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Privacy from an Ethical Perspective

Marijn Sax¹

1. Introduction

Philosophy is a rich discipline consisting of many branches that focus on a wide range of questions. Epistemology, for instance, is the study of knowledge and focuses on questions like ‘what conditions need to be fulfilled for something to count as knowledge?’ Aesthetics is another example, which is the study of (the nature of) art and beauty. Ethics is the branch of philosophy that, in its most general sense, is concerned with the question of what we *ought* to do. More specifically, ethicists often focus on *normative* questions concerning (1) the value of certain goods, practices, or norms, and (2) how – given those values – we should act and relate to each other. The ethics of *privacy*, then, focuses on questions such as ‘What is the value of privacy?’ and ‘What privacy norms should be respected by individuals (including ourselves), society, and the state?’

The formulation ‘the ethics of privacy’ might suggest that there is *one* ethics² of privacy. Nothing could be further from the truth. Precisely because ethics is concerned with normative questions, there are no fixed answers to any of these questions. The answer to a normative question admits to different degrees or plausibility, relative to the arguments provided. As a result, different ethicists develop and argue for different theories of the value of privacy, which, in turn, often implies that they also identify different norms that *should* regulate privacy-related behaviors and policies.

This chapter will focus on the most important and influential ethical theories of privacy. First, some of the important conceptual distinctions that figure prominently in the ethical literature on privacy will be discussed. Here, the definition and function of privacy are discussed. Second, the classical text that laid the foundation for all contemporary analyses of

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² Some philosophers insist that ‘ethics’ and ‘morality’ are two distinct fields of philosophy, while others use the terms interchangeably. In order not to introduce unnecessary complications, I will not make a distinction between ethics and morality.

both the legal and moral right to privacy is discussed. Third, the most important and influential perspectives on privacy's value, and what that implies for the norms that should regulate our behavior and policies, are discussed. In this section, perspectives that are critical of (particular aspects of) privacy are discussed as well. Fourth, some of the important contemporary ethical challenges to privacy and how they are addressed in the literature are discussed. In this section will mostly focus on technological developments and what they imply for privacy.

2. Privacy's Meaning and Function

2.1. Privacy's Meaning: Access and Control-Access

There is persistent disagreement in the literature on privacy's proper meaning and definition. It is, however, possible to identify two terms that figure prominently in discussions on privacy's meaning and definition: the terms of 'access' and 'control'.

Some authors define privacy solely in terms of **access**. Reiman (1995), for instance, writes that "privacy is the condition in which others are deprived of access to you" (Reiman 1995: 30). According to access definitions such as Reiman's, privacy is a function of the extent to which people can access you either physically, or can access information about you. In case people cannot access you in any way, you enjoy complete privacy. Most of the time, however, other people can either gain some access, or have to go through some trouble to gain (some) access to you. So formally speaking, people rarely enjoy complete privacy. This is not necessarily a problem. Seen from the perspective of ethics, we should not focus on access per se, but on the question of *how* access is gained, and to *what* one is gaining access. For example, every time you enter a public place others have 'access' to you and information about you; they can see what you are wearing, where you are going, how tall you are, and so on. This is usually not considered to be problematic.

Other authors point out that access definitions can lead to counter-intuitive conclusions. Fried (1984: 209-10) argues that "to refer [...] to the privacy of a lonely man on a desert island would be to engage in irony". According to Fried, the judgment that a person stranded on a desert island enjoys complete privacy because no one can access her is a meaningless and absurd conclusion because "the person who enjoys privacy is able to grant or deny access to others" (Fried 1984: 210). For Fried, privacy is an inherently interpersonal phenomenon, something the access definition does not properly capture. In order to remedy this shortcoming,

a range of authors, including Fried, include **control** in their definition.³ The resulting control-access definitions state that privacy is about the control one has over access to oneself. With control incorporated into the definition, it immediately becomes clear why the desert island example is, from this perspective, absurd. With no other people being present, there is no meaningful control to be exercised in the first place. But control is often precisely what we care about. Access to ourselves or our information is not undesirable per se; what matters is that we have control over this access. Consider two persons who are involved in a romantic relationship. As a constitutive part of their relationship, they share secrets. Under access definitions, we would have to conclude that they lack privacy due to this practice of sharing intimate secrets. Control-access theorists emphasize that the fact these two romantically involved persons have *chosen* to grant each other access is an ethically important feature of the situation. From a control-access perspective, then, a breach of privacy occurs when a person is not able to exercise control over access, or when the attempt to exercise control over access are ineffective or ignored.

While many authors employ a definition that incorporates the notions of access and/or control, there are also those who deny the possibility of defining privacy at all. Most prominent in this regard is Solove (2008, 2015), who calls privacy “a concept in disarray” (Solove 2008: 1; Solove 2015: 73). According to Solove, we should stop pursuing a single definition of privacy and, instead, start “understanding it with Ludwig Wittgenstein’s notion of ‘family resemblances’.” Wittgenstein suggests certain concepts might not have a single common characteristic; rather, they draw from a common pool” (Solove 2008: 9).⁴ Solove argues that privacy serves many different functions and has many different meanings in different contexts. These different functions and meanings are all related to each other, without necessarily sharing one common feature. As a result, Solove suggests that the pursuit of a single definition of privacy is misguided and unhelpful, since it will never be able to capture privacy’s diverse nature.

2.2. Privacy’s Function: Three Dimensions

Solove’s doubts concerning the possibility of defining privacy are understandable. There are so many things – spaces, bodies, information, behavior, and so on – we call ‘private’. It is

³ Fried defines privacy as “control over knowledge about oneself” (Fried 1984: 210). Roessler writes that “Something counts as private if one can oneself control access to this ‘something’” (Roessler 2005: 8). Westin defines privacy as “the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others” (Westin 1967: 7).

⁴ See Wittgenstein 1953: §§66-67 for his discussion of family resemblances.

indeed difficult to theorize about privacy in a structural and consistent manner. To help structure our reasoning, we can refer to different dimensions of privacy.

Roessler (2005) defines three dimensions of privacy which can be understood as “possibilities for exercising control over ‘access’” and which describe “three ways of describing the normativity of privacy” (Roessler 2005: 9). The three dimensions Roessler identifies are the local dimension,⁵ the informational dimension, and the decisional dimension.⁶

The local dimension of privacy refers to our control over access to physical spaces or areas. Control over access to our own physical body can also be included in this dimension. It is easy to come up with examples of norms of local privacy. We have locks on our front doors. We put locks on bathrooms and, sometimes, bedrooms. We are not supposed to touch just any part of the body of the person sitting next to us on the bus. In all these examples, it is *not* the case that access to homes, bathrooms, bedrooms, and bodies should be strictly forbidden in all cases. Rather, we value our ability to determine who gets access under what conditions.

The informational dimension of privacy refers to “control over what other people can *know* about oneself” (Roessler 2005: 111). With the fast developments in the domain of Information and Communication Technologies (ICTs), information is often understood as data. Although discussions concerning the collection, storage, analysis, and dissemination of (personal) data can indeed be understood from the perspective of privacy’s informational dimension, it should be emphasized that not *all* information is necessarily data. Notice that the earlier mentioned example of looking at people in the streets is also about gaining access to information about other persons’ appearances and behavior.

The decisional dimension of privacy refers to our control over “symbolic access” (Roessler 2005: 79) to our personal decisional sphere. Norms of decisional privacy are supposed to grant “protection from unwanted access in the sense of unwanted interference or of heteronomy in our decisions and actions” (Roessler 2005: 9). This dimension of privacy gained prominence after the *Roe v. Wade* (410 U.S. 113) decision by the U.S. Supreme Court, which ruled the decision to terminate a pregnancy a *private* decision protected by the right to privacy. In line with *Roe v. Wade*, the decisional dimension of privacy can also be said to include – but not be reducible to – *bodily privacy*, i.e. control one has over deciding who can (or cannot) do what to one’s body. In essence, decisional privacy can be understood to be about those decisions for which we find it valuable that persons themselves are able to decide on the

⁵ Cohen (2008: 181) calls this dimension “spatial privacy”.

⁶ Allen (2011: 5) identifies three additional dimensions of privacy which she calls “proprietary privacy”, “associational privacy”, and “intellectual privacy”.

basis of which values, goals, and reasons they come to a decision. Decisions pertaining to our own bodies are one important example of such decisions. Other examples are decisions pertaining to who we spend our life with, what type of ideological and political beliefs we adopt, and what type of lifestyle we adopt.

So far, we have seen that privacy is most often defined in terms of access and control. Moreover, we have seen that different dimensions of privacy are helpful conceptual tools when theorizing privacy. In discussing these conceptual issues, privacy's value has already been gestured at, without discussing it explicitly. For example, identifying control as an important component of privacy's definition seems to presuppose that it is, normatively speaking, desirable that people have control over access. In a similar vein, the different dimensions of privacy not only help *describe* privacy more precisely, they also help us to better understand privacy's value.

In the next section, the seminal text by Warren and Brandeis (1890) that started the discussion on the value of privacy is introduced. After the next section, we proceed to a more detailed discussion of the different theories on the value of privacy.

3. Classical Texts and Authors: Warren and Brandeis Introduce the Right to Privacy

This section focuses on Warren and Brandeis's seminal article 'the right to privacy' from 1890. Their contribution is the first to explicitly theorize a right to privacy and has been highly influential. Many of the other texts that can be considered 'classics' – and which will be briefly mentioned here before they are discussed in the next section – can be understood in relation to Warren and Brandeis' important contribution.

The origin story of the article is a curious one, but also one that contains an important message. As Prosser (1960) explains, the article by Warren and Brandeis is likely the outcome of Warren's annoyance at the way in which "the press had begun to resort to excesses in the way of prying that have become more or less commonplace today"⁷ (Prosser 1960: 383). Prosser continues by explaining that "the matter came to a head when the newspapers had a field day on the occasion of the wedding of a daughter" where many of the Boston elite of the time were present (Prosser 1960: 383).

⁷ Remember that Prosser wrote this in 1960.

Warren and Brandeis observe that the combination of “instantaneous photographs” and an increasingly aggressive press constituted significant societal and technological changes as a result of which “the sacred precincts of private and domestic life” came under such pressure that an intervention was needed (Warren and Brandeis 1890: 195). Suddenly, reporters with relatively small and easy to handle photo cameras could quickly capture images of everything they saw. Warren and Brandeis felt that this technological development, which allowed for a new level and type of privacy invasions, was serious enough to ask the question whether the legal protections of the time still offered enough protections to the individual. Their answer of this question was in the negative.

Law is, in their view, a system that needs “from time and time to define anew the exact nature and extent of such protection [of the individual in person and property]” (Warren and Brandeis 1890: 194). In order to meet this new challenge of “instantaneous photographs” and an aggressive press, they proposed it was high time to explicitly recognize to individuals a distinct right to privacy. It is interesting to emphasize at this point that their observations from 1890 feel surprising topical. More than 125 years later, it is still very much the case that technological developments challenge existing social norms, raising the question whether existing (legal) protections still suffice to protect individuals against (alleged) privacy intrusions.

How should this right to privacy as introduced by Warren and Brandeis be understood? They famously summarized this right to privacy as the right “to be let alone” (Warren and Brandeis 1890: 195). Although this often quoted formulation has almost become a slogan, it does not say much by itself. If we look behind the slogan, however, we encounter many observations concerning the role and value of privacy that are still relevant nowadays. They emphasize that:

the intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprises and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury (Warren and Brandeis 1890: 196).

It is, first of all, interesting to focus on their formulation ‘subjected him to mental pain and distress, far greater than could be inflicted by bodily injury’. This observation is in line with

their repeated emphasize on the importance of not only the protection of the body and the property of an individual, but also its “thoughts, sentiments, and emotions” (Warren and Brandeis 1890: 198). If we couple this observation with the emphasis on the necessity of ‘retreat from the world’, it becomes clear that Warren and Brandeis think that individuals need – and also have the right to – a private sphere where they can think, feel and be the way they want to, without having to worry about intrusions into this private sphere. They also stress that so long as the individual has not made any thought, emotions, or sentiments public, it is the individual who is “entitled to decide whether that which is his shall be given to the public” (Warren and Brandeis 1890: 199). (Notice that this could be construed as a control-access definition of privacy).

At the foundation of their right to privacy, then, is the idea of the “inviolable personality” (Warren and Brandeis 1890: 205), or, put differently, “the more general right to the immunity of the person, - the right to one’s personality” (Warren and Brandeis 1890: 207). It is ultimately up to the individual to decide how he or she wants to be, think, and act. For this to be possible, and in order to live a good life, the individual needs a private sphere free from intrusions and to which she herself can grant or refuse access. Without explicitly mentioning it, Warren and Brandeis essentially offer the contours of a theory of privacy that bases the value of privacy on its ability to enable the autonomy of the individual. As we will see in the next section, this intimate connection between privacy and personal autonomy has been further developed by a number of different privacy scholars.

It was Warren and Brandeis’ article that started the still ongoing discussions of the right to, and the value of, privacy. Remarkably, many of the observations and arguments in their article are still as relevant today as they were at their time of publication in 1890. A further development of their ideas concerning the value of privacy to individuals can be found in a number of classical texts in the liberal traditions, such as Benn (1984), Fried (1984), Reiman (1995) and Roessler (2005). There is, however, also a range of classical texts that explores critiques of such theories of individual privacy which have their origin in Warren and Brandeis. Here we have: the feminist critique with classical texts such as Allen (1988), MacKinnon (1989), and DeCew (1997); the reductionist critique as famously defended by Thomson (1975); the communitarian critique of Etzioni (1999); classical texts on the social value of privacy such as Rachels (1975) and Regan (1995). Lastly, there is the ‘modern classical text’ of Nissenbaum (2010), who develops a theory of privacy that is very sensitive to changing technological circumstances. Although Nissenbaum’s theory is in substance very different to Warren and

Brandeis' theory, they share the fact that they are explicit answers to changing technologies. In the next section, all the classical texts that came after Warren and Brandeis will be discussed in greater detail.

4. Privacy's Value: Different Perspectives

This section will provide an overview of the most important theories on privacy's value. By identifying different 'perspectives' on privacy's value, different authors that develop theories that are in some important respect similar can be grouped together. First, theories that are predominantly liberal in nature and emphasize the value of privacy for individuals are discussed. Second, three critical perspective that emerged in response to theories that emphasize privacy's value for individuals are discussed. Third, the literature on the social value or privacy – and which can be understood as a response to the various critiques– is discussed. The different perspectives discussed here are not necessarily mutually exclusive.

4.1. Privacy's Value for Individuals

A wide range of authors have focused on the value of privacy for individuals. Many of these authors understand privacy as being constitutive of, most importantly, personal liberty and autonomy (Benn 1984; Fried 1984; Schoeman 1984b; Allen 1988; Cohen 1992; Reiman 1995; Roessler 2005; Bennett & Raab 2006).

Fried (1984: 210) writes that “privacy in its dimension of control over information is an aspect of personal liberty”. He provides an important illustration of this more general claim, by arguing that privacy is a necessary precondition for the possibility of friendship and love. The sharing of (very) private information that (nearly) no one else knows about is what makes friendships and intimate relationships special. However, for you to be able to share (very) intimate information it must, first, be the case that no one has access to the information in question, and, second, you yourself must be the one who can decide with whom to share it. This is exactly what privacy achieves – it makes it possible to give others the “gift” of “the intimacy of shared private information” (Fried 1984: 211).⁸ The existence of privacy also provides “means for modulating those degrees of friendship which fall short of love” (Fried 1984: 211). In short, because friendship and love are valuable aspects of our lives, privacy is valuable as well.

⁸ See Inness 1992 and Cohen 2002 for other influential accounts of privacy and intimacy.

Benn (1984) emphasizes how respect for privacy expresses respect for persons and their personhood. Privacy protects you against unwanted observation and scrutiny. The respect of others for your attempts to enforce your right to privacy so as to ensure that you are not observed and scrutinized, is an expression of respect for your personhood. Why? Because, as Benn (1984: 242) explains, “[a] man’s view of what he does may be radically altered by having to see it, as it were, through another man’s eyes”. When you are observed – or suspect that you may be observed – in a place you deem private, you are forced to adopt an additional perspective (besides your own) on yourself. For Benn, this constitutes a lack of respect for the person in question, because for us to be able to act, think, and decide as we want, without having to always see ourselves through another person’s eyes, is essential to our personhood. We need privacy precisely to afford us spaces free of observation and scrutiny in order to achieve various liberal personal ideals: the ideal of personal relations, the ideal of “the politically free man”, and the ideal of “the morally autonomous man” (Benn 1984: 234). These three ideals will be used to structure the remainder of this section on privacy’s value to individuals.

Where Fried focuses on the exclusivity of information (achieved by privacy) as a constitutive element of personal relations, Benn focuses primarily on the fact that “[p]ersonal relations are exploratory and creative” (Benn 1984: 236). He explains that all of our personal relations are largely regulated by role-expectancies. However, persons will also, first, “fulfill them in different ways” (Benn 1984: 235), and, second, relations are not *completely* determined by role-expectancies. Privacy affords persons with a sphere in which to explore different ways of fulfilling roles, or to creatively shape relationships to the extent that they are not defined by role-expectancy. Without privacy, people would be less free to do so. Moreover, we need privacy to have a reasonable measure of control over how we present ourselves to others. Privacy, first of all, allows us to *separate* different roles to begin with (Cohen 2002). It is, next, important that we can have expectations of what others do and do not know about us, so we can determine how to present ourselves. The possibility to do so is important to us, because we need to play different roles in society (e.g. the roles of friend, co-worker, lover, stranger on the street, family member, and so on), and we would like to have meaningful control over *how* we choose to fulfil those roles (Roessler & Mokrosinska 2013; Marmor 2015).

The ideal of political freedom is explained by Benn by referring to “the liberal ideal” that persons should enjoy “an area of action in which he is not responsible to the state for what

he does so long as he respects certain minimal rights of others” (Benn 1984: 240).⁹ Privacy thus functions as a sort of “shield” (Cohen 1992: 102), protecting a space where persons are not accountable to anyone but themselves. This so called public/private distinction is central to liberalism, since it rules our private space (which can be defined somewhat differently by different authors) as off-limits to the state.

Reiman (1995) provides a further elaboration of the relation between privacy and political freedom. Not respecting norms of privacy can lead to an “extrinsic loss of freedom”, by which Reiman means “all those ways in which lack of privacy makes people vulnerable to having their behavior controlled by others” (Reiman 1995: 35). Much like Benn, Reiman argues that (the possibility of) observation and scrutiny of our behavior can affect our actual behavior. “[E]ven if they have reason to believe that their actions *may* be known to others and that those others *may* penalize them, this is likely to have a chilling effect on them that will constrain the range of their freedom to act” (Reiman 1995: 35). As a result of a lack of privacy, people may start to behave in ways they believe is in conformity with “the lowest-common denominator of conventionality” (Reiman 1995: 41). If the lack of privacy is persistent enough, there is the risk of people becoming *different* – less willing and able to deviate from conventional norms, less willing and able to experiment, less willing and able to engage in political criticism. In a similar vein, Richards (2015: 95) argues that we need ‘intellectual privacy’ as “protection from surveillance or unwanted interferences by others when we are engaged in the process of generating ideas and forming beliefs”. A severe lack of privacy would be inimical to political freedom as understood by liberals, since this freedom is premised on “the autonomous individual, the one who acts on principles which she has accepted after critical review rather than simply absorbing them unquestioned from outside (Reiman 1995: 42).

The last remark provides a good transition to the third liberal ideal identified by Benn: personal autonomy. Roessler (2005) develops a systematic normative account of privacy to argue that privacy is constitutive of personal autonomy. The ideal of personal autonomy can be understood as providing a more concrete and more substantial interpretation of what normatively desirable freedom looks like. While we can ascribe freedom in a general sense to a person who is not obstructed in her acting and who can choose from a significant range of options, “not every free action is an autonomous one” (Roessler 2005: 49). Personal autonomy is about one’s practical relation to oneself – it is about “the possibility of holding an attitude to

⁹ See Mill (1991 [1859]) for a classic elaboration of the liberal ideal, including the harm principle implicitly referred to here by Benn (“That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill 1991 [1859]: 14)).

oneself in general” (Roessler 2005: 51) by virtue of which one can critically reflect on one’s reasons, goals, values, and projects. It thus becomes possible to ask “oneself the ‘practical question’ [...] how I want to live, what sort of person I want to be, and how I should strive for my own good in my own way” (Roessler 2005: 51). Freedom *as autonomy* should thus be understood as self-determination, which consists in developing – and at the same time is enabled by – the above mentioned practical relation to oneself. Importantly, Roessler claims that living an autonomous life is more rewarding and desirable than living a non-autonomous life, “for without this form of self-determination we would fail precisely to achieve our *own* good as our own” (Roessler 2005: 50).

As was described in the section on privacy’s function, Roessler identifies three dimensions of privacy (local, informational, and decisional). The different dimensions help identify a range of different privacy norms that are supposed to protect and enable personal autonomy.

Norms of local privacy carve out spaces where one can go unobserved – or invite only those persons one wants present – in order to, among other things, engage in intimate relationships, experiment with new ways of doing, thinking, or living, and take a rest from the social demands of presenting oneself in certain ways in public.¹⁰

Norms of informational privacy allow one to control who knows what about oneself. It is important to have this kind of control, because the knowledge other people have about us shapes the ways in which we can present ourselves to others and act around others. Informational privacy thus affords space for autonomous freedom in choosing how to present ourselves to others and how to give shape to relationships.

Norms of decisional privacy allow one to control access to one’s decisional sphere. In practice, this means that for “certain forms of behavior in public, as well as questions of lifestyles and more fundamental decisions and actions” we “may with good reason tell other people that such-and-such a matter is none of their business” (Roessler 2005: 79). The relevance of decisional privacy for personal autonomy should be clear: it carves out a sphere where one can determine for oneself how to shape one’s life and actions.

Thus far, theories that ground privacy’s value in personal freedom and autonomy have been discussed. Moore (2010), however, adopts a different approach and starts from an account of human nature to explain privacy’s value. In line with Aristotelean teleology, Moore explains

¹⁰ See Goffman (1959) for a seminal analysis of self-presentation in social life. Similarly, Marmor (2015: 3-4) argues that the “right to privacy is grounded in people’s interest in having a reasonable measure of control over the ways in which they can present themselves (and what is theirs) to others”.

that human nature is such that it allows humans to flourish in a particular human way. In order to flourish, humans need to develop those capacities and faculties that are unique to human nature, such as our rational faculties which allow us to, among other things, live an autonomous life. We also need favorable external conditions to flourish. In essence, Moore's argument is that rights to and norms of privacy are necessary to make human flourishing possible. For example, we need private places to relax, experiment, and think. Without the availability of private places, we would not be able to do these typically human activities that are conducive to human flourishing. Moore thus concludes that "privacy is valuable *for beings like us*" (Moore 2010: 56, emphasis added).

A recurring idea – sometimes explicit, sometimes implicit – in many theories of privacy's value for individuals is that privacy is a special kind of value. Privacy is seen as an individual (and sometimes collective) right that expresses *respect* for persons and their personhood. One could even claim that respect for privacy is seen as acknowledging the *dignity* of persons. As early as 1890, Warren and Brandeis (1890: 214) referred to "the dignity [...] of the individual" in discussing the right to privacy. Later, Bloustein (1964) criticized Prosser (1960), who suggested privacy should not be considered an independent value, but "rather a composite of the interests in reputation, emotional tranquility and intangible property" (Bloustein 1964: 962). Bloustein's reply to Prosser is to suggest that Prosser's account of privacy's value is too superficial, because "he neglects the real nature of the complaint; namely that the intrusion is demeaning to individuality, is an affront to personal dignity (Bloustein 1964: 973). As we saw earlier, multiple authors in the liberal tradition emphasize the intrinsic connection between privacy and personal autonomy (Benn 1984; Reiman 1995; Roessler 2005). If personal autonomy is not possible without privacy, and if personal autonomy is the ground for the dignity of persons, then it follows that the right to privacy is a highly important right because it is constitutive of human dignity.

Because of privacy's supposed special importance, there is a reluctance to discuss privacy as 'just one value and right amongst many'. Seen from this perspective, privacy cannot simply be 'balanced' with other values and rights.¹¹ The image of 'balancing' suggests that one is balancing two things that are, in principle at least, equally important. Precisely this assumption is in many cases misleading, because some values and rights are more fundamental

¹¹ For critical analyses of balancing as a method to answering normative questions, see Waldron 2003 and Van der Sloot 2017.

than others. Consider the following example. A person might claim that privacy can be violated as long as the violation is instrumental to generating enough monetary profits to ‘tip the scales’ in the right direction. Authors in the dignity tradition would see this judgment as fundamentally misguided. Why? Because the right to privacy protects and respects human dignity, whereas an increase of monetary profits is not (necessarily) constitutive of human dignity. To suggest that both values and rights are of the same kind and can therefore be ‘traded’ for each other given the right exchange rate, is to neglect the fact that some values – such as privacy – are (sometimes) categorically more important. Another example is the often heard proposal to ‘balance’ privacy and security. Again, some would suggest that privacy is of special importance and that a simple balancing of privacy and security fails to acknowledge this.

4.2. Three Critiques of Privacy and its Value

The writings on privacy’s value to individuals have resulted in a number of different critiques, three of which will be discussed. First, the communitarian critique of privacy which questions the special importance that is ascribed to privacy. Second, the reductionist critique which suggests that the concept of privacy is redundant because it can be reduced to more basic values and rights. Third, the feminist critique which points out that privacy sometimes benefits particular groups more than others due to prevailing power structures.

4.2.1. The Communitarian Critique of Privacy

In the introduction to his book with the telling title *The Limits of Privacy*, Etzioni (1999) announces that “[t]his is a book largely about the other side of the privacy equation” (Etzioni 1999: 2). So what are both sides of the equation that Etzioni is referring to here? One side of the equation – the one Etzioni criticizes – is the side that stresses privacy’s unique value and, as a result, emphasizes the need for especially strong protections of the individual’s moral and legal right to privacy (roughly the dignity position discussed above). The “other side of the equation” he defends is “about our investment in the common good, about our profound sense of social virtue, and most specifically about our concern for public safety and public health” (Etzioni 1999: 2). His book is an exploration into the question when “serving the common good entails violating privacy” and when such violations of privacy are legitimate (Etzioni 1999: 2). It is important to emphasize that Etzioni does not wish to claim that privacy is *unimportant*. What he claims is that due to the strong focus on privacy as an (almost) inviolable individual right, we tend to forget about other values and rights that warrant our attention and protection

as well. His critique is in line with the more general communitarian critique¹² on liberalism's strong focus on the individual and the individual rights that should protect her from unwanted interferences by society and the state. Communitarians seek to reclaim the value of living in a community that is not made up of atomistic liberal individuals pursuing maximum individual freedom. They emphasize the essential and valuable role our social surroundings play in forming and enabling our identity formation, a fact largely ignored by the liberal tradition. The reaffirmation of the function and value of community also comes with a stronger focus on 'the common good' and 'a sense of social virtue', as Etzioni puts it.

Etzioni's discussion of Megan's Laws¹³ provides a good illustration. As he himself observes, arguments *against* such laws are often grounded in privacy considerations that are presented as knock-down arguments: "They have paid their dues to society when they complete their jail sentence; [...] and they have the same inalienable rights to privacy and autonomy as the rest of us" (Etzioni 1999: 43-44). Given Etzioni's communitarian position, he does not take the individual's right to privacy as constituting reason enough to refute Megan's Laws. He discusses a great deal of empirical literature in an attempt to establish to what extent the violation of the sex offenders' privacy yields higher levels of security. If the increase of security *to the community at large* is substantial enough, he argues, it can justify violations of the privacy of individuals. In short: privacy is just one of the many values and rights that should be considered and privacy receives no special treatment vis-à-vis other values and rights.

4.2.2. *The Reductionist Critique of Privacy*

As we have seen earlier, Solove (2008, 2015) suggests that there can be no single, unified definition of privacy because privacy protects too many different, diverse interests. Thomson (1975) defends the even stronger claim that the very idea of a *right* – both moral and legal – to privacy is conceptually superfluous. She offers a reductionist analysis of the right to privacy, arguing that it is made up of a cluster of other rights such as the right to property and the right over the person (which is similar to the right to bodily integrity and self-determination). Moreover, she argues that "every right in the right to privacy cluster is also in some other right cluster" (Thomson 1975: 312). Every time we invoke our right to privacy, we can point to a

¹² For important communitarian critiques of liberalism, see Sandel 1981, MacIntyre 1981, Walzer 1983, and Taylor 1989.

¹³ Megan's Laws refers to legislation that requires people who have been found guilty of sexual offenses to register with local law enforcement, even if they have served their sentence. The resulting sex offenders registers are open to the public and some communities require people in the register to proactively inform others in their neighborhood of their history as a sex offender (Etzioni 1999: 43-44).

different right that explains why the supposed right to privacy is important. As a result, “the right to privacy is “derivative” in this sense: it is possible to explain in the case of each right in the cluster how come we have it without ever once mentioning the right to privacy” (Thomson 1975: 313). According to Thomson, introducing the term (and the right to) ‘privacy’ in discussions does not add any explanatory value, for everything we want to address when we discuss privacy can be addressed in terms of existing different rights.

Although Thomson’s argument has been influential, it can be criticized.¹⁴ In order to uphold her claim that *any* privacy right can be reduced to a different right, Thomson has to refer to an open-ended list which contains a large number of rights, some of which seem rather ad hoc and trivial. For example, we have a right not to be looked at, and a right not to be listened to. Thomson calls them “un-grand” rights which, contrary to “grand ones” like the right to life and the right to liberty, are not “those that come to mind” when we speak of rights (Thomson 1975: 305). She maintains that they are relevant rights nonetheless and, moreover, that they help explain why privacy is a derivative right. However, by referring to an open-ended list of “un-grand” rights, Thomson has introduced such a broad notion of rights that she can answer to any possible counter-example by introducing yet another highly specific, un-grand right. Do we need a right to privacy to explain that X is problematic? No, Thomson could reply, because we have a right not to be subjected to X.

Scanlon (1975) offers a direct reply to Thomson. He agrees that those violations we understand as privacy violations do not derive “from any single overarching right to privacy” (Scanlon 1975: 315). Scanlon, however, argues that there is something *else* that unifies all the different privacy violations and the corresponding different rights: “these rights have a common foundation in the special interests that we have in being able to be free from certain kinds of intrusions” (Scanlon 1975: 315). Put shortly, Scanlon argues that Thomson got the primary unit of analysis wrong. A satisfactory theory of privacy should start from the interests we have in privacy. These interests yield norms, conventions, and (legal and non-legal) rights supposed to protect them. Rights *can* indeed protect our interests, but there is not an intrinsic 1 on 1 connection between the two. Sometimes our interests are (partly) harmed, without a right being violated. Scanlon thus concludes that Thomson’s rights-based analysis cannot (always) adequately explain the interest we have in privacy. The concept of ‘privacy’ is thus still a valuable one to have in our vocabulary and does not need to be scrapped, as Thomson suggests. Reiman (1976) agrees with this conclusion when he writes that Thomson’s argument is based

¹⁴ See Scanlon 1975, Rachels 1975, and Reiman 1976 for critiques on Thomson’s argument.

on a “large non sequitur”: “even if privacy rights were a grab-bag of property and personal rights, it might still be revealing, as well as helpful, in the resolution of difficult moral conflicts to determine whether there is anything unique that this grab-bag protects that makes it worthy of distinction from the full field of property and personal rights” (Reiman 1976: 28).

4.2.3. *The Feminist Critique of Privacy*

A range of authors have formulated different feminist critiques of privacy (Allen 1988; MacKinnon 1989; Pateman 1989; Gavison 1992; DeCew 1997, 2015). Contrary to liberal scholars who praise privacy for its ability to provide us with a private sphere where the state cannot interfere with us, feminists argue that given unequal power relations shaped along gender lines, privacy can *disempower* women, rather than empower them. In essence, all feminist critiques are founded on a similar observation: although privacy can indeed be considered valuable for many reasons, it can at the very same time shield off instances of violence, degradation, rape, and abuse, that take place in the private sphere from much-needed public scrutiny. The public/private distinction so essential to liberalism is therefore deeply problematic, for it perpetuates many gendered inequalities and injustices by allowing them to go unnoticed entirely or by labelling them as ‘private issues’ the state has no business in addressing. An additional problem addressed by feminist scholars is the ‘naturalization’ of the private and public sphere. Pateman (1989: 118-136) points out that liberal scholars often presume that there is a natural private sphere where family life takes place and a natural public sphere where social and political life takes place. Feminist critics emphasize that what counts as private and what counts as public is determined by *conventional* norms that can – and sometimes should – change. Insistence on the conventional nature of the public/private distinction affords feminist critics an important basis for critique, since conventional norms and boundaries can be (re)negotiated.

MacKinnon (1989) is most radical in her critique of the public/private distinction. After observing that the existence of a private sphere does not benefit both genders equally (to put it mildly), she concludes: “This is why feminism has had to explode the private” (MacKinnon 1989: 191). She argues that the private has to be exploded, because “women have no privacy to lose” (MacKinnon 1989: 191). If, as the liberal tradition teaches us, privacy is important because it allows for autonomous freedom, then privacy thus understood does not exist as long as women are subject to unequal power relations *within* the very private sphere that allows for

the suppression of their autonomy. Accordingly, the private sphere should be exploded to allow for interventions aimed at gender equality.

Other feminist scholars have suggested that MacKinnon's dismissal of the private sphere in its entirety is implausible, because the dismissal is too rigorous. DeCew (1997: 86) agrees with MacKinnon that the public/private distinction *can*, and in fact often does, work to the detriment of women. However, proposing to completely collapse the private into the public is unattractive, since it implicitly assumes that privacy can *never* be attractive to women, not even under (more) ideal conditions. She refers to Gavison, who writes that "it is rare to find feminists who argue consistently that everything should be regulated by the state, or that the family and all other forms of intimate relationships should disappear in favor of public communities [...] When pushed, feminists explicitly deny this ideal" (Gavison 1992: 28). So instead of arguing for exploding the private, DeCew, as well as Allen (1988), Gavison (1992), and Pateman (1989), argue for a more nuanced approach. Harmful practices that are allowed to go unnoticed because they take place in the private sphere should be remedied, for instance by allowing for more – but not complete – public scrutiny. But at the same time it should be observed that women *can* benefit from the existence of a private sphere, because women – just like men – have an interest in autonomous freedom enabled by a just private sphere. In sum, the very existence of a private sphere is not the problem, but unjust power structures that give rise problematic gender norms structuring the private sphere are the problem.

4.3. The Social Value of Privacy

The feminist critique of privacy has been an important source of inspiration for a branch of ethical literature that focuses on the social value of privacy. While few would disagree that privacy has value for individuals, authors in this tradition call attention to the fact that privacy is also valuable to social relations and society at large (Rachels 1975; Regan 1995; Solove 2008; Steeves 2009; Roessler & Mokrosinska 2013; Marmor 2015).

Rachels (1975) focuses on privacy's importance for social relations. The attentive reader might notice that in the previous section, different authors within the liberal tradition also emphasized privacy's importance for relations. These authors (Fried, Benn), however, focused on relations from the perspective of the individual. They argued that it is important to personal identity and personal autonomy to be able to shape relationships. Rachels' focus is somewhat different. He argues that privacy regulates all of our normal and ordinary social relationships: "privacy is necessary if we are to maintain the variety of social relationships with other people that we want to have, and that is why it is important to us" (Rachels 1975: 326).

To see why, consider your doctor, your close friend, and your co-workers. We behave differently with all of them and this is to a large extent regulated by the types of information we exchange with each of them. Social norms prescribe that it is certainly okay for you to reveal information about the private parts of your body to your doctor. It is, quite literally, her business to know these private facts (Rachels 1975: 331). At the same time, it would be weird – in the typical office space at least – to reveal the same private facts to your co-workers. Reversely, there are many things you could discuss with your co-workers that would be weird to share with your doctor. Rachels' argument is that privacy norms regulate the different types of appropriate information disclosures. Privacy thus allows us to maintain different relations with different persons and that this, in turn, is what allows society to function in a way that is valuable to us all.

Roessler and Mokrosinska (2013) provide a further refinement of Rachels' argument. They focus specifically on different types of social interactions associated with different types of relationships (private relationships with friends, family, and intimates; professional relationships; and interactions between strangers in public). For each type of relationship, they show how norms of informational privacy regulate information exchanges and how this is a precondition for these different types of relationships to be able to exist alongside each other. Norms of informational privacy ensure that you can generally expect that people do not know something about you, unless you have chosen to disclose the information (or know that someone else has done so). Besides enabling different types of relationships, the resulting control you have over disclosures of information also enables you to autonomously decide how you want to give shape to the relationships you enter in to. So, "by facilitating social interaction, norms of privacy contribute to creating social conditions that are required for the successful exercise of individual autonomy" (Roessler and Mokrosinska 2013: 785).

Privacy's value to society can also be understood from the perspective of democracy. A range of authors have suggested that privacy is a necessary precondition for the proper functioning of democracy (Gavison 1980; Simitis 1987; Regan 1995; Reiman 1995; Lever 2006; Goold 2009, 2010; Hughes 2015; Lever 2015; Richards 2015). Gavison (1980), for instance, argues that "[p]rivacy is also essential to democratic governance because it fosters and encourages the moral autonomy of the citizen, a central requirement for democracy" (Gavison 1980: 455). A similar argument can be found in Reiman (1995), as was discussed earlier.

An important implication of the literature on the social value of privacy is that "it is not always reasonable to assume a conflict between individual privacy on the one hand and society

on the other” (Roessler & Mokrosinska 2013: 785). Privacy does not just place annoying *restrictions* on society’s room for action, it is just as much an enabler of many valuable social practices.

5. New Challenges and Topical Discussions

This section discusses a range of new challenges to privacy, most of which arise due to new technological developments that challenge existing norms, laws, and customs. To provide structure to the discussion of the wide range of technologies and challenges, the section is divided in three sections: challenges to local privacy, challenges to informational privacy, and challenges to decisional privacy.

5.1. Challenges to Local Privacy

One of the prominent contemporary challenges to local privacy is the rise of ‘ambient technology’ and ‘smart devices’ that (try to) find their way into our homes. Traditionally, access to the home is severely regulated and restricted by locks and social norms a like. Ambient technology and smart devices seem to be hardly bothered by tradition, as they gain access to a sphere that used to be impenetrable (e.g., Brey 2005, De Vries 2010, Van Dijk 2010, Roux & Falgoust 2013, Etzioni & Etzioni 2016).

By now, a smart thermostat is no longer a niche product that only a few enthusiasts have installed – it is starting to become the default. This seems to be only the beginning. At the latest (2018) Consumer Electronics Show, ‘smart technology’ took center stage, with nearly every company present showing some kind of smart solution for the house. As Wired commentator David Pierce writes: “Everything is a gadget now! A smart washing machine doesn’t seem ridiculous anymore [...] All of it more powerful than last year’s model, more connected, more deeply integrated into your everyday life” (Pierce 2018). The ‘digital assistants’ are another example. The ‘big four’ all try to push their digital assistant to become the standard: Apple with its Siri, Amazon with its Alexa, Facebook with its M, and Google with its Google Assistant. These digital assistants all aim to be present in your house and to become your go-to device for questions, suggestions, and for controlling other ‘smart devices’ in your home (Ezrachi & Stucke 2016; Stucke & Ezrachi 2017).

The very fact that an increasing number of devices – often connected to the internet and thus to a fundamentally open, public sphere – occupy our private spaces, is not necessarily a

reason for worries. What is, according to many, worrisome, is the fact these devices also challenge our informational and decisional privacy within our homes. Many of these devices are explicitly designed to collect, store, and analyze large amounts of data. Moreover, these devices often come with ‘smart’ functions aimed at making suggestions, or even at making choices for us. These worries pertaining to informational and decisional privacy will be discussed in the next sections.

In terms of local privacy, we should ask to what extent these devices threaten to destroy something of value in our private spaces. Recall that norms of local privacy are important because they allow persons to, among other things, take a break from performing different social roles; to experiment with different ideas, thoughts, and practices; to perform acts that would not be possible – or become less valuable – with spectators present. The presence of device that constantly gather, store, and analyze data, often in order to make suggestions or make decisions for you, could potentially disturb these practices. As the presence of such device in our private spaces grows, they might end up making us feel less free to experiment, and to engage in activities that require no uninvited spectators to be present. We might, moreover, end up feeling like we have to always incorporate the presence and abilities – that is to say, the perspective – of these devices into our view of and deliberations about ourselves; even within our homes, the one place where this should not be the case.

5.2. Challenges to Informational Privacy

Many of the contemporary challenges to informational privacy have their roots in technological developments as well. We have seen the rise of futuristically sounding phenomena such as big data, the internet of things, social media, the quantified self, and smart cities. Although these phenomena are different in many respects, they share at least one thing: they all perpetuate the rapid ‘datafication’ of our life world (Van Dijck 2014). It has led many commentators to write things like “the amount of data is growing fast, outstripping not just our machines but our imaginations” (Mayer-Schönberger & Cukier 2013: 8). Simply put, enormous amounts of data are collected, and those data can be put to work in increasingly smart ways.

To understand why this development raises privacy concerns, we should make at least three observations. First, it should be observed that not just more data are collected; it is equally important to observe that data about an increasing amount of different domains of life and activities are collected. We all know by now that our smartphones generate a great variety of data throughout the day. Some of us wear wearables that measure, for instance, heartrate and number of steps. The cities we live in are becoming smarter as well, datafying mundane

activities. Consider Wi-Fi tracking of customers in stores (Gibbs 2016) and billboards that can film and generate data on people passing by (Ember 2016). In a world that is rapidly being filled with all kinds of sensors, one could ask whether persons can still keep track of – let alone exercise meaningful control over – all the different types of data that are generated.

Second, new techniques allow to exploit all these data in increasingly sophisticated ways. Consider big data's promise to extract qualitatively *new* and *unexpected* insights from existing data; big data promises to let us see things we previously could not see (Sax 2016). Even if you have never disclosed a piece of information, big data analytics may allow others to still *infer* the information from existing data.

Third, the previous two developments are further exacerbated by the inherent properties (or: affordances) of bits, the 'material' that data are made of. Bits are persistent, replicable, scalable, and searchable (boyd 2010). As a result, once data is created, it can be easily shared (and exist in two or more places at once) and used for different purposes in different contexts.

Taken together, these developments lead to privacy concerns that can be understood from the perspective of privacy's informational dimension. People feel like they lose control over information that is about them. Why is this problematic? People are often quick to point out that there is a risk of unwanted access to *sensitive* information. This claim is then often followed by an especially embarrassing example involving love, intimacy, and/or sex. For example, a billboard at a train station might film a person in the company of her secret lover, a fact she does not want other people to know about. More formally put, the abundance of sensors collecting data and big data technology analyzing data might erode a person's effective control over her sensitive information. It should be emphasized, however, that it is not just sensitive information that people (should) want control over. As was discussed earlier, people play different social roles in different contexts which are regulated by different social norms. This practice is enabled by the general expectation that people do *not* know certain information about us, unless we have shared the information deliberately. It is precisely this expectation that is threatened by contemporary technological developments, with the possible (partial) collapse of social boundaries between contexts as a result.

Besides people's ability to perform different roles, the current developments also put pressure on context-dependent interpretations of the meaning of anything that can be stored as data. As Miller (2016) describes, information that is produced in context A with intended meaning X, could, due to data's inherent properties, be reproduced in context B and interpreted to mean Y or Z. This can occur due to a lack of people's control over the original data, i.e. due to a lack of informational privacy. Sometimes, this will not result in serious harms. But lack of

informational privacy can lead to serious harms, as is explained by Turow (2011) when he describes the inner workings of online advertising industry. Due to people's limited informational privacy, an enormous amount of information about people is available to advertisers, which, in turn, allows them to build profiles of individuals. The built profiles can, next, be used to target particular persons with personalized offers. Zuboff (2015) even talks of "surveillance capitalism" to indicate that the surveillance of consumers had become a dominant commercial strategy aimed at generating value. Turow also explains how these practices can lead to serious – often unintended – social discrimination. If people end up in the 'waste' category of advertisers, their opportunities will be narrowed as a result of receiving less interesting and useful offers.¹⁵ A lack of informational privacy can thus lead to serious harms. Moreover, Bridges (2017) explains that – in the US context at least – there is the additional problem of poorer people experiencing a *de facto* weaker protection of their privacy rights.

The predicament sketched above is also the point of departure of the theory of privacy that adds a fundamentally new perspective: Nissenbaum's (2010) theory of privacy as contextual integrity. Nissenbaum observes that we are surrounded by all kinds of information flows that, on the one hand, may threaten our privacy, but, on the other hand, are also necessary for many essential or useful services. Instead of trying to argue that the flow and use of information should be controlled by individuals as much as possible, Nissenbaum argues that information should flow in *appropriate* ways. The appropriateness of a particular flow of information can be determined by analyzing whether "context-relative informational norms" are respected (Nissenbaum 2010: 129). Society is made up of various social contexts such as the educational contexts, the healthcare context, and the commercial marketplace. In each context different goals, ends, and purposes are at stake; or, put differently, each context is structured around a different set of values. These values inform the norms of a context that determine how activities within the context can be conducted in an appropriate manner. Privacy is respected when information flows without breaching context-relative informational norms (Nissenbaum 2010: 129-157). By shifting focus away from individual control and towards contextual norms, Nissenbaum's theory is an attempt to theorize privacy's function and value for a time where (personal) data are generated, disseminated, and analyzed at such a rapid pace that (complete) individual control over data seems no longer attainable.

¹⁵ Another possibility is that, for instance, poorer people will be targeted with advertisements for short term high interest credits, which might end up harming them more than benefitting them.

5.3. Challenges to Decisional Privacy

Because data are a salient feature of many contemporary technological developments, it is unsurprising that informational privacy is the primary analytical frame often used. However, the relevance of decisional privacy as source of relevant ethical norms should not be overlooked. The datafication of our life world through the emergence of big data, the internet of things, social media, the quantified self, and smart cities also increases the potential of technology to influence us, persuade us, or even manipulate our behavior (Spahn 2012). Consider Yeung's (2017) concept of 'hypernudge'. Hypernudges are nudges¹⁶ supercharged with big data technology. As Yeung explains "Big Data-driven nudges make it possible for enforcement to take place *dynamically* (Degli Esposti 2014), with both the standard and its execution being continuously updated and refined within a networked environment that enables real-time data feeds which, crucially, can be used to *personalize* algorithmic outputs [...]" (Yeung 2017: 122). Because hypernudges can be personalized on the basis of personal profiles, they are expected to be much more effective in terms of influencing our behavior. An important question is whether we want to allow this type of access to our decisional sphere. Consider another example that has come to be known as the Facebook emotional manipulation study. In a large scale experiment, for which they later apologized, Facebook tried to manipulate the emotions of its users, by showing either more positive or more negative content to users and check whether and how it influenced the behavior of these users (Hill 2014). The researchers were indeed able to measure significant effects. The study seems to suggest that a large platform can influence how we feel and possibly how we act as a result of those invoked feelings. This raises, again, questions on decisional privacy. Do we deem it acceptable for platforms to enter our decisional sphere behind our backs, trying to manipulate what we do by adjusting our "psychological levers", possibly "away from their ideal setting" (Noggle 1996: 47)? This chapter is not the right place to answer such a question, but it is important to point out that the growing potential for manipulation, and the importance of norms informational as well as decisional privacy for preventing manipulation, should not be overlooked when discussing contemporary challenges to privacy.

¹⁶ The term 'nudge' was popularized by Thaler and Sunstein (2008) and refers to "any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentive" (Thaler & Sunstein 2008: 6). The basic idea is to exploit known cognitive biases to help people make better decisions. *The Cafeteria* is the best known-example: by placing the salad in an easier to reach place than the less healthy lasagna, significantly more people will end up choosing the salad. This outcome can be predicted and explained by insights from behavioral economics.

6. Conclusion

This chapter has presented many different theories on privacy's value, as well as critiques of these theories. The reader might ask to herself what to do with such a multiplicity of perspectives. Is one to just pick and choose between these perspectives, based on personal preference?

One way of understanding the meaning and practical use of these different perspectives, is to acknowledge that there is a red thread running through all the theories discussed and the discussions between theories. This red thread can already be found in Warren and Brandeis' foundational text on the right to privacy. As both society and technology are constantly developing and changing, we are also confronted with an constant reconfiguration of norms that regulate what we may know of each other, what we may see of each other, what places we may enter, what information we may share, and what private decisions we may (try) to influence. Many of the theories discussed are an attempt to (1) make sense of these shifting norms, and (2) suggest how we *should*, ideally, understand and enforce privacy norms.

There are, of course, persistent and fundamental disagreements as to how we *should* understand and enforce privacy norms. Different theories build on, and promote, different values, and those values can clash. Most of the time, however, different theories focusing on different developments and different aspects of privacy can, when taken and understood together, complement each other and allow for a richer understanding of the privacy challenge at hand. The hope is that this chapter provides the reader with a rich toolbox filled with normative and conceptual tools that help the reader understand and theorize how privacy *should* take shape, now and in the (near) future.

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