

## Chapter 2

# Philosophical Foundations of Privacy

### Introduction

Compared with other topics, such as knowledge, democracy, or justice, privacy has received relatively less attention from philosophers. This is quite surprising, since privacy is an important concept and does play an important role in our lives. Compared to other topics in social philosophy such as equality, justice, or freedom, privacy seems to be a rather minor issue. Most academic literature on privacy come from law or communication studies, or the emerging field of Internet studies. Nonetheless, there are a number of very interesting philosophical works on the topic, and the purpose of this chapter is to review some of them.

In this chapter, then, I review what these philosophers have said about privacy, outlining, as it were, a conceptual map of privacy in order to find out what the terrains are and what connections there are to other topics. I start with the contentious problem of whether privacy, as a philosophical concept, is reducible to other, perhaps more fundamental ones. In an important anthology of philosophical analyses on the topic, Ferdinand Schoeman divides the debate into two main camps.<sup>1</sup> What he terms “the coherence thesis” states that there are underlying threads that actually connect talks and discourses about privacy together, and these threads are objective in the sense that they point to some really existing underlying issue. On the other hand, Schoemann calls the contrary position, the one denying that there are such underlying, objective threads, “the distinctiveness thesis.” The first position holds that talks about privacy, since they are coherent with the other issues, are reducible to more fundamental concepts, while the distinctiveness position holds that discussions about privacy are not so reducible.

This is not surprising, since privacy is a very complicated concept. Though many have attempted to provide a definition, no clear consensus has actually emerged as to the official definition of privacy such that it is universally agreed. Thus, it is

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<sup>1</sup>Schoemann (1984).

conceivable that when privacy is looked at through one perspective, then it appears to be reducible to other concepts, such as autonomy or integrity. On the other hand, when viewed differently, the concept appears to be irreducible. Judith Jarvis Thomson, for example, argues that there is no such thing as the right to privacy, since anything that is thought to be an instance of such a right could be explicated in terms of other concepts such as those related to the concepts of property or the person. For example, cutting someone's hair while she is asleep does not harm her, but her right is violated nonetheless, and that is the right over the person according to Thomson. In surreptitiously cutting her hair, her privacy is violated, so even though the act of cutting the hair does not cause bodily pain it is nonetheless a violation to her body. By thus violating her privacy, it is in fact her right over her own body that is violated. The basic idea, then, is that any putative instances of violation of the right to privacy turn out to be, on closer analysis, a violation of the right to person or the property.<sup>2</sup> On the other hand, Thomas Scanlon argues that there is indeed a common ground to the right of privacy, and that is the condition of "being able to be free from certain kinds of intrusions."<sup>3</sup> And it is the intrusions of our bodies, behaviors and interactions with others are some of the clear examples of intrusions that violate the norm of privacy.<sup>4</sup> Thus Scanlon would presumably argue that in cutting the hair of a person, the norm of privacy is violated in such a way that does not reduce to mere violation of the bodily integrity since the situation where one is free from intrusions such as cutting hair could be regarded as its own distinct category which is not one and the same as those of bodily harm or bodily integrity. In maintaining the privacy of one's own body, one has a certain amount of control over how one's body is perceived and is respected by others, and for Scanlon this constitutes the person's right to privacy in a way that does not reduce to the right to bodily integrity alone.

Even though privacy is closely related to other concepts, perhaps it would be beneficial if we maintained that privacy is a distinct concept and that discourses about privacy are not reducible to other topics. One benefit of doing this would be a clear idea of what one is actually doing when one discusses privacy in a variety of settings. For example, when one inserts a smart card into a machine, or when one carries an electronic passport equipped with an RFID chip, one's privacy would be threatened if the information related to the individual who carries the passport or who owns the card is used in a way that is not consented to by the individual in question. This could be reduced to some kind of bodily integrity, but in order for us to be able to focus our attention solely to the problem of information and of how such information is used, then a distinct concept of privacy seems to be in order. Furthermore, it is possible that no bodily harm is done but privacy is violated. In a case where a lover intentionally shows her body to her lover while she is taking a shower, no bodily harm seems to be done to her, yet her privacy is compromised

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<sup>2</sup>Thomson (1975).

<sup>3</sup>Scanlon (1975).

<sup>4</sup>Thomas Scanlon, "Thomson on Privacy", p. 315.

even though she is always in control of how much her lover is allowed to see her body. The fact that she willingly opens up her body to her lover does not necessarily mean her privacy is kept intact. So perhaps there is a case to be made to distinguish bodily integrity or harm to the body or the right to the body from privacy.

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In Roman times, the conception of “being private” had more to do with one’s “private” domain where one is the master of one’s own house rather than the sense we have today where the emphasis is more on one’s private thoughts. According to the Merriam Webster Dictionary, the word *privacy* in English comes from Latin *privatus* which means “not in public life” (<http://www.merriam-webster.com/dictionary/private>). Another root of the word is *privus*, meaning “single, or alone.” Hence the etymological root of the word signifies the importance of the distinction between what is private and what is public. Moreover, the term also connotes the sense of being alone or single; that is, there is a line drawn between what one is for himself or herself and the relation one has with others. Thus, the conception of the Romans and presumably other ancients was geared more toward the sense of “private” as in “private property.” Roman law and custom was such that the master could do much more in his household than it is possible today. For example, he could sell off his slaves or children, or do anything he pleased with them with relative impunity. The reason was that he was the “master” within his private domain where the reach of the law was valid only for those who were free only, namely those who did not belong to any household or who were masters in their households themselves. Thus, there was a clear line between what is private and what is public, namely what is private belongs to an individual’s property, lying within his disposal, where the public was where those individuals who had their private domains and properties interacted.<sup>5</sup>

This sense of “private” in the sense of “private property” and “private domain” still survives today with the legal recognition of the individuals’ right to property. Furthermore, it also survives in discourse about the public/private distinction when it comes to attitudes toward women and domestic workers in the household, where the law does not seem to reach them as they do to people in public arenas.<sup>6</sup> However, the advent of modernity added another very important dimension to the sense. Instead of the private being understood to mean only the concrete private domain or property, the term became also understood to mean one’s private “thoughts” and “ideas.” This does not mean that the ancients did not have their private thoughts and ideas, but that the modern world became markedly different from the ancient one in that much more emphasis was paid to these private thoughts and ideas, in other words one’s “subjectivities” which the moderns believed to be the underpinning of epistemology and hence metaphysics. As a primary and most influential example: according to Descartes, the foundation of all true knowledge

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<sup>5</sup>Tamás (2002).

<sup>6</sup>G.M. Tamás, “From Subjectivity to Privacy and Back Again.”

lies within an individual's sense of subjectivity of himself as a thinking, conscious being.

According to Tamás,<sup>7</sup> privacy was once the privilege of the propertied class, who enjoyed the "private" atmosphere of their homes. Vagabonds, refugees and slaves did not have any privacy because they did not own any property. However, as the conception became more subjectivized, the privacy of the individual came to mean increasingly that of the thoughts, desires and ideas of the individual herself. In one sense the thoughts and desires still belonged to the individual, in the same sense, generally speaking, as the land and other material properties belonged to the individual, but since the thoughts and ideas were not material and could not be quantified, the change was a significant one in that it underlined the metaphysical shift that took place as a result of modernity, namely the shift toward subjectivity in the Cartesian sense. What this has to do with our topic is that, the modern conception of privacy, being more subjectivized, points to more pronounced emphasis on information as what is being thought about and what can be collected in the mind of the subject. It is not enough just to defend privacy through a system of rights that recognize people's private, concrete properties, their thoughts, feelings, and sensibilities needed to be accounted for also.

This historical shift in the attitude toward privacy also points toward another important topic in the discussion on the general analysis of the concept. It is generally acknowledged that societies in the past did not pay as much attention to the protection of privacy as we do in contemporary times. In Thailand, for example, people lived in large households with little individual, private space; it was not uncommon at all for families to sleep together in one big bedroom and for children to be able sometimes to witness their parent's love making if the latter were not careful. There was also a closeness and a sense of trust among the family members and those who lived within close proximities toward one another. People shared their thoughts and feelings with one another seemingly more readily in this kind of social setting than in today's world.<sup>8</sup> Furthermore, since the system of government was not as sophisticated and technology-laden as it is today, there was little effort or possibility by the authorities to snoop upon people's private lives, unless it was a matter of 'spying' on people using techniques such as eavesdropping and so on. There was also a possibility of the practice of neighbors informing the authorities of their neighbor's suspicious activities. However, such activities did not, of course, achieve the same level of comprehensiveness and depth enjoyed by today's authorities who have a large variety of technological tools at their disposal to enter upon people's private lives. Hence, it seems fair to say that privacy as we know it today did not quite exist in past or in traditional societies.

However, this viewpoint is disputed in a number of research works dealing with anthropological investigations of the concept. According to Robert Murphy, privacy was universally recognized in all societies as a necessary tool whereby people

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<sup>7</sup>G.M. Tamás, "From Subjectivity to Privacy and Back Again."

<sup>8</sup>See, for example, Ramasoota (2000). See also Ramasoota (1998).

earn trust toward one another, trust which is essential in establishing communication.<sup>9</sup> It is essential in establishing a sense of the self and in social relationships. Murphy also holds that privacy is necessary in maintaining relationships even among those who are close to one another, as a means of keeping certain distance in case there might be misunderstandings or ambiguities in the relationship.<sup>10</sup> However, one might need to compare Murphy's view here with the view proposed here in the book, which is more concerned with how the information pertaining to an individual might be used by the authorities or how one could protect the integrity of one's own sense of self. It might be true that all societies exhibit the traits outlined by Murphy. That is, it might well be true that all human relationships involve some kind of distancing to a certain degree, including even the most intimate relationships. However, there is a difference between "privacy" in the sense of social distance as in Murphy, and the same in the sense of maintaining some kind of control over the information about oneself so that the authorities do not have access to it without permission. It is certainly possible for there to be the first kind of privacy (i.e., social distancing) without the second kind (say, in a fully totalitarian society), but if this is the case, then we still need an analysis and justification of privacy that does justice to the second kind, as well as the possibility to criticize that kind of society. To say that privacy has always existed as Murphy suggests could be taken to imply that there is no need to defend and justify privacy, because it is there all along.

In another paper in the same volume, Westin argues that, as an empirical matter, privacy is also universal in all societies. Practices such as covering of the genitals, having sexual intercourse in a hidden place, are considered private and shows that privacy is practiced in all cultures. That is true, but still the account leaves open the question whether the privacy considered here is the same kind of thing as the concept we are interested in this book. Practices such as having private conversations among trusted friends who do not want to share the information to outside circles may well be universal, but perhaps what concerns most people regarding privacy in today's world is that their private lives are being threatened by the new technologies and by surveillance by the authorities. In traditional societies, there can well be cases where the authorities, such as the village elders, eavesdrop on some of the members of the village or employ an informer to keep them informed of the movement of these members. This shows that in these societies, privacy as freedom from intrusion or eavesdropping by the authorities can exist especially if the members feel that they are being threatened in some way. Nonetheless, this does not seem to be the kind of privacy that is discussed by Westin. Covering one's genitals or not having sex in public is not the same as having one's information stolen by the authorities. If this is the case, then to maintain that the meaning of

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<sup>9</sup>Ferdinand Schoemann, "Privacy: Philosophical Dimensions of the Literature," in Ferdinand Schoemann, *Philosophical Dimensions of Privacy: An Anthology*, p. 9. See also Robert F. Murphy, "Social Distance and the Veil," op. cit., pp. 34–55.

<sup>10</sup>Robert F. Murphy, "Social Distance and the Veil," op. cit., pp. 34–55.

privacy also includes behaviors belonging to human's social nature, such as covering one's genitals, may mislead one from the more important point, which is how privacy in the sense of freedom from intrusion by the authorities should be protected and justified. Hence, while it may well be true that all societies do enjoy some degree of privacy in the sense of social practice, this does not mean, and should not be taken to imply, that privacy as freedom from intrusion is a thoroughly universal concept and practice. It is perfectly conceivable that a society might be able to. Even though a society does enjoy all kinds of social privacy in Westin's sense,<sup>11</sup> it is still conceivable that these social practices could continue unabated while there is no privacy in the sense of freedom from intrusion by those in power at all. If this scenario is conceivable, then we can conclude that the privacy discussed in Westin is not one and same as the privacy that is being threatened in today's globalized and technologized world.

## Definitions of Privacy

It is natural for a complicated concept such as privacy has a large variety of definitions. The discussion above, where the differences in how privacy is understood is mentioned, adumbrates how complicated the concept really is. On the one hand, scholars such as Westin and Murphy believe that the same concept applies in the case of a primitive tribe which maintains some distance in their communication among their member, as it is in the case of privacy of, say, a group of individuals who have their genetic profiles stored and manipulated electronically in a population database. However, I have tried to point out that doing so might stretch the extension of the concept too far to do any useful work.

In this section, we will review a number of definitions of privacy in the literature. The definitions we got from the discussion above refer to the conceptual connection the concept has, according to Murphy and Westin, to concepts such as social distancing, trust, and the need for maintaining a level of decency according to the norms of the community. However, if we agree that there is more to the modern conception of privacy which is effective in helping us fully understand the situation nowadays, this conception needs to be supplemented. In any case, the question is: What are we protecting when we claim that we need to be protecting our privacy against unwanted intrusions? It seems that we are protecting access to our own lives in terms of our information pertaining to our identity, or our inner sphere of life where we do not want outsiders to know them or to make them publicly available. According to Schoemann, the various proposals of definition of the term start first with the claim that privacy is a claim, an entitlement, or a right to determine what

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<sup>11</sup>See, for example, account given in Kitiyadisai (2005).

information one should allow others to have access to.<sup>12</sup> However, Schoemann is right in arguing that this definition begs the question of what is morally significant with privacy. If privacy as the right to control information intimately related to oneself needs to be protected, then there is something morally significant about it, and it should be the task of the theory of privacy to spell this out.

In fact providing definitions of privacy appears to be a thriving academic industry. In a well-known article, Fried writes: “It is my thesis that privacy is not just one possible means among others to insure some other value, but that it is necessarily related to ends and relations of the most fundamental sort: respect, love, friendship and trust. Privacy is not merely a good technique for furthering these fundamental relations; rather without privacy they are simply inconceivable.”<sup>13</sup> In roughly the same vein, Parent states: “Privacy is the condition of not having undocumented personal knowledge about one possessed by others. A person’s privacy is diminished exactly to the degree that others possess this kind of knowledge about him,”<sup>14</sup> where personal information “consists of facts which most persons in a given society choose not to reveal about themselves (except to close friends, family, ...) or of facts about which a particular individual is acutely sensitive and which he therefore does not choose to reveal about himself, even though most people don’t care if these same facts are widely known about themselves.”<sup>15</sup>

Furthermore, some claim that privacy means having control of access by others to one’s information about oneself. Schoemann again objects that this definition begs counterexamples in a situation where one has lost all control one has over one’s own private information, but still one does not seem to have privacy. A man who is naked and alone on a deserted island has lost control over who has access to the information about his body—were there someone else who is on the island, he or she will be able to see everything on the man’s body, but we would think that he still has his privacy, since he is alone on the island. Schoemann’s proposed definition, then, is “a state of limited access to a person.” According to him, “[a] person has privacy to the extent that others have limited access of information about him, limited access to the intimacies of his life, and limited access to his thoughts or his body.”<sup>16</sup>

Schoemann claims that an advantage of this definition is that one can then distinguish between having privacy and having the right to privacy. By claiming that privacy is a state of limited access to a person, one leaves open the issue of the legal entitlement to such a state, thus making it possible for there to be a distinction between the two. One can then suffer loss of privacy without having one’s right to

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<sup>12</sup>Ferdinand D. Schomann, “Privacy: Philosophical Dimensions,” in *Philosophical Dimensions of Privacy: An Anthology*, p. 2.

<sup>13</sup>Fried (1968).

<sup>14</sup>Parent (1983).

<sup>15</sup>W.A. Parent, “Privacy, Morality and the Law,” p. 270.

<sup>16</sup>Ferdinand D. Schoemann, “Privacy: Philosophical Dimensions,” in *Philosophical Dimensions of Privacy: An Anthology*, p. 3.

privacy violated, such as when one willingly gives away information. Or in a reverse case, one can also have one's right to privacy violated without having one's actual privacy infringed, such as when the authorities routinely monitor telephone conversations of the citizens, but have not actually checked on a particular person. Hence that person's privacy is not violated, even though his right is.

Schoemann's definition does leave open the question what is actually meant by the 'person' whose access is limited, and another one of how much the limit should be. He gives three accounts on the person, namely information about himself, intimacies of his life, and his thoughts and his body. But perhaps there could be a case where the person himself or his privacy is not exhausted by these three conditions, such as when information, not of himself directly, but of something relatable to him, is obtained without his permission. The information does not even have to be relatable to him directly, but if that information belongs to someone who has an intimate connection with him, then perhaps it is conceivable that *his* privacy would be infringed too. Furthermore, there is the issue of the extent to which the limit on access should be determined. This shows that privacy is a relative concept, as Helen Nissenbaum also points out.<sup>17</sup> It is possible that what counts as violation of privacy for one might not be so for another.

In a different vein, Graeme Laurie argues that privacy should be viewed as "a state of non-access from others."<sup>18</sup> What he has in mind is a definition that combines two major strands of privacy, viz. spatial and informational privacy. Spatial privacy is the state of non-access to a person's physical or psychological self, and informational privacy is the state where others do not have access to a set of information pertaining to a person.<sup>19</sup> Furthermore, Laurie elaborates this, saying "privacy should be taken to refer to a state in which an individual is apart from others, either in a bodily or psychological sense or by reference to the inaccessibility of certain intimate adjuncts to their individuality, such as personal information."<sup>20</sup>

It is in fact quite difficult how the concept of being apart from others could be a defining characteristic of being private. There is a sense in which, necessarily, an individual exists apart from all others, since we have different bodies, personalities, life histories, and so on. But that does not necessarily mean that we all have privacy as a matter of course. According to Laurie, the definition is designed to combine the two senses of spatial and informational privacy in such a way that a common conceptual thread between them is recognized. However, by stressing only the "apartness" of individuals, it seems that his conception is perhaps too vague to be able to do any effective work.

It is not surprising that a very complicated concept such as privacy did spawn a large number of definitions. As such privacy is not different from fundamental

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<sup>17</sup>See, for example, Nissenbaum (2010).

<sup>18</sup>Laurie (2002).

<sup>19</sup>For an account for the informational nature of the person, see Floridi (2006, 2014).

<sup>20</sup>Graeme Laurie, *Genetic Privacy*, p. 6.



concepts such as ‘time’ or ‘justice’ where precise definitions are very difficult to pin down. Nonetheless, everyone knows what time is (being reminded, of course, of Augustine’s dictum), and everyone instinctively knows when justice is missing in a certain scenario even though they might be hard put to come up with a specific account of it. I guess that perhaps privacy belongs to this class of concept. We all know what it is; more poignantly we instantly know when we do not have our privacy (except those who might not be aware of their privacy when it comes to their interaction with modern, sophisticated technology that mines their data, but this is a topic for later treatment in detail in the book), or when our privacy is being taken away. So instead of trying to come up with a precise definition, I would propose that we at this stage rely on our intuitive understanding of the term. Later on when we deal with accounts or theories of privacy, the issue of defining it might not be so important after all. (Here I agree with Lucas Introna, who argues in the same way.)<sup>21</sup> The assumption here is only that, in order to propose a systematic account or theory of privacy, one does not need a precise definition of the term. Only a rather vague and intuitive understanding should suffice. Nonetheless, Introna does give a number of intuitive accounts of privacy, which should provide a clearer view of what we are really talking about here in this book. According to Introna, privacy does exhibit the following properties:

- (a) Privacy is a relational concept. It comes to the fore in a community. Where people interact, the issue of privacy emerges.
- (b) Privacy is directed toward the personal domain. What is deemed personal is to some extent at least, culturally defined. In general one may state that personal or private aspects of my life are those aspects that do not, or tend not to, affect the significant interests of others.
- (c) To claim privacy is to claim the right to limit access or control access to my personal or private domain.
- (d) An effective way to control access to my personal realm is to control the distribution of textual images or verbal information about it.
- (e) To claim privacy is to claim the right to a (personal) domain of immunity against the judgments of others.
- (f) Privacy is a relative concept. It is a continuum. Total privacy may be as undesirable as total transparency. It is a matter of appropriateness for the situation at hand. It is unfortunately (or fortunately) a matter of judgment.<sup>22</sup>

The complexity and the difficulty of privacy has led some scholars to effectively renounce the task of providing a definition of the term all together. Recently, Daniel Solove has proposed a new attempt at defining privacy.<sup>23</sup> Inheriting the idea from Wittgenstein, Solove argues that any attempt to provide a unitary definition of

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<sup>21</sup>Introna (2000).

<sup>22</sup>Lucas D. Introna, “Privacy and the Computer: Why We Need Privacy in the Information Society,” p. 190.

<sup>23</sup>Solove (2008).

privacy has always been, and will always be, futile, since privacy is a very complicated concept which has been used in such a wide range of areas that it is not possible to provide a single definition for it. Nonetheless, Solove believes that one could still regard the various uses of privacy as falling under some kind of umbrella, as these various uses do resemble one another in one way or another. Wittgenstein has proposed the concept of ‘family resemblance’ to refer to the situation where instances of a certain concept vary so much that a single, clear cut definition of the term is not possible but still the concept and the term denoting it can be used in ordinary discourse since these instances resemble one another, much like members of a family resemble one another.<sup>24</sup> Thus, for Wittgenstein, it may be the case that two brothers resemble each other and one of the two may resemble their mother more than the other. The mother then resembles her father, but when the grandfather is compared with the brothers there might not so much resemblance, and so on. Hence there is a chain of resemblance, the sum of which is enough for one to gather, in ordinary discourse, that these members belong to the same clan. In the same manner, Solove argues that instances of the use of privacy, ranging from Internet privacy to wiretapping on the telephone to attempts to peep into somebody’s bathroom, are all instances of one and the same concept, even though there cannot be a single, unitary definition of the term ‘privacy.’

According to Solove,

In contrast to attempts to develop a unified conception of privacy, I contend that privacy should be conceived in a more pluralistic way. “Privacy” is an umbrella term that refers to a wide and disparate group of related things. The use of such a broad term is helpful in some contexts, but quite unhelpful in others. Consider, for example, the term “animal.” “Animal” refer to a large group of organisms—mammals, birds, reptiles, fish, and others—and within each of these groups are subgroups. For some purposes, using the term “animal” will suffice. ... As with the term “animal,” there are many times when the general term “privacy” will work well, but there are times when more specificity is required. Using the general term “privacy” can result in the conflation of different kinds of problems and can lead to understandings of the meaning of “privacy” that distract courts and policymakers from addressing the issues before them.

Nevertheless, it is no accident that various things are referred to under the rubric of “privacy.” They bear substantial similarities to each other. The analogies between different things can be useful and instructive. We should classify something as involving “privacy” when it bears resemblance to other things we classify in the same way. ... Similarity, however, is not sameness, and we must also recognize where the many related things we call “privacy” diverge.<sup>25</sup>

Solove aims at arriving at a conception of privacy from the ground up, looking at how privacy issues play themselves out in real lives and how the term is used and understood, and build from that. This is a change from the usual philosophical

<sup>24</sup>See Wittgenstein (1953), especially §§66–68.

<sup>25</sup>Daniel J. Solove, *Understanding Privacy*, pp. 45–46.

method of arriving at a concept totally a priori and apply that onto local instances. Solove discusses many instances of privacy, namely the family, the body, sexual activity, the home, and communications.<sup>26</sup> Instead of starting from an a priori concept, Solove proposes to look at what the problems actually are and view violations of privacy as interferences of integrity of certain activities and propose that these disruptions form the basis on which an understanding of privacy is developed.<sup>27</sup>

In short, then, Solove would like us to give up any attempt to provide a single definition of privacy, exhorting us to rely instead on ordinary understandings of the term as it is used in daily life. I have quite a lot of sympathy with this approach. However, in relying on the everyday conception Solove has to assume that such a conception is already clearly understood, for otherwise it is hard to see how a theory of privacy is possible. In building up a conception of privacy from the ground up, looking at how the term is used and so on, there is always the problem of how these disparate instances could be tied up with one another to an extent that a theory is possible. According to Wittgenstein, no theory is possible since the actual relations among the instances of concepts are not there. The family resemblances among concept are but *pragmatic* ground on which language and concept use are possible at all. Perhaps this is what Solove intends to do with the concept of privacy. Still it begs the question of what to do when people's understandings of privacy do diverge in the beginning, as seems really to be the case when privacy concerns and issues have pervaded the world's cultures.

## Privacy and Autonomy

Privacy and autonomy of the individual are closely related concepts. However, they do not necessarily relate to each other. This point is in contrast with what is believed by many scholars, for the standard account seems to be that privacy is a necessary condition for autonomy. Without privacy, it would be very difficult, so the argument goes, to maintain any kind of autonomy of the individual. However, in a close-knit society where everybody knows everybody in very intimate details and where everybody trusts everybody else, it seems possible that autonomy is in existence although privacy is not. However, it seems more difficult to imagine a reverse kind of society where individuals enjoy privacy but lack autonomy. For that to be the case, the individuals in question would have to be able to distance themselves from one another in certain ways so as to maintain a degree of privacy. But they might not be capable of thinking for themselves or independently by themselves. Conceptually this is possible, but it is very hard in practice to find such a society. In any case, societies where people enjoy autonomy but do not have

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<sup>26</sup>Solove, *Understanding Privacy*, pp. 50–65.

<sup>27</sup>Solove, *Understanding Privacy*, p. 9.

much of privacy are quite common. In fact, most traditional societies are of this kind.

There are many arguments supporting the idea that privacy is necessary for autonomy. In one of the strongest support for the link between privacy and individual autonomy, Michael Eldred discusses Beate Rössler's work, *The Value of Privacy*, where she defends privacy in terms of something that emerges from individual autonomy.<sup>28</sup> According to Rössler, one has a normative claim to privacy when one's autonomy depends necessarily on the realization of privacy; in her words, "the true realization of freedom, that is a life led autonomously, is only possible in conditions where privacy is protected."<sup>29</sup> Furthermore, for Introna the issue has to do with being observed. It is likely, so he argues, that one is more likely to behave according to the wish of others rather than of one's own free will when one is observed.<sup>30</sup> It seems that when one is observed, one feels being pressured by a variety of factors in such a way that one's judgments would be clouded by them. Again this would be a moot point in a thoroughly transparent society where trust absolutely prevails. However, in a transparent society there is a qualm, felt by Introna, that individuals in such a society might behave out of the mindset that values conformity over their own individuality, and presumably that signifies an erosion of autonomy. Indeed, Introna argues that transparency and accountability are concepts that require privacy as a precondition. Without privacy, it would be impossible for accountability or transparency to have any valid meaning. For Introna, "privacy creates the clearing from which autonomy, trust, and accountability can emerge."<sup>31</sup> A machine cannot be accountable because it does not have autonomy. Trust is also not possible without autonomy either, and as Introna has argued, privacy is required for autonomy because trust and privacy are necessary for each other. So these concepts are intimately interconnected, with privacy as the linchpin of them all.

It may be useful here to inquire how and in exactly what sense privacy is related to such concepts as autonomy, trust or accountability. We have already seen that privacy is related to autonomy in the sense that the latter seem to presuppose the former. Without privacy, it is difficult to see how real and functioning autonomy can be present. However, we have also seen that this is not necessarily the case. In the atmosphere where there is complete trust of everybody to everybody, privacy does not really have to be there in order for autonomy to function. The reason is that when there is complete trust, there could even be a situation where everybody knows all the details about everybody else (this is of course not possible, at least for now, but we are talking here about a hypothetical situation), an individual in that

<sup>28</sup>Capurro et al. (2013). Rössler's work is Beate Rössler, *The Value of Privacy*, R.D.V. Glasgow, transl. (Cambridge: Polity Press 2005).

<sup>29</sup>Beate Rössler, *The Value of Privacy*, p. 72, quoted in Capurro, Eldred and Nagel, *Digital Whoness*, p. 68.

<sup>30</sup>Lucas D. Introna, "Privacy and the Computer: Why We Need Privacy in the Information Society," p. 194.

<sup>31</sup>Lucas D. Introna, "Privacy and the Computer," p. 195.

situation could well maintain her autonomy when she makes decisions and judgments out of her own belief and free will. The fact that her details (inner as well as outer) are known does not seem to prevent that. If this is so, then privacy and autonomy are concepts which are very closely related to that of trust. When there is truth, there does not even have to be privacy, or enforcing of privacy rules preventing someone from ‘snooping’ on others without their knowledge or consent. So it seems that the need for privacy protection arises from lack of trust. Since lack of trust is pervasive in almost all human societies, the need for privacy protection then becomes almost universal. Furthermore, if one is not accountable for what one does, then there would be no means to sanction anyone’s behavior, including snooping and violating others’ private personal space. So if there is no accountability, it is very likely that there is no privacy either. On the other hand, in the hypothetical scenario where there is complete trust and lack of privacy as mentioned earlier, the trust seems to ensure that everyone already is aware that he or she is accountable for what she is doing.

Of course such a hypothetical scenario where there is complete trust is a highly ideal one and is unlikely to be found in reality. But that should not deter us from pointing out that privacy and concepts such as autonomy, trust, and accountability are distinct and their logical connections spelled out. This will help us understand the concept of privacy as well as these other related concepts better.

## Privacy and Contextual Integrity

The account of how privacy should be justified I offer in this book bears many resemblances with Helen Nissenbaum’s view on the contextual integrity approach on privacy, where basically speaking norms regarding privacy protection should vary according to different contexts.<sup>32</sup> As information technology has become increasingly pervasive, many are concerned about its possible encroachment on privacy; however, the way privacy is threatened and how privacy plays a role in social life in general does vary, according to her, among different contexts. How privacy is approached, understood, protected, and analyzed is different, for example, in health care than in the home, and both are different from how privacy is understood and accepted in the social media. Instead of a ‘one size fits all’ approach where the user is confronted with a dialog box asking whether she agrees to disclose her personal information in exchange for her being able to participate in a website, Nissenbaum proposes a more nuanced approach where different domains and different settings play a constitutive role in deciding whether and how much privacy protection should play a role and in what form. According to her,

The framework of contextual integrity identifies the roots of bewilderment, resistance, and sometimes resignation expressed by experts and non-experts alike. According to the

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<sup>32</sup>Nissenbaum (2009). See also Nissenbaum (2011).

framework, finely calibrated systems of social norms, or rules, govern the flow of personal information in distinct social contexts (e.g., education, health care, and politics). These norms, which I call context-relative informational norms, define and sustain essential activities and key relationships and interests, protect people and groups against harm, and balance the distribution of power. Responsive to historical, cultural, and even geographic contingencies, informational norms evolve over time in distinct patterns from society to society. Information technologies alarm us when they flout these informational norms—when, in the words of the framework, they violate contextual integrity.<sup>33</sup>

In her earlier article, Nissenbaum argues for a conception of privacy in public, where the advent of information technology has made possible the kind of surveillance that was not available before the technology was available, where the surveillance underscores the need for a conception of privacy even in a public place.<sup>34</sup> A familiar example illustrating this point is an office worker who relaxes in her office and takes off her shoes. While she is in a public space—the office where she works is shared by many others—her taking off the shoes and unwinding is part of her private moments and the norms governing privacy in this case would be violated if someone were to snoop up on her and see what she is doing. In this case, there are different contexts that clash with each other. On the one hand, there is the context of the putative private space surrounding her desk and her office, and on the other there is the public space of the office itself. In this case she is making herself at home, as if her office has become part of her home where she can unwind. In this case, then, the norm governing her home, or her private space at her office, is markedly different from that governing the public office. She may be wearing her office attire and her makeup, signifying that she is aware that she is in a public space and that people can look at her at any time. Nonetheless she also remains in a *private* space because the office is part of her domain and she is not interacting with any customer or any other member of the public. Respecting the office worker's privacy in this sense is tantamount to respecting the contextual integrity that, according to Nissenbaum, governs her privacy in this case.

In other words, for Nissenbaum privacy is justified when the norms governing how privacy should be regulated in a particular context are accepted socially as norms. Nissenbaum herself prefers to use the term “personal information flow” which she believes avoids the ambiguities and endless discussions if “privacy” is used instead.<sup>35</sup> Here, presumably, personal information flow within a particular context is justified when the flow can go on smoothly without being unduly interrupted. Thus Nissenbaum's point is to analyze when a norm is or is not violated; her main point is not as much on why a particular norm that is in use in a particular context is justified or is accepted as the governing norm. In contrast, that is exactly what I set out to do in this book. Nissenbaum searches for a “middle ground” between the lofty height of abstraction and the nitty gritty ground level disputes, and she argues that the social norms fit with this middle ground. In her

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<sup>33</sup>Helen Nissenbaum, *Privacy in Context*, p. 3.

<sup>34</sup>Nissenbaum (1997).

<sup>35</sup>Helen Nissenbaum, *Privacy in Context*, p. 4.

words, “Between the ground and the heavens, according to the picture I am imagining, is the realm of the social, and it is in this realm that contextual integrity fits. This middle realm holds a key to explaining why people react to real-world disputes in the ways they do and why they frequently express their alarm in terms of the erosion of privacy.”<sup>36</sup> However, social norms are made up by people living in particular times and places, and it is clear that these norms are not the same everywhere. Part of my attempt here thus is different from Nissenbaum’s in that I intend to go a level deeper; that is I intend to look at the metaphysical level of how normative guidelines regarding privacy in various contexts arise and how they are ultimately justified. Nissenbaum makes it clear that her view is based on the premises of contemporary liberal democracies, and these are my promises in the book as well. My contribution lies rather in explicating exactly how the premises of contemporary liberal democracies translate to the working norms regarding privacy which should work in different contexts because after all they are norms that govern *privacy* as a single concept.

## Privacy and Justice

Privacy is not only related to autonomy of individuals, but on a wider, social scale privacy also has a lot to do with justice. In fact, the concern for privacy of individuals could be regarded as a concern for justice. When someone has an unfair advantage over others, such as when one has the power to obtain information about others’ personal and private lives whereas others cannot do so in return, this would be a clear case of injustice. Furthermore, the issue becomes a standard one concerning the relation between the individuals and the state. In the case, where the state has no justifiable reason to obtain private and personal information of the citizens, this would not constitute justice, and the individuals have a fair claim against the state on this regard.

It is precisely at this point where there is a conflict between privacy and justice. It is entirely possible that effort to realize some kind of justice requires some intrusion of privacy. If this is the case, then one has to decide which value trumps over the other. On this, Arneson has the following to say:

Suppose we say that justice requires equalizing people’s opportunities for well-being. On this view, if one person is badly off now because she never had any opportunity to achieve a decent quality of life, there is a justice reason to compensate her for her misfortune, whereas if another person is equally badly off now because she squandered the rich opportunities that were available to her, there is no justice reason to compensate her and there may even be a case for transferring resources away from her so as to improve the opportunities of those whose initial options were bleak. But on this view upholding egalitarian justice requires agents of society to ferret out the information about individuals that will enable these classifications of people into different levels of responsibility for their current fate.

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<sup>36</sup>Helen Nissenbaum, *Privacy in Context*, pp. 10–11.

Moreover, agents of society must make complex and discriminating moral assessments of people's conduct of their lives. To some, theories of distributive justice with these implications amount to rationalizations for a Big Brother state.<sup>37</sup>

Simply put, the state, in order to ensure distributive justice for their citizens, might need to obtain information from the individuals so that it has the necessary ingredient in their decision making of how best to approach their policies. It might be necessary to obtain some kinds of information from the households pertaining to each individual there so that the state knows how to proceed. So in order for the state to make any concrete decisions and to implement any measures that addresses injustice of entitlements and goods, they might need to infringe on privacy. Here the key issue is the relation between the individual and the state, a very old topic in political philosophy. Privacy seems to be a very individual matter, and to protect it sometimes runs into conflict with attempts by the state to ensure distributive justice.

Arneson argues further, however, that the infringement on privacy does not have to be too harmful to the individuals since the benefits that will accrue outweigh the loss. He compares this to a medical procedure where the patient has to undergo some pain in order to be cured. Thus it is apparent that Arneson trumps justice over privacy. If there comes to a choice between the two, it seems that one should choose justice first.

However, it is not clear that privacy and justice have always to be incompatible values. The question whether distributive justice raises its own problems regarding encroachment of individual liberty aside, there does not seem to be any prevailing reason why privacy and justice have to be an either or situation. Arneson's dilemma apparently rests on the idea that, in order to enact laws and regulations that ensure certain kinds of distributive justice, certain information pertaining to the individuals is required, and this means encroachment on their privacy. However, in a situation where the individual and public interests are perfectly balanced, or where the two interests merge ideally into one (in the Hegelian sense), then there would be no conflict. In such a situation, individuals willingly give up their personal information, trusting that the authorities involved do the right things to ensure justice. It is true that there is no privacy, but there is no conflict. Private interests and those of the public are totally merged. Here the distinction between having privacy and having the *right* to privacy is relevant. Individuals in this ideal scenario do not have privacy (since they willingly give up the information), but it does not mean that they do not have the right to it.

## Privacy and the Individual: The Metaphysics of Privacy

One of the most interesting topics in philosophical discussions on privacy is the conceptual relation between privacy and the individual. If anything, privacy seems to be a quintessentially individual concept. Perhaps the most salient aspect of

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<sup>37</sup>Arneson (2000).



privacy as a topic in social philosophy is that it functions as something belonging to the individual such that the state is not justified in taking it away without compelling reasons. We have seen that from the Roman times onward, privacy specifies what belongs to the individual and seems to presuppose a clear line between the individual and what is outside of him or her. What is private is something that an individual enjoys, a space for the individual to wallow without being observed. Private domain or private property are those that the individual who is the lord of the domain or the owner of the property to enjoy and to dispose of it and she sees fit. What many are defending when they are defending privacy is a kind of boundary demarcating a space that functions, either actually or metaphorically, as the individual's own domain where outsiders are not allowed and where the individual herself is empowered to defend it if someone wants to intrude into the space without her consent.<sup>38</sup>

Many arguments purporting to justify privacy rely on the conception of human dignity for support. Privacy is needed so that the dignity of individuals can be maintained. Schoemann has the following to say:

Defenders of the importance of privacy have generally followed two related strategies:

1. Arguments designed to show that respect for privacy is a key component in the more general regard for human dignity. The appeal here is to such conditions as moral integrity, individuality, consciousness of oneself as a being with moral character and worth, and consciousness of oneself as a being with a point of view, searching for meaning in life.
2. Arguments designed to show that respect for privacy is integral to our understanding of ourselves as social beings with varying kinds of relationships, each in its way important to a meaningful life.<sup>39</sup>

The first line of arguments argue that, since individuals have their own moral worth, qua human persons, and since privacy is necessary for the expression or the viability of those worths (which include such notions as human dignity, moral integrity, moral worth, and so on), privacy is thus needed and is justified. Here the underlying metaphysical issue seems to be that these moral worths do in fact rely on the conception of the individual as substantive, objective, and self-subsisting entity. For an individual to be autonomous, she has to be able to make judgments of her own, and for that to be possible she has to possess cognitive ability in such a way that she is able to understand language and to be conscious of her self. Thus Schoemann's condition that the individual be conscious of "oneself as a being with moral character and worth" shows that the individual needs to be able to be so conscious, and this ability is a necessary precondition for the individual to be

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<sup>38</sup>See Debatin (2011) on how the U.S. discourse concerning privacy, which still dominates in much of the Western world, emerged out of Fourth Amendment protections of private spaces belonging to individual citizens.

<sup>39</sup>Ferdinand Schoemann, "Privacy: Philosophical Dimensions," p. 8.

autonomous. The moral worth and the dignity then follow from the autonomy. Hence it seems that these standard arguments for privacy ultimately rely on a notion of the individual as self-subsisting, substantive and objective entity.

What this actually means is that for an individual to be able to be autonomous and thus enjoys moral worth and dignity, the individual herself has to be self-subsisting; that is, she does not need other individuals for her very being. If it were to be the case that the individual here would be the only individual in the world, this fact would not have a bearing on the question whether she deserves moral worth or moral dignity, since her relations to other individuals appears to be irrelevant in this regard. This seems to be the presupposition of the standard arguments that purport to justify privacy through conceptions of autonomous individual, moral worth, or human dignity. These arguments seem to presuppose the metaphysical position that individuals are self-subsisting, namely they do not need to be related to other individuals, or other beings for that matter, for their status as an individual person. If the individual in question happens to be the only human person in the whole universe (supposing that there are no other cognitively advanced being, such as thinking robots or angels), then her moral worth or dignity would not suffer even a little. This is because the fact that she is now alone in the universe is not relevant to the question whether she possesses moral worth or dignity. The moral worth and dignity belong to her simply *qua* human person. Her relations to other individuals do not seem to have anything to do with this.

Thus privacy according to these lines of arguments is needed because it follows from the metaphysical assumption that individuals are self-subsisting in the sense outlined above. Hence, if privacy somehow happens to be unavailable, such as in a prison camp, then the individuals in that situation stand in a very serious threat of having their moral worth and their dignity taken away. However, if we consider the hypothetical situation described earlier, one where there is complete trust among all the individuals and one where privacy is not actually needed because everybody is completely open and trusting toward everybody else, then it seems at least that privacy does not have to be necessarily tied up with moral worth and dignity as the standard arguments seem to require. In such a situation, individuals do not have privacy, but that does not seem to imply that they do not have moral worth or dignity. However, this does not necessarily imply that privacy can be any less critical to democratic values. One might object that in a political environment where there is complete trust in the authorities as described in the text, the condition for a "conscientious objector" who needs some private space to deliberate on the possible inadequacies of the present regime, and, in case where the regime is a legal but an immoral one, could come up with a realization that the regime needs to be reformed. Without the private space, the objection goes, it would not be possible for the deliberation and the realization to take place. However, the objection is premised upon the existence of a legal but immoral regime, but if the regime is completely moral and just, then the basis for the objection does not arise in the first place. Furthermore, in a completely open and moral regime (and a very hypothetical and highly implausible one), everyone would be entitled to her own private space as there will be no restrictions on how one goes about deliberating and thinking on

one's own. In this admittedly implausible scenario, privacy could be lacking but moral worth and dignity remains intact. In fact the situation in which they are completely open toward one another and are respectful toward one another seems to imply the opposite. Each one in this situation enjoys moral worth and dignity even though there is no privacy. In the prison camp situation the link between privacy and dignity is such that when there is no privacy there is then no dignity is perhaps due to the fact that there is an obvious imbalance of power. The prison guards, ordering the prisoners to strip naked and so on, are responsible for threatening the dignity of the prisoners because they have more power and use that power in an unscrupulous manner. But in the hypothetical and admittedly implausible situation described above, there is no abuse of power. And there is no immoral or unjust law to be abused either, since if the law were unjust then private space would certainly be needed as a breeding ground for the conscientious objector to think up their resistance plans. If we could suppose that there can be such a scenario where all laws are just and everybody trusts everybody else, then privacy would seem to be unnecessary. In this case everybody is open to everybody else, no one harboring any secrets, but the dignity of each one is maintained because of the prevailing trust. That is what is lacking in the prison camp situation.

If this can be the case, then privacy does not have to be always linked up with dignity and moral worth. The question then becomes whether such a hypothetical scenario is possible at all. But we will have to wait until later chapters in the book for a satisfactory answer to this question. What I am concerned with here is merely the conceptual possibility of the scenario. If this can be the case, then to justify privacy through conceptions such as human dignity or moral worth that ultimately rely on certain metaphysical conception of the individual is suspect.

## **Privacy and Private Language**

Another point in philosophical analysis of privacy is the relation between privacy as a social norm and the "privacy" we have as individuals who have our own private thoughts such that no one else can have access to. This is a standard topic in epistemology, when the topic concerns the "privileged access" of the first person. Arguments aiming to justify privacy through reliance on certain conceptions of the individual, such as through the moral worth or dignity of individuals that we have seen, appear to presuppose that individuals do have the capability to have sole access to the domain within their thoughts, their "private" mental domain. The individuals, as subjects, have privileged access to their own mental states. They alone know their own mental states in such a way that nobody else can. An individual, for example, can feel her own pain through her own phenomenological experience as the one who does have the pain, the subject of the feeling of pain. No one else can feel exactly the same pain as she does. Even though neuroscientists might succeed in locating the part of her brain that is responsible for her feeling that is not the same as the subjective; the first-person feeling of the pain because that

phenomenological quality is qualitatively different from the data presented on the brain scanner. As a consequence, her private thoughts and feelings appear to be absolute, and this underpins the notion that the individual deserves moral worth and dignity, since they are capable of entertaining such private feelings.<sup>40</sup>

The idea that the individual has sole privileged access to their mental states has much intuitive appeal. However, it has been criticized by a number of philosophers, most notably Ludwig Wittgenstein, who presents powerful arguments showing that the idea is incoherent. When one tries to make sense of one's private sensations, for example, when I tell myself, when I have certain sensation, that I am having an itch, I have to follow certain rules that make my meaning making activities systematic. That is, in telling myself and in somehow communicating to myself that I am having an itch, I have to follow the rule of English in the sense that I have to use the concept 'itch' which has its own systematic meaning. The meaning has to be systematic because if it were not, then the word would have no meaning at all, thus incapable of communicating any thought. Now Wittgenstein's point is that this systematicity cannot be arbitrary. This is so because, if meaning making were arbitrary, then there would be no systematicity and hence to meaning as we have just seen. But this implies that I cannot change how the words are used to mean anything by the sheer act of my will. I cannot, then, use the word 'itch' any way I like, and I have to follow the rules of English language even in making sense to *myself* that I am having an itch. Since I am constrained by this rule of systematicity, the meanings of the words I am using are not dependent on me, but in fact on the whole community of the users of English. For Wittgenstein this implies that the meanings of the words, even the words that refer to my own sensation such as my itch, are not private because if it were I would be able to change them arbitrarily. The fact that I cannot do so means that meanings are not private, and a rather startling consequence of this is that the content of my thoughts are not private at all, as it is possible in principle for another to learn about that content. In this case the meaning of 'itch' is the set of publicly available criteria that distinguish that kind of sensation from others, such as pain. The criteria have to be publicly available because that is precisely what the non-arbitrary condition requires.<sup>41</sup>

Perhaps there might be an equivocation here on how the word 'private' is used. Privacy as a social norm refers to a social condition where individuals are accorded respect by others and the authorities so that their lives are not made open for

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<sup>40</sup>It is surprising that there is very little literature dealing with Wittgenstein's private language argument and information privacy. The standard work on Wittgenstein's private language argument remains Kripke (1982), where the argument is discussed in detail. A collection of articles on the topic is Jones (1971). However, after an extensive search I have failed to find a work that links up Wittgenstein's private language argument with a discussion on information privacy. Daniel Solove comes closest when he uses Wittgenstein's notion of family resemblances in his discussion of his pragmatic view of privacy in (2002).

<sup>41</sup>The *locus classicus* for Wittgenstein's argument against the coherence of a private language is his *Philosophical Investigations*, G.E.M. Anscombe, transl. (Oxford: Basic Blackwell, 1958), §244–271. For a concise and quick treatment of the complicated subject, see Candlish and Wrisley (2014).

everyone to see. On the other hand, in talking about ‘private’ language, Wittgenstein seems to be referring to some technical way of addressing language, in that ‘private’ language is the kind of language that only the subject has her own privileged access. (Such a language, it should be made clear here, does not mean a kind of language that functions like a code that the subject invents to herself which no one else understands because they do not know how to interpret it. Wittgenstein’s argument against private language is much deeper. It says in effect that a language that consists of parts that only the subject can know because those parts refer to the subject’s private sensation, or the first-person perspective of the subject herself, is untenable.) So it might appear that the two domains of use of ‘private’ or ‘privacy’ are distinct. However, when one considers that the main criterion of ‘private’ language in Wittgenstein’s argument is that it is the kind of language that *only* the subject has access to, then the relation between this apparently technical use and the normal use of the term in social philosophy becomes quite clear. What is private, intuitively speaking, is something that only the owner has access to. This is true both for the more mundane sense of one’s private plot of land or domain, or the sense of one’s private thoughts and sensations.

In a recent book, Susan Greenfield argues that privacy is a distinctly modern phenomenon which did not obtain in the ancient world.<sup>42</sup> Her argument resonates with that of many others, such as Lawrence Friedman.<sup>43</sup> Friedman in particular has the following to say:

In an important sense, privacy is a modern invention. Medieval people had no concept of privacy. They also had no actual privacy. Nobody was ever alone. No ordinary person had private space. Houses were tiny and crowded. Everyone was embedded in a face-to-face community. Privacy, as idea and reality, is the creation of a modern bourgeois society. Above all, it is a creation of the nineteenth century. In the twentieth century it became even more of a reality.<sup>44</sup>

Those who are familiar with the situation in Asia or other non-western regions should be very familiar with the picture painted here. One thing that emerges from Friedman’s account here is that if privacy is a “modern invention,” then it does not per se belong to the individual through her characteristic as a unique, autonomous, spontaneously rational being for the simple reason that these individuals were also present in ancient times when there was little or no privacy. Furthermore, Greenfield gave an account of the emergence of the modern novel, a literary genre that coincided with the rise of the middle class and the modern era. One main characteristic of the novel that distinguished it apart from the other, older genres such as the epic or dramatic poetry is that the novel relies on the first-person

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<sup>42</sup>Susan Greenfield, *id: the quest for meaning in the 21st century* (Sceptre, 2008), pp. 123–124. Recently she has published another book, *Mind Change: How Digital Technologies Are Leaving Their Mark on Our Brains* (Random House, 2015), where she presents a scathing criticism of the use of information technology as a whole.

<sup>43</sup>Friedman (2007).

<sup>44</sup>Lawrence Friedman, *Guarding Life’s Dark Secrets*, p. 258.

narrative of the characters. We are invited to peer inside the minds of the characters in the novel, and what is going on inside the minds of these characters does drive the plot of the novel forward. This was in a contrast with the older genre where outward action was the norm. According to Greenfield,

Until relatively recently, up to the mid-eighteenth century, the social position into which you were born defined your identity, and broadly determined how you would live your life: there would have been little chance for a transformational inner perspective. ... Not only would you have had much less time than nowadays for introspection, but the very notion of 'individuality' in our modern sense of being truly and complete unique may have been a lot less obvious.

Then the Industrial Revolution came along to change everything. Just as a twenty-first century revolution in technology is currently transforming not only our lifestyles but how we might actually think and feel, so it must have been almost three centuries ago. ... For the first time, Someone could be defined not just by their place and function in society, but by what happened to them in particular, and, most importantly, by the much wider repertoire of potential actions open to them.<sup>45</sup>

The main difference between the pre-modern and the modern individual is that the former was defined through his or her relations to others, whereas the latter is free to give his or her own definition of he or she should be. This is a key to the difference between the modern and the pre-modern conception of the individual and has a profound implication toward the conception of privacy. Viewed in this light, Wittgenstein's argument against private language is a critique of the modern conception of the individual which has as its basis the notion that the individual possesses the ability to link up mental episodes and their referent in a completely autonomous manner. This spontaneous autonomy then provides a basis for arguments based on human dignity. So the upshot is that if Wittgenstein is right in arguing that private language is incoherent, then all arguments for privacy based on individual dignity are incoherent.

It is, however, not quite a straightforward matter how private language in Wittgenstein's strong sense is related to the ideas of human dignity and autonomy that function as the lynchpin of the traditional conception of privacy. In order for Wittgenstein's private language argument to have an impact on the conception of privacy, a connection has to be established between it and the idea of human dignity and autonomy. In any case, one of the strongest justifications of human dignity and autonomy is that human beings are alone among all animals in being able to make meanings and understand them. In other words, humans are *rational* animals or perhaps more clearly language using animals. This has profound implications. In being able to use language, humans can construct models representing not only their immediate surroundings, but their future plans, their memories, constructions of the past, their desires for the future, and so on, even their fictional scenarios. Let us grant that this language using and understanding ability is what makes humans unique and thus is a basis for dignity and autonomy. It is a common idea that

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<sup>45</sup>Susan Greenfield, *id: the quest for meaning*, pp. 121–122.

humans possess dignity in virtue of their ability to process meaningful symbols. However, the idea that humans are to be accorded dignity and autonomy goes further. Not only must humans possess language using and understanding ability, but it seems necessary also that there be a set of objective criteria whereby one individual human being can be distinguished from another. In arguing that human beings have dignity, the standard argument seems to start from the fact that humans are unique and another important step in the argument is that they are entitled to their individual, 'private' sphere. That is, they possess a 'world' which is theirs and theirs alone. Each individual human being possesses his or her own world, consisting in subjective experiences, thoughts, desires, episodes, memories and so on, which they do not share with any other. Chief among these subjective experiences are naturally those that refer to their sensations that they alone possess, such as their private feelings such as their itches and pains and so on. Now, then, we see the connection between the private language and the idea that humans naturally possess dignity and autonomy. So long as the idea of human dignity and autonomy is derived from the putative existence of subjective, first-person viewpoint constitutive of the private sphere, then there is a logical link between the two.

One of the most startling consequences of Wittgenstein's arguments against private language is that the putative private sphere of the individual alluded to above appears then to be destroyed. If there can be no private language, no possibility of referring to one's private sensations in such a way that only the subject is able to do, then it seems that there can be no individuals. However, that is rather far from the truth. From the statement that private language is an incoherent notion, one cannot deduce that no individual is possible. Individuals are possible, since they are obviously actual. There being no private language only means that there is no possibility of referring strictly to one's private sensations. The most one can do is to use publicly available language (or systematic language that can be learned—which is the character of all possible language) to refer to it. An upshot of this is that individuals still suffer from pains and itches, and they are still able to refer to them, talking about them and telling others about how they suffer and so on. But the meaning of their talks would then be public verifiable and sharable, not something that could belong strictly to one's individual domain alone.

Arguments purporting to justify privacy through conceptions of individual moral worth or human dignity presuppose that individuals are to be accorded these worths because of their ability to think for themselves or to be autonomous cognitive agent. It seems clear that the ability to think for themselves is closely related to the individual's ability to have their private sphere of thoughts and feelings. It is presumably in virtue of their having their private, individual spheres that individuals are autonomous, thus becoming candidates for moral worth and dignity. According to Deborah Johnson, for example, privacy is crucial because it is "an essential aspect of autonomy."<sup>46</sup> But if Wittgenstein's argument is correct, then these arguments cannot rely on individuals' having privileged access to their private

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<sup>46</sup>Quoted in Moor (1997), from Johnson (1994).

spheres of thoughts and feelings as a foundation for the conclusion that privacy is justified. If privacy is to be justified as a desirable social norm, then the justification has to be of a different kind.

However, there might be an objection that autonomy can also be relational. That is, someone can be an autonomous agent, and one way of understanding Kant's system of ethics is that the moral reasoning that one entertains has a force on others also. In other words, the autonomous agent in Kant's ethics somehow needs the existence of others in order that her moral reasoning can carry force. For example, the categorical imperative says, briefly: Act in such a way that the maxim governing the act can become a universal law. Now the maxim can only become a universal law if the individual deliberating this is thinking of others, and is also deliberating on how one's action has a bearing on others. Without the others, then it looks like the categorical imperative does not have any force. However, the sense of 'autonomy' and an 'autonomous' agent in my discussion here is quite subtly different. It does not mean 'capable of standing alone' as much as 'not being subject to any higher authority.' In the sense of the objection outlined here, an individual, being capable of standing alone, might not be able to carry the force of the categorical imperative because the latter presupposes the existence of others so that the imperative can become universal. On the contrary, the sense I am rather using is the latter one of not being subject to any higher authority. It is part of not being subject to any higher authority that one must have one's own privacy, for intrusion of privacy is a clear sign that there is a higher authority capable of gathering information about oneself. Thus there is a clear line from autonomy, in the sense of not being subject to any higher authority, to privacy in this sense.<sup>47</sup>

In any case, justifying privacy will be the topic of the fourth chapter, where we build upon the material developed here and look at how to think deeply and justify privacy from the Buddhist perspective. Here we focus on the relations between privacy as a social concern and the private in Wittgenstein's private language argument. This relation is scarcely noticed in the literature, perhaps due to the fact that social philosophers do not pay much attention to the technicalities of Wittgenstein's arguments and vice versa. Nonetheless, one can see the connection between the two by noticing that one's private sphere of thought has become the foundation for the typical way of justifying privacy, as the former is the basis for one's autonomy and status as an autonomous agent. As we have seen, privacy is usually justified through the individual autonomy, and this autonomy seems nothing more or less than the individual's capability to exercise free thought. The 'free thought' here usually employs the kind of language that Wittgenstein finds to be deeply problematic, as we have seen. The reason is that such language presupposes the idea that one has a privileged access to one's own sensation in such a way that separates out one's own inner boundary from what is going on outside. This separating out then fits quite nicely with the drawing of a boundary between one's own private domain or private property and what is public as we have seen.

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<sup>47</sup>I am grateful to an anonymous referee of the manuscript who points out this important out to me.



This does not mean, however, that Wittgenstein does not agree with the idea of free, autonomous thought, or that he thinks that thought should not be free. What the argument against private language implies is that usually the free, autonomous thought presupposed by most arguments purporting to justify privacy through human dignity and autonomy is in fact constituted by a number of different factors. One such factor is that the meaning of the words is objectively fixed by either reference to objective entities or objective criteria. For example, the meaning of the word 'itch' is fixed by the such-and-such feeling that one typically has when one is bitten by a mosquito. In other words there is a one-to-one correspondence between the sensation and the concept. It is this belief in such a correspondence that reinforces the belief that language is fixed in this way and that one's own private world of sensations such as itch and the like gives one a privileged access to knowledge, thus giving the world of sensation here a special place. This then becomes the basis for the justification of one's own private sphere as opposed to the publicly verifiable one that Wittgenstein prefers. It is as if language is a transparent medium through which one arrives at the meaning directly, where thought is realized at the level of the meaning or the proposition, and not on the level of public language itself. However, this transparency, as Wittgenstein argues, is possible only if private language is possible, for private language is just the kind of language that enables the subject to get at what the language means directly and transparently since the meaning is fixed by the subject alone. But we have already seen that this kind of language is incoherent. In the third chapter, this line of argument will be developed in greater detail, where Wittgenstein's attack on private language gives way to the Buddhist theory of privacy where the only way to justify privacy is through a pragmatic approach which does not presuppose that individuals need to be a self-subsisting entity as is the case in most liberal theories.

## Conclusion

Privacy is a very multifaceted concept. We have seen that according to Daniel Solove, it cannot even be given a precise definition, since any attempts to do it would miss some important facet of the concept that is also recognizably an instance of privacy. Taking a cue from Wittgenstein, Solove argues that the concept could be understood more as a kind of 'family resemblance,' where instances of privacy are related one with another, but without an essential property linking them all together. Instead, such cases are linked through a chain of resemblances where one pair of the instances might resemble each other more than other pairs, but when an instance is paired up with a third instance, the new pair might resemble each other more than the others in their own way. This may well be the case, but still we would need to find a workable understanding of the whole concept, lest we fall into a trap where no definition or even no understanding of the whole concept can be found.

I have attempted to provide some definitions of the concept that are available in the literature. Perhaps more important than giving a precise definition is how to justify privacy. This will occupy the next chapters, but at least we have had a glimpse as to how this is to be done. No less interesting is the relations between privacy and other concepts, such as autonomy and justice. Here, one has to accept that privacy is a concept perhaps on a par with those of justice, freedom or autonomy in that they are basic to our understanding and our bearings in the world, so basic that it is extremely difficult to give a precise definition. Nonetheless, we can certainly discuss how privacy is related to these concepts. The fact that these concepts seem to be vague point to the fact that we are working at the fundamental level of philosophical, foundational concepts, and that any definitions we offer is very much a reflection of our own philosophical underpinnings.

Perhaps the most interesting topic that emerged from discussion of the philosophical ramifications of privacy is the relation between privacy and private language. The two are certainly closely related, as privacy is if anything a property that private language has. But it is surprising that there is little discussion of the relation in the literature. This may be due to the fact that privacy as commonly understood is a concept in social and political philosophy, whereas private language is more in the domain of logic, epistemology and philosophy of language. However, the two are certainly related, and I have shown that Wittgenstein's argument against the very coherence of the notion of private language demands equally strong argument to maintain or justify privacy as a social concept, which I intend to do in the chapter on the Buddhist conception of how privacy should be justified (Chap. 3). If there can be no private language, then it seems that there can be no privacy as a social convention or a social norm either. Or at least that is what I am trying to argue. We certainly have covered some ground but by doing so we realize that there is more than awaits much further investigation.

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