

SHAUN MACNEILL

## A Philosophical Definition of Privacy

WE HAVE ENTERED AN ERA in which privacy faces significant pressures on many fronts. Advances in computer and surveillance technologies greatly facilitate the compilation of vast quantities of personal and impersonal information. Both the means of gathering information and the means of storing and manipulating that information have evolved in the new digital age. Compounding this problem is the fact that privacy is also under a greater degree of pressure in many new social settings. These pressures come from a variety of sources including an increasingly invasive journalistic community, a business community willing to subject employees to more rigorous screening and supervision, a police force faced with the need to effectively monitor the actions of a growing populace, and a government which collects, stores, and utilizes information concerning each citizen during virtually every interaction. In sum, these social and technological threats present a formidable challenge to the preservation of privacy, a challenge which must be engaged now before privacy erodes intolerably.

The first tool required to meet these challenges is a strong conceptual foundation upon which to build, one which makes necessary and useful distinctions and which accurately reflects our understanding of privacy while offering a refinement over competing conceptions. The generation of such a foundation will be the focus of this essay. It might be objected at the outset that the current endeavour is a wasteful intellectual exercise; competent language users know the meaning of 'privacy' and thus further exploration of the issue must prove fruitless. However, while most people do have a common-sense understanding of privacy, a more refined tool is needed for use in contexts which demand a higher level of precision. In both the courtroom and the legislature the demands of clarity and consistency dictate that the common-sense

notion of privacy be explicated and subjected to rigorous scrutiny. What is required is a coherent account of the nature of privacy which is able to provide guidance in problematic cases and accommodate the needs of an ever-changing society, while remaining true to our intuitions about privacy.

In this essay I will be defending the claim that privacy is the condition which obtains to the degree that new information about one's self is not acquired by others. Though not a radical break from some previous conceptions of privacy, this conception does offer a few significant innovations to be defended later. One might object to such a definition on the basis that any attempt to strictly define privacy must ultimately be limited by the ambiguity inherent in language generally, and the conception of privacy specifically. Such a position might further maintain that various definitions of privacy are context-specific, with features appropriate to the specific language-users in question. Thus, a jurist might have a significantly different understanding of privacy than a sociologist, with no central conception governing both uses.

Undoubtedly, privacy borders on many neighbouring concepts, and relates to issues like autonomy, access, control, etc., in innumerable ways which do rely heavily on the context of usage. Furthermore, the specific privacy concern focused on in any given context might differ significantly from the area of focus prominent in other disciplines. A jurist might focus on the degree of control individuals have over the maintenance of some legally sanctioned sphere of privacy, while the sociologist might focus primarily on the ways claims to privacy affect our interactions within society. Despite this multidimensional aspect of privacy, however, analysis might still reveal a conceptual core, consisting of some feature which is both a necessary and sufficient condition of maintaining or diminishing privacy. The demonstration of such a core-condition would be an informative event, clarifying our understanding about a concept over which there has been much disagreement. The present account argues that acquisition of information comprises this conceptual core. I will begin by defending the need for a non-normative conception of privacy *simpliciter*. I will then outline the criteria of adequacy to be employed in defence of the candidate conception. Next, I will explain and defend the proposed account, contrasting it with a range of alternate conceptions. Finally, I will offer a brief review of the main conclusions of the paper.

*Normative versus non-normative conceptions*

Before attempting any preliminary definition of privacy, one important conceptual desideratum must be defended. Because the generation of a conception is the first step in a foundational treatment of privacy, the proper conception should be broadly construed; it should be an account of privacy *simpliciter* rather than some restricted usage of the term. At this stage of the exploration a concept of privacy should be non-normative or pre-normative, rather than normative in nature. I shall call a concept of privacy normative if it requires that an act under consideration transgress some social norm to qualify as a reduction in privacy. Conversely, a concept shall be considered non-normative if no such restriction is employed. The definitions of Alan F. Westin and Jeffrey Reiman will serve to explain this distinction.

Westin's popular definition<sup>1</sup> identifies privacy with "the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others."<sup>2</sup> This conception is normative because it defines privacy primarily as a claim, thus making privacy dependent upon the moral and/or legal norms in society. If a person has no legitimate claim against another because no social norm was transgressed, Westin's definition must exclude their case from the realm of privacy. Alternately, Reiman defines privacy as "the condition in which other people are deprived of access to either some information about you or some experience of you."<sup>3</sup> This is a non-normative conception because no appeal to social norms is made. The designation of privacy is based solely on the successful deprivation of access rather than the maintenance of social privacy norms. Reiman's

---

<sup>1</sup> In a 1987 report of recommendations by the standing committee reviewing the Privacy Act and the Freedom of Information Act (*Open and Shut: Enhancing the Right to Know and the Right to Privacy*, House of Commons, Issue 9, March 1987: 58), the recommendation is made that Westin's definition be explicitly adopted in the Privacy Act. This is but one example of the many endorsements of Westin's definition, which W.A. Parent called "a dogma of contemporary jurisprudence"; see "Recent Work on the Conception of Privacy," *American Philosophical Quarterly* 20 (1983): 343.

<sup>2</sup> Alan F. Westin, *Privacy and Freedom* (New York: Atheneum, 1967) 7.

<sup>3</sup> Jeffrey Reiman, "Driving to the Panopticon," *Critical Moral Liberalism* (New York: Rowman and Littlefield, 1997) 172.

account thus lacks the significant normative element present in Westin's account.

I argue that a non-normative conception is appropriate for a general account of privacy because a general account should not be limited by restrictions of narrow or context-specific uses of 'privacy.' Provided there are cases of unobjectionable reductions in privacy (i.e., reductions which do not transgress accepted social privacy norms) an adequate general account of privacy should correctly identify these reductions. A conception's inability to do this bespeaks its restricted, rather than general, treatment of privacy. Normative conceptions only identify objectionable reductions of privacy, and as such only identify a subset of all privacy cases. One of the ideas which has most misled various scholarly treatments of privacy is the idea that all reductions in privacy are necessarily objectionable reductions.

To demonstrate the existence of unobjectionable reductions in privacy, consider the circumstances of some maximum-security prisoners. They are subjected to cell searches, occasional strip searches, frequent monitoring in virtually all their activities, and a host of other invasive acts deemed necessary for their effective and efficient supervision. Because of these circumstances, such prisoners have a diminished degree of privacy compared to the average citizen. Counter-intuitively, a normative conception of privacy would not identify these acts as reducing the prisoner's privacy because no norm has been transgressed. To refer again to Westin's definition, because a prisoner has no legitimate moral or legal claim against such monitoring (assuming it accords with acceptable codes of practice), the invasive methods of supervision could not be said to reduce the prisoner's privacy. Reiman's non-normative conception, however, offers an alternate description. Because Reiman's account locates the core of privacy in the actual deprivation of access and is not restricted to norm-transgressing acts, it rightly identifies the situation as drastically reducing the prisoner's privacy, even though such reductions may be fully sanctioned by accepted norms. I would argue that the non-normative account provides a much more accurate description of the prisoner's situation, because it coheres with our intuitions about privacy. One aspect of life which markedly distinguishes the prisoner from the citizen is the degree to which s/he is monitored, and a reduction in privacy remains the most accurate way to describe what occurs. That the invasive acts are sanctioned by social norms does not

remove them from the realm of privacy, it simply determines them as acceptable and unobjectionable reductions. As a base conception of privacy, a non-normative account seems more appropriate given its ability to accommodate all cases centrally concerned with privacy, rather than some restricted subset thereof.

Given this need to begin with a non-normative account of privacy, definitions and arguments put forward must also be scrutinized for the importation of ethical norms in ways more subtle than that of Westin's account. Specifically, there is a mistake which crops up regularly in the literature, and this ought to be guarded against. Many privacy scholars consider various candidate conceptions extensively or solely in terms of 'violations' or 'invasions' of privacy. Whether or not a given factor *violates* privacy is often seen as the central consideration in determining its role and extent in the concept. These norm-laden terms are indicative of an implicit importation of norms into what otherwise appears to be a non-normative conception. This premature introduction of normative considerations, however, can detract from the persuasiveness of the account. Consider the following argument put forward by W.A. Parent:

To define privacy as the control over (all) information about oneself implies that every time I walk or eat in public my privacy is *compromised*. The implication flies in the face of common sense. An adequate conception of privacy must not allow for the possibility that a person's privacy can be *violated* simply by observing him openly engaged in public activities.<sup>4</sup>(emphasis mine)

Parent's basic argument takes the form of a hypothetical syllogism in which the consequent is denied. If privacy is defined in terms of all information, then acquisition of information concerning public activities violates privacy. Acquisition of information concerning public activities does not violate privacy. Therefore, privacy may not be defined in terms of all information. Though valid, this argument is not sound, with the mistake occurring in the first premise. Counter to Parent's claim, to define privacy as the control over all

---

<sup>4</sup> Parent, "Recent Work" 344.

information does not imply that the observation of public activities *violates* privacy. Rather, what is implied is that privacy would be *reduced* by such observation. Such a reduction may be either objectionable (and thus subject to moral or legal sanction), or it may be unobjectionable insofar as it transgresses no social norms. Only those reductions which are objectionable would 'violate' one's privacy. *Contra* Parent, an account of privacy which does not restrict information is fully consistent with observation of public activities which does not violate privacy. The account need only be non-normative, and observation of one's public activities is accommodated as an unobjectionable reduction in privacy, rather than a violation.

Parent's mistake highlights the danger of using norm-laden language when considering a pre-normative concept. Simply by importing norm-laden language into the argument concerning the role of information in privacy, Parent draws the false conclusion that acquisition of only non-public information may reduce privacy. Far from being a minor oversight, this mistake grounds one of the definitive features of Parent's account. To avoid the pitfalls of such normative importation, the usage of norm-laden terms such as 'violate' and 'invade' shall be forgone in this essay in favour of non-normative terms such as 'reduce' or 'diminish,' thus postponing the introduction of normative considerations until the pre-normative subject is properly identified.

### *The criteria of adequacy*

For one conception of privacy to be considered superior to another, the former must meet certain criteria which the latter fails to meet. These criteria must be defended as useful in improving the concept. The criteria employed in this paper are accuracy, clarity, precision, and concision. While these are to some degree related, they each possess certain characteristics which will distinctly improve the candidate account. Each will be defended in turn.

#### *a. accuracy*

The importance of accuracy in properly conceiving a term should require little in the way of argumentative support for its acceptance. Indeed, prior inaccuracy is one of the more probable motivations for engaging in any prolonged analysis of a concept. Were alternate accounts of privacy accurate though not clear, pre-

cise, or concise, the only remaining work to be done would consist of little more than fine tuning, and would not be worthy of the attention devoted to it below. However, such is not the case. As I will argue in the next section, recent treatments of privacy are all, to some extent, inaccurate. Thus, the adoption of the criterion of accuracy is a necessary, though obvious, first step.

While accuracy needs little defence as a valid criterion of adequacy, an explanation concerning its role in the following account is still requisite. What does it mean to say that a proposed conception is accurate, and how shall this accuracy be demonstrated? The criterion of accuracy will be met if the proposed account correctly identifies cases we know to be cases of privacy, and excludes cases which are better described under neighbouring concepts. Thus, an account may hereafter be considered inaccurate in three ways. First, it may be too narrow insofar as it excludes cases which are best described as centrally concerning privacy. Second, it may be too broad insofar as it includes cases more perspicuously dealt with by other concepts. Third, it may simply misidentify a component of privacy, and thus fail to reflect our understanding of the concept. Given these three possible failings, the strategy of raising cases and testing the proposed account's ability to accommodate them suggests itself as an effective method of assessing conceptual accuracy. Furthermore, the use of intentionally structured cases allows for the isolation of various components within competing accounts. Thus, each distinct component may be assessed independently, thereby furthering our understanding of privacy.

*b. clarity and precision*

While their assessment is not as structured as that of accuracy, clarity and precision are nonetheless also important criteria of an adequate definition of privacy. Employed as a remedy for vagueness and ambiguity, clarity and precision ensure that the application of the proposed definition is not thwarted by an inability to understand its intended meaning. As mentioned at the outset of this essay, the development of a conception of privacy is not simply an abstract intellectual exercise. Both the creation and consistent application of privacy legislation benefit from the employment of clear conceptual tools unhampered by inherent ambiguity. Any definition of privacy whose meaning is unclear, or which may plausi-

bly be interpreted in more than one way, is unsatisfactory due to a lack of clarity and precision.

*c. concision*

The final criterion of adequacy employed in this paper is that of concision. Concision is primarily needed to effectively communicate the meaning of a concept without undue complication. Again, privacy is a social concept, the primary interest in which lies in its protection through the maintenance of social privacy norms. This protection is facilitated by avoiding excessive conceptual complexity, and thus the need for parsimonious editing of the proposed account is supported by its need to be broadly comprehensible and applicable. The utility of using Ockham's razor to avoid unnecessarily complex explanations of phenomena is paralleled in the definitional process by the need to effectively communicate the meaning of concepts without undue complication.

*The proposed conception*

The account of privacy which I will currently explicate and defend is the following: privacy is the condition which obtains to the degree that others do not acquire new information about oneself. While very basic, this account maintains that any time person A acquires previously unknown information about person B, A thereby reduces B's privacy. Every time A reads about B in the newspaper, peeks in B's window, sees B commuting to work, etc., A's act directly diminishes B's privacy. This account makes four potentially debatable claims. Each will be explicated and defended in turn.

*a. privacy as a condition*

The least original of the current claims is the designation of privacy as a condition in which a person finds him/herself. Indeed, this convention is common among many of the more recent accounts of privacy.<sup>5</sup> However, as was noted above, the frequently endorsed definition advanced by Westin misidentifies privacy as a claim rather than a condition, and thus confusion does still exist around privacy's status. What does it mean for X to have privacy? It

---

<sup>5</sup> Parent ("Recent Work") and Reiman (*Critical Moral Liberalism*) are contemporary scholars who identify privacy as a condition.



means that certain circumstances exist around X: no one is tapping X's phone, no one is peeking in X's windows, no one is looking through X's medical files, etc. In sum, all of these circumstances directly contribute to the preservation of X's privacy; one has privacy to the degree that these conditions obtain. Privacy, then, is the condition or state in which such intrusions are absent.

In contrast, consider Westin's description of privacy as a claim. By identifying privacy as a claim, Westin's account corresponds more closely to a description of the right to privacy.<sup>6</sup> While this is understandable given Westin's primarily legal interest, his normative conception is unsatisfactory as a base account because it fails to accurately reflect our understanding of privacy. While the right to privacy is arguably the most important employment of the concept, the conflation of the two distinct subjects serves only to obfuscate both the differences and relations between the two. To have privacy, one need not have a claim to privacy. Person A could have privacy while living in a society which recognizes no moral or legal right to privacy for its citizens, provided significant personal information about that individual remains unknown. Thus, having a claim is not a necessary condition of having privacy. Likewise, having a claim is also not a sufficient condition of having privacy. People frequently have a valid legal claim to privacy even when their privacy is being reduced. Indeed, a claim to privacy is most valued when such invasions occur, and thus having a legal or moral claim is insufficient to ensure privacy, though such a claim does provide a course of action in the event of a violation. Such claims, however, can only be understood in light of a previous comprehension of the identity of privacy. Stated differently, one may only sensibly discuss the implications of a claim to privacy if one knows what one is claiming a right to. These significant differences between privacy *simpliciter* and the right to privacy thus justify their conceptual separation.

---

<sup>6</sup> It should be noted that in legal contexts, 'privacy' is often used as shorthand for the right to privacy. In advancing his normative conception, Westin might be seen as addressing privacy from a distinctly legal viewpoint, and thus not concerned with many of the issues raised in this essay. However, both Westin's lack of explicit recognition of this conflation and the frequency of his conception's endorsement in non-legal contexts argue in favour of a strict demarcation.

*b.* 'which obtains to the degree that'

A common oversight of many definitions is their description of privacy as a categorical concept. Thus, privacy is most often conceived of in such a way that either certain conditions are met and one has privacy, or those conditions are not met and one lacks privacy. No allowance is made for any middle ground. To refer again to Reiman's definition, either one has privacy because others are deprived of access to oneself, or one lacks privacy because that access remains. Absent from this basic conception is privacy's non-categorical nature. No mention is made of the fact that privacy exists in varying degrees depending, on Reiman's account, on the degree of access which remains. To illustrate the need for a non-categorical conception of privacy, consider the case of prisoners and probationers. When someone is prosecuted for a crime, their act is assessed and they are placed in an institution with a level of security commensurate with the severity of the crime committed. These various levels of security involve differing degrees of supervision, with the maximum security prisoner being subject to the most thorough monitoring. Those who commit less dangerous criminal acts are subject to increasingly less supervision, with the other end of the spectrum consisting of probation programs. Throughout the spectrum, however, the need for effective supervision dictates that the prisoner's or probationer's privacy be reduced in degrees appropriate to their respective crimes. This situation creates distinct degrees of privacy possessed at all levels of supervision, ranging from the highly scrutinized life of the maximum security prisoner to the mildly intrusive check-ups required of the probationer. A proper conception of privacy should allow for such a range of possible privacy possessions. By including the phrase 'which obtains to the degree that,' the current account attempts to make this non-categorical nature of privacy prominent in the statement of its basic conception.

*c.* privacy as solely information-based

While the previous two claims have been relatively uncontroversial in their characterization of privacy, the third claim is more contentious. By arguing that acquisition of information is both necessary and sufficient for a reduction in privacy, the current definition excludes components of other definitions, such as experience or physical access. I argue that acquisition of information alone causes a reduction in privacy. This claim has two main parts.

First, the current definition makes the actual acquisition of information a necessary condition of a reduction in privacy. This differs from many previous definitions, which locate the core of privacy in the maintenance of control over personal information, or the successful deprivation or limitation of access to such information.<sup>7</sup> Both of these features, however, are unsatisfactory upon closer inspection. The reasons for rejecting control-based definitions of privacy have been sufficiently defended elsewhere, and need no extensive consideration here.<sup>8</sup> In short, the ability to maintain control over factors such as information is neither a necessary nor sufficient condition of maintaining privacy. People exercise control when they voluntarily disclose sensitive personal information to others, yet privacy is reduced rather than enhanced by such exercise of control. Conversely, even without control over the flow of information, one's privacy might still be maintained provided no information is acquired. Consider the case of a student who faithfully keeps a diary. One day, in a rush, this student goes to university and leaves the diary open on the bed. During the day, a roommate stumbles across the diary. Upon this discovery, the student can no longer be said to have any control over the flow of personal information contained within the diary's pages. Despite this lack of control, however, the student's privacy may remain intact provided the roommate does not actually read the diary. It could be argued that the student lacks any real privacy because of the absence of control, but it seems more accurate to say that while control is lacking, the student's privacy is intact. Though the lack of control over information is certainly a potential threat to privacy (the roommate could read the diary), the student's privacy may escape unscathed provided no information is actually acquired. Here, the factor of control is of no consequence in determining the student's privacy.

Aside from control over information, deprivation or limitation of access to information is similarly unsatisfactory when contrasted with information's real acquisition as a condition for a reduction of privacy. Again referring to the student diary counterexample, the student may possess privacy provided the roommate

---

<sup>7</sup> Westin's definition is probably the most well known control-based account, while Reiman is a proponent of access-based definition.

<sup>8</sup> For a more thorough critique of control-based definitions, see Parent, "Recent Work" 343–45.

does not read the diary, despite the student's inability to limit or wholly deprive the roommate of the access s/he enjoys. Again, it is the real acquisition of information which constitutes a reduction in privacy, rather than simply having access to such information. Depriving others of access may be a sufficient condition of privacy (if no one has access to information, no one can acquire that information), but as the student diary counter-example shows, it is not a necessary condition. Like control-based definitions, access-based accounts incorrectly locate the crux of privacy reductions in the maintenance of some zone into which others may not enter unsolicited. Both control and access, however, are peripheral to the main issue of information acquisition, which lies at the heart of privacy reductions. If no information is acquired, no real reduction in privacy occurs.

The second main part of a claim to information as being the sole constituent of privacy is the exclusion of other characteristics often attributed to privacy, such as attention or experience. Thus, while it may be conceded that acquisition, rather than control or access, is necessary for a reduction in privacy, it might be maintained that another's acquisition of experience involving oneself or the focus of his/her attention on oneself may also constitute a reduction in privacy. However, I argue that information, properly understood, is the sole constituent of privacy.

To defend this claim adequately, what is meant by 'information about oneself' must be spelled out in some detail. First, there is the common sense of information as facts about an individual. These facts include, but are not limited to, statements concerning one's habits, group memberships, physical make-up, medical history, past exploits, abilities, etc. In short, any statement of fact which has an individual as its subject constitutes a piece of information about that individual. The reduction of privacy which can occur as a result of journalistic exposure illustrates this sense of information. Because facts are communicated concerning the subject of an article, that subject's privacy is thereby reduced. The facts communicated by such an article constitute this common sense of information. A related but less common sense of information concerns the sensory input contained within our experience. This is the sense of the term, for instance, used when an optometrist refers to 'visual information.' Information here refers to the sensory content involved in any experience involving the subject. Such content may be relayed via any of the senses, though some are

certainly more common means of acquiring information than others. Thus, while visual observation may be the most frequently employed method of acquiring sensory information about an individual, one might also hear someone singing, smell smoke on someone's clothes, feel someone's calloused skin, or even taste garlic while kissing someone. In each case, acquisition of specific sensory data about the other is involved in the experience, and this data constitutes an acquisition of information in this second sense. These two uses of 'information' are related insofar as sensory information is describable in linguistic terms and therefore also may constitute propositional information. Thus, each of the above examples of sensory information 'relays' or 'communicates' propositional content. As a result of the sensory observations, the subject might be described as a terrible singer, a smoker, a hard worker, or a fan of Italian cuisine, with each description consisting of propositional information.

Having outlined these two distinct senses of information, they will now be defended as the sole constituent of privacy, to the exclusion of experience or attention. The rationale for this exclusion is simply that no conceptual benefit is derived from including these two components, and thus a more concise conception of privacy is achieved through their exclusion. Consider first the case of experience. If someone were to compare the statement of information 'Jane took a shower' with the actual experiential observation of Jane's shower, the latter would seem to constitute a much more severe reduction of Jane's privacy, containing much not captured in the former information statement. However, were one to go into sufficient descriptive detail in the statement of information (i.e., noting her skin condition, weight, shape, and all other physical attributes), then it becomes less clear that experience engenders some reduction of privacy above and beyond that brought about by its informational equivalent. To further illustrate, imagine that instead of visual experience of Jane's shower (the experiential method which relays the most information in this case) the observer gains audio experience of the event. Listening to Jane's shower still constitutes direct experience of the event, but the reduced informational content of the audio experience make it far less objectionable than visual observation, or even than a minimally thorough description of the event. Most of us (barring the occasional exhibitionist) would rather have a stranger listen to us take a shower than have them directly watch, view video footage of, or read a

thorough description of the event. This is because, in each case, informational content is the factor which determines the degree to which our privacy is reduced. Given this, no benefit is gained from including experience within our basic conception of privacy.

Two possible explanations may be advanced concerning the inclusion of experience in some conceptions of privacy. The first concerns the sheer quantity of information often communicated in direct experience. The saying 'A picture is worth a thousand words' is instructive here, drawing attention to both the relation between visual observation and information, as well as the quantity of information transmitted through such observation. Through visual observation of an event, a large amount of information may be acquired in a relatively short period of time. To return to Jane's shower, a brief experiential encounter would be sufficient to relay a vast quantity of information concerning her physical make-up, and possibly other attributes such as personal hygiene habits, singing ability, etc. This efficiency of sensory experience as a method of acquiring information might make experience seem to reduce privacy by some unique means. However, informational content alone determines the degree of the privacy reduction, with direct experience of the event simply constituting a thorough informational penetration of the subject. The second factor which might seem to relevantly distinguish experience from its informational constituents is the subject's frequent awareness of, and subsequent objection to, experiential observation. If Jane is aware that her shower is being observed by a third party, she would rightly feel a deep sense of unease concerning the state of her privacy. However, if she is aware of information gathering by means of a video record, there is no reason why she wouldn't be equally uncomfortable, and feel her privacy equally violated, even though such a recording does not constitute direct experience of the event. In short, experience of such an event constitutes no extra intrusion into Jane's privacy, provided the informational counterpart relays the same quantity of information as the direct experience.

Like experience, attention adds nothing as an additional characteristic of privacy and thus should be rejected. Attention can be understood in one of two ways. First, it can refer simply to the focus of another's thoughts on oneself. Barring other information acquisition, this use of 'attention' plays no role in the concept of privacy. One's privacy is in no way reduced simply by being the

subject of another's thoughts.<sup>9</sup> The second sense of attention, however, does implicate privacy. This is the sense of attention used when someone is said to be 'paying attention' to another. This sense of attention involves direct experience of the other, and thus the acquisition of some degree of sensory information involving the subject. Provided information is acquired in this way, this informational content does reduce privacy. However, it is this acquisition of information, and not simply the focus of attention, which constitutes the reduction. Like experience, the characteristic of attention adds nothing new or useful to the concept of privacy, and thus should be disregarded.

*d. only new information*

The final claim concerning the conception of privacy to be defended in this paper is the sole requirement that acquired information be *new* to constitute a reduction in privacy. By 'new' it is simply meant that the information acquired must be previously unknown to the person acquiring it. A person does not further reduce another's privacy upon receiving previously known information. To demonstrate, consider the following scenario. Alice approaches Barbara on Monday and discloses some fact about her personal life. Forgetting her actions on Monday, she again approaches Barbara on Wednesday and relates to her the same information. I argue that no further reduction of Alice's privacy occurs on Wednesday because no new information is communicated. Were this not the case, no continuity would be perceptible in one's state of privacy. If every informational acquisition resulted in a loss of privacy, rather than only new acquisitions, the state of one's privacy would be under constant assault from all directions. However, the qualification that information must be new slows this erosion of privacy to a reasonable and manageable rate. One might object that if A spies on B's conversation with C, A is reducing both

---

<sup>9</sup>There is one way someone's privacy may be reduced simply by being the subject of another's thoughts, but this is also information-based. Suppose A knows two pieces of information, which imply a third piece of information about B. For instance, "All stonecutters wear togas," and "B is a member of the stonecutters." If A does not realize this implication immediately upon learning both pieces of information it could be realized at a later time when A is simply contemplating B. This revelation (B occasionally wears a toga) constitutes a further reduction in B's privacy.

B's and C's privacy even if A is already aware of the contents of the conversation. However, the new information acquired by A in this case is the fact that B is discussing those things with C, and not the specific informational content of what is said. Thus, A's acquisition of knowledge concerning the current activity of B and C is new information, and it is this monitoring of their affairs which diminishes their privacy.

In contrast to the qualification that information must be newly acquired, consider two other restrictions on applicable information defended by Parent. He argues that information must be both personal and undocumented if its acquisition is to constitute a reduction in privacy.

Parent uses 'personal information' to refer to

facts that most persons in a given society choose not to reveal about themselves (except to friends, family, advisors, etc.) or to facts about which a particular person is extremely sensitive and which he therefore does not choose to reveal about himself (even though most other persons don't care whether these same facts about themselves are widely known).<sup>10</sup>

By requiring that information must be personal if its acquisition is to constitute a reduction in privacy, Parent excludes all impersonal information from the realm of privacy. I have already argued that Parent's importation of normative language made his specific argument concerning the exclusion of public information unsound. However, the tendency within various conceptions to focus exclusively on personal information necessitates the further defence of public information as also centrally pertaining to privacy. I maintain that acquisition of both public and private information may be said to reduce privacy. This may be demonstrated by way of example.

Consider the circumstances of a socially active person (S) situated in a normal social environment and a modern-day hermit (H). S goes about her daily activities under the watchful eye of 'the public.' While commuting to work, S is observable by those people

---

<sup>10</sup> Parent, "Recent Work" 346-47.



who share the sidewalk, subway, or highway with her. At work S is monitored to some extent by her supervisors (indeed, as a 'supervisor' it is precisely one's job to monitor those working under you). In short, during any activity S undertakes in public, she is potentially subject to the observation of others, who may thereby acquire information concerning her public activities. Now, contrast her case to that of the hermit (H). H has undertaken to remove himself from the eye of the public. Disliking any form of public activity, H has no job to which he commutes, or at which he is subject to supervision. Given the opportunity, H avoids all public activities and the public observation they engender. In the former case, S is subject to a high degree of scrutiny only while performing her public activities. In the latter case, H is subject to no such scrutiny because his activities occur, without exception, in the absence of public observation. Surely given the details of these two cases it makes sense to claim that, barring other differentiating considerations, H has a higher degree of privacy than S. Indeed, the desire for this heightened level of privacy (as well as for increased peace, security, etc.) is the most probable explanation for H's motivation in the pursuit of the hermit lifestyle. It seems clear from this example that privacy is indeed reduced by observation of public activities.<sup>11</sup>

In defending his definition Parent also argues that any information acquired must be previously undocumented, because documentation of information places it within the accessible public record, and accessing this public record cannot violate privacy. His rationale for this is simply that allowing the uncovering of previously documented information to constitute a violation of privacy would "needlessly blur the fundamental distinction between the private and the public."<sup>12</sup> This argument, however, is flawed.

---

<sup>11</sup> The qualification defended in this essay that information must be new to constitute a reduction in privacy has the additional benefit of partially reconciling the position advanced here with Parent's view that observation of public activities cannot reduce privacy. If knowledge of one's public activities (e.g., where one works) already exists, further observation of this fact does not further diminish the subject's privacy. Thus, while the initial acquisition of information does constitute a reduction in privacy, once one's peers are aware of various 'public' facts concerning the subject, the subject's privacy is not further diminished by the repetitive observation of those facts.

<sup>12</sup> Parent, "Recent Work," 347.

In his popular essay, "Privacy, Freedom, and the Respect for Persons," Stanley Benn distinguishes four senses of the term 'private.'<sup>13</sup> For the purposes of the current argument, only two of these senses are relevant. The first is the purely descriptive use of 'private.' This use of 'private' lacks any normative reference, with an act being considered private if and only if it goes unobserved or unmonitored (i.e., if information concerning the act is not acquired by others). The second applicable sense of 'private' is normative, rather than descriptive, in nature. To describe something as private in this normative sense is to imply that it is a matter "that it would be inappropriate for others to try to find out about, much less report on, without one's consent."<sup>14</sup> This second sense of the term differs significantly from the first because it is norm-dependent, rather than focusing on the neutral fact of the others' acquisition of information. With this distinction drawn, Parent's argument concerning undocumented information may now be properly assessed.

In another essay defending his conception of privacy, Parent claims that "what belongs to the public domain cannot without glaring paradox be called private; consequently it should not be incorporated within our concept of privacy."<sup>15</sup> The argument is roughly as follows. Public documentation of information implies that it is no longer private. Information which is not private cannot involve privacy, and therefore publicly documented information does not implicate privacy. Here, Parent's mistake lies in his belief that information which is not private in one sense of the term ought to be excluded from the general concept of privacy. Public documentation only disqualifies information from being private in the former descriptive sense, and not in the latter normative sense. In this second sense of the term, no such "glaring paradox" exists. One could maintain that a piece of information made public should have remained unobserved or unreported, and thus belongs to that class of private information rightly protected by privacy. The

---

<sup>13</sup> Benn, "Privacy, Freedom, and Respect for Persons," *Nomos XIII: Privacy*, ed. Chapman and Penock (New York: Atherton, 1971) 1-3. Richard Wasserstrom also distinguishes the two pertinent senses of 'private' in "Privacy, Some Arguments and Assumptions," *Philosophical Dimensions of Privacy*, ed. Schoeman (Cambridge: Cambridge UP, 1984) 320.

<sup>14</sup> Benn, "Privacy, Freedom, and Respect for Persons" 2.

<sup>15</sup> Parent, "Privacy, Morality, and the Law," *Philosophy and Public Affairs* 12 (1983): 271.

information would be both public, in the former descriptive sense, as well as private, in the latter normative sense. This vindicates the inclusion of publicly documented information within the concept of privacy.

The need to reject 'undocumented' as a qualification of information may be further evidenced by way of example. Suppose that X attends a small university, and has been caught cheating on his Philosophy 101 exam. It is the policy of this school that all students caught cheating are to have their names published in a column on the last page of the student newspaper, which has an average readership of one thousand people. Also, the library retains a copy of each issue of the newspaper for its permanent record. In this way, knowledge of X's act becomes part of the documented public record, and X's privacy is reduced by the article's communication of information concerning X to the rest of the student body. Years later, X goes on to become a prominent political figure. In the spirit of contemporary politics, other politicians who covet X's position uncover the fact that X cheated on his exam, and provide details of his act to the top national newspaper. This newspaper, with an average readership of one million, publishes a front-page article about X's shameful act, which has the effect of making X's act known to the whole country. According to Parent's account of privacy, the publication of this second article engenders no further reduction of X's privacy because the information was already part of the public record as a result of the first article. This is clearly false. Upon the publication of the second article, the number of people who know about X's act increases at least a thousandfold. Surely this large increase in public awareness of the act does constitute a further reduction in X's privacy, above and beyond that brought about by the original article. That the information was part of the public record previous to the latter article in no way alters the fact that most people were unaware of the information. It is the extent of the knowledge of the act which lies at the heart of privacy reductions, not simply the availability of the information in question. Thus, again Parent's requirement that information be undocumented must be rejected.

One consequence of making privacy solely a function of information is that no consideration is given to the individual's subjective mental state. The degree of one's privacy is determined not by any attitude the individual holds *vis-à-vis* his/her situation, but simply by the extent to which personal information is known

to others. Thus, someone involuntarily isolated from others would, according to the definition defended here, be said to possess privacy despite that person's lack of desire for such a state. It could be objected that the condition in which the individual finds him/herself is not rightly called privacy, but is more appropriately identified as isolation or loneliness.<sup>16</sup> Privacy, however, need not be restricted only to cases of *desirable* informational security. Most discussion, often centred on protecting privacy, deals only with those cases in which privacy is sought by an individual. This does not mean, however, that only those cases constitute our base conception of privacy. Rather, they are simply that subset of cases with which the courtroom, the legislature, and society at large are centrally interested. I see nothing inaccurate in saying that a marooned sailor possesses a great degree of privacy, even though it is a privacy which was neither sought nor desired. Thus, while it might seem strange or inappropriate to console Robinson Crusoe by drawing attention to his newly attained degree of privacy, such an observation would still not be false. Indeed, were the question put to Mr. Crusoe concerning an increase in privacy due to his predicament, his answer would have to be a grudging affirmative. Isolation and privacy are not mutually exclusive concepts, with the individual's attitude differentiating the two; rather, an individual can be isolated (undesirably) and possess privacy, though the latter would be a source of anguish rather than comfort. Having privacy thrust unwillingly upon oneself could be just as intolerable as not being able to escape the intrusion of others into one's affairs.

### *Conclusion*

This essay has attempted to defend an original conception of privacy as the condition which obtains to the degree that new information about oneself is not acquired by others. It began by defending the need to start with a non-normative account of privacy. The inability of normatively restricted accounts to identify cases of unobjectionable reductions in privacy implies that they are unsuitable for a general account. Next, four criteria were defended which offer distinct advantages to compliant conceptions. Finally, the aforementioned conception was defended and contrasted with a range

---

<sup>16</sup> I thank Ronald Huebert for bringing this to my attention.

of competing conceptions. Throughout the course of this essay, five significant conclusions concerning privacy have been drawn:

- (1) a base conception of privacy should be non-normative;
- (2) privacy is a condition in which one finds oneself;
- (3) privacy is a non-categorical concept;
- (4) a loss of privacy requires the actual acquisition of information; and
- (5) acquisition of any new information concerning a person constitutes a reduction in privacy.

As technology advances, the potential for violations of privacy likewise increases. If these threats are to be met with coherent and consistent reasoning, the proper groundwork must first be laid. This groundwork must include an accurate account of the terms involved, without which policies concerning the protection of privacy are susceptible to misapplication and misuse. In this essay I have attempted to advance the accuracy and understanding of the central concept within that debate.