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BOOK REVIEW

PRIVACY IN A PUBLIC SOCIETY, by Richard F. Hixson.
New York: Oxford University Press. 1987. Pp. 229. Hard
Cover.

*Reviewed by Peter V. Dessau**

Society's recent inability to balance the individual's desire for privacy with the public's right to information is popularly and safely conceptualized as solely an advent of modern technology. However, it is also necessarily a product of the individual's definition of "private" which intrinsically reflects the individual's concept of self and community. It is the recognition of this dynamic, combined with a thoughtful study of jurisprudential material that lays the foundation from which *Privacy in a Public Society* is written.

Richard F. Hixson's description of the phenomenon of America's struggle to balance individual privacy with its need for information and controlled data dissemination is insightful and well documented. Although it would be impossible to review his documentation, the basic thesis of the book may be summarized as follows:

The notion of privacy is ancient in origin and has steadily evolved. Its evolution may be correlated with major cultural revolutions in history.

With the spread of Christianity, the conflict between privacy and authority became more acute, epitomized, and brought to a head by the practice of the church-directed confessional. Such intrusions into private matters created anxiety and resentment among increasingly literate parishioners. The role of the indi-

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vidual in matters of religion continued to plague the church and was of major significance in the Reformation. . . .¹

By the 20th Century, mass communication, large cities, unprecedented leisure time and technology affected the individual's life style both positively and negatively. Man was forced to confront and adapt to a modern world that provided convenience at the expense of individuality. The threat was so pervasive and so intimate that individuals have responded by equating privacy with the self. No longer is privacy merely descriptive of one's relationship with the environment (i.e., withdrawn, secluded, privileged or intimate). Rather it now encompasses a description of the self. Put differently, privacy once referenced the self's relation to others; one's own sense of self was a point of reference. Now the self is no longer a reference point alone. Instead, one's notion of the private includes one's understanding of the self. As a consequence, privacy is now thought to be a natural right.

Because "the individual and the community are interdependent,"² this evolution of the individual's understanding of privacy has impacted his concept of community. No longer is the community valued and cherished as an end in itself. Rather, Hixson asserts that it has become primarily a means to the individual's self-fulfillment:

Community, in the sense of "direct common concern" and "common organization," . . . turns out to be the best place for personal privacy to thrive, indeed, to survive. Our modern society, by encouraging competitiveness among otherwise egalitarian individuals, the privatizing of persons, actually creates a high degree of competitive indifference that works against common progress.³

The legal result of this phenomenon is a body of law that is convoluted and self-contradictory due to the legal system's attempt to draft laws that protect a sense of privacy that defies a definition. Since privacy is increasingly a concept intrinsically linked to self-definition, there are multiple definitions of privacy. In the end, privacy is effectively left unprotected.

Hixson proposes two solutions. First, society must redefine privacy legally, sociologically and philosophically:

[A] major source of the conflict between privacy and publicity, from a social as well as a legal frame of reference, is the matter

1. R. HIXSON, *PRIVACY IN A PUBLIC SOCIETY* 6 (1987).

2. R. HIXSON, *supra* note 1, at 130.

3. R. HIXSON, *supra* note 1, at 130-31.

of terminology. If information privacy interests are worthy of protection, the main problem would seem to be in defining—in light of the various privacy interests that may be at issue—the “intimate” or “personal” data that the individual has a right to protect. Once agreement is reached, a fair and equitable procedure could be established for deciding when a person has “waived her or his right by making the information public.”⁴

Of course, this would require a redefinition of community. Specifically, individuals would have to be more than “public-serving.”⁵

Second, present laws must be rethought and redrafted, presumably, to reflect a more realistic sense of privacy while simultaneously restraining the intrusiveness of technology without emasculating it. For example, Hixson makes a compelling argument that copyright law should be utilized to protect “the commercial aspect of personal privacy,”⁶ since it could adequately protect the individual’s monetary capitalization of one’s character and self. Simultaneously, this would preserve the Constitutional rights designed to protect the public’s right to informed self-government. In the end, both values are more likely to thrive since they will not be placed in needless frequent conflict.

Privacy in a Public Society will be helpful to anyone studying or working in this area who is not thoroughly familiar with the philosophical, sociological, historical and legal history of the modern right to privacy and its origins. More importantly, Hixson’s artful interdisciplinary approach to the issues addressed is paradigmatically instructive to the attorney seeking to make a serious intellectual contribution to any legal topic.

The book’s weakness is its inability to generate concrete solutions to the problem it diagnoses. Excluding his proposal for the use of copyright law, the book is clearly descriptive rather than prescriptive. Hixson merely suggests how the solution to the conflict may be resolved. To redefine privacy, to reshape the present understanding of the self and the community, and to redraft existing laws are all sound theoretical solutions, but they provide no practical concrete guidance for those attorneys struggling with the law of privacy in courtrooms across America.

On the other hand, this problem may be the strongest argument for the accuracy of the book’s thesis. Society’s struggle with the right

4. R. HIXSON, *supra* note 1, at 228.

5. R. HIXSON, *supra* note 1, at 216.

6. R. HIXSON, *supra* note 1, at 156.

to privacy may be just a small manifestation of a greater existential problem that is confronting modernity. If this is true, then no one individual is likely to resolve the problem. Rather, it will take collective cultural reassessment before a practical solution to the problem evolves.