



Kant and Privacy

Helga Varden

12.1 INTRODUCTION¹

“Perhaps,” J. J. Thomson argues in her seminal article on privacy, “the most striking thing about the right to privacy is that nobody seems to have any very clear idea what it is” (Thomson 1975, 295). In addition to making many astute observations about how we commonsensically distinguish between various ethical and legal concerns with regard to respecting somebody’s privacy, Thomson argues that this lack of clarity exists, ultimately, because there is no such thing as *one* distinct *right* to privacy. Rather, she argues, what we subsume under the label of a “right to privacy” is a cluster of other rights central to liberty, most prominently the rights to bodily integrity and private property. Since the publication of Thomson’s groundbreaking analysis, a host of papers have been written about whether there is a distinct right to privacy and what its nature is if

¹For help with this paper, I thank Lucy Allais, Ann Cudd, Katerina Deligiorgi, Katrin Flikschuh, Juliet Floyd, Jon Garthoff, Rafecq Hasan, Mark Navin, Krupa Patel, Jonathan Peterson, Arthur Ripstein, Judy Rowan, Tim Sellers, Sergio Tenenbaum, Shelley Weinberg, Ekow N. Yankah, the participants at the 2017 AMINTAPHIL conference, at the practical philosophy workshop at the University of Illinois at Urbana-Champaign, and at the 13th International Kant Congress.

H. Varden (✉)
Department of Philosophy, University of Illinois, Urbana, IL, USA

there is such a thing. For example, many argue that there is a right to privacy and that it is, ultimately, a right to control personal information, to intimacy, to dignity, to autonomy, to social relationships, or to freedom from governmental interference. In addition, feminist accounts draw our attention to bad things that transpire under the guise of a right to privacy, especially domestic abuse.²

Not only the philosophical literature struggles to obtain a clear idea of the boundaries and value of privacy; however, the same can be said about legislation, public discussion, and even common sense. Legislation regarding privacy around the world differs significantly. In countries where free speech is legally protected and social media is legally permitted, there are intense public debates surrounding states' duties to protect citizens against state surveillance of private electronic communications and against recording and data mining by private companies that facilitate citizens' private electronic correspondence and social media platforms, such as Apple, Google, Gmail, and Facebook. There is also much discussion about whether, and if so, how people should be legally protected against unauthorized, abusive online sharing of intimate personal conversations or images. Uncontroversially too, there's both significant confusion in common sense regarding the boundaries and value of privacy and much oversharing of intimate, personal moments and information on social media. If, however, we try to clarify what constitutes sharing too much and why, we quickly get unsure about what to say and where or how to draw the line.

To make matters more complex, if Hannah Arendt is right, the fact that there's so much confusion in the Western philosophical practice and in related public debates, legislation, and modern common sense about what privacy is, is no historical accident. In *The Human Condition* (1958), Arendt argues that (the practice of) Western philosophy has devalued the importance of the private sphere (centrally the home) with its intimate, maintaining, and reproductive ("labor") functions and instead held up as the human ideal only active public lives ("action"), such as the lives of public leaders and artists, as well as, and typically even more so, the contemplative lives of scholars ("thinking"). She furthermore argues that although philosophy always has had a tendency to get this aspect of life wrong, in pre-modern historical periods, the human condition corrected this in that most people's lives had to focus significant attention on their

²For an excellent overview of the existing privacy literature, see DeCew (2015).

personal sphere because of sickness, the perishability of food, vulnerabilities due to weather, seasons, and so on.

In modern times, however, this fact of the human condition radically changed. Because we are naturally drawn to want “absolute freedom from necessity” and because modernity allows that many (and not just the few) no longer have to tend to biological and animalistic needs in the same way, a “price” we pay is “life itself, or rather the substitution of vicarious life for real life [...] to rob human life of its very liveliness and vitality” (Arendt 1958, 120–1). Once human life underwent this change, however, the problems Arendt sees as characteristic of classical philosophical theories became real problems of human life: human beings have faced an unprecedented danger of trying to live ungrounded lives—lives typified by a lack of valuing the private, personal sphere, such as by shielding it against intrusion and by valuing it through activities constitutive of a grounding private life. And neither classical philosophical theories nor ordinary human life itself could, did, or does offer much help in comprehending and resisting this danger. To make matters worse, Arendt continues, there is a general lack of distinction and valuing of different spheres of lives in modernity, meaning that there is a problematic meshing of all spheres of life without an appreciation for the difference between kinds of activities and their distinctive value (“labor,” “work,” “action,” and “thinking”).³ We have a tendency, she proposes, to think that we are all doing versions of the same thing: we are all—politicians, presidents and prime ministers, kings and queens, workers, judges, craftspeople, professors, nurses and physicians, engineers, and so on—simply doing a job in exchange for money (Arendt 1958, 46). Modernity is therefore invaded by a perverted kind of laboring, one that strives to turn all activities into the same kind in the name of equality (Arendt 1958, 41). Hence, she proposes, modern age’s “emancipation of labor will not only fail to usher in an age of freedom for all but will result, on the contrary, in forcing all mankind for the first time under the yoke of necessity” (Arendt 1958, 130). The lack of appreciation for the differences between various kinds of activities and their unique values creates its own source of instability and, I will argue,

³Labor consists in inherently biological, animalistic activities such as eating, sleeping, and having sex; “work” consists in activities characteristic of crafts (the creation of useful, durable objects); “action” is public legal–political activities constitutive of creating and maintaining a flourishing society that aims at immortality, and, finally, “thinking” is scholarly activity aiming at uncovering eternal truths. See chapter 1 “The Human Condition” of Arendt (1958) for a summary of these ideas.

with regard to appreciating the importance and grounding value of activities protected by privacy. In so doing, the aim is also to show how recent, fuller engagements with Kant's practical philosophy—engagements that attend not only to his moral analyses (of virtue and of right) in the way the Western philosophical practice typically has done, but also with his writings on human nature—give us philosophical tools with which to improve our understanding of the complexity of modernity and of privacy.

This paper seeks, then, to contribute to the debates regarding the nature and importance of privacy by means of Kant's rather than Arendt's and Thomson's practical philosophy as I believe it can incorporate their insights and move us beyond them. I argue that although neither Kantian interpretive nor the general philosophical practice has utilized them, Kant's practical philosophy has resources with which we can get a good handle on the problems of ungrounded modern individuals, the importance of privacy for human beings, and the structure of (including the differences between) the ethical and judicial rights and duties regarding privacy. More specifically, I agree with Thomson that there is no one distinct right to privacy that captures all our normative concerns—emotional, ethical, and legal—regarding privacy. Section 12.2 outlines how we can use Kant's theory of human nature to obtain structure and ideas with which to analyze privacy, and to speak to questions of privacy's importance and the temptation not to heed its value and even to disrespect it. I supplement this analysis with some of Kant's ideas on friendship and on the challenges internal to publicly active and contemplative ways of life. To identify ethical and legal wrongdoing regarding privacy, I turn to Kant's accounts of virtuous (internal) and rightful (external) freedom. Section 12.3.1 engages Kant's writings on virtue to develop an ethical *idea* of privacy before developing an ethical *ideal* of privacy with help from his fuller account of human nature. Similarly, in Sect. 12.3.2, Kant's writings on right are used to develop a judicial *idea* of privacy and, again, with help from his fuller account of human nature to arrive at a judicial *ideal* of privacy. In both sections, the *ideas* refer to accounts of privacy derived from Kant's moral (rational) principles, whereas the *ideals* show ways to make proper space for our distinctly human natures. Developing a philosophical approach to privacy by using Kant's practical philosophy in these ways, I propose, can also explain why so many different types of concerns are raised in the name of privacy, including why these diverse concerns—emotional, ethical, and legal—are not reducible to one another or to something else. And the analysis can explain how all these concerns can be

unified into one coherent philosophical account of privacy, according to which, we may argue with Arendt, privacy is best realized if we take our embodied, social natures as human (and not merely rational) beings seriously.

12.2 ON THE VALUE AND IMPORTANCE OF PRIVACY FOR HUMAN BEINGS

One of Arendt's objections to the Western philosophical tradition concerns the ways in which it tends to "be ignorant of, or unconcerned with" the importance of biological, reproductive, sustaining (or importantly non-rational) aspects of the human condition that we in an important sense share with other animals (Arendt 1958, 24). For example, whether we look to Aristotle's or Plato's theories of truly flourishing human life, there is much text to support reading them as both insufficiently appreciative of the value of our animalistic natures and instead as primarily focused on defending the supreme or "divine" form of human life as a contemplative life striving to uncover the eternal truths—the life of the philosopher or academic—and as defending the public, legal-political life with philosophers or academics (e.g. Socrates) as ideal political leaders. Arendt thinks that this understanding of the (best possible) human condition is the norm throughout the Western philosophical tradition.⁴ We can see the same tendency in prominent interpretations of Kant's practical philosophy: Many philosophers don't realize that Kant has a theory of *human* (beyond merely rational) nature just as they believe that Kant's entire life was taken up by philosophical striving to uncover the eternal (objective) truths. Most scholars don't think that Kant had an interesting private life at all (except, perhaps, that he held dinner parties), and even among those who do pay attention to his theory of human nature, most read him as arguing that the ever so human aspects of our nature—our animality and various social aspects of our humanity—are valuable only insofar as they make it easier for us to act truly freely (virtuously). Arendt further objects to the tradition by arguing that it's profoundly wrong to devalue or misunderstand the actual value of non-rational ("laboring") parts of human life, that, indeed, living as these theories recommend is emotionally challenging and can even be dangerous to human beings. It's dangerous for everyone not to understand how labor is distinct from the activities

⁴See Ch. 2 "The Public and the Private Realm" in Arendt 1958 for more on this.

constitutive of creating a flourishing human world (with usable and durable objects, and legal–political activities) and of striving for knowledge of all there is in the universe (scholarly work). Indeed, she argues, in modernity where we have lost these distinctions not only in theory but in how we live, “mass society not only destroys the public realm but the private as well, deprives men not only of their place in the world but of their private home” (Arendt 1958, 59). This line of reasoning, in turn, leads her to propose that we need theories of the human condition that capture how reproductive (“laboring”) activities (properly understood) are important and emotionally grounding for us as activities constitutive of the private life, a life that needs to be hidden from the public eye (Arendt 1958, 50–1). With these laboring activities doing their distinctive and important work in our theories and lives, we can then seek to restore the other, distinctly human activities—work, action, and thinking—so that they can contribute their distinctive values to the human condition as well.

But, in my view, Arendt’s (Heidegger-inspired) solution is not without problems. First, like most naturalistic accounts of human nature,⁵ it struggles to capture the importance and structure of human diversity. Second, her (Heideggerian-inspired) account of labor is traditional and conservative. Arendt furthermore doesn’t give us enough to work with philosophically as we seek to clarify the phenomenological structure of these “laboring” or inherently private, grounding activities beyond that they are importantly non-reflective in nature. Arendt puts her finger on something crucial to capturing the importance and structure of (modern) privacy—something that is intimately connected with her account of labor activities—but we need to go beyond her analysis, which we can do with Kant and which is the purpose of the next section.

12.2.1 *Kant’s Theory of Human Nature*

Kant argues that our human nature can, in part, be understood in terms of the ways in which we are reflexively and reflectively self-conscious, embodied social beings. A central part of his account is “the predisposition to good in human nature,” which, in turn, is made up from the predispositions to “animality,” “humanity,” and “personality” (*Rel* 6: 26–8).⁶ Importantly, in this context, how each predisposition requires and is

⁵For more on this, see Varden (2020b).

⁶For more on Kant’s theory of human nature, see Varden (2020b).

enabled by different capacities for self-consciousness and thinking can explain the many and diverse emotional, ethical, and legal concerns noted in the literature on privacy. To see this, we need a little more information about each predisposition.

The predisposition to animality, Kant proposes, does not require reflective self-consciousness or abstract conceptual reasoning abilities and it can be seen as fundamentally involving reflexively self-conscious strivings to preserve oneself (self-preservation), to preserve the species (having sex and caring for offspring), and to seek affectionate loving unions (basic community). These basic, strong emotional–physical ways in which we are oriented toward ourselves and one another as animalistic beings can be developed also with associative thinking powers and they cannot become fully reflective. That is to say, in contrast to non-human animals (who develop their animality through associative thinking),⁷ we can become reflectively aware of our animalistic strivings and inclinations, we can transform and develop them in integrated ways in our lives, and, as we will see shortly, we can assume moral responsibility for them. What we cannot do, however, is to directly determine or control what they are through reason and reflection. Additionally, when realized well—and we return to what this involves shortly—this predisposition enables us to eat and drink, to have sex and care for our offspring, and to love affectionately in emotionally and physically healthy ways.

In contrast to the predisposition to animality, the predispositions to humanity and to personality do require and must be seen as enabled by our capacities for reflective self-consciousness and reasoning. The predisposition to humanity enables us to have a social sense of self and to set rational ends: to have a self-recognitional sense of ourselves (of who we are as distinct from and as seen by others) and to set ends of our own (to act on universalizable maxims). The predisposition to personality, in contrast, refers to our susceptibility to do what is right *just because* it is right—a susceptibility Kant calls “moral feeling”—which ultimately explains why we can be morally responsible for our actions. Regardless of what we *want* to do or *feel like* doing, insofar as we can be morally responsible for our actions (not morally incapacitated), we can choose to do something *just because* it’s the only morally justifiable course of action (we can act out of duty). Human beings are living, rational, and responsible beings; we are

⁷My account of non-human animals follows Lucy Allais’ lead in Allais 2015. For my interpretation Kant’s account of duties regarding non-human animals, see Varden (2020a).

embodied, social beings who not only set ends of our own in the world, but who can do so in morally responsible ways.

The story thus far cannot explain why we don't *always* do the emotionally healthy and morally right thing; to explain this, we need Kant's account of the propensity to evil (*Rel 6*: 28ff.). Basically, that we can choose (set ends of our own) and that we have embodied, social natures have the consequence that we will do bad things. In addition, Kant argues that this propensity comes in three degrees—"frailty," "impurity," and "depravity"—where the first two can come in self-deceived and not self-deceived versions, but the last always occurs in a self-deceived manner. Frailty describes an instance of wrongdoing, impurity a pattern of wrongdoing, and depravity having lost one's way so badly that one aims to destroy (some) rational life as having dignity (under the guise of the good). To illustrate, in relation to our animality we are easily tempted to focus on momentary sensuous pleasures rather than on developing our desires in richer ways that are good for ourselves and others. For example, we are tempted to eat and drink too much, to strive only to satisfy and increase our present sexual satisfaction, and to focus only on ourselves thereby hurting the ones we love, and so on. Similarly, the predisposition to humanity is trailed by a temptation to be jealous, to take joy in others' failures, or to be envious. Although we can develop, transform, and integrate our many desires into emotionally healthier wholes—something that also makes it subjectively easier for us to stay on course—this propensity to bad temptations cannot be eradicated. In addition, of course, we are often subjected to others' bad behavior, and when we are children—before we are able to assume responsibility for our actions—we are subjected to (commonly rationalized) bad behaviors by those entrusted with our physical and emotional well-being and moral development. To make matters worse, it's also difficult to live truthfully and well with the fact that we (and our loved ones) often do bad things and that our feelings and responses sometimes are out of line. It's tempting to tell a much nicer, self-and other-deceptive story about each other, ourselves, and our lives. Of course, the degree to which we have been subjected to others' bad behavior and social disabilities greatly influences how subjectively difficult it is for us to do things well, let alone the right thing. It is, in other words, relatively easy to make mistakes and even lose one's way in life. Nevertheless, insofar as we are capable of assuming moral responsibility for our actions, each of us *can* do the right thing and *can* assume moral responsibility for figuring out how to interact respectfully and for handling, repairing, or

healing the emotional wounds inflicted on us, even though, of course, we always remain rather imperfect works-in-progress. Insofar as we are capable of moral responsibility, then, we have internal to us what it takes to morally improve and emotionally heal and develop although doing so is much, much easier when we have the support of affectionately loving and morally responsible others. We never, however, reach the state of being perfect, unflawed beings.

Finally, if the above is on the right track, notice that we have the beginning of an answer to why we quickly associate protecting privacy with protecting private spheres such as intimacy, personal information, private homes, existentially important social relations and practices (including religious ones), dignity, and autonomy from government intervention. These personal relations, spheres, and practices are constitutive parts of how we realize our animality (preserve ourselves, our sexuality, and our sense of basic community with others as an “us”) and humanity (self-recognitional aspects of ourselves and setting ends for ourselves). They also concern aspects of ourselves for which only each one of us can assume moral responsibility. As we strive to live morally good, happy lives—to reach for the “highest good, which consists of the union and harmony” between “human morality” and “human happiness” (*TP* 8: 279)—a core challenge we face is to develop and transform each of these spheres richly in themselves as well as integrate them into a whole in stable ways that are good for each of us individually and respectful and supportive of other persons’ different ways of life. Much of this activity is deeply personal in nature—and doing it well requires us to do it in a personal way. This doesn’t mean that others can’t take part in our projects (quite the opposite), but we must want to invite them in and we must be going about these projects in such a way that we own them as our own. In other words, humans typically need privacy because it is constitutive of developing into emotionally healthy, morally responsible human beings.

Of course, in various cultures and given our different temperaments, exactly how we do all this—how we are taught to relate to animality, humanity, and personality—differs to some extent. For example, in some cultures, it’s customary to express raw grief in a very social way—such as through public crying and singing—whereas in other cultures raw grief is commonly expressed only in much more intimate, private settings. Also, to what extent we feel comfortable participating in these practices depends to some extent on our temperament, such as whether we are more extroverted or introverted. Alternatively, in some cultures it’s considered

natural to be able to relate to naked bodies in a non-sexual, very social manner—such as in the Finnish social institution of saunas—whereas in others, one's naked body should only ever be revealed to oneself or in sexual, loving, or intimate spheres. And, again, internal to each culture, people differ in how subjectively desirable it is for them to participate. The above account doesn't deny any of this. On the contrary, it says that there will be different social practices and there will be much variety within these practices, depending on what kind of person one is. Additionally, the above account suggests that when we look at our many inherited practices and the lives lived within them, we can see a typical structure: On the one hand, they reveal ways in which human beings seek to realize their own animality, humanity, and personality—on their own and together with others—and on the other hand, they reveal ways in which we fail to do so.

It's furthermore important to emphasize that the aspects intimately connected with our animality and self-recognitional aspects of our sociality (related to shame and honor) are not simply under the direct control of our reason (as they are not enabled by nor do they require reflective self-consciousness or practical reasoning powers), which is why protecting them is particularly important. We can be ungrounded or undone—not know how to move on or what to do—by things that affect our animality, such as deaths of loved ones, or by things that affect our humanity, such as shame (an inherently social emotion that disempowers us). It's because of the important existential role these emotions play in human lives lived well and their sheer psychological strength that we take such care to protect them in ourselves, in our loved ones, and in general. Furthermore, it's because of the existential importance of these aspects of ourselves that Kant deems friendships supported by firm commitment to respect for one another—moral friendships—so valuable (*MM* 6: 472). True friends not only make it easier for us to grow and to own our mistakes and our less endearing aspects, but they enable us to have a sense of ourselves and be grounded as who we are because that is a constitutive part of what they love and care for (reflexively and reflectively).

In addition, because of our liability to do bad things and because these aspects of us (animality and humanity) are very emotionally strong and unruly, they are morally dangerous, and we will be tempted to develop them in bad ways and misuse them when we fail to act well. For example, as the phenomenon of so-called revenge porn shows, someone who is unable to handle a breakup can be tempted to make public intimate images of one's ex-partner (through the Internet). Violating another's privacy in

this way is both extremely emotionally hurtful and can be radically disempowering and damaging because it leaves the affected persons no longer in control of who sees how they reveal themselves and interact sexually in private or personally intimate spheres. Moreover, because assuming moral responsibility—including by repairing and developing our embodied, emotional selves in good ways—is such a challenging, slow, never-ending, and personal project, we never outgrow the need for privacy; indeed, the more we mature, the more we appreciate its importance. Finally, because these aspects of ourselves are both very emotionally powerful and unruly, it's especially mean-spirited intentionally to disrespect the boundaries set by privacy and, as we see below, such behavior is not only ethically and legally wrong but also heinous.

12.3 ASSUMING MORAL RESPONSIBILITY FOR PRIVACY

A major contribution of Kant's philosophy is his account of morality understood in terms of freedom. When exploring human freedom, Kant proposes, we must distinguish between the "internal" and "external" uses of choice (*MM* 6: 214). Freedom in internal uses of choice captures virtue (first-personal ethics), meaning acting on universalizable maxims from the motivation of duty (virtuous internal freedom), whereas freedom in the external uses of choice captures right (justice), meaning interaction in the world that is consistent with respecting one another's innate right to freedom (rightful external freedom). When we combine Kant's accounts of freedom with the above account of our embodied, social nature, we end up with a practical philosophy that views *morality* as captured by his critique of practical reason (including the related writings on freedom, virtue, and right) but that also includes his writings on our embodied, social human nature, such as on moral (philosophical) anthropology, moral psychology, politics, history, and religion. Each part—virtue, right, human nature, religion, anthropology, and so on—makes its own philosophical contribution to the integrated whole that is his complete practical philosophy. Hence, as we explore a phenomenon such as privacy, several parts do complementary yet different philosophical work. Finally, Kant is deeply convinced that the objective certainty we can have with regard to principles of freedom explored in his writings on virtue and right cannot be obtained when exploring the embodied, social aspects of our human nature. Kant concludes from this that the writings on freedom must set the framework within which embodied, social (contingent) concerns of

human nature are given their appropriate space when we search for more complete practical theories of various human phenomena (*MM* 6: 217, *SRL* 8: 429, *TP* 8: 277ff.). This matters centrally, we see below, when we seek to use Kant's ideas to arrive at a unified theory of privacy.⁸

12.3.1 *Virtue and Privacy*

Kant's account of virtue—with its distinction between perfect and imperfect duties—can be used to arrive at an *ethical idea* of (respect for) privacy. More specifically, below I argue that we have perfect duties to protect our own privacy and to respect others' privacy and we have imperfect duties to develop our ability to realize and protect our private spheres and to assist others in their efforts to do the same as part of pursuing happiness. Kant's account of our social, embodied nature and of evil, in turn, helps us clarify *ethical ideals* of privacy, namely the particular value and challenges internal to our irreducibly human strivings for privacy.

As we saw above, human beings are rational in that we set ends of our own; as we learn how to act, we are able to pursue our ends with our means (bodily and otherwise). Learning to set ends rationally and responsibly is a complex task, however; it involves being able to orient ourselves toward ends that we need or want—to master the use of abstract concepts and to act for reasons—and to learn to do or not do something just because it's the right thing to do. Today, most states judge that not until we are 18 years of age are we fully capable of deeds in that we are then held legally responsible for our actions. Moreover, even though we—in general—are held fully legally responsible for our actions at this age, it's not the case that we're particularly mature or successful at living our own lives at this point in time. Even under the best of circumstances and upbringings, people are still very early in the game of learning to live their own lives by this age. All upbringings yield their own kinds of challenges with regard to the project of maturing; indeed, even those with more ideal upbringings tend to be a little naïve and act in entitled, rather bulldozing kinds of ways as compared to those who have been less fortunate. In addition, at the heart of all good ways of developing, on this approach, lies a deep respect for the fact that each person has their own life to live. We are beings who can set ends of our own in good ways, which involves learning to assume responsibility for living meaningful lives and to act in ways

⁸For more on all of this, see Varden (2020b).

compatible with respect for and supportive of others' end-setting—and respect for privacy is at the core of such activity. I'll develop this thought by means of Kant's account of perfect and imperfect duties before incorporating how our particular embodied, social natures can be accommodated within such a freedom-based approach.

Kant (in/famously) distinguishes between two kinds of ethical duties, namely perfect and imperfect duties: we have perfect duties to act in ways consistent with respect for ourselves and each other as ends in ourselves (not treating each other as mere means but as having dignity) and we have imperfect duties to develop our own capacities and talents and to assist others in their pursuit of happiness. Regardless of how close we are in our relationships, because we are rational beings, it's of central importance that those around me respect how, in a fundamental sense, my life is mine to live just as yours is yours. Moreover, insofar as we interact with each other in this way, we don't presume that we have moral authority over each other's lives; we don't have the right to know everything about each other's lives just as we don't have a right to tell each other which lives to live. Ethical rights and duties regarding privacy track many of these concerns: the perfect duties track how we must be around each other in ways consistent with respect for the fact that each person's projects are their own. In contrast, the imperfect duties track how we must strive to develop our abilities to set ends of our own, such as by learning to invite others (how and whom) to take part in our lives (in good ways) and to learn how to respond well to others' invitations or need to have us assist them in their pursuits of happiness. Learning to do all of this well involves learning to read situations well and to respond in ways that are not intrusive, unreliable, confusing, or dishonest, but truthful and deeply respectful of one another in our attempts to figure out how to live well as who we are, including by sharing lives in various ways.

In my view, the above sketches a Kantian ethical idea of privacy. It's an idea set by the principles constitutive of perfect and imperfect duties, duties that ultimately track the fact that we can set ends of our own and where doing this well is partially constituted by respect for exactly our rational being so understood. However, we are not only rational beings, we are rational *human* beings, and consequently the above ethical *idea* of privacy must be complemented by an ethical *ideal* of privacy, which incorporates the fact of our embodied, social natures. Hence, the ideal of privacy must take into account how we are not only beings who can set ends of our own, but we have an animality that requires us to learn to live in

ways that feel profoundly safe (self-preservation), sexually satisfying (sex drive), and affectionately loving (basic community), and it must take into account how we have a social sense of self. Learning to realize privacy well, in other words, requires us to keep striving to learn how to act around others in ways that are attentive to our own and their particular needs and wants in this regard, including as they are developing and changing with time. And this is not an easy task; it's a lifelong endeavor that requires us to have a lot of space for ourselves and each other to try things out and to fail—and a real ability to learn when and how to hold on and be present, how and when to share, when and how to let go in good ways. And the only way to get this right involves a profound commitment to truthfulness; without a commitment to truthfulness, it's impossible to know what we are doing and, so, to do things better.

One way to illustrate some of the above analysis of the value and importance of privacy is to use Kant's phrase of our "unsocial sociability" in relation to our projects of being at home in the world and living life together in various kinds of relationships (*IUH* 8: 20). If I understand correctly, Kant's reasoning goes something like this: our animality and social sense of self draw us to one another and being together in good ways is grounding for us. In fact, being invited to become a constitutive part of (some of) one another's fundamental ways of being at home in the world is one of the most incredible things we can experience and being able to live together well in intimate ways is absolutely precious. Although we are drawn to each other in these ways and it's good that we are, living together in flourishing ways also comes with a deep respect for the fact that we need to be on our own as we are irreducibly also unsocial beings (we set ends of our own). In fact, a real challenge is, at first, to dare to be truthful about these facts, and with time to strive to become wise around them. Hence, as we learn to go through our lives in profoundly shared ways—as caring us's—doing so well comes with a real appreciation for the fact that the other genuinely needs you, needs others, and also, crucially, needs to be on their own a great deal. In fact, seeing and knowing that those we love flourish also when we are not present is its own source of joy. Sometimes, of course, we are not there because we are doing our own thing, we are with somebody else, or our loved one is with somebody else; other times, however, we are not there because doing this thing—whatever it is—is something our loved one needs to do on their own. Regardless, in emotionally and morally healthy relationships, we know and can and do trust that we are reliably there for each other when need arises—and in

human lives, such need inevitably arises. Furthermore, it's true that the closer we are, the more it's the case that we are present in a more continuous way—as a good background, in how we pay attention and share small and big things. It's also true that it feels good and safe to have or feel someone with whom we have a very close and deep connection present even as we are at our most creative or personal or happy or vulnerable or messy, and so on. Nevertheless, it's still the case that in all good relationships, we strive to find caring ways of making space for each other's separateness as well as for sharing experiences and life. Constitutive of such relationships is the fact that we genuinely want each other to flourish both on our own and together as the particular people we are; this is the way in which we matter to and value each other. We are, inherently, deeply un-social social beings and, so, we need privacy both in that we need to be together (and away from everyone else) and we need to be on our own (and away from everyone).

Let me now use the above analysis to revisit some puzzles regarding privacy mentioned in the introduction. To start, the above can explain why invasions of privacy typically are particularly bad, mean, or even heinous. Privacy concerns animalistic, and hence grounding, aspects of our lives, such as our safe spaces (self-preservation), sexuality (sex drive), and affectionate love (basic community), in addition to social aspects of our selves, such as playful social presentations in presumed private spaces like private conversations, letters and emails, homes, and so on. If someone either intrudes uninvitedly into these spaces and shares with others or makes (or threatens to make) public what they then have knowledge of *or* have been invited and entrusted to share in this space, then there can be significant bad effects. Our animality, we saw above, is reflexive, but not inherently reflective, which means that it's not something we can simply control through reflective means. And even though the social sense of self is inherently reflective, what happens in private settings when made public can make one feel extremely exposed and unprotected. It's because of the typical effects of such invasions that failures to respect others' privacy are particularly bad, and we have perfect duties not to do them. Such intentional disrespect—with the wish to do others ill—is particularly mean, and often heinous. And if Kant's idea of the propensity to evil is on the right track, then the way in which we are embodied, social beings tempts us to do such things when we are rejected (break-ups) or if someone doesn't want to invite us into their private lives in the first place (unrequited love). Additionally, if we yield to the temptation of feeling powerful by putting

others down in this way, and especially if we do this with self-deception (“they deserve it”), then there is a real danger that our bad behavior becomes obsessive, meaning that we increasingly direct our lives toward being upset or even angry with or wish ill upon a person whose affection, love, and care we don’t (any longer) have access to. To work oneself away from such temptations, on this approach, truthfulness is a precondition.

Notice too that if the above account is on the right track, then insofar as we live very creative, public, or theoretical lives, there is a real risk that our animality receives less attention or is less integrated into our everyday life. Such lives risk being mostly focused on our social sense of self (how we are viewed in public or socially) and at setting creative ends of our own. So, there is a real possibility that everything that has to do with animality (home, sexuality, and affectionate loving relations) are seen as pulling us away from what we really care about—the creative and/or social activities—rather than being integrated with it. The danger with these lives, then—whether they are lives as public legal–political leaders, artists, or theorists—is that the laws and policies, the art, or the theories devalue or fail to appreciate the importance of animality for us, as human beings. (Cf. Arendt’s analysis of the importance of (uncorrupted) “labor.”) Or to put the point with Kant: the highest end—the meaning of life—for human beings is to strive to bring happiness and morality into union. Thus, distinctly creative kinds of life come with a danger of not appreciating the grounding importance of animality for human beings. Consequently too, although there has always been a danger that creative people with much social power (those in charge of the legal–political institutions, who create inspiring art, or come up with wonderful theories) will fail to appreciate the importance of privacy or the private sphere—a tendency that might at present be exacerbated by the pressures of social media—it may be more important than ever that we increase our understanding and appreciation of how Western philosophical practice might exacerbate this danger.

12.3.2 *Right and Privacy*

Kant argues that no one can determine or control another person’s internal uses of choice by means of external uses of choice (coercion); our maxims, including the motivations we act on, are beyond the reach of coercion (physical force). In fact, if we try to exercise control over others in this way—as is symptomatic of emotionally or physically violent relationships and social institutions, including dictatorships—we necessarily

wrong the person we so subject to coercion by non-consensually depriving them of something that is theirs. As a consequence, when we switch from an analysis of freedom in internal uses of choice (virtue) to one of freedom in external uses of choice (right), our (judicial) analysis becomes fundamentally about whether our interactions in the world (in space and time) are reciprocally consistent with one another's innate right to freedom and the accompanying duty of rightful honor. The proper judicial aim is therefore not to make people virtuous (as that is impossible and wrong) but to provide conditions in which they can interact rightfully, which is, of course, both constitutive and supportive of their efforts to become emotionally and morally better human beings (to realize the "highest good"). Moreover, because the necessary counterpart of Kant's account of freedom in a complete practical philosophy is a moral anthropology, the analysis will distinguish between the juridical *idea* of privacy (understood as the exposition of the relevant principles of right that abstracts from empirical conditions of experience) and the juridical *ideal* of privacy (understood as the exposition of a fuller legal-political conception of privacy where empirical cognition of experience is given due space). The main difference between the idea and ideal, then, is that the fuller legal-political ideal incorporates the moral psychological and anthropological reality that we are embodied, social human beings who live in particular societies that have distinct histories and cultures.⁹ Correspondingly, a Kant-based proposal for the juridical *idea* of the right to privacy comprises the relevant principles of innate, private, and public right, while the fuller, legal-political *ideal* will include the contingent moral psychological and anthropological concerns of human nature. This enables us to see how the overall juridical idea of the right to privacy may be seen as a cluster of juridical rights (innate, private, and public right) constitutive of the minimally just state, whereas the fuller legal-political ideal of the right to privacy shows ways in which good, just societies not only treat breaches of privacy as particularly heinous but also seek to reform themselves by becoming increasingly able to systemically secure each citizen's right to privacy.

12.3.2.1 *The Judicial Idea of a Right to Privacy*

The basis of Kant's theory of right—as presented in its purest form in the "Doctrine of Right" in *The Metaphysics of Morals*—is "the innate right to freedom" and its corresponding "duty of rightful honor." Our innate

⁹For more on here, see Varden (2020b).

right to freedom is our right to “independence from being constrained by another’s choice ... insofar as it [our exercise of freedom] can coexist with the freedom of every other in accordance with a universal law” (*MM* 6: 237). Our duty of rightful honor “consists in asserting one’s worth as a human being in relation to others” (*MM* 6: 236, cf. 6: 236–1, 6: 240, 6: 213–1, 6: 218–221). There are three kinds of rights protected by the laws of freedom as there are three kinds of rights necessary to establish a condition in which our innate right to freedom is realized and secured. Somewhat simplified, these rights are: individual rights analytically related to our innate right to freedom (the rights to our bodies, to thought and speech, and to honor); individual rights synthetically related to our innate right to freedom, namely private rights that are acquired through acts of appropriation and hold between private persons (rights to private property, contract, and what Kant calls “status” right); and, finally, public rights, which are systemic legal claims citizens have on or through their public institutions (rather than against one another as private persons). Finally, Kant argues that it’s impossible to interact rightfully in a pre-state condition (“the state of nature”); establishing a public authority that has a law-governed monopoly on coercion is constitutive of rightful interactions because it’s the means through which we can rightfully solve problems of (systemic) interaction that we cannot solve as private individuals.¹⁰ The aim in this section is to outline the judicial idea of a right to privacy, understood as the foregoing principles of right combined so as to yield this (cluster) right.

Starting with the rights analytically related to our innate right to freedom, Kant argues that from the judicial (spatiotemporal) point of view, there is no distinction between one’s body and one’s person, which is why, for example, touching someone in an unauthorized way is a particularly serious offense (battery). By touching another’s body in this way, you touch the other’s legal person. In addition, Kant argues that because words as such don’t have coercive (spatiotemporal or physical) power or force—you can say what you want and I can choose to ignore you—the utterance of words as such cannot be a legal wrong. Indeed, even lies are not legal wrongs as such; rather, we are legally responsible only for the bad consequences of our lies. Lies are furthermore legal wrongs only if they

¹⁰For overviews of the interpretive traditions of Kant’s legal–political thought, see Ebels-Duggan (2012), or Varden (2015). For more on how my approach fits into these interpretive traditions, see Varden (2020b).

are published lies about other persons and the lives they have lived and so affect their rightful honor, *or* if they are uttered to or by representatives of the public authority. In the first case, one can be legally charged with slander and libel, and, in the second, with public crimes (“crimes against justice”). These legal boundaries—the way in which they protect my body and my right to explore thoughts privately without fear of external, including legal, repercussions—enable aspects of my privacy. They protect me from others’ non-consensual access to my body and thoughts—including my written, private thoughts—and they protect me against unauthorized publication of my spoken or written words and of private images of me and my life.

Turning to private right, rights that hold between private persons, it seems that all the categories—property right, contract, and status right—are important to privacy. These three kinds of acquired rights are constitutive of freedom in our external uses of choice: They make it possible for us to set ends with objects distinct from us (private property), to set ends involving legal claims on other’s deeds (contract right), and to set intimate, personal ends involving “us’s” with other persons (status right covers marriage, parent-child relations, and relations between families and servants). In all cases, the principles of private right set the abstract boundaries of my rightful choices, and the corresponding legal system—of private property, contract, and status law—specifies how these principles generally apply in a state (legislation), specifies how laws are then applied by the judiciary in particular cases, and upholds these laws by the executive powers of the state. And, so, by securing the rule of private law on the territory, just states enable their citizens’ freedom in the external use of choice with regard to objects distinct from them. They enable people to live lives of their own by enabling interaction within a legal-political framework of enforceable boundaries that are grounded in our fundamental rights against one another as persons capable of external freedom (*MM* 6: 245ff.). In this way, private property, contract, and status right are constitutive of creating private legal spheres—spheres that enable privacy.

Finally, according to Kant, there is public right, which are legal claims citizens hold against or through the public authority but not directly against one another as private individuals. Kantians use this to explore issues of systemic right, such as why the state can and must assume responsibility for problems regarding poverty, infrastructure, the economy, and the financial system. The most general, formal argument is simple: Once the state with its monopoly on coercion is established, as it must be, the

public authority must strive to make sure that the legal system functions in such a way that it represents (is reconcilable with) each citizen's right to freedom. Moreover, insofar as the public authority permits system-dependence for our exercise of freedom, such as interaction in an economy to access means, it must also regulate these systems so as to ensure that this (coercive) dependence is dependence on public law and not on other private persons' arbitrary choices. The general idea is that those entrusted with public authority must strive to ensure that the legal-political institutions function in such a way that no one citizen finds themselves in a situation in which the possibility of their exercising freedom is subjected to the determining choice of another private citizen; their only (coercive) dependence in a minimally just or rightful state is on public laws of freedom. The public authority, therefore, does not reason in the same way as (even a supremely virtuous) private individual since public reasoning is reasoning in terms of legal-political principles (laws and policies) that aim to secure each citizen's right to freedom.¹¹

By combining the rights discussed above, we can see how the bare bones—the juridical idea—of privacy is a cluster or combination of innate, private, and public right. The account that specifies the fundamental ways in which public laws of freedom enable finite beings to interact rightfully in the world (in space and time), namely by specifying the legal-political boundaries surrounding each and all that are guaranteed by state coercion. This cluster of rights enables them to realize rightful freedom in their external uses of choice when they interact and ensures that each of us have legal access to spheres of our own at all times. Moreover, it is clear that this judicial idea of privacy—the set of principles upheld by any minimally just state—entails significant legal protection of privacy through the ways in which laws specify innate, private, and public right. Consequently too, if this minimal legal-political framework is not in place, then we are not yet in the civil condition in these regards. In this connection, it is important to note that much of history and contemporary life is marked by states' failures to uphold such a basic legal framework to a minimal degree for some of their citizens. Many concerns we have regarding privacy concern actual (de facto, existing) states' failures to act as public authorities by protecting all citizens' innate rights to bodily integrity and speech; acquired, private rights to

¹¹In important ways, Rawls and Kant agree on this basic point. For more on this, see Deligiorgi (2012), Niesen (2018), Jonathan Peterson (2008), Ripstein (2006), and Varden (2020b).

private property, contract rights, and status rights; and systemic (public) rights. And no current or historical states have or do actually protect these rights equally for all its citizens. The histories of various religious, ethnic, sexual, gendered, or racialized minorities, of women, or people with disabilities are marked by a denial of the judicial right to privacy by denying them some or all of these rights—either formally or as a matter of legal-political practice. For much of history, women, for example, have been denied the right to own private property, to sign contracts, to bodily integrity, or to work themselves into a situation where they can obtain a home of their own (they have had access to shared homes only through the determining choices of others—their parents, their brothers, husbands). To the extent that these are the lives some people are forced to live, the extent to which these people decide to put up with it for prudential reasons or not is a decision each person must own. The decision in either direction under such conditions where a path of challenging the injustices is *de jure* or practically impossible is not one that can be thought of as morally justifiable (let alone emotionally healthy) and the fact that they find themselves in this impossible position is because state apparatus does not function as a fully *public* authority (yet).

12.3.2.2 *The Legal-Political Ideal of Privacy*

If the last section tells the story of the judicial standard states must uphold to issue political obligations, it is tempting to argue that a Kant-based position could not endorse any law, decree, or policy that goes beyond such a bare minimum. For example, such a Kant-based position could not justify further ways of securing privacy, such as by upholding more severe punishments for breaches of privacy than for, say, shoplifting, or by introducing public initiatives aimed at solving problems like homelessness. For reasons of space, below I suggest only a general way in which Kant-based positions can analyze core problems of reform of our inherited, more or less dysfunctional legal-political framework by letting recognition of our embodied, social human nature and historical circumstances do their due work, before arguing that the projects of reforming states so as to protect privacy is necessarily never-ending for free beings like us.¹²

The account of human nature outlined previously shows us that the private spaces protected by privacy are morally dangerous, something, as noted in the introduction, that is the focus of much feminist philosophy.

¹² See Varden (2020b) for a Kantian take on the problem of homelessness.

Our embodied, social beings and our liability to do bad things make us vulnerable to losing our way and to being violated in specific ways. As an illustration, prominent social groups can assert their dominance by socially or coercively excluding or attacking other social groups by making their personal and/or social presentations impossible. One of the most difficult aspects of living in a socially oppressive society—whether or not this oppression is made into law—is that it becomes dangerous to live out who you are in the world or in your private home (even with the curtains drawn). Indeed, the violence exerted against people with oppressed identities is exactly characterized by the aim to destroy or lower the person's sense of themselves as a human being worthy of respect; the violence is extremely aggressive and expresses a deep dehumanization of the person attacked. Moreover, failures to protect people whose lives are described by such vulnerable identities are particularly serious because of the impossibility of living an emotionally grounded life as who one is together with chosen loved others—as suicide rates for members of LGBTQIA groups so clearly show.¹³ It is therefore not surprising that just states treat these kinds of hate crimes as particularly heinous; they attack a person's right to rightful honor and they threaten to undo a person's ability to hold onto themselves. There are deep psychological reasons we strive to create private spaces, the entrances to which can occur only consensually, and because of the way in which serious breaches of privacy can unground us, we may reasonably want to deem such crimes particularly heinous.

In addition, note that on this approach there are no reasons to believe that these reform projects ever end. As previously mentioned, in addition to securing each citizen's basic innate and private rights, the state must secure citizens' public rights. The general rule is that insofar as citizens' exercise of freedom depends on systems—a property regime, an economy, a financial system, cities with various private housing complexes, the Internet, and so on—the state must regulate these systems as they develop and insofar as necessary to ensure that with respect to those systems, the dependent persons are not subject to the determining, arbitrary choices of another private person. Therefore, it's necessary to add privacy regulation as our living spaces get more crowded and involve more technology. For example, in a city where most of us must live in high-rises and can peep in through one another's windows (using cameras, binoculars, or telescopes), or as private drones now become a part of our everyday lives, we already,

¹³ See Haas et al. (2014).

or soon will, need to be designing legislation that makes it illegal to violate people's privacy using such technological means, including to specify the general distinctions between legal and illegal uses. Such home intrusions are particularly serious and typically mean or heinous because of how psychologically important it is for embodied, social beings like us to be and feel safe from them.

Similarly, because people use the Internet to connect with one another on a private level, the state, in authorizing (as it should) electronic communication via the Internet, must also regulate those social media and other companies facilitating that communication with laws protecting a respect for people's privacy. There is no a priori answer as to exactly what such regulation must involve—for example, whether or not companies can collect various kinds of non-personal, bulk information—but it must ensure that people retain the right to decide whether, when, and to what extent something they write or say can be shared with others. We must also be able to retain the right and duty to be recognized as the authors of our own public communication, whether in text, images, or photos; when we address the public, we should be required to do so in our own name (and not via anonymous computer-issued accounts, for example). Moreover, oftentimes we use the Internet and other electronic means of communication as means of direct, private communication with select others. As our lives become more system-dependent in these ways, we must make sure that our laws regulate accordingly—and, of course, we must try to safeguard the system such that if things go very badly in a particular state and state officials start using state powers to wrongly intrude into its citizens' private lives, the damage is contained and limited. One major tool here, I believe, is to enforce time limits on storage of personal communications and information. After all, except in limited intervals of time and in safe and protected spaces, such as when a therapist helps someone work through a traumatic experience, or in the case of certain medical emergencies, it seems plausible that no one but oneself or one's entrusted loved ones should have the right to one's personal information since neither the state nor anyone but these persons can justify keeping it permanently. These systemic issues are, I take it, core areas of modern life where we currently need to find better ways to protect our privacy.

REFERENCES

- Arendt, Hannah. 1958. *The Human Condition*. 2nd ed. Chicago: Chicago University Press.
- DeCew, Judith. 2015. Privacy. *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta. <https://plato.stanford.edu/archives/spr2015/entries/privacy/>
- Deligiorgi, Katerina. 2012. *Kant and the Culture of Enlightenment*. Albany: SUNY Press.
- Ebels-Duggan, Kyla. 2012. Kant's Political Philosophy. *Philosophy Compass* 7 (12): 896–909.
- Haas, Ann, Philip Rogers, and Jody Herman. 2014. *Suicide Attempts among Transgender and Gender Non-conforming Adults: Findings of the National Transgender Discrimination Survey*. New York/Los Angeles: American Foundation for Suicide Prevention and the Williams Institute.
- Niesen, Peter. 2018. Kant and Rawls on Free Speech in Autocracies. *Kantian Review* 23 (4): 615–640.
- Peterson, Jonathan. 2008. Enlightenment and Freedom. *Journal of the History of Philosophy* 46 (2): 223–244.
- Ripstein, Arthur. 2006. Private Order and Public Justice: Kant and Rawls. *Virginia Law Review* 92: 1391–1438.
- Thomson, Judith Jarvis. 1975. The Right to privacy. *Philosophy and Public Affairs* 4 (4): 295–314.
- Varden, Helga. 2015. Immanuel Kant – Justice as Freedom. In *Philosophie de la justice/Philosophy of Justice*, ed. Guttorm Fløistad, 213–237. Dordrecht: Springer.
- . 2020a, forthcoming. Kant and moral responsibility for animals. In *Kant and Animals*, ed. Lucy Allais and John J. Callahan, 157–175. Oxford: Oxford University Press.
- . 2020b. *Sex, Love & Gender: A Kantian Theory*. Oxford: Oxford University Press.