



A Conversation on Privacy Part II – with Nuala O’Connor, Noam Chomsky, Edward Snowden and Glenn Greenwald

Note: This transcript may not be 100% accurate.

Nuala O’Connor

So, we’re going to start from the very beginning with the fundamental question of what is privacy? Glenn Greenwald calls himself a constitutional lawyer - maybe a recovering constitutional lawyer, I'm not sure.

So he knows that there is no right to privacy enshrined in the U.S. Constitution, although there are state constitutions that use the word privacy, so my question really for the whole panel, and we'll take it one by one, is what is privacy? The author Jeffrey Ritter wrote that privacy is a contractual bond as we know our friends in Europe think of it as a human right. In Latin America the construct is “Habeas” data, my data myself, I personally like that one. At CDT we think of the construct as digital self, that your data is an extension of your person, an extension of self and should be treated as part of the body. Where should we be drawing the line between the self and the state, the self and the corporate interest, the self and each other? I'm going to start with Noam again.

Noam Chomsky

Well I think we should start from a principle which derives from the enlightenment and classical liberalism. The principle that any form of authority, domination, and hierarchy must be assumed initially to be illegitimate. It carries a burden of proof. The burden of proof is on the structure of authority. It has to demonstrate that it has legitimacy in specific circumstances... and sometimes... it should be a pretty high burden. There are times when that burden can be met. So if I’m walking in the street with my granddaughter and she runs out on the street and I grab her back and pull her back I think I can justify that authority. But justification of authority is extremely difficult and if you look carefully, it’s a burden that can very rarely be met. So the issue in this case is typically security, and it's therefore, that... we have... one of the good things about the United States is that by comparative standards it's quite an open society and we have access to documentary records from the government which is unusual, maybe unique, by historical standards and we can look at it and we can investigate to what extent government actions have been motivated by security, and when you investigate that I think what you discover is first of all that there are different kinds of security. That there is security for state power that's constantly protected. There’s security for the concentrations of economic power, corporate interest and so on that are highly influential, overwhelmingly influential and determining state powers, and we find plenty of attention to their

security. And then there's the question of security of the population. That turns out to be of a very low consideration, of very little significance. It's constantly either ignored or overruled in the interests of the real concerns of security. I think I can't demonstrate it here but I think it's a challenge to look at the record which we can investigate and I think that's what you'll find. And that strongly suggests that the claim to legitimacy of authority in this case is on very shaky foundations and should be very seriously questioned in case after case.

Nuala O'Connor

Glenn, it's a penumbral right, so how are we doing?

Glenn Greenwald:

Well, at the risk of picking a fight with the moderator earlier than I had planned to

I do think actually, you know, when you're talking about privacy, the starting point is the fact that it is actually protected in the constitution albeit not with the word privacy, if you look at probably the amendment of the Bill of Rights, which received the greatest attention, it was the idea that the government had no power of general warrants meaning what the king used to do is order entire villages or neighborhoods or cities subjected to house-by-house searches that instead you had to have this particular suspicion, reasonable cause in fact, probable cause, that the person was engaged in some sort of wrongdoing before the state had the right to inspect their papers or persons. That is in essence the crux of the definition of privacy and in so many ways the debates we're having now were settled over 200 years ago when the government said we don't have mass surveillance, in this country it's a violation of fundamental rights, but the only kind of surveillance that is permitted as Prof. Chomsky said is when the burden that's on the government is met by them going into a court and saying this particular individual has engaged likely, in all likelihood, in some sort of wrongdoing and therefore we can invade their home, read their papers and the like. But I want to just take a step back because I think the question of what is privacy is a really critical question to ask and the reason is because a lot of times people treat it as though it's this kind of abstraction, like we understand why physical needs like the need for food or shelter or healthcare are things that are these immediate urgent needs that are fundamental for who we are, but a lot of people are really going to be dismissive about the right to privacy to treat it as this kind of distant remote value that even for those of us who sort of think it's a good thing we're not really willing to say that it's something we demand be protected. And I'm sure all of you in this room have heard the rationale that's used by people who want to belittle the right to privacy and I bet a lot of you even think it yourselves which is the idea that, well, *you know what, I'm not one of the bad people, I'm not planning any terrorist attacks, I'm not engaged in violent crimes and therefore I don't actually have anything to hide, I don't mind if the government invades my privacy.* And what's really fascinating about that, that I found over the last years is that even the people who say that, the people who say they don't actually value their privacy, they don't actually mean it at all. And the proof of it is they do all sorts of things to safeguard their own privacy, I mean we all have things to hide. There are things that everyone in this room would be willing to have their spouse or their best friend or their physician or their lawyer or their psychiatrist know but would be mortified to have anybody else know. The people who say they don't value privacy they do things like: they put and use locks on their bedroom and bathroom door, they put passwords on their email and on their social media account, they do all sorts of things to ensure there's a place they can go in the world to think and reason and explore without the judgmental eyes of other people being cast upon them. This is really critical to human freedom. And you know you should do this experiment, it's something I've done every single time over the last three years when somebody said to me *You know what, I'm not a terrorist, I'm not a bad person, I'm not planning any crimes, I don't actually have anything to hide,* I do the same thing every time someone says that to me, which is I take out a sheet of paper and I

write my email address on it and I say *Here's my email address and what I want you to do when you get home is I want you to email to me all of the passwords to all of your email and social media accounts, and like not just the nice respectable ones from work in your name, but like all of them and you know I just want to be able to troll through what you're doing online and publish it under your name because after all if you're not a bad person you should have nothing to hide.* And you know, to this day not a single person has taken me up on this offer. I check that email account really frequently, it's a very lonely and desolate place and the reason is because we really understand instinctively without this abstract debate why privacy is so critical. We are social animals we have a need for other people to know and see what we're doing, which is why we post things about ourselves online, but we also have the need to be able to do things without other people watching because when other people are watching what you're doing you're much more likely to engage in decision-making that's the byproduct of societal orthodoxies or external expectations and not a byproduct of your own agency and independence, and so when we lose privacy, when we allow ourselves to live in a society where some of us are more susceptible to being monitored at all times we lose a really critical part of what it means to be a free and fulfilled individual. And as Prof. Chomsky was saying, we should not allow that to happen in any circumstance except when the government demonstrates there's a really compelling need.

Nuala O'Connor

To have the quiet spaces for creativity and soul-searching, and, Ed Snowden, in the days and weeks and months after the revelations that you sparked became clear to the American public, Pew Internet Life Research showed that people were modifying their behavior, they were self-censoring, they were curtailing their own speech. You have perhaps arguably given up some of your own privacy in order that many of us have more one would hope in the future. What are your thoughts on that?

Edward Snowden:

So there are a couple of things that I want pursue on that... If I could make a quick technical note to the people working on the stage audio, I can hear myself quite loudly which is making it hard to speak online. You mentioned that privacy is a penumbral right, of course referring to previous statements by the supporting panel, but I would offer a slightly different formulation here, drawing on the arguments made by former supreme court of justice Brandeis who offered that privacy is really something different and altogether more valuable than what we expect in the common usage. When we talk about privacy today in the modern context we're really asking the word to do too much work. Privacy means many different things to many different people. Privacy for many people is just settings on their Facebook page and so they go *I don't really care, it's just Facebook.* But privacy is so much more. Brandeis said privacy is the right to enjoy the products of our own intellect. I would go further. I would say privacy is the founding head of all other rights. Privacy is the right to the self, privacy is the right as we have in the Constitution to freedom of speech, freedom of press, freedom of religion, freedom from unreasonable search and seizure without probable cause. Privacy is the right to a free mind. Now how can I say that, right, that seems sort of abstract, but when you think about it, privacy is what allows us to determine what we believe, without being influenced by others, without being subject to peer pressure, without our ideas being prejudged before they're fully formed. Freedom of speech has no meaning if you don't have the space, the time, the freedom to determine what it is that you want to say. Freedom of religion has no value if you cannot independently determine what it is that you believe in, otherwise you're being influenced by what's popular or what you inherited. Now when we go further from this we realize that this is actually inherently understood by generations of speakers, generations of thinkers, going down all the way to something that Mr. Chomsky made understand quite well, which are the underpinnings of our language. It's called *private property* for a reason. Without privacy you can't

have anything for yourself. You exist as a collective, you exist in a state of reaction to your environment at all times. You are a part of a larger being, but at no time are you permitted to have a space that is only just for you. And when I sort of follow this, and I think about this in my own terms, particularly when we're confronted with the arguments of sort of apologists for the national security state and the argument that was first proposed by the Nazis against privacy, which was if you have nothing to hide you have nothing to fear, I would say that arguing that you don't care about privacy because you have nothing to hide is like saying that you don't care about free speech because you have nothing to say. Rights exist and have value for more than just the individual in the current moment. Rights are about individual and collective. And if you think about the value of a free press, we're not all journalists but we still derive value from them. Moreover, rights are not really intended, rights are not really designed for use by the elites, the people who are leading our debates, because these are the people who are least threatened with the abrogation of their rights. The system exists to serve and protect these people. Rights are almost always needed on a regular continual basis by those who are vulnerable, by those who are not protected by the system, by those who are not protected by their communities, by the people who are different, by the people who are ahead of everyone else, who are proposing a new idea, or people who are simply minorities and don't have access to the same resources, don't have access to same ability to compete. And to say fundamentally that you don't care about a right even it is truly of no value to you because you are not using it in this current moment and don't expect to use it in the future, is probably the most antisocial thing I can imagine.