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PRIVACY: ITS MEANING AND VALUE

Adam D. Moore

INTRODUCTION

Bodily privacy, understood as a right to control access to one's body, capacities, and powers, is one of our most cherished rights—a right enshrined in law and notions of common morality. Informational privacy, on the other hand, has yet to attain such a loftily status. As rational project pursuers, who operate and flourish in a world of material objects it is our ability to control patterns of association and disassociation with our fellows that afford each of us the room to become distinct individuals. Privacy, whether physical or informational, is valuable for beings like us. Establishing the truth this claim will be the primary focus of this article. Providing reasons, evidence, and support for this claim will take us into the historical and cultural dimensions of privacy.

The boundary of privacy varies across cultures and species. Nevertheless there is a near universal need for seclusion or separation at different times for humans as well as non-human animals. As we shall see, populations that fail to achieve a minimum level of privacy for individual members, self-destruct in various ways. Before arguing for the claim that privacy is a necessity for beings like us we must first clarify

the notion of privacy—alas there are numerous competing conceptions of privacy.

DEFINING PRIVACY¹

Privacy has been defined in many ways over the last century. Warren and Brandeis called it “the right to be let alone”.² Pound and Freund have defined privacy in terms of an extension of personality or personhood.³ Westin and others including myself have cashed out privacy in terms of information control.⁴ Still others have insisted that privacy consists of a form of autonomy over personal matters.⁵ Parent offers a purely descriptive account of privacy—“Privacy is the condition of not having undocumented personal knowledge about one possessed by others.”⁶ Finally, with all of these competing conceptions of privacy some have argued that there is no overarching concept of privacy but rather several distinct core notions that have been lumped together.

Legal scholar William Prosser separated privacy cases into four distinct but related torts.

Intrusion: Intruding (physically or otherwise) upon the solitude of another in a highly offensive manner. For example, a woman sick in the hospital with a rare disease refuses

a reporter's request for a photograph and interview. The reporter photographs her anyway, over her objection.

Private facts: Publicizing highly offensive private information about someone which is not of legitimate concern to the public. For example, photographs of an undistinguished and wholly private hardware merchant carrying on an adulterous affair in a hotel room are published in a magazine.

False light: Publicizing a highly offensive and false impression of another. For example, a taxi driver's photograph is used to illustrate a newspaper article on cabdrivers who cheat the public when the driver in the photo is not, in fact, a cheat.

Appropriation: Using another's name or likeness for some advantage without the other's consent. For example, a photograph of a famous actress is used without her consent to advertise a product.⁷

What binds these seemingly disparate cases under the heading "privacy invasions" is that they each concern access and personal information control. And while there may be other morally objectionable facets to these cases, for example the taxi driver case may also be objectionable on grounds of defamation, there is arguably privacy interests at stake as well.

As noted in the opening paragraph, a "control" based definition of privacy will be explicated and defended—privacy has to do with control over access to oneself and to information about oneself.⁸ Richard Parker writes:

privacy is control over when and by whom the various parts of us can be sensed by others. By "sensed," is meant simply seen, heard, touched, smelled, or tasted. By "parts of us," is meant the part of our bodies, our voices, and the products of our bodies. "Parts of us" also includes objects very closely associated with us. By "closely associated" is meant primarily what is spatially associated.

The objects which are "parts of us" are objects we usually keep with us or locked up in a place accessible only to us.⁹

One feature of such a conception is that it can incorporate much of the aforementioned definitions. Controlling access to ourselves affords individuals the space to develop themselves as they see fit. Such control yields room to grow *personally* while maintaining *autonomy* over the course and direction of one's life.

William Parent has attacked "control" definitions of privacy arguing,

All of these definitions should be jettisoned. To see why, consider the example of a person who voluntarily divulges all sorts of intimate, personal, and undocumented information about himself to a friend. She is doubtless exercising control. . . . But we would not and should not say that in doing so she is preserving or protecting her privacy. On the contrary, she is voluntarily relinquishing much of her privacy. People can and do choose to give up privacy for many reasons. An adequate conception of privacy must allow for this fact. Control definitions do not.¹⁰

Parent is quick to add in a footnote that those who defend a control definition of privacy might be worried about a *right* to privacy rather than the *condition* of privacy.¹¹ He charged that if so they should have made this explicit and in any case are confusing a liberty right with a privacy right.

Parent's charge, however, is anemic. On these grounds we could complain that control definitions of property rights or life rights are similarly confused with liberty rights. Following Hohfeld and others, the root idea of a "right" can be expressed as follows:

To say someone has a right is to say that there exists a state of affairs in which one person (the right-holder) has a claim on act or forbearance from another person (the duty-bearer) in the sense that, should the claim be exercised or in force, and the act or forbearance not be

done, it would be justifiable, other things being equal, to use coercive measures to extract either the performance required or compensation in lieu of that performance.¹²

This broad characterization holds of both moral rights and legal rights. For example property is a bundle of rights associated with an owner's relation to a thing where each right in the bundle is distinct.¹³ Moreover rights are not free floating moral entities—rather, they are complex sets of claims, duties, obligations, powers, and immunities. Some have argued that if this is the case, then we should dispense with talk of rights and merely talk of duties, obligations, and claims. We could do this but then tedium also has costs and there is nothing wrong with talking in terms of rights so long as we do not lose sight of the fact that they are conceptually complex.

Frederick Davis has argued that privacy rights reflect more fundamental rights and are thus derivative.

If truly fundamental interests are accorded the protection they deserve, no need to champion a right to privacy arises. Invasion of privacy is, in reality, a complex of more fundamental wrongs. Similarly, the individual's interest in privacy itself, however real, is derivative and a state better vouchsafed by protecting more immediate rights.¹⁴

While essentially correct it would not follow that we should do away with the category of privacy rights—the cluster of rights that comprise privacy may find their roots in property or liberty yet still mark out a distinct kind. Moreover, if all rights are nothing more than sets of obligations, powers, duties, and immunities it would not automatically follow that we should dispense with talk of rights and frame our moral discourse in these more basic terms.¹⁵

Returning to Parent's attack on control definitions, it should be clear that his worry is based on an overly simplistic account of rights. Ginger's property right to a Louisville

slugger yields her a particular sort of control over the baseball bat in question. It also justifiably limits the liberty of everyone else—they cannot interfere with Ginger's control of the bat without her consent. A liberty right is not a freedom to do whatever one likes—it is not a license. Liberty rights, like property rights, are limited by the rights of others. It is within these boundaries that we are free to order our lives as we see fit. In the most basic terms, rights, liberty, and control, come bundled together.

Parent offers the following definition for privacy. "Privacy is the condition of not having undocumented personal knowledge about one possessed by others."¹⁶ On this account Ginger's privacy is diminished when Fred or others possess undocumented personal information about her. For Parent, documented information is information that is available via the public record—e.g., information found in newspapers, court proceedings, published biographies, and other documents open to public inspection.

The problem with this definition is that it leaves the notion of privacy dependent upon what a society or culture takes as documentation and what information is available via the public record. Parent acts as if undocumented information is private while documented information is not, and this is the end of the matter. But surely the secret shared between family members is private in one sense and not in another. To take different case, consider someone walking in a public park. There is almost no limit to the kinds of information that can be acquired from this public display. One's image, height, weight, eye color, approximate age, and general physical abilities are all readily available. Moreover, biological matter will also be left in the public domain—strands of hair and the like may be left behind. Since this matter, and the

information contained within, is publicly available it would seem that all of one's genetic profile is not private information.

Furthermore, what is publicly available information is dependent upon technology. Telescopes, listening devices, heat imaging sensors, and the like, open up what most would consider private domains for public consumption. What we are worried about is what should be considered a "private affair"—something that is no one else's business. Parent's conception of privacy is not sensitive to these concerns.

Like Parent, Judith Jarvis Thomson finds "control" based definitions of privacy puzzling. She argues that a loss of control does not always mean that we have lost privacy. "If my neighbor invents an X-ray device which enables him to look through walls, then I should imagine I thereby lose control over who can look at me: going home and closing the doors no longer suffices to prevent others from doing so. But my right to privacy is not violated until my neighbor actually does train the device on the wall of my house."¹⁷

But surely control based definitions of privacy do not fall prey to Thomson's charge—control over access comes at different levels. Thomson's case suggests that "control" is lost without a loss of privacy. This is only true if we construe "control" in a general way. If defined narrowly—say over each instance—her case falls apart.

A right to privacy can be understood as a right to maintain a certain level of control over the inner spheres of personal information and access to one's body, capacities, and powers. It is a right to limit public access to oneself and to information about oneself. For example, suppose that Ginger wears a glove because she is ashamed of a scar on her hand. If Fred were to snatch the glove away he would not only be violating her right to property—alas the glove is Ginger's to control—Fred would

also violate her right to privacy; a right to restrict access to information about the scar on her hand. Similarly, if Fred were to focus his X-ray camera on Ginger's hand, take a picture of the scar through the glove, and then publish the photograph widely, he would violate a right to privacy.

PRIVACY RIGHTS AND PROPERTY RIGHTS

An interesting question to consider is how does a control definition of privacy distinguish these rights from property claims. If property rights are essentially about control and privacy rights are as well, then maybe privacy rights are simply a special form of property rights.¹⁸ It is obvious that property may come in several forms. Intellectual property is generally characterized as non-physical property where owner's rights surround control of physical manifestations or tokens of some abstract idea or type. Ideas or collections of ideas are readily understood in terms of non-physical types, while the physical manifestations of ideas can be modeled in terms of tokens. Intellectual property rights surround control of physical tokens, and this control protects rights to types or abstract ideas. For example, the ownership of Windows grants Microsoft a level of control over every physical embodiment of a certain kind—over every token of the type.

Privacy may be understood as a right to control both tokens and types. In terms of tokens, privacy yields control over access to one's body, capacities, and powers. A privacy right in this sense is a right to control access to a specific token or object. In Prosser's terminology, *intrusions* would violate rights to control access to a specific object. But we may also control access to sensitive personal information about ourselves. In this sense a privacy right affords control over types or ideas. For example when a rape victim suppresses

the dissemination of sensitive personal information about herself, she is exercising a right to control a set of ideas no matter what form they take. It matters not if the information in question is written, recorded, spoken, or fixed in some other fashion. Again, taking up Prosser's categories, publishing *private facts*, putting someone in a *false light*, or *appropriating* someone's image or style would violate a right to control an entire class of ideas.

While privacy rights may simply be nothing more than a special kind of property claim it is nonetheless advantageous to retain the category as we do with intellectual property. If correct, privacy rights include claims to types and tokens. This fact alone marks a significant category even if it is a category that falls under the umbrella of property rights.

But what of the following worry introduced by Thomas Scanlon?¹⁹ Imagine a case where Crusoe uses an X-ray device to examine an item locked away in Friday's safe. Given that the item in Friday's safe may belong to someone else or to no one, Scanlon believes that the right violated in this case is not based on ownership. Some kind of wrongful intrusion has occurred independent of ownership and so notions of ownership and privacy pull apart in this case. Scanlon adds:

Suppose, for example, that each person was assigned a plot in the common field to use as a place to bury valuables. Then anyone who . . . [X-rayed] . . . my plot without special authority would violate a right of mine. . . . For us, ownership is relevant in determining the boundaries of our zone of privacy, but its relevance is determined by norms whose basis lies in our interest in privacy, not in the notion of ownership."²⁰

Assuming, however, that privacy rights are rights to control types or tokens these examples do not undermine a control based view of privacy or that privacy and

ownership come bundled together. If the object or objects were unowned—assuming that the safe and the plot of land are unowned as well—then there would be no privacy invasion. Imagine that the object was a painting of a sunset painted by some long dead artist who gave the work to all of humankind. On the other hand, if we assume that the safe and the plot are owned, then wrongness can be found in interfering with the control conferred by ownership.²¹

Scanlon may reply by arguing that the wrongness is found when someone unjustifiably intrudes and obtains knowledge about someone else—say Crusoe finds out, by using an X-ray device, that Friday is keeping an unowned item in a safe. Such a reply, however, would seem to support a control based definition of privacy. The wrongness in this case lies in the fact that Friday has a right to control access to certain kinds of information and Crusoe has violated this control.

In contrast to a *right* to privacy it may also be helpful to define what some have called a condition of privacy.²² Here we are trying to be descriptive rather than normative. Weinstein provides a useful starting point. "If the condition is entered involuntarily, it is isolation when a matter of circumstance and ostracism when a result of the choice of others. Either isolation or ostracism may become loneliness when accompanied by a desire for communication."²³ Privacy, on the other hand, is a condition of voluntary seclusion or walling off. The condition obtains when an individual freely separates herself from her peers and restricts access. For those entities that lack freewill we may talk of separation rather than privacy.

THE VALUE OF PRIVACY²⁴

Turning now to the primary focus of this article it will be argued that privacy rights

are necessary for human well-being or flourishing. Drawing on the results of numerous animal and cultural studies a case will slowly be built to support this claim.

While privacy rights may entail obligations and claims against others—obligations and claims that are beyond the capacities of most non-human animals—a case can still be offered in support of the claim that separation is valuable for animals. Although privacy may be linked to freewill, the need for separation provides an evolutionary first step. Somewhere in our past, nature selected for an entity with the capacity to choose between alternatives. It is this capacity of freewill that changes mere separation into privacy.

Alan Westin, in *Privacy and Freedom*, notes,

One basic finding of animal studies is that virtually all animals seek periods of individual seclusion or small-group intimacy. This is usually described as the tendency toward territoriality, in which an organism lays private claim to an area of land, water, or air and defends it against intrusion by members of its own species.²⁵

More important for our purposes are the ecological studies demonstrating that the lack of private space due to overpopulation and the like will threaten survival. In such conditions animals may kill each other or engage in suicidal reductions of the population. Lemmings may march into the sea or there may be what is called a “biochemical die-off.” Christian, Flyger, and Davis’ study of a herd of Sika deer illustrates the point.

Mortality evidently resulted from shock following severe metabolic disturbance, probably as a result of prolonged adrenocortical hyperactivity, judging from the historical material. There was no evidence of infection, starvation, or other obvious cause to explain the mass mortality.²⁶

In this case the inability to separate from other members of the same species apparently caused a die-off so that herd numbers could accommodate separation.

Calhoun notes that experiments with rats and spacing in cages show that a certain level of separation is necessary for the species. The lack of separation leads to the disruption of social relationships and increases of disease, high blood pressure, and heart failure. Calhoun allowed Norway rats, which were amply fed, to breed freely in a quarter-acre pen. Their number stabilized at 150 and never exceeded 200.²⁷ With a population of 150, fighting became so disruptive to normal maternal care that only a few of the young survived. If placed in pens, the same area could support 5,000 rats.²⁸ Moreover these results hold across a wide range of species supporting the contention that separation, like food and water, is a necessity of life.²⁹

If it is plausible to maintain that humans evolved from non-human animals, then it is also plausible that we may retain many of the same traits. The question now becomes, is separation a necessity for well-being and is it found in human cultures? If so, like other basic requirements for living, we may plausibly conclude that privacy is valuable.

THE CULTURAL ROOTS OF PRIVACY

One could argue that privacy is a cultural phenomena and its form or content depends on customs and social practices.³⁰ Independent of society—when we are by ourselves—there is no need for privacy. Thus there is nothing inherent in human nature that makes privacy valuable for all humans. This view is shown to be suspect as soon as it is admitted that we are, *by nature*, social animals. We need companionship and intellectual stimulation as much as food and shelter. Quoting Westin “the work

of leading scientists such as Darling, Fisher, and Wynne-Edwards shows that it is not security per se that brings animals of the same species together, but a desire for stimulation of their fellows."³¹ Alas, if we were something other than we are, then privacy may be a non-issue.³²

While it may be possible via environmental and genetic manipulation to change human nature in radical ways it does not follow that privacy is irrelevant. For those future relatives of ours, privacy may not be important. But surely this would not undermine the position that privacy is valuable for beings like us nor would it undermine the view that there is a determinant nature in question.

To continue, of the thousands of cultures studied there are a rare few that appear to contain no privacy. The Tikopia of Polynesia, Thlinget Indians of North America, Java of Indonesia, as well as a few others, have cultural systems that appear to leave everything open for public consumption. These are important cases because individuals in such societies may flourish in the absence of privacy—if true, we will have found a telling counterexample to the claim that privacy is necessary for human flourishing.

Before more closely examining these cases, it should be noted that one avenue of response would be to further relativize the central claim about privacy. Rather than maintaining that privacy is a necessary condition for human well-being full stop, the claim could be weakened to include only advanced cultures or societies that have moved beyond hunter gatherer or purely agricultural models. Such a restriction is not necessary, however, because while privacy may take many forms it appears everywhere. Consider the following cases.

Tikopia of Polynesia . . . the Tikopia help the self to be continuous with its society. . . . They find it good to sleep side by side crowding

each other, next to their children or their parents or their brothers and sisters, mixing sexes and generations; and if a widow finds herself alone in her one-room house she may adopt a child or a brother to allay her intolerable privacy. . . .

Work among the Tikopia is also socially conceived and structured; and if a man has to work alone, he will probably try to take a little child along.³³

Thlinget Indians of North America. There are no skeletons tucked away in native families, for the acts of one are familiar to all of the others. Privacy is hardly known among them. It cannot be maintained very well under their system of living, with families bunched together. . . . The Thlinget's bump of curiosity is well developed and anything out of the ordinary, as an accident, a birth, a death or a quarrel, never fails to draw a crowd. . . . They walk in and out of one another's homes without knocking on the door. A woman may be in the very act of changing her garments when Mr. Quakish steps in unannounced to visit her husband. This does not embarrass her in the least. She proceeds as if no one had called.³⁴

Java of Indonesia. In Java people live in small, bamboo-walled houses. . . . [T]here are no fences around them . . . and no doors. Within the house people wander freely just about any place any time, and even outsiders wander in fairly freely almost any time during the day and early evening. In brief, privacy in our terms is about as close to non-existent as it can get. . . . Except for the bathing enclosure (where people change their clothes) no place is really private.³⁵

Westin notes that these cases and others like them do not "prove that there are no universal needs for privacy and no universal processes for adjusting the values of privacy, disclosure, and surveillance within each society."³⁶ The Java still have bathing enclosures, while the Thlingets and Tikopia hide behind psychological walls to ensure private domains. Like viewing a striper we

may see everything and nothing at all of the real person. Moreover, in each of these cultures there are time restrictions on access—for example, visiting someone in the middle of the night would be typically prohibited.

Cultural universals have been found in every society that has been systematically studied.³⁷ Based on the Human Relations Area Files at Yale University, Westin argues that there are aspects of privacy found in every society—privacy *is* a cultural universal.³⁸

Barry Schwartz, in an important article dealing with the social psychology of privacy, provides interesting clues as to why privacy is universal.³⁹ According to Schwartz, privacy is group-preserving, maintains status divisions, allows for deviation, and sustains social establishments. As such, privacy may be woven into the fabric of human evolution.

Privacy preserves groups by providing rules of engagement and disassociation. “If the distraction and relief of privacy were not available . . . the relationship would have to be terminated. . . .”⁴⁰ Without privacy or what may be called a dissociation ritual there could be no stable social relation. As social animals we seek the company of our fellows but at some point interaction becomes bothersome and there is a mutual agreement to separate. Thus having “good fences” would be necessary for having “good neighbors.” James Rachels echoes this view:

We now have an explanation of the value of privacy in ordinary situations in which we have nothing to hide. The explanation is that, even in the most common and unremarkable circumstances, we regulate our behavior according to the kinds of relationships we have with the people around us. If we cannot control who has access to us, sometimes including and sometimes excluding various people, then we cannot control the patterns of behavior we need to adopt (this is one reason why privacy

is an aspect of liberty) or the kinds of relations with other people that we will have.⁴¹

Schwartz also notes that privacy helps maintain status divisions within groups. A mark of status is a heightened level of access control. Enlisted men in the armed services have less privacy when compared to commissioned officers. Line level employees work without doors or secretaries who screen access to them. Phyllis McGinley writes:

The poor might have to huddle together in cities for need’s sake, and the frontiersman cling to his neighbor for the sake of protection. But in each civilization, as it advanced, those who could afford it chose the luxury of a withdrawing place. Egyptians planned vine-hung gardens, the Greeks had their porticos and seaside villas, the Romans put enclosures around their patios. . . . Privacy was considered as worth striving for as hall-marked silver or linen sheets for one’s bed.⁴²

By protecting status divisions and determining association and disassociation rules privacy has a stabilizing effect on groups or social orders. Privacy also protects and leaves room for deviation within groups. Via deviation and experiments in living new ideas are introduced into groups and, if good, are adopted.⁴³

Schwartz claims that privacy is built into the very fabric of social establishments. Doors, hallways, fences, window blinds, walls, and the like each serve to separate individuals at appropriate times from their peers. “The very act of placing a barrier between oneself and others is self-defining, for withdrawal entails separation from a role and, tacitly, from an identity imposed upon oneself via that role.”⁴⁴

Growing up can be understood as the building of a series of walls—the walls of privacy.⁴⁵ Infants are without privacy. As infants grow into toddlers and begin to communicate with language they express wishes for separation at times. This process

continues as children grow into adults.⁴⁶ Toddlers and small children begin requesting privacy as they start the process of self-initiated development. More robust patterns of disassociation continue as children enter puberty. Finally as young adults emerge, the walls of privacy have hardened and access points are maintained vigorously.

Could we imagine, however, a culture that flourishes without individuals attaining any measure of accomplishment, autonomy, understanding, deep personal relationships, or privacy? Alexander Rosenberg writes,

For all their desirability, could a just society get along without intimacy, friendship, and love? We can perfectly well imagine a desert island society and a scenario of impeccable justice and moral probity in which the inhabitants have no interest in the sort of social relations that moral social psychologists extol. . . . Alternatively, we can imagine a society replete with friendship, intimacy, and love, but without privacy.⁴⁷

We can indeed imagine some of these things as we can imagine evolved humans who do not need protein or water to survive. Such entities would have different requirements for flourishing. It is arguably the case that we cannot imagine a society where friendship, intimacy, and love obtains but where privacy is non-existent. The very relation of association and disassociation that comprise friendship, intimacy, and love is central to the notion of privacy. It would seem impossible to have an “intimate” relationship where there was also no control over access.

CONCLUSION

While privacy may be a cultural universal necessary for the proper functioning of human beings, its form—the actual rules of association and disengagement—is culturally dependent.⁴⁸ The kinds of privacy

rules found in different cultures will be dependent on a host of variables including climate, religion, technological advancement, and political arrangements. As with the necessities of food, shelter, and education we should not jump to the conclusion that because the forms of privacy are culturally dependent that privacy is subjective “all the way down.”

In 1969 Edward Hall noted a link between a lack of privacy and psychological and physical disorders in humans and non-human animals.

The disorders of Calhoun’s overcrowded rats bear a striking resemblance to . . . Americans who live in densely packed urban conditions. . . . Chombart de Lauwe has gathered data on French worker’s families and has demonstrated a statistical relationship between crowded living conditions and physical and social pathology. In Manhattan Srole et al. showed that only 18% of the representative sample were free of emotional disorders while 23% were seriously disturbed or incapacitated.⁴⁹

These results are bolstered by numerous more recent studies.⁵⁰

Given all of this, one can, with great confidence claim that privacy is valuable for beings like us. The ability to regulate access to our bodies, capacities, and powers and to sensitive personal information is an essential part of human flourishing or well-being. Modern surveillance techniques, data mining efforts, and media coverage are opening up private lives for public consumption. Technological advancements in monitoring and data acquisition are forcing us to rethink our views about the value of privacy. The unexamined life, as Socrates once said, is not worth living, but neither is the life examined by police or corporations, or the life open to inspection by anyone for any reason.⁵¹

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NOTES

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1. Parts of this section draw from Adam D. Moore, "Intangible Property: Privacy, Power, and Information Control," *American Philosophical Quarterly*, vol. 35 (1998), pp. 365–378, esp. pp. 371–373; and Adam D. Moore, *Intellectual Property and Information Control* (Transaction Pub., 2001), pp. 185–188.
2. S. Warren and L. Brandeis, "The Right to Privacy," *The Harvard Law Review*, vol. 4 (1890), pp. 193–220.
3. Roscoe Pound, "Interests in Personality," *Harvard Law Review*, vol. 28 (1915), pp. 343; Paul A. Freund, "Privacy: One Concept or Many?" *Privacy (Nomos, vol. 13)*, ed. J. Roland Pennock and John W. Chapman (Atherton Press, 1971), p. 182.
4. Alan Westin, *Privacy and Freedom* (New York: Atheneum, 1968); Moore, *Intellectual Property and Information Control*.
5. *Eisenstadt v. Baird*, 405 U.S. 438 (1972): 453. See also Louis Henkin, "Privacy and Autonomy," *Columbia Law Review* 74 (1974): 1410, 1425; Joel Feinberg, "Autonomy, Sovereignty, and Privacy: Moral Ideas in the Constitution?" *Notre Dame Law Review*, vol. 58 (1983), pp. 445; Daniel R. Ortiz, "Privacy, Autonomy, and Consent," *Harvard Journal of Law and Public Policy*, vol. 12 (1989), p. 91; and H. Tristram Englehardt Jr., "Privacy and Limited Democracy," *Social Philosophy and Policy*, vol. 17 (Summer 2000), pp. 120–140. "Three different senses of privacy . . . must be distinguished . . . : (1) freedom from unwanted observation or collection of information, (2) freedom from the disclosure of personal information without one's consent, and (3) freedom from unwarranted government intrusion." Englehardt, "Privacy and Limited Democracy," p. 123.
6. W. A. Parent, "Privacy, Morality, and the Law," *Philosophy and Public Affairs*, vol. 12 (Autumn 1983), p. 269.
7. Dean William Prosser, "Privacy," *California Law Review*, vol. 48 (1960), pp. 383, 389; quoted in E. Alderman and C. Kennedy, *The Right to Privacy* (New York: Alfred A. Knopf, 1995), pp. 155–156.
8. See also Charles Fried, *An Anatomy of Values* (Cambridge, Mass.: Harvard University Press, 1970), chap. 9; Richard Wasserstrom, "Privacy: Some Assumptions and Arguments," *Philosophical Law*, edited by R. Bronaugh (Westport, Conn.: Greenwood Press, 1979), p. 148; Hyman Gross, "Privacy and Autonomy," *Privacy (Nomos, vol. 13)*, p. 170; Ernest Van Den Haag, "On Privacy," *Privacy (Nomos, vol. 13)*, p. 147; and Richard Parker, "A Definition of Privacy," *Rutgers Law Review*, vol. 27 (1974), p. 280.
9. Richard Parker, "A Definition of Privacy," p. 281.
10. Parent, "Privacy, Morality, and the Law," p. 273.
11. *Ibid.*, note 11.
12. Lawrence Becker, *Property Rights, Philosophic Foundations* (London: Routledge & Kegan Paul 1977). Hohfeld distinguishes four types of rights: claim-rights, liberty-rights, power-rights, and immunity-rights. See W. N. Hohfeld, "Fundamental Legal Conceptions," *Yale Law Journal*, vol. 23 (1913).

13. Honoré has provided a lucid account of full legal ownership. See A. M. Honoré, "Ownership," *Oxford Essays in Jurisprudence*, ed. A. G. Guest (London: Oxford University Press, 1961); and Becker, *Property Rights, Philosophic Foundations*, p. 19.
14. Frederick Davis, "What Do We Mean by 'Right to Privacy'?" *South Dakota Law Review* (Spring 1959), p. 20.
15. See also Jeffrey Reiman, "Privacy, Intimacy, and Personhood," *Philosophy and Public Affairs*, vol. 6 (Autumn 1976), pp. 26–44.
16. Parent, "Privacy, Morality, and the Law," p. 269.
17. Judith Jarvis Thomson, "The Right to Privacy," *Philosophy and Public Affairs*, vol. 4 (Summer 1975), p. 304, note 1. For a critique of Thomson's view of privacy, see Thomas Scanlon, "Thomson on Privacy," *Philosophy and Public Affairs*, vol. 4 (Summer 1975), pp. 315–322.
18. Thomson tends to agree: "[T]he right to privacy is itself a cluster of rights, and that it is not a distinct cluster of rights but itself intersects with . . . the cluster of rights which owning property consists in." Thomson, "The Right to Privacy," p. 306. It would seem that life rights, liberty rights, and property rights overlap with each other and privacy as well.
19. Scanlon, "Thomson on Privacy," p. 318.
20. Ibid.
21. James Rachels also argues against models that conceive privacy rights as types of property rights. "[T]he right to privacy [is] a distinctive sort of right in virtue of the special kind of interest it protects." James Rachels, "Why Privacy is Important," *Philosophy and Public Affairs*, vol. 4 (Summer 1975), p. 333. As already noted, the fact that privacy protects different sorts of interests does not by itself lead us to the conclusion that privacy and property do not come bundled together. Intellectual property rights protect different interests from physical property—this fact should not lead us to conclude that intellectual property rights are not a type of property right.
22. Parent's definition of privacy seems to be trying to capture this notion.
23. M. Weinstein, "The Uses of Privacy in the Good Life," *Privacy (Nomos)*, vol. 13), p. 94.
24. In the most general terms, the value claims presented in this section are objective and relational. Objective values are those that exist independent of human affections. Relational values are those that are relative to or dependent on the species or life form in question. In large part this view of value is sympathetic with Philippa Foot's account presented in *Natural Goodness* (Clarendon Press, 2001).
25. Westin, *Privacy and Freedom*, p. 8.
26. J. Christian, V. Flyger, and D. Davis, "Phenomena Associated with Population Density," *Proceedings of the National Academy of Science*, vol. 47 (1961), pp. 428–449.
27. Paraphrased from Edward Hall, "Proxemics," *Current Anthropology*, vol. 9 (1968), p. 86. John Calhoun, "The Study of Wild Animals Under Controlled Conditions," *Annals of the New York Academy of Sciences*, vol. 51 (1950), pp. 113–122.
28. Westin, *Privacy and Freedom*, p. 10. See also H. E. Howard, *Territory in Bird Life* (London: Murray, 1920); W. C. Allee, *The Social Life of Animals* (New York: Norton, 1938); E. Hall, *The Hidden Dimension* (Garden City, N.Y.: Doubleday, 1966); R. Ardrey, *The Territorial Imperative* (New York: Atheneum, 1966); J. Calhoun, "A Behavioral Sink," in *Roots of Behavior*, ed. E. L. Bliss (New York: Harper, 1962); and "Population Density and Social Pathology," *Scientific American*, vol. 206 (1962), pp. 139–146.

29. See, for example, Allee, *The Social Life of Animals*; E. Deevey, "The Hare and the Haruspex, A Cautionary Tale," reprinted in the *American Scientist*, vol. 48 (Sept. 1962); T. Gilliard, "On the Breeding Behavior of the Cock-of-the-Rock," *Bulletin of the American Museum of Natural History*, vol. 124 (1963), pp. 31–68; R. Snyder, "Evolution and Integration of Mechanisms that Regulate Population Growth," *National Academy of Sciences*, vol. 47 (1961), pp. 449–455; and V. Wynne-Edwards, *Animal Dispersion in relation to Social Behavior* (Edinburgh: Oliver and Boyd, 1962).

30. See *A History of Private Life*, 5 volumes, edited by Philippe Ariès and Georges Duby (Cambridge, Mass.: Belknap Press, 1987–91).

31. Westin, *Privacy and Freedom*, p. 10. See also F. Darling, "Social Behavior and Survival," *Auk*, vol. 69 (1952), pp. 183–191; J. Fisher, "Evolution and Bird Sociality," in *Evolution as a Process*, edited by J. Huxley (London: Allen & Unwin, 1954); and Wynne-Edwards, *Animal Dispersion in Relation to Social Behavior*.

32. Part of the Bolshevik project in the Soviet Union was to create individuals who lived entirely in the public realm and to reject privacy. "The private, however, was reestablished as the 'secret' but pervasive underside of the social, as the invisible sphere of the most intimate comportment, carefully hidden by individual dissimulation." Oleg Kharkhordin, "Reveal and Dissimulate: A Genealogy of Private Life in Soviet Russia," in *Public and Private in Thought and Practice*, edited by J. Weintraub and K. Kumar (University of Chicago Press, 1997), p. 359.

33. Dorothy Lee, *Freedom and Culture* (Englewood Cliffs, N.J.: Prentice Hall, 1959), p. 31.

34. Livingston Jones, *A Study of the Thlingets of Alaska* (New York, F. H. Revell, 1914), p. 58. Quoted in Westin, *Privacy and Freedom*, p. 12.

35. Clifford Geertz (unpublished paper), quoted in Westin, *Privacy and Freedom*, p. 16.

36. Westin, *Privacy and Freedom*, p. 12.

37. See George Murdock, "The Universals of Culture," in *Readings in World Anthropology*, edited by E. A. Hoebel, J. D. Jennings, and E. R. Smith (New York: McGraw-Hill, 1955).

38. This view is supported by John Roberts and Thomas Gregor, "privacy as a set of rules against intrusion and surveillance focused on the household occupied by a nuclear family is a conception which is not to be found universally in all societies. *Societies stemming from quite different cultural traditions such as the Mehinacu and the Zuni do not lack rules and barriers restricting the flow of information within the community, but the management and the functions of privacy may be quite different.*" Roberts and Gregor, "Privacy: A Cultural View," *Privacy (Nomos*, vol. 13), p. 225 (italics mine).

39. Barry Schwartz, "The Social Psychology of Privacy," *American Journal of Sociology*, vol. 73 (May 1968), pp. 741–752.

40. *Ibid.*, p. 741.

41. James Rachels, "Why Privacy is Important," p. 331. It would seem that Parent would agree: "if others manage to obtain sensitive personal knowledge about us they will by that very fact acquire power over us. . . . [A]s long as we live in a society where individuals are generally intolerant of life styles, habits, and ways of thinking that differ significantly from their own . . . our desire for privacy will continue unabated." Parent, "Privacy, Morality, and the Law," p. 276.

42. Phyllis McGinley, "A Lost Privilege," *Province of the Heart* (New York: Viking Press, 1959), p. 56.

43. A classic treatment enumerating the benefits of free thought and experiments in living is John Stuart Mill's *On Liberty*.
44. Schwartz, "The Social Psychology of Privacy," p. 747.
45. "Both animals and humans require, at critical stages of life, specific amounts of space in order to act out the dialogues that lead to the consummation of most of the important acts of life." Rene Spitz, "The Derailment of Dialogue," *Journal of the American Psychoanalytic Association*, vol. 12 (1964), pp. 752–775.
46. "The door of openness closes perhaps halfway as a recognition of self development during childhood, it shuts but is left ajar at pre-puberty, and closes entirely—and perhaps even locks—at the pubertal and adolescent stages when meditation, grooming, and body examination become imperative." Schwartz, "The Social Psychology of Privacy," p. 749. See also Erik Erikson, *Childhood and Society* (New York: Norton, 1963), pp. 219–231; and Jane Kessler, *Psychopathology of Childhood* (Englewood Cliffs, N.J., Prentice-Hall, 1966).
47. Alexander Rosenberg, "Privacy as a Matter of Taste and Right," *Social Philosophy and Policy*, vol. 17 (Summer 2000), p. 71. Rosenberg also notes that "Anthropologists have even reported the existence of [such] societies" (p. 71). No citation is given for this claim and the work on cultural universals would point in the other direction. Moreover, later in the article, Rosenberg acknowledges the pervasiveness of privacy.
48. See Herbert Spiro, "Privacy in Comparative Perspective," *Privacy (Nomos, vol. 13)*, pp. 121–148.
49. Hall, "Proxemics," p. 86.
50. See for example: A. Baum and S. Koman, "Differential Response to Anticipated Crowding: Psychological Effects of Social and Spatial Density," *Journal of Personality and Social Psychology*, vol. 34 (1976), pp. 526–536; Jes Clauson-Kaas et al., "Urban Health: Human Settlement Indicators of Crowding," *Third World Planning Review*, vol. 18 (1996), pp. 349–363; J. N. Edwards and A. Both, "Crowding and Human Sexual Behavior," *Social Forces*, vol. 55 (1977), pp. 791–808; Theodore D. Fuller et al., "Chronic Stress and Psychological Well-Being: Evidence from Thailand on Household Crowding," *Social Science Medicine*, vol. 42 (1996), pp. 265–280. Griscom Morgan, "Mental and Social Health and Population Density," *Journal of Human Relations*, vol. 20 (1972), pp. 196–204; D. Farrington and C. Nuttal, "Prison Size, Overcrowding, Prison Violence and Recidivism," *Journal of Criminal Justice*, vol. 8 (1980), pp. 221–231; P. Paulus, V. Cox, and G. McCain, "Death Rates, Psychiatric Commitments, Blood Pressure and Perceived Crowding as a Function of Institutional Crowding," *Environmental Psychology and Nonverbal Behavior*, vol. 3 (1978), pp. 107–116.
51. Paraphrasing John R. Silber in "Masks and Fig Leaves," *Privacy (Nomos, vol. 13)*, p. 234.