

PRIVACY, KNOWLEDGE AND KNOWABLENESS

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1 Three Accounts of Privacy

On the face of things, an individual's (informational) privacy¹ is possessed or lacked only in relation to other individuals and personal facts about her. That I have no privacy with respect to my physician and sensitive facts about my state of health does not imply that I have no privacy with respect to my local grocer and those facts. Nor does it imply that I have no privacy with respect to my physician and various non-medical facts, say about my favorite on-line activities or tastes in fiction. Any plausible account of the nature of privacy should be able to accommodate these relativistic dimensions of privacy.

The relativization (in this sense) of privacy under the three main accounts of it in the privacy literature seems easy enough to effect. Consider first the "Control Theory," which points to an individual's control over others' knowledge of personal facts about her as the essence of her privacy. "Privacy," writes Alan F. Westin, "is the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about themselves is communicated to others."² Similarly, Charles Fried contends that privacy "is not simply an absence of information about us in the minds of others; rather it is the *control* we have over information about ourselves."³ Thus, if it is up to me whether you know a certain fact about my medical status – if your knowing depends on whether I voluntarily expose the fact to you – I can properly be said to have privacy relative to you and to that fact. If by contrast it is not up to me – if you can know the fact

independently of my free choice to expose it – then I have no privacy relative to you and to that fact.

To render this sort of account consistent with the relativity of privacy, we need merely to build into its central thesis (hereafter, CT) an appropriate reference to other individuals and the relevant personal facts:

CT An individual A has privacy relative to another individual B and to a personal fact f about A if and only if A controls whether B knows f .

Consider now the “Limited Access Theory,” represented by such authors as Ruth Gavison⁴ and Anita L. Allen.⁵ This account construes an individual’s privacy in terms of limitations (or restrictions) on others’ epistemic access to personal facts about her, where – unlike in the Control Theory – these limitations needn’t derive from the individual’s own control over the access.⁶ To illustrate, suppose that there is a legal norm in A ’s society to the effect that unauthorized videotaping of an individual’s activity in her own home is subject to prosecution. This norm limits the epistemic access that others have to various personal facts about A ’s activity at home, for it precludes them from knowing such facts in the following way: unauthorized videotaping, not subject to prosecution, of A ’s activity at home. And that means that A has some degree of privacy, according the Limited Access Theory.

How does this account look when appropriately relativized? It cannot – on pain of absurdly implying that every individual has privacy relative to every other individual and to every personal fact about herself – be taken to hold that an individual A has privacy relative to another individual B and to a personal fact f about A just in case there are *some*

limitations or other on B 's ability to know f , for individuals' epistemic access to personal facts about others is always limited in some way or other, simply in virtue of the fact that they are human. (None of us is, after all, omniscient.) But it would be pushing the account to an equally absurd point to construe it as holding that A has privacy relative to B and to f just in case there are *complete limitations* on B 's ability to know f – just in case B is completely unable in any manner whatsoever to know f . Rather, the idea is that there are limitations on B 's ability to know f that go beyond the limitations imposed simply by virtue of the fact that B is a human epistemic agent, and these limitations needn't entail that B is completely unable to know f . The limitation imposed by the legal norm just mentioned in the previous paragraph is of this sort: there's nothing about the mere fact that others are human epistemic agents that prevents them from knowing personal facts about A 's activity at home through unauthorized videotaping of that activity that is not subject to prosecution; the legal norm (or something similar) is required to preclude them from knowing in this way.

Let us call limitations of this sort – limitations on B 's ability to know f that go beyond those imposed simply by virtue of the fact that B is a human epistemic agent – “extraordinary limitations” on B 's ability to know f . In that case, the central thesis of the Limited Access Theory (LAT), appropriately relativized, comes out along the following lines:

LAT An individual A has privacy relative to another individual B and to a personal fact f about A if and only if there are extraordinary limitations on B 's ability to know f .

We come now to the third main account of privacy on the contemporary scene, which I'll call the "Narrow Ignorance Theory." It maintains that an individual's privacy consists of others not knowing personal facts of a certain kind about her. The bit about *others not knowing* underwrites the "Ignorance" part of the account's title, and the restriction to *personal facts of a certain kind* gives rise to the "Narrow" part. The relevant kind of personal facts are those that are not recorded in a way that allows for public epistemic access. As the account's originator, William A. Parent puts it, privacy is "the condition of not having undocumented personal information about oneself known by others," where undocumented personal information is to be understood as sensitive facts about the individual not "belonging to the public record."⁷ Appropriate relativization of the Narrow Ignorance Theory (NIT) accordingly results in the following:

NIT An individual A has privacy relative to another individual B and to a personal fact f about A if and only if (1) f is undocumented and (2) B does not know f .

2 A Common Commitment: Privacy and Unknowableness

What has not been emphasized in the privacy literature to date is that, for all their differences, CT, LAT and NIT all render an individual's privacy at least partly a function of a kind inability of others to know personal facts about her. To say that an individual A controls whether another individual B knows a personal fact f about A is to say that, in the absence of A 's voluntary decision to expose the fact, f cannot be known by B . Hence, on CT, A has privacy relative to B and to f just in case f is, without A 's voluntary decision to

expose f , unknowable by B ; which means that CT makes an individual's privacy exclusively a function of *the inability of others to know personal facts about her in the absence of her voluntary decision to expose those facts*. Similarly, to say that there are extraordinary limitations on B 's ability to know f is to say that B is unable to know f through all "ordinary" epistemic channels – that is, unable to know f through every means of knowing f that is not precluded by the mere fact that B is a human epistemic agent. So, according to LAT, A has privacy relative to B and to f just in case B cannot know f through all ordinary epistemic channels, and an individual's privacy thus becomes exclusively a function of *the inability of others to know personal facts about her through all ordinary epistemic channels*. And, finally, to say with NIT that f is undocumented is to say that f cannot be known by B through consultation of public records. Thus, according to NIT, A has privacy relative to B and to f just in case both (a) f is unknowable by B through consultation of public records and (b) B does not know f through other means; and that makes an individual's privacy partly a function of *the inability of others to know personal facts about her through consultation of public records*.

Their common commitment to the idea that privacy is at least partly a function of a kind of inability of others to know personal facts about an individual opens up CT, LAT and NIT to compelling counterexamples, as I will now show in the next three sub-sections.

3 Counterexamples

3.1 Against CT

Judith Jarvis Thomson writes:

If my neighbor invents an X-ray device which enables him to look through walls, then I should imagine that I thereby lose control over who can look at me: going home and closing the doors no longer suffices to prevent others from doing so. But my right to privacy is not violated until my neighbor actually does train the device on the wall of my house. It is the actual looking that violates it, not the acquisition of power to look.⁸

Situated within the relativized formulation of CT, Thomson's counterexample is straightforward. In the envisaged scenario, it is clear that Thomson retains her privacy (a necessary condition on not having her right to privacy violated) relative to her inventive neighbor and to the facts about her visual appearance, activity within the confines of her own home, etc. Yet, due to the mere invention of the X-ray device, she no longer retains control over whether the neighbor knows such facts: whether he does depends now simply on *his* choice of putting the device into operation. His invention of the device thus makes the relevant personal facts knowable by the neighbor in the absence of her voluntary decision to expose those facts; but this does not alone, contrary to CT, diminish her privacy.

Another counterexample to CT can be drawn from Parent. Consider, he asks us, a person who voluntarily divulges all sorts of intimate, personal, undocumented information about herself to a friend. She is doubtless exercising control, in a paradigm sense of the term, over personal information about herself as well as over (cognitive) access to herself. But we would not and should not say that in doing so she is preserving or protecting her privacy. On the contrary, she is voluntarily

relinquishing much of her privacy. People can and do choose to give up their privacy for many reasons. An adequate conception of privacy must allow for this fact. Control definitions do not.⁹

I don't think this passage itself provides a clear counterexample to CT, for it is open to CT's defenders to claim that the individual in question has in fact voluntarily relinquished her privacy by divulging the information to her friend. On CT, the voluntary relinquishment of privacy amounts to the voluntary relinquishment of control over whether others know certain personal facts about oneself. And the case that Parent describes could be a case in which the individual has voluntarily relinquished such control. By allowing the friend to know personal facts about herself, for example, the individual has moved from a state wherein it was under her control whether the friend knows the facts to one in which it is now no longer under her control. After all, in the normal course of events, once the friend gains the knowledge it is no longer up to the individual who facilitated its acquisition to determine whether the friend *retains* the knowledge; and if that is no longer up to her, it is no longer under her control – as it was prior to the original acquisition – to determine whether the friend is in a state of knowledge or of non-knowledge with respect to the relevant personal facts.

There is moreover a second way in which the individual in Parent's thought experiment could plausibly be said to have voluntarily relinquished her privacy, given CT. By allowing her friend to know the personal facts, the individual has now passed along control over *who else* – other than herself and the friend – knows those facts.¹⁰ Prior to passing along the knowledge of those facts to the friend, the individual remains in control of whether, say, a close friend of the friend knows the facts. After passing along the

knowledge, it may then simply be up to that friend – and not the individual alone – whether the second friend comes to know the facts. Hence, the individual may voluntarily relinquish her privacy relative to the second friend and to the personal facts, let alone relative to the first friend and those facts.

Nevertheless, a clear counterexample to CT does emerge upon a slight modification of Parent’s scenario. Suppose again that an individual voluntarily discloses all sorts of personal facts about herself to a friend. But now suppose further that, first, this individual is such an intimidating character that the friend in question would never dream of passing the facts along to others without her express permission, and that, secondly, this individual has the unusual ability to interfere with the friend’s memory in such a way as to remove the friend’s memorial knowledge of the facts even after she has acquired it. Now we can say that the individual has relinquished her privacy with respect to the personal information and the friend; that is, relative to the friend and to the range of personal facts of which that information consists, the individual has no privacy. Yet in this case (unlike in Parent’s), because the individual remains in complete control both of whether the friend *continues* to know the facts and of who, *other than the friend*, comes to know them, it will follow on CT that the individual has not voluntarily relinquished her privacy at all – whether relative to the friend and to the personal facts, or relative to others and to those facts– a very counterintuitive result.

3.2 Against LAT

Parent offers the following counterexample to LAT. Suppose, he asks us, that “[B] taps [A]’s phone and overhears many of her conversations, including some of a very intimate

nature. Official restraints have been imposed on $[B]$'s snooping, though. He must obtain permission from a judge before listening in on $[B]$.”¹¹ Here, there are there are extraordinary limitations on B 's ability to know various personal facts about A 's telephone conversations. In particular, there is a legal norm that precludes B from knowing these facts through the following channel left open by whatever limitations are imposed simply by virtue of B 's being a human epistemic agent: wiretapping without judicial warrant. But, despite the limitation, A obviously has no privacy relative to B and to those facts. Even though B meets the strictures laid down in the legal norm – he's obtained the warrant – he knows the personal facts through channels not proscribed by the norm – by wiretapping *with* judicial warrant. The fact that B 's intrusion into A 's privacy is legally acceptable doesn't make it any less an intrusion.¹²

Parent's counterexample shows that, contrary to LAT, an individual can fail to have privacy relative to another individual and to a personal fact about her even though there are extraordinary limitations on B 's ability to know that fact. But there are also counterexamples, Parent suggests,¹³ that run against LAT from the other direction – examples in which an individual A clearly has privacy relative to another individual B and to a personal fact f about A even though there are no extraordinary limitations on B 's ability to know f . Here is one. Imagine that B is the dictator of a small country who, by virtue of his position, has near unlimited access to certain kinds of personal information about the country's citizens, including A . There are, in others words, no limitations on B 's epistemic access to certain personal facts about A beyond what's imposed by the mere fact that B is human. Does it follow that A has no privacy relative to B and to any such personal fact f about A ? Clearly not, since, despite his near unlimited access, B might simply never get around to accessing f , or might purposely avoid accessing such facts

altogether on the grounds that sentiments of rebellion among the citizenry would be less likely to arise if it were widely recognized that, despite his power to access such facts, he purposely chooses to respect citizens' privacy by not accessing them. *A* in that case might enjoy full privacy relative to *B* and to *f*, despite the lack of extraordinary limitations on *B*'s ability to know *f*.

3.3 Against NIT

Judith W. DeCew argues that Parent's account of privacy is too narrow because it fails to recognize that widespread publication of documented personal facts about an individual can amount to a further loss of the individual's privacy. By way of illustration, DeCew asks us to consider the following case:

[D]uring former Massachusetts Representative Margaret Heckler's divorce proceedings, her husband claimed that they had not had sexual relations in twenty years. Although this information was publicly available to reporters in the courtroom, it seems clear that the subsequent media coverage not only diminished Heckler's privacy but also violated her right to privacy.¹⁴

There is a strong intuition that Heckler's privacy was further diminished by the subsequent media coverage. Still, the defender of NIT may have some room to maneuver in light of that intuition. NIT does not preclude the possibility that the initial documentation of personal facts itself diminishes an individual's privacy – seeing that the documentation itself brings about knowledge by others of previously undocumented

personal facts;¹⁵ and one might think that the media coverage to which DeCew appeals in her example amounts not simply to *widespread access* to the documentation, but further to *part of* that documentation itself. Although the information about Heckler might have been available to court reporters, it was not truly available to the general public, and hence not documented, until sufficient media coverage had been given. So perhaps NIT can allow that the media coverage served further to diminish Heckler's privacy.

But DeCew's argument is on the mark in so far as it draws attention to NIT's "undocumented" clause, (1). The mere fact that personal information about an individual has already been documented does not seem to be sufficient to render the individual immune to a loss of privacy relative to that information and other individuals. To see this, imagine that every personal fact about A that can be known by others is documented. It was documented by other people, but the original documenters have either died or simply forgotten what was documented, and no one else has accessed the documentation lately. Since no one other than A presently knows any of these documented personal facts, it is very plausible to say that A has privacy relative to everyone and to those facts, even if precariously – a fact that helps explain why, if the original documenters were to refresh their memories about those personal facts by going back and re-accessing the documentation, they would be diminishing A 's privacy.¹⁶ But we can't say this according to NIT. On that account, despite the fact that no one other than A presently knows the personal facts, A has no privacy relative to those facts and anyone at all who is in a position to acquire knowledge of the facts by accessing the documentation.

Or suppose that every personal fact about A that can be known by others is documented by a complex system of well-placed impersonal recording devices. No one has accessed the documentation, and, because such access turns out to be a rather involved

affair, it is highly unlikely than any one ever will. Although *A*'s personal facts are thus documented, no one in the world but *A* knows them at present or is every likely to. Again, the strong intuition is that *A* therefore has privacy relative to everyone and to all of her personal facts – an intuition that contradicts the judgment that NIT renders of the case.

4 Counterexamples and the Common Commitment

The counterexamples to CT, LAT and NIT just discussed are made possible by the fact that all three accounts construe privacy as at least partly a function of a kind of inability of others to know personal facts about an individual. In Thomson's counterexample to CT, the neighbor's invention of the X-ray device makes the relevant personal facts knowable by the neighbor in the absence of her voluntary decision to expose those facts; but this does not alone, contrary to CT, result in a loss of her privacy. In the Parent-inspired counterexample to CT, the relevant personal facts about the intimidating individual cannot (continue to) be known by the friend (or others) without that individual's decision to let them be known; and yet the individual has no privacy about the facts relative to the friend. Parent's counterexample to LAT involves a situation in which, despite being unknowable through some ordinary epistemic channels, certain personal facts about an individual are known by another individual through other ordinary channels – and hence a situations in which, contrary to LAT, the individual lacks privacy with respect to those facts and the other individual. Other counterexamples to LAT, such as the case of the privacy respecting dictator, involve situations in which an individual has privacy relative to others and to certain personal facts about her despite the fact that the others are able to know the facts through all ordinary channels. The two counterexamples to NIT are both ones

where, though intuitively an individual has full privacy with respect to certain personal facts about her, a great many others are nonetheless capable of knowing those facts through consultation of public records. I suspect that any account that follows CT, LAT and NIT in rendering privacy even partly a function of a kind of inability of others to know is bound to suffer refutation by similar counterexamples.

5 A New Account

Accordingly, I want to propose a Broad Ignorance Theory (BIT) of privacy, which makes no attempt to tie privacy essentially to the inability of others to know:

BIT An individual A has privacy relative to another individual B and to a personal fact f about A if and only if B does not know f .

Aside from its simplicity, BIT has the important virtue of being immune to the sorts of counterexamples to which, we have seen, CT, LAT and NIT are all subject. That's because it renders privacy always exclusively a function of (simply) a lack of knowledge on the part of others with respect to personal facts about an individual, and never even partly a function of others' inability to know those facts through certain means. Nevertheless, one might suppose that BIT suffers other deficiencies that its competitors do not. To help mitigate this worry, I will now turn to four objections to BIT drawn from the very reasons proffered for accepting the likes of CT, LAT and NIT in the first place.

6 Objections Answered

6.1 The Public Domain Objection

Consider first Parent's argument for including an "undocumented" clause in an account of privacy:

My definition of privacy excludes knowledge of documented personal information. I do this for a simple reason. Suppose that $[B]$ is browsing through some old newspapers and happens to see $[A]$'s name in a story about child prodigies who unaccountably fail to succeed as adults. $[A]$ had become an obsessive gambler who committed suicide. Should we accuse $[B]$ of invading $[A]$'s privacy? An affirmative answer needlessly blurs the distinction between the public and the private. What belongs to the public domain cannot without glaring paradox be called private and consequently should not be incorporated within a viable conception of privacy.¹⁷

As an objection to BIT – call it the "Public Domain Objection" – this argument can be simply formulated. Its first step is that if a personal fact f about A is documented, then f belongs to the public domain. The second step maintains that if f belongs to the public domain, knowledge of f by another, B , cannot bring about a loss in A 's privacy relative to B and to f . Therefore, according to the argument, if f is documented, knowledge of f by B cannot bring about a loss in A 's privacy relative to B and to f . And, obviously, if this conclusion is sound, BIT has to go.

On Parent's account, 'belonging to the public domain' and 'belonging to the public record' are apparently synonymous.¹⁸ Since, further, on his account the documentation of personal facts about an individual amounts to those facts being knowable by others through consultation of public records, this gives a sense to '*f* belongs to the public domain' that makes the first step of the Public Domain Objection undeniable. But for one partial to BIT, the second step makes the argument a *petitio principii*: any sane advocate of BIT will naturally find that premise no more compelling than the argument's conclusion.

Nevertheless, there is something right about the idea that with respect to some personal facts about an individual that are in the public domain (where this is understood in the relevant sense of being knowable by others through consultation of public records), knowledge of those facts by others does not *inappropriately* affect the individual's privacy. And what's right about it, I suggest, is that in the relevant cases knowledge of the facts by others does not result in a loss of the privacy that the individual can reasonably expect to have – of her *reasonable privacy* – even if (as BIT has it) it does result in a loss in the individual's privacy *simpliciter*.

The attempt to provide a full, illuminating account of reasonable privacy is (like most other interesting normative endeavors) bound to be a complicated matter, but I think we can at least say this. An individual *A* has reasonable privacy relative to another individual *B* and to a personal fact *f* about *A* only if the following conditions are met:

- a *A* has not voluntarily caused *B* to know *f*
- b *A* has not voluntarily made *f* easily knowable by *B*

- c B does not have an overriding right to know f (i.e. a right to know f that trumps A 's *prima facie* right to B 's ignorance of f , if such a right be had by A).

With the notion of reasonable privacy now at least tentatively in hand, we are in a position to see the tempting albeit misleading nature of the Public Domain Objection. In situations such as the suicide case that Parent describes, the individual whose personal facts have become documented has failed to satisfy one or all of the conditions (a)-(c).

Typically, for example, one wouldn't attempt to commit suicide without an awareness that the fact of a successful attempt, along with plenty of other personal facts about oneself, are bound to make their way into the public record; furthermore others – official investigators, say – will have no doubt have an overriding right to know and document such facts.

Hence the sort of case that Parent describes would typically be one in which the subject voluntarily causes such facts to be known, or to be easily knowable by others, and in which others will have an overriding right to know them. And that means that in such a case there need be no diminishment of the individual's reasonable privacy, since the individual cannot reasonably expect to have privacy relative to those others and to the personal facts. But it does not follow that the individual has suffered no loss of privacy *simpliciter*; it seems to follow only if the notions of privacy *simpliciter* and reasonable privacy are conflated. And I would suggest that this conflation is precisely what the Public Domain Objection trades on in its second step. It may be true that if personal facts about an individual belong to the public domain, then knowledge of those facts by others cannot – depending on how they got into that domain – result in a loss of that individual's reasonable privacy, but this is not

to say that knowledge of those facts by others cannot diminish that individual's privacy *simpliciter*.

6.2 The Attribution Oddity Objection

I turn now to a second objection to BIT. Fried claims that “[t]o refer...to the privacy of a lonely man on a desert island would be to engage in irony. The person who enjoys privacy is able to grant or deny access to others.”¹⁹ This suggests another argument – call it the “Attribution Oddity Objection” – whose conclusion calls BIT into question. The first premise of the argument is that it is intuitively odd to attribute privacy to an individual A , relative to another individual B and to a personal fact f about A , when f is unknown by B because A has no control over whether f is known by B despite the fact that A desires that f be known by B . But then – next premise – the best explanation of the first premise's truth is that an individual A 's privacy relative to another individual B and to a personal fact f about A amounts to A 's control over whether B knows f . Hence the conclusion: an individual A 's privacy relative to another individual B and to a personal fact f about A amounts to A 's control over whether B knows f .

It is significant to note that the first premise of the Attribution Oddity Objection speaks of the oddity (or “irony”, as Fried more specifically puts it) of attributions of privacy to individuals in situations of the sort it describes – not the falsity of those attributions. This is significant because there are many cases in which the oddity of an attribution arises precisely by virtue of the blatant obviousness of its truth. If I'm sitting on a park bench with you, smoking a cigarette in plain view, it would be very odd of me to

remark, “I’m smoking right now.” But it would be an odd attribution because it would be so clearly true.²⁰

So there may be equally good if not better explanations of the attribution oddity mentioned the Attribution Oddity Objection’s first premise that do not, contrary to the argument’s second premise, imply the falsity of the relevant attributions. And, as a matter of fact, I think there are. In my judgment, the explanation of why the relevant privacy attributions are odd involves two claims both of which are perfectly consistent with BIT: first, individuals like Fried’s lonely island inhabitant in fact have an enormous amount of privacy relative to their personal facts and to other individuals; and, second, these individuals fail to have reasonable privacy in virtue of having so much privacy *simpliciter*. One can fail to have reasonable privacy because one has *too little*. But one can also fail to have reasonable privacy by virtue of having *too much*. (Consider the overzealous privacy fanatic who has taken pains to acquire an extreme amount of privacy, but then comes to realize that by having so much he’s missing out on certain things he wants (e.g. a spouse, more intimate friendships, etc.), and so has a change of heart: by his own lights, he’s got too much privacy, and resolves to relinquish a good deal of it.) A lot of ink has been spilled on the virtues of having more privacy than we typically enjoy in our contemporary networked society’s settings, and much of it very plausible.²¹ Yet this should not blind us to the fact that were the pendulum to swing too far the other way, very ill effects would be bound to follow. Participation in important relations like love, intimacy, trust and friendship, for example, may require an individual initially to have a good deal of privacy at her disposal to relinquish. But it equally requires that a good deal of that privacy *be* relinquished. One way of accommodating this insight is to note that an individual *A* has reasonable privacy relative to another *B* and to a personal fact *f* about her only if, in

addition to meeting conditions like (a)-(c) above, she meets certain other conditions such as (d):

- d B 's knowing f is not required in order for A to satisfy certain of A 's desires that it is reasonable for any mature human to have.

Since Fried's lonely island inhabitant fails a condition like (d) with respect to many other individuals and personal facts about him, and yet nonetheless has privacy relative to those others and to those personal facts, the proper thing to say of such an individual is that he has so much privacy that it outstrips his reasonable privacy. As with the Public Domain Objection, then, the Attribution Oddity Objection gets a grip only if we fail to distinguish privacy *simpliciter* and reasonable privacy.

6.3 The Secrecy Objection

A third objection to BIT can be derived from another of Fried's attempts to motivate CT – the “Secrecy Objection.” Privacy and secrecy, goes the objection, are distinct relations; yet by rendering privacy always exclusively a function of the ignorance of others, BIT stands in danger of rendering them indistinguishable, for such ignorance is precisely what is involved in secrecy.²²

I do not think that BIT conflates privacy and secrecy, although I do think it is understandable why one might think it does: both privacy and secrecy, after all, have to do essentially with the ignorance of others. As Sissela Bok²³ has pointed out, however, secrecy seems to involve an element of *intentionally fostered ignorance* – hiding or concealment – that

privacy does not. I might have privacy relative to my next door neighbor and to facts about the state of my garden in the backyard, but this does not imply that I am secretive about those facts with respect to my neighbor, for I might have taken no purposeful pains to hide the facts, and my neighbor's ignorance of them might just be a matter of happenstance. Privacy, as Bok puts it, "need not hide," whereas secrecy always does.²⁴ Moreover privacy, unlike secrecy, always involves ignorance of *personal* facts about the individual who possesses it. Relative to many others, to borrow an example from Bok, a diplomat can be successfully secretive with respect to facts about inter-governmental or international relations. But she can't properly be said to have privacy with respect to those others and such facts, for the facts are not personal facts about her. "[S]ecrecy hides far more than what is private."²⁵

Thus, we may tentatively construe secrecy along the following lines: An individual A has secrecy relative to another individual B and to a fact f (i.e. A is successfully secretive about f with respect to B) just in case, at least partly because A has concealed f from B , B does not know f . This makes it apparent that although both privacy (according to BIT) and secrecy involve the core feature of ignorance on the part of others, they remain distinct.

6.4 The Loss without Knowledge Objection

One final objection to BIT can be drawn from a consideration that Allen raises against NIT.²⁶ BIT construes an individual's privacy as exclusively a function of the ignorance of others with respect to personal facts about her. This implies that the loss of an individual's privacy always involves others *knowing* personal facts about her. But, according to the "Loss without Knowledge Objection," as I will call it, an individual's privacy losses needn't

involve others knowing personal facts about her, for knowledge entails truth and justification, and an individual's privacy can be lost even in situations where others believe either falsely or without justification that certain personal facts about her obtain. Allen points to a scenario in which *A* is a well-known literary figure rumored to keep a "secret diary of interwoven saucy facts and fantasy" about her romantic life.²⁷ *B* manages illicitly to get his hands on the diary and, as a result of reading it, forms beliefs about a number of fantastical entries to the effect that they are factual. In this case, Allen says, *B* diminishes *A*'s privacy, even though the beliefs *B* forms about *A*'s romantic life are all false, or at least unjustified (*B*, after all, has no reliable way of distinguishing between the factual and fantastical entries).

I share the intuition that *B* has in such a case diminished *A*'s privacy. But I disagree that what drives the intuition is the recognition that *B* has formed false or unjustified beliefs about *A*'s romantic life. In such a case, *B* will no doubt have acquired knowledge of personal facts about *A*, not merely false or unjustified beliefs. *B* will at least have acquired knowledge of such facts as *A*'s style of diary writing, the sorts of thoughts (whether fact or fantasy) entertained by *A* in her private moments; *B* will even, perhaps, have acquired knowledge of facts about the private location in which *A* kept her diary (e.g., if the location was *A*'s own home, facts about *A*'s furniture preferences, taste in home décor, housekeeping habits, etc.). And it is more than plausible, I think, to suppose that recognition of such knowledge acquisition on the part of *B* is what really grounds the intuition about *A*'s lost privacy.

To help determine whether – as the Loss without Knowledge Objection has it – the diminishment of an individual's privacy can occur merely through others forming false or unjustified beliefs about her, we should think about cases in which others have clearly

acquired no new knowledge of personal facts about her despite the fact that they have formed false or unjustified beliefs about her. So, suppose that *A* is a famous literary figure rumored to keep a secret diary composed of various entries both fact and fiction, as in the case that Allen describes. But now suppose that *B* comes to believe false things about *A*'s romantic life not because he has stolen and read the diary, but rather simply on the basis of wishful thinking. *B* never acquires any new knowledge of personal facts about *A* by entering her home and stealing the diary, or by reading the diary; he merely finds himself wishing that the rumored diary contained certain factual entries, and through wishful thinking ends up falsely believing that it does. It seems all too obvious that, in such a situation, whatever else *B* is guilty of, he is not guilty of diminishing *A*'s privacy. And BIT has a good explanation of this. For now it is clear that *B* has acquired no new knowledge of personal facts about *A*, despite acquiring false, unjustified beliefs about her.²⁸

ENDNOTES

¹ Throughout the remainder of the paper, I will drop the “informational” qualification, but it is to be understood that I am concerned only with informational privacy, i.e. the sort that bears essential connection to information, or facts, about the individual who has it. Although I doubt that there are, at the end of the day, non-informational forms of privacy, I take no stand on that here.

² Westin, *Privacy and Freedom* (New York: Atheneum, 1967), 7.

³ Fried, “Privacy,” *Yale Law Journal*, 77 (1968), 482.

⁴ “Privacy and the Limits of Law,” *Yale Law Journal*, 89 (1980), 421-471.

⁵ *Uneasy Access: Privacy for Women in a Free Society* (Totowa, NJ: Rowman & Littlefield, 1988).

⁶ It should be noted that, despite claiming to give a *definition* of privacy along these lines, Allen expresses reservations about treating the definition as yielding, “in any simplistic way,” necessary and sufficient conditions for privacy. (Allen, *Uneasy Access*, 15.) Perhaps this reservation disqualifies her from being a representative of the Limited Access Theory as I characterize it here. But I am unsure, because it is quite unclear what the qualification “in any simplistic way” is supposed to amount to. Talk of “nominal definitions” doesn’t help (Allen, *Uneasy Access*, 9-10), for the definition of privacy that I will provide below as the Limited Access Theory’s central thesis seems to count as a nominal definition (as least as Allen describes nominal definitions), despite its necessary-and-sufficient-condition form.

⁷ Parent, “A New Definition of Privacy for the Law,” *Law and Philosophy*, 2 (1983), 306-307.

⁸ Thomson, “The Right to Privacy,” *Philosophy & Public Affairs*, 4 (1975), 304-305, n. 1.

⁹ Parent, “Privacy, Morality, and the Law,” *Philosophy & Public Affairs*, 12 (1983), 273.

¹⁰ Cf. Gavison, “Limits of Law,” 427.

¹¹ Parent, “Privacy, Morality, and the Law,” 274.

¹² Allen (*Uneasy Access*, 28-29) responds to this counterexample by pointing out that there are, after all, some ways in which *B* can know the relevant personal facts. But unless she means to maintain an absurdly implausible version of the Limited Access Theory according to which *A* has privacy relative to *B* and to *f* just in case there are limitations on *B*'s ability to know *f* that preclude *B* from knowing *f* in any manner whatsoever, her response simply misses the point.

¹³ Parent, "Recent Work on the Concept of Privacy," *American Philosophical Quarterly*, 20 (1983), 346.

¹⁴ DeCew, *In Pursuit of Privacy: Law, Ethics, and the Rise of Technology* (Ithaca: Cornell University Press, 1997), 30.

¹⁵ Parent is explicit about this: "I hasten to add that a person does lose a measure of privacy at the time when personal information about him first becomes part of the public record, since the information was until that time undocumented." (Parent, "Privacy, Morality, and the Law," 271.)

¹⁶ Cf. Allen, *Uneasy Access*, 22.

¹⁷ Parent, "A New Definition," 308.

¹⁸ *Ibid.*, 309.

¹⁹ Fried, *An Anatomy of Values: Problems of Personal and Social Choice* (Cambridge, MA: Harvard University Press, 1970), 140.

²⁰ And hence in violation of something like the second “quantity constraint” that, according to H.P. Grice, applies to rational conversational conduct: “Do not make your contribution more informative than is required.” (Grice, “Logic and Conversation,” in Grice, *Studies in the Way of Words* (Cambridge, MA: Harvard University Press, 1989), 26.)

²¹ In addition to Westin’s *Privacy and Freedom*, Fried’s *Anatomy of Values* (especially Chapters 5&9), Gavison’s “Limits of Law,” and Allen’s *Uneasy Access* (especially Chapter 2), see Thomas Nagel, “Concealment and Exposure,” *Philosophy & Public Affairs*, 27 (1998), 3-30.

²² Cf. Fried, *Anatomy of Values*, 140 and “Privacy,” 482.

²³ *Secrets: On the Ethics of Concealment and Revelation* (New York: Pantheon Books, 1982), 15ff.

²⁴ Bok, *Secrets*, 11. In their “Hypocrisy and Privacy” (*Journal of Philosophical Research* 27 (2002): 610-618) Eldon Soifer and Béla Szabados argue that hypocrisy and privacy are, on moral grounds, harder to distinguish than one might suppose. Even so, hypocrisy’s essential tie to the intentionally fostered ignorance distinguishes it from privacy: hypocrisy, like secrecy – or rather as one form of secrecy – “always hides” as well. This point is obscured by Soifer and Szabados’s tendency to slide back and forth between the notion of *privacy* (which doesn’t “always hide”) and the *protection of privacy* (which does).

²⁵ Bok, *Secrets*, 11.

²⁶ Allen, *Uneasy Access*, 21-22.

²⁷ *Ibid.*, 21.

²⁸ I am indebted to Steven Davis, Eldon Soifer, William Parent, and an audience at the 2005 Canadian Philosophical Association annual meetings at the University of Western Ontario (where an earlier version of this paper was presented) for their helpful comments and criticisms.