

# Philosophical Law

AUTHORITY

EQUALITY

ADJUDICATION

PRIVACY

edited by Richard Bronaugh

Copyright © 1978 by Richard Bronaugh

All rights reserved. No portion of this book may be reproduced, by any process or technique, without the express written consent of the publisher.



*Contributions in Legal Studies, Number 2*

GREENWOOD PRESS

WESTPORT, CONNECTICUT • LONDON, ENGLAND

## 13

## Privacy: some arguments and assumptions

RICHARD A. WASSERSTROM

In this paper I examine some issues involving privacy—issues with which the legal system of the United States has had and continues to have a good deal of concern. What I am interested in is the nature of privacy and the reasons why it might be thought important. The issues I consider have been of particular interest in recent years as changes in technology have made new ways to interfere with privacy possible. For this reason, too, I am primarily concerned with the ways in which government and other powerful institutions can and do interfere with privacy, for it is these institutions that tend to have the sophisticated instruments most at their disposal.

I consider first some distinctions that I think it important to make among different kinds of cases that involve privacy. I then consider in some detail one plausible set of arguments for the value of privacy. These arguments help to explain why the law protects privacy in some of the ways it does and to provide a possible justification for continuing to do so. Some of the arguments are not without their problems, however. And in the final section of the article I raise certain questions about them and indicate the key issues that require additional exploration before any satisfactory justification can be developed.

It is apparent that there are a number of different claims that can be made in the name of privacy. A number—and perhaps all—of them involve the question of the kind and degree of control that a person ought to be able to exercise in respect to knowledge or the disclosure of information about himself or herself. This is not all there is to privacy, but it is surely one central theme.

It is also true that information about oneself is not all of the same type. As a result control over some kinds may be much more important than control over others. For this reason, I want to start by trying to identify some of the different types of information about oneself over which persons might desire to retain control, and I will describe the situations in which this information comes into being. To do this, I will consider four rather ordinary situations and look at the ways they resemble one another and differ from one another.

### I

The cases I have in mind are these.

1. It is midafternoon and I am sitting in a chair resting. As I close my eyes and look inward, I become aware of numerous ideas running through my mind, of various emotions and feelings, and of a variety of bodily sensations—an itch on my scalp, a slight pain in my side, and so on.

2. I am in a closed telephone booth, no one is standing near the booth, and I am talking in a normal voice into the telephone. I have called my travel agent to find out what time there are flights to Chicago so that I can make a reservation for a trip.

3. I am in the bedroom of my home with my wife. We are both undressed, lying on the bed, having sexual intercourse.

4. I am considering hiring a research assistant for the summer. If I wish to, I dial a special number on the telephone and a few days later receive in the mail a computer printout consisting of a profile of the prospective assistant—her age, marital status, arrest record, if any, grades at school, income, as well as a summary of how she has spent her time over the past few years.

The first kind of case is that of the things that are going on within a person's head or body—especially, though, a person's head: his or her mental state. One thing that is significant about my dreams, my conscious thoughts, hopes, fears, and desires is that the most direct: the best, and often the only evidence for you of what they are consists in my deliberately revealing them to you. To be sure, my nonverbal behavior may give an observer a clue as to what is going on in my mind. If, for example, I have a faraway look in my eyes you may infer that I am daydreaming about something and not paying

very much attention to you. In addition there is, no doubt, a more intimate and even conceptual connection between observable behavior and certain states of feeling. If I am blushing that may mean that I am embarrassed. If I am talking very fast that may lead you to infer correctly that I am excited or nervous. It is also sometimes the case that I will not know my own thoughts and feelings and that by saying what I think they are, a skilled observer listening to me and watching me as I talk can tell better than can I what is really going on inside my head. This may be one way to describe what can take place during psychotherapy.

But even taking all of these qualifications into account, it still remains the case that the only way to obtain very detailed and accurate information about what I am thinking, fearing, imagining, desiring, or hating and how I am experiencing it is for me to tell you or show you. If I do not, the ideas and feeling remain within me and in some sense, at least, known only to me. Because people cannot read other people's minds, these things about me are known only to me in a way in which other things are not unless I decide to disclose them to you.

What about things that are going on in my body? In some respects the situation is similar to that of my thoughts and in some respects different. There are things that are going on in my body that are like my thoughts, fears, and fantasies. If I have a slight twinge of pain in my left big toe, there is no way for anyone else to know that unless I choose to disclose it. Of course, if the toe is swollen and red and if I grimace whenever I put any weight on it, an observer could doubtless infer correctly that I was experiencing pain there. But in many other cases the only evidence would be my verbal report.

There are other things about my body concerning which this privileged position does not obtain. Even though they are my ribs, I cannot tell very well what they look like; even though it is my blood, I cannot tell with any precision how much alcohol is there. A person looking through a fluoroscope at my ribs or at an x-ray of them can tell far better than I can (just from having them as my ribs or from looking down at my chest) what they look like. A trained technician looking at a sample of my blood in combination with certain chemicals can determine far better than I can (just from it being *my* blood)

what the alcohol content is or whether I am anemic.

So there are some facts about my body that I know in a way others logically cannot know them, that can be known to others only if I disclose them by telling what they are. There are other facts about my body that cannot be known by others in the way I know them but that can be inferred from observation of my body and my behavior. And there are still other kinds of facts about my body that I do not know and that can be learned, if at all, only by someone or something outside of myself.

The second kind of case was illustrated by an imagined telephone conversation from a phone booth with my travel agent to make the reservations for a trip. Another case of the same type is this: I am in the dining room of my house, the curtains are drawn, and I am eating dinner with my wife. In both of these cases it is the setting that makes the behavior distinctive and relevant for our purposes. In the example of the reservations over the telephone, the substance of my conversation with my travel agent is within my control if it is the case that no one is in a position to overhear (at my end) what I am saying to him, that no one is listening in along the way, and that only one person, the travel agent, is in a position to hear what I am telling him. It is less within my control, of course, than is information about my mental state, not yet revealed to anyone, because the agent can choose to reveal what I have told him.

In the second-case—that of eating dinner in my dining room—knowledge of what I am eating and how I am eating is in the control of my wife and me if it is correct that no one else is in a position to observe us as we are eating. We might want to describe both of these cases as cases of things being done *in private* (although this is a very weak sense of private)—meaning that they were done in a setting in which there did not appear to be anyone other than the person to whom I was talking or with whom I was eating who was in a position to hear what was being said or to see what was being eaten at the time the behavior was taking place. Both of these are to be contrasted with the third example given earlier.

Instead of eating dinner with my wife in the dining room, we are having sexual intercourse in the bedroom. Or, instead of talking to my travel agent, imagine that I call my lawyer to discuss the terms of my will with her. Both of these things are being done in private in

the same sense in which the discussion with the travel agent and the dinner with my wife were private. But these have an additional quality not possessed by the earlier two examples. While I expect that what I tell my lawyer is not being overheard by anyone else while I am telling her, I also reasonably expect that she will keep in confidence what I tell her. The conversation is private in the additional respect that the understanding is that it will not be subsequently disclosed to anyone without my consent. It is a private kind of communication. That is not the case with my phone reservations for Chicago. Absent special or unusual circumstances (for example, telling the agent that I do not want anyone to know when I am going to Chicago), I have no particular interest in retaining control over disclosure of this fact.

Similarly, having intercourse with my wife is private in the additional respect that it is the sort of intimate thing that is not appropriately observed by others or discussed with them—again, absent special or unusual circumstances. In addition to being done in private, it, too, is a private kind of thing. It is in this respect unlike the dinner we had together. There is no expectation on my part that what I ate or how I ate it will not be discussed with others by my wife.

The most obvious and the important connection between the idea of doing something in private and doing a private kind of thing is that we typically do private things only in situations where we reasonably believe that we are doing them in private. That we believe we are doing something in private is often a condition that has to be satisfied before we are willing to disclose an intimate fact about ourselves or to perform an intimate act. I would probably make my airplane reservations even in a crowded travel agency where there were lots of people who could overhear what I was saying. The telephone was a convenient way to make the reservations. But the fact that I was making them in a setting that appeared to be private was not important to me. It did not affect what I disclosed to the agent. Thus, even if I had suspected that my agent's telephone was tapped so that someone unknown to us both overheard our conversation, I would probably have made the reservation. In the case of my conversation with my lawyer, however, it was the belief that the conversation was in a private setting that made me willing to reveal a pri-

vate kind of information. If someone taped my discussion with my lawyer, he injured me in a way that is distinguishable on this basis alone from the injury, if any, done to me by taping my conversation with the travel agent. That is to say, he got me to do or to reveal something that I would not have done or revealed if they had not hidden his presence from me.

It should be evident, too, that there are important similarities, as well as some differences, between the first and third cases—between my knowledge of my own mental state and my disclosure of intimate or otherwise confidential information to those to whom I choose to disclose it. These can be brought out by considering what it would be like to live in a society whose technology permitted an observer to gain access to the information in question.

## II

Suppose existing-technology made it possible for an outsider in some way to look-into or monitor another's mind. What, if anything, would be especially disturbing or objectionable about that?

To begin with, there is a real sense in which we have far less control over when we shall have certain thoughts and what their content will be than we have over, for example, to whom we shall reveal them and to what degree. Because our inner thoughts, feelings, and bodily sensations are so largely beyond our control, I think we would feel appreciably more insecure in our social environment than we do at present were it possible for another to "look in" without our consent to see what was going on in our heads.

This is so at least in part because many, although by no means all, of our uncommunicated thoughts and feelings are about very intimate matters. Our fantasies and our fears often concern just those matters that in our culture we would least choose to reveal to anyone else. At a minimum we might suffer great anxiety and feelings of shame were the decisions as to where, when, and to whom we disclose not to be wholly ours. Were access to our thoughts possible in this way, we would see ourselves as creatures who are far more vulnerable than we are now.

In addition, there is a more straightforward worry about accountability for our thoughts and feelings. As I mentioned, they are often

not within our control. For all of the reasons that we ought not hold people accountable for behavior not within their control, we would not want the possibility of accountability to extend to uncommunicated thoughts and feelings.

Finally, one rather plausible conception of what it is to be a person carries with it the idea of the existence of a core of thoughts and feelings that are the person's alone. If anyone else could know all that I am thinking or perceive all that I am feeling except in the form I choose to filter and reveal what I am and how I see myself—if anyone could be aware of all this at will—I would cease to have as complete a sense of myself as a distinct and separate person as I have now. A fundamental part of what it is to be an individual is to be an entity that is capable of being exclusively aware of its own thoughts and feelings.

Considerations such as these—and particularly the last one—help us to understand some of the puzzles concerning the privilege against self-incrimination. Because of the significance of exclusive control over our own thoughts and feelings, the privilege against self-incrimination can be seen to rest, ultimately, upon a concern that confessions never be coerced or required by the state. The point of the privilege is not primarily that the state must be induced not to torture individuals in order to extract information from them. Nor is the point even essentially that the topics of confession will necessarily (or even typically) be of the type that we are most unwilling to disclose because of the unfavorable nature of what this would reveal about us. Rather, the fundamental point is that required disclosure of one's thoughts by itself diminishes the concept of individual personhood within the society. For this reason, all immunity statutes that require persons to reveal what they think and believe—provided only that they will not be subsequently prosecuted for what they disclose—are beside the point and properly subject to criticism. For this reason, too, cases that permit the taking of a blood sample (to determine alcohol content) from an unconscious or unwilling person—despite the existence of the privilege—are also defensible. Since a person is not in a privileged position in respect to the alcohol content of his or her own blood, the claim to exclusivity in respect to knowledge of this fact is not particularly persuasive.

In a society in which intrusion into the domain of one's uncommunicated thoughts and feelings was not possible, but in which communications between persons about private things could be intercepted, some of the problems would remain the same. To begin with, because of our social attitudes toward the disclosure of intimate facts and behavior, most of us would be extremely pained were we to learn that these had become known to persons other than those to whom we chose to disclose them. The pain can come about in several different ways. If I do something private with somebody and I believe that we are doing it in private, I may very well be hurt or embarrassed if I learn subsequently that we were observed but did not know it. Thus if I learn after the fact that someone had used a special kind of telescope to observe my wife and me while we were having intercourse, the knowledge that we were observed will cause us distress both because our expectations of privacy were incorrect and because we do not like the idea that we were observed during this kind of intimate act. People have the right to have the world be what it appears to be precisely in those cases in which they regard privacy as essential to the diminution of their own vulnerability.

Reasoning such as this lies behind, I think, a case that arose some years ago in California. A department store had complained to the police that homosexuals were using its men's room as a meeting place. The police responded by drilling a small hole in the ceiling over the enclosed stalls. A policeman then stationed himself on the floor above and peered down through the hole observing the persons using the stall for eliminatory purposes. Eventually the policeman discovered and apprehended two homosexuals who used the stall as a place to engage in forbidden sexual behavior. The California Supreme Court held the observations of the policeman to have been the result of an illegal search and ordered the conviction reversed. What made the search illegal, I believe, was that it occurred in the course of this practice, which deceived all of the persons who used the stall and who believed that they were doing in private something that was socially regarded as a private kind of thing. They were entitled, especially for this kind of activity, both to be free from observation and to have their expectations of privacy honored by the state.

There is an additional reason why the observation of certain sorts of activity is objectionable. That is because the kind of spontaneity and openness that is essential to them disappears with the presence of an observer. To see that this is so, consider a different case. Suppose I know in advance that we will be observed during intercourse. Here there is no problem of defeated reasonable expectations. But there may be injury nonetheless. For one thing, I may be unwilling or unable to communicate an intimate fact or engage in intimate behavior in the presence of an observer. In this sense I will be quite directly prevented from going forward. In addition, even if I do go ahead, the character of the experience may very well be altered. Knowing that someone is watching or listening may render what would have been an enjoyable experience unenjoyable. Or, having someone watch or listen may so alter the character of the relationship that it is simply not the same kind of relationship it was before. The presence of the observer may make spontaneity impossible. Aware of the observer, I am engaged in part in viewing or imagining what is going on from his or her perspective. I thus cannot lose myself as completely in the activity.

Suppose, to take still a third case, I do not know whether I am being observed or overheard, but I reasonably believe that no matter what the appearances, it is possible that I am being observed or overheard. I think it quite likely that the anxiety produced by not knowing whether one is doing an intimate act in private is often more painful and more destructive than the certain knowledge that one is being observed or overheard, despite all precautions. It is possible, for example, that one could adjust more easily and successfully in a world where one could never do things in private than one could in a world where there was always a rational likelihood that one was being deceived about the ostensible privacy in which one was acting. This is so because the worry about whether an observer was present might interfere more with the possibility of spontaneity than would the knowledge that the observer was there. If I am correct, then one of the inevitable consequences of living in a society in which sophisticated spying devices are known to exist and to be used is that it does make more rational the belief that one may be being observed or overheard no matter what the appearances. And this in turn makes engagement more difficult.

There is still an additional reason why control over intimate facts and behavior might be of appreciable importance to individuals: our social universe would be altered in fundamental and deleterious ways were that control to be surrendered or lost. This is so because one way in which we mark off and distinguish certain interpersonal relationships from other ones is in terms of the kind of intimate information and behavior that we are willing to share with other persons. One way in which we make someone a friend rather than an acquaintance is by revealing things about ourselves to that person that we do not reveal to the world at large. On this view some degree of privacy is a logically necessary condition for the existence of many of our most meaningful social relationships.

### III

The fourth kind of case that I want to consider is different from the previous three. It is suggested by the example I gave earlier of all of the information that might be made routinely available to me concerning possible appointees to the job of teaching assistant. It concerns the consequences of possessing the technological capability to store an enormous amount of information about each of the individual members of a society in such a way that the information can be retrieved and presented in a rapid, efficient, and relatively inexpensive fashion. This topic—the character, uses, and dangers of data banks—is one that has received a lot of attention in recent years. I think the worries are legitimate and that the reasons for concern have been too narrowly focused.

Consider a society in which the kinds of data collected about an individual are not very different from the kinds and quantity already collected in some fashion or other in our own society. It is surprising what a large number of interactions are deemed sufficiently important to record in some way. Thus, there are, for example, records of the traffic accidents I have been in, the applications I have made for life insurance, the purchases that I have made with my Mastercharge card, the COD packages I have signed for, the schools my children are enrolled in, the telephone numbers that have been called from my telephone, and so on. Now suppose that all of this information, which is presently recorded in some written

fashion, were to be stored in some way so that it could be extracted on demand. What would result?

It is apparent that at least two different kinds of pictures of me would emerge. First, some sort of a qualitative picture of the kind of person I am would emerge. A whole lot of nontemporal facts would be made available—what kind of driver I am, how many children I have, what sorts of purchases I have made, how often my telephone is used, how many times I have been arrested and for what offenses, what diseases I have had, how much life insurance I have, and so on.

Second, it would also be possible to reconstruct a rough, temporal picture of how I had been living and what I had been doing with my time. Thus, there might be evidence that I visited two or three stores in a day and made purchases, that I cashed a check at the bank (and hence was there between the hours of 10 A.M. and 3 P.M.), that I ate lunch at a particular restaurant (and hence was probably there between noon and 2 P.M.), and so on. There might well be whole days for which there were no entries, and there might be many days for which the entries would give a very sketchy and incomplete picture of how I was spending my time. Still, it would be a picture that is fantastically more detailed, accurate, and complete than the one I could supply from my own memory or from my own memory as it is augmented by that of my friends. I would have to spend a substantial amount of time each day writing in my diary in order to begin to produce as complete and accurate a picture as the one that might be rendered by the storage and retrieval system I am envisaging—and even then I am doubtful that my own diary would be as accurate or as complete, unless I made it one of my major life tasks to keep accurate and detailed records for myself of everything that I did.

If we ask whether there would be anything troublesome about living in such a society, the first thing to recognize is that there are several different things that might be objectionable. First, such a scheme might make communications that were about intimate kinds of things less confidential. In order to receive welfare, life insurance, or psychiatric counseling, I may be required to supply information of a personal or confidential nature. If so, I reasonably expect that the material revealed will be known only to the recipient.

If, however, the information is stored in a data bank, it now becomes possible for the information to be disclosed to persons other than those to whom disclosure was intended. Even if access to the data is controlled so as to avoid the risks of improper access, storage of the confidential information in the data bank necessarily makes the information less confidential than it was before it was so stored.

Second, information that does not concern intimate things can get distorted in one way or another through storage. The clearest contemporary case of this kind of information is a person's arrest record. The fact that someone has been arrested is not, I think, the kind of fact that the arrestee can insist ought to be kept secret. But he or she can legitimately make two other demands about it. The person can insist that incorrect inferences not be drawn from the information; that is, the person can legitimately point out that many individuals who are arrested are never prosecuted for the alleged offense nor are they guilty of the offense for which they were arrested. He or she can, therefore, quite appropriately complain about any practice that routinely and without more being known denies employment to persons with arrest records. And if such a practice exists, then a person can legitimately complain about the increased dissemination and availability of arrest records just because of the systematic misuse of that information. The storage of arrest records in a data bank becomes objectionable not because the arrest record is intrinsically private but because the information is so regularly misused that the unavailability of the information is less of an evil than its general availability.

This does not end the matter, although this is where the discussion of data banks usually ends. Let us suppose that the information is appropriately derogatory in respect to the individual. Suppose that it is a record of arrest and conviction in circumstances that in no way suggest that the conviction was unfairly or improperly obtained. Does the individual have any sort of a claim that information of this sort not be put into the data bank? One might, of course, complain on the grounds that there was a practice of putting too much weight on the conviction. Here the argument would be similar to that just discussed. In addition, though, it might also be maintained that there are important gains that come from living in a

society in which certain kinds of derogatory information about an individual are permitted to disappear from view after a certain amount of time. What is involved is the creation of a kind of social environment that holds out to the members of the society the possibility of self-renewal and change that is often dependent upon the individual's belief that a fresh start is in fact an option that is still open. A society that is concerned to encourage persons to believe in the possibility of genuine individual redemption and that is concerned not to make the process of redemption unduly onerous or interminable might, therefore, actively discourage the development of institutions that impose permanent marks of disapprobation upon any of the individuals in the society. One of the things that I think was wrong with Hester Prynne's "A" was that it was an unremovable stain impressed upon her body. The storage of information about convictions in a data bank is simply a more contemporary method of affixing the indelible brand.

In addition, and related to some of the points I made earlier, there are independent worries about the storage of vast quantities of ostensibly innocuous material about the individual in the data bank. Suppose nothing intrinsically private is stored in the data bank; suppose nothing potentially improperly derogatory is included; and suppose what does get stored is an enormous quantity of information about the individual—information about the person and the public, largely commercial transactions that were entered into. There are many useful, efficient uses to which such a data bank might be put. Can there be any serious objections?

One thing is apparent: With such a data bank it would be possible to reconstruct a person's movements and activities more accurately and completely than the individual—or any group of individuals—could do simply from memory. As I have indicated, there would still be gaps in the picture. No one would be able to tell in detail what the individual had been doing a lot of the time, but the sketch would be a surprisingly rich and comprehensive one that is exceeded in detail in our society only by the keeping of a careful, thorough personal diary or by having someone under the surveillance of a corps of private detectives.

What distinguishes this scheme is the fact that it would make it possible to render an account of the movements and habits of every

member of the society and in so doing it might transform the society in several notable respects.

In part what is involved is the fact that every transaction in which one engages would now take on additional significance. In such a society one would be both buying a tank of gas and leaving a part of a systematic record of where one was on that particular date. One would not just be applying for life insurance; one would also be recording in a permanent way one's health on that date and a variety of other facts about oneself. No matter how innocent one's intentions and actions at any given moment, I think that an inevitable consequence of such a practice of data collection would be that persons would think more carefully before they did things that would become part of the record. Life would to this degree become less spontaneous and more measured.

More significant are the consequences of such a practice upon attitudes toward privacy in the society. If it became routine to record and have readily accessible vast quantities of information about every individual, we might come to hold the belief that the detailed inspection of any individual's behavior is a perfectly appropriate societal undertaking. We might tend to take less seriously than we do at present the idea that there are occasions upon which an individual can plausibly claim to be left alone and unobserved. We might in addition become so used to being objects of public scrutiny that we would cease to deem privacy important in any of our social relationships. As observers we might become insensitive to the legitimate claims of an individual to a sphere of life in which the individual is at present autonomous and around which he or she can erect whatever shield is wished. As the subjects of continual observation we might become forgetful of the degree to which many of the most important relationships within which we now enter depend for their existence upon the possibility of privacy.

On the other hand, if we do continue to have a high regard for privacy, both because of what it permits us to be as individuals and because of the kinds of relationships and activities it makes possible and promotes, the maintenance of a scheme of systematic data collection would necessarily get in the way. This is so for the same reason discussed earlier. Much of the value and significance of being able to do intimate things in private is impaired whenever there is a



serious lack of confidence about the privacy of the situation. No one could rationally believe that the establishment of data banks—no matter how pure the motives of those who maintain and have access to them—is calculated to enhance the confidentiality of much that is now known about each one of us. And even if only apparently innocuous material is to be stored, we could never be sure that it all was as innocuous as it seemed at the time. It is very likely, therefore, that we would go through life alert to these new, indelible consequences of everyday interactions and transactions. Just as our lives would be different from what they are now if we believed that every telephone conversation was being overheard, so our lives would be similarly affected if we believed that every transaction and application was being stored. In both cases we would go through life encumbered by a wariness and deliberateness that would make it less easy to live what we take to be the life of a free person.

#### IV

The foregoing constitute, I believe, a connected set of arguments for the distinctive value of privacy. While I find them persuasive, I also believe that some of them are persuasive only within the context of certain fundamental assumptions and presuppositions. And these assumptions and these presuppositions seem to be a good deal more problematic than is often supposed. What remains to be done, therefore, is to try to make them explicit so that they can then be subjected to analysis and assessment. One way to do this is to ask whether there is an alternative perspective through which a number of these issues might be considered. I believe that there is. I call it the perspective of the counterculture because it captures at least some of the significant ingredients of that point of view or way of life. In calling this alternative view the perspective of the counterculture, I do not mean to be explicating a view that was in fact held by any person or group. However, this view does provide a rationale for a number of the practices and ideals of one strain of the counterculture movement in the United States in the 1960s.

I have argued for the importance of reposing control over the disclosure or observation of intimate facts with the actor. One argument for doing so was that intimate facts about oneself—one's

fears, fantasies, jealousies, and desires—are often embarrassing if disclosed to others than those to whom we choose to disclose them. Similarly there are acts of various sorts that cause us pain or are rendered unenjoyable unless they are done alone or in the company only of those we choose to have with us.

This is a significant feature of our culture—or at least of the culture in which I grew up. What I am less sure about is the question of whether it is necessarily a desirable feature of a culture. Indeed disagreement about just this issue seems to me to be one of the major sources of tension between the counterculture and the dominant older culture of my country. The disagreement concerns both a general theory of interpersonal relationships and a view about the significance of intimate thoughts and actions. The alternative view goes something like this.

We have made ourselves vulnerable—or at least far more vulnerable than we need be—by accepting the notion that there are thoughts and actions concerning which we ought to feel ashamed or embarrassed. When we realize that everyone has fantasies, desires, worries about all sorts of supposedly terrible, wicked, and shameful things, we ought to see that they really are not things to be ashamed of at all. We regard ourselves as vulnerable because in part we think we are different, if not unique. We have sexual feelings toward our parents, and no one else has ever had such wicked feelings. But if everyone does, then the fact that others know of this fantasy is less threatening. One is less vulnerable to their disapproval and contempt.

We have made ourselves excessively vulnerable, so this alternative point of view continues, because we have accepted the idea that many things are shameful unless done in private. And there is no reason to accept that convention. Of course we are embarrassed if others watch us having sexual intercourse—just as we are embarrassed if others see us unclothed. But that is because the culture has taught us to have these attitudes and not because they are intrinsically fitting. Indeed our culture would be healthier and happier if we diminished substantially the kinds of actions that we now feel comfortable doing only in private, or the kind of thoughts we now feel comfortable disclosing only to those with whom we have special relationships. This is so for at least three reasons. In the

first place, there is simply no good reason why privacy is essential to these things. Sexual intercourse could be just as pleasurable in public (if we grew up unashamed) as is eating a good dinner in a good restaurant. Sexual intercourse is better in private only because society has told us so.

In the second place, it is clear that a change in our attitudes will make us more secure and at ease in the world. If we would be as indifferent to whether we are being watched when we have intercourse as we are to when we eat a meal, then we cannot be injured by the fact that we know others are watching us, and we cannot be injured nearly as much by even unknown observations.

In the third place, interpersonal relationships will in fact be better if there is less of a concern for privacy. After all, forthrightness, honesty, and candor are, for the most part, virtues, while hypocrisy and deceit are not. Yet this emphasis upon the maintenance of a private side to life tends to encourage hypocritical and deceitful ways of behavior. Individuals see themselves as leading dual lives—public ones and private ones. They present one view of themselves to the public—to casual friends, acquaintances, and strangers—and a different view of themselves to themselves and a few intimate associates. This way of living is hypocritical because it is, in essence, a life devoted to camouflaging the real, private self from public scrutiny. It is a dualistic, unintegrated life that renders the individuals who live it needlessly vulnerable, shame ridden, and lacking in a clear sense of self. It is to be contrasted with the more open, less guarded life of the person who has so little to fear from disclosures of self because he or she has nothing that requires hiding.

I think that this is an alternative view that deserves to be taken seriously. Any attempt to do so, moreover, should begin by considering more precisely the respects in which it departs from the more conventional view of the role of privacy maintained in the body of this essay, and the respects in which it does not. I have in mind three issues in particular that must be examined in detail before an intelligent decision can be made. The first is the question of the value that the counterculture ideal attaches to those characteristics of spontaneity and individuality that play such an important role in the more traditional view as I have described it. On at least one interpretation both views prize spontaneity and individuality equally

highly, with the counterculture seeing openness in interpersonal relationships as a better way of achieving just those ends. On another interpretation, however, autonomy, spontaneity, and individuality are replaced as values by the satisfactions that attend the recognition of the likeness of all human experience and the sameness that characterizes all interpersonal relationships. Which way of living gives one more options concerning the kind of life that one will fashion for oneself is one of the central issues to be settled.

Still another issue that would have to be explored is the question of what would be gained and what would be lost in respect to the character of interpersonal relationships. One of the main arguments for the conventional view put forward earlier is that the sharing of one's intimate thoughts and behavior is one of the primary media through which close, meaningful interpersonal relationships are created, nourished, and confirmed. One thing that goes to define a relationship of close friendship is that the friends are willing to share truths about themselves with each other that they are unprepared to reveal to the world at large. One thing that helps to define and sustain a sexual love relationship is the willingness of the parties to share sexual intimacies with each other that they are unprepared to share with the world at large. If this makes sense, either as a conceptual or as an empirical truth, then perhaps acceptance of the counterculture ideal would mean that these kinds of relationships were either no longer possible or less likely. Or perhaps the conventional view is equally unsatisfactory here, too. Perhaps friendship and love both can and ought to depend upon some less proprietary, commercial conception of the exchange of commodities. Perhaps this view of intimate interpersonal relationships is as badly in need of alteration as is the attendant conception of the self.

Finally, we would want to examine more closely some other features of the counterculture ideal. Even if we no longer thought it important to mark off and distinguish our close friends from strangers (or even if we could still do that, but in some other way), might not the counterculture ideal of openness and honesty in all interpersonal relationships make ordinary social interaction vastly more complex and time-consuming than it now is—so much so, in fact, that these interactions, rather than the other tasks of living, would

become the focus of our waking hours?

These are among the central issues that require continued exploration. They are certainly among the issues that the fully developed theory of privacy, its value and its place within the law, must confront and not settle by way of assumption and presupposition.