



Queer Privacy Protection: Challenges and the Fight within Libraries

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Abstract

The COVID-19 pandemic has forced libraries to shift their service-delivery model online, infiltrating countless interactions—from storytime to reference questions to social groups—into digital mediation, typically by third-party platforms outside the library’s control, generating mineable, persistent digital traces. One community particularly vulnerable to the impacts of surveillance is the queer community, where an outing, at least in the United States, imposes a potential loss of housing and employment and may subject the outed person to violence.

Libraries—particularly public and school libraries—have once again become sites of conflict and resistance, with queer people and materials increasingly coming under attack both physically and legally. A primary shield by which libraries try to protect their patrons from such attacks is “privacy.” Librarians, as professionals, proclaim a commitment to privacy embedded in such documents as the American Library Association’s Library Bill of Rights and the International Federation of Library Associations and Institution’s Statement on Privacy in the Library Environment. However, these ideals exist in broader systems—including legal and cultural structures—which constrain and complicate abstract commitments to privacy.

This article examines the challenges of queer digital privacy within libraries in the United States, focusing on the polysemous, boundary-crossing nature of queerness, the digital and the material, privacy, and libraries (as both concepts and institutions). In particular, this article demonstrates how binary-bound, individual-rights-oriented legal approaches to privacy have arisen, and been mediated, by cis-heteronormative patriarchal values and how the sociotechnical materialities in which they occurred (such as paper-based recordkeeping) are fundamentally incompatible with queer privacy needs.

Keywords Queer · Digital privacy · Libraries · Queer digital privacy · Privacy

1 Introduction

In targeting queer communities, libraries may seem an unlikely battleground, but they have become embattled. For example, the public library in Jamestown, Michigan, in the United States, was defunded after refusing to ban books by queer¹ authors [1]. A librarian in Louisiana had sued for defamation after a conservative organization accused her of “fighting [...] to keep sexually erotic and pornographic materials” in the children’s section of her library when she fought against anti-queer censorship [2]. Drag story times in Canada and the United States have become sites of protest [3]. Proud Boys, one of whom wore a shirt stating “Kill Your Local Pedophile,” crashed a Drag Queen Story Hour at the San Lorenzo Library in California. The 2022 winner of the American Library Association (ALA)’s Lemony Snicket Prize for Noble Librarians Faced with Adversity, Martha Hickson, is a high school media specialist who refused to pull Lesbian, Gay, Bi, Transgender, and Queer+ (LGBTQ+) titles, with those attacking the books labeling her as a pornographer and pedophile, subjecting her to personal attacks, hate mail, threats, and vandalism. As reported in the Association of College & Research Libraries’ *College & Research Libraries News* in May 2022:

ALA’s Office for Intellectual Freedom tracked “729 (book) challenges—affecting nearly 1,600 books—at public schools and libraries in 2021, more than double 2020’s figures and the highest since the ALA began compiling challenges more than 20 years ago.” The two most challenged books for the year were *Gender Queer*, by Maia Kobabe, and *Lawn Boy*, by Jonathan Evison [4].

Librarians and other information professionals—long imagined as mere cardigan-clad shushers—find themselves at the vanguard of a fight over information access. Many librarians refuse to remove queer-oriented materials from their shelves and databases; they point to the profession’s commitment to intellectual freedom and its bulwark, patron privacy. However, “privacy” is a complex, polysemous term [5]; defining its dimensions and effective implementation is a necessary first step before privacy can serve as a meaningful tool for justice, equity, or inclusion.

Furthermore, both “privacy” and “libraries” have deep histories in the oppressive structures of the state; the most committed library (or librarian) must confront the individualistic orientation of privacy rights and policy, as well as the cis-heteronormative, patriarchal structures in which both privacy and libraries are embedded if they are to protect queer privacy and intellectual freedom truly. In particular, libraries’ commitments to privacy and intellectual freedom must be bolstered by a

¹. It must be noted from the outset that “queer” is used herein as an umbrella term; there are a multiplicity of queer identities, and the precise positionality and needs of individual queer people and communities are diverse. There is no consensus regarding the best term for queer/LGBTQIA2S+/sexual and gender minority. The positionality of any given queer person or community is intersectional; while it is beyond the scope of this paper, the literature generally shows that privacy rights are most tenuous for marginalized people – poor, women, people of color (see, e.g., [6], [7]). A truly equitable privacy must account for the needs of different communities and cultures and respond to the multiple, overlapping forms of oppression. For the sake of this paper, however, our analysis is limited to queer privacy.

meaningful commitment to broader liberatory values; as will be shown *infra*, current conceptions of privacy, and especially digital privacy, within libraries remains nebulous and malleable, allowing libraries to claim support for privacy while merely providing lip service.

Finally, these challenges come after COVID-19 forced libraries to implement several digital solutions. While many services have gone back to face-to-face delivery, engagement with library services typically involves a sprawling ecosystem of digital services with potential data collection and aggregation points, only some of which are within any given library's control. Much like libraries, while datafied technologies may have illusions of "neutrality," each has its' inbuilt notions of governance (and even, in some cases, governmentality), which mediates the technology's relationship to the user, the user's information, and the library. Thus, the "privacy" of queer library patrons encompasses a number of interests; by examining the polysemous nature of privacy in each of the three significant categories affecting a queer library patron–library privacy, queer privacy, and digital privacy—we can see the shifting, expansive nature of privacy as a concept, and the need for much greater precision in making meaningful privacy decisions, acknowledging the much broader dimensions of agency and dignity inherent therein.

2 (The Challenge of) Defining Privacy in Libraries

Libraries and librarians' commitment to "privacy" is treated as a given within library and information science (LIS). Carpenter, writing about the development of a consensus framework for library patron privacy, wrote, "It perhaps goes without saying that librarians have a tradition of respecting—and strenuously advocating for—patrons' rights to privacy while pursuing their intellectual interests" [6]. In said consensus, the preamble states that "support of intellectual freedom and protection of user privacy and user confidentiality has long been integral components of the missions of libraries and related institutions" [6]. The International Federation of Library Associations (IFLA), states that "freedom of access to information and freedom of expression, as expressed in Article 19 of the Universal Declaration of Human Rights, are essential concepts for the library and information profession. Privacy is integral to ensuring these rights" [9]. However, the concept of "privacy" in libraries is underdeveloped, to the point of being malleable. While there are of course librarians and information professionals with deep, lived commitment to human liberation and well-being, conversations about privacy—particularly at the level of institution and profession—often serve to deflect harder conversations about the library's roles and responsibilities in a deeply inequitable society; what it means to be a third place committed to connecting people with information, technology, and one another, when such connection if truly supported, stands to disrupt the very power structures upon which libraries and other information institutions rely.

Part of the challenge arises from the fact that privacy, generally, is an ill-defined concept, overused and ultimately insufficient to shield against the constant intrusions of surveillance capitalism [11]. The privacy literature is vast, sprawling across disciplinary boundaries and encompassing everything from monographs to industry

standards to white papers. And yet, almost every work on privacy begins by disclosing privacy's unknowability, describing its fundamental slipperiness and ability to evade easy definition. Solove writes, "Privacy is a concept in disarray. Nobody can articulate what it means. As one commentator has observed, privacy suffers from an embarrassment of meanings. Privacy is far too vague a concept to guide adjudication and lawmaking, as abstract incantations of the importance of privacy do not fare well when pitted against more concretely-stated countervailing interests" [11]. The definitional challenges are not merely academic. Krotoszynski, reflecting on the polysemous nature of privacy as a legal term encompassing autonomy, non-disclosure, and dignity, and the challenges of transnational dialogue on "privacy" (which have not eased in the decade since this article), reminds us that "Polysemy is not evil in and of itself, but when polysemy impedes the attainment of a workable system of global human rights, it becomes essential to find more definite and concrete ways of articulating the fundamental interests that we seek to protect" [5]. The relatively abstract values of privacy often fail in the face of more concrete competing claims and interests. Furthermore, when it comes to privacy, the interests sought to be protected are wide-ranging and fact- and context-dependent. In the context of libraries, the polysemy of privacy is compounded by the equally polysemous concept of "information," and often conflated with ideas of "intellectual freedom."

Although both privacy and libraries encompass many dimensions, including the spatial and embodied, the focus in both libraries and broader privacy legislation has been on the informational. This is not entirely unjustified; Koops et al. describes how informational privacy arguably touches all other categories of privacy in the Taxonomy of Privacy (See Fig. 1).

They argue, "each ideal type of privacy contains an element of informational privacy – that is, a privacy interest exists in restricting access or controlling the use of

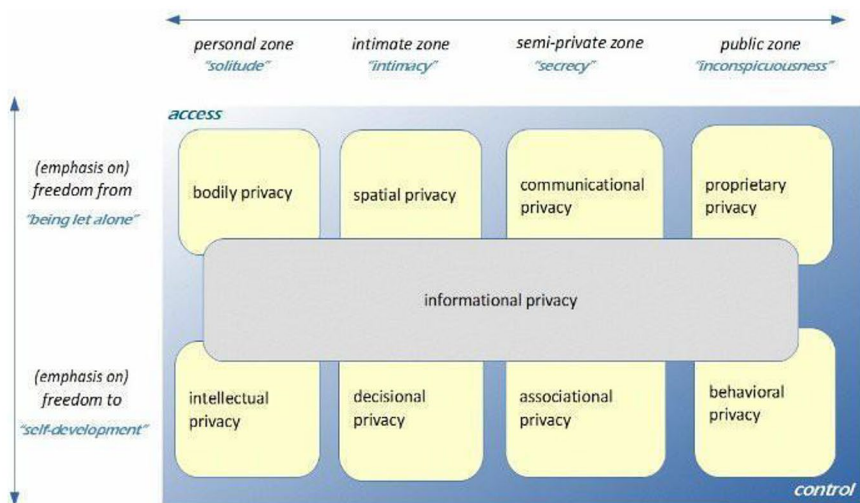


Fig. 1 Taxonomy of Privacy, Koops et al., 2017

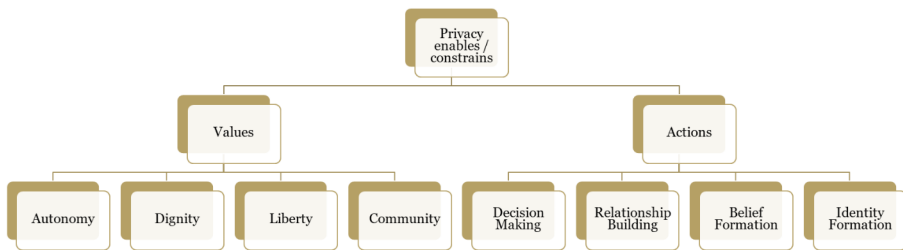


Fig. 2 Privacy's Import, Hofman 2020, 2021

information about that aspect of human life” [12]. Although it is ultimately insufficient, it is in this overarching notion of “informational privacy” where libraries primarily situate themselves. Noh, discussing a study of librarian privacy education in South Korea, writes, “Libraries are fundamentally institutions that handle information; they keep and utilize information not only found within the library but also those regarding users receiving the information” [13]. The American Library Association (ALA), in their statement discussing privacy in the Library Bill of Rights, writes, “The library profession has a long-standing ethic of facilitating, not monitoring, access to information. [...] It is essential that libraries maintain an updated, publicly available privacy policy that states what data is being collected, with whom it is shared, and how long it is kept” [14]. The focus throughout rests on information, in particular, recorded information, and how to appropriately protect said information.

Unfortunately, even if informational privacy were sufficient to protect the many privacy interests inherent in a library, the concept of “informational privacy” is deeply contingent and uncertain. It is ironic that librarians and information professionals should be uniquely equipped to confront the complexity of information privacy, and yet, as a whole, they do not. After all, “information” forms the “invisible substrate” of LIS, a “red thread” that flows through all other disciplines and the *raison d’être* for the field [15]. In particular, Bates’ seminal article distinguishes information science’s understanding of information from that of, say, engineering: “We are interested in information as a social and psychological phenomenon. the information we study generally originates from human agency in some way [...] the field’s interest is in human-produced information, and therefore, how human beings relate to this information – how they seek it, use it, ignore, retrieve it” [15]. What are problems in informational privacy if not questions of how humans seek, use, ignore, retrieve, and - to add a category - control information? Further elucidating the ideas of “information” that make up the universe of “information science,” Hartel identifies nine phenomena that make up the red thread of information, from genres and information experience to information institutions and policy [16]. Yet many of these phenomena, such as embodied information (the “knowing” of the body) and information practice (the information practices of communities) remain under-studied in mainstream LIS privacy and are nearly absent in mainstream professional guidance (such as the ALA

and IFLA Privacy Statements). While there is a growing body of LIS literature on queer information practices, including queer information privacy practices (see., e.g. [10]), the insights therefrom have had limited impact on the broader conception of privacy for LIS. Library privacy continues to focus on compliance with institutional values, and on information policy (which “comprises all the laws, regulations, and public policies that encourage, discourage, or regulate the creation, use, storage, and communication of information”) [17]. In part, this is due to the conflation of “privacy” with “intellectual freedom” in LIS, and to the library’s commitment to privacy in service of other values.

Library and information science scholar Hoffmann, in her article on privacy, intellectual freedom, and self-respect in libraries, describes the normative understanding of libraries’ roles in American society:

It is the “grand tradition” of libraries that ready, and equitable access to information is integral to a functioning democracy [...]. [L]ibraries support a robust public sphere [...] enacting “the principle of critique and rational argumentation through the commitment to balanced collection, preserving them over time, and furthering inclusion through active attempts to make collections and resources reflect historical and current intellectual diversity” [...as well as playing] a role in the development and maintenance of communities. [Libraries] “function as places where communities get constructed” [...] [and] the place of the library in society is informed, in part, by the moral and political claims of both individual citizens and the communities within which they are embedded² [18].

The idea of the library—specifically of its roles in the broader society—is presented as bound up in commitments to ideas like democracy, the public sphere, and diversity and inclusion. However, these are not coherent with one another in an unequal society. The poor definition of privacy, particularly informational privacy, and intellectual freedom allow for the dissonance by which libraries can ignore—and actively perpetuate—oppressive structures while also claiming to support privacy. Furthermore, privacy and intellectual freedom are functioning not as goods in and of themselves, but rather as support mechanisms for *other* goods. Thus, while privacy is one of the ALA’s “Core Values” of librarianship, the explication of that value’s importance points not to privacy *per se*, but to other things, in particular free expression or “intellectual freedom,” that privacy enables: “Privacy is essential to the exercise of free speech, free thought, and free association. Lack of privacy and confidentiality chills users’ choices, thereby suppressing access to ideas. The possibility of surveillance [...] undermines a democratic society” [14]. Thus, privacy is a core value because it enables a suite of things: free expression, free association, and, indeed, a democratic society itself. One of the most common formulations in the library context (and regarding information privacy more generally) is that privacy is critical because it enables *intellectual freedom*. Richards & Cornwell state the common view: “Intellectual freedom and privacy are distinct concepts, but they are mutually reinforcing. Certain kinds of privacy protections can be essential to the meaningful exercise

² Internal citations omitted.

of intellectual freedoms” [19]. Richards & Cornwell trace intellectual freedom to the U.S. Constitution, specifically the First Amendment, whose “protections extend beyond those of speakers to those of listeners as well, and include the right to know or receive information” to protect people’s intellectual pursuits [19].

To this extent, intellectual freedom is not particularly contested. However, as with privacy, there are numerous justifications given for intellectual freedom and its importance. Intellectual freedom—like privacy—encompasses several values, whose entanglement makes it a convenient principle for justifying any number of decisions. Nonetheless, it is crucial to break down these concepts and understand what libraries are trying to accomplish when they make decisions based on privacy and intellectual freedom. Doing so is critical if libraries are to “move from making ineffective calls for equity, diversity, and inclusion (EDI) to actively working for justice within and beyond the field,” especially since “the ALA places [emphasis] on intellectual freedom within the organization’s two primary sets of ethical guidelines [which] suggest[s] that it has been chosen as *the* guiding principle of U.S. [library and information science]” ([20] emphasis in original).

Reviewing the work of major legal scholars on privacy and intellectual freedom, Rubel finds that there are two main arguments for intellectual freedom: democratic self-governance and diversity of thought [21]. It is aligned with a particularly American conception of privacy as an individual right of liberty aimed at a particular kind of political participation (an idea that, arguably, finds its fullest expression in Richards’ scholarship on intellectual privacy [19], [22]). Moreover, given the broader institutional role and understanding of the library in American society, “democratic intellectual freedom” is relatively well-developed (if not entirely unproblematic). Library privacy supports—somehow, though this too remains controversial—the development of the (imaginary) “omnicompetent citizen” [23] who can exercise both the autonomy and responsibility of citizenship if supported with information access and intellectual freedom. Thus, democratic intellectual freedom functions as an autonomy-based ideal central to library understandings of privacy.³

The democratic ideals of this form of intellectual freedom as a library value can be found in both the black letter law and in the various commitments and tools the library profession has developed surrounding user privacy. For example, California’s library record privacy statute, *California Code, Government Code – GOV § 6267*, states:

All patron use records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed by a public agency, or private actor that maintains or stores patron use records on behalf of a public agency, to any person, local agency, or state agency [...]

As used in this section, the term “* * * patron use records” includes the following:

³ It is also worth noting that intellectual freedom is not limited to libraries. The International Federation of Library Associations and Institutions (IFLA) actually bases its definition of intellectual freedom on Article 19 of the United Nations Universal Declaration of Human Rights.

- (1) Any written or electronic record, that is used to identify the patron, including, but not limited to, a patron's name, address, telephone number, or e-mail address, that a library patron provides in order to become eligible to borrow or use books and other materials.
- (2) Any written record or electronic transaction that identifies a patron's borrowing information or use of library information resources, including, but not limited to, database search records, borrowing records, class records, and any other personally identifiable uses of library resources information requests, or inquiries.

This is relatively standard for library records statutes. The motivation behind the statute is to ensure that patrons' use of library resources is not chilled by the possibility of people accessing their records and learning potentially harmful information about the patron. Under the democratic theory of intellectual freedom, such a chilling effect would limit the citizen's effectiveness, they might be afraid to research or even search for controversial or unpopular topics and stances. New ideas, potential solutions, and innovations would be lost to the stifling conformity enforced by living life on stage.⁴ Also standard is the statute's protection of "borrowing information or use of library information resources." The American Library Association's Code of Ethics requires librarians to "protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired, or transmitted." Indeed, the public's right to receive information in public libraries has been affirmed in case law (see, e.g., [25–27]). In particular, the case law affirms the right of "undesirable" people to use and receive information from public libraries. The Third Circuit writes powerfully in *Kreimer* concerning the rights of the homeless to access libraries: "Society has survived not banning books which it finds offensive from its libraries; it will not survive banning persons whom it likewise finds offensive from its libraries. The greatness of our country lies in tolerating speech with which we disagree; that same toleration must extend to people"⁵ [26].

Of course, because the statute is fairly standard, it falls into fairly standard challenges facing privacy regulation. Firstly, determining the harm in privacy violations is notoriously difficult. At the same time, democratic intellectual freedom locates the harm in limiting people's intellectual habits, and in particular, their intellectual desires, which makes it difficult to define such without perpetuating the very idea of a right "vacuous" [28]. The challenge in defining harm is one of the reasons that privacy torts have largely been toothless in the American context.⁶ Arguably, this is

⁴ Of course, as discussed *infra*, the digital has in many ways put all of us on stage from time to time, creating a society that is nearly "pornographic" in its transparency [24].

⁵ Here, of course, we see the Court explicitly tying the democratic function of intellectual freedom to an equity function, without necessarily explicating the steps from A to C.

⁶ Data protection statutes of the model of the *General Data Protection Regulation*, are a bit of a different beast, as they tend to locate the harm quite narrowly in failure to comply with the requirements of the statute and by assigning statutory damages, such as the percentage of worldwide revenues, rather than trying to identify "harm" in the more fact-driven manner of torts.

because both privacy and intellectual freedom as “rights”⁷ are so big—both in scope and ambition—that the harm of their violation becomes difficult to articulate in any meaningful way. Is the harm:

- The diminishing of the scope of one’s citizenship?
- The loss of human vision and imagination?
- The chilling effects?

These are not harms that our system is set up to make whole. The lack of clarity between the grand vision of privacy and its practical goals has made it nigh impossible to effectively operationalize privacy outside of very narrowly scoped contexts.

The expansiveness of information as a concept highlights the narrowness of the concept of “information,” particularly “personally identifiable information” or “personal data,” that rises to the level of legal privacy protection. Consider the European Union’s General Data Protection Regulation (GDPR), widely considered to be the current gold standard in omnibus data protection legislation.⁸ GDPR’s scope is limited to the processing of “personal data,” defined as: “any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to [...] that natural person” [30]. Sectoral library privacy statutes found that 48 states in the United States similarly focus on personal data/personally identifiable information (PII), especially in library usage records (see., e.g., [31]), as do, for example, the omnibus provincial privacy statutes that many Canadian libraries rely on as public bodies. Despite its ubiquity in privacy statutes, PII is a problematic category of information with malleable borders. In particular, it is tough to say what information, specifically, can identify a given individual. The current era of data brokerages and auxiliary information, which can be combined with other previously non-identifiable information to identify a person, increases ceaselessly. For example, it would be near impossible to identify a person if the only information available was their ZIP code. However, if auxiliary information is added to the equation (e.g. gender), it could become slightly easier (e.g. cis-gender male in Los Angeles) to identify (e.g. transgender woman in a sparsely populated ZIP code). Furthermore, as data analytic techniques, including machine learning techniques, grow increasingly sophisticated, identification (or re-identification) of individuals from seemingly innocuous information grows ever more likely. As more information becomes “personally identifiable,” PII becomes less and less helpful for determining what protections should be applied to information. The PII problem (and

⁷ While there are, of course, privacy and intellectual freedom rights as discussed, there is disagreement that a rights-based approach is the best or even a good approach to reaching the many goals of privacy and intellectual freedom writ large.

⁸ The difference between privacy and data protection, particularly in the varying cultural and legal contexts of the U.S. and the E.U., is beyond the scope of this paper. (See, e.g. [29]). For the purposes of this paper, we simply note that the majority of “privacy” legislation, both library-specific and omnibus, focuses on protection of personally identifiable information, personal data, or similar categories of information and/or data.

its cousins, such as the “sensitive data” problem) again point to the lack of clarity regarding what informational privacy is and what it’s trying to accomplish.

However, it remains unclear that privacy and intellectual freedom serve to extend such tolerance, in part, these authors argue, because the bundle of rights associated with privacy and intellectual freedom is unevenly distributed. As Rubel explains, “intellectual freedom is at least partly a function of the quality of persons’ agency with respect to intellectual endeavors” [21]. It must be noted that many of the norms surrounding library privacy and intellectual freedom primarily developed in an analog world. Libraries, like all other institutions, have faced significant changes in their operations and how they can and do protect (or endanger) user privacy in the face of digitization and the extensive development and implementation of information and communication technologies (ICTs). These changes were accelerated and amplified by COVID-19, but the fundamental realities were in place well before the pandemic began.

Additionally, autonomy—and privacy—are precious commodities throughout American history, meted out to the privileged few. As Christman writes, “Put most simply, to be autonomous is to be one’s person, to be directed by considerations, desires, conditions, and characteristics that are not simply imposed externally upon one, but are part of what can somehow be considered one’s authentic self” [28]. Putting aside the philosophical questions about how autonomous one can be, which are beyond the scope of this paper, it is nonetheless abundantly clear that many groups are, as a matter of law, more autonomous than others. Marriage equality has been the law of the land for less than a decade, and many jurisdictions still permit various forms of discrimination against queer people and families. Even in the “highest” sphere of expression and intellectual freedom, political expression, it is abundantly clear that American law and institutions have never seen intellectual privacy and freedom as universally given.⁹ Autonomy, which literally means to give law to oneself, has long been denied to those Americans who have been held outside the civic life of the country. Given that voting is one of the primary mechanisms by which citizens govern themselves in representative systems, we can treat enfranchisement as a reasonable proxy for autonomy. Let us briefly outline the history of enfranchisement in the U.S. to demonstrate the non-universal nature of “autonomy” under the law.

At the founding of the United States, only land-owning men could vote (and therefore, presumably, were the only people with privacy interests related to their role as citizens with political interests). All white men were not enfranchised until 1856. White women could not vote across the U.S. until 1920 [33]. One of the “original sins” of the United States, chattel slavery, literally defined Black people as property, not people who could exercise rights. Although the 15th Amendment of the United Constitution was enacted in 1870, preventing people from being denied the right to vote based upon their race, it was not until 1965, when Congress passed the *Voting Rights Act* [34], that discriminatory measures meant to prevent non-white people from voting, such as poll taxes, literacy tests, and fraud and intimidation, were barred. Native Americans were not recognized as “persons” in American law until

⁹ For example, a number of slave codes criminalized teaching Black people – including free Black people – to read; see, e.g. [32].

1879 and their citizenship was not recognized until 1924 [35]. Despite their being recognized as American citizens in 1924, it was not until 1948 that the Supreme Court of the United States recognized the right of Native Americans to vote, and not until 1962 that the last state allowed Native Americans to vote [36]. U.S. citizens who reside in the U.S. territories (Puerto Rico, Guam, U.S. Virgin Islands, Northern Mariana Islands, and American Samoa) are unable to vote for President unless they move to and obtain residency in the U.S. mainland, and their delegates in the U.S. House of Representatives do not have voting privileges [37].

It is hard then to square autonomy as a justification for “privacy” with the now-prominent stance that privacy *per se* exists to serve justice and equity. After all, when privacy is justified on the grounds of autonomy, people who are denied their autonomy are also denied privacy. Cheney-Lippold argues that “[privacy] is, and has long been, ‘a luxury commodity’” [8]. “For people of color, privacy in the model of liberal democracy is often a nonstarter. Excessive state policing, non-state social vigilance fueled by racist media representations, and the overall institutionalization of white supremacy all frame non-white bodies as less deserving of [the] ‘right to be let alone’” [8]. As discussed in the section on “Queering Privacy,” *infra*, the history of queer privacy rights is no less fraught. Furthermore, privacy remains a privilege even for many with nominal legal rights. Still, no resources to enforce such rights exist (which frequently includes queer people, who statistically have fewer financial resources than their cisgender/heterosexual counterparts in the United States) [38]. Bridges, writing about the lack of poverty afforded to poor mothers, explains that “privacy is imagined to generate value – either for the individual or society. [...] But] if the individual enjoying privacy rights will not put them to good uses, her enjoyment of these rights will not produce the value that otherwise justifies their provision” [7]. Given this—and the construction of poverty as a moral failing—“wealth is a condition for privacy rights and [...] people] lacking wealth [...] do not have any privacy rights” [38]. Reichel goes so far as to argue that “a core function of privacy in a liberal society is to obscure wealth so that social inequalities are not in plain view. Because the legitimacy of the prevailing social order rests, in large part, on the conceit that most people are starting from relatively equal footing, it is necessary to conceal the fact that this is not, in fact, the case” [39].

Thus, “privacy,” both in the library contexts and beyond, while often exhorted as a protection of such ideals as democracy and diversity, is complicated by broader structural issues. This does not mean, however, that privacy cannot—or is not—used in furtherance of justice and equity. Many librarians, leaning on the profession’s commitments to privacy and intellectual freedom, have chosen to continue offering queer materials and programming to their community, even at the risk of significant personal harm. Furthermore, there is a strong tradition of critical librarianship (see, e.g., [40]), which “aims to understand how libraries participate in systems of oppression and find ways for librarians and students to intervene upon these systems” [41]. Lankes goes so far as to assert, “To be a librarian is not to be neutral, or passive, or waiting for a question. It is to be a radical positive change agent within your communities” [42]. However, libraries, and librarians, are not monolithic. Collins refers to the “LIS Diversity Void,” arguing that LIS has a “decades-old rhetoric of diversity and inclusion [...] that is] toothless and which is ultimately performative rather than

effective” [43]. Indeed, in an analysis of diversity-related research in high-impact LIS journals, Sung and Parboteeah found that only 1.15% of articles addressed sexual or gender identity as a dimension of diversity [44]. Libraries remain institutions, often beholden to the more powerful—sometimes queer-phobic—elements in their communities. And, as noted *supra*, most librarians are acculturated into a professional understanding of privacy focused on intellectual freedom that conflates autonomy (a privilege in our current society) with justice and equity. However, a justice-oriented sense of privacy has to account for the power dynamics and different interests inherent in other groups’ privacy needs. Thus, to understand queer privacy in libraries, we must also understand “queer privacy” as a concept unto itself.

3 Queering Privacy

One of the significant challenges of a concept as expansive as “privacy” is that it can serve as both sword and shield. Where those committed to equality, equity, and justice have leaned on privacy to protect endangered communities, countless counterexamples of privacy are being used to shield and perpetuate inequality. A long line of feminist scholarship exposes how privacy perpetuates patriarchy and gender norms and critiques the ability of an individualistic rights approach to protecting the “majesty of human experience.” As Lever explains, “[f]eminists have often been ambivalent about legal protection for privacy, because privacy rights have, so often, protected the coercion and exploitation of women, and made it difficult to politicize personal forms of injustice” [45]. MacKinnon goes so far as to argue that “feminism has had to explode the private [...because] women have no privacy to lose” [46]. Olsen, noting that the law has often turned a blind eye to matters such as domestic violence and spousal rape under the guise of “privacy” asserts that, “The important critical point is that injustice cannot be justified by means of the public/private distinction” [47]. Even for cisgender, heterosexual women, privacy has long served as a problematic category, shielding wrongdoers and closing recourse for the wronged.

The arguments for privacy’s harm extend well beyond feminism. Legal scholar Danielle Citron has written extensively about sexual privacy, “the behaviors, expectations, and choices that manage access to and information about the human body, sex, sexuality, gender, and intimate activities” [48]. Indeed, Citron argues that sexual privacy stands as a “distinct privacy interest [...that is] foundational to human dignity and intimacy, and its denial results in subordination of marginalized communities” [48]. Sexual privacy is sweeping, but it includes “decisions about intimate life, such as whether to entrust others with information about one’s sexuality or gender” [48]. However, our norms around sexual privacy developed around the interests of cisgender heterosexual couples, specifically cis-gender heterosexual white men. Thus, whether there are protections in place to protect a transgender person from having to out themselves every time they deal with a library employee in order to pay a late fine or check out a book depends on where they live, the awareness of the specific library and its librarians, and the support librarians have at an institutional level. Even librarians who wish to respect their transgender patrons, for example, may have a system that insists upon legal names on accounts, leading to patrons being deadnamed. Given

that deadnaming can “trigger feelings of dysphoria and humiliation” [48], the reality of being deadnamed undermines any meaning that “privacy” might carry if focused solely on intellectual freedom. A library that cannot protect the sexual privacy of its community may cause active harm, “entrenching the subordination of women and marginalized communities” [49], including queer people, who typically “shoulder the abuse [of invasions of sexual privacy]” [48].

Citron’s sexual privacy is a sophisticated privacy interest, with a deep orientation toward equity and justice. It is rooted in human dignity, but unfortunately, “privacy” can be actively harmful if not moored to such values as described above [48]. Hazeldean traces the use of privacy as a pretext to oppose queer equality. As a relatively recent example, Hazeldean points to the characterization of any attempt to “ban sexual orientation and gender identity discrimination in employment, housing, or public accommodations by labeling them ‘bathroom bills’” that will allow “men” (a purposeful mischaracterization of transgender women) to enter women’s washrooms in violation of women’s privacy [50]. Libraries, as public institutions (whose washrooms are one of their valuable assets for patrons), can only do so much in the face of state laws that—absurdly—prevent gender discrimination. Thus, “privacy,” much lauded in the context of intellectual freedom, can be used as a pretext to prevent a transgender person from using the washroom, limiting the availability of the library as an institution. Access to a gender-appropriate washroom is no small matter: “12% [of transgender Americans] reported being verbally harassed in public restrooms, [...] 1% were physically attacked, and 1% were sexually assaulted” [50]. Frankly, it does not matter how wonderful a library’s collections or programming is if a transgender person cannot safely meet their basic physical needs within that library. That privacy should be the shield to deny them makes clear that privacy is no simple good in and of itself.

Privacy practices do not exist in a vacuum. Rubel, explaining how lack of privacy can chill intellectual habits, notes that “based on the practices of a library and the dynamics of one’s hometown, one might suspect that community members will learn of his reading choices. [...] they] might self-censor, or steer his choice of materials to things he wants others to believe he reads” [21]. Given the cis heteronormativity in American culture generally, there has never been a time when engaging with queer materials was not associated with some degree of risk. Even queer librarians, library technicians, and other library workers predominantly work in spaces dominated by cis-hetero cultures.¹⁰ Those not of the dominant culture, such as queer librarians, are expected to assimilate or they may not be taken seriously by their library communities even resulting in being passed over for promotions. The library profession has attempted to diversify over the years, however when it comes to privacy or even the issue of neutrality within libraries (a much larger issue beyond the scope of this paper), library workers are essentially asked to adopt and conform to a dominant paradigm that denies their complex lived experiences and identities.

When it comes to non-dominant groups, including queer people, a rights-oriented framework may not be sufficient to meet the needs of the community, particularly when the group still stands outside legal protection, as queer, and especially trans-

¹⁰ There are specialist queer libraries, but these are few and far between.

gender people do in many U.S. jurisdictions. Caswell and Cifor argue that the feminist care ethic actually stands in opposition to the rights-oriented framework: “[a]s opposed to a human rights framework that endows individuals with universal and inalienable rights, a feminist ethics framework posts interlacing and ongoing relationships of mutual obligation that are dependent on culture and context” [51]. In the specific case of archives, they argue that “[i]n a feminist ethics approach, archivists are seen as caregivers, bound to records creators, subjects, users, and communities through a web of mutual affective responsibility” [51]. Taking as their example a human-rights archive, they assert that:

In this particular case, we argue, an archival approach marked by radical empathy would require archives to make survivors and implicated communities not just a target group of users, but central focal points in all aspects of the archival endeavour, from appraisal to description to the provision of access. In this case, an ethics of care would transform the reading room space from a cold, elitist, institutional environment to an affective, user-oriented, community-centered service space [51].

Thus, approaching services with *radical empathy* would require retooling our entire approach, centering the community in every aspect, including privacy. While individual librarians operate from an ethics of care perspective in serving their queer patrons, libraries as institutions operate primarily in the space of rights and policies when it comes to privacy, typically treating all patrons the same (fairly, as opposed to necessarily justly). Furthermore, the revolution in information and communication technologies has served to retrench individualist, rights-oriented narratives of “privacy,” while also underscoring the absurdity of those narratives.

4 Materiality, Digital Privacy, and the *Onlife*¹¹ World

The datafication of our information lives has made privacy increasingly fraught and challenging to manage; libraries are no exception. Despite this, research has found that “there is a certain complacency in libraries’ attitudes toward data protection which cannot be afforded when the development of the surveillance society [...] threatens to create a climate of suspicion against personal information-holding organizations, including libraries” [52]. One can hardly say that privacy has become simpler to manage in the intervening decade. It’s shocking, then, that in an analysis of a random sample of 1,000 public libraries in 2021, Lund found that only 44.6% have a data privacy policy [53]. Even at the basic level of policy, then, libraries are not accounting for privacy and its impacts.

However, the problem extends beyond mere privacy policy to the very digital infrastructures themselves. Libraries, like other institutions, typically rely on metrics to justify their ongoing funding and community support, tracking everything

¹¹ A neologism by the legal scholar and philosopher Mireille Hildebrandt, reflecting that both our digital and meat-space lives are part of our “real” life.

from books removed from shelves to online engagement statistics to support their ongoing existence. The tracking possibilities expand as libraries offer ever more of their services and programming through digital media; during the pandemic, most libraries shifted to fully- or primarily digital delivery models. Unfortunately, doing so requires engaging with (and engaging one's patrons with) an information ecosystem that is beyond the control of the library. Perhaps of singular importance is the ways in which the digital shift has empowered surreptitious data collection and analysis by any number of actors, both governmental and private. Rather than surveillance by Big Brother, library users and stakeholders find themselves subject to multiveillance by everyone and their brother. Citron explains the ways in which the digital is transforming sexual privacy, specifically:

Intimate life is under constant surveillance. Apps memorialize people's menstruation cycles, fertility, and sexually transmitted infections. Advertisers and analytics firms track searches and browsing on adult sites. Sex toys monitor the frequency and intensity of their owners' use. Digital assistants record, transcribe, and store conversations in bedrooms and bathrooms [54].

This is widely known in the wake of *Dobbs*, as women hurriedly deleted period tracking apps, in response to the law changing the import of the technology. As Hildebrandt explains, law and technology share "intricate entanglements": "neither law nor technology are neutral instruments, while neither qualifies as an independent force or institution. Instead, both are seen as relational and co-constituting both those who shape or use them and the goals they aim to achieve" [55]. Law and technology both create and are created by the world around them. Hildebrandt states that the inscribing of law into Information and Communications Infrastructures (ICI) such as the printing press, and now digital technologies, brings material changes in the law itself and its operation, arguing that "the era of the printing press made possible the rise of the bureaucratic state [... which in turn] ushered in the era of the rule by law" [55]. What remains unknown—perhaps, at this juncture, unknowable—is where the entanglement of law with digital technologies will lead: "Thanks to networked technologies, sexual privacy can be invaded at scale and from across the globe," [48]. This raises immense challenges for folks who rely on that privacy to remain safe. As Kornstein argues, there remains a need to understand queer relationship(s) to digital surveillance:

While there is growing literature that attends to the racialized and gendered natures of surveillance and digital cultures[...], there is still limited scholarship that focuses on the specificities of queer and transgender subjects and how gender and sexuality themselves constitute epistemologies, technologies, and subjects of observation [...]. Such omissions also often fail to account for non-state or corporate actors who engage in various forms of watching and tracking, including families, local communities, religious institutions, non-governmental organizations, and intimate partners, as well as forms of data that are often col-

lected specifically about gender and sexuality, such as data points about sexual activities, relationships, or health (including HIV status) [56].¹²

Queer people have reason to be wary of surveillance. Journalist Wareham, discussing the parallels between COVID surveillance and HIV surveillance, reminds us that queer people are often targeted by surveillance more than their cisgender/heterosexual peers: “[t]he danger for LGBT people is linked in particular to the parallels of the HIV epidemic. That, wrong and prejudiced idea, that ‘gay people are responsible for viruses’—that is still prominent in the majority” [57]. Even now, as monkeypox and COVID spread concurrently, the queer community continues to be subject to heightened surveillance due to HIV [58]. Both digital surveillance technology and HIV surveillance technology continue to develop, in ways that are deeply problematic. Molecular surveillance, which uses the genes of the virus to identify “risk clusters,” “allows for a surveillance attuned toward the vectors of disease evacuated from the complexity presented by intervening in complex social relations” [59], much to the concern of community activists. McClelland et al. characterize molecular surveillance—which does not require consent because it is a “secondary use” of biological specimens—as “a shift back to the early days of the AIDS epidemic where certain groups were singled out as infectious and characterized as ‘dangerous’” [59]; the risk is made worse by the fact that HIV non-disclosure, exposure, and transmission are explicitly criminalized in much of the U.S. In other words, with molecular surveillance, people are tested for HIV—with neither notification nor consent—and may be criminally prosecuted for the results of such testing [60]. In order to identify transmission clusters and risk networks, the Center for Disease Control and Prevention (CDC), relies on “other databases [...] such as demographic, geographic, risk, clinical and laboratory data sources” [59]. Molecular HIV surveillance vividly illustrates the risks LGBTQ+ people face, with no legal recourse to protect their privacy as surveillance technology develops apace. It is also worth noting that systems built in an emergency do not disappear after the emergency has ended: “Numerous groups have pointed to widespread surveillance policies enacted in the United States following the September 11 terrorist attacks as a cautionary tale for the normalization of mass surveillance” [61]. Given what the foregoing research has shown about the creep of access and aggregation, as well as novel surveillance techniques such as molecular HIV surveillance, queer people and communities would be foolish not to approach information systems—including those available through libraries—with caution. A search history on a public computer logged in with a library account for HIV testing, makes plausible deniability that much harder. How equipped are librarians whose commitment is only to an ill-defined, neoliberal idea of “privacy,” with little engagement with, or even exposure to, the broader privacy risks faced by queer patrons and stakeholders, to protect such patrons’ digital privacy. Even for librarians who are committed to both privacy and equity, adequately identifying information risks for users who engage queer information, materials, and programming is immensely difficult, given the opaque nature and third-party control of many libraries’ digital infrastructures.

¹² Internal citations omitted.

While many libraries and librarians have been fighting to defend their patrons' privacy with regard to information accessed, the simple fact is that our digital world imposes logics of control and power that are nigh inscrutable. As Hildebrandt explains:

The ICI [information and communications infrastructure] of the online world is built on hidden complexity; its computational mechanisms are invisible and, therefore, hard to criticize. Second, the script entails a distanciation in time and space that necessitates interpretation to tune the unified norm to its changing contexts. This raises the possibility of disagreement about the correct interpretation, which makes the act of interpretation explicit and turns the law into a platform for argument and contestation. Third, the online world returns to tacit, invisible interpretations, which are performed by machines that have no use for meaning. It becomes more challenging to engage in argumentation and contestation if the ICI does not operate on the basis of reasons and arguments but on the basis of algorithms or neural net [55].

Given what research has shown us about the ways in which digital technologies instantiate and retrench both explicit and implicit biases in their design and training data (see, e.g., [62–64]), queer persons are facing “tacit, invisible interpretations” by machines that are built for bias [55]. Contexts are changing at a head-spinning pace, legally, culturally, and materially. And without a richer, more nuanced understanding of “privacy,” built on engagement with and commitment to queer communities, its use by librarians to support and protect their queer stakeholders is just paper.

5 Conclusion: Privacy Beyond Checklists

Ultimately, then, we arrive at an idea of privacy that is far more expansive than can be upheld by either regulation or policy. Indeed, privacy is nothing less than “space to breathe[,] [...] a privacy that provides for the integrity of self [...] [and] lets us know who we are, how we’re treated, and what that treatment means” [8]. Indeed, privacy is an “umbrella construct” [65], a “broad concept used to encompass and account for a diverse set of phenomena” [66]. Privacy, in particular, invokes the need for “space” for individuals or communities against the controlling, surveilling, consuming, or totalizing forces of the broader society – both governmental and commercial. Because individuals and communities are infinitely diverse in how they need space, so are the potential needs for privacy. And – most challengingly – contradictory needs can fall within the privacy umbrella. Figure 2, below, shows privacy as an umbrella that enables or constrains a tremendous number of values – including autonomy and dignity – and actions. In each of the ideas of privacy discussed *supra* – library privacy, queer privacy, and digital privacy – differing values and actions are prized and prioritized. Yet for the queer library user, *all ideas of privacy* are relevant, though perhaps of different weight in different contexts.

For example, in choosing to keep transphobic materials in its collection, a library may claim that it is upholding intellectual freedom and the intellectual privacy of

those users who choose to read such literature. At the same time, the library is demarcating itself as an unsafe space for transgender patrons, whose intellectual freedom will then be chilled. Privacy can allow/constrain values – some of which, as discussed *supra*, are contradictory. In other words, privacy, and its library companion, intellectual freedom, is not value-neutral, nor is it a value in and of itself. Instead, in asserting a privacy claim, we are declaring a claim for particular values or actions that we—as individuals and/or institutions—see as inherent to the majesty of human life.

In determining how to apply privacy and intellectual freedom in contexts that are unlikely to be any less fraught or complex in the near future, American libraries must dig deeper and admit that privacy and intellectual freedom can harm as well as help. If librarians, as a profession, and libraries, as institutions, decide that they are committed to queer people and communities, then “intellectual freedom” rings as hollow as “bathroom bills” in decisions to platform queer-phobic or transphobic speakers, for example. A blanket policy of “intellectual freedom” simply avoids the questions of what are we privileging and why. The balance of values and actions requires a fact-driven analysis. The foregoing example of a queer-phobic or transphobic speaker likely should be weighted differently from including problematic literature in an expansive collection. By giving space (and, arguably, the imprimatur of its legitimacy and authority) to, say, anti-transgender speech, the library is valuing the liberty of the speaker over the dignity, community, and safety of its transgender patrons. This is a choice that the library can make, but the choice should be made honestly, as opposed to under an uncritical banner of “intellectual freedom.” By contrast, among the many thousands of items in even a small library collection, there is space for any number of resources, even offensive ones, without necessarily harming the dignity and safety of queer people.

Privacy ideals often, and perhaps even typically, fail in the face of competing interests and needs when privacy is legislated and operationalized. “Privacy is too complicated a concept to be boiled down to a single essence. Attempts to find such an essence often end up being too broad and vague, with little usefulness in addressing concrete issues” [67]. While the literature is bursting with attempts to define privacy’s many contours, taxonomies of privacy abound (e.g. [11], [12]) and privacy typically fails because “privacy” is not in and of itself a claim, but rather, a claim for some value or action enabled by the “space” (sometimes literal and sometimes metaphorical) that it provides. “Neutral” privacy is fiction. Privacy is only as good - or as bad - as what it is used to support. Therefore, we encourage libraries and librarians to interrogate the privacy and intellectual freedom issues set out within this article. Make a stand against the single view of dominant norms, unlearn, and relearn to hold space for the queer people and communities that visit and work in your spaces. The following is a short “queer” declaration for libraries and librarians to reflect on and take action:

1. Within libraries, and the associated academic discipline of library and information science, there exists an opportunity to revolutionize the understanding of “privacy.” However, this potential remains unrealized, in part due to a lack of training and understanding of the terms and applications within the discipline. Providing library employees with professional training and development to

understand what “privacy” and “intellectual freedom” are/mean for queer persons is a start. Be better educated on this issue. For “privacy” to be meaningful for queer persons in a library context, it must be understood that privacy itself is not ethical but merely serves to enable or constrain any number of ethical goods. In addition, better training on queer inclusivity in the workplace is necessary to develop sustainable change.

2. Partner with schools, agencies, and neighborhood communities to address possible crimes against queer persons and create awareness about the principles of equality and humanity; libraries must visibly hold themselves out as spaces that support queer people and communities.
3. Reenvision and shape the library as a space and place where access to “queer” information and support is a must, while also referral services for “queer” needs.
4. Provide greater visibility and access to materials, programs, and services – following the American Library Association’s Library Bill of Rights which affirms that libraries and librarians have an obligation to resist efforts that systematically exclude.... including sex, gender identity, gender expression, or sexual orientation; similarly, with access to resources and services [68].
5. Push the envelope on library-led ideals of “privacy,” meaning librarians defending their queer patrons need to have moral courage. When faced with questions of privacy, consider asking, *qui bono?* Treating all privacy claims as equivalent and ignoring the broader questions of meaning, power, and positionality inherent thereto, leaves libraries with a “privacy” that is only capable of supporting what is, rather than what could be.

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