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**Conducted by
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Speaker: **Matthew Liao, NYU Bioethics**

Paper: **Understanding Privacy
The Personal Agential Realm Theory and Its Implications**



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Understanding Privacy: The Personal Agential Realm Theory and Its Implications

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I. Introduction

The digital revolution has profoundly changed our world, bringing unprecedented connectivity and convenience. Today, the globe feels smaller than ever before; loved ones across oceans are just a FaceTime video call away, allowing us to maintain close relationships despite physical distances. Urban navigation has been revolutionized by real-time transit updates and ride-sharing apps like Uber and Lyft, making it easier to traverse bustling cities with confidence. Wearable technology such as Apple Watches and Fitbits provides detailed health insights, empowering individuals to monitor their well-being proactively. Meanwhile, AI-powered recommendations personalize our shopping and entertainment experiences with remarkable precision, tailoring content to our unique preferences and enhancing our daily lives.

However, these advancements appear to be coming at a significant cost to our privacy. Our smartphones are constantly logging our movements, purchases, and even our most private curiosities, creating detailed profiles of our behaviors and interests. Social media makes viral fame—or embarrassment—just a click away. Workplaces are becoming digital fishbowls, where employers can monitor everything from keystrokes to facial expressions during video calls to how often you have come into your office. The anonymity that city streets once offered has been diminished by the increasing prevalence of CCTV cameras and facial recognition systems, making public spaces subject to constant surveillance.

In this all-seeing digital age, we are faced with some important questions: Are these new technologies making it harder to keep things private? If they are, how can we protect our privacy? To answer these questions, we need to understand what privacy truly means and why it is important to us. We also need to comprehend our rights and responsibilities with respect to privacy.

While privacy is a topic that has been extensively explored by scholars, philosophers, and legal experts, there is value in presenting a fresh perspective. Instead of starting with existing theories, we will start by presenting our own novel view. Any theory of privacy should address six fundamental questions:

1. What is privacy?
2. Why does privacy matter?

3. Do we have a right to privacy? If so, why?
4. What are some implications of this theory?
5. How is this theory different from other theories of privacy?
6. What are some objections to this theory?

We shall attempt to answer these questions with what we call the Personal Agential Realm (PAR) theory of privacy. PAR says that privacy is rooted in what we refer to as a “personal agential realm.” This realm represents a space where we can figure out important aspects of our lives such as who we are and what we want to become. Within this realm, we engage in personal thoughts, hold beliefs, communicate with select others, take specific actions, and possess unique identifying features. These agential activities and characteristics generate a set of personal information about us. We propose that having privacy means that one’s personal information within one’s personal agential realm is not accessed by others. When someone has accessed our personal realm, privacy has been impacted but not necessarily lost. We shall explain the value and importance of maintaining this personal agential realm for us. We shall also argue that everyone has a right to privacy, and that having such a right means that, all else being equal, we get to decide who can access our personal agential realm and under what circumstances. This right imposes obligations on others to respect these boundaries and to proactively refrain from unauthorized intrusion or surveillance. We contend that our right to privacy is violated when others have wrongfully accessed or intrude upon our personal agential realm. After explaining our theory, we will compare it to other theories of privacy to show how it is different and why it offers a more comprehensive and compelling understanding of privacy. Finally, we will consider some implications of this theory and address some potential concerns.

II. Privacy as Personal Agential Realm

Jeanie keeps a diary where she meticulously records her deepest thoughts, fears, and aspirations. This private journal is a sanctuary for her innermost feelings, a place where she can express herself. Jack, on the other hand, has been battling persistent depressive disorder for a long time. His medical records contain detailed information about his symptoms, treatments, and doctor visits—sensitive data that reveals much about his personal struggles. Lucy and her best friend frequently engage in intimate phone conversations, sharing insights about their lives, relationships, and future plans. These discussions are candid and heartfelt, fostering a deep connection between them. Kay is in the process of exploring their sexual orientation, navigating complex feelings and identities. Tim is contemplating controversial political views, beliefs that he chooses to keep to himself due to their potentially polarizing nature.

All these examples—Jeanie’s diary entries, Jack’s medical records, Lucy and her friend’s intimate conversations, Kay’s sense of identity, and Tim’s political opinions—fall within what we call the “personal agential realm.” This realm represents a space where we figure out important aspects of our lives, such as our identity, values, and future aspirations. Within this realm, we can entertain certain thoughts and beliefs, communicate with specific people, and act in particular ways.

Our thoughts, beliefs, communications, actions, and certain details about our identity and individual characteristics in the personal agential realm generate a set of information that we can call personal information. This personal information encompasses general categories such as health and medical data, financial details, identification information, family-related information, personal beliefs and opinions, details of personal relationships, individual habits and behaviors, and personal communications.

While these categories remain relatively consistent across time and cultures, their specific contents may vary. For instance, in the case of health and medical information, modern personal data might include genetic profiles. Such information would have been irrelevant in ancient times due to the lack of knowledge about genetics. Information about physical ailments or injuries, on the other hand, would have been considered personal information both in ancient times and today. Similarly, in the domain of personal communications, our current understanding includes both emails and text messages. In earlier periods, personal letters would have fallen into this category. For our earliest ancestors, written communication didn't exist, so their understanding of personal communication would have manifested differently, such as through spoken words. This distinction between general categories and culturally or temporally specific contents allows us to recognize the common types of personal information while acknowledging their diverse manifestation across different societies and historical periods.

In contrast, non-personal information can be found outside of the personal agential realm and might include categories such as one's outward physical appearance, basic demographic data such as occupation, social activities, and publicly stated opinions. For instance, someone's attendance at a public event or their participation in a community activity is generally considered non-personal information. It is helpful to mention that while these categories are generally considered non-personal, in some cases, a piece of non-personal information or the aggregation of multiple pieces of non-personal information could potentially lead to inferences about personal information. For example, analyzing patterns in someone's public activities might reveal personal beliefs or health conditions. We shall explore such cases in more detail later.

Building on our understanding of the personal agential realm, we can articulate what privacy is and what it means to have privacy. Privacy is concerned with access to personal information. A person, X, has privacy regarding a piece of personal information if others have not accessed it. Here, "access" encompasses various ways of obtaining information, including seeing, hearing, inferring, and being informed.

To illustrate, consider Joe, who has recently begun chemotherapy treatment for cancer. Joe has privacy regarding his medical condition as long as others have not noticed physical changes (such as hair loss or weight loss), been directly informed about his illness, or deduced his condition from indirect evidence (such as interpreting his web searches or observing his frequent doctor visits).

It is important to recognize that privacy is not an all-or-nothing state. Joe might maintain privacy concerning certain aspects of his personal information—such as specific details about his treatment regimen or prognosis—while lacking privacy in other areas, such as changes in his work schedule.

Additionally, we can introduce the notion of “privacy being impacted,” which comes into play when someone accesses any piece of one’s personal information. Joe’s privacy is impacted whenever someone gains access to his personal information. This could happen in a number of ways: a family member noticing his hair thinning, Joe confiding in a friend about his diagnosis, or a coworker piecing together clues based on his frequent medical appointments and changes in behavior. Several points emerge from this. First, privacy is impacted as soon as someone accesses a piece of personal information, regardless of what happens with that information afterward. When Joe tells his friend about his cancer diagnosis, his privacy is impacted even if the friend doesn’t tell anyone else about it. Second, privacy being impacted is not the same as a loss of privacy. Joe’s privacy is impacted when Joe tells his friend about his health condition, but it is not necessarily lost if the information stays between them. However, Joe’s privacy with respect to this information would be lost if the friend tells others at work without Joe’s consent. As we shall discuss further, we consider a loss of privacy to be a normative notion connected, e.g., to a violation of the right to privacy. Third, a piece of information remains personal information even if privacy has been impacted. For instance, even if everyone at work knows that Joe is receiving chemotherapy, the details of his treatment and his personal feelings about his illness remain his personal information. The fact that the information has become public does not strip it of its personal nature; it simply means that more people have accessed it.

III. The Value of Privacy

Next, let us consider why having privacy is important for us. As human beings, we all need to be able to shape and determine the course of our lives. We need to be able to figure out who we are, what we want to do, who we want to become, how we want our lives to go, and so on. In other words, we need autonomy.

However, this autonomy does not develop by itself. To do all of this ‘figuring out’, *qua human beings*, we need a protected space to work through these processes without immediate judgment.

When we say “*qua human beings*,” we are emphasizing that this need for a protected space pertains to most people across different societies and cultures. To be sure, there are exhibitionists who do not need such a protected space. But this is not true for most people. As Thomas Nagel aptly notes,

Humans are, so far as I know, the only animals that suffer from self-consciousness—in the ordinary sense, that is, inhibition and embarrassment brought on by the thought that

others are watching them. . . The awareness of how one appears from outside is a constant of human life.¹

At the same time, some people might have an exaggerated sense of being constantly judged. Our use of the phrase “qua human beings” is intended to focus on what is common to most human beings.

The personal agential realm, which we discussed earlier, provides us such a space. It gives us the freedom to entertain various thoughts, ideas, and possibilities without immediate outside interference. Within this realm, we can explore unconventional ideas, work through complex personal issues, and imagine different futures for ourselves. It serves as a safe haven where we can “try on” different identities or perspectives before expressing them to others.

In addition, the personal agential realm allows us to share our thoughts selectively with trusted individuals. We often need to “bounce ideas” off others, seek advice, or gain different perspectives on our thoughts and experiences. Crucially, we need to be able to engage in these vulnerable moments of uncertainty or exploration with others without the constant fear of judgment.

Finally, the personal agential realm allows us—within the bounds of law and morality— to act on our thoughts and ideas and test them without constant fear of criticism. This allows for a degree of trial and error, enabling us to learn from our experiences and refine our understanding of ourselves and the world.

In short, the personal agential realm acts as a buffer between our inner world of thoughts and the outside world of social expectations. It enables us to develop our own ideas, form our personal values, and set our unique goals, even if they are different from others around us. Without it, we might be too easily swayed by what others think or follow societal norms without question. This underscores the critical role that privacy, through the personal agential realm, plays in fostering genuine autonomy and personal growth.

Before moving on, it is helpful to clarify two things. First, our claim about the value of privacy should be distinguished from how particular individuals might regard their privacy in specific contexts. When we say that the value of privacy lies in the fact that it gives us a realm where we can figure things out, our claim is that this is something that is valuable to us *qua human beings*, not just as individuals. That is, as human beings, we inherently benefit from privacy for the reasons outlined above. On an individual level, people might value privacy for a variety of reasons, sometimes even unethical ones. For instance, one person might value privacy simply because they do not want others intruding into their affairs, while another person might value it because privacy enables them to perpetrate and conceal crimes. These individual motivations do not undermine the general idea that that privacy is valuable to human beings as a whole because it provides a space for contemplation and self-discovery. Consider an analogy. Some

¹ Thomas Nagel, "Concealment and Exposure," *Philosophy and Public Affairs* 27, no. 1 (1998), p. 16.

scholars believe that a value of freedom of speech lies in its ability to enable and promote democratic citizenship, fostering open discourse, accountability, and the exchange of ideas essential for a functioning democracy.² Suppose that Mike values free speech only because it allows him to verbally harass his neighbors. Mike's personal reason for valuing free speech—using it to intimidate or harm others—should not undermine the claim that in general, freedom of speech is valuable because it supports democratic processes.

Second, it is helpful to recognize that the value of a personal agential realm in allowing us to figure things out can serve as the foundation for other important aspects of human life. One such aspect is the development of intimate relationships. As we navigate our thoughts and feelings in the personal agential realm, we gain the ability to choose what we share with others and to what extent, depending on the kind of relationship we want to have with them. By selectively sharing personal thoughts and feelings, we deepen our connections with others, fostering trust and intimacy. Another value of having a private realm for self-reflection is that we can shape how other people see us by deciding what to disclose and what not to disclose. We shall discuss these additional values and interests in more detail later.

IV. The Right to Privacy

The importance of privacy as a personal agential realm where we can “figure things out” helps to explain why we have a human right to privacy. This right can be grounded in different ways, but for illustrative purposes, we can use the Fundamental Conditions Approach to human rights, which says that human beings have human rights to the fundamental conditions for pursuing a good life.³ On this approach, a good human life consists in pursuing certain basic activities. These include forming deep personal relationships with one's partner, friends, parents, children; acquiring knowledge of the workings of the world, oneself, others; experiencing active pleasures such as creative work and play; and enjoying passive pleasures such as appreciating beauty. Importantly, while you do not need to pursue all the basic activities to have a good life, it is impossible to live a good life without pursuing at least some of them. To pursue these basic activities, human beings require certain fundamental conditions, which are things that qua human beings, we need to pursue the basic activities. Candidates include fundamental goods such as food, water, and air; fundamental capacities such as the capacity to think, to be motivated by facts, to know, to choose an act freely (liberty), to appreciate the worth of something, to develop interpersonal relationships, and to have control of the direction of one's life (autonomy); and fundamental options, including the option to have social interaction, to acquire further knowledge, to evaluate and appreciate things, and to determine the direction of one's life. According to the Fundamental Conditions Approach, we have a right to all these fundamental

² John Rawls, *Political Liberalism, expanded edition* (New York: Columbia University Press, 2005).

³ S. Matthew Liao, "Human Rights as Fundamental Conditions for a Good Life," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo (Oxford: Oxford University Press, 2015).

conditions, even if we don't need to use them all to pursue a good life. This is because when you deprive someone of a fundamental condition, or if you fail to provide it, they are unable to pursue some basic activity.

We all have a human right to privacy because privacy is one of these fundamental conditions for pursuing a good life. As we have seen, we need autonomy to figure out our identity, determine our goals and aspirations, envision who we want to become, and decide how we want our lives to unfold. To achieve this, we need privacy. Privacy allows us to think about certain ideas, communicate these thoughts with trusted others, and act on these thoughts without fear of interference, judgment or censure. Without privacy, it would be very difficult for us to develop our own ideas, values, and goals. Therefore, since privacy is a fundamental condition for pursuing a good life, and human beings have human rights to these fundamental conditions, we have a human right to privacy.

Having a right to privacy means that we get to decide who accesses our personal information. We choose what to share, when to share it, and with whom. For instance, it is up to Janet to decide whether and when she wants to announce her pregnancy to her colleagues.

Additionally, this right imposes obligations on others not to access our personal information without permission. For example, Emily has an obligation not to read Nichole's emails without her consent. Respecting others' privacy rights means acknowledging and upholding these boundaries, ensuring that personal information remains confidential unless permission is granted.

Furthermore, if someone gains access to our personal information, they are obligated not to share it further without our consent. For instance, if Nancy shares intimate details with her friend, that friend is obligated to keep those details confidential unless Nancy permits otherwise.

Our right to privacy is violated when our personal information is accessed without sufficient justification. Generally, accessing someone's personal information without their consent constitutes a privacy violation. For instance, reading another's diary without permission typically qualifies as wrongful access and a violation of privacy. However, there may be circumstances where accessing personal information without explicit permission can be justified. For example, police officers with a proper warrant may search a suspect's house during a robbery investigation, even without the suspect's consent. Likewise, a doctor may need to check an unconscious patient's medical history in an emergency, even though the patient can't give consent. In such cases where access to personal information occurs without permission but with valid justification, we can say that the right to privacy is "infringed" rather than violated. This distinction helps us differentiate between justified (though not ideal) access to personal information and clearly wrongful intrusions. It acknowledges that while privacy is a fundamental human right, there may be circumstances where limited infringement is justified for other

important societal or individual needs. Whenever rights are infringed or violated, we can also say that we have lost privacy. On this view, a loss of privacy is therefore normative notion.

V. Comparing PAR with Other Theories

We shall develop PAR further by situating it within existing privacy literature. The debate on privacy is vast and multifaceted, with scholars addressing different questions and aspects of privacy at different times. This diversity has led to a somewhat fragmented understanding of privacy. To provide clarity and structure to our exploration, we will break the discussion into four areas: a) the definition of privacy; b) the content of privacy; c) the value of privacy; and d) the right of privacy.

(a) Definition of privacy

To start, in the ongoing debate concerning how privacy should be defined, two influential approaches have emerged. The first approach understands privacy in terms of access—specifically, the lack of access to something. This perspective focuses on the idea that privacy is maintained when others have not obtained or perceived certain information or aspects of an individual's life. The second approach defines privacy in terms of control, suggesting that privacy is about an individual's ability to manage and control their personal information or other matters relating to their private life.

As we have seen, PAR aligns with access theories of privacy. According to PAR, an individual has privacy regarding a piece of personal information if others have not accessed it. In this section, we shall explain how PAR is different from some other access theories, and why we have opted against control theories of privacy.

A prominent access theory of privacy is that of Ruth Gavison.⁴ Gavison begins by proclaiming that “an individual enjoys perfect privacy when he is completely inaccessible to others” and that “in perfect privacy no one has any information about X, no one pays any attention to X, and no one has physical access to X.”⁵ Recognizing that such an ideal is unattainable, Gavison focuses on the loss of privacy, which she argues occurs when: a) someone obtains information about an individual; b) someone pays attention to an individual; or c) when someone gains physical access to an individual. Regarding a), Gavison's view here follows her general belief that the any loss of information constitutes some loss of privacy. Regarding b), Gavison argues that an individual “always loses privacy when he becomes the subject of attention,” whether intentional or inadvertent.⁶ This includes being followed, stared at, or observed in any way. Regarding c), Gavison holds that individuals lose privacy when others gain physical proximity to them. Gavison offers examples such as a stranger choosing to sit on “our” bench in a park full of empty benches or the presence of a Peeping Tom.⁷ As she explains, “In each of these cases, the essence of the

⁴ Ruth Gavison, "Privacy and the Limits of Law," *The Yale Law Journal* 89, no. 3 (1980).

⁵ Gavison, "Privacy and the Limits of Law.", p. 428.

⁶ Gavison, "Privacy and the Limits of Law.", p. 432.

⁷ Gavison, "Privacy and the Limits of Law.", p. 433.

complaint is not that more information about us has been acquired, nor that more attention has been drawn to us, but that our spatial aloneness has been diminished.”⁸

While both PAR and Gavison's theory are concerned with access to information, they differ in several key aspects. First, Gavison considers all information about an individual as privacy-related. In contrast, PAR distinguishes between personal information within the personal agential realm and other, non-personal information. Under PAR, privacy specifically concerns access to personal information. Obtaining non-personal information about someone typically has no impact on their privacy under PAR. For instance, noticing that someone has long hair at Starbucks typically has no impact on their privacy.

Second, Gavison argues that an individual loses privacy whenever someone else obtains information about them. Setting aside non-personal information, Gavison's view implies that sharing personal information with a friend would result in a loss of privacy, which seems counterintuitive. In contrast, under PAR, assuming the friend does not share the personal information without your consent, this situation would be regarded as impacting privacy but not necessarily losing it.

Third, Gavison's claim that an individual “always” loses privacy when he becomes the subject of attention implies that being observed in a public space like Washington Square Park would result in a loss of privacy. According to PAR, mere observation in public spaces does not typically involve the acquisition of personal information and thus does not constitute a loss of privacy.

Fourth, while Gavison claims that close physical proximity leads to a loss of privacy, PAR separates physical proximity from privacy concerns. It allows for situations where people are physically close—such as strangers sitting next to each other on a crowded subway—without exchanging personal information or compromising privacy. The key factor in PAR is whether personal information within the personal agential realm is accessed, not merely physical closeness. Hence, while both PAR and Gavison's theory are concerned with access to information, the two views differ in a number of significant ways.

To see why we have opted against control theories of privacy, it is helpful first to distinguish between the concept of privacy itself and the concept of the right to privacy.⁹ Here we focus solely on control theories of privacy, not control theories of the right to privacy. We shall discuss different theories of the right to privacy later.

Control theories define privacy in terms of an individual's ability to manage and control certain things such as personal information. Charles Fried exemplifies this approach, arguing that “privacy is not simply an absence of information about us in the minds of others; rather it is the control we have over information about ourselves.”¹⁰ This definition emphasizes the active role

⁸ Gavison, "Privacy and the Limits of Law.", p. 433.

⁹ Björn Lundgren, "A Dilemma for Privacy as Control," *The Journal of Ethics* 24, no. 2 (2020).

¹⁰ Charles Fried, "Privacy," *The Yale Law Journal* 77, no. 3 (1968), p. 482.

individuals play in managing their personal information. Other scholars share similar views. Arthur R. Miller describes privacy as “the individual's ability to control the circulation of information relating to him,”¹¹ highlighting the importance of personal agency in determining how information flows and is shared. Richard Parker broadens the scope to include physical and sensory perception, stating that “privacy is control over when and by whom the various parts of us can be sensed by others.”¹² These control-based theories of privacy view privacy not as a passive state of being unknown or unobserved, but as an active process of managing access to oneself and one's personal information.

To defend a control-based definition of privacy, Fried presents a thought experiment involving a solitary individual stranded on a desert island, completely isolated from human contact.¹³ In this scenario, Fried suggests that the concept of privacy loses its meaning and relevance. Since there is no one else around, the individual has no need to control access to personal information. Fried concludes that a person who possesses privacy should be someone who has the power to “grant or deny access” to others.¹⁴ In other words, Fried is arguing that privacy requires the presence of other people and involves the ability to control one's interactions and information sharing with these individuals.

However, there are several responses one can offer to challenge Fried's desert island example. For one thing, the desert island example does not undermine the idea that, *qua human beings*, privacy is valuable to most people across different societies and cultures. The fact that an individual is isolated on a desert island does not change the value of privacy to human beings in general. Privacy remains an important aspect of human life, providing individuals with the space to develop their identity. This aspect of privacy remains relevant even to this individual on the desert island, whether or not they recognize it as such. Consider an analogy. There are exhibitionists who do not desire privacy and may even seek to expose personal aspects of themselves publicly. This exception does not undermine the general idea that *qua human beings*, privacy is valuable, even to these exhibitionists.

In addition, arguably, even on a desert island, the individual still has privacy in the sense that their personal information, thoughts, and actions are not accessed by others. The fact that there is no one around to access this information does not negate the state of privacy. It just represents an extreme form of it.

Furthermore, Fried seems to be conflating the definition of privacy with its value or purpose. Privacy can still exist as a state of non-access even if its practical value is diminished in isolation. The fact that privacy might not serve a purpose on a desert island does not mean it ceases to exist.

¹¹ Arthur R. Miller, *The Assault on Privacy* (Ann Arbor: University of Michigan Press, 1971), p. 25.

¹² Richard B. Parker, "A Definition of Privacy," *Rutgers Law Review* 27 (1974), p. 281.

¹³ Fried, "Privacy.", pp. 482-483.

¹⁴ Fried, "Privacy.", p. 482.

More generally, defining privacy in terms of control faces a number of challenges, which can be illustrated through some scenarios. Imagine you are in your office, composing personal emails on your computer.¹⁵ You step out for a quick bathroom break, leaving your office door open and your computer unattended briefly. During your absence, no one enters your office or looks at your computer screen. According to control theories, you have lost some degree of privacy in this situation. By leaving your office door open and your computer unattended, even for a brief period, you've relinquished some control over your personal information. Your ability to "grant or deny access" to others, as Fried might put it, has been temporarily compromised.¹⁶ However, this conclusion seems counterintuitive. If no one has actually looked at your computer screen, it seems odd to claim that you have lost any privacy. Your personal information remains just as private as it was before you left for the bathroom.

Another example further highlights the limitations of control theories. Suppose that you voluntarily post on your website that you have recently been diagnosed with cancer.¹⁷ According to a control account of privacy, since you had control over whether or not to divulge such information and chose to do so voluntarily, you have not lost any privacy. The control-based perspective suggests that as long as you manage the disclosure of your personal information, your privacy remains intact. Yet, it seems that your privacy has been impacted to some extent through your sharing such personal information online, regardless of your control over the disclosure.

PAR does not have these implications. On PAR, your privacy concerning the personal information on your computer is only impacted if someone actually accesses or observes that information. In the office scenario, since no one looked at your computer screen during your absence, your personal realm remains undisturbed, and your privacy is maintained.

In the case where you have posted personal information about yourself online, PAR implies that your privacy has been impacted, even though you did this voluntarily. PAR thus focuses on actual intrusion into one's personal realm rather than potential loss of control. This approach aligns more closely with our intuitive understanding of privacy.

(b) The content of privacy

¹⁵ See also W. A. Parent, "Privacy, Morality, and the Law," *Philosophy & Public Affairs* 12, no. 4 (1983), <http://www.jstor.org/stable/2265374>; Kevin Macnish, "Government Surveillance and Why Defining Privacy Matters in a Post-Snowden World," *Journal of Applied Philosophy* 35, no. 2 (2018), <https://doi.org/https://doi.org/10.1111/japp.12219>, <https://onlinelibrary.wiley.com/doi/abs/10.1111/japp.12219>.

¹⁶ It might be thought that what matters is not having control, but that people act in a way that respects that one should have control. However, this perspective also faces difficulties. For instance, suppose that Penny's dress accidentally slips at the Met Gala, exposing her undergarment. According to this interpretation of control, Penny's privacy should not be diminished in this case because she should still be in control of her personal information. However, this conclusion seems counterintuitive. Most people would agree that Penny's privacy has indeed been compromised in this situation, regardless of whether others believe she should have control over this information. For a more detailed discussion of this point, see Lundgren, "A Dilemma for Privacy as Control."

¹⁷ Parent, "Privacy, Morality, and the Law."

In the literature on privacy, there is also a debate regarding the content of what privacy encompasses. While many theories, including PAR, focus on the information that others can obtain about us, some scholars argue that the content of privacy should extend beyond mere information. We shall discuss two additional aspects that have been proposed for inclusion, namely, action and sensory perception.

The idea that privacy includes certain individual actions has found significant support in U.S. legal precedents. A foundational case in this regard is *Griswold v. Connecticut* (1965).¹⁸ In this case, Estelle Griswold, the Director of Connecticut's Planned Parenthood League, was arrested for providing information and medical advice about contraceptives to married couples, which was illegal under Connecticut law at the time. Justice William O. Douglas, writing the majority opinion, argued that Griswold's constitutional right to privacy entitled her to engage in such actions.

This idea of privacy encompassing individual actions was further expanded in subsequent cases. In *Eisenstadt v. Baird* (1972), which challenged a Massachusetts statute that prohibited the use of contraceptives by unmarried couples, Justice William J. Brennan, writing for the majority, stated that "The right to privacy gives an individual, married or single, the right to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."¹⁹ Similarly, in the landmark case *Roe v. Wade* (1973), Justice Harry Blackmun wrote that the right of privacy is "broad enough to encompass a woman's decision whether or not to terminate her pregnancy."²⁰ Later, the right to privacy was invoked to defend other individual actions, such as a patient's right to decline medical treatment under certain circumstances²¹ and adults' right to use marijuana in their homes.²²

Several scholars have supported this inclusion of action within the realm of privacy. Edward Bloustein, for instance, argues that "An intrusion on our privacy threatens our liberty as individuals to do as we will," comparing such intrusions to physical assaults or imprisonment.²³ Beate Roessler similarly contends that "*decisional privacy*" is crucial in securing an individual's ability "to make decisions and take action in all his social relations."²⁴

The problem with expanding privacy to include action though is that it seems to conflate privacy with liberty. Indeed, in separate opinions in *Griswold*, Justices John Harlan and Byron White suggested that the proper constitutional inquiry in this case is whether the Connecticut statute infringes the Due Process Clause of the Fourteenth Amendment because the enactment violates basic values "implicit in the concept of ordered liberty."²⁵ They implied that the issue was more

¹⁸ 381 U.S. 479 (1965)

¹⁹ 405 U.S. 438 (1972)

²⁰ 410 U.S. 113 (1973)

²¹ *In re Quinlan*, 70 N.J. 355 A. 2d 647 (1976)

²² *Ravin v. State*, 537 P. 2d. 494 (1975)

²³ Edward Bloustein, "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser," *NYU Law Review* 39 (1964), p. 962.

²⁴ Beate Roessler, *The Value of Privacy* (Cambridge: Polity, 2005), p. 16.

²⁵ 381 U.S. 479 (1965)

about liberty than privacy per se. Likewise, Richard Posner wrote that “we already have perfectly good words—liberty, autonomy, freedom—to describe the interest in being allowed to do what one wants (or chooses) without interference. We should not define privacy to mean the same thing and thereby obscure its other meanings.”²⁶ Echoing a similar sentiment, William Parent concurred that “Laws that effectively prevent citizens from pursuing various activities infringe (sometimes justifiably, sometimes not) on personal liberty.”²⁷ These critiques suggest that while the protection of personal actions is important, it may be more appropriately addressed under the concept of liberty rather than privacy.

In addition to the debate about including actions within the scope of privacy, several scholars have argued that the content of privacy should encompass sensory perception. This perspective aims to extend the concept of privacy beyond information to include the direct sensory experiences of individuals. As noted earlier, Richard Parker is an advocate for this view. He defines privacy as “control over when and by whom the various parts of us can be sensed by others.”²⁸ By “sensed,” he is referring to all five senses: sight, hearing, touch, smell, and taste. “Parts of us” in his definition includes not only our physical bodies but also our voices and bodily products. Parker's definition is notable for its emphasis on sensory experience rather than just information. Parker argues that there's a fundamental difference between being directly perceived and being described, even in great detail. Parker writes, “What is gained by those who sense a person, and not by those who read the most detailed description of him, could be called 'information,' but it would be misleading to use that word.”²⁹

To illustrate his point, Parker presents a scenario: a woman's lover, who has just left the room, looks through the window to see her naked once more. Parker argues that while the lover doesn't gain new information—since he already knows what she looks like naked—the woman has still suffered a loss of privacy. He contends that this privacy loss is not about information control, but rather about control over who can see her body at that moment. This perspective challenges the information-centric view of privacy that many theories, including PAR, adopt.

However, this interpretation can be challenged on two grounds. First, sensory perception, while potentially providing a different quality of experience, still fundamentally conveys information. The lover seeing the woman naked again is indeed receiving visual information, whether new or not. The immediacy and vividness of sensory perception do not change its informational nature.

Second, the discomfort in Parker's scenario can be explained within an information-based privacy framework. The uneasiness stems not from a non-informational aspect of privacy but from the violation of the woman's right to privacy through unauthorized access to personal information. As discussed earlier, a right to privacy implies that others have a duty not to access personal

²⁶ Richard A Posner, *The economics of justice* (Harvard University Press, 1983), pp. 274–275.

²⁷ W. A. Parent, “A New Definition of Privacy for the Law,” *Law and Philosophy* 2, no. 3 (1983), <http://www.jstor.org/stable/3504563>, p. 316.

²⁸ Parker, “A Definition of Privacy,” p. 281.

²⁹ Parker, “A Definition of Privacy,” p. 281.

information without consent. In this case, the lover is accessing visual information about the woman's naked body without her consent, which constitutes a privacy violation regardless of whether new information is gained.

Carissa Veliz presents a similar case as Parker, describing a peeping Tom who catches a glimpse of a naked victim.³⁰ She argues that “Intuitively, it seems that privacy is not only about information, but also about physical access. The sheer gaze of someone can feel like an invasion of privacy . . . even when that uncomfortableness cannot be explained through the information that the watcher gains.”³¹ However, this discomfort can also be explained through the violation of the right to privacy, rather than through the idea that privacy includes something non-informational. The peeping Tom is accessing personal information—the visual appearance of the person in a private state—without consent, which constitutes a privacy violation within an information-centric framework.

To further illustrate this point, consider another scenario: Jane steals Jack's diary and re-reads it every night. Even though Jane is not gaining new information from these repeated readings, she is still violating Jack's right to privacy as long as she keeps the diary and each time she accesses the diary without authorization. The issue isn't the novelty of the information, but the unauthorized access to personal information. This perspective supports maintaining an information-centric view of privacy while still accounting for the intuitive discomfort we feel in scenarios like those described by Parker and Veliz.

(c) The value of privacy

Earlier we defended PAR and argued that privacy is valuable because it provides us with a personal agential realm to explore ideas, discuss them with others, and experiment with these ideas without constant fear of criticism. As we have seen, this understanding of privacy offers a straightforward explanation for why privacy should be considered a fundamental right: having privacy, understood as having a personal agential realm, is a fundamental condition for pursuing a good life, and human beings have human rights to the fundamental conditions for pursuing a good life. While the PAR approach offers a plausible rationale for the value of privacy, it is helpful to consider how it related to other prominent explanations in this literature. Two such explanations are the dignity/personhood-based rationale and the intimacy-based rationale.

The dignity/personhood-based explanation for privacy says that privacy is valuable because it protects human dignity and personhood. In contemporary discussions, the root of this perspective can be traced to Samuel Warren and Louis Brandeis's seminal paper, “The Right to Privacy,” which introduced the concept of “inviolate personality” as the core principle underlying privacy protection.³² Subsequent scholars have interpreted this notion to encompass human

³⁰ Carissa Véliz, *The Ethics of Privacy and Surveillance* (Oxford University Press, 18 Jan 2024, 2024). <https://doi.org/10.1093/oso/9780198870173.001.0001>, p. 51.

³¹ Véliz, *The Ethics of Privacy and Surveillance*, p. 51.

³² Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” *Harvard Law Review* IV, no. 5 (1890).

dignity and personhood. For instance, Edward Bloustein writes, "I take the principle of 'inviolable personality' to posit the individual's independence, dignity and integrity."³³ He argues that privacy protects against conduct that is "demeaning to individuality" or "an affront to personal dignity."³⁴ Similarly, Jeffrey Reiman asserts that the right to privacy "protects the individual's interest in becoming, being, and remaining a person."³⁵

An issue with the dignity/personhood-based explanation is that it may be too broad in scope. Gavison points out that there are numerous ways to offend dignity and personhood that have no direct connection to privacy.³⁶ She notes that "Having to beg or sell one's body in order to survive are serious affronts to dignity, but do not appear to involve loss of privacy."³⁷ Gavison's critique suggests that while privacy can protect aspects of dignity and personhood, not all violations of dignity are matters of privacy.

To address these concerns and narrow the scope of the dignity/personhood explanation, some proponents have argued that privacy is fundamentally about respecting individuals as autonomous agents capable of making their own choices. For instance, Stanley Benn writes, "respect for someone as a person, as a chooser, implied respect for him as one engaged on a kind of self-creative enterprise, which could be disrupted, distorted, or frustrated even by so limited an intrusion as watching."³⁸ On this narrower reading, PAR can be seen as a more concrete articulation of the dignity/personhood-based explanation. PAR focuses on the tangible ways in which privacy enables individuals to explore ideas, discuss them, and experiment without constant fear of criticism. By safeguarding a personal space where one can think freely and develop independently, PAR provides a clearer picture of how privacy contributes to human dignity and personhood.

Intimacy-based explanations, on the other hand, assert that privacy is valuable because it is essential for forming and maintaining intimate relationships. Charles Fried, for instance, contends that privacy is necessarily linked to fundamental human ends and relationships such as respect, love, friendship, and trust. He argues that without privacy, these relationships are "simply inconceivable."³⁹ Similarly, James Rachels posits that our ability to control who has access to us and information about us is closely connected to our capacity to create and sustain different kinds of social relationships with different people.⁴⁰

³³ Bloustein, "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser."

³⁴ Bloustein, "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser.", p. 973.

³⁵ Jeffrey H. Reiman, "Privacy, Intimacy, and Personhood," *Philosophy & Public Affairs* 6, no. 1 (1976), <http://www.jstor.org/stable/2265060>, p. 44.

³⁶ Gavison, "Privacy and the Limits of Law.", p. 438

³⁷ Gavison, "Privacy and the Limits of Law.", p. 438.

³⁸ Stanley I. Benn, "Privacy, Freedom, and Respect for Persons," in *Privacy Nomos XIII*, ed. R. Pennock and J. Chapman (New York: Atherton, 1971), p. 26.

³⁹ Fried, "Privacy.", p. 477.

⁴⁰ James Rachels, "Why privacy is important," *Philosophy and Public Affairs* 4, no. 4 (1975).

Fried delves deeper into this perspective by emphasizing that love and friendship require us to voluntarily share aspects of ourselves that we have the right to withhold. According to him, intimacy involves “the sharing of information about one’s actions, beliefs, or emotions which one does not share with all, and which one has the right not to share with anyone.”⁴¹ In this view, privacy gives us “the moral capital” that we can “spend in friendship and love.”⁴² Fried further explains that privacy rights are not just one among many entitlements a loved one can surrender to demonstrate love; rather, they are fundamental to the very possibility of love and friendship. As he says, “The man who is generous with his possessions, but not with himself, can hardly be a friend.”⁴³

An implication of Fried's view is that if government officials are monitoring the communications between two loved ones, the possibility of intimacy between them is destroyed. The reason is that “where any intimate revelation may be heard by monitoring officials, it loses the quality of exclusive intimacy required of a gesture of love or friendship.” In other words, surveillance undermines the ability to bestow the gift of intimacy, making the essential dimensions of love and friendship impossible.

While there is no doubt that privacy facilitates love and intimacy, the relationship between them is more nuanced than Fried and Rachels suggest. First, it's not clear that privacy is necessary for all intimate and loving relationships. Consider the relationship between parents and their infants or toddlers. In such cases, it's not evident that parents or their young children must relinquish personal information to establish intimacy. They might share personal aspects naturally, but even if they didn't, it seems unlikely that intimacy would be absent from their relationship. The bond between parent and child often transcends the sharing of personal information, rooted instead in care, affection, and mutual reliance.

Second, Fried and Rachels focus on the sharing of personal information as a means to facilitate love and intimacy, which can seem somewhat transactional. While friends and loved ones do share personal information for various reasons, it is questionable whether they are motivated to share such information in order to maintain their friendship. Jeffrey Reiman critiques this aspect, arguing that their portrayal makes intimacy resemble a marketplace exchange. He suggests that “what constitutes intimacy is not merely the sharing of otherwise withheld information, but the context of caring which makes the sharing of personal information significant.”⁴⁴ For example, we might disclose a great deal of personal information to a therapist, but this doesn't necessarily equate to an intimate relationship. What distinguishes intimacy, Reiman argues, is the mutual care and emotional connection between individuals, not just the exchange of personal information.

⁴¹ Fried, "Privacy.", p. 484.

⁴² Fried, "Privacy.", p. 484.

⁴³ Fried, "Privacy.", p. 484.

⁴⁴ Reiman, "Privacy, Intimacy, and Personhood.", p. 33.

Third, the assertion that government surveillance of communications between loved ones can destroy the possibility of true intimacy—due to the removal of exclusivity in their shared revelations—seems debatable. Consider the scenario where Jack tells Sally that he loves her, and this message is intercepted by a government official named Bill, who is monitoring their communications. Despite Bill overhearing the exchange, the intended recipient of Jack's declaration is Sally, not Bill. The personal and intimate nature of their communication remains focused on their relationship. In other words, the intimacy between Jack and Sally is grounded in their emotional connection. Given this, even if an external party like Bill becomes aware of their exchange, it doesn't diminish their connection. The essence of intimacy lies in the significance of the shared information between the individuals involved, rather than in its exclusivity.

It might be thought that if Jack and Sally are unaware of the surveillance, then then it would not alter the significance of their communication. However, so the argument goes, once Jack and Sally become aware of the surveillance, this awareness could inhibit their willingness to share openly, potentially impacting the intimacy of their relationship. In response, it can be pointed out that this effect stems from their perception of being watched, rather than the mere fact that someone else has access to their communications. Also, intimacy can survive even in contexts where privacy is limited. Under authoritarian regimes where surveillance is prevalent, people have found ways to maintain close relationships despite external pressures or lack of privacy.

Fourth, privacy encompasses more than love and intimacy. Information about our health, finances, or personal beliefs can be private without necessarily being intimate. Privacy protects a wide array of personal information that individuals may wish to keep confidential for reasons unrelated to intimate relationships. For example, an individual may desire privacy regarding a medical condition not because it pertains to intimacy, but because they wish to avoid stigma or discrimination.

As far as we can tell, the PAR can accommodate the insights of intimacy-based approaches while also explaining privacy's value in non-intimate contexts. PAR says that privacy is valuable because it provides us with a personal space to explore and experiment with ideas without constant fear of criticism. This personal realm is crucial in intimate relationships because we can decide who to invite into this space and with whom to share our thoughts and feelings. Often, those we choose to include are our friends and loved ones.

However, PAR is not committed to the notion that we must share personal information with our friends and loved ones in order to maintain intimate relationships. It acknowledges that intimacy can involve shared experiences and mutual understanding without necessitating the disclosure of all personal information. PAR also explains why privacy matters in professional, civic, and other non-intimate spheres of life. Hence, while intimacy-based explanations highlight important aspects of the relationship between privacy and intimate relationships, they do not seem to fully capture the complexity of privacy's role in human life. Privacy is not solely about facilitating intimacy through the sharing of personal information; it also involves the autonomy to withhold

information, protect loved ones, and develop oneself independently. PAR explains why privacy is valuable both within and beyond intimate relationships.

(d) The right to privacy

According to PAR, the right to privacy means that we can decide who accesses our personal information and others have a corresponding duty not to access this information without explicit permission. If someone does gain access to our personal information, whether accidentally or with granted permission, they are under an obligation not to share it further without our approval. Our right to privacy is violated when our personal information is accessed or disseminated without sufficient justification.

This understanding of privacy under PAR can be contrasted with the classic view of the right to privacy as “the right to be let alone.”⁴⁵ This concept was famously articulated by Warren and Brandeis, where they argued that the right to privacy is essentially a right to solitude and protection from unwarranted public scrutiny.⁴⁶ They observed that technological advancements of their time, such as instant photography and sensational journalism, were increasingly encroaching on individuals' private lives, causing emotional distress that surpassed mere physical harm. To safeguard individuals from these intrusion developments, Warren and Brandeis proposed that privacy should be understood as the right to be let alone. They stated: “The protection afforded to thoughts, sentiments, and emotions, expressed through the medium of writing or of the arts, so far as it consists in preventing publication, is merely an instance of the enforcement of the more general right of the individual to be let alone.”⁴⁷ They emphasized that this right was rooted in the broader principle of protecting one's “inviolate personality,” which, as we have seen earlier, has been interpreted to mean the preservation of personal dignity and personhood.

Justice Brandeis further elaborated on the “right to be let alone” in his famous dissent in the 1928 Supreme Court case *Olmstead v. United States* (1928).⁴⁸ The Court's majority had ruled that wiretapping did not violate the Fourth Amendment because it did not involve a physical trespass into a person's home. Brandeis disagreed, arguing that the protections guaranteed by the Fourth and Fifth Amendments were far more expansive than the majority acknowledged. He asserted that the framers of the Constitution intended to provide citizens with “the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.”⁴⁹ This broader interpretation of privacy as a fundamental right to be free from government intrusion significantly influenced later legal thinking. Notably, it impacted the Supreme Court's decision in

⁴⁵ Warren and Brandeis, “The Right to Privacy.”, p. 194.

⁴⁶ Warren and Brandeis, “The Right to Privacy.”

⁴⁷ Warren and Brandeis, “The Right to Privacy.”, p. 194.

⁴⁸ 277 U.S. 438 (1928)

⁴⁹ 277 U.S. 438 (1928)

Katz v. United States (1967), where the Court embraced a more expansive understanding of privacy protections, aligning with Brandeis's earlier dissent.⁵⁰

However, despite its historical significance and despite the fact that some scholars have understood the right to privacy as “the right to be let alone,”⁵¹ this interpretation has certain limitations. One issue is that the right to privacy is not necessarily equivalent to the right to be left alone. If we were to consider them identical, then situations such as someone shouting at you while you are delivering a public lecture would constitute a violation of your right to privacy. While the person is undeniably interfering with your activity—thereby infringing upon your right to be let alone—it does not seem accurate to categorize this disruption as a violation of your right to privacy. If so, at best, the right to privacy is an instance of a right to be let alone and we would still need to delve deeper to understand what the right to privacy is.

In addition, framing the right to privacy as the right to be let alone implies a negative liberty right, which emphasizes freedom from interference by others, especially governmental entities. This framing does not fully address situations where privacy involves more than mere non-interference. For example, suppose someone spies on you while you are using the bathroom without interfering with your actions in any way. They do not appear to be violating your negative liberty rights because they are not impeding your ability to act freely; arguably, they are leaving you alone in terms of non-interference. However, it seems clear that they are violating your right to privacy.

In these respects, PAR provides a more focused understanding of privacy. PAR can readily explain why someone shouting during your lecture, although disruptive and perhaps infringing upon other rights or norms, does not constitute a violation of your right to privacy. This is because the act does not involve accessing or misusing your personal information or intruding upon your personal agential realm. On the other hand, if someone spies on you in a private setting, such as a bathroom, PAR clearly identifies this as a privacy violation. This is because it involves accessing your personal agential realm without permission. Hence, while the concept of the right to be let alone has played a significant role in shaping discussions about privacy, PAR offers better accounts for various situations where privacy is violated without direct interference, thereby providing a clearer understanding of what the right to privacy consists of.

Recently, Andrei Marmor has argued that the main purpose of the right to privacy is to protect our interest in having a reasonable measure of control over how we present aspects of ourselves to different others.⁵² According to Marmor, this control is essential for our well-being because it enables us to navigate our place in the social world effectively and maintain reasonable control over our social lives. Marmor’s theory builds on the work of James Rachel, who emphasized the

⁵⁰ 389 U.S. 347 (1967)

⁵¹ Bloustein, "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser."

⁵² Andrei Marmor, "What Is the Right to Privacy?," *Philosophy & Public Affairs* 43, no. 1 (2015), <https://doi.org/https://doi.org/10.1111/papa.12040>, <https://onlinelibrary.wiley.com/doi/abs/10.1111/papa.12040>.

importance of privacy in maintaining different types of relationships with different people. Rachel argued that we interact differently with family members, colleagues, friends, and strangers, and that privacy is crucial for managing these varying social roles. Marmor extends this idea about arguing that these distinct relationships would not be possible without control over how we present ourselves to others.

To exercise this control effectively, Marmor argues that we need a predictable environment regarding the flow of information and the likely consequences of our actions.⁵³ This predictability allows us to make informed decisions about what we reveal and to whom, thereby maintaining control over our social interactions.

According to Marmor, the right to privacy is violated when somebody manipulates, without adequate justification, the relevant environment in ways that significantly diminish our ability to control what aspects of ourselves we reveal to others. He illustrates his view with two cases. In the first case, suppose that you believe that by doing action X, you reveal information Y only to person A.⁵⁴ If someone manipulates the environment without your knowledge—making it so that by doing X, you actually reveal Y not only to A but also to B and others—they have, according to Marmor, violated your right to privacy. This is because they have significantly diminished your ability to control what aspects of yourself you reveal other others, undermining your intended self-presentation.

In the second case, imagine the government announces that it plans to surveil everyone. Marmor argues that this action also violates our right to privacy because it “diminishes the space in which we can control what we reveal about ourselves to an unacceptably small amount in an important domain of human activity. It just excludes too much from the ordinary means of communication available to us that we can control to a reasonable degree.”⁵⁵ When we are aware of constant surveillance, our behavior changes—we may censor ourselves or avoid certain expressions altogether, which hampers our ability to engage freely and authentically with others. According to this line of thought, the government's action severely reduces our capacity for self-presentation in social interactions.

While Marmor is correct that we have an interest in presenting ourselves in certain ways to others, and that the right to privacy can facilitate that interest, it is less clear whether this interest is what justifies the right to privacy. In particular, self-presentation and the right to privacy seem to have different scopes and implications. For instance, if someone throws paint on your shirt while you are delivering a public lecture, they interfere with your self-presentation by affecting how you appear to your audience. However, this act does not seem to constitute a violation of your right to privacy. This suggests that there are aspects of self-presentation that fall outside the domain of privacy rights.

⁵³ Marmor, "What Is the Right to Privacy?," p. 12

⁵⁴ Marmor, "What Is the Right to Privacy?," p. 14.

⁵⁵ Marmor, "What Is the Right to Privacy?," p. 14.

Conversely, there are scenarios where privacy rights seem to be violated without any apparent impact on self-presentation. Consider a scenario where hackers infiltrate a hospital's database containing your medical history. Let us assume that these hackers have no intention of using or sharing your personal information, and you remain unaware of the breach. In this case, your ability to control how you present yourself to others appears unaffected. You continue to manage your public persona as before, unaware of the data breach. Yet, most would agree that this unauthorized access to your sensitive medical information constitutes a violation of your privacy rights. This scenario illustrates that privacy rights can be infringed upon even when there is no discernible effect on self-presentation.

One might argue that the mere act of hacking the database does, in fact, undermine your control over your self-presentation to some degree. After all, the potential for your private information to be exposed now exists, even if the hackers don't intend to use it. However, this interpretation of control raises further complications. If we accept that the mere potential for unauthorized access undermines control over self-presentation and thus violates privacy rights, we encounter a problematic expansion of what constitutes a privacy violation. Consider a situation where hackers have developed a tool capable of infiltrating various computer systems, including the hospital's database, but have not yet deployed it and may never do so. Under this broad notion of control, the mere existence of this potential threat could be seen as undermining your control over your self-presentation and, by extension, violating your privacy rights to some extent. This implication seems counterintuitive and potentially overreaching. It suggests that the mere capability to access personal information, regardless of whether that capability is ever utilized, could constitute a privacy violation. Indeed, in our increasingly interconnected digital world, the potential for unauthorized access to personal information is virtually omnipresent. If we consider this potential alone as a violation of privacy rights, we might conclude that our privacy is constantly being violated, even in the absence of any actual intrusion or impact on our lives.

PAR offers more straightforward explanations of these cases. Under PAR, someone throwing paint on your shirt does not violate your right to privacy because no personal information is accessed or disclosed. The act is disruptive and may infringe upon other rights, such as the right to personal property or freedom from assault, but it does not constitute a privacy violation. In contrast, hackers violate your right to privacy by accessing your personal medical information without authorization, even if they have no intention of using or sharing it, because they have intruded upon your personal data without consent.

Applying PAR to Marmor's examples also yields a different analysis. In the first case, PAR explains the violation of privacy as follows: individuals have a duty not to access or facilitate access to other people's personal information without their consent. By manipulating the environment so that you unintentionally reveal information Y to B and others, the individual causes you to disclose personal information to parties with whom you did not agree to share it. This action breaches your right to privacy under PAR because it results in unauthorized access to your personal information.

Regarding the government's surveillance program, PAR would consider it a violation of people's right to privacy because it involves the systematic collection and monitoring of personal information without proper justification or consent. This violation occurs regardless of whether this surveillance affects individuals' choices in self-presentation.

In her influential article "The Right to Privacy," Judith Jarvis Thomson challenges the traditional understanding of privacy as a distinct, standalone right.⁵⁶ She argues that what we commonly refer to as the "right to privacy" is not an independent right but rather a cluster of rights that overlap with more fundamental rights, such as property rights and rights over one's person. According to Thomson, every supposed violation of privacy can be fully explained as a violation of these more basic rights, making a separate right to privacy unnecessary.

To support her claim, Thomson presents several thought experiments illustrating how privacy violations can be reframed as infringements of other rights. One example involves someone using an X-ray device to look at another person's belongings, specifically a pornographic photograph hidden in a drawer.⁵⁷ At first glance, this act appears to violate the right to privacy. However, Thomson argues that it is better understood as a property right violation. Ownership confers both positive rights—such as the right to use, sell, or modify the item—and negative rights—the right to prevent others from taking or viewing it without permission. Thomson argues that the unauthorized viewing of the photograph infringes upon the owner's property rights.

Another example that Thomson offers is the act of eavesdropping on a private conversation.⁵⁸ Thomson argues that what appears to be privacy right violation can be explained in terms of a violation of rights over the person, stemming from self-ownership. Just as we have property rights that allow us to control access to our belongings, we also have rights over our own bodies and personal experiences. This includes the right not to be seen, heard, or touched without consent. According to Thomson, the eavesdropper is infringing upon these rights rather than a distinct right to privacy. From these examples, Thomson concludes that the right to privacy is "derivative"—it can be entirely explained in terms of other, more fundamental rights.⁵⁹

However, there are issues with Thomson's arguments that privacy rights are merely derivative of other rights. One issue is that privacy rights can be violated even when property rights are not. For instance, consider a scenario where a hospital shares your medical records with a pharmaceutical company without your consent. Although the hospital may own the physical records, the unauthorized sharing of your personal health information constitutes a violation of your right to privacy. A real-life example of this may be when the National Health Service (NHS) in the UK shared the data of 1.6 million patients with Google without adequately informing the

⁵⁶ Judith Jarvis Thomson, "The right to privacy," *Philosophy and Public Affairs* 4, no. 4 (1975).

⁵⁷ Thomson, "The right to privacy.", pp. 298-299.

⁵⁸ Thomson, "The right to privacy.", p. 305.

⁵⁹ Thomson, "The right to privacy.", p. 312.

patients about how their data will be used.⁶⁰ The patients did not own the data, but their privacy rights were nonetheless violated because personal and sensitive information was disclosed without their consent.

As another example, suppose that you are surfing the internet at an internet cafe. The internet cafe owns the computer and the data stored on it, including your browsing history. If the cafe were to sell your surfing history—which may contain personal information—without your consent, it seems that your right to privacy would be violated. This violation occurs even though you have no property rights over the computer or the data stored on it. In both these cases, if one agrees that privacy rights are violated, it becomes difficult to explain these violations solely in terms of other rights without referring to privacy rights specifically.

Thomson herself discusses an even more extreme example, credited to Gilbert Harman, where she stipulates that no other rights are violated.⁶¹ In this scenario, acquaintances engage in personal gossip about an individual, using information obtained without violating any of the individual's rights and without breaching any confidences. Thomson asks whether they violate a right of yours in sharing the information. She acknowledges that “If they do, there is trouble for the simplifying hypothesis, for it seems to me there is no right not identical with, or included in, the right to privacy cluster which they could be thought to violate.”⁶² However, she maintains that such gossip does not violate any rights, arguing that we simply do not have rights against others gossiping about us.

This predicament highlights a significant problem in Thomson's argument. It is stipulated that there are no other fundamental rights that account for the protection of personal information in such cases. Yet, it seems there is a privacy violation in this case. This suggests that privacy rights may indeed stand as distinct rights, contrary to Thomson's claims.

In contrast to Thomson's account, PAR can readily recognize that property rights and privacy rights are distinct rights. Under PAR, the case where a hospital shares medical records without consent is clearly a privacy violation owing to the unauthorized access and dissemination of personal health information. The hospital's ownership of the records is irrelevant to the privacy violation because the core issue is the breach of privacy, not the infringement of property rights. Similarly, in the internet cafe scenario, the unauthorized sale of browsing history violates the individual's privacy rights because it involves accessing and sharing personal information without consent, regardless of who owns the computer or the data.

Regarding Thomson's extreme example of acquaintances gossiping without violating any other rights, PAR maintains that this still constitutes a privacy violation. Under PAR, an individual's right to privacy means that others have a duty not to share personal information without

⁶⁰ <https://www.theguardian.com/technology/2017/may/16/google-deepmind-16m-patient-record-deal-inappropriate-data-guardian-royal-free>

⁶¹ Thomson, "The right to privacy.", pp. 311-312.

⁶² Thomson, "The right to privacy.", pp. 311-312.

consent. Even if no other rights are being violated, the act of gossiping about someone's personal matters without their consent infringes upon their privacy rights. This reinforces the notion that privacy rights are fundamental and independent, not merely derivative of other rights.

VI. Some Implications of PAR

Let us now highlight and discuss some of PAR's more interesting and novel features and implications.

First, PAR implies that personal information remains personal, and individuals retain the right to decide who gets access to their personal information, even after it has been shared. This challenges the common assumption that once information is disclosed, especially in a public setting, it loses its private status.⁶³ For instance, suppose that Serena confides in Craig about a personal matter while sitting in a café. She reveals that she is planning to divorce her husband and asks Craig to keep the information confidential. Another patron in the cafe overhears their conversation. Despite the conversation taking place in a public space, the information Serena shared remains personal, and Serena has not given this patron the permission to share this information further. According to PAR, this patron has a duty not to share this information with others. The public setting does not negate Serena's right to privacy regarding her personal affairs. This emphasizes that privacy rights are not automatically forfeited simply because personal information is inadvertently exposed in a public space.

Similarly, suppose that Julie is in a WhatsApp group chat with her friends. She shares something intimate about herself with the group, under the understanding that her friends will keep the information to themselves. PAR implies that her friends have a duty not to share this information with others, including refraining from taking a screenshot of the chat and disseminating that information elsewhere. This highlights the ongoing responsibility of recipients of personal information to respect the confidentiality and privacy expectations of the person sharing it.

Second, as we have argued, the right to privacy is a human right. Under a common understanding of human rights, all able individuals in appropriate circumstance have a duty to protect and promote these rights. This implies that everyone—including companies, governments, and individuals—has an obligation to be proactive in safeguarding other people's personal information and not misuse it. For example, suppose that through aggregate data analysis, a researcher learns something personal about Amy. According to PAR, the researcher has at the very least a duty to not use this information without consulting Amy. If Amy refuses to give her permission and asks for her personal data to be removed, PAR implies that the researcher should take steps to remove the data from their database. This is analogous to practices in biomedical research, where researchers sometimes discover personal information not directly related to the

⁶³ See, e.g., Parent, "Privacy, Morality, and the Law."

research—for instance, finding that a patient has a certain medical condition.⁶⁴ In such cases, it is generally agreed that researchers have a duty to inform the subject of this incidental finding. They also have an obligation to obtain permission before using this information for additional research. This underscores the responsibility to respect individuals' privacy rights, even when personal information is obtained unintentionally.

Third, currently, companies and researchers operate under the assumption that as long as users consent through certain terms of service, and appropriate safeguards such as data anonymization are in place, they have the right to own, use, and even sell the data as they see fit. However, PAR challenges this prevailing view. PAR implies that users' agreement to terms of service is not sufficient to transfer ownership or full control over their personal data. According to PAR, personal data remains personal information, and those who collect it do not automatically gain ownership simply through collection. Moreover, PAR suggests that data anonymization is not sufficient to address privacy concerns. For one thing, while anonymization involves removing or altering personal identifiers to prevent direct association with individuals, advances in data analysis and machine learning have shown that anonymized data can often be re-identified when combined with other datasets. This means that individuals' privacy can still be compromised despite anonymization efforts. In addition, under PAR, personal information remains personal even if it is anonymized. Among other things, this means that one can violate another person's right even if identification is not possible. To illustrate this point, imagine that you are writing in your diary at a cafe and briefly leave it to take a call outside. During your absence, a stranger enters the cafe, does not know who the diary belongs to, and decides to read it without permission. The stranger leaves before you return and never learns your identity. Even though the stranger cannot identify you as the diary's owner, it seems that the stranger has violated your right to privacy. If so, the violation of privacy does not necessarily depend on the ability to identify the individual. The mere act of accessing personal information without consent constitutes a privacy breach, regardless of whether the accessor can link that information to a specific person. If we accept this perspective, it follows that individuals retain their right to decide who can access their personal information, even when that information is anonymized or when identification is not possible.

Lastly, PAR has implications for data collection in public spaces, such as through surveillance technologies. In particular, it suggests that currently surveillance technologies may not be discriminating enough and may capture personal information, potentially violating privacy rights, especially if such surveillance lacks sufficient justification. PAR implies that authorities and organizations must have sufficient justification before employing surveillance technology that can capture personal information without consent.

⁶⁴ Marlies Saelaert et al., "Ethical values supporting the disclosure of incidental and secondary findings in clinical genomic testing: a qualitative study," *BMC Medical Ethics* 21, no. 1 (2020/01/30 2020), <https://doi.org/10.1186/s12910-020-0452-0>, <https://doi.org/10.1186/s12910-020-0452-0>.

VII. Addressing Some Potential Objections

Despite its attractiveness, people might still have concerns regarding PAR. One potential concern centers on the claim that there are general categories of personal information that remain relatively consistent across time and cultures. Skeptics may question this assertion, wondering whether concepts of privacy and personal information are indeed universal or if they vary significantly between different societies and historical periods.

To address this skepticism, it is worth reiterating that various cultures throughout history have recognized certain types of personal information as deserving of privacy. Common examples include health and medical data, financial details, and aspects of personal relationships. These categories often remain consistent because they pertain to fundamental aspects of human life that individuals generally prefer to keep to themselves. The widespread recognition of such information as private suggests a universal understanding of personal boundaries and the importance of deciding who gets to access one's personal agential realm.

In addition, one can support this point further by drawing on the work of Alan Westin.⁶⁵ First, according to Westin, studies of animal behavior suggest that the desire for privacy is not exclusively human but is observed in the animal kingdom as well.⁶⁶ Many animals seek periods of individual seclusion or small group intimacy, which can be seen as a basic biological need. For instance, certain species of birds and mammals will isolate themselves during mating seasons or when rearing young, indicating an instinctual drive for privacy. Additionally, there is evidence that a lack of personal space due to overpopulation can threaten the survival of animal species. Overcrowding can lead to increased stress, aggression, and the spread of diseases, highlighting the importance of adequate space and privacy for well-being.

Second, while there are very few human societies that appear to have minimal concepts of privacy—such as the Tikopia of Polynesia, the Tlingit Indians of North America, and certain communities in Java, Indonesia—even these societies exhibit privacy norms upon closer examination.⁶⁷ For example, in these cultures, there may be established customs like using bathing enclosures to ensure personal modesty or prohibitions against visiting someone unannounced in the middle of the night. These practices suggest that even in cultures where privacy is not heavily emphasized, there are still recognized boundaries and expectations regarding personal space and information.

Third, Westin argues that aspects of privacy are found in every society through mechanisms like social distancing techniques and avoidance rules.⁶⁸ Social distancing techniques refer to the ways individuals regulate physical proximity and interactions with others to maintain a comfortable

⁶⁵ Alan Westin, "The origins of modern claims to privacy," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman (Cambridge: Cambridge University Press, 1984).

⁶⁶ Westin, "The origins of modern claims to privacy," p. 56.

⁶⁷ Westin, "The origins of modern claims to privacy," p. 59.

⁶⁸ Westin, "The origins of modern claims to privacy," p. 61.

level of personal space. This can include gestures like avoiding eye contact in crowded places or using body language to signal a desire for solitude. Avoidance rules are norms that dictate appropriate behaviors to respect others' privacy, such as not intruding on someone's personal space or refraining from asking overly personal questions. According to Westin, the presence of social distancing and avoidance practices across different cultures implies that people inherently understand and value the concept of personal boundaries. These points collectively support the idea that certain personal information is indeed widespread and consistent across time and cultures.

Another potential concern revolves around the claim that individuals retain the right to decide who gets access to their personal information, even after it has been shared. Continuing with the previous example, suppose that Serena broadcasts her plan to divorce her husband on X (formerly Twitter), where she has 200 followers? Does she still retain the right to decide who can access her personal information after such a public disclosure? There are several points to consider on behalf of PAR. First, it can be argued that Serena is exercising her right to decide who gets to access her personal information by choosing to share it on a platform like X. She has decided that everyone who reads her tweets can have access to this information. In this sense, Serena is actively determining the audience for her personal revelation. Second, PAR acknowledges that sometimes rights can be waived. By publicly sharing her personal matter, perhaps Serena is waiving her right to privacy regarding this issue. She might be accepting that the information is now in the public domain and that others may discuss or share it further. Third, a case can be made that Serena hasn't completely relinquished her right. Suppose that a couple of days later, Serena issues a retraction informing her followers that she has changed her mind and requests that they do not share the information about her previous intention any further. It seems reasonable that her followers should honor her request. This suggests that Serena may still retain the right to decide what happens to her personal information, even when she has shared it in a public forum. In this respect, PAR can make sense of laws like the "right to be forgotten," which allow individuals to request the removal of personal information from public records or the internet.⁶⁹

A further concern pertains to the claim that individuals retain rights over their personal information even after it has been collected and processed by others. This stance appears quite revisionary compared to current practices in data collection and ownership, where data is often considered a commodity owned by those collect it as long as certain procedures are followed. However, this is arguably a virtue of PAR rather than a vice. By advocating for stronger privacy protections and recognizing the ongoing rights individuals have over their personal data, PAR promotes the view that data collectors are custodians with responsibilities toward the individuals to whom the data pertains. This perspective shifts the focus from ownership to stewardship, emphasizing ethical obligations over mere legal entitlements. This approach seems to be more ethical and respectful in terms of data handling. By treating personal data as an extension of the

⁶⁹ <https://gdpr.eu/right-to-be-forgotten/>

individual rather than a commodity, PAR encourages organizations to prioritize the rights of individuals to privacy. This stands in contrast to the current practice, where user agreements often obscure the extent of data usage without meaningful consent.

VIII. Conclusion

The rise of the internet, social media, big data analytics, and surveillance technologies has made personal information more accessible than ever before. These technological advancements have significantly blurred the boundaries between public and private spheres, often leading to unauthorized access and misuse of personal data. In this context, the Personal Agential Realm (PAR) theory of privacy emerges as a robust theoretical model that understands privacy in a way that is both relevant and necessary for our times.

By defining privacy as the state where others have not accessed one's personal information within their personal agential realm, PAR offers a comprehensive framework for conceptualizing, valuing, and protecting privacy. It recognizes privacy as a fundamental condition for pursuing a good life, emphasizing that all of us need a space to entertain various thoughts, ideas, and possibilities without immediate outside interference. This perspective offers a strong justification for why privacy matters—not merely as an individual preference but as a fundamental human right.

Moreover, the implications of PAR challenge many current practices and assumptions about privacy. It suggests that personal information remains personal even after being shared, that anonymization does not negate privacy rights, and that everyone - including corporations and governments - has an obligation to uphold others' privacy rights. PAR offers a promising new approach to understanding the nature and value of privacy and a strong foundation for addressing emerging privacy challenges. As such, it deserves to be explored further.⁷⁰

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