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Privacy Norms and Resistances Between the Performative, the Habitual and the Periperformative

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I very much appreciate Ari Ezra Waldman's thoughtful reply (2021a) to my article "From Protecting to Performing Privacy" (2020) for expanding the discussion and offering challenges to push the concept(s) further. He introduces the role of habit within the ways privacy is performed in society, focusing on the different contexts in which habits are imposed on performances, constraining not only current norms but the possibilities of alternative expectations.

I will continue the conversation of performativity and habit from my own perspective on their relation, before responding to Waldman's challenge using the language of habit to further explain and extend the performative theory of privacy and how it relates to unequal performances and the asymmetric power structures constituted through unequal periperformative contexts, as well as wider norms of information in society.

### **Performativity and Habit**

Mentioning habit to me immediately recalls the work of Wendy Hui Kyong Chun, specifically her book *Updating to Remain the Same: Habitual New Media* (2016). In that text we see a detailed exploration of habitual new media, the way that media becomes a "function of you" (3), the way our bodies become archives to be curated and mediated (xi), and the very positioning of digital technologies and platforms at the boundary, intersection and inversion of public and private, social and intimate (building on Sedgwick's point that feminist analyses have shown the perpetually unstable binary division between public and private (1990, 110)). In fact, in the original article on performing privacy I had already (briefly!) mentioned Chun's call to move towards thinking in terms of public rights, ephemerality, and being in public (exposed) without being exploited (2016, 172). Chun's work speaks very closely to the constitutive aspect of performativity in the way identity is created. When thinking about the performative qualities of media, the affordances of the medium can play an important role in defining the periperformative context that defines which possibilities for identity and action are available for people to perform.

There are tensions here, I think, in discussing the role of the medium. Artefacts (somewhat obviously to a contemporary sociological perspective) have politics, but this is always in relation to their designers, and we can count laws among such artefacts. How does Waldman's challenge to consider in more detail the role of design and designers (an important aspect and one that is already informing the ongoing development of my thinking in relation to affordances and periperformativity) rest between the habits of the designers and the habits of users in relation to the affordances of the medium created by such designers? We must think both in terms of the relation between the user and the technology and the relation between the user and the designers, owners and operators of such technology. This latter relation is often obscured. This is perhaps then where habit can return to being useful in describing the means through which normalising performances are made invisible. Waldman identifies this process in the misleading sense of action and choice we are offered when we click "accept". It not only reinforces our expectations of what privacy should be, not only habituates us to keep reperforming these roles, but it conceals

the different power relations that Waldman is getting at when referring to different periperformative contexts. It even habituates and normalises both the unequal power relations and the fact that these power relations are kept hidden. It feeds into the rhetorics of black box algorithms and technical complexity behind which platform designers and owners attempt to obfuscate their own role to users and policy-makers.

I am less convinced that habit offers a more clear division of positive and negative performances. It seems that habit is intertwined in performance in ways that can, as Waldman acknowledges, be both. But the “bottom up” approach of habit requires further elaboration, I feel, to contribute a radical alternative. Returning to Chun’s definition, “habits are strange, contradictory things: they are human-made nature, or, more broadly, culture become (second) nature” (2016, 5). As with Waldman’s sociological use of habit it is not (counter to common contemporary interpretations) related to addiction but to creativity—alongside Bourdieu’s generative but also itself dynamic *habitus*, which taken together seem to wrap nicely around performative acts. The habit-habitus relation is productive, it produces behaviours in the same way performativity constitutes norms and roles. And the role of habit in the invisibility of performance comes out through Chun’s assertion that “our media matter most when they seem not to matter at all, that is, when they have moved from the new to the habitual” (1), for it is then that they structure our knowledges, our actions and our interactions. Context, too is important in Chun’s discussion of habit—the links between behaviours and the environment (in a similar vein to the issue of artefacts’ links between performativity and affordances) and the idea that we *inhabit* media and contexts. In this way habit leads us from the performative to the periperformative, acting as a link between act and context, and therefore potentially a path to that “bottom up” collective performance of alternatives.

Relating this discussion back to privacy from a different angle, Priscilla Regan (1995, 226-227) positions habits as one of a number of distinguishing features over which we might wish to have a right to privacy—something we may wish to move into the background within a given setting. This raises interesting questions about the self-referential component of habit—what are our habits of habit? Perhaps here is where *habitus* plays a role. But I would be more inclined to lean further into Sedgwick’s concept of allo-referential periperformative—acts about performative acts—and the constitution of periperformative contexts.

### **Corporate Performances**

Waldman encourages us to think more specifically about the performative privacy in corporate contexts, and specifically on the co-opting of privacy by tech companies to legitimise extractive narratives and practices:

The more a company says it cares about privacy and reminds its employees to tell each other and the public that they care about privacy, the more tech company workers are likely to believe it and likely to commit themselves to

believing their work serves the goal of caring about privacy (Waldman 2021a).

The outcome of this, Waldman has written, is that it is “turning privacy laws into privacy theatre” (2021c; also 2021b, 133). It is certainly true that corporate narratives constitute values among their employees and in their public image that do not correspond to their actual practices, but I would push back on two points. The first is that both these types of acts are performative, albeit performing two contradictory roles at once. Secondly, performativity/periperformativity (and social narratives more generally) are always to some extent theatrical. I have previously argued (Benjamin 2021) that “regulatory theatre” is not only a show of power between governments and corporations, each keen to seem like they are the dominant actor while skirting responsibility for any real action. This regulatory theatre (not only in privacy but also online content, AI and related areas of tech policy) constitutes the periperformative context. It “sets the stage” (and our expectations) on which actions of legislation, enforcement and resistance might occur. This form of theatrical power is truly periperformative: the directors and benefactors setting the limits of what performances might occur.

Habit here could offer a useful framing for discussing performing in its more usual sense of “going through the motions”, as Waldman discusses throughout his book *Industry Unbound* (2021) leaning on, for example, Julie Cohen’s concept of corporations and their employees (and lawyers) “performing accountability” in a generic sense while avoiding accountability for specific actions or ongoing practices (2019, 250). This raises interesting questions around the relation between habit and performance in corporate contexts. It is the communicative level of performance that is habituated or normalised.

Through these performances—performances carrying immense weight on a global stage—we come to expect going through the motions as the best we will get from corporations and regulators. We see levels of performance here. The more theatrical display of pretending to care in turn constitutively performs the broader expectations of exploitation and further entrenches the power structures in which corporations dominate the narratives under which this is seen as caring. It is, in other words, the dual performance, the double-speak, that is not only performed but periperformed.

In this way, one actor’s performative utterance can also be periperformative to others. This is particularly the case if that actor is designing a social media platform, moderating content, labelling data, writing legislation or enforcing it. These corporate performative acts are therefore periperformative acts in so far as they are about performance without actually containing any constitutive performativity. They constitute the absence of privacy even as they speak of privacy. They are also periperformative in the way wider publics are “forced to bear witness” (Sedgwick 2003, 68) to such acts that in turn shape the contexts of our individual performances as users.

Perhaps, then, we can layer up performance and habit in this way. Relations between performers are habituated within periperformative contexts. Bearing witness to dominant

narratives habituates the limitations of future performances. These habits feed back again into periperformative contexts. It could be that habit mediates the very situation whereby one group's performative utterance becomes periperformative to another group or context. And this normalises extractive and surface-level expectations for regulators as well, further shaping the periperformative contexts and sociolegal norms that can constrain the possibilities of more radical privacy performances. With corporations constituting narratives that constrain legislators, who in turn also constitute narratives to the public, we see multiple overlapping strands of periperformativity—and shifting, blurred, malleable periperformative contexts—all the way down.

Chun's separation of habit and the new in media is instructive here if we look at different levels and contexts of habit, and ask what is being habituated or normalised. There are tensions between habituating professionals and users into performing practices subsumed by extractive values of the data economy while simultaneously pushing constantly “new” features of interfaces and platforms in order to destabilise performances of resistance. There is a need to perform across contexts or levels here, to perform resistance in ways that also shifts periperformative contexts. Again, we go back to the unequal impact of different performances, and how one group's performative utterance (especially, for example, technology professionals, engineers, designers, policy-makers, etc.) has disproportionate weight not only in constituting and perpetuating norms but in defining the periperformative context in which the conditions and limits of others' (especially users') performances are made possible.

### **Periperformativity and Power**

Not all acts are performed equally. Certain acts carry more weight than others. This is demonstrated clearly in the impact of corporate performance. While norms are constituted by the mass iterations of performance habituated often by large sections of society, that is not to say that all performances carry equal influence in defining those norms. Responding to Waldman's challenge to focus more directly on performative acts beyond “the user” leads us towards not only the different types but also different impacts of performances by different groups. Differences in the power of performances can be tied to some extent to the role of certain, more influential individuals, but this goes far beyond, say, mere charisma, and directly into issues of structural inequality, design injustices and asymmetric contexts.

Certain acts attempt to carry greater influence out of necessity. Following Sedgwick's embracing of both linguistic and theatrical dimensions of performance, we can see the periperformative framing of acts as tied to different roles. Indeed, within her discussion of contexts as “abstract representations of social structures experienced in daily life”, Helen Nissenbaum links norms to roles, activities and values (2010, 133-4). We can reframe this in terms of performance. Acts by corporations—from CEOs and global PR schemes down to designers of technical systems—occupy different performative roles, engage in different types of activities, act in different contexts (and indeed shape the contexts of others) and embed values through their performances.

Similarly, resistance is a role and set of activities, albeit in different contexts and with different values. Radical acts that counter the dominant narratives constituted by repeated, habitual iterations of society more widely are of this category and may also hold greater weight than more everyday acts. The performances of resistance described by Scott Skinner-Thompson in *Privacy at the Margins* (2021), for example, are designed to raise awareness and provoke a response in opposition to the permissive expectations of privacy embedded in dominant social norms. Those excluded, those more acutely harmed, by such dominant narratives must find ways to overtly perform alternatives. Individual acts relying on outwards expression and visibility to shift the scope of discourse thus remain important parts of establishing different possibilities and expectations.

The broader discursive value of this conceptualisation of performative privacy is to “help change the starting point for any conversation regarding public privacy from one of suspicion to one of sympathy or even embrace” (Skinner-Thompson 2021, 98). But there are limits to naming movements and raising awareness without altering expectations and behaviours, without challenging underlying power structures. Individual expressive acts of resistance are often for naught if they do not spark a collective shift in wider performed norms, often less radical than they intend if awareness raising does not lead to transformation (Keyes 2021). This could be described as a rift between voluntarist and normalising performative acts, resulting in acts of resistance that enact a similar “going through the motions” to corporate power. Or, as Helen Nissenbaum describes, “the level of privacy is a function of technical design and administration [...] Once these features are settled for the system as a whole, it becomes difficult, if not impossible, for individuals to determine a particular level for themselves” (2010, 88). Not everyone is able to performatively intervene in such systemic issues without larger collective performative acts to shift underlying norms and power structures.

So how, then, do we perform differently? First, we need to change the periperformative contexts, and there are lots of different roles and acts involved. It spans not just privacy law, but privacy norms, expectations, technologies and practices.

There is a necessary voluntarist periperformative act of protest that must (re)constitute protest space anew. Sedgwick describes this as “a space of public protest that has continually to be reinvented from scratch, even though (or because) the protest *function* is so routinized and banalized by the state and media institutions that enable it” (2003, 28). But this is not merely the need for “new” forms to raise a particular protest above the background noise of generic protest narratives sanitised by dominant narratives of power.

Butler highlights the requirement to embody norms for recognition as human (Assembly, 35-37). The inherent contradictions in dominant narratives that force a subset of humans as unrecognisable as humans. She writes that “the human is differentially produced” (Butler assembly, 41). This is literally the case for those marginalised through lack of privacy (Skinner-Thompson 2021)—especially those historically dehumanised by socially constructed categories of race, gender, disability, etc. But it is also the case that performers

are differentially produced, occupy different roles. Corporate, legislative, public roles all receive different levels and types of recognition.

This is particularly clear with the problematic role of “user”, one that humans are required to embody in order to gain access to informational society, often being forced to perform compliance and complicity in the process. As Waldman pushes us to look at performative privacy beyond the user, we can also look to upend the performance of the category itself. This passive role, recalling as a term the superficial addiction sense of habit, is habituated in the truer sense as a means of repressing agency and dehumanising the user as a mere data subject. Moving beyond this requires removing such categories and allowing space for more active and different performances to emerge: performances of resistance. Butler (2006, 151) discusses forms of becoming and categorisation—with categories as variable, not fixed. By constantly shifting and blurring categories, we can destabilise the context in which those categories operate, in order to allow new identities and practices to emerge.

In terms of the becoming of resistance as an ongoing process, the alloreferential nature of periperformative gestures implies a certain future, a shaping of the present context with the expectation of a certain continuation of the norms being performed. I would argue that the periperformative extends beyond habitus in that it is not only the limits created by the context of the past but the limits of fictions and imaginaries imposed by contexts themselves dispersed as relations between past, present and future. Sedgwick writes about how performing expected roles can itself lead to the unexpected—perhaps very similarly to how Chun describes the Deleuzian emergence of something potentially radical or socially transformative from within the repetition of habit.

This spans both normalising and voluntarist phases that Butler identifies, as well as the more communicative dimensions that mediate these, by disrupting the former with elements of the latter, and/or by reframing the relations that shape performative utterances. We must therefore continually emphasise periperformative acts that shift the realms of possibility, offering up alternative stages, alternative contexts, upon which alternative performances can occur. Practically speaking, this is a recentring of values such as distributive and transformative justice over rights. It is the socialising of laws as part of a broader resetting of the defaults in which we perform our daily privacy acts. As Nantina Vgontzas describes in relation to tackling tech giants like Amazon through existing legal mechanisms, we should instead be pursuing aims such as “worker power, surveillance abolition and climate justice” (2021). These issues go far beyond privacy. We require a shift in the periperformative contexts of our entire informational society that spans labour, power and justice, people and the environment, towards a new stage on which exploitative business models are resolutely cast as the villain and acts of resistance become habituated into the everyday.

## **Conclusion**

There are lots of conceptual avenues opened up in this discussion, and I again thank Waldman for generating some interesting challenges. Performing certain roles and values again and again normalises behaviours in a way that becomes habitual. It is perhaps tempting

to see performativity and habit as two descriptions of very similar phenomena, but I would agree that there are additional nuances and insights to be uncovered in their interaction. And yet open questions remain, further threads unraveled, and I will certainly continue to pursue performative privacy's relation to other concepts such as affordances or imaginaries. While we are told not to make a habit of repeating ourselves, we should be habituating the generative processes of constantly revisiting the terms and practices of privacy, to open up new spaces in which alternative norms and possibilities can emerge.

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