought
to give an ever-increasing number of men a role in
public life, a status reserved in the Periclean model
for the aristocrat. Currently privacy, the traditional
complement of "publicity" has become the expressed need
of modern man who has achieved an overheating of public
exposure and participation in the market-place. Modern
man, as much as others see him in the public domain, has
increased vision and awareness of the lives of others
in the body politic, and through democratic procedures has
increased his capacity for affecting change. One must
not accept the utopian perception that in Western
democracy it was ever other than the reserve of a few
to make ultimate and important decisions for the polis.
What must be understood is that modern man has achieved
effective public citizenship in his right to claim
benefits and rights within the adjudicatory and constitutional
process.

The logic of the right to life establishes the
taking of life as its opposite. The right to equal status
within the body politic establishes inequality as its opposite.
The right to property establishes the unjustified seizure
of property as its opposite. Modern man has been paradoxically
placed in the position of establishing "publicity"; which
has been the historical complement of privacy, as its opposite,

thereby asserting the right to privacy as a fundamental
value. In fact the public-private continuum mirrors
the value system within the culture.

The notion of absolute rights carries with it
the assumption of intrinsic definition. The science of
natural law conveyed the belief that the meaning of
natural rights concepts could be understood through
an extracted formalization of their apparent internal
logical features. The usage of privacy has hitherto
escaped such formalization and scientific or systematic
exigesis. For its function as a concept has been as
an appendage to other primary rights. Consider the
ordinary usage of such a familiar statement as "this
is private property". The right to property, in our
civilization, has been for centuries regarded as an
inalienable right. Privacy represents, in this context,
the designation of the conditions for the realization of
a primary right, rather than the designation of a primary
right in and of itself. In other words, the private-
public continuum has revealed the pragmatic context of
the application of primary rights known to the civilization.
The private sphere has functioned as the complement rather
than the opposite of the public sphere. The statement that
"this is private information" acknowledges the fact,
insofar as the statement is sanctioned by the normative

behaviour patterns of the society, that the infringement
on one's personal information system would entail a
compromise or qualification of one's liberty.

Indeed, the etymological root "priuus", that
is "owned by one person", has the derivative "privation",
which would designate that a man's right to his life,
property, or liberty is in some way being compromised.
Historically it was through the notion of private person
and the private citizen (privacy designated the benefits
of the inalienable rights of citizenship) that the true
fulfilment of the public sphere was realized. In this
sense, private and public have served as historic complements,
not opposites.

The meaning of privacy cannot be understood in
isolation from the fundamental pattern of social interaction and
the acknowledgment of certain prescribed fundamental
values within the specified culture. Patterns of
fundamental values evolve and devolve showing consistencies
and inconsistencies between accepted values and accepted
practices depending upon the historic moment of the culture.
There will be occasions within a culture where the fundamental
values of the culture will be most greatly stressed in the
public as opposed to the private sphere, depending upon
the balance of interests between or among the parties in

the culture. Socio-economic factors weigh heavily as practical variables affecting the social-psychological patterns of evolution which define the continuum, and create the conditions for the application of the fundamental values.

Privacy is therefore a receptacle or a mirror of a host of social, political, psychological and economic value variables. It becomes an important concept for a culture depending upon the stress between or among the various variables in question. As a blend and mirror of these phenomena the meaning of privacy achieves changing contours of importance within the social order.

Privacy may be viewed both from the standpoint of positive and negative definition. It may be defined as the right to possession over one's own information system, one's physical being, as a covering extension of the property right, or as the liberty to involve oneself in a particular field of personal activity. Or, put in another way, privacy may be defined as the right to escape from intrusion of others on one's committed spheres of enjoyment of the good life. The negative focus of definition has become predominant in an age where man fears his very loss of self and capacity to maintain a sphere of activity free of surveillance. The negative focus of definition is clearly related to the capacities

that are the product of modern information systems for
gathering, storing, and disseminating information about
persons. Classically, intrusion on man's person and his
property could be comfortably connected to the primary
rights of life, liberty, and property, without the special
introduction and elaboration of a primary right of privacy.
Therefore, the focus of usage of privacy was, in the heyday
of Western liberalism, connected to the positive right
of asserting one's citizenship through the application of
primary rights. In the current era the crisis of man's
retreat in the face of computerized information systems
has, via a negative emphasis in definition, spurred the
appetite of twentieth century man to define privacy as a
threshold right for civilization itself.

Man's privacy is the inviolate sphere of his own
person or extension of his person with regard to which he has
the right to deny access to others. While primary rights
represent a model commitment to a perfected image in his
relation to his species, privacy represents the context for
the realization of all primary rights in a state of civilized
relations.[47] In this light privacy ceases to be an appendage
or the mere occasion for realizing fundamental rights, but
rather is the grounding from which fundamental rights are
distilled and evolved. It serves as the basis for understanding
the meaning of man's claim to human dignity, to his treatment
as an end and not as a means.

But what must confuse the modern observer is
that there are numerous contexts in which privacy is used in
ordinary parlance and that the moral force of these vary.
Therefore it is necessary to distinguish these contexts and
to understand the sorts of value claims that are made under
the penumbra.

In general terms privacy may be defined as the capacity
to exercise control over what a person or group of persons
perceive to be a right to physical space (environmental)[48]
or over relationships with others (human-relational). Within
these two discrete ranges of usage, environmental and
human-relational, are many examples of extreme radical
subjectivity (held only by one person) and public (shared)
subjectivity which, in the social life of a community,
specify a spectrum of weak and strong usages of the term.
In a specific culture one must distinguish between
idiosyncratic-aesthetic, and moral-legal claims to
privacy.

Man, over the millenia, has come to realize
that it is necessary, for civilized life, for the human
being, in his relations to others, to have patterns of
distancing both in the psysical and mental spheres in
order to establish the ground conditions for lessening
aggression and maximizing human fulfilment. In the physical
sphere man's aloneness is either perceived as the occasion
to be isolated altogether at certain times and places from

from any contact with other members of the species (negative focus), or as the right to choose to be physically alone with one's fellows, to band together for purposes of intimate group relations (positive focus). The physical sphere shades into usages related to the right of mental separation. Man is perceived as having the right to be alone for purposes of mental intimacy, either in terms of self-analysis or for the purpose of sharing intimate emotional relations with others. In gross terms the notion of environmental privacy is quantitative in nature whereas the mental or psychic is qualitative. Physical separation designates isolation, whereas mental separation designates anonymity. Covering all usages and emphases is the assumption that the basis of the privacy claim is ultimately grounded in man's physical and moral autonomy and the moral principle of respect for persons.

Within any social unit each individual will establish for himself a range of perceptions about his personal privacy which will inevitably be a blend of his peculiar biology and cultural experience. These perceptions have both physical and emotional ramifications. An individual may feel that a particular part of his body, for example, must be free of surveillance at all times, or that a particular piece of information about himself, which to ordinary folk would be considered harmless, must be protected. This individual subjectivity, for our purposes,

will be designated as idiosyncratic. The major attribute
of idiosyncratic usages of privacy is that the outsider can
recognize differences in privacy practice rather than express
agreement about a right to the claim and the sanction of
it. There is a difference between sympathy and collective
agreement.

A person's idiosyncratic commitments to privacy
hold sway so long as there is collective agreement within
his special group as to his right to a particular physical
or mental space or proven right of property. A man,
living in a hotel, may have the habit of sitting on a plush
red velvet settee each morning between the hours of nine
and ten o'clock in order to read the morning newspaper.
It may be said that his commitment to sitting in exactly
the same spot every morning is idiosyncratic. His
peculiarity is to assume that the chair is his private
spot. An outsider arriving at the hotel, unfamiliar with
the man's habits, may be regarded as being justified in
having a first come, first served view of the right to
enjoyment in a public physical artifact, insofar as the
chair is within the public domain. However, if an argument
ensued as to the right to the chair it might be observed
that collective agreement among the frequent users of the
hotel or the employees of the establishment, who themselves
were committed to this man's habit in more than a merely
sympathetic vein, could bring suasion to bear on the

newly-arrived visitor to the establishment. This would
be to introduce an aesthetic dimension of privacy usage,
namely, a description of the mores and customs of a
particular group or place. By "aesthetic" we understand
the shared subjectivities of a special group of individuals.

Idiosyncratic privacy claims can be protected on
aesthetic grounds. In the case at hand one might say that
the man in question, whose habit it was to read his newspaper
on the chair each morning, was regarded not only as a "character"
but also as a character worth protecting because he had,
over a period of time, become so regular in his behaviour
that it would disturb the patterns of both physical and
human relations within the establishment to evict him
from his habitual sitting place. Aesthetic suasion seems
to create an informal right to certain manners and deference
patterns. However, if a man arrived a hair's breadth
after another into the lobby of the same hotel and
proclaimed his particular fascination with red plush
velvet chairs, surely his claim would be passed off as a
peculiarity which only a large dose of sympathy could
redress. Idiosyncratic claims find their propection in
aesthetic agreement as to group notions of propriety. In
the aesthetic domain is introduced the notion of shared
subjectivities. Groups of men, over a period of time,
develop shared expectations about the do's and don'ts
that allow for unspoken and intuited patterns whereby the
balance is struck between eccentricity and collective enjoyment.

Privacy, in the aesthetic sphere, is a commitment to maximizing the value of pleasurable experience in one's physical and emotional environment of relations. Every social environment produces cues whereby it is possible for men who have been bred in the standards and practices of the shared pattern of relations to make distinctions between good and bad manners.

As aesthetic perceptions heighten to the point where a sense of propriety turns to a sense of obligation, the moral usage of privacy comes into focus. Moral usage reflects widely shared community expectations which signify values deeply embedded in the culture.[50] Although informal sanctioning processes are invoked in aesthetic usages, moral commitment to privacy usage presents a stronger case for justification within our culture. It must be admitted that moral outrage expresses a sentiment qualitatively different from a sense of aesthetic indignity. It is the notion of moral autonomy and respect for persons which explains cases where we give credence to idiosyncratic privacy usage or aesthetic norms. And the notion of moral usage in privacy takes precedence over those cases where idiosyncratic or aesthetic claims violate the dignity of another or of a group of persons. Principles of morality, that is, notions of justice, or fairness, impose the paradigm cases from which to judge the ultimate importance of privacy.

In any situation where a man's moral autonomy or his
view of himself as a person is jeopardized, even without
alteration of his conduct, it may be asserted that his
privacy, namely, his right to dignity, has been violated.

Whereas it requires a sense of a community
or a host of cultural specifications to explain a set of
mores, it requires merely the notion of personhood which
carries the widest possible range of application to
understand the nature of the moral right to privacy.

If we go about observing a man's conduct
against his will the consequence of such observation is
that either the man's conduct is altered or his perception
of himself as a moral agent is altered. The notion of
altering conduct or self-perception against the will of
moral agent is offensive to our sense of human dignity.
If, through a monitoring device, we are able to regulate
or indeed to follow the conduct of a person it is
obvious that we are in effect compromising his responsibility
as a chooser of projects in the world, thereby delimiting
or influencing the kinds of choices that we make available
to the doer. If indeed we are offended by such intervention,
instead of saying "do not violate X's privacy" we might say,
and with synonymous conveyance of meaning, "do not prevent X
from doing what he must be free to determine for himself as

a moral agent". Aside from the obvious cases of electronic
monitoring, where physical surveillance serves as a dramatic
paradigm, are the more subtle range of devices of data
surveillance and attitudes that we have towards our more
vulnerable members, the poor, the elderly, prison inmates,
and so on.

In the case of the elderly, to take one example,
too often at the moment at which it is decided that an aged
person requires extensive care, the physical and mental
arrangements of control are produced whereby the person,
who is found in vulnerable circumstances, loses control
over the disclosure of a private physical area. This
is heightened in any process of institutionalizing the
vulnerable. The guardians begin to treat the elderly
as objects which require physical servicing but have
no existential control over self-determination.
Clothes, the private closet, highly personal physical
artifacts are combed by the guardians as if even the last
vestiges of extended self are in the public domain. Such
treatment inevitably alters the self-perception of the
elderly who become passive and dependent, losing even
the desire to assert self against the world.

Men must, in the course of reflecting on their culture, unpack the threshold levels at which the control of information about persons relates to the capacity of a person to control the nature of his physical freedom and the quality of his relationship with others, indeed, his relationship with himself in terms of his self-perception as an individual. In our culture, a man's notion of self is bound up with the recorded history of his projects covering a wide spectrum of individual and social activities.[51] Each person contains a memory bank where discriminations are made between personal (important) and depersonalized (trivial) phenomena. At some point a man's sense of dignity is violated when, in the context of his identification with his private memory system, those matters which he perceives to be highly personal are trivialized or put up for consumption as a commodity or object in the market place.[52]

In a possessive individualist culture man's property has been a convenient contour through which an ecology of privacy has evolved.[53] Currently man's perception of personal and social space, and of personal and social intimacy, is experiencing a process of rapid transition and alteration. In a profound sense a man's memory or specialized knowledge, his resume of accomplishments, is the ground from which he asserts his rights against

others in the market place. To lose control over one's

record is perceived as a loss of control over one's

very self. This is why privacy, the stuff which makes

possible the realization of fundamental values, has come

to be used equivalently or synonymously with the very notion

of human dignity. It commends the symbolic assertion of

man's right to self in the universe of men.

Privacy is expressed as an interest or need

and also as a fundamental value. Law is the strongest

statement with objective specification of privacy,

whichever way it is defined. In any event, the law

designates those interests which will be given legal

protection. The difficulty with much of the legal literature

rests in the fact that legal commentators have not known

whether the "meaning problem" of privacy is to be solved

either by tightening the concept through specification on

the one hand or broadening the concept so as to include a

wide range of possibilities on the other. The distinction

between rule and principle solves this riddle.[54]

In order to understand how privacy functions

in the legal context we must treat the distinction between

rule and principle as a continuum,[55] but a dramatic statement

of principle is not upheld because of any utilitarian

calculus of social or economic benefits but rather because

it expresses a value which we commit ourselves to as
an end in itself. It may have a correlative benefit but
not in all cases. And to say that we commit ourselves
to a principle merely because it benefits the majority
of persons is to lose sight of what is unique about
principles.

To appreciate why privacy is deserving of our
attention it is necessary to emphasize the relation between
privacy and the broad principle of human dignity (respect
for persons and moral autonomy). Insofar as society
perceives privacy to be a crisis of value it may be
referred to either in legal or statutory literature as an
end in itself. So understood human dignity is the covering
genus of which privacy is a species. This of course in any
number of contexts of its usage is misleading and confusing.
The meaning of privacy is best understood through its
functional operation. To understand this is indeed to view
privacy more as a material cause than as the final goal of
our moral activity. It is the condition for the realization
of fundamental values. It is that stuff without which we
could not build the edifices (principles) of a civilized
community. Without privacy it is not meaningful, at least
in the context of our culture, for man to have physical or
moral integrity.

The practical question in the Common Law is whether
a new Tort should be created or whether our openings are
sufficient within the available scope of remedies for the
evaluation of novel specifications. Some commentators
have isolated discrete categories of usage within the
decided cases.[57] It has been shown that these legal
categories are covered by privacy understood qua principle,
namely human dignity.[58] These positions need not be understood
as conflicting ones for the former is to designate the rules
of privacy that the legal system has hitherto provided and
the latter is a further inroad into explicating the symbolic
treatment in law of privacy as the designation of a fundamental
value in its own right. Privacy is often used as a principle,
an end in itself in the legal literature. This reflects the
symbolic usage of privacy as a synonym for equality or moral
autonomy. It might be argued that although this is misleading
in logical terms it is not in legal terms because the
specifications of privacy occur much as the specifications of
fundamental values occur; that is, in the adversarial system
of the common law, competing claims are the occasion for
compromise and measured application of the values that are
fundamental to our legal culture.

However, because privacy has diverse usages
within our culture and due to the fact that the structure
of its meaning is unlike the logic of a fundamental value,

like equality for example, it is in the interest of sound

legal housekeeping that privacy share in the ongoing

evolution of the protection of dignitary rights without

a biased commitment to it as a separate and equal principle

standing in its own right. Its association with other

fundamental values is too deep to do it the disservice

of ripping it from its cord of deepest meaning and purpose,

for without privacy moral autonomy would be a naked

notion and privacy, without moral autonomy, would be to

have clothes without persons. One is necessary to the

other. Fundamental principles are necessary to breathe

life into the notion of privacy, and privacy is best

understood as the precondition for the realization of

fundamental values.

The law can best achieve this necessary union

by preventing the disembodiment of privacy from the

context of its strong moral connectors which are given

protection in law. The protection of dignitary rights

in the Law of Tort reflects the crystallization of moral

standards which society has arrived at over a long period

of time. Just because privacy is being lifted as the

symbol of the current disorientation of community life it

is the responsibility of the law, the task of which it is

to move slowly and deliberately in response to the changing

sands of mores and morals, to situate new flowerings of

values within the traditional categories of legal remedy.

Over time, the various categories of usage within the legal context may come to reveal a definition of principle which will provide not only a logic but an experiential reality which may give privacy a status around which all other principles will revolve, not only as a precondition but also as the penultimate principle of civilized life, indeed, even as the most important end of a human striving for perfection in a mortal universe. Such vision, however, is in the hands of future verification; for the moment privacy is undoubtedly one of the more confusing concepts of our contemporary culture.

Its confusion was suggested at the outset by the statement that "privacy is borne of an industrial age". Privacy symbolizes the physical and psychic imbalance which modern man is experiencing as social change outdistances his definition as humanistic man. Man is able to perform his mechanical or technical tasks, to contribute to technological progress, while losing the sense of moral progress in his relations with others and in the view that he perceives they hold of him. Although one might say we all know that we need privacy and that it requires legal protection we are baffled to describe it in terms that are not readily reduced to values that we cherish and are familiar to us. This is not an insult to privacy nor is it a category mistake, for our old principles in some respects have worn threadbare

on the elbows of history. Perhaps we need new words to
describe those concepts which have served us well at the
altar of human integrity. Over time privacy may perform
this essential task.

The protection of dignitary interests has
developed piecemeal in the common law and represents an
elaborate documentation of the view that law is the formal
instantiation and distillation of societal values arrived
at through the balancing of complementary or conflicting
interests between or among members of society. The common
law provides the ground rules for protecting man's dignitary
rights against the unwarranted intrusion of others. This
has not hitherto been arrived at through broad general
categories of legislation but rather through the judiciary's
cautious protection of those values which it would regard
as minimal for maintaining a respectable level of social
cohesion in a civilized order. The moral quality of its
decisions represents the ideals of civility of the legal
culture which is a broad reflection of community expectations.
But this is not synonymous with the ideals which represent
a model universe of perfected standards. The law intervenes
with the rough instrument of the checks and balances of
competition and conflict. In so doing it resists, in the
common law, the broad sweep of legislation on the one hand
and the adhocracy of radical existentialism on the other.

It produces rules which underlie principles making civil
liability the guidelines by which man may arrange his
affairs with others in a stable and predictable fashion.

This outlook on the common law does not exclude
the view that legislation may be required in discrete
areas, for specific legislation will occur as men in the
governing process realize that they are able, because of
the high degree of repetition of competing claims, to
establish workable practices through which dignitary
interests may be protected. In such cases the meaning of
privacy must be wedded to the context of its usage.
A general theory of privacy is not required when community
expectations are sufficiently clear with regard to the
right to know and correct the content of one's record
and the dissemination of information about one's self
in such areas as credit, health, and education. Here
again the competing interests of society must be the
mainstay of the creation of protections in a democratic
order.

BALANCE OF POWER

The psychic dimension of privacy, understood through a redefinition of identity and role, has a correlative explanation in socio-political terms in a theory of power distribution. The quest for privacy is a quest for power. The concretization of privacy has always been dependent, regardless of the historical society, on power realities.

It is in the political arena that the functional usages of privacy have sharpest focus and clarity. The claim to privacy is not only made by an individual or his family, but as well by groups, organizations, and governmental agencies. Indeed, groups may identify their power in terms of their perceived control over the information systems relevant to their own social and political determination. Time and time again it may be seen that information kept private is where the power lies. In the family unit children are cued as to the nature of physical and informational taboo systems and instinctively become inquisitive about their details. The power of the adult over the child lies in the private conversations between father and mother, no less than it lies in the discussions between management as far as the worker is concerned. The notion of the backroom or the private space being the place where important decisions are made is a symbol in our culture of the attachment of power to privacy.

Privacy refers us to a cluster of socio-political
interests against which patterns of societal reorganization
are occurring. The reorganization of self on the psychological
level has a concurrent force in the reorganization of power
on the political level. Privacy is the focus of these
transformations.

Information has become the profound property
of the twentieth century. The men who will have the power
of the future will not be the men who own lands and forests,
nor personal wealth, but, rather, the men who have the
equipment of information systems and the knowledge to manipulate
them within their grasp. The man who can control information
will control his environment. The weapon of control of
the future is in the hands of information systems. A
political elite will need to establish itself in the context
of the control of information bureaucracies.

The market economies of the West, in the centuries
following the industrial revolution, developed the ethos
that man's selfhood is defined in terms of the status of
his property. Pursuant to this notion, property was
perceived as a necessary condition for the attainment of
privacy. Insofar as the dignitary rights of men became
deeply intertwined with the right to possession of
property, the citizen of wealth was able to protect
himself from intrusion. The orientation of the common law

in its earliest treatment of right to privacy was one
of spatial conception, hence the evolution of the doctrine
of privacy in terms of the laws of trespass and nuisance,
indicating a fundamental concern with the attack upon
private domains of sanctified ground of ownership.

Until very recently ownership of spatial
environment guaranteed the essential protection of one's
privacy. Through the control and power attached to the
"home as castle" a burgher was able to delimit the scope
of his interaction. In societies where class structures
were clearly defined according to ownership, work relations
extended the principle of physical non-intrusion.[59] The
reserve of the nineteenth century factory worker with
respect to his employer is the archetype relationship
realized in social stratification which clearly distinguished
the property owner from the worker. The man who possessed power
was kept at a distance from the powerless and remained in an
unthreatened role of leadership.

In a structured property-oriented society, to be
propertiless designated lesser status and opportunity for
self-determination.[60] Insofar as property was conceived as
an extension of self, the poor could be described as being
less fulfilled and authoritative in their relationships than
the wealthy classes. A certain standard of living afforded a
level of privacy depending on the extent of ownership.

It followed then that the poorest members of the community had
the least right to privacy whereas the wealthiest members
were able to choose the extent to which they wished to
remain separate and distant from other members of the
community.

In the competitive and highly individualist
cultures of Western industrial society, privacy was a
commodity purchased or inherited through class standing.
This tradition has been a heavy weight on our present-day
conceptions of privacy. Top management in industry,
professional elites, such as doctors and lawyers, are
rewarded with privacy as a result of their attaining high
social rank within the culture. Men of education and
wealth are looked upon as being responsible, by the culture,
for their actions and the public right to know the intricacies
of the work-a-day habits of these elites is restricted.[61]
Hence responsibility is linked to privacy. On the other
hand, a worker in a factory is under much greater surveillance
and is unable or even lacks the will to determine the
precise boundary conditions of management's intrusion
into his habits and performance. This state of affairs
is consistent with the historical pattern of privacy being
closely linked to independence, responsibility, and the
right to self-determination.

Despite this linkage between privacy and status, a new trend has emerged which is altering our conception of property, and therefore of privacy. Many spheres of ownership are being reinterpreted in the light of the transformation of the notion of privilege to that of right.[62] The corporation is perceived as having greater responsibility in the sharing of resources and benefits. Larger numbers of people have now begun to perceive information as power, and are demanding new property rights of access to information which is understood as essential to self-fulfilment and self-determination.

It is asserted that the centres of power have shifted dramatically in favour of those individuals and agencies who possess information which they can effectively adapt for purposes of social control. We are led, therefore, to consider information as power and computers as the instruments of wielding this power.

Centralisation and Decentralisation

The search for a balance of power takes the form of seeking a compromise between centralisation and decentralisation of authority. To the extent that possession of computers implies the ability to define and exercise authority the centralisation of computer operations assumes a key role in determining the balance.

In computing, the general economic rule which favours large production systems over small ones, based on the economy of scale, has come to be known as Grosch's law.[63] This states that the effectiveness of a computing system, as measured by throughput or speed, is proportional to the square of the cost. The effect of this law is that large, multibranch companies can reduce their equipment costs, or alternatively acquire a more effective system for the same cost, by consolidating their computer services into a single facility rather than establishing separate facilities at each branch. It is just this fact that performance/cost increases as cost goes up which has provided the justification for marketing larger and larger computers.

It is not only hardware costs which show economy of scale. Surveys of installations in which the equipment costs are compared with salaries show that the cost ratio of salaries to equipment decreases as the size of the installation goes up. In addition to these dollar savings, Solomon[64] argues that larger installations are more productive because higher salaries make it possible to attract and retain more experienced programmers, and because with larger staffs it is possible to institute training programs, standardized practices, specialization, better documentation, and research activities, all of which

contribute to making the installation more effective.
Another argument in favour of the centralised system is
that a larger, more versatile machine makes it possible to
integrate file systems more effectively and carry out
applications which could not be undertaken without
large memory and fast processing rates.

Berman[65] disputes the greater effectiveness of
large installations for a number of reasons, of which the
most important are that the large organization is far
less able to provide good service to its users who are
necessarily remote, and that the rigid structure generally
found in large organizations is not conducive to good
performance or attractive to the most competent people.
We have here the main argument for decentralising, not only
computing systems, but also manufacturing complexes,
institutions, government and political systems. A
decentralised system is closer to the people whom it serves
and therefore its management will be more responsive to
needs, both with respect to the work which is undertaken and
the speed of service.

In his review of the debate, Glaser[66] further notes
that a reason that many industrial organizations adopt
decentralised responsibility for operations in general is
that it also makes it possible to assign local responsibility
for profit and loss, and that this same argument holds
for data processing operations. He points out that it is

possible to apply decentralisation independently with respect
to operations and development. The operational staff is
responsible for rendering services, and the development staff
for decisions on long-range objectives, projections, selection
and evaluation, hardware and software acquisition, policies
regarding cost distribution, use of outside services, etc.
He suggests that two trends are working toward increased
decentralisation: first that the scarcity of experienced
data processing personnel will not last[67] and secondly that
middle and upper level managers, as they become more familiar
with computers, will insist on having data processing staff
available and responsible to themselves for reasons of
independence and safety. These arguments certainly apply for
the operational component of data processing, and to them
might be added that the trend of technological development
is to make it much easier to do computing locally. The
developments include the growth of time-sharing, the extension
of communications facilities which allow satellite computers
to be attached to large remote central processors, and the
spread of minicomputers.

On the whole, past experience has probably favoured
large centralised computer installations in business over
small decentralised ones, where there was a choice between
the two, but current trends are making the decentralised
operations more feasible. On the basis of cost-effectiveness
it is not possible to state unequivocally that one mode is

better than the other. Both centralised and decentralised facilities can be made to work and in the end, the decision to adopt one mode or the other should be, and usually is, based on convictions as to where control of the operations ought to lie - in a centralised body which has an overview of the organization, or in decentralised working groups alive to the needs of users. In government, as in business, the question of centralising or decentralising services comes up, with the same arguments we have just seen about economy of scale when operations are centralised, and better responsiveness to needs when they are decentralised.[68] But since governments everywhere are the largest and very often the just users of computers, the implications for the political process are of central importance.

Computers in the Political Process

Computers may be installed because of efficiency, because they enable certain responsibilities to be carried out within specified schedules, or because they offer better control over an important process. The usefulness of computers for control, predicting, and planning is an aspect which makes them attractive to governments everywhere, and it is especially in evidence in governments with centrally planned economies. The computer literature of the Soviet Union leaves little doubt of the importance of this point of view.[69]

Computers are regarded as the means of making the
hierarchy of state, local and central bureaus work
effectively, and they have been given increasingly high
priority in successive five-year plans. An network of
computers has been proposed in which vital data on
population, housing, production statistics and traffic
flows is captured at the source, and transmitted almost
instantaneously to centralized computers with large
scale data banks which control the operations of whole
industries and production systems. It is difficult to
gauge the extent to which Soviet planners see their whole
economy as a single system, amenable to computer control;
certainly there is a realization that local plants and
local decisions must enter into the picture, but the
theories of large scale planning and global optimums are
consistent with their philosophy of government.

Computers can influence the balance of power
between the levels of government, an effect which is
important in countries such as the United States, Canada,
Germany, and Australia, with federal systems of government
in which there is continuous tug-of-war between the central
and regional jurisdictions. Because computers, initially
at least, were large and very expensive, the first acquisition
of computers in government tended to be large operating
units at the federal level, e.g. the defence establishment,

tax departments, the census division. Although the initial

applications were usually to routine data processing, these

divisions were also the first to come to the more sophisticated

applications in planning and control. The massive data

bases and superior analytical power possessed by those who

have computers at their disposal confer an advantage,

when for example negotiations about tax sharing take place.

As computers have become commonplace in state

and municipal governments[70], the advantages are no longer

sensed along federal or state lines. There are still

unequal bargaining positions, but these will exist between

state and municipal levels of government, between the

departments within a governmental jurisdiction, or between

the different individuals and groups within a department.

At these levels of government, definite shifts of power

continue to result. Downs[71] describes the differences

as follows:

- lower and intermediate-level officials tend to lose

  power to higher-level officials and politicians...

- high-level staff officials gain power...

- city and state legislators tend to lose power to

  administrative operating officials...

- the government bureaucracy as a whole gains power at

  the expense of the general electorate and

  non-governmental groups...

- well-organized and sophisticated groups... gain power at the
  expense of less well-organized and less sophisticated groups...
- within city governments, those who actually control
  automated data systems gain in power at the expense of
  those who do not...
- technically-educated officials within city governments gain
  power at the expense of old-style political advisors.

   The effects of computers on the balance of power
between government levels were explicitly acknowledged
when the State of Hessen in the Federal Republic of Germany
proposed a "data management ombudsman". Among his duties
he is "to observe the effects of automatic data processing...
and note whether they lead to a displacement of the
distribution of powers among the State Constitutional
bodies, among those of the local government bodies, and
between the State and local authorities. He shall be
entitled to suggest any measures he thinks fit to prevent
such effects."[72]

   Must computers imply a greater centralisation of
information and control on the part of gavernment? Not
everyone agrees that it need be so. MacBride, convinced
that a unified national computer centre is inevitable
(in the United States), seeks methods of making it independent
of any one of the government arms, so it becomes available to

Congress, the courts, local and state authorities and the
public.[73] Michael suggests that citizen groups might hire
specialists, unavailable to governments, to exercise a
watchdog role on their behalf.[74] Ithiel de Sola Pool et
al[75] go further. They say: "The dangers are maximized if
there is a monopoly of control over information. There is
a widespread misapprehension that the computer centralizes
information control." But, they add, "the information facilities
provided by the computer can equally serve as a decentralising
instrument. They can make available to all parts of an
organization the kinds of immediate and complete information
that is today available only at the centre... A society
with computerized information facilities can make its
choice between centralisation and decentralisation,
because it will have the mechanical capability of moving
information either way. An information utility can make
information available with unprecedented facility to
people working at all levels."

This aspect of transparency of government, and
its possible influence on public participation, is
the concluding theme of Thomas in his monograph on
data banks in the public administration.[76] He notes the
current tradition in most countries to treat as confidential
all data not explicitly designed for public use. Computers
permit a reversal of this, a more transparent administration,

in which all data not explicitly designated as confidential
can be made accessible. Such accessibility carries a
cost and it might be desirable to make a charge for
information, especially to private enterprises (legal
firms, insurance companies, real estate agents, building
contractors, etc.) which would derive substantial benefits
from it. But the improved communication could encourage
interest in public affairs, and invite new ways for individual
participation, a desideratum of modern political systems.

There are several ways in which computers
might come to supplement newspapers, radio and television
in the role which these media play in capturing and
influencing public opinion. One method which has recently
emerged for determining whether an expert group is able
to arrive at a definable position on some given topic
is the Delphi technique, developed by Olaf Helmer and
Norman Dalkey at the Rand Corporation.[77] In a Delphi
experiment, individuals in the group state their opinions
about the timing and importance of future possible events
considered to have high sociological significance. The
participants are then informed about the collective opinion
and given opportunities to reconsider and revise their
positions. The observation, which in large measure
makes it possible to have some confidence in the Delphi
method, is that after a few iterations (three to five normally)

a consensus is often reached. This does not, of course,
provide assurance that the prediction will be correct, but it
does mean that there is a measure of agreement on the
part of experts about what is likely to happen. About
some matters agreement is not reached, but the opinions
may crystallize around two different views, and this provides
a basis for further explorations.

The advantages of Delphi as a method of obtaining
aggregate opinion is that through maintenance of anonymity
in the responses, the possibilities of coercion, unwillingness
to abandon previous views, and the "bandwagon" temptation
to join the majority, are eliminated. More recently Delphi's
have been conducted in which the participants communicate
through interactive computer terminals, thereby greatly
shortening the period of the experiment, and providing
a great deal of flexibility in the size of the participating
group, the manner in which the experiment is monitored,
the number of interactions, and the type of statistics
gathered and circulated during the course of the interaction.

It must be emphasized that Delphi experiments, as
now carried out must be conducted with carefully selected
participants who are at least moderately well informed about
the topics, and often are authorities. In hot-line radio
shows, where there is no real control on participation the

discussion is usually rambling and it is impossible to attach significance to the opinions expressed. Before computers and communications could be combined into a tool for dynamic and interactive exchange of ideas on a wide scale, new techniques for selecting participants and focusing a discussion would have to evolve.[78] Although this has not taken place with the radio or television media, it has been achieved in opinion polling.

The most interesting possibilities for participation on public affairs, perhaps the most far reaching, would occur if the computerized two-way communications systems, to and from the home, were to be realized. Through CATV, cable TV, or community antenna television, high frequency broad band coaxial cable makes it possible to bring many more communications channels directly into the home than are now available through broadcasting. This opens up the possibility of providing many special services, since it is no longer necessary to insist on large audiences for each channel. If one envisages a system which allows data to be sent from the home (as well as being received there) and which allows the data to be switched to many receiving centers, we have a system like the existing telephone system, but one capable of dealing with a very much greater variety of information streams. Among the services which have been suggested are:

- entertainment

- educational television (conventional broadcast)

- computer assisted instruction

- telephone, picture 'phone, and message recording

- facsimile reproduction of newspapers, magazines, and documents

- information retrieval, reference and library services

- mail delivery

- home shopping, banking and travel arrangements

- meter reading

- alarm systems (burglar, power failure, fire, emergency)

- voting and participation in surveys, debates and conferences

- advertising.

The term "wired-city" has been used to characterize
a society in which such services would be prevalent. Although
it is not clear whether any one use will be important
enough to justify terminals in the home, it is conceivable
that the totality of uses would make such a system economically
feasible. Many persons, in noting the possibilities
that this would open for instant mass opinion polls,
have questioned whether this would be a desirable development.
Eulan examines the potential effects on decision-makers
and elected politicians and concludes that the influence
on the representative process would not be beneficial.[79]
Democracy works because politicians have different convictions
about the merits of an argument supporting some position,

and a fair decision is (or should be) reached in debate
after these arguments have been presented. If it were
expected that every individual representative had to
respond to the collective position recorded by an opinion
poll, the debate would not be as effective.[80] Certainly
a representative would be in a poor position to exercise
his own judgment counter to the clearly expressed view
of the majority of his constituents. This is, in effect,
saying that although opinion polls are useful, it is
informed opinion which must be taken into consideration
when decisions are made.

For the present it is only possible to speculate
on the response to making more detailed information about
legislative actions and proposals available widely and
promptly through computers and communications, or about
the political consequences of more frequent and more
widely posed public opinion polls on a large number of
issues. The political processes in the western nations are
too pluralistic and too complicated for any one development
to have a dominating role. In any case a new resource is
most likely to be exploited by those who are already
politically organized. When an on-line computerized information
system containing a bibliography on pollution studies was made
available to university students, faculty, and to other scientists,
evidence appeared that the activist law students began to use
the data first.[81]

The long term political implications of merging computers with communications, if it were to take place, are far from clear. Even the effects of television alone on political participation are difficult to assess.[82] There are suggestions that a new cadre of political scientists might emerge, specialists in collecting and interpreting public opinion.[83] Because of their understanding of how opinion could be brought to bear on issues, they might replace the "political pundits" and the lobbyists who are now regarded as the experts on political trends and the means of achieving political ends. Other possibilities are that more effective communications would encourage the formation of small cohesive activist groups, dedicated to achieving specific ends, and that the emphasis on personality and "political packaging", already noticeably present in television, could be heightened.

In summarizing the changes in power brought about by the introduction of computers both in business and government, it is fair to say that the initial effects have been to favor a concentration in power in the larger groupings at the expense of the smaller ones. As computers have become more available there has been some redress in balance. All the larger units of government how have more data and information processing power than they had before and it is not possible for one to claim advantage. At the

lower levels of government the unequal access to, and
understanding of, computers on the part of different
groups and different officials still has significance
with respect to possession of power. There is some suggestion
that the contribution of computers and communications might
eventually have profound effects on political groupings.
At the level of the individual, the inequalities of power
assume their greatest significance.

Computers, Technology and the Individual

In examining the shifts in the balance of
power caused by technology in general, and computers in
particular, it is not enough to look at the institutions,
organizations, business and government. We must ask how
the individual is affected. Is privacy the only consideration
or are there other ways in which the importance of the
individual is diminished or threatened? Are there individuals
in an especially disadvantaged or favoured position?

One fear is that the new pre-eminence of planning
and technology results in major power being placed in the
hands of technocrats. The fear is that such people are
ill-prepared to exercise power because of their inability
to appreciate human values when these run counter to the
demands of efficiency, and because their decisions are

not subject to the checks imposed by public debate and

democratic processes. This concern comes up repeatedly

and it is not raised only by those who are critical

of technology. It is expressed by Meynard as follows:

> The danger in this area of highly
> developed technology is that democratic
> power is being eroded, as power is
> shifting from (or, often, willingly
> yielded by) elected representatives to
> technocrats who are not responsible
> to the electorate... But technocrats
> also have dangerous faults: an
> assertion of special competence in areas
> where hard knowledge does not really
> exist, especially in regard to the
> behavior of men; a tendency to form
> closed groups, deaf to the advice of
> anyone outside their coteries; a
> partiality for the interests of the
> upper class of professionals and managers,
> the class from which the technocrats
> themselves come and with which they have
> most in common; and a tendency to be
> conservative in politics... The
> danger of technocratic domination is
> becoming greater, as new techniques for
> manipulating the minds of men become
> available. Politics is not yet
> completely dominated by technicians,
> but transfer of power is underway, and
> will continue.[84]

Technocrats derive their power when politicians

and decision-makers do not have the expertise to question

their conclusions which are based on highly technical

arguments. Just as important is the ability to define the

set of alternatives which are being considered in a given

situation. This issue of the power of technicians came

to the fore with the development of nuclear weapons,[85] but it applies also to computer and system analysts. Boguslaw writes:

> It is in this sense that computer
> programmers, the designer of computer
> equipment, and the developers of
> computer languages possess power. To
> the extent that decisions made by
> each of these participants in the
> design process serve to reduce,
> limit, or totally eliminate active
> alternatives, they are applying force
> and wielding power in the precise
> sociological meaning of these terms.[86]

But most of those who consider the question, although recognizing the dangers, conclude that there has been no surrender of power to experts and planners, and the major decisions on the economy, social welfare and military matters are continuing to be made by those who have the responsibility for them. Daniel Bell writes:

> Thus the technical intelligentsia
> becomes a claimant, like other groups
> for public support... Since all of
> those (crucial decisions affecting all
> parts of society) involve policy decisions,
> it cannot be the technocrat alone, but
> the political figures who can make them.
> And necessarily, the two roles are distinct,
> even though they come into complicated
> interplay with each other.[87]

Such views are also expressed by Price and by Wood,[88] and Carl Kaysen, writing on the contribution of economists to economic policy-making,[89] comes to a similar conclusion about the role of the expert in that area.

Others go beyond this to suggest that expert advice now seldom plays any real role in the political process, and that politicians and decision-makers simply call upon those who will render technical opinions to support positions they have already taken. Thus H.L. Nieburg:

> Increasingly, as the expertise of the scientist is politicized, the real centres of power in federal agencies or in Congress pick and choose those scientists who will proffer the advice they want; the chosen scientists provide a rationale and a justification for policies arrived at by other means. Scientific advice becomes a new species of lawyers brief and advocacy, and a cover for conducting policies in bureaucratic corridors or congressional cloakrooms. In all key post-war decisions, scientists have been present in ancillary roles both in and out of government, but they have made none of the major decisions.[90]

Similar positions are advanced by Daniel Greenberg[91] and Victor Ferkiss.[92] According to them the day of giving special attention to the advice of experts is past[93] (if it was ever here at all).

Because we have such a divergence of views about the power of technocrats, it does not follow that the actual position is in the middle, or indeed close to any one of them. What one would like to see is that technical advice carries different weight in different situations. Where values have been articulated, and a framework constructed which makes technical analysis possible and relevant,

technical considerations can dominate. Where there are value conflicts and the technical analysis applies to only part of the problem, political considerations should dominate. The prevailing opinion is that decisions about most social and economic problems are still being made as political decisions, in which technical experts, including computer experts and systems planners, play useful but minor roles.

But the worry about the place of the individual in a technological society goes much deeper than this. The real concern is not that too much power is held by too few, but rather that too little is held by too many. The belief, highly pessimistic in character, that man has already been diminished almost beyond hope of recovery because of the application of technology, runs through a whole school of technology critics. The indictment is that man no longer has any choice in the way he lives, that decisions are made to promote economic growth rather than his basic needs, and that what is technically feasible is allowed to happen without regard to consequences. These views, in varying forms and with different degrees of intensity and pessimism, are expressed by such well-known writers as Jacques Ellul, Hannah Arendt, Herbert Marcuse, Ludwig von Mises, Erich Fromm, and Lewis Mumford.

Alienation, the usual term for describing man's inability to identify with the goals of the society in which he finds himself, has many sources and its description and analysis is a major theme of modern studies in social science. One long recognized source of alienation has been the specialization in work brought on by automation in factories; one needs only to note the appeal of Charlie Chaplin in "Modern Times" to see how universal the feeling about factory work is. There is some evidence that the introduction of computers in offices and process control may actually be leading to a reversal of the traditional increases in alienation produced by mechanization, because for many workers computers seem to provide a better overview of their jobs. But even if this is a real trend, the concern of the effect of computers on our daily lives goes beyond their effects on jobs,[94] important as these are.

The degree of choice which man is able to exercise is a focal point of the criticism. On this we find the same wide divergence of views that we saw about the influence of experts. At one end there is the despairing view of Herbert Marcuse who believes that society, through technology, co-opts man - it absorbs his energies, ambitions, ideals, and protests, so that he is integrated into it almost without realization that any alternatives exist, and without possibility of escape even if he were to become aware of his plight. In "One-Dimensional Man"[95] he writes

that as a result of technological progress a comfortable,
smooth, reasonable, democratic unfreedom prevails...
contemporary industrial society operates "through the
manipulation of needs by vested interests", and "the productive
apparatus and the goods and services which it produces
'sell' or impose the social system as a whole." In a
similar view, Erich Fromm,[96] on examining the present
technological system and its effects on man sees two
guilding principles: that "can" becomes "right" and
that maximal efficiency must be secured. The consequences
are to "reduce man to an appendage of the machine, ruled
by its very rhythm and demands." When science undermined
religious belief, it failed to provide an alternative
certainty and as a result there has arisen "the need
of what amounts to a blind belief in the efficiency of
the method of computerized planning," but "both the
religious decision, which is a blind surrender to God's
will and the computer decision, based on the faith in the
logic of 'facts', are forms of alienated decisions in
which man surrenders his own insight, knowledge, inquiry,
and responsibility to an idol, be it God or the computer."

These views do not go unchallenged. There are
others who argue that technology has not resulted in too
little choice, but rather too much, that the prospects
are for more not less individuality, that what is required
are new mechanisms for exercising the multiplicity of

choice, and that _any_ solutions for societal problems must
be based on the application of more technology, administered
of course, in the light of human values. Toffler, for example,
emphasized the changes which characterize the multiplicity
of choices, and makes the need to live with change, predict
it, and ultimately channel it, his central thesis.[97]
McLuhan takes hope in the new possibilities arising out of
cybernation and automation, and suggests that it will
repattern the very nature of identity. "But whereas
before the problem of identity had been one of meagerness
and poverty, it has now become the problem of abundance and
superfluity... It would be a cosmic irony if men proved
unable to cope with abundance and riches in both the
economic and psychic order. It is not likely to happen."[98]

The range in views about the effects of technology
on man, and shades of opinion on what the real problems
are, what is likley to happen and what should be done about
it, is far wider than has been suggested here.[99] On the
whole they are pessimistic particularly on the subject of
choices. Why? It is obvious that technology and computers
make it possible to deal not only with quantitative,
measurable attributes of people, but also with qualitative
attributes as observed by preferences in travel arrangements
or car styles. But choices about the _major_ problems seem to
be missing, for technology has not been able to deal effectively

with the intractable problems of poverty, overpopulation, pollution, aggression. Many claim that technology has given rise to, or aggravated them.

A deeper study of alienation and the part technology plays inevitably leads to an examination of values. Values are preferred outcomes or goals, stemming from human instincts and emotions, and the necessities of social organization. Whatever the attitudes to technology there is agreement that modern technology leads to change in values and the problems we have just been considering can be posed as the question: how does technology alter values and conversely, how do values alter technology? It would be beyond the scope of this study to attempt to answer this in any depth. All that can be said is that even after sober examination it is possible to conclude that not all the value changes induced by technology are harmful. There have been several studies (some conducted with the aid of the Delphi techniques mentioned earlier) by groups who have attempted to predict future values and directions of society. Difficult as these is some measure of agreement about the trends. The conclusions from one survey conducted by Rescher[100] can be summarized as follows:

- There has not been an erosion in the general commitment
  to values. However, many significant trends can be
  identified.

- There will be a general upgrading of values associated
  with social cooperation. For example, justice, equality,
  peace, and group affiliations will be more highly valued.
  Values will be, more and more, group rather than individual.

- But there is also a general upgrading of values associated
  with self satisfaction (e.g. aesthetics, pleasure,
  intellectualism, material comfort).

- Many tradidional sources of authority will be de-emphasized;
  the nation, the family, religion, will become subjects
  of affiliation rather than objects of devotion.

- There will be a downgrading of self-reliance, and private
  property rights.

- The effects of technology are mainly indirect; they act
  to facilitate value-sensitive developments in the political,
  sociological, and economic spheres. For example, "omnipresent
  central planning" is a computer-facilitated development which is
  seen to have significant effects on economic security (upgraded)
  and self-reliance, freedom from interference, privacy
  (downgraded)

- There are scientific and technological forces which have a
  direct impact on values; the most important are in biology-
  medecine (e.g. control of aging, genetic control, psychological
  engineering). "Massive automation" is seen to have negative

effects on economic security but to increase the value of
leisure-oriented activities.

The forecasts produced by those having some
technological background are, not surprisingly, less
pessimistic than those coming from the technology critics.
Assuming that the present conflicts within societies and among
nations will be lessened if not resolved, they at least see the
possibility of social harmony and the pursuit of individual
needs replacing economic insecurity and fear. Whether or not one
sees such forecasts as encouraging may be a question of whether
one leans to a "responsive centre" which values contructing and
emphasizing social structure, or to "humanist left" which is
committed to a search for meaning. The humanist's concern
is that in seeking primarily the stable society we may not
know what essential part of ourselves we have to sacrifice for
its achievement.

DATA AND POLICIES

In order to formulate policies which might govern
the exchange of information, i.e., those transactions between
the individual on one part, and groups, organizations, and
government on the other, which essentially provide the
operational definition of privacy, it is natural to
look for simple classifications of the organizations and
their relationships. As an example of such a simplification
we might try to view the organizations as commercial and
governmental and the relations as binary (one-to-one),
n-ary (one-to-many), or multiple (many-to-many), according
to whether the parties involved in the exchange are individuals
or organizations. We might also, for example, try to view
the benefits which accrue as a result of an information
transaction as being direct (i.e. immediate) or indirect
(i.e. long term).[101] Unfortunately available data is
too complex to support simple categorization. With respect
to types or organizations, at the very least it is necessary
to recognize seven types. One, of many possible groupings,
is:[102]

- welfare (census, welfare agencies)
- employment (public and private agencies)
- enforcement (police, regulatory agencies, tax departments,
             licensing bureaus)
- health (doctors, hospital, health-care services)

- education

- commercial services (insurance, credit, merchandising)

- associations (clubs, unions, political parties,

        professional bodies).

As to the type of transaction, there are at least six key questions which must be asked in order to characterize it. These concern:

. the relative type - is it binary, n-ary, or multiple?

. The data source - is it the individual concerned or an intermediate party?

. the degree of consent - is the information being given freely, because it is a condition of qualifying for some benefit, or because of a legal requirement?

. the confidentiality - are there restrictions against subsequent dissemination?

. the benefits - are these immediate and specific to the individual or do they derive from a furthering of desirable social goals?

. the ownership of data - where does it reside? Is the data accessible to the individual?

Examination of file practices (manual and computer) reveal that the actual situation is much more complicated than is suggested here. The degree of consent is not simply defined by three possibilities - one almost needs a continuous scale to describe it. Confidentiality has to be attached not

to a whole file but to each item of information contained in
the file. Although an individual seldom if ever owns the data
in a file about himself, the actual ownership is very difficult
to describe for a file in a school, a hospital, or a
government department.

The Computer Controversy

Even though any attempt to organize the exchange
of information around a model emphasizing the type and range
of flow is inadequate, efforts to delineate policy can usefully
be classified according to two views. One is based on the
conviction that computers have created new concentrations of
power and authority as a result of which the rights and the
privacy of the individual have been sharply diminished. To
restore the balance between the individual and organizations
it is necessary to establish new legal and regulatory
mechanisms for the protection of privacy. The other view
is that the changes brought about by computers are essentially
like those induced by other technologies. An evolutionary
approach will allow the law to adjust to new conditions as
they arise. No urgent initiatives are required with respect
to computers and privacy: hasty action could be harmful.

These positions stated here form what might be
called the computer controversy. In essence the first
corresponds to that advanced in a number of books which A.
Miller's Assault on Privacy[103] is typical; the second

summarizes the views of those who insist that there is
no evidence that the present systems, computerized or
non-computerized, are causing injustices or hardships.

Miller bases his argument on a chain of reasoning
which essentially is a detailed presentation of the first of
the two statements given above. The background is one
in which society, represented by business and government,
makes increasing demands on individuals for more and more
personal information. To gather and process this information,
an arsenal of technology - based equipment and procedures is
employed, including surveillance devices, personality tests,
and information processing systems with their data banks,
time-sharing terminals and communication networks. Specific
cases of data gathering in the context of credit bureaus,
schools and police investigative systems are cited, but
especial attention is devoted to current practices of agencies
within the U.S. federal government in handling personal
information. Even the census bureau, which is commonly
assumed to behave in exemplary fashion with regard to the
data it collects and releases, comes under criticism; among
security agencies, including the Army, the Federal Bureau of
Investigation, the Central Intelligence Agency and police
groups, there is apparently a free transfer of information;
the restraints for inhibiting flow of data between other
agencies such as the Internal Revenue Service of the Department

of Health and Welfare are ineffective because of the
existence of a statute granting the Office of Management
and Budget the power to require "a Federal agency to make
available to another Federal agency information obtained
from any person."[104] The net results of the new technology
and the absence of restraints is that individuals have
lost control over their personal information and in the
process their freedoms have been seriously curtailed.

In an examination of how there might be a redress
for the imbalance between individuals and institutions, so
as to favour the individual, Miller reviews the existing
laws relating to privacy in the United States, starting
with the common law. A most important deficiency in the
common law arises because it has been very easy to establish
the claim that an injured party has forfeited the right to
privacy because he has engaged in an activity inconsistent
with a desire to maintain a private life (e.g., he has become
an actor or a politician) or that he has (implicitly) consented
to the dissemination of information about himself. Likewise
in reviewing the protections for privacy which might be found
in the U.S. constitution, Miller comes to the conclusion
that there is too much conflict with other freedoms - notably
the rights to free speech and to "snoop" - as embodied in
the First Amendment, to offer any satisfactory guarantees.
The conclusion is that a new legal framework for the protection
of privacy is needed.

For some time it has been clear that any
resolution of the computer controversy would have to depend
on a much more careful and comprehensive set of observations
on exactly how personal data was being handled by organizations
and governments than was actually available, along with a
serious analysis of the trends towards greater use of computers.
It was for this reason that the National Academy of
Sciences in the United States undertook a study of privacy
under the directorship of Alan Westin. The data for this
project, which has been three years in progress, come from
on-sites visits to over fifty private and governmental
organizations in the United States as well as from a
survey to which there were some 1500 respondents. The report,
which has been delayed several times, is scheduled to appear
in the Fall of 1972, and it is to include a forecast of
developments in the computer and communication technologies,
an analysis of the socio-political meanings of the findings
and a presentation of the implications of the study for
public policy in the United States. The Canadian Task Force
survey has of course been greatly aided in its design and
procedure through consultations and discussions with Westin
and his co-workers. To appreciate the finding of the Task
Force Survey it is necessary to go to the report on Study
No. 2, but those that bear directly on the computer controversy
can be summarized as follows:

(1)   As yet computerization of records have not resulted
      in the collection of more personal data about individuals,
      in the combining of files, or in more sharing of data
      between various public or private agencies.

(2)   The reasons for this are that most organizations, in
      computerizing their records, have consciously mechanized
      their manually-based procedures. Attempts to construct
      integrated files and larger systems have often encountered
      technical difficulties.

(3)   The tools for constructing comprehensive systems which
      might contain much greater amounts of sensitive personal
      data are, nevertheless, available. The inhibiting
      factors against creating such systems are not technological,
      but organizational, political, and legal.

(4)   There are no accepted criteria about the safeguards
      necessary to maintain civil liberties, should comprehensive,
      shared data banks be created.

(5)   Most organizations are likely to maintain both manual
      and computerized systems for some time.

(6)   During the next five years there will be a steady
      improvement in computer and communication technologies
      which can be expected to result in an increase of the
      number of systems which will require public policy
      attention.

From these findings it would be hasty to conclude
that new laws for the protection of privacy are not needed.
The proper conclusion is that there is a few years time
in which to consider the forms these laws should take.
In any field new legislation can only be enacted after
information has been gathered, there has been widespread
public debate, and a consensus attained. This process
is well under way with respect to credit records. Through
similar developments legislation on the treatment of health,
educational and welfare records might come to be adopted.
During the time in which regulations evolve, and in fact
built into such regulations, there must be a dependence on
due process as a general protection of the rights of
individuals. That is, the long established administrative
and legal practices in which there is insistence on well
defined procedures, on open rulings, and on opportunities
for challenge and review of decisions, must accompany any
policies which emerge.

With this background it is possible to make some
general remarks on policies which might be considered in the
Canadian context. It should now be recognized that the
range of practices with respect to the handling of records
already extant and accepted by society presents a serious
difficulty when one attempts to apply the social and
philosophical concepts outlined earlier. These practices

are in a real sense our interpretation of the current
balance between what is private and what is public. If
our views about public participation and private intimacy
are changing so that we wish to reinterpret the balance
there is of course nothing to prevent the appropriate
changes from coming about. And this is precisely what is
happening when the new regulations about rights to verify
and correct credit data are legislated, or when the right
of a parent to examine the educational record of his child
is established. But the question arises how can general
policies about such rights be formulated? Can a general
policy about privacy be fitted into the legal framework
and can we lay down broad guidelines which can be taken
as terms of reference for regulatory bodies in a variety
of situations? Or must each of the major areas and
sub-areas be treated as a case in its own right, and our
sense of the changing balance between public and private
find its expression in detailed procedures which are
worked out in response to particular problems.

In terms of legal solutions two general
approaches can be identified, namely limiting the direct
enquiry, and regulating waiver and consent.[105]

Limiting the direct enquiry is the most
fundamental way in which laws can be passed to protect
privacy. By defining the areas which may not be subject
of enquiry, and enforcing the limitations, the problem
is attacked at its source. There is a growing list of
situations where limitations of this type are accepted
practice:

- in law of testimony and evidence there are well defined
  rules for determining what is admissible;

- in many jurisdictions the use of personality tests
  and polygraph recordings is forbidden;

- enquiries into race, religion, and sex are forbidden
  in applications for employment, housing, admission to
  educational institutions, etc.;

- at each census the questionnaire is revised, often
  resulting in the removal of questions which might be
  considered discriminatory or offensive.

The principle would be to limit enquiries to
what is relevant to the particular situation (credit,
research, admission to schools, etc.). This would not
be an easy matter; it would undoubtedly require protracted
studies and generate substantial controversy. Yet in the
cases mentioned enforcing limitation does not seem to have
impaired the effectiveness of employment practices,
rental procedures or census taking. And even if there

is some loss of ability to make the best judgments because
of missing data, this must be considered as a necessary
cost of achieving fairness, in the interest of privacy.

The second general way in which notions of
privacy can be given operational meaning is to regulate
waiver and consent. The most obvious way to carry this
out would be for the courts to introduce a requirement
that personal information can be passed along only when
the individual about whom it pertains consents to the
transmission. This would be very close to establishing
a right of ownership of data, and it would meet many of
the objections about data circulating without the
knowledge of the individual, and the "broadcasting" of
personal data from one organization to others, as occurs
for example when a motor vehicle department sells lists
of licenses.

But the solution would raise many new problems.
How long should consent be good for? When should the
release be obtained? What protections against coercion
should be sought? Although there is a surprising readiness
on the part of those who collect information and maintain
files to accept guidelines and regulations about data
banks,[106] there is definite objection to consulting an
individual in every case before information about him can

be passed along. This must be taken as evidence that any real attempt to introduce consent would also generate controversy and meet with difficulties of implementation.

It is possible to seek policy along other directions. Instead of addressing oneself to the functional issues and principles about information gathering and dissemination, it is possible to consider the different groups responsible for the operation of information systems, and attempt to establish policies, guidelines, and working principles for each. These would be the data-seeking and data-dispensing groups already noted, governmental bodies at various levels, and the personnel actually engaged in operating systems. This approach would have the advantage that it would allow special attention to be focused on those involved with the new computer-based systems which have provided the impetus for re-examining the issues relating to files and dossiers. Included in these are computer operators, programmers, and analysts, the professional societies to which they belong, and the designers and manufacturers of information systems, commercial organizations and government at every level. Details about the form which the policies might take for each of these groups, as well as the arguments for and against the different policies, are spelled out in the Canadian Federal Government Task Force Report.

In spite of the difficulties in categorizing information systems noted earlier, it is impossible to consider the range of regulations without having some groupings in mind. One classification which has been given is statistical, administrative and intelligence, in which it will be noted that there is no distinct commercial or corporate class. Although it has been suggested that sharp distinctions between short term and long term benefit cannot be drawn, an essential feature of the corporate or commercial class is that the transaction involving exchange of information is explicit, and the benefits are immediate or short term. Because of this it is not difficult to perceive how the problems relating to information systems and privacy in the corporate sphere can be resolved. The significant fact is that market forces act to produce ad hoc regulating mechanisms which reflect the frustrations or grievances between the contracting parties, and resolve them. If the market forces fail to do so, which can happen when one of the parties has an unfair power advantage, the societal right of intervention, through government regulation or imposed legal sanction, can come into play. Experience has shown that any government or legal intervention will produce standards to which corporate entities or individuals will soon adjust.

The implication of this is that the central problems of privacy occur with governmental information systems; to many these pose the greatest threat to individual freedom. The two issues which center about governmental statistical systems were clearly brought out in the controversy about the National Data Bank in the United States when the problem of privacy and computers first came to the fore. These are the justification for collecting information about individuals, and the capacity to correlate and interpret statistical information so as to reveal the identity of individuals or groups. The solution to this latter problem is in part technical, for it is possible to take measures which make it very difficult to identify individuals, but in the final analysis satisfaction will have to depend on the same answers which can be found to the first problem. The attitude towards gathering statistics depends on the confidence which the public has that governments will use the data for the benefit of the individual. Any criticism of the accumulation of statistical information must take into account the fact that benefits of a just distribution of resources cannot be attained without adequate data.

The most difficult problems undoubtedly lie with intelligence information systems of the type operated by the police and with those maintained for purposes of national security. It is not possible to quarrel with the

contention of the police that the data in such systems
cannot be open to the public, that the anonymity of
informants must be preserved or that unconfirmed speculation
which might be forbidden in other systems must be retained.
Thus some of the essential safeguards which should in
general be built into personal data banks cannot be
applied here. Nevertheless it should be possible to set
up certain guidelines which will give the public greater
confidence that the systems are being operated fairly,
without at the same time impairing their effectiveness.
There are no insurmountable reasons against making known
what information systems exist, who has access to them
and under what conditions, and defining the type of data
which may and may not be stored. In cases where an
individual has reason to believe that there were inaccuracies
in the information about him it might be feasible to set
up review of the data by third parties. The essential
point is that the mechanics of operation of the system
can be distinguished from the data contained in it. Being
more open about the former can serve to build up public
confidence in the fairness of the system, a sine qua non
if feelings of alienation and hostility are to be checked;
and it should be possible for this to happen without
jeopardizing the system itself.

The greatest range for action on privacy, and the greatest opportunities to set good examples lie with government administrative systems. Increasingly governments are being called on to demonstrate their sincerity about the rights of individuals, and about their belief in the need for citizen and group participation in democratic processes, by implementing good practices in their planning and in their information systems. The pressures to bring this about in Canada are manifest at every level of government, and there are clear signs that the need to act in response to these desires is recognized. With respect to planning, the federal government has found it impossible to apply punitive measures for policy leaks because of the public's insistence that it deserves to know more about policies before they are put into effect. On another planning issue the government has undertaken to make the data about siting an airport known to an extent which represents a significant departure from previous practice. At the municipal level the plans of developers, civic planners and school boards are subject to searching scrutiny by activist groups. Social planning is the clear responsibility of government, but there is growing acceptance that the information systems on which planning is based must become more open. Personal information systems are even more directly associated with the interests of the individual. It is impossible to believe that this same willingness to make the systems more

open will not be extended to those containing personal data.
The problem is how to define policies which will allow this
intention to be translated into practice.

It is highly unlikely that over-all policies
centering on computers can be adopted without at the same
time introducing special considerations particular to the
context in which problems develop. An illustration of the
complexities can be found in the computerized medical
information systems now being proposed and constructed where
the problems arise less out of the introduction of computers
than through changes in medical practice. There is a definite
tendency away from the binary doctor-patient relationship
toward a team approach to delivery of health care. This is
accompanied by a change of status in the health profession.
Many more people are involved - clinicians, specialists,
laboratory technicians, nurses, and with this change there is
a requirement to produce a more generally accessible patient
record system. It is reasonable to believe that only after
much more experience will it be possible to arrive at workable
regulations governing health records. If necessary, conditions
under which patients can see, alter, or control the dissemination
of their records can then be worked out.

Regulations about the other government administrative systems mentioned at the beginning of this section - welfare, employment, and education - must develop in a similar way. These should evolve in the framework within which the records are kept, either under existing legislative and administrative guidelines, or under well defined extensions designed to meet specific needs.

We thus arrive once more at the proposition that the problems about information systems and privacy are to be worked out to meet the needs of the particular cases as they arise. More often than not there will be guidelines and suggestions based on experience in areas where rules have already been adopted, but the regulation and legislation would be specific to the environment. But the importance of governments being willing to take the necessary actions as problems and solutions become clear cannot be overemphasized. Computers, through their versatility and flexibility, permit the adoption of administrative procedures which are much more sophisticated, much more able to allow for the special case, than has hitherto been possible. If, whenever computerized data banks are assembled, this dynamic, individualized treatment accompanies the handling of personal data, many of the fears and realities about the centralization of data, and the shifts in the balance of powers which computers bring about may be circumvented. In the end

computerized data banks could lead to better treatment of individuals. But for this to happen government must be willing to make it happen. It must first of all be willing to define and adopt good practices in its own administrative systems. It must have the incentive to make the technology serve the social and political goals to which it subscribes, and it must be ready to apply and adapt the law to ensure that the means are in harmony with the ends.

FOOTNOTES

1. "The social need which became crystallized in the right of privacy did not grow insistent until the age of great industrial expansion, when miraculous advances in transportation and communication threatened to annihilate time and space." Louis Nizer, "The Right of Privacy, a Half Century's Developments", 39 Michigan Law Review, 526, (1940-41).

2. Voluminous literature exists on the subject. For a recent compendium of articles divided up according to country see: Appendix A. Selected bibliography 43 - 44, Justice: Privacy and the Law, International Commission of Jurists (London, 1970). Also see Arthur R. Miller, The Assault on Privacy (Ann Arbor, 1971), pp. 261-269.

3. Warren & Brandeis, "The Right to Privacy", 4 Harvard Law Review 193 (1890).

4. "In 1900 over 62 per cent of our population was rural, with about 40 per cent engaged in agriculture; in 1961 only 30 per cent of the population was rural and only 11 per cent were engaged in agriculture." F.Elkin, The Family in Canada(Ottawa, 1964) p.31. For a detailed demographic outline see Donald R. Whyte, Rural Canada in Transition, pp.9-26. Assembled and published under the sponsorship of the Agricultural and Economic Research Council of Canada, ed. Marc Adelard Tremblay and Walton J. Anderson (Ottawa).

5. Seymour Lipset, "Canada and the United States: A Comparative View", Canadian Review of Anthropology and Sociology, Vol.I, No. 6, Nov. 1964, p.173 and following.

6. See Arthur Lower, From Colony to Nation (Toronto, 1946) p.114.

7. Careless argues that Canada has remained more conservative than the United States ever since the Second World War. "In comparison with the rich and restless republic, Canada was a cautious and conservative country. Cautious because her past was harder, more conservative because of her closer bonds with the old world and the stronger power of traditions brought from Britain and France." J.M.S. Careless, Canada: A Story of Challenge (Cambridge, 1963) p.405.

8. "In Canada, public opinion has been traditionally conservative and reticent. Public debate on basic issues is, on the whole, diffident, halting, and impoverished..." The Prospect of Change: Proposals for Canada's Future, ed. Abraham Rotstein (Toronto 1965) Introduction p.xvii.

9. In this regard interesting affinities may be noted between Canada and her Mother Country: "Although democratic and pluralistic, British society is not populist. Great Britain is a hierarchical country. Even when it is distrusted, the Government, instead of being look down upon, as it often is in the United States, is, as such, the object of deference because the Government is still suffused with the symbolism of a monarchical and aristocratic society." Edward A. Shils, The Torment of Secrecy (New York, 1956) p.48.

10. There have been several Private Members' bills relating to privacy and most of the Provinces are considering legislation.

11. In the Fall of 1971, Solicitor General Goyer announced the formation of a group to compile and analyze information collected on subversive groups and their activities. See Statements on Motions before the House of Commons (September 21, 1971).

12. Protection of Privacy Act, C-252.

13. The Queen's Conference was the first attempt in Canada to obtain a sounding about views on privacy and computers from a group which might reflect the spectrum of opinions about the subject. It is necessary to go to the report of the Conference, Queen's University, Conference on Computers: Privacy and Information, May 21-24, 1970, to state the findings with any accuracy, but it may be noted that:

- the concern about privacy seemed to stem mainly from a small group of computer personnel, professors and government officials familiar with the history of developments in the United States
- those responsible for files in business operations felt that market consideration would be adequate to maintain protection for individuals
- the trend to computerization of files was only just beginning
- the need for government to be interested in the subject was recognized, but there was no agreement whether action was needed, or what form it should take, if it was needed. (Telecommission Study 5 (b) Conference Report - Computers: Privacy and Freedom of Information. Ottawa, 1971).

14. For a background analysis on credit reporting see John M. Sharp, Credit Reporting and Privacy (Toronto, 1970).

15. Meetings were held at Geneva Park, Ontario, August 4 - 7, 1971, where the following areas were examined: Privacy and the Law, Privacy and Law Enforcement, Computers and "The Dossier Dilemma", Privacy and Urban Life, and Privacy and the Media.

16. The tradition of the Hebrew Oral Law has specified the importance of privacy. See Baba Batra 11, 14 and 22b. In The Mishnah (Danby trans. 1935) Maimonides stated that "the harm of being seen in privacy is a legal wrong." Mishneh Torah, Neighbors 11, 14, The Code of Maimonides, Book XII; The Book of Acquisition (Klein trans. 1951).

17. See Hannah Arendt, The Human Condition (Chicago, 1958) p. 41. For a general distinction between the public and the private realm see pages 1 - 73. An adaptation of Arendt's analysis may be found in John O'Neill, "Public and Private Space", Agenda 1970: Proposals for a Creative Politics, ed. Trevor Lloyd and Jack McLeod (Toronto 1968) pp. 74 - 93.

18.   Westin describes the taboo sense of privacy in his section
       on Privacy in the Primitive World, p. 11 - 19. "...virtually
       every society holds ceremonies for special groups from which
       various segments of the whole tribe or community will be
       barred - ceremonies for warrior males, cult members, women,
       and the like. Strict sanctions are imposed on the invasion
       of privacy of these occasions. In addition, there are taboos
       forbidding anyone rather than priests or some special elite
       from entering sacred quarters or going to sacred places."
       (p.18). Alan F. Westin, Privacy and Freedom (New York,1967).
       H.W. Arendt goes further than Westin in claiming that while
       there was a strong sense of taboo privacy in primitive
       societies there was little sense of individual privacy.
       "Primitive societies have their secret rituals but there is
       little privacy for the individual and, as far as we know, little
       if any demand for it." "The Cult of Privacy", Australian
       Quarterly, Vol. XXI, No. 3, Sept. 1949, 69.

19.   The cosmologies of the ancient Greeks rested on a profound
       belief in Destiny (Moira). "Moira...means 'part', 'alloted
       portion'; from that primary meaning it is agreed that the
       meaning 'destiny' is derived...Each God has his own allotted
       portion or province - a certain department of nature or
       field of activity. This may also be regarded as his status;
       it gives him a determined position in a social system. Some-
       times it is called his 'privilege'. Within his own domain
       his supremacy is not to be challened; but he must not trans-
       gress its frontiers, and he will feel resentment at any en-
       croachment by another." F.M. Cornford, From Religion to
       Philosophy (New York, 1957) p.16.
       It was against the background of tribal aristocracy that
       Greek notions of democracy emerged. In such a model "...social
       life is determined by social and religious taboos; everyone
       has his assigned place within the whole of the social structure;
       everyone feels that his place is the proper, the 'natural'
       place, assigned to him by the forces which rule the world;
       everyone 'knows his place'. Kenneth R. Popper, The Open
       Society and Its Enemies, Volume I, Plato (London, 1962) p.12.

20.   For a discussion of biblical privacy see Milton R. Konvitz,
       "Privacy and the Law: A Philosophical Prelude", Law and
       Contemporary Problems, Vol.XXXI, No.2, Spring, 1966.

21.   See A.R. Lundesinth and A.L. Strauss, Social Psychology,
       (New York, 1956) p.433.
       John R. Silber argues that the privatization of relationship
       achieves highest focus in an atmosphere of utter trust. This
       is symbolized in the other wordly realm. "It is the genius
       of the confession in the Roman Catholic Church and of private
       prayer in Protestant sects that full disclosure of one's
       sins, far from being a risk, is the means of salvation."
       "Masks and Fig Leaves", Nomos XIII, Yearbook of the American
       Society for Political and Legal Philosophy, ed. J. Roland
       Pennock and John W. Chapman (New York, 1971) p.233.

22.   Some authors regard this as the basis for a questionable
pre-occupation with privacy. "In the past, kinsfolk and
neighbours gave the individual continuous moral support
throughout his life. Today the domestic household is isolated.
The family looks inward upon itself. There is an intensification
of emotional stress between husband and wife, and parents and
children. The strain is greater than most of us can bear.
Far from being the basis of the good society, the family with
its narrow privacy and tawdry secrets is the source of all
our discontents." Edmund A. Leach, A Runaway World (London, 1968)
p.44. A similar point of view is supported by P. Halmos,
Solitude and Privacy (London, 1952) pp. 121-122.

23.   Although Lasswell observes rightly that, "It is generally
believed among us that lower class persons (measured in terms
of respect or wealth position) lay much less store by the
demand for privacy than the upper or middle class person"
(Harold Lasswell, Conflict of Loyalties (Port Washington,
1952) p.122) there is growing sensitivity to the rights of
welfare recipients to limit disclosure of personal information.
See Charles A. Reich, "Individual Rights and Social Welfare:
The Emerging Legal Issues", 74 Yale Law Journal, 1965, 1245, 1247.
See Reich, "Midnight Welfare Searches and the Social Security
Act", 72 Yale Law Journal 1963, 1347. See also J.F. Handler
and M.K. Rosenheim, "Privacy in Welfare: Public Assistance
and Juvenile Justice", Law and Contemporary Problems, Vol.XXXI,
No. 2, Duke University School of Law, 1966, 337-412.

The Hamilton Welfare Rights Organization has objected to
unannounced visits by welfare workers and has managed to arrange
that welfare workers make appointments. In Toronto Operation
Family Rights has asked repeatedly for information on how
levels of allowances found in Regulations were arrived at.
Similar groups are being formed in other areas, and if current
experience is any guide, one can expect such demands to grow.
See briefs to the Croll Commission, Poverty in Canada, A
Report of the Special Senate Committee on Poverty (Ottawa, 1971).

24.   Connected to the view that man is forever losing power in
the urbanized environment of mammoth information systems is
the much worked contemporary myth in North America that the
move from rural to urban society brought with it the collapse
of privacy. The population explosion has lead people to
reminisce nostalgically on a previous pastoral state which is
said to have existed before the genesis of the city. Pastoralism,
a deeply entrenched ideology of contemporary commune movements,
encourages a return to the model of the rural community,
asserting the propostion that in the rural setting man was
equal and autonomous.

In a physical sense the early homesteader in Canada was isolated
from his fellow farmers and from the adjacent rural communtiy.
The flow of information from the larger centres was slow and
inefficient. But, it must be realized that the homesteader
in Canada was isolated from his fellow farmers and from the

24. outside world, and sought company in the festive occasions of
     gossip that his rural community structured for him. It is only
     recently that man has sought to retreat from social company
     and the intrusion of information systems.

     As the early homesteader explored and developed his environ-
     ment, thereby creating clusters of social and economic communities,
     hierarchical relationships were the inevitable result. And as
     information systems became more efficient, catering to a marked
     desire for communication, more information was shared and
     appreciated by wider groups of people. Even if, in the earlier
     stages of the growth of rural communities, the average man was
     disinterested in global affairs or federal politics, or indeed
     the intricate affairs of the life of the next village, the mere
     establishment of a rural community meant a highly structured
     and status-oriented creation of an information system.

     Within the internal life of a rural community, status was
     and continues to be, perpetuated by clearly defined structures
     of human interaction. The personalities in the rural Canadian
     society of the doctor, lawyer, banker, newspaperman, local
     priest, politician, hotel-keeper, historically have been crucial
     to an understanding of rural life. The professional elites of
     the rural setting have historically had accrued to them special
     information both of the internal life of the community and the
     outside world, which gave them effective power over the conduct
     of the community. In the rural community, from its very inception
     in the Canadian environment, the average man experienced neither
     equality nor autonomy from the critical vantage points of our
     hindsight urban perspectives. The mark of the rural community
     was that of a society which perpetuated clubism, and the close
     identification of elites. Despite the nostalgia that ex-ruralites
     feel in the big cities for the home town, the lack of mobility
     within the town structure that drove upwardly mobile numbers
     away from the rural setting must be stressed in order to gain
     perspective on the meaning behind population trends.

     Rural societies may be distinguished from urban environments
     on the basis of the personalization of "services". In the rural
     community a man has special relationship with his barber, his
     banker, and his minister. Elites within the community have
     a detailed knowledge of their subscribing membership and share
     the local gossip in a manner that allows for the model of a
     supportive and warm relationship. However, each man is clearly
     defined according to his status level within the community. The
     barber's boy and the banker's boy are highly visible in their
     inherited roles. Although gossip exists in a way that creates
     a warm feeling of sharing of information within the community,
     the information services that create and affect power are
     reserved for the elites. If membership within the extended
     community is desiring of gaining these information services
     (education and skills) it is necessary to escape from the
     static structure of the rural environment where the neighbours

24. and the villagers are familiarized with handicaps of parentage
     and background.

It may be that the metropolis presents obstacles to mobility
in many of the same respects that the rural community does. But
the anonymity of the city environment does, in fact, allow for
an individual to be private in his struggle for mobility in a
sense in which the rural community does not. In the larger
environment the model of meritocracy is more fluid. There
is greater knowledge documented about a man's work habits and
skills, as opposed to the information about his private relation-
ships. The myth of pastoralism must be substantially qualified
when one realizes that in a profound sense, in the rural community,
one's life is not one's own, man's status is rigidly defined,
and his opportunity for autonomous development is hampered by
the thorough knowledge that the community possess of his
origins and relationships.

Even the view that gossip, the symbol of warmth of the rural
community, is a widely shared system of information, has been
rejected by recent sociological investigation of the small town
in the context of mass society. It is in fact a problem for
small towners to protect individual privacy in the face of a
public ideology which places a high valuation on positive
expressions of equalitarianism and neighborliness. (Small Town in
a Mass Society, Arthur J. Viditch and Joseph Bensman, Princeton,
1968).

Stephen Leacock, one of the formidable Canadian commentators
on rural society, emphasizes the theme that small towners do
not live within highly autonomous and individual spheres of
private self, but rather, participate and specialize in intruding
on each other's lives. (Sunshine Sketches of a Little Town,
Toronto, 1960). The attribute of the small town is an unceasing
desire for company and being part of social intrigue. The
small town that exists in the context of an expanding industrialized
society inevitably suffers from the complexes that result from
being on the periphery of trend-setting patterns of achievement.
In the rural community there is a fascination with the outside,
with the wealth of city people, fashions, and urban symbols
of success. The small town is by no means a true example of
a private and internalized sphere of human conduct. The internal
life and intrigue of the rural community is qualified by its
complex relationships with the urban centres.

Since Leacock's period this condition has only been aggravated
by the ever-increasing intrusion of information systems of the
larger centres into the small town world and the movement of
population between the rural community and the city. In an age
where the media reaches the small community with the speed and
intensity equal to the city, and the interaction between the
small community and the city is heightened by a constant flow
of goods, resources, and people, the small town inevitably is
deeply influenced by the symbols of a material culture, and is
indeed disoriented by it. Small towns continue to be amalgamated
with larger cities, and are increasingly dependent, for material

24. benefits, on the depersonalized machines that bring work and economic growth to the rural community. For the small towner, as much as the city man, seeks credit, education, and is dependent on a complex relationship with government. Where classically, in the rural community, the farmer at his work, and the medical doctor in his office, were not under the surveillance of wide numbers of people, the contemporary rural community is more and more exposed to the information intrusions of the larger centres.

The transition from rural to urban society in Canada has been widely documented. "The urban way of life through radio, television, newspapers and other mass media and through developments in transportation have all but eliminated any major cultural differences between the city and country. The residents of rural areas operate increasingly by urban standards and values. Frederick Elkin, "Variations in Canadian Family Life", Canada: A Sociological Profile, compiled by E. Mann (Toronto, 1968), p. 93.

Indeed, Jane Jacobs observes, "Privacy is precious in cities. It is indispensable. It is precious and indispensable everywhere but most places you cannot get it. In small settlements everyone knows your affairs. In the city everyone does not - only those you choose to tell will know much about you. This is one of the attributes of cities that is precious to most city people, whether their incomes are high or their incomes are low, whether they are white or coloured, whether they are old inhabitants or new, and it is a gift of great-city life deeply cherished and jealously guarded". Jane Jacobs, The Death and Life of Great American Cities (New York, 1961).

25. This stand is in sharp contrast to the model presented in the Middle Ages. "The unattached person during the Middle Ages was one either condemned to exile or doomed to death: if alive, he immediately sought to attach himself...To exist, one had to belong to an association; a household, a manor, a monastery, a guild; there was no security except in association, and no freedom that did not recognize the obligations of a corporate life. One lived and died in the style of one's class and corporation." Lewis Mumford, The Culture of Cities (New York, 1970).

It is a modern presumption that true human identity is achieved through choice of life-style and exposure. In the medieval universe man asserted his life corporately rather than existentially. The analysis proceeds with the assumption throughout that "social diversity is the prevailing condition of modern nation-states and that it ought to be promoted. Pluralism is thus created as a social actuality that no contemporary political theory can ignore without losing its relevance, and also as something that any liberal should rejoice in and seek to promote, because it is in diversity alone that freedom can be realized... The range and number of choices available and the mutual

25. tolerance among those who choose conflicting paths are what determine the degree of freedom that the members of any modern society can be said to enjoy". Judith Shklar, Legalism, (Cambridge, 1964), pp. 5-6.

It cannot be denied however that it is becoming increasingly difficult to appreciate the effectiveness of the pluralist ideology. For, as one author has put it, "to be socially integrated in America is to accept propaganda, advertising and speedy obsolescence in consumption. The fact is that those who fit the image of pluralist man in pluralist society also fit the image of mass man in mass society. Any accurate picture of the shape of modern society must accommodate these ambiguities". Harold L. Wolensky, "Mass Society and Mass Culture"; American Sociological Review, Vol.XXIX, No.2 (April, 1964), 196.

Nevertheless it is in the model of pluralist man, man as chooser of individual projects in the world that the privatization of self can be meaningfully realized.

26. Barry Schwartz notes, "The very act of placing a barrier between oneself and others is self-defining, for withdrawal entails the separation from a role and, tacitly, from an identity imposed on oneself via that role". "The Social Psychology of Privacy", American Journal of Sociology LXXIII, (May, 1968) 747.

27. Historically this is the primordial form of privacy, "...the first etymological meaning of the word 'person' was 'mask' indicating both the conscious and expressive presentation of the self to the social audience...Each person is aware of the gap between what he wants to be and what he actually is, between what the world sees of him and what he knows to be his much more complex reality". Westin, Privacy and Freedom, p.33. See also R.E. Park, Race and Culture (Glencoe, Ill., 1950) p.249.

28. "In this highest state", he (Plato) tells us, "there is common property of wives, of children, and of all chattels. And everything possible has been done to eradicate from our life everywhere, and in every way all that is private and individual. So far as it can be done, even those things which nature herself has made private and individual have somehow become the common property of all. Our very eyes and ears and hands seem to see, to hear, and to act, as if they belonged not to individuals but to the community." Popper, The Open Society and Its Enemies, p.102. See Republic 519e.

29. The whole medieval caste of mind favoured ideas of corporate unity and conceived of the Church as the central form of human life. The individualism of the Catholic Christianity was "mitigated" by the "sacramental dispensations of the Church". Talcott Parson, The Structure of Social Action (Glenco,Ill.,1949) p.53.

· The development of anti-ritualism in the Protestant Church of course ultimately contributed to the radical isolation of the individual, in the era of competitive liberalism. See Max Weber, The Protestant Ethic and the Rise of Capitalism (New York, 1958).

30.   See David Reisman, Selected Essays from Individualism Reconsidered (New York, 1954) pp.20-21.

31.   "In such societies, the very idea of privacy comes to be viewed as anti-social, anti-general welfare, anti-government and therefore dangerous." Arthur L. Moore, "Statistics and the Problem of Privacy", Report of the President's Commission on Federal Statistics (Washington, 1971) Vol.II, 343.

32.   A thorough comparative anthropological and political analysis is offered by Westin in Privacy and Freedom, chapters 1 and 2. See also E.T. Hall, The Hidden Dimension (Garden City,1956) pp.127-153.

33.   For an insightful discussion of the child's development in establishing a set of boundaries between himself and the world see Erik H. Erikson, Childhood and Society (New York,1950)pp.219-231. Also Erikson, "Identity and the Life Cycle", Psychological Issues, ed. George S. Klein (New York, 1959) pp.55-100. This process of asserting self against the world may be approached from a biological standpoint. "During the first few years of his life, the human child becomes aware of his environment, stores information about it, and develops almost passively certain patterns of responses. This phase of biological maturation is followed by a more active and conscious one during which the child appears to try to create his individuality by making use of his genetic endowment and early experiences. Rene Dubos, "Biological Determinants of Individuality", Individuality and the New Society, ed. Abraham Kaplan (Washington,1970).

        An earlier but interesting study of man's bio-social nature as the basis for understanding the Western ideology of privacy is P. Halmos, Solitude and Privacy (New York, 1953) pp.1-21.

34.   See Arnold Simmel, "Privacy is not an Isolated Freedom", Nomos XIII, Pennock and Chapman.

35.   Intimacy "serves to set necessary boundaries of mental distance in interpersonal situations ranging from the most intimate to the most formal and public". Westin, Privacy and Freedom, p.38.

36.   Privacy is deeply attached to the measurement of trust in a given relationship. If trust is absolute privacy will not be an issue. It logically follows that in any specified relationship when one refuses to reveal certain information the refusal is an indicator of the distrust that the person holding the information has vis-a-vis the other party. So it is that by raising the level of trust in a given environment the propensity to give out additional information is heightened. Interesting examples may be found in recent experimentation in the psychological domain in marriage counselling, theories of doctor-patient relationship, in depth analysis, and encounter groups.

37.   "If the observation of totalitarian societies, hospital or prison life, has taught us anything, it should be that an individual's life ought not to be an open book - unless he chooses to make it so." Richard I. Miller, "Invasion of Privacy by Computer", Lex et Scientia, Vol. V, 1968, 24.

38.   For a detailed treatment see Irving Goffman, Asylums (New York,1961) Goffman, Stigma (Englewood Cliffs, New Jersey, 1963) and Goffman, The Presentation of Self in Everyday Life (New York,1959).

Further, see T. Shubitani, <u>Society and Personality</u> (Englewood Cliffs, N.J., 1961), pp. 213-248.

39.   The emphasis here is on youth. "Post-modern youth is committed to a search for new forms of organization and action where decision-making is collective, where arguments are resolved by "talking them out", and where self-examination, interpersonal criticism, and group decision-making are fused. The objective is to create new styles of life that humanize rather than dehumanize, that activate and strengthen the participants rather than undermining or weakening them. And the primary vehicle for such participation is the small, face-to-face, primary group of peers. Kenneth Keniston, "Dissenting Youth in a New Society", <u>Individuality and the New Society</u>, ed. Abraham Kaplan, p. 35.

For a comprehensive background reader to these new trends, see Keniston, <u>The Uncommitted</u> (New York, 1965).

40.   The assertion of radical self has become an important dimension of contemporary privacy claims. This view of privacy prescribes that man must achieve a heightened sense of intimacy and self-reflection, even at the expense of institutional stability or political cohesion. Man's greatest responsibility is to develop a reflective awareness of his own self, whether it be in isolation or through limited chosen experiences of trust and familiarity. The exploration of self is in these terms the meaning of privacy. This is the embodiment of a new consciousness of the post-industrial society which argues for the affirmative right to radical individuality and life style. "...how shall we characterize the counter-culture?....They see that building the good society is not primarily a social, but a psychic task. What makes the youthful disaffiliation of our time a cultural phenomenon, rather than a merely political movement, is the fact that it strikes beyond ideology to the level of consciousness, seeking to transform our deepest sense of the self, the other, the environment." Theodore Roszak, <u>The Making of a Counter-Culture</u> (London, 1970) p.49. Roszak describes the attack on the myth of objectivity which views the self as a "small, hard atom of intense objectivity" denying men the significance of their own subjectivity. "The counter-culture assaults the reality of the ego as an isolable, purely cerebral unit of identity", p.55..."it delves into the non-intellective aspects of the personality", p.81.

Or, put in the now familiar terms of art, of the author Charles Reich, "The foundation of Consciousness III is liberation... The meaning of liberation is that the individual is free to build his own philosophy and values, his own life-style, and his own culture from a new beginning...Consciousness III starts with self...the individual self is the only true reality", (p.225)... (it) postulates the absolute worth of every human being - every self." Charles A. Reich, <u>The Greening of America</u> (New York, 1970).

41.   For a consideration of the spectrum of uses of privacy see Michael A. Weinstein, "The Uses of Privacy in the Good Life", <u>Nomos</u>, ed. Pennock and Chapman, pp.88-104.

42.   "The idea of property has often been used as a means of
demarcating the sphere of human autonomy and freedom", Dennis
Lloyd, "The recognition of New Rights", 14 Current Legal Problems,
1961, 43.

Hegel offered the definition of property as "an external
sphere of freedom". For centuries in the West the legal order
described property as a realm of private autonomy. C.J.
Friedrich writes, "The whole development (the inviolability
of property) rests upon a conviction, which was repeated again
and again and was never seriously questioned, that property
provides the essential safeguard for the freedom of the individual...
The free man can be only a man of property, and for a long time
it was believed that, therefore, only a man of property ought
to participate in political life". Carl Joachim Friedrich,
The Philosophy of Law in Historical Perspective   (Chicago,1958)
pp. 154-156.

43.   H.L.A. Hart, The Concept of Law, chapter on "Law and Morals".
(Oxford, 1961) p. 184.

44.   As Sydney Hook puts it, "The right to liberty, however
specified, sometimes threatens the right to property and
vice versa, and either or both of them may on occasion conflict
with the right to the pursuit of happiness", The Paradoxes of
Freedom (Berkeley and Los Angeles, 1962) p.14. ..."so that
no matter how the conflict is resolved one or more of the actual
rights must be alienable", Kai Nielson, "Skepticism and Human
Rights", The Monist, Vol.52, No. 4, October, 1968, 573. For
an insightful treatment of types of natural law claims see
pp. 573 - 594.

45.   Indeed, Brandeis described the "right to be let alone"
(privacy) as "the most comprehensive of rights and the
right most valued by civilized men". V. Olmstead, U.S. 277,
U.S. 438, 478 (1928).

On June 1st, 1970, the then Minister of Justice and Attorney
General of Canada, John Turner, declared to the First Annual
Joint Conference of the Canadian Information Processing
Society in Vancouver, "Some thirty years ago the then-
Associate Chief Justice of the United States Supreme Court,
Louis Brandeis, outlined a dissent that was later to become
the law of the land that has become the philosophic measure
of the right to privacy for all lands." P.10, Press Release,
Office of the Minister of Justice.

46.   Observe, "If privacy is an intrinsic right - a basic
right in itself, akin to a natural right requiring no
utilitarian justification - it must be given greater respect
than a right which is viewed as merely derivative - remaining
after all other interests have been satisfied. It is submitted
that the intrinsic view of the social interest regarding
privacy is more consistent with the 'totality of the constitutional
scheme under which we live'". Note "Right to Privacy: Social
Interest and Legal Right", 5 University of Minnesota Law Review
(1967) 533.

47   It is Fried's point of view that "Privacy is not...just a
defensive right. It rather forms the necessary context for
the intimate relations of love and friendship which give our

47.   lives much of whatever affirmative value they have". Charles
        Fried, "Privacy", 77 Yale Law Journal, (1967 - 68) 490.

48.   The concept of personal or social space may be approached
        from a spatial perspective. See Community and Privacy Toward
        a New Architecture of Humanism, Serge Chermayeff and Christopher
        Alexander (New York, 1965).

49.   "Psychologically, privacy is a self-related subjective experience
        which may include one or many persons. ...Both individually
        and collectively, privacy is structured in relation to variations
        in the things which acquire privacy meanings, the persons who
        arouse privacy responses and the situational contexts within
        which behaviour has privacy connotations. Privacy ordinarily
        connotes meanings that are more psychological than sociological.
        It is less likely to be defined by overt, interpersonal
        behaviour, more by attitudinal and affective responses of
        the individual." Alan P. Bates, "Privacy - A Useful Concept?"
        Social Forces 42 (1964) 429.

50.   The conditioning processes that surround societal notions
        of family privacy are significant moral foci. "The ideological
        defence of family insularity cannot be readily supported by
        aesthetic considerations. A criticism of its moral justification
        may be deduced." Halmos, Solitude and Privacy, p. 119. Although
        Halmos asserts the notion that there is an important distinction
        between family privacy and single person privacy, unquestionably
        the moral aspect of privacy conditioning in the familial context
        deeply affects both individual and group privacy perceptions in
        wider arenas.

51.   The danger with the superindustrialized society is that "as
        the society grows more complex and the individual's sense of
        his ability to influence it in his own interest seems smaller,
        the tendency to depend for placement and advancement on what
        can be revealed about himself which can be evidenced and acted
        on 'scientifically'may well increase." Donald N. Michael,
        "Speculations on the Relation of the Computer to Individual
        Freedom and the Right to Privacy", 33 George Washington Law
        Review (1964) 270 - 277. ..."The individual may come to believe
        that he 'really' is what his file says he is", UCLA Computer
        Project: 1968, Part IV, p.1419; Vol.15,1371, 1419.

52.   It is worth recalling that it was John Locke who stressed
        man's privacy right in his own person. See Of Civil Government,
        Chapter 5, Section 26, Chapter 7, Section 87.

53.   In the possessive individualist culture "its possessive
        quality is found in its conception of the individual as essentially
        the proprietor of his own person or capacities, owing nothing
        to society for them. The individual was seen neither as a moral
        whole, nor as part of a larger social whole, but as an owner of
        himself." C.B. MacPherson, The Political Theory of Possessive
        Individualism: Hobbes to Locke (Oxford,1962) p.3.

54.   "There are principles and there are rules. A higher order of
        generality is not only tolerable in the statement of principles;
        it is to be encouraged, for the assimilative, magnetic effect,
        the shock of recognition, that it produces when new or questionable
        phenomena are encountered. A principle is the natural language
        of the theoretician of law, the jurist, while a rule is pre-
        eminently the language of legislators and counsellors-at-law. A

rule is a particularization that describes the state of law in
a defined context, and prescribes with a relatively high
degree of immediacy and precision...A principle is a more plastic
formulation, useful for predicting and shaping the course of legal
development. It is in the latter context that the right of
privacy is of cardinal worth. "Privacy: One Concept of Many?",
Paul A. Freund, Nomos, ed. Pennock and Chapman, p.197.

See also Christie "Vagueness and Legal Language" 48 Minnesota
Law Review (.964) 885-886, and Williams, "Language and the
Law", 61 Law Quarterly Review (1945) 179-81, 189-92.

55.   "No precise distinctions can be made between rules, principles,
and maxims, but the terms serve to mark differences
of degree in the precision of guides to decision-making",
Graham Hughes, "Rules, Policy and Decision-Making", Law,
Reason and Justice, ed. Graham Hughes (New York, 1969) p.111.

56.   Ronald M. Dworkin's usage of principle is instructive.
"I call a 'principle' a standard that is to be observed,
not because it will advance or secure an economic, political,
or social situation deemed desirable, but because it is a
requirement of justice, of fairness or some other dimension
of morality". "The Model of Rules", Law, Reason and Justice,
ed. Graham Hughes (New York, 1969) p.14.

57.   William L. Prosser, 48 California Law Review (1960) 383.

58.   Ernest J. Bloustein, "Privacy as an Aspect of Human Dignity:
an Answer to Dean Prosser", 39 New York University Law
Review (1964) 962.

59.   In spatial terms Louis Mumford assesses the relation between
privacy and luxury in Western history. Louis Mumford,
The Culture of Cities (New York, 1970) p.40, p. 118.

60.   As one political theorist recently remarked: "Indeed,
in the seventeenth century the word property was often used
as a matter of course in a sense that seems to us extra-
ordinarily wide: men were said to have a property not only
of lands and goods and in claims on revenues from leases,
mortgages, patents, monopolies and so on, but also property
in their lives and liberties". C.B. MacPherson, "Liberalism
and the Political Theory of Property", unpublished Manuscript,
p.6a.

61.   Yet even in the cases of some professional elites "the
essence of bureaucratic work is the replacement of individual
control by the control of the work process. Even in highly
skilled fields work is evaluated by supervisors; 'work
measurement' is a hallmark of bureaucracy. This is so
whether the product is turned out by men or by machines.
As we have seen, big organizations are systems of graded
authority that ensure supervision, uniformity, and predictability...
On every hand organizations fix the conditions of participation,
limiting individual discretion by rules, certifications, and
tacit expectations of many kinds." Robert Presthus, The
Organizational Society (1962).

62.   Charles Reich, "The New Property", 73 Yale Law Journal (1964).

63.   This relation, stated by H.R. Grosch in the 1940's has
been disputed and rehabilitated a number of times. See M.B.
Solomon, "Economies of Scale and the IBM/360", Communications
of the ACM, vol. 9, no.6, June 1966, pp. 435 - 440, and W.F.
Sharpe: "The Economics of Computers", Columbia University
Press, 1969, p. 315 et seq.

64.   M.B. Solomon: "Economies of Scale and Computer Personnel",
Datamation, March 1970, pp. 107 - 110, and Datamation, June
1970, pp. 293 - 294.

65.   P. Berman: "A Note Against Centralized Staff", Datamation,
May 1970, pp. 284 - 290, and "Decentralization Again",
Datamation, October 15, 1970, pp. 141 - 142.

66.   G. Glaser: "The Centralization vs. Decentralization Issue",
I.A.G. Journal, vol. 4, no. 1, 1971, pp. 15 - 27.

67.   A prediction which has already come to pass in the industrially
advanced countries at least.

68.   F.G. Kordes: "Policy on Automation in Government Departments:
Centralization or Decentralization", I.A.G. Journal, vol. 3,
no. 2, 1970, pp. 179 - 203.

69.   Soviet Cybernetics Review: "Network Systems Require 'Top-Down'
Approach", Nov. 1970, pp. 27 - 28, "State-Wide Control Systems",
May 1970, pp. 5 - 7, "A configuration of the State Network of
Computer Centres",Oct. 1969, pp. 39 - 41, "The State Network of
Computer Centres", Sept. 1969, pp. 59 - 75, the RAND Corporation,
Santa Monica, California.

70.   For details of the type and extent of use at these levels
see "Automated Data Processing in State Government", Public
Administration Service, Chicago, 1965, and also "Automated
Data Processing in Municipal Government", 1966.

71.   A. Downs: "The Political Payoffs in Urban Information
Systems" in Information Technology in a Democracy, ed. Alan
F. Westin (Harvard, 1971) pp. 311 - 321.

72.   "Data Processing Law", State of Hessen, Federal Republic of
Germany, Oct. 7, 1970, Part 1, page 625; the translation is
from Thomas (1971) p. 19.

73.   Robert O. MacBride: "The Automated State: Computer Systems
as a New Force in Society", Chilton Book Co., 1967.

74.   Donald N. Michael: "On Coping with Complexity: Planning
and Policies", Daedalus, Fall 1968, pp. 1179 - 1193.

75.   Ithiel de Sola Pool, Stuart McIntosh, and David Greffel:
"Information Systems and Social Knowledge", in Westin,
Information Technology in a. Democracy, pp. 241-249.

76.   Thomas (1971) 6.5.

77.   Olaf Helmet: "Analysis of the Future: The Delphi Method"
in Technological Forecasting for Industry and Government, ed.
James Bright (1968) pp. 116-133.

78.   "Citizen Sampling Simulations: A Method for Involving the
Public in Social Planning", CERL Report X-12, University of
Illinois, January, 1970.

79.   H. Eulan: "Some Potential Effects of the Information Utility on Political Decision-Makers, and the Role of the Representative" in Sackman and Nie (1970) pp. 187-189.

80.   Note that this is based on the implicit view that if the same detailed arguments were presented to the public they would not listen to them as carefully as would the representative.

81.   The system is described in H. Lawford.

82.   N.H. Nie: "Future Developments in Mass Communications and Citizen Participation" in Sackman and Nie (1970).

83.   This suggestion and those which follow are made by the contributors to "The Information Utility and Social Choice" op. cit. For an overview see the summary by Kenneth Prewitt.

84.   Jean Meynard: "Technocracy" (London, 1968) Conclusion, pp.293-303.

85.   R.E. Lapp: "The New Priesthood" (New York, 1965).

86.   R. Boguslaw: "Systems of Power and the Power of Systems" in The New Utopians: A Study of System Design and Social Change (Princeton, 1965). We may note that with the specialization of labor, the type of social and political choices we have been considering are not specified by programmers, or the designers of computer equipment and languages; but they are built into the models and simulations of the system designers and planners who apply the computers, and the general point is valid.

87.   D. Bell: "Notes on the Post-Industrial Society" (1), The Public Interest, 6, Spring 1967, p. 35.

88.   For a summary of their views (D.K. Price: "The Scientific Estate", Bilkny Press of Harvard University, and R.C. Wood: "Scientists and Politics: The Rise of an Apolitical Elite" in Gilpin, Robert and Christopher Wright (eds.) Scientists and National Policy Making (New York, 1965); see "Technology and Polity", Research Review No. 4, of the Harvard University Program on Technology and Society, Summer 1969, pp. 31 - 32.

89.   Carl Kaysen: "Model-Makers and Decision-Makers: Economists and the Policy Process", The Public Interest, no. 12, Summer 1968, pp. 80-95.

90.   Nieburg, H.L.: "In the Name of Science", Quadrangle Books, (Chicago, 1966).

91.   Daniel S. Greenberg: "The Myth of the Scientific Elite", The Public Interest, no. 1, Fall 1965, pp. 51 - 62.

92.   Victor C. Ferkiss: "The Spectre of the Scientific of Elite", The Public Interest, no. 1, Fall 1965, pp. 51 - 62.

93.   It may be that the influence of an advisor depends on the terminology; technicians are ignored, technocrats are feared, experts are needed and authorities are respected.

94.   J.M. Shepard: "Automation and Alienation: A Study of Office and Factory Workers", The MIT Press (Cambridge, Mass, 1971).

95.   Herbert Marcuse: "One-Dimensional Man" (Boston 1964) Chapter 1 - The New Forms of Control, pp. 1 - 18.

96.   Erich Fromm: "The Revolution of Hope: Toward a Humanized Technology" (New York, 1968), pp. 26 - 57.

97.   Alvin Toffler: Future Shock (New York, 1970).
        Marshall McLuhan: "Cybernation and Culture" in Deckert,
    Charles R. (ed.) The Social Impact of Cybernetics (New York, 1967)
    pp. 95 - 108.

98.   For a more complete summary and for some of the principal
    views see "Technology and the Individual", Research Review,
    no. 6, 1970, Harvard University Program on Technology and
    Society.

100.   N. Rescher: "A Questionnaire Study of American Values by
    2000 AD" in Values and the Future, K. Baier and N. Rescher (eds.)
    (New York, 1969); and H. Kahn and A. Wiener: The Year 2000:
    A Framework for Speculation on the Next Thirty-Three Years"
    (New York, 1967).

101.   This corresponds approximately, but not exactly to the seven
    classes identified by J. Carroll in the report on "Personal
    Records". That there is such uncertainty in identifying classes
    is a measure of the difficulty of the problem of categorization.
    As a further example of the difficulty in both this classification
    and in Carroll's it is not clear where research organizations
    or military units should be assigned and arguments can be made
    for a considerably enlarged list of organizations types.

102.   To appreciate the full extent of the variability in the
    transactions it is necessary to go to the report on
    "Personal Records: Procedures, Practices, and Problems"
    prepared for the Canadian Federal Government Task Force on
    Privacy.

103.   University of Michigan Press, 1971, Miller op. cit.

104.   14 U.S.C. 3507 (1967).

105.   These forms are suggested by A.S. Goldstein in "Legal
    Control of the Dossier" which appeared in S. Wheeler (ed.):
    "On Record", The Russell Sage Foundation, 1969.

106.   This is true for both the Canadian and U.S. Studies.

STUDIES COMMISSIONED BY THE TASK FORCE

1 The Nature of Privacy - D.N. Weisstub and C.C. Gotlieb.

3 Personal Records: Procedures, Practices, and Problems - J.M. Carroll
and J. Baudot, Carol Kirsh, J.I. Williams.

9 Electronic Banking Systems and Their Effects on Privacy - H.S. Gellman.
Technological Review of Computer/Communications.[1]

4 Systems Capacity for Data Security - C.C. Gotlieb and J.N.P. Hume.

5 Statistical Data Banks and Their Effects on Privacy - H.S. Gellman.

10 Legal Protection of Privacy - J.S. Williams.

Vie Privée et Ordinateur Dans le Droit de la Province du Québec - J.
Boucher.

6 Regulation of Federal Data Banks - K. Katz.

2 Regulatory Models - J.M. Sharp.

Ordinateur et Vie Privée: Techniques et Contrôle - C. Fabien.

7 The Theory and Practice of Self-Regulation - S.J. Usprich.

Privacy, Computer Data Banks, Communications and the Constitution -
F.J.E. Jordan.

8 International Factors - C. Dalfen.

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[1] A joint Study by the Privacy and Computers Task Force and the Canadian
Computer/Communications Task Force, to be published by the latter.

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