

## **Mark Tunick, Does Privacy Undermine Community?**

*Journal of Value Inquiry* 35:517-34 (December 2001).

[Published version pagination inserted via brackets]

Final published version is available [online](#). © 2001 *Kluwer Academic Publishers*

### **1. [517] The Problem**

In Dickens's *Great Expectations*, Mr. Wemmick, a clerk for the wealthy and powerful Mr. Jaggers, lives a double life: a public life dealing with seedy criminals and greedy businessmen, and his private life at home, which he takes extreme measures to protect. Wemmick lives in the Castle, a small cottage with gothic windows he built in the little town of Walworth. The Castle has "a real flagstaff," and a gun called "the Stinger" that fires every night at nine o'clock "so as not to impede the idea of fortification."<sup>1</sup> To get to the Castle a person traverses a plank bridge that crosses a chasm about four feet wide and two deep. After crossing it Wemmick hoists up the bridge to cut off the communication. Wemmick tells Pip, the novel's hero, for whom Wemmick's boss Jaggers is guardian, "the office is one thing, and private life is another. When I go into the office, I leave the Castle behind me, and when I come into the Castle, I leave the office behind me."<sup>2</sup> Wemmick makes a point of having his boss, Jaggers, know as little as possible about his personal life. After his charming marriage ceremony in Walworth, Wemmick tells Pip, "This is altogether a Walworth sentiment, please." Pip says he understands: "Not to be mentioned in Little Britain."<sup>3</sup> And Wemmick concurs: "Mr. Jaggers may as well not know of it. He might think my brain was softening, or something of the kind."<sup>4</sup> In his Castle, Wemmick says: "I am my own engineer, and my own carpenter, and my own plumber, and my own gardener, and my own Jack of all Trades."<sup>5</sup> He adds: "it's a good thing, you know. It brushes the Newgate cobwebs away," referring to the prison housing many of Jaggers's clients with whom Wemmick must interact daily.<sup>6</sup> After a visit to the Castle, Pip walks with Wemmick back to town and observes how "[b]y degrees, Wemmick got dryer and harder as we went along, and his mouth tightened into a post-office again. At last, when we got to his place of business and he pulled out his key from his coat-collar, he looked as unconscious of his Walworth property as if the Castle and the drawbridge and the harbour and the lake and the fountain . . . had all been blown into space together by the last discharge of the Stinger."<sup>7</sup>

[518] Some people may look upon Wemmick's reclusion into his moat-protected home as a necessary defense against a corrupt, immoral, and dangerous world. Others, though, may see it, disapprovingly, as a defeatist withdrawal from community that can only further undermine the quality of public life. Wemmick's Castle is one portrayal of the sphere of privacy, a sphere protecting us from an onslaught of demands and intrusions. Contemporary Wemmicks seek protection against junk mail, spam, telemarketers, overzealous police and government agents, spying neighbors, and efficiency-minded employers. Privacy, today, is seen by many people as in need of increased fortification, as the government routinely conducts aerial surveillance, uses thermal imaging devices, searches garbage, and conducts random drug tests and body cavity searches without probable cause, and as employers monitor telephone conversations, observe what is on computer screens or hard drives of their employees,

and subject workers to keystroke monitoring to see if they are below par or spending too much time away from work. Opponents of such protections typically have an interest in possessing information, such as businesses and employers, and law enforcement agencies charged with uncovering crimes, although in some cases businesses have been strong advocates for privacy protection.<sup>8</sup>

But opponents of privacy also include people concerned with the quality of our public life. For them, to desire so much privacy is wrongly to assume that a worthwhile life is a sheltered life with little interaction with anyone other than a select group of friends and family. Wemmick's moat provides him a safe haven but also deters him and others from working together to create and maintain a meaningful community.

Is privacy a good thing? The answer will depend on our understanding of the proper relation between individuals and society. By "society" we may mean the state as well as what Hegel calls civil society, which encompasses the institutions and practices of public life distinguishable from the political institutions of the state and the non-public institution of the family.<sup>9</sup> If we see society instrumentally as a set of institutions and associations the only purpose of which is to provide the infrastructure or means for us to lead our personal lives, then we might want as little to do with the infrastructure, and as much privacy, as possible. But if we see society differently, not merely as an enabling infrastructure, but as the very source of a worthwhile life, then we may not wish to shelter ourselves from it. We may be leery of calls for privacy which, if heeded, would shut us off from the very thing we all need to flourish, a thing we might call "community." Some public intellectuals, communitarians, are concerned about the pursuit of private interests eroding "the network of social environments on which we all depend."<sup>10</sup> Some communitarians are concerned that too much privacy may foster an individualistic attitude that tends to be destructive of community and the social order. Does privacy, as a condition of being invisible to public scrutiny, in so em-[519]phasizing individual rights, undermine community? The reason for turning to Hegel is that while he recognizes the value of community, seeing society not as a mere instrument of convenience but as the source of a worthwhile life, he recognizes as well the importance of individual autonomy and, by inference, privacy, seeing this not only as having intrinsic value but as essential for community.

## **2. Clarifying the Question: the Concepts of Privacy and Community**

One approach in answering the question of whether privacy undermines community would be to conduct empirical studies of the effects of pro-privacy or anti-privacy policies. Do policies that protect privacy weaken social cohesion or disrupt the social order? Little has been done to find answers to this question, in part because of the difficulties in correlating specific policies with identifiable social consequences. One problem is to determine how to measure the extent to which community has been undermined. We might look at acts of disobedience, or at less overt measures of the extent to which members share social values or are concerned about their needs and interests. We might use political activism as a measure of community, but a political activist need not be supportive of community, and there are different ways of being politically active, not all of which are generally associated with a strong level of community. To some observers, the mere act of voting expresses a concern for

community, while to others it is a poor and perhaps destructive substitute for genuine deliberative democracy and engagement with others. We might try to measure civility and friendliness, or look at the crime rate, or donations to public causes, or the number of selfless acts. Each of these measures might be contested because what counts as community is contested. If we could develop reliable measures, the next problem would be convincingly to correlate them to privacy policy. One study suggests that there is a positive relation between privacy in a suburban residential setting and overall sense of community.<sup>11</sup> Some studies have shown that one privacy protecting measure, use of the exclusionary rule in Fourth Amendment cases, has a low societal cost.<sup>12</sup> But whatever the answer to the empirical question, we need to consider the reasons why we should care about privacy, and whether some of the reasons are sufficiently good reasons to someone also concerned with the values associated with community.

Does the value of privacy conflict with the value of community? The answer depends on what we mean by “privacy” and “community.” One of the most famous definitions of privacy was offered by Louis Brandeis and Samuel Warren. Privacy, according to them, is “the right to be let alone.”<sup>13</sup> To be let alone is to be anonymous and to have solitude, perhaps isolation from others or just protection from unwanted intrusions. An invasion of privacy, so understood, can refer to a variety of things, from the more to the less innocuous: gossiping about me, phoning me during dinner hours, sending me unwanted junk e-mail, taking my picture without my consent, stopping my car at a checkpoint and examining me for signs of excessive alcohol consumption, monitoring the heat emitted from my home, accessing my credit report without my consent, reading my diary, searching my house, stalking me, or conducting a body cavity search on me. A loss of such privacy might involve an annoying intrusion, one that steals away our time. Such losses are morally not that important, unless the nuisance reaches the point where it truly offends or harms. Losing privacy can mean that information about ourselves is revealed that we want to keep to ourselves.<sup>14</sup> Unwanted exposure might come from police searches, gossip, employer supervision, or media publications, and it may be objectionable even if the people who uncover the information have a right to know.<sup>15</sup> Employers may have a right to know how productive their workers are, but the manner they choose to find out can be excessively intrusive and a threat to privacy.<sup>16</sup> Some losses of privacy, such as body cavity searches and urine tests, can affront our dignity. Single instances of privacy invasion can invade privacy in different senses: sobriety checkpoints steal away our time and may uncover information about us we do not want revealed. Drug tests can affront our dignity, take time away from us, and reveal information we want to keep private.

According to the definition of Brandeis and Warren, privacy is something we hold against snoops, spies, intruders, busybodies, and more well-meaning seekers of information. To have privacy is to be left alone and invisible to public scrutiny. Having privacy may seem to be by definition the very opposite of living in community. But this is not the case in a modern democratic state. It is important to distinguish privacy from a related but distinct concept with which it is often equated. Privacy is often used to refer to autonomy, or control over how we live our lives. An invasion of privacy can undercut autonomy, but not all threats to autonomy are intrusions upon privacy. Publishing facts about me or announcing random searches may well inhibit me from leading my life the

way I wish, but enacting a law telling me that I cannot do certain things need not limit my ability to remain anonymous and undisturbed by unwanted intrusions. Some invasions of privacy can undermine a sort of autonomy that may be important for maintaining community and involves showing respect and concern for individuals.

We must be clear also about what we mean by “community” when considering whether to expand or diminish the scope of privacy. If we think that privacy does undermine community, but community means something objectionable to us, such as a lack of autonomy and a pressure to conform with conventions, then we might conclude that we should have more privacy because it undermines community. Conceptually, community need not be at odds with individual autonomy, whether a community is a society or group,[521] distinct from family or a group of friends, in which those regarded as members share and work together toward common goals, or the state of cooperation and goodwill achieved by this society or group. Such cooperation toward common goals creates and reenforces ties that distinguish members from nonmembers. In working toward common goals, some rules and procedures must be followed, and there must be some level of agreement regarding means and ends. Conforming with law, and the sharing of values, is implicit in this conception of community, as is a mutual respect and a concern of members for their welfare.

We need to distinguish a community from a group of friends. Community is likely promoted when people are friendly to each other, but the commitments we have to friends are not coextensive with commitments to community and may at times undercut them. Commitments to family are also distinguishable from commitments to community, which might include commitments to our state, or neighborhood, or a voluntary association, since we can be part of multiple communities. Commitments to family may at times undermine commitments to community. We need privacy from strangers and government to preserve friendship and family ties, but too much privacy against friends and family can undermine the ties. One way that ties to community are different is that they are more immune to privacy.

We might think that the value of privacy is in conflict with the value of community for several reasons. Giving individuals too much privacy is a license for them to engage in antisocial activity that undermines norms of decency and civility and disrupts the social order. As well, privacy is associated with isolation and anonymity, the very opposite of the characteristics we need to maintain an active, public-spirited citizenry that strengthens community. We need to articulate these distinct objections to privacy and to consider some responses that defenders of privacy might make, responses that can be made not only by liberals intent on defending individual rights, but by communitarians intent on emphasizing duties to society and the common good.

### **3. Privacy as License**

One objection to extensive privacy is that allowing people their privacy facilitates license and discourages the maintenance of social order by hampering government efforts to enforce the law. Prohibiting police from conducting drug tests or eavesdropping on a suspected drug kingpin’s phone conversations makes it easier for criminals to continue breaking the law. Privacy, according to this line of argument,

undermines crime control and social order. The resultant weakening of social norms may lead to a demand for more police coercion and is therefore more likely to lead to a police state that is at odds with a genuine conception of community.<sup>17</sup> Even one of the most force-[522]ful defenders of privacy acknowledges that unlimited privacy would destroy community by shielding criminals.<sup>18</sup> Some communitarians in particular have advocated limits to privacy because they believe that too much privacy undermines the social-moral climate. Amitai Etzioni defends fingerprinting of welfare recipients on the ground that this protects against fraud, and “once fingerprinting is widely applied, the stigma will wane.”<sup>19</sup> He would accept “random searches of automobiles on public highways,” though not random searches of homes.<sup>20</sup> The Communitarian Platform, although in its preamble declaring that it “does not dictate particular policies,” goes on to favor sobriety checkpoints, screening gates at airports, drug and alcohol testing “for people who directly affect public safety,” and disciplinary measures against high school students in order to maintain a “social-moral climate” in the schools.<sup>21</sup>

It is important to note that communitarians recognize the need for some privacy protection. Etzioni lays out four criteria that should be met before curbing privacy: there must be a compelling need for the intrusion, the intrusion should be minimized, there should be no less intrusive alternatives, and side affects of the intrusion should be minimized.<sup>22</sup> Nevertheless, recommendations to limit privacy for the sake of preserving the social-moral climate are premised on the view that privacy is intrinsically anti-community, and this is a premise we need to question.

Decisions on specific issues such as whether we should implement sobriety checkpoints or allow the use of thermal imaging devices to uncover marijuana cultivation will ultimately depend on a complex weighing of considerations. In particular cases, protecting privacy may have overwhelmingly negative consequences. But the contributions privacy makes to community should be weighed even though they may not be decisive in some cases. Community can be undermined by excessive crime, but community involves other things besides compliance with law. It involves cooperation, and a respect and concern for others. Police intrusions without probable cause, while effective at preempting crime or capturing the guilty, may discourage cooperation, signal mistrust, or have other effects detrimental to community. For example, when lower criminal courts did away with the usual due process protections in the wake of riots in Detroit during the summer of 1967, sociologists found evidence suggesting that this led to a hardening of antisocial attitudes.<sup>23</sup> Undermining the principle of due process for the sake of expediency may have the unintended consequences of breeding mistrust and showing a lack of respect, and in so far as due process is a core value shared by a community, of loosening an important tie that binds. A consideration of the effect of privacy on social order should take into account such consequences. Once we recognize the contributions that privacy can make to community, we will want to ask whether the diminution in the crime rate that may follow adoption of anti-privacy policies is enough to justify their costs, not only to individuals but to community.

[523] We should be suspicious of the argument that once police actions that presently violate reasonable expectations of privacy or are regarded as unduly invasive become common, our expectations will change and the stigma will wane. Following this reasoning, the government could legitimize extremely invasive policies simply by

announcing and implementing them.<sup>24</sup> But sometimes people ought reasonably to expect privacy even when they cannot do so due to prevailing practices of surveillance. As the Supreme Court of Washington observed, the protection of privacy by the state is “not confined to the subjective privacy expectations of modern citizens who, due to well publicized advances in surveillance technologies, are learning to expect diminished privacy in many aspects of their lives.”<sup>25</sup>

Some critics of privacy who are concerned that privacy may undermine the social order are concerned not so much with the prospect of guilty people getting away with their crimes, but more with the prospect that privacy, which the critics associate with a license to do whatever we please, may undercut efforts to uphold community standards of right and wrong. On this distinct objection, to advocate privacy is to advocate a type of moral relativism according to which every person may act according to his or her own understanding of what is right and wrong, and this is poisonous to community. Grant Mindle makes this argument in the course of discussing how privacy was regarded by the Framers of the United States Constitution and how their understanding of privacy has been changed for the worse and in a way that threatens community. Mindle claims that the Framers of the Constitution had nothing to say about privacy, and for good reason: privacy was at odds with their republicanism and their desire to maintain a morally cohesive social order.<sup>26</sup> The Framers, Mindle argues, denied that “man is essentially a private or autonomous being.”<sup>27</sup> Their disparagement of privacy was connected to their belief that men are born subject to God and the Creator. “Intrinsic to the brand of republicanism the Framers established is the denial of the sovereignty of man, and his subordination to a higher law, if not a higher being.”<sup>28</sup> He cites early constitutional history where the Court has “unashamedly” appealed to an objective morality of society to allow the state to restrict individual conduct.<sup>29</sup> One criticism of Mindle is that he is historically inaccurate. The impetus for the Fourth Amendment was a concern with British infringements on personal privacy, the privacy of a person’s home.<sup>30</sup> Even Puritans, who more than the Framers shared a religiously based communal spirit that required watchfulness and mutual surveillance, recognized the value of privacy, “the conscience as a haven,” and the right against self-incrimination, even as they generated norms that viewed a demand for privacy as a subversive act or shield from wrongdoing.<sup>31</sup> “There was a gap between [the Puritan’s] theoretical acceptance of brotherly surveillance and the extent to which he would accept such practices in everyday life.”<sup>32</sup> David Flaherty shows how though the Puritans had practices that encouraged surveillance, such as the use of tythingmen<sup>[524]</sup> for moral supervision of families, and of informers to uncover private offenses, at the same time they adopted policies that served to protect personal privacy. For example, to prevent too much intrusiveness few tythingmen served more than one year. Spouses were not bound to inform on each other, and snitches were frowned upon.<sup>33</sup> Flaherty concludes that the “colonists believed they had a general right to privacy and had asserted it long before the writing of the Bill of Rights.”<sup>34</sup>

Another criticism of Mindle is that his commitment to an objective morality that restricts individual autonomy does not require that he disapprove of privacy. It implies disapproval of autonomy, which, while connected in important ways to privacy, is a distinct concept. In one of the cases Mindle uses to illustrate how an earlier Supreme

Court was unwilling to allow a claim to a privacy right to undermine social standards of morality, *U.S. v. Reynolds*, the Court upheld a law proscribing bigamy. But the *Reynolds* decision was not dismissive of the right to privacy against snoops, spies, busybodies, or more well-meaning exposers of information. It was dismissive of the claim that people should have the license to live their lives however they please. Mindle praises such cases and contrasts this age where Americans were not afraid to stand by what is right even if it meant not tolerating mores like that of bigamists which do not conform with the dominant social morality, with the present state, where Americans “are now skeptical of their capacity to distinguish morality from immorality and civility from incivility.”<sup>35</sup> Mindle’s target is really the intellectuals who demand individual autonomy and toleration for people who do not share the dominant social morality, or who regard its dominance as based on power. But he can do this while still recognizing that people need and are entitled to privacy from undue scrutiny. We can defend privacy while upholding laws restricting autonomy. Any regime of law that accords with principles of due process, including the presumption of innocence, should place a high value on privacy even as it rigorously enforces its laws.

Mindle says that privacy historically has come to mean “the right to behave in public with little if any regard for the feelings of others.”<sup>36</sup> He argues that in its earlier conceptions, such as that of Brandeis, privacy meant the opposite of license. The right of privacy was originally intended to uphold the standards of civility and decency of society. Mindle notes how Brandeis saw invasions of privacy, such as nuisances, defamation, or assault, as threats to domestic tranquillity and the peace and order of the commonwealth. But, he also observes, this idea of privacy got twisted to mean “the right of an individual to do as he pleases in public.”<sup>37</sup> Privacy is thus conflated with autonomy, a caricatured view of autonomy as self-centered license. Mindle is against too much autonomy, and disapproves of the weakened belief in morality that he thinks is the result.<sup>38</sup> But privacy need not weaken our moral sensibilities. What Mindle calls privacy, the right to do as we please, of which<sup>[525]</sup> he is critical, is different from privacy from snoops, spies, busybodies, and well-meaning seekers of information. Mindle makes the argument not that privacy undermines community, but that autonomy undermines community.

#### **4. Tinted Windows and Gated Communities: Privacy as Isolating**

Another reason we might think that privacy undermines community is that it may encourage an isolated life, a life of solitude or at least of indifference, whereas community depends on public spirited citizens willing to dedicate their time to working with others. Building and maintaining a community is not the task for loners and hermits. Of course some degree of privacy is necessary to maintain community, a point noted by leading sociologists and anthropologists. Society would not be pleasant if “people knew too much of one another.”<sup>39</sup> But, the objection goes, too much privacy isolates and alienates people from their community. A concern for privacy, according to this objection, reflects a commitment to individualism that undercuts the goal of having people work together toward common goals in a public-spirited way and out of mutual respect and concern.

H.W. Arndt, thinking of privacy more as the recourse of the guilty than as a safe haven for potential victims, finds the concern for privacy puzzling. A tax evader or person with venereal disease wants privacy, he argues, but this only shows how “the cult of privacy seems specifically designed as a defense mechanism for the protection of anti-social behavior.”<sup>40</sup> Arndt’s objection, though, is not the same as the objection that too much privacy is bad because it hampers efforts to control crime and prevent disorder. Arndt wants us to see that privacy protects not just criminals but people who do not conform with social norms, and that privacy “rests on an individualistic conception of society,” apparent in the phrase “mind one’s own business.” Arndt, evoking the Marxian idea of alienation, thinks privacy is a “product of capitalist ethics.”<sup>41</sup> Privacy, the argument goes, makes us self-oriented, apathetic, unconcerned with other people, who are and will remain strangers to us.

The connection between privacy and individualism has been noted by advocates as well as critics of privacy. David Flaherty, for example, prefaces his study of privacy in colonial New England by noting that it really is concerned with individualism, “since concern for privacy is so patently a manifestation of individualistic impulses.”<sup>42</sup> While we can speak of privacy for things other than individuals, such as families, sects, or clubs, we usually speak of “personal privacy.” Some of the most obvious meanings of privacy refer to states of isolation: solitude, anonymity, reserve, intimacy.<sup>43</sup> This is the privacy someone obtains with tinted car windows or gated communities. This sort of privacy protects us from a dangerous, threatening world but, according to the objection, it also makes it harder for us to work together to make[526] this world any better. It distances us from each other, promotes mistrust and fear, undermining community.

Is someone excessively concerned with privacy less likely to have a public-spirited attitude than someone who does not mind having information about herself revealed to strangers? It is easy to envision a reserved and secretive person who cherishes time alone with family and friends but who also values public involvement and needs both to be satisfied. Presently we do not know the answer to the empirical question of whether people who protect their privacy are more or less active in their community. One study of the relation between the amount of privacy from neighbors’ houses and overall sense of community found a positive correlation. The authors of this study note that the results run counter to the view that suburban designs that encourage privacy would also encourage social isolation and a withdrawal from community life. The results are in agreement with the idea that desired privacy lowers the levels of personal stress and allows a fostering of an overall sense of community. . . . [B]y reducing the social stresses of having too many unwanted interactions with neighbors, suburban residents can develop more positive relations with neighbors and, over time, a greater perception that their locale provides an overall sense of community.<sup>44</sup>

But even if counter-evidence were gathered linking privacy with community non-involvement, it would not follow that adopting policies that restrict privacy would have a positive effect on the ability of people to work in community. There is no more reason to think that a privacy policy of prohibiting body cavity searches will discourage a public-spirited attitude than that it would have the opposite effect, given that such searches are demeaning, degrading, and therefore likely to breed resentment toward the criminal justice system.<sup>45</sup> There is no more reason to think that a privacy policy of prohibiting



police, without a warrant, from searching non-intermingled garbage would make people more withdrawn and less likely to engage in community projects, than there is to think that allowing such searches would breed a distrust that undermines community. Prohibitions of software that allows people to use the Internet anonymously would help battle cyberspace terrorists who create and spread computer viruses. It might also deter people from accessing pornographic sites. Therefore the prohibitions might be justified to someone convinced that privacy hampers crime control.<sup>46</sup> But would restrictions on the ability of Internet users to be anonymous help promote community? Some communitarians might interpret any restriction on the use of pornography as good for community. It may be that pornography makes people less likely to work together out of mutual concern and respect. But even if we are convinced that laws restricting pornography are justified, we cannot yet conclude that anonymous use of the Internet should be restricted. Anonymous use is valuable to others besides law breakers. It may be that people are willing to express themselves freely or forge ties to strangers only if they are anonymous at first, and once trust is built the strangers may unite in constructive ways. Instead of founding policy on the assumption that privacy is valuable only to criminals, we need to recognize the contribution privacy may make to community. By promoting a respect for persons, privacy can engender a mutual respect and recognition that is essential to community.

## **5. Privacy, Trust, Autonomy, and Community**

Why should we care about privacy? One reason is that we do not want to become victims. The less information we reveal about ourselves, and the less time we spend outside, the less of a target we are. But there is a greater value to privacy than merely protecting us from being victims. Wemmick's moat may deter criminals, but that is not why he built it.

When people respect my privacy they are respecting and recognizing me as a person, a bearer of rights, as someone entitled to some degree of self-determination. In leaving me alone, they are putting their trust in me that I can act responsibly. Scott Sundby argues that the true value that the Fourth Amendment protects is not privacy but trust.<sup>47</sup> "Trust that the citizenry will exercise its liberties responsibly . . . is jeopardized when the government is allowed to intrude into the citizenry's lives without a finding that the citizenry has forfeited society's trust to exercise its freedoms responsibly."<sup>48</sup> Sundby perhaps takes his argument to an extreme when he argues that the Fourth Amendment should be regarded as primarily about trust and not about privacy, and when he argues for a "new metaphor" to replace the "right to be let alone" metaphor, which he says no longer resonates in our regulated and crime-ridden society.<sup>49</sup> It seems wrong to say the Fourth Amendment is not about privacy, in the sense of a protection from snoops, spies, intruders, busybodies, and more well-meaning seekers of information. The complaint of colonists about the British conducting suspicion-less, generalized searches without a warrant was not that this showed a lack of trust, but that the searches were invasive, a violation of their very personhood. Nevertheless, Sundby's article convincingly shows how invasions of privacy can undermine trust. When the police bring specially trained dogs into a junior high school class to sniff the students and their belongings to see if drugs are present, and they do this without cause to suspect any student in particular of using drugs, the civics lesson the students

get is that the state does not trust them. Charles Fried also points to the connection between privacy and trust: "A man cannot know that he is trusted unless he has a right to act without constant surveillance so that he knows he can betray the trust. Privacy confers that essential right."<sup>50</sup> [528] One response to the argument that we should not conduct invasive searches because it suggests that we do not trust our citizens is that some of our citizens simply cannot be trusted. But that is too quick a response. Public policies concerning privacy must be established as general rules, applicable to all citizens. We cannot have privacy policies for law-abiding citizens, whose privacy we do not invade without probable cause, and more restrictive policies for people who we do not think that we can trust, unless the law specifically stipulates for good reason that certain classes of people have reduced rights, such as prisoners or those on probation. Basing policy on the assumption that no one can be trusted is likely to create or exacerbate the inability of some people to be trusted by treating them in effect as if they are not deserving of respect or recognition. In his field research of street culture in East Harlem, Philippe Bourgois discovered that crack dealers and addicts, perceiving themselves as unable to pursue promising careers in the mainstream economy, turned to the crack economy not only for better pay, but for respect, prestige, and recognition. Bourgois describes how a former manager of a coke-shooting gallery who had employed a network of a half-dozen sellers, lookouts and security guards before he was jailed, explained to me that the best memories of his drug-dealing days were of the respect he received from people on the street. After his release, he became a clerk in a Wall Street brokerage concern, determined, he said, not to return to street life. But he recalled that, as a dealer, when he drove up in one of his cars to pick up the day's receipts, a bevy of attentive men and women would run to open the door for him and engage him in polite small talk. Others would offer to clean his car. He would invite a half-dozen friends and acquaintances out to dinner in expensive restaurants almost every night.<sup>51</sup>

People need recognition, and when they are not treated with respect by mainstream society, they will look for it wherever they can. A community depends on mutual respect and trust, and should encourage it; but many invasions of privacy, searches lacking probable cause in particular, show a lack of trust that may have the effect of encouraging the sort of social disorder the invasion is intended to prevent.

A more abstract and theoretical defense of privacy that points to the importance showing respect for individuals has for community is suggested in the political philosophy of Hegel. Showing trust is important in conveying to someone that we respect him as a person, and Hegel emphasizes why such respect is so important to community. Hegel argues that the social practices and institutions that make up a community's system of ethical life are the source of the standards of right and wrong of the community. He is critical of liberals who place an individual's right to do as he or she pleases above the [529] obligation to obey the law, or who think that each person can determine for himself what is right. On his view, what is right is objectively determined by turning to existing social practices, laws, and institutions.<sup>52</sup> Hegel is particularly critical of liberals who want individuals to have the license to do as they please. Such license, for Hegel, is not really freedom.<sup>53</sup> Hegel radically redefines freedom to mean being at home in the world, and we are at home, or free, only as a

meaningful part of a larger community, the state. For Hegel, freedom is freedom-in, not freedom-from.<sup>54</sup> The reason Hegel thinks we are truly free only in the state is that only in the state do individuals obtain recognition of their own worth as contributors to something sufficiently enduring and meaningful, more meaningful than the satisfaction of their own individual needs and desires.<sup>55</sup>

Hegel argues that recognition is obtained in other ways as well: through the possession of property, by marrying and raising a family, and working in civil society, for example. But he believes none of these commitments are entirely satisfying, or truly fulfill our need for a meaningful existence. They are important, though, because, Hegel argues, only through being rights-bearing individuals, and fulfilling the duties of family and civil society, do we develop the capacity to recognize others and be recognized as persons so that ultimately we can undertake a commitment to the state.<sup>56</sup> The capacity to be persons worthy of respect and of recognizing others as worthy of respect is developed in part by granting individuals what Hegel calls “abstract rights.”<sup>57</sup> Such rights serve as a logical, if not a historical, prerequisite for community. To be free in the state, to recognize it as our highest commitment, as a place in which we are at home, we first need the capacity to be free in commitments, to be recognized as persons, and to recognize others as equally worthy of respect. In this way community, according to Hegel, requires respect for individual rights, autonomy, and, though Hegel himself does not explicitly say so, privacy.

While Hegel does not discuss the importance of privacy to autonomy in any detail, focusing instead on the importance of property rights, other theorists do. Alan Westin argues that there is a universal need for privacy as a means to preserve autonomy: “The individual in virtually every society engages in a continuing personal process by which he seeks privacy at some times and disclosure or companionship at other times.”<sup>58</sup> Loss of privacy is seen as threatening our core self.<sup>59</sup> Westin cites “the numerous instances of suicide and nervous breakdowns” resulting from exposure by government or media investigation.<sup>60</sup>

Privacy is important for individual autonomy in a variety of ways. Privacy can provide an important emotional release. Without minor non-compliance of social norms, many of us “would be under organizational discipline or in jail, or could be manipulated by threats of such action.”<sup>61</sup> We need a harmless release from the effort we make to be civil and polite. A divide between the [530] public and the private may help maintain our sanity and our integrity, a point Dickens makes with his portrayal of Wemmick. Westin and others have argued that privacy is needed for intimacy, and is required if we are to benefit from special relationships, such as those with doctors, lawyers, priests, and psychiatrists.<sup>62</sup> Respecting someone’s privacy is also a way of respecting someone as a person.<sup>63</sup> To invade my privacy, perhaps by reading my diary against my wishes, can be to fail to respect me as a person. Jeffrey Reiman argues that we need privacy to create selves: “Privacy is a social ritual by means of which an individual’s moral title to his existence is conferred,” and is a “precondition for personhood.”<sup>64</sup> Edward Bloustein similarly argues that privacy is associated with a principle of “inviolable personality,” a principle that declares “the individual’s independence, dignity and integrity; it defines man’s essence as a unique and self-determining being.”<sup>65</sup> Invasions of privacy demean an individual. They are “an affront to personal dignity.” “A man whose home

may be entered at the will of another, whose conversation may be overheard at the will of another . . . is less of a man, has less human dignity, on that account.”<sup>66</sup>

This is perhaps overstated. It is no affront to the dignity of Javanese or colonial New Englanders who, because of their architecture and social norms, would not expect privacy against people entering without knocking. Yet they are no less human than are citizens of advanced industrial societies. There are also objections to some of the more universalistic claims of privacy advocates.<sup>67</sup> Expectations of privacy vary depending upon time and place. Philippe Aries makes the striking argument that from the Medieval period until the end of the seventeenth century, “nobody was ever left alone. The density of social life made isolation virtually impossible, and people who managed to shut themselves up in a room for some time were regarded as exceptional characters.”<sup>68</sup> In this context, private life was virtually impossible. Private life surfaced only with the rise of the family in the eighteenth century, and with changes in the architecture of houses that allowed for a specialization of rooms. Finally in the eighteenth century a contrast was made between a *chambre*, or room used for sleeping, and a *salle*, which was used for visitors or for dining, and this allowed a space for private life within the family.<sup>69</sup> But recognizing the cultural and historical variations in expectations of privacy does not require us to dismiss the importance of privacy in the United States and other modern democratic states. Violating privacy undermines the capacity to develop meaningful relationships of mutual respect and concern, though what counts as a violation of privacy varies across time and place.

Privacy can serve other purposes besides developing individual autonomy. It protects groups or communities within society. In some cases, privacy may actually inhibit personal development. Privacy serves as a crutch for people who are not sufficiently autonomous, and crutches do not always help us develop what we lack. Gary Marx imagines how purchasers of weight-loss [531]products may be targeted for promotional offers from sellers of candy, cookies, and ice cream. He suggests that people should be able to control information about themselves so that they do not face temptations they lack the self-control to overcome.<sup>70</sup> Perhaps most importantly, privacy lets us maintain close ties to family and friends. While sometimes such commitments conflict with commitments to the state or the institutions of civil society, they are crucial in enabling us to take on commitments to community. This is Hegel’s point. What contemporary theorists of privacy do not make explicit, but Hegel develops richly and at length, is that the respect for persons that privacy promotes enables us to work with each other in community.

We have seen that privacy is sometimes associated with autonomy, where autonomy is taken to mean license, or the liberty to do as we please, unconstrained by others. The value of being able to do what we please surely conflicts with the value of social order and perhaps with the public-spiritedness and concern for others that is central to community. But there is, as Hegel shows, another conception of autonomy besides the freedom to do what we please, and being autonomous in this other sense may be a precondition for community. Community is not incompatible with, indeed it requires individual autonomy, and some kinds of privacy are important for autonomy.

## **6. Conclusion**

Dickens appreciates the value in community, but believes that it is achieved through a select moral community. Not everyone is good. Everyone may be worthy of respect and concern, but not everyone is someone with whom we want to live or work. Dickens can be seen as an advocate of community, even as he recognizes the need to be shielded from some aspects of the world. Hegel also recognizes the value of community, as well as its complex character, while seeing the importance of autonomy and individuality for obtaining community. Hegel recognizes that we have multiple commitments, and that it is important to preserve them all, whether commitments to friends, family, work, or state. Privacy is important in allowing us to develop and preserve some of the commitments so that we develop the capacity to show respect and concern for others, a capacity that is a prerequisite for community. Privacy is especially important in preserving friendships and family ties. One reason for turning to Hegel is that he shows that they not only are not intrinsically incompatible with ties to community, but that they are their logical precondition.

There are ways in which privacy conflicts with community. Some people who prize their privacy and their home as a castle of solitude may be averse to working with others toward common goals. Some privacy protections make it easier for criminals to go undetected. But would government policies or a change in legal doctrine do anything about this? Would it make people more [532] inclined to be friendly and sociable and less busy? Would the diminution in the crime rate be enough to justify the loss of autonomy and trust? We do not know enough yet to answer these questions confidently, though there are general reasons why protecting the privacy of people may in fact promote the concern and respect for each individual that may be a necessary precondition for community. We may find that some of the general reasons carry little weight in particular cases. For example, the argument that limiting privacy undermines trust is hardly an adequate reason to abolish the use of airport magnetometers to detect weapons on people about to board planes.

## Notes

1. Charles Dickens, *Great Expectations* (New York: Penguin Books, 1965), ch. 25, p. 229.
2. *Ibid.*, p. 231.
3. *Ibid.*, ch. 55, p. 465.
4. *Ibid.*, pp. 464–465.
5. *Ibid.*, ch. 25, p. 230.
6. *Ibid.*
7. *Ibid.*, pp. 230, 232.
8. See Priscilla M. Regan, "Ideas or Interests: Privacy in Electronic Communications," *Policy Studies Journal*, 21 (Autumn 1993).
9. See G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. Allen Wood (Cambridge, England: Cambridge University Press, 1991), Pars. 182–256.
10. "The Responsive Communitarian Platform: Rights and Responsibilities," in Amitai Etzioni, ed., *Rights and the Common Good: The Communitarian Perspective* (New York: St. Martin's Press, 1995), p. 11.

11. Georjeanna Wilson and Mark Baldassare, "Overall 'sense of community' in a suburban region: the effects of localism, privacy, and urbanization," *Environment and Behavior*, 28 (January 1996).
12. See Peter F. Nardulli, "The Societal Cost of the Exclusionary Rule: An Empirical Assessment," *Research Journal*, 3 (Summer 1983); and Thomas Davies, "A Hard Look at What We Know About the Costs of the Exclusionary Rule: The NIJ Study and Other Studies of Lost Arrests," *Research Journal*, 3 (Summer 1983).
13. Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," 4 *Harvard Law Review* 193 (1890); reprinted in Ferdinand Schoeman, ed., *Philosophical Dimensions of Privacy: An Anthology* (Cambridge, England: Cambridge University Press, 1984), p. 75.
14. Ferdinand Schoeman, *Privacy and Social Freedom* (New York: Cambridge University Press, 1992), p. 13.
15. But see H. J. McCloskey, "The Political Ideal of Privacy," *Philosophical Quarterly*, 21 (October, 1971).
16. See Louis Harris and Associates, Inc., and Alan F. Westin, *The Dimensions of Privacy: A National Opinion Research Survey of Attitudes Toward Privacy* (New York: Farland Publishers, 1981), p. 35.
17. Etzioni, *The New Golden Rule: Community and Morality in a Democratic Society* (New York: Basic Books, 1996), pp. 54–55. See also Amitai Etzioni, *The Limits of Privacy* (New York: Basic Books, 1999), pp. 213–214.
18. Gary Marx, "Privacy and Technology," *Whole Earth Review*, 73 (Winter 1991).
19. Etzioni, *The New Golden Rule*, p. 54.
20. Etzioni, ed., *Rights and the Common Good*, p. 6.
21. "The Responsive Communitarian Platform," in Etzioni, ed., *Rights and the Common Good*, pp. 11 & 20.
22. Etzioni, *The New Golden Rule*, p. 55. Cf. Etzioni, *The Limits of Privacy*, pp. 12–13.
23. See "Study of the Administration of Justice in the Wake of the Detroit Civil Disorder of July 1967," 66 *Michigan Law Review* 1544 (1968).
24. See Anthony Amsterdam, "Perspectives on the Fourth Amendment," 58 *Minnesota Law Review* 349 (1974), p. 384.
25. *State v. Young*, 123 Wash 2d 173; 867 P 2d 592 (1994), cited in Mark Tunick, *Practices and Principles: Approaches to Ethical and Legal Judgment* (Princeton, N.J.: Princeton University Press, 1998), p. 159.
26. Grant Mindle, "Liberalism, Privacy, and Autonomy," *Journal of Politics*, 51:3 (August 1989), p. 579.
27. *Ibid.*, p. 580.
28. *Ibid.*, p. 581.
29. *Ibid.*, p. 582.
30. See Nelson B. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* (Baltimore, Md.: Johns Hopkins Press, 1937).
31. Flaherty, *Privacy in Colonial New England* (Charlottesville, VA: University Press of Virginia, 1967), pp. 14–15.
32. *Ibid.*, p. 170.
33. *Ibid.*, pp. 196, 205–211.
34. *Ibid.*, p. 249.
35. Mindle, "Liberalism, Privacy, and Autonomy," p. 582.
36. *Ibid.*, p. 596.

37. Ibid., pp. 588–590.
38. Ibid., p. 593.
39. Robert F. Murphy, “Social Distance and the Veil,” *American Anthropologist*, 66 (1964); reprinted in Schoeman, ed., op. cit.
40. H. W. Arndt, “The Cult of Privacy,” *The Australian Quarterly* (September 1949), p. 69.
41. Ibid., pp. 70–71. Cf. Bruno Bettelheim, “The Right to Privacy is a Myth,” *Saturday Evening Post* (July 27, 1968), p. 9.
42. David Flaherty, *Privacy in Colonial New England*, p. viii.
43. Ibid., pp. 1–3.
44. Wilson and Baldassare, “Overall ‘Sense of Community’ in a Suburban Region,” *Environment and Behavior*, 28 (January, 1996), p. 38.
45. See Fox Butterfield, “Parents in Prison: A Special Report,” *New York Times*, April 7, 1999, p. A1.
46. See Peter Lewis, “Internet Hide and Seek: Staying Under Cover,” *New York Times*, April 8, 1999.
47. Scott Sundby, “Everyman’s Fourth Amendment: Privacy or Mutual Trust Between Government and Citizen,” 94 *Columbia Law Review* 1751 (October 1994), p. 1777.
48. Ibid.
49. Ibid., p. 1775.
50. Charles Fried, “Privacy,” originally in 77 *Yale Law Journal* 574 (1968); reprinted in Schoeman, ed., op. cit., p. 212.
51. Philippe Bourgois, “Just Another Night on Crack Street,” *The New York Times Magazine*, November 12, 1989, p. 94.
52. Hegel, op. cit., pp. 11–22; Par. 149. See also Mark Tunick, *Hegel’s Political Philosophy: Interpreting the Practice of Legal Punishment* (Princeton, N.J.: Princeton University Press, 1992), pp. 61–71.
53. Hegel, op. cit., pp. 37–39.
54. Ibid., pp. 39–42. See also Tunick, *Hegel’s Political Philosophy*, ch. 3. 55.
55. Ibid., pp. 276–281.
56. Ibid., pp. 81–82, 84–88, 102–103, 198–203, 227–228, 238–239, 282–283, 329–330.
57. Ibid., pp. 67–72.
58. Alan F. Westin, op. cit. p. 13.
59. Ibid., p. 33.
60. Ibid., pp. 33–34.
61. Westin, op. cit., p. 35. See also Karl Menninger, *The Crime of Punishment* (New York: Viking Press, 1966).
62. Westin, op. cit., p. 38; see also James Rachels, “Why Privacy is important,” in Schoeman, ed., op. cit., pp. 295–297.
63. Stanley I. Benn, “Privacy, freedom and respect for persons,” *NOMOS XIII: Privacy*, ed. J. R. Pennock and J. W. Chapman (New York: Atherton Press, 1971); reprinted in Schoeman, ed, op. cit., pp. 223–244.
64. Jeffrey Reiman, op. cit., p. 310.
65. Edward J. Bloustein, “Privacy as an aspect of human dignity: An answer to Dean Prosser, 39 *NYU Law Review* 962 (1964); reprinted in Schoeman, ed., op. cit., p. 163.
66. Ibid., pp. 164, 165.

67. See Mark Tunick, *Practices and Principles*.
68. Philippe Aries, *Centuries of Childhood: A Social History of Family Life*, trans. Robert Baldick (New York: Random House, 1962), pp. 395–400.
69. Ibid.
70. Gary T. Marx, *op. cit.*