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Why Privacy is Important

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Source: *Philosophy & Public Affairs*, Summer, 1975, Vol. 4, No. 4 (Summer, 1975), pp. 323-333

Published by: Wiley

Stable URL: <http://www.jstor.com/stable/2265077>

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According to Thomas Scanlon, the first element of a theory of privacy should be “a characterization of the special interest we have in being able to be free from certain kinds of intrusions.” Since I agree that is the right place to begin, I shall begin there. Then I shall comment briefly on Judith Jarvis Thomson’s proposals.

I

Why, exactly, is privacy important to us? There is no one simple answer to this question, since people have a number of interests that may be harmed by invasions of their privacy.

(a) Privacy is sometimes necessary to protect people’s interests in competitive situations. For example, it obviously would be a disadvantage to Bobby Fischer if he could not analyze the adjourned position in a chess game in private, without his opponent learning his results.

(b) In other cases someone may want to keep some aspect of his life or behavior private simply because it would be embarrassing for other people to know about it. There is a splendid example of this in John Barth’s novel *End of the Road*. The narrator of the story, Jake Horner, is with Joe Morgan’s wife, Rennie, and they are approaching the Morgan house where Joe is at home alone:

“Want to eavesdrop?” I whispered impulsively to Rennie. “Come on, it’s great! See the animals in their natural habitat.”

Rennie looked shocked. “What for?”

"You mean you never spy on people when they're alone? It's wonderful! Come on, be a sneak! It's the most unfair thing you can do to a person."

"You disgust me, Jake!" Rennie hissed. "He's just reading. You don't know Joe at all, do you?"

"What does that mean?"

"Real people aren't any different when they're alone. No masks. What you see of them is authentic."

. . . . Quite reluctantly, she came over to the window and peeped in beside me.

It is indeed the grossest of injustices to observe a person who believes himself to be alone. Joe Morgan, back from his Boy Scout meeting, had evidently intended to do some reading, for there were books lying open on the writing table and on the floor beside the bookcase. But Joe wasn't reading. He was standing in the exact center of the bare room, fully dressed, smartly executing military commands. About *face!* Right *dress!* *Ten-shun!* Parade *rest!* He saluted briskly, his cheeks blown out and his tongue extended, and then proceeded to cavort about the room—spinning, pirouetting, bowing, leaping, kicking. I watched entranced by his performance, for I cannot say that in my strangest moments (and a bachelor has strange ones) I have surpassed him. Rennie trembled from head to foot.¹

The scene continues even more embarrassingly.

(c) There are several reasons why medical records should be kept private, having to do with the consequences to individuals of facts about them becoming public knowledge. "The average patient doesn't realize the importance of the confidentiality of medical records. Passing out information on venereal disease can wreck a marriage. Revealing a pattern of alcoholism or drug abuse can result in a man's losing his job or make it impossible for him to obtain insurance protection."²

(d) When people apply for credit (or for large amounts of insurance or for jobs of certain types) they are often investigated, and the

1. John Barth, *End of the Road* (New York, 1960), pp. 57–58.

2. Dr. Malcolm Todd, President of the A.M.A., quoted in the *Miami Herald*, 26 October 1973, p. 18-A.

result is a fat file of information about them. Now there is something to be said in favor of such investigations, for business people surely do have the right to know whether credit-applicants are financially reliable. The trouble is that all sorts of other information goes into such files, for example, information about the applicant's sex-life, his political views, and so forth. Clearly it is unfair for one's application for credit to be influenced by such irrelevant matters.

These examples illustrate the variety of interests that may be protected by guaranteeing people's privacy, and it would be easy to give further examples of the same general sort. However, I do not think that examining such cases will provide a complete understanding of the importance of privacy, for two reasons.

First, these cases all involve relatively unusual sorts of situations, in which someone has something to hide or in which information about a person might provide someone with a reason for mistreating him in some way. Thus, reflection on these cases gives us little help in understanding the value which privacy has in *normal* or *ordinary* situations. By this I mean situations in which there is nothing embarrassing or shameful or unpopular in what we are doing, and nothing ominous or threatening connected with its possible disclosure. For example, even married couples whose sex-lives are normal (whatever that is), and so who have nothing to be ashamed of, by even the most conventional standards, and certainly nothing to be black-mailed about, do not want their bedrooms bugged. We need an account of the value which privacy has for us, not only in the few special cases but in the many common and unremarkable cases as well.

Second, even those invasions of privacy that *do* result in embarrassment or in some specific harm to our other interests are objectionable on other grounds. A woman may rightly be upset if her credit-rating is adversely affected by a report about her sexual behavior because the use of such information is unfair; however, she may also object to the report simply because she feels—as most of us do—that her sex-life is *nobody else's business*. This, I think, is an extremely important point. We have a "sense of privacy" which is violated in such affairs, and this sense of privacy cannot adequately be explained merely in terms of our fear of being embarrassed or disadvantaged in one of these obvious ways. An adequate account of privacy should

help us to understand what makes something "someone's business" and why intrusions into things that are "none of your business" are, as such, offensive.

These considerations lead me to suspect that there is something important about privacy which we shall miss if we confine our attention to examples such as (a), (b), (c), and (d). In what follows I will try to bring out what this something is.

II

I want now to give an account of the value of privacy based on the idea that there is a close connection between our ability to control who has access to us and to information about us, and our ability to create and maintain different sorts of social relationships with different people. According to this account, privacy is necessary if we are to maintain the variety of social relationships with other people that we want to have, and that is why it is important to us. By a "social relationship" I do not mean anything especially unusual or technical; I mean the sort of thing which we usually have in mind when we say of two people that they are friends or that they are husband and wife or that one is the other's employer.

The first point I want to make about these relationships is that, often, there are fairly definite patterns of behavior associated with them. Our relationships with other people determine, in large part, how we act toward them and how they behave toward us. Moreover, there are *different* patterns of behavior associated with different relationships. Thus a man may be playful and affectionate with his children (although sometimes firm), businesslike with his employees, and respectful and polite with his mother-in-law. And to his close friends he may show a side of his personality that others never see—perhaps he is secretly a poet, and rather shy about it, and shows his verse only to his best friends.

It is sometimes suggested that there is something deceitful or hypocritical about such differences in behavior. It is suggested that underneath all the role-playing there is the "real" person, and that the various "masks" that we wear in dealing with some people are some sort of phony disguise that we use to conceal our "true" selves from them. I take it that this is what is behind Rennie's remark, in

the passage from Barth, that, "*Real* people aren't any different when they're alone. No masks. What you see of them is authentic." According to this way of looking at things, the fact that we observe different standards of conduct with different people is merely a sign of dishonesty. Thus the cold-hearted businessman who reads poetry to his friends is "really" a gentle poetic soul whose businesslike demeanor in front of his employees is only a false front; and the man who curses and swears when talking to his friends, but who would never use such language around his mother-in-law, is just putting on an act for her.

This, I think, is quite wrong. Of course the man who does not swear in front of his mother-in-law may be just putting on an act so that, for example, she will not disinherit him, when otherwise he would curse freely in front of her without caring what she thinks. But it may be that his conception of how he ought to behave with his mother-in-law is very different from his conception of how he may behave with his friends. Or it may not be appropriate for him to swear around *her* because "she is not that sort of person." Similarly, the businessman may be putting up a false front for his employees, perhaps because he dislikes his work and has to make a continual, disagreeable effort to maintain the role. But on the other hand he may be, quite comfortably and naturally, a businessman with a certain conception of how it is appropriate for a businessman to behave; and this conception is compatible with his also being a husband, a father, and a friend, with different conceptions of how it is appropriate to behave with his wife, his children, and his friends. There need be nothing dishonest or hypocritical in any of this, and neither side of his personality need be the "real" him, any more than any of the others.

It is not merely accidental that we vary our behavior with different people according to the different social relationships that we have with them. Rather, the different patterns of behavior are (partly) what define the different relationships; they are an important part of what makes the different relationships what they are. The relation of friendship, for example, involves bonds of affection and special obligations, such as the duty of loyalty, which friends owe to one another; but it is also an important part of what it means to have a

friend that we welcome his company, that we confide in him, that we tell him things about ourselves, and that we show him sides of our personalities which we would not tell or show to just anyone.³ Suppose I believe that someone is my close friend, and then I discover that he is worried about his job and is afraid of being fired. But, while he has discussed this situation with several other people, he has not mentioned it at all to me. And then I learn that he writes poetry, and that this is an important part of his life; but while he has shown his poems to many other people, he has not shown them to me. Moreover, I learn that he behaves with his other friends in a much more informal way than he behaves with me, that he makes a point of seeing them socially much more than he sees me, and so on. In the absence of some special explanation of his behavior, I would have to conclude that we are not as close as I had thought.

The same general point can be made about other sorts of human relationships: businessman to employee, minister to congregant, doctor to patient, husband to wife, parent to child, and so on. In each case, the sort of relationship that people have to one another involves a conception of how it is appropriate for them to behave with each other, and what is more, a conception of the kind and degree of knowledge concerning one another which it is appropriate for them to have. (I will say more about this later.) I do not mean to imply that such relationships are, or ought to be, structured in exactly the same way for everyone. Some parents are casual and easy-going with their children, while others are more formal and reserved. Some doctors want to be friends with at least some of their patients; others are businesslike with all. Moreover, the requirements of social roles may vary from community to community—for example, the role of wife may not require exactly the same sort of behavior in rural Alabama as it does in New York or New Guinea. And, the requirements of social roles may change: the women's liberation movement is making an attempt to redefine the husband-wife relationship. The examples that I have been giving are drawn, loosely speaking, from contemporary American society; but this is mainly a matter of convenience. The only point that I want to insist on is that *however* one

3. My view about friendship and its relation to privacy is similar to Charles Fried's view in his book *An Anatomy of Values* (Cambridge, Mass., 1970).

conceives one's relations with other people, there is inseparable from that conception an idea of how it is appropriate to behave with and around them, and what information about oneself it is appropriate for them to have.

The point may be underscored by observing that new types of social institutions and practices sometimes make possible new sorts of human relationships, which in turn make it appropriate to behave around people, and to say things in their presence, that would have been inappropriate before. "Group therapy" is a case in point. Many psychological patients find the prospect of group therapy unsettling, because they will have to speak openly to the group about intimate matters. They sense that there is something inappropriate about this: one simply does not reveal one's deepest feelings to strangers. Our aspirations, our problems, our frustrations and disappointments are things that we may confide to our husbands and wives, our friends, and perhaps to some others—but it is out of the question to speak of such matters to people that we do not even know. Resistance to this aspect of group therapy is overcome when the patients begin to think of each other not as strangers but as *fellow members of the group*. The definition of a kind of relation between them makes possible frank and intimate conversation which would have been totally out of place when they were merely strangers.

All of this has to do with the way that a crucial part of our lives—our relations with other people—is organized, and as such its importance to us can hardly be exaggerated. Thus we have good reason to object to anything that interferes with these relationships and makes it difficult or impossible for us to maintain them in the way that we want to. Conversely, because our ability to control who has access to us, and who knows what about us, allows us to maintain the variety of relationships with other people that we want to have, it is, I think, one of the most important reasons why we value privacy.

First, consider what happens when two close friends are joined by a casual acquaintance. The character of the group changes; and one of the changes is that conversation about intimate matters is now out of order. Then suppose these friends could *never* be alone; suppose there were always third parties (let us say casual acquaintances or strangers) intruding. Then they could do either of two things. They

could carry on as close friends do, sharing confidences, freely expressing their feelings about things, and so on. But this would mean violating their sense of how it is appropriate to behave around casual acquaintances or strangers. Or they could avoid doing or saying anything which they think inappropriate to do or say around a third party. But this would mean that they could no longer behave with one another in the way that friends do and further that, eventually, they would no longer *be* close friends.

Again, consider the differences between the way that a husband and wife behave when they are alone and the way they behave in the company of third parties. Alone, they may be affectionate, sexually intimate, have their fights and quarrels, and so on; but with others, a more "public" face is in order. If they could never be alone together, they would either have to abandon the relationship that they would otherwise have as husband and wife or else behave in front of others in ways they now deem inappropriate.⁴

These considerations suggest that we need to separate our associations, at least to some extent, if we are to maintain a system of different relationships with different people. Separation allows us to behave with certain people in the way that is appropriate to the sort of relationship we have with them, without at the same time violating our

4. I found this in a television program-guide in the *Miami Herald*, 21 October 1973, p. 17:

"I think it was one of the most awkward scenes I've ever done," said actress Brenda Benet after doing a romantic scene with her husband, Bill Bixby, in his new NBC-TV series, "The Magician."

"It was even hard to kiss him," she continued. "It's the same old mouth, but it was terrible. I was so abnormally shy; I guess because I don't think it's anybody's business. The scene would have been easier had I done it with a total stranger because that would be real acting. With Bill, it was like being on exhibition."

I should stress that, on the view that I am defending, it is *not* "abnormal shyness" or shyness of any type that is behind such feelings. Rather, it is a sense of what is appropriate with and around people with whom one has various sorts of personal relationships. Kissing *another actor* in front of the camera crew, the director, and so on, is one thing; but kissing *one's husband* in front of all these people is quite another thing. What made Ms. Benet's position confusing was that her husband *was* another actor, and the behavior that was permitted by the one relationship was discouraged by the other.

sense of how it is appropriate to behave with, and in the presence of, others with whom we have a different kind of relationship. Thus, if we are to be able to control the relationships that we have with other people, we must have control over who has access to us.

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. But what about our feeling that certain facts about us are "simply nobody else's business"? Here, too, I think the answer requires reference to our relationships with people. If someone is our doctor, then it literally is his business to keep track of our health; if someone is our employer, then it literally is his business to know what salary we are paid; our financial dealings literally are the business of the people who extend us credit; and so on. In general, a fact about ourselves is someone's business if there is a specific social relationship between us which entitles them to know. We are often free to choose whether or not to enter into such relationships, and those who want to maintain as much privacy as possible will enter them only reluctantly. What we cannot do is accept such a social role with respect to another person and then expect to retain the same degree of privacy relative to him that we had before. Thus, if we are asked how much money we have in the bank, we cannot say, "It's none of your business," to our banker, to prospective creditors, or to our spouses, because their relationships with us do entitle them to know. But, at the risk of being boorish, we could say that to others with whom we have no such relationship.

III

Thomson suggests, "as a simplifying hypothesis, that the 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 the

right over the person consists of, and also with the cluster of rights which owning property consists of." This hypothesis is "simplifying" because it eliminates the right to privacy as anything distinctive.

"The right over the person" consists of such "un-grand" rights as the right not to have various parts of one's body looked at, the right not to have one's elbow painted green, and so on. Thomson understands these rights as analogous to property rights. The idea is that our bodies are *ours* and so we have the same rights with respect to them that we have with respect to our other possessions.

But now consider the right not to have various parts of one's body looked at. Insofar as this is a matter of *privacy*, it is not simply analogous to property rights; for the kind of interest we have in controlling who looks at what parts of our bodies is very different from the interest we have in our cars or fountain pens. For most of us, physical intimacy is a part of very special sorts of personal relationships. Exposing one's knee or one's face to someone may not count for us as physical intimacy, but exposing a breast, and allowing it to be seen and touched, does. Of course the details are to some extent a matter of social convention; that is why it is easy for us to imagine, say, a Victorian woman for whom an exposed knee would be a sign of intimacy. She would be right to be distressed at learning that she had absent-mindedly left a knee uncovered and that someone was looking at it—if the observer was not her spouse or her lover. By dissociating the body from ideas of physical intimacy, and the complex of personal relationships of which such intimacies are a part, we can make this "right over the body" seem to be nothing more than an un-grand kind of property right; but that dissociation separates this right from the matters that make *privacy* important.

Thomson asks whether it violates your right to privacy for acquaintances to indulge in "very personal gossip" about you, when they got the information without violating your rights, and they are not violating any confidences in telling what they tell. (See part VIII, case (e), in Thomson's paper.) She thinks they do not violate your right to privacy, but that if they do "there is trouble for the simplifying hypothesis."

This is, as she says, a debatable case, but if my account of why privacy is important is correct, we have at least some reason to think

that your right to privacy can be violated in such a case. Let us fill in some details. Suppose you are recently divorced, and the reason your marriage failed is that you became impotent shortly after the wedding. You have shared your troubles with your closest friend, but this is not the sort of thing you want everyone to know. Not only would it be humiliating for everyone to know, it is none of their business. It is the sort of intimate fact about you that is not appropriate for strangers or casual acquaintances to know. But now the gossips have obtained the information (perhaps one of them innocently overheard your discussion with your friend; it was not his fault, so he did not violate your privacy in the hearing, but then you did not know he was within earshot) and now they are spreading it around to everyone who knows you and to some who do not. Are they violating your right to privacy? I think they are. If so, it is not surprising, for the interest involved in this case is just the sort of interest which the right to privacy typically protects. Since the right that is violated in this case is not also a property right, or a right over the person, the simplifying hypothesis fails. But this should not be surprising, either, for if the right to privacy has a different *point* than these other rights, we should not expect it always to overlap with them. And even if it did always overlap, we could still regard the right to privacy as a distinctive sort of right in virtue of the special kind of interest it protects.