1 Privacy Cases: Being Suborned

"Well . . . how did I get here?"
—David Byrne, "Once in a Lifetime"

To discuss the relative merits of personal privacy, it's worth reviewing historic rationales and justifications for security processes and programs. Privacy and security have become linked to the point where the ideas are almost inextricable, and it is valuable to understand how this came to happen.

Security Through Trust

One of the concepts that relates to privacy is security through trust— an institution, government, or company is considered more trustworthy if the personnel working in or for it are themselves trustworthy. To determine whether a person is trustworthy, it's important to learn certain things about the person: their behavior, tendencies, condition, mindset, and so forth. Trust is established based on past performance; we tend to believe that someone will act more or less in a manner similar to how they already have. The assumption is: a lying junkie will continue to be a lying junkie; a person who has worked diligently and honorably for their entire adult life will continue to behave diligently and honorably. There are, of course, outliers and changes in circumstance where predictions are wildly unhinged from the past; the junkie might change overnight and become a paragon of virtue and a hard worker, whereas the model employee might turn into a depraved murderer in a moment. Human beings are fickle, unpredictable, irrational creatures. But if you have to trust someone, you will generally tend to use their past actions as an indicator for what you expect of them in the future.

The Historic Trust Model Creates Oppression

Not so long ago, many organizations had some rather bizarre criteria programmed into their trust models—metrics that we would find ridiculous, offensive, stupid, and/or downright evil today. These have included gender, race, religion, ethnicity, and national origin.

For instance, at the outset of World War II, American President Roosevelt considered people of Japanese descent, including American citizens with Japanese parents and grandparents, untrustworthy, to the point where he believed they might aid Japan in its war against the United States. He therefore ordered them to be forced into concentration camps.[1] The rationale was: this would make the United States more secure. Personal privacy, in that circumstance, was not an aspect of the trust model; significant physiognomic traits, combined with birth and immigration records, allowed the US government to enforce this horrible decision. There was not much room for question as to the ethnicity of the prisoners.

Privately Trustful

Another awful aspect of the personnel trust model was, however, larger a facet of what is generally considered "private" life: whether that person engaged in same-gender sexual activity.

NOTE For purposes of discussion in this book, I'll use the term *gay* to mean the full spectrum of what we now often call LGBTQ—lesbian, gay, bisexual, transgender, queer—sometimes with additional descriptors.

There were two main (ugly and horribly flawed) rationalizations for this type of policy.

- Gay people are untrustworthy because of their very nature; sexual orientation is a choice, gay people engaging in sexual acts is an indicator of character, and only depraved people would choose to do so.

[1] Executive Order 9066. `www.ourdocuments.gov/doc.php?flash=false&doc=74&page=transcript`

- Gay people are untrustworthy because they are susceptible to coercion; anyone learning of a person's sexual interactions or desires could use that knowledge against the person—a gay person could be blackmailed for being gay.

The first "reason" is so tragically stupid that it's hard for people today to realize that people in the past actually believed ideas like this. It almost certainly had origins in religious and cultural biases and misanthropic tendencies tantamount to evil. The second rationale is insidious in a different way and is a perfect of example of how privacy and security can become conflated to the point of causing true harm to the very things they purportedly are meant to protect.

NOTE At the time the laws/policies discussed in this chapter were created/implemented/enforced, there were other terms used to describe any sexual activity that did not conform to heteronormative standards, typically *unnatural acts* and *sodomy*, when included in statutes or other written mandates.

The historical personnel trust model is based on some simple premises: institutional trust is linked to personal trust, personal trust is based on using past behavior to predict future action, and personal behavior outside the workplace (such as sexual activity) is linked to personal behavior in the workplace. For the institution to trust the individual for a particular job, the institution must learn and know about the person's behavior outside the workplace, in their personal life. That's the institution's perspective.

Generally, from the individual's perspective (instead of the institution's), we like to think of a person's home life and work life as two separate, distinct contexts: I act in accordance with my employer's needs during the hours I'm working, because that's what I'm getting paid for, but when I am not working, I am free to live my life in the manner I see fit, without my employer's oversight. I might wear a uniform in the workplace, but I take it off when I'm not working; I associate with colleagues and customers while I'm working, but I might have a totally different set of friends and acquaintances when I'm not working, and I might not interact with the workplace colleagues/customers until I'm back in the workplace.

In reality, this construct often breaks down in actual practice. Colleagues and customers share information about their nonwork activities

in workplace discussions, and actions a person takes outside the workplace can seriously affect their employment, be it acquiring a college degree or running someone over with a car while driving drunk. Even so, we often like to think of ourselves as having a bifurcated existence.

In order for the dated trust model, which discriminated against gay people to have existed, the institution had to breach the employee's private life—sex is generally (with very, very few exceptions) an activity that happens outside the workplace. This intrusiveness was seen as necessary in order to ensure that the person placed in a position of trust by the institution was, indeed, trustworthy.

This, of course, makes absolutely no sense, when exposed to even the barest logical scrutiny. Were gay people subject to blackmail/coercion because of their same-gender sexual activity? Yes—*but only because the institutional trust model created that situation*. The person who is given employment or promotion only under the condition that they act in a prescribed manner (or, more to the point, do not act in a proscribed manner) is under the threat of losing something of value (a job, a promotion, etc.) if their unapproved behavior becomes known.

Disarmed Forces

Here's a historic example: the US military has its own laws and court system; this is known as the Uniform Code of Military Justice (UCMJ). Not too long ago, the UCMJ prohibited same-gender sexual activity; violations could be punished with demotions, dismissal, or even imprisonment.[2] The government had similar, if more vaguely worded, restrictions in Executive Order 10450, "Security Requirements for Government Employment." In both the military and other government positions, a security clearance (the documented verification of a person's trustworthiness) was (and still is) considered extremely valuable—a person with a security clearance could get employment and other opportunities that a person without a clearance could not. A person in the military/

[2] Uniform Code of Military Justice, 1950. Article 125, Sodomy, Sections (a) and (b). "(a) Any person subject to this Code who engages in unnatural carnal copulation with another of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offence. (b) Any person found guilty of sodomy shall be punished as a court-martial may direct." `www.loc.gov/rr/frd/Military_Law/pdf/morgan.pdf`, pg. 161

government service could lose their security clearance if the military/government learned that the person was gay.[3]

So, the military/government (and institutions who had similar anti-gay policies) had created a situation where certain people had something to lose (the clearance, and the benefits that come with a clearance) if information about them (personal information, from their "private" life) was disclosed. That, therefore, put those people at risk of coercion and put the institution at risk overall (a trusted person might be coerced into causing harm to the institution). If, however, the anti-gay rules/policies did *not* exist, then the entire possibility for coercion would not exist, and trust would not be in question.

NOTE Within reason, and taken in context, a person might not be subject to coercion *only* because of their employment status and situation, and that employer's policies—there might be other aspects of a person's life that could be used to coerce them into harming their employer. At the time the UCMJ had rules against same-gender sexual activity, there were also social mores and prejudices that might make someone gay subject to coercion as well; a blackmailer might threaten the target with outing them to their *family* as opposed to their employer and might therefore get the victim to do something harmful to the employer. "I will show these photos of you with your gay lover to your children, unless you steal these files from your office." Societal and cultural dysfunction played a large part in workplace discrimination, as well. Typically, however, the employers' rules both reflected and exacerbated the cultural norms.

Missed Application

While employer-created susceptibility to coercion was bad enough, these institutions further harmed themselves by adhering to this flawed trust model in the application and enforcement of the mandates. The rules were never applied fairly, uniformly, or sensibly; there are many notorious cases where the rules were instead used to settle personal workplace grudges, by resentful lovers/spouses/friends as revenge, for

[3] Executive Order 10450—"Security requirements for Government employment," 1953. www.archives.gov/federal-register/codification/executive-order/10450.html

political damage, to gain advantage by a competitor for a position/promotion, or even simply by small-minded bureaucrats insistent on following the law regardless of sense or harm to the "lawbreaker."

Here's one example of lack of uniformity/sense in applying the rules (and the trust model) regarding personal (private) behavior: a group of British men, acting as Soviet spies from the 1930s through the 1950s, known as the Cambridge Five.[4] At least two of the men were gay, and a third bisexual[5] . . . and almost all of them were known to regularly abuse alcohol, to the point where drinking significantly impacted their behavior (one of the KGB handlers of the spies noted that one of the Five, MacLean, may have revealed the fact that he was a spy to both a lover and a sibling while drunk). Yet none of them was prosecuted by the British government, although their behavior was presumably known to British authorities as well. This can be directly contrasted with the case of Alan Turing, another British government employee, whose cryptographic work is famously thought to have been instrumental in the Allied effort to win World War II. Turing was convicted of "indecency" in 1952, under the Criminal Law Amendment Act of 1885,[6] and was subjected to chemical castration as part of a sentencing arrangement; he lost his security clearance as well, which ended his consulting work with the British government and may have led to his suicide in 1954 (the details of his death do not rule out accidental causes).

Arbitrary enforcement of any law is atrocious; it degrades the rule of law and overall concepts of justice. However, with these particular laws, designed specifically to control the private lives of citizens, lack of uniformity in application creates fear, mistrust, and a horrific sense of unease and anxiety among the very people the laws are supposed to protect. Anyone who might be victimized by their own legal system is naturally terrified of this possibility. To underscore the relationship of this situation to the premise of the book: *laws designed to protect privacy necessarily create situations where there are "private" lives/data distinct from "open" lives/data, and situations where the distinction between what is known and what is not, especially by law enforcers and the*

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[4] Editorial. (2014). Cambridge Five spy ring members 'hopeless drunks.' BBC website: www.bbc.com/news/uk-england-cambridgeshire-28143770

[5] www.bbc.com/news/magazine-35360172

[6] Criminal Law Amendment Act of 1885. www.swarb.co.uk/acts/1885Criminal_Law_AmendmentAct.shtml

individuals affected, can cause fear, mistrust, and unnecessary hardship on individuals. Moreover, even laws created with the very best of intent (and, to give the benefit of the doubt to lawmakers, let's assume that means all laws, although I certainly think there's a great deal of room to argue that point) often have unintended consequences. With privacy laws, one of the obvious, predictable, "unintended" consequences is to create sets of data that are sensitive—giving power to those people and institutions that are allowed to transcend or abrogate those laws (such as the government and law enforcement entities). A set of data that is sensitive is a set of data that can be leveraged, often to the detriment of the very citizenry who are supposed to be protected by those laws (the individuals who the data describes). Again: by creating "protected" information, we create a potential to cause harm.

Harmfully Ever After

What harms did those obsolete laws and policies, based on the atrociously flawed trust models, cause? Aside from the personal harm to each individual affected (those like Turing who lost their jobs, prominence, and respect in their fields of endeavor, and often freedom), what harm does this cause to society at large?

The first and most obvious terrible impact is the loss of potential candidates for trusted positions that become ineligible. This might happen through self-elimination—candidates who fear being identified and punished for personal actions/behaviors/beliefs therefore do not even attempt to pursue positions where they might be considered or investigated. It also includes those people who still attempt to take those positions but are turned away or rejected by the institutions as unsuitable. On top of these are the people who still sought those positions (knowing that they, themselves, could be identified, eliminated, or even prosecuted), actually achieved their intent and took those roles, but then were fired/removed from the positions later because their private lives and actions came to light.[7] Qualified, accomplished people have been removed from candidacy for those positions, or removed after a time of faithful service, and the negative impact is felt by both the institutions and the society as a whole that is served by those institutions.

[7] St. Martin's Press. (1993). *Conduct Unbecoming: Gays and Lesbians in the U.S. Military: Vietnam to the Persian Gulf* (1st ed.). Aurora, IL

And possibly the most terrible harm in distinguishing a "private" life from a "public" persona is creating a situation where the person in a position of trust—in a job, in their community, in their family—must always have a continuous fear, the constant knowledge that at any time their livelihood and identity could be ruined, if they were to be "outed" (that is, if someone reveals the heretofore "private" knowledge about them, without the target's consent/permission). This must be a lingering, gnawing apprehension, something that infects and degrades every success and keeps people who experience this risk from enjoying their lives fully. That is a severe cost, and a constant toll. It's one of the reasons why many laws in many jurisdictions have a statute of limitations: every perpetrator must live with the constant knowledge that they could be arrested and prosecuted at any moment, that they are hunted, and that is a form of punishment in itself.

At first pass, this might seem like a reason *for* privacy: to set up stringent distinctions between an individual's private life and their public identity. We might view as beneficial the possibility of distinguishing, for ourselves, what is revealed to others, and what is held in secret. In practice, however, this causes only opportunities for abuse, malfeasance, and fear: anything secret and distinct lends a potential for exploitation and attack—anyone with entrée to your (supposedly) private life has power over you, even if that power can only be used to hurt you.

Open Air

How would openness and an end to privacy have served as a benefit to the gay people vilified and persecuted by laws like Executive Order 10450 and the Criminal Law Amendment Act? Wouldn't the *lack* of privacy have been more damaging to the targets of those laws, denying them any opportunities for positions of trust, by not allowing them to keep their identities and behavior secret? (That is, is there an argument to be made that *having* privacy created the only opportunity for gay people to attain those positions of trust in a hostile environment?)

The answer is: if the actions of every person were known to every other person, then same-gender sexual activity (or any activity associated with gay people) would not and could not be seen as wildly deviating from the norm, nor as inherently dishonorable or disreputable, for two reasons—the significant percentage of human beings who engage

in the proscribed behavior and the existence of a large number of gay people known to be eminently trustworthy.

If everyone knows that everyone else engages in a particular activity, that activity cannot reasonably be vilified . . . and even if prejudices and social mores exist that attempt to vilify the particular activity, *enforcement* cannot be meted out uniformly and evenly throughout the entire population. To wit: many laws that prohibited sodomy specifically included oral sex—if every person (hetero or otherwise) who has ever received or given a blowjob were under the same threat of prosecution and punishment, then a vast majority of the population would live in continual fear of exposure, and every person (no matter their station in life) would face the same risk . . . and when the overwhelming majority of people face equivalent risk, laws inevitably must change to alleviate their fear, if for no other reason than powerful people do not like the prospect of losing their power and will work to reduce their own risk.

Moreover, those laws prohibiting certain types of sexual behavior were based on ignorance: the presupposition that same-gender sexual activity denoted flawed character, indicating the person was somehow immoral or untrustworthy. *Actual ignorance can only exist in absence of data*—if people know, factually, that an assumption is patently incorrect, then that assumption cannot be used as a basis for law or regulation, unless that society or institution wishes to put itself in jeopardy solely in pursuit of its own superstitions. The latter case is willful ignorance—belief in something either in absence of data or counter to that evidence. If every person can see every other person's activity, including sexual acts, and it is quickly revealed that there is absolutely no correlation between a particular sexual act and trustworthiness or capability, then only someone purposefully willing to put themself or their institution at greater risk of failure would continue to act in accordance with the bias against certain actions or people.

Artifice Exemplar

I'll create a wholly artificial, philosophical construct for an example. The country of Abandonia is biased against a certain group of people (be them gay or of a certain ethnicity or religious group or whatever) and therefore prohibits individuals of that group to participate in the leadership/staff of Abandonia. The nation of Bearington does not have that same prejudice and hires the best people for leadership positions,

regardless of their orientation, gender, ethnicity, religion, or other affiliation.

When Abandonia comes into direct competition with Bearington, Bearington will have a distinct advantage. There will be some people, whatever amount that might be, in the disfavored class of Abandonia who would be more capable than some people of the favored group, but Abandonia won't avail itself of their service. Bearington won't have any such compunction and will only choose and promote people based on merit. Bearington will prevail against Abandonia, because Bearington will have the best people in all positions. The generals of the army in Bearington will be more militarily capable than their counterparts in Abandonia, because those people were not chosen according to inaccurate assumptions, and Bearington will reap the benefits and defeat Abandonia over and over. Bearington will have better business leaders, civic leaders, scientists, engineers, and employees at all levels, in all endeavors . . . because no Bearingtonian will be held back by the inherent superstitions and biases that Abandonia enshrines.

Full knowledge of the merits of individual people, their trustworthiness and capabilities, exposed to all other people, forces everyone to judge everyone else on their merits, and not on the false suppositions and assumptions of irrational prejudice. Irrational prejudice can only survive in privacy. *Lack* of knowledge allows biases; biases cannot withstand hard data. *Secrecy and privacy allow unfounded prejudice*—removing secrecy and privacy diminish the hold of superstition.

In the following chapters, I offer more examples of how secrecy and confidentiality are not the bargain they appear to be, and how revealing all data, making public all information, is not the threat it appears to be . . . and, in fact, liberates us all. I will also explain the manifold benefits of universal openness: how a lack of privacy enhances humanity.