Divine omniscience, privacy, and the state

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Received: 1 March 2016 / Accepted: 15 January 2017 / Published online: 2 February 2017
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Abstract Traditional theism teaches that God engages in a relentless form of observation for every human being. If, as is widely supposed, humans have a right to privacy, then it seems that God constantly violates this right. In this paper we argue that there is both a defensible philosophical excuse and justification for this infringement. We also argue that this defense is extensible to human social and political contexts; it provides the vital elements of a theory of just privacy infringement. This theory is broadly compatible both with major forms of political theory (except anarchistic ones) and with the main conceptions of privacy defended in recent philosophical and jurisprudential literature.

Keywords Privacy · Ethics · Political philosophy · Philosophy of religion

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Introduction

Orthodox or conservative Christian, Jewish, and Islamic traditions teach that God engages in what we will call “total observation” for every human being. Total observation occurs when a person, or institution of persons, observes every action and mental event of some other person (or persons). This observation could be done in an unobtrusive manner, such that the person being observed is not immediately aware of being watched. It is widely held, however, that, in some form or other, human persons have a right to privacy. If so, it seems that these traditional theologies face a moral problem: God’s total observation violates human privacy in a way that seems wrong in most human contexts. In what follows, we will contend that the Abrahamic conception of God does indeed imply the infringement of human privacy, but this, nevertheless, is not a serious moral problem facing traditional Christian, Jewish or Islamic theologies. A defensible excuse and justification can be given for this privacy infringement. Defending the conceptual integrity of the traditional view is not, however, our only main goal in this paper. We also intend to show that consideration of this alleged problem of divine–human relations yields a significant theory of privacy infringement justification that is usefully applicable to ordinary human social and political contexts.

1 No central claim in this paper is intended to assume or defend the truth or falsity regarding God’s existence, nor the truth or falsity of any conservative/traditional theological claims. Rather, our main purpose here is to show that, from a purely conceptual understanding of these ideas, important moral claims about privacy violation can be derived.

2 Many conservative theologians rely on scriptural sources for their theological beliefs. In this regard, the scriptural basis for the belief that God engages in total observation seems unassailable. Luke 12:2–3, for example, records Jesus saying: “Nothing is covered up that will not be uncovered, and nothing secret that will not become known. Therefore...what you have whispered behind closed doors will be proclaimed from the housetops.” See also Matthew 10:26–27. (All quotations from the Bible are from the New Revised Standard Version [NRSV].) The author of Hebrews (at 4:13) also emphasizes our transparency before God: “before him no creature is hidden, but all are naked and laid bare to the eyes of the one to whom we must render an account.” In the Hebrew Bible, the psalmist writes (69:5): “O Lord, you know my folly; the wrongs I have done are not hidden from you.” (See also Psalm 38:9.) And Moses Maimonides, historically regarded as a venerable defender of orthodox Judaism, claims that God’s total observation of all persons is one of the most basic beliefs of Judaism. In his Commentary on the Mishnah (“Introduction to Helek”) Maimonides states that the “tenth Principle of Faith” is “[t]hat He, the exalted one, knows the works of men and is not unmindful of them.... [H]is eyes are open upon all the ways of the sons of men” (Cohen 1968, p. 189.) Maimonides cites Jeremiah 22:19 as a source for this principle. And finally, the Koran repeatedly states that God (Allah) is watching everyone at all times. See 2.110; 2.233; 2.237; 2.265; 3.156; 8.72; 11.112; 41.40; 49.18; 57.4; 60.3; 64.2.

3 In a fascinating and provocative article, Margaret Falls-Corbitt and F. Michael McLain (1992) have argued that this claim is false. They contend that God’s capacity for what we call total observation is capable of self-limitation, and hence God can choose at will to observe or not to observe every human thought or action. They openly admit, however, that their thesis “does not fit well with theistic tradition and its devotional practice” (pp. 383–384). Falls-Corbitt and McLain, however, insist that their conception of a God who respects human privacy makes this same traditional understanding more complete and consistent (especially on the matter of God’s moral perfection). In the course of this paper, we intend to challenge directly the general thrust of their main thesis. (For a different analysis and a critique of the details of their argument see Davison 1997.)

4 Although all three Abrahamic traditions raise questions regarding privacy, we will hereinafter limit our focus to Christianity.
The problem of human privacy and divine omniscience

We shall begin our discussion by developing further the problem of human privacy posed by traditional Jewish, Islamic, and Christian conceptions of God. As we have just mentioned, theologians in these traditions hold that God engages in a seemingly relentless form of total observation. They also hold that God documents every one of these observations. This appears to be the implication of “the books,” mentioned in Daniel 7:10 and Revelation 20:11–13 where, at the final judgment, God judges every person according to what has been recorded in “the books” and whether a person’s name is found in the “book of life.” Presumably, this documentation is not done as an aid for God’s memory, but as a way, through the documentation itself, of making private acts part of a public record, something that other persons can become aware of.

The Jewish and Christian scriptures, however, clearly do not regard human privacy as something of little or no value. At least two biblical narratives offer support for this claim: the exposure of Adam and Eve after the fall, and the observation of Noah’s nakedness after the flood by his son Ham. In both stories, the narrative suggests either that God values human privacy or that it is something which humans should respect in their relations with each other. In the first case, after realizing they had sinned and were naked, Adam and Eve “sewed fig leaves together and made loincloths for themselves” (Genesis 3:7). After cursing “the serpent” and the ground “because of you”, God then “made garments of skins for the man and for his wife, and clothed them” (Genesis 3:21). This seems to entail that God directly approved of the desire humans typically have to keep certain aspects of themselves hidden from public view. Killing an animal for its skin may even be read as a further indication of the importance of privacy. The attempt to clothe themselves with leaves appears insufficient—both as a means of covering that which should be private and as an expression of the seriousness that should be put on the matter. This may be implied by the fact that killing a sentient being instead of vegetation foreshadows the importance given to divine–human relations through animal and blood sacrifice.

In the case of Noah (Genesis 9:20–27), the significance of respecting certain forms of privacy is also emphasized. When Noah drank too much wine and passed out naked on the floor of his tent, his son Ham did two things which violated Noah’s privacy: he observed the nakedness of his father, and then he told his two other brothers about it (i.e., he took something that should have remained private and made it public). The severe curse that Noah placed on Ham (cursing him before God and enslaving him and his descendants [i.e., Canaan] to his two other brothers), the blessing given to Shem and Japheth, and the apparent endorsement of Noah’s

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5 See Konvitz (1966, p. 272).
6 For further discussion of this in connection with the concept of shame, see Velleman (2001).
7 It might be suggested here that what is primarily at stake is the violation of the obligation to honor one’s parents, and not the violation of Noah’s privacy. However, even if honoring one’s parent really is the primary issue here, it is difficult to see how the dishonoring that occurs in the story has no connection at all to Noah’s privacy. On the contrary, it seems central to the dishonour itself.
assessment by God (the Canaanites do not fare well from here on in the biblical narrative), all seem to suggest that due respect for a person’s privacy is a value that has a fairly strong basis in biblical theology.

So at least in human relations, there is a fairly clear requirement that privacy is a value that ought to regulate human affairs. But, of course, in the very same theological tradition this value or constraint appears to be no part of the relation between God and humans. What then would morally allow for God’s total observation?

A first response to this question might point to a distinction, implicit in what has just been argued, between God–human relations and human–human relations. It could be argued that the moral relation in each case is vastly different. Putting the matter this way, however, raises a familiar dilemma. It could mean that God has moral standards which are completely unrecognizable or unknowable to human beings, and hence God may have “moral” reasons for total observation which are simply beyond our ordinary moral understanding. On the other hand, it could also mean that, while morality for both God and humans is within the realm of human understanding, it still might be the case that God’s moral obligations or privileges are quite different than human obligations and entitlements in virtue of the sort of being that God is.

Determining which of these two interpretations is correct would involve entering into a long-standing debate that goes back at least to Plato’s (and/or Socrates’) arguments in the *Euthyphro* dialog. This is the debate about the proper relationship between God’s nature and the ground of morality itself. This paper is not the place to settle this long-standing discussion. We will only state that, along with a number of other philosophers,8 we would defend the view that the ground of morality is independent of God’s will, and hence deny that God could have moral standards that are completely apart from ones that hold for all other moral agents. This position still leaves the possibility, however, that there might be different obligations and entitlements for God, given His position as God, than those which might hold between humans. This is an important idea, one which seems basically correct and one which we shall return to below.

Another relevant consideration that might make total observation acceptable has to do with its possible consequences. If total observation has no serious consequences for the persons observed, then, from a general consequentialist point of view, it might seem that there would be no serious moral problem with it. Even in human affairs, it might be suggested, if the observed is never aware of her observation, and nothing else ever turns up as a possible negative consequence for her, nothing of any moral importance has occurred. However, this response is too philosophically easy.9 It also distorts a fairly traditional Christian understanding of God.

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8 See for example, Swinburne (2010, pp. 14–15). In taking this view, Swinburne notes that he is also in the company of at least Aquinas and Duns Scotus who seem to take this same perspective on the basis of morality.

9 For more in-depth discussion of the problems surrounding privacy and observation see Doyle (2009), Nathan (1990), and Taylor (2002).
One of the observed’s expectations or goals in life could be to *not be observed* about certain matters. Thus even if a person is unaware of the observation, her goal has been thwarted. So if the observation is to be morally defensible, a sound argument is needed to show that having an important personal goal thwarted without consent is not a moral affront. In this regard, it is first worth noting that this situation does not describe the situation that we have focused on above with the traditional conception of God’s total observation. God’s observation is not morally neutral, nor is it purposeless. One purpose of this observation, traditional Christian theology tells us, is to keep track of each person’s sinful actions or thoughts. And the standard conservative belief is that each person will, at some future time, be held accountable with eternal damnation facing the unredeemed or unrepentant. So God’s observation is far from being of no consequence for the observed. But, again, this same tradition usually insists that God is completely justified in practicing total observation.

Another attempt to address this problem might suggest that God is justified in engaging in total observation simply in virtue of God’s omnipotence. God is justified simply because God can undertake total observation. This, however, seems misguided. To state a moral truism: merely being able to do something (e.g., being able to kill another human being) provides no moral warrant for doing that act. The contemporary state equipped with all available technology might well be able to do something fairly close to total observation for some of its citizens. However, this still begs the obvious moral question of whether this state would ever be morally justified in doing such a thing.

More plausibly, it might be argued that God’s omniscience implies that God cannot avoid engaging in total observation. Omniscience seems to imply necessarily that God will just know what everyone is doing/thinking, has done/thought, and so forth. Margaret Falls-Corbitt and Michael McLain, however, have suggested that this understanding of omniscience is false. The best way to think of God’s omniscience, they claim, is in a self-limiting way, one which allows for the possibility that God is able to respect human privacy by intentionally limiting knowledge of human thoughts and actions. As they put it:

> if God...values freedom, then a very strong case can be made that God also chooses to limit divine knowledge in a way that respects privacy. That is, though God’s knowledge of what is true could include every innermost thought and feeling of each of us, God chooses instead to grant humans the choice of self-disclosure.\(^{10}\)

Scott Davison, however, has argued that there are sound metaphysical reasons for believing that this claim is false. God’s creative and sustaining activities with respect to the universe entail that it is “extremely difficult to see how God could not know everything about every human person. After all, God is present in every place in which God acts, and [on the traditional view] God acts everywhere, at every time” [(1997), p. 144]. This response is, in our view, sound. But we would press the case against Falls-Corbitt and McLain to an even more basic level. The

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\(^{10}\) Falls-Corbitt and McLain (1992, p. 369).
straightforward meaning of omniscience logically forbids the idea that God’s knowledge could ever be self-limiting. The traditional Judeo-Christian conception of divine omniscience identifies this quality as a completed state where God knows everything at all times.

One way that God’s omniscience could be self-limiting is if it is understood as a capacity rather than (more traditionally) as a state of God. Consider the logical difference between the standard concept of omnipotence and that of omniscience. Omnipotence is, basically, the claim God is an all-powerful being. No difficulty seems to be involved in holding that God’s omnipotence can be self-limited. Within the realm of the logically possible,11 God can freely choose to do or not do something. Even if God chooses to do nothing, the traditional understanding is that it would still be true that God is omnipotent. Omniscience, however, cannot be self-limiting in the way that omnipotence is. While there is no logical contradiction in holding that God knows (at least) everything that everyone is thinking and doing, and has thought and has done, it is contradictory to hold that God’s omniscience can be self-limited. For if God were to choose to not know something, then it would simply be false that God knows everything—i.e., that God is omniscient. Someone might argue here that God’s omnipotence can be exercised in some particular way in order for God to self-limit His own omniscience. But if this were proposed, the claim still amounts to the contradiction that God both knows everything and that God could will that he could not know something. This, again, is an obvious contradiction. Most traditional theologians and philosophers of religion who consider the Abrahamic conception of theism, hold that God cannot do what is logically impossible,12 They typically argue that this is not an imperfection of omnipotence, but the rational exercise and limitation of it. It follows, then, that God’s omniscience cannot be self-limiting. And this necessarily follows even if it might be true that it is wrong for God to violate human privacy. Falls-Corbitt and McLain, then, must either give up any claim to the traditional attribution of omniscience as part of God’s essential nature or reject their own conclusion that God has an obligation to respect human privacy.

Even if it is true, however, that in some sense God cannot help knowing everything about everyone, this at best amounts to a preliminary excuse for God’s total observation; it provides no moral justification.13 And there needs to be such a

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11 This claim, of course, is philosophically contentious. We will only be able to assume it here. But it is worth noting that in doing so we are in fairly good company. To cite just a few of the obvious cases: Augustine (1950, p. 157) writes: “But assuredly [God] is rightly called omnipotent, though he can neither die nor fall into error.... Wherefore, He cannot do some things for the very reason that He is omnipotent.” Aquinas (1947) held a similar view in Summa Theologica I, 25, a3. Maimonides (1968) is especially clear about this: “That which is impossible has a permanent and constant property, which is not the result of some agent, and cannot in any way change, and consequently we do not ascribe to God the power of doing what is impossible” (p. 279).

12 For example, Swinburne (2010, p. 7) states: “God cannot do what is logically impossible (what involves a self-contradiction).” Swinburne has argued for this more thoroughly in Swinburne (1977).

13 It might be objected here that it is redundant to provide a justification for a morally questionable act once a defensible excuse has been offered (or vice versa). This is not a defensible objection, however. The concept of an excuse is logically distinct from the concept of a justification (particularly in legal contexts), and so it does not follow that providing both forms of argument is either inconsistent or
justification, otherwise God’s moral perfection must be denied or significantly compromised. For if it were the case that God innocently engages in total observation, and this observation were itself morally unjustified, then we have a situation where an innocent party would be bringing about something that is morally wrong or evil. And, to say the least, this does not seem to fit well with the traditional idea of God as a morally perfect being, particularly given God’s providential nature and capacities.

We do not mean to suggest here that it is inconsistent to hold both that a morally perfect being might do something, which was either completely morally innocent or morally justified, and that something evil could happen as a result of the original act. The traditional view of the creation, particularly of free human agents, challenges this idea. For in creating free human beings, where the real possibility existed that such beings could do evil, God, according to the traditional Christian account, both did something that was morally permissible (the creation of completely free beings) and which resulted in the presence of evil in the world (e.g., human sin). But the problem here is that God’s total observation involves no shift in responsibility from God to humans. Humans are not responsible for God’s total observation, as they may be in the case of their own sin exercised by free will. Whatever responsibility there might be here seems to follow directly from God’s omniscient nature.

So while omniscience may excuse God’s total observation, it simply does not follow without any further argument that human privacy has not been violated, that something morally bad has not occurred. To illustrate this point, consider a rather different but analogous case: A completely insane person, one who is utterly unaware of what he is doing and that it is morally wrong, kills an innocent child. This person would typically be excused on the grounds of insanity, but it remains true that a great moral harm or evil has occurred; an innocent life has been tragically lost. So, again, even if the cause of God’s total observation is morally innocent, it is still not obvious that human privacy has not been violated. To show that this is not the case one needs to argue that God’s total observation either (a) does not fundamentally disrespect human beings and/or (b) is completely morally justified; it is a great moral good or perhaps even an obligation that God has in virtue of God’s moral perfection. In what follows, we will argue that both of these two options are correct. Let us begin by considering and responding to arguments which try to show that (a) is false. This continues our discussion of an excuse for God’s total observation. In the next section of this paper, we will offer a justification (i.e., [b]).

There are two lines of argument which could attempt to show that God’s total observation fundamentally disrespects humans as persons. It could be argued (1) that essential to what it means to be a person is the entitlement of being the sole

Footnote 13 continued
unnecessary. Providing an excuse addresses primarily the issue of personal culpability, whereas justification focuses largely on the moral worth of an agent’s reasons for doing some particular action. In many cases, providing both forms of argument can be essential to offering a complete moral case for some particular action or concern. So, for example, when an insane person kills another person, an excuse for the insane person (i.e., insanity) is usually acknowledged. But it might also be relevant that, although completely unknown or misunderstood by the insane person, the individual that he killed was in fact posing a lethal threat, and hence the insane person was also justified by self-defense in doing what he did.
person who has access to one's own mental life. \(^{14}\) And (2), it is standardly argued by Kantians and other deontologists that autonomy is essential to personhood, and that this is violated in some way by any instance of non-consensual, total observation. These two suggestions share the basic idea that some feature essential to what it means to be a person is violated by God’s total observation.

Both (1) and (2), of course, set out only a *prima facie* case for privacy violation. So if they are true, they at best still allow that total observation, even if wrong, might still be morally justifiable for some greater moral reason or purpose. \(^{15}\) A defender of the traditional Christian perspective now seems to have two main options. He or she could (i) accept that one or both of (1) and (2) are correct, and hence hold that total observation is always—even for God—*prima facie* morally wrong or bad, but then argue that some set of higher principles justifies the infringement of human privacy. Or he or she could (ii) argue that neither (1) nor (2) is true, and then provide a reason for thinking that God’s total observation is morally good or permissible. It is the latter, stronger line (ii) that we want to defend in what follows.

Let us turn to the first suggestion why God’s total observation might disrespect humans as persons, namely, that being a person means that I alone should have direct access to my “inner” thoughts and experiences. This conception of a person involves the idea of an individuation of these inner thoughts and experiences as ones which I rightly should have sole and sovereign access to. Something is terribly wrong, it is widely believed, if someone else is non-consensually observing or manipulating these inner processes. The idea is that when this happens, I would not be treated in the way that a person should be treated—namely, as a being who has a mental and emotional life which is, in some sense, separate from other persons. We will call this claim the “separateness of persons thesis.”

It is important to note that for the separateness of persons thesis to bear any moral weight it must do so on its own accord, and not revert to the significance of moral autonomy. That is, the defender of the separateness of persons thesis must show that even if an infringement of the separateness of persons were accepted or welcomed autonomously by any of the parties involved, it would nevertheless be morally wrong. If this cannot be shown, the moral significance of the separateness of persons is reducible to issues of autonomy, and so autonomy rather than the separateness of persons should become our focus for cases of disrespect.

It is very difficult, however, to argue that the separateness of persons thesis bears any serious moral weight on its own. Consider the following hypothetical situation. Through some technological miracle, A can “connect” to B in a way that gives

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\(^{14}\) Falls-Corbitt and McLain (1992, p. 375) note something like this objection. They also acknowledge that Reiman (1976) is another source of this kind of argument.

\(^{15}\) The *prima facie* quality of (1) and (2) could be denied, of course, by moral absolutists about privacy. General moral absolutism, however, is a fairly difficult position to defend, even though some Christian moral philosophers and theologians may think that it is defensible. But whatever the philosophical defensibility of moral absolutism in general, it is a much more difficult matter, we would suggest, to hold that privacy is an absolute value or principle. No instance of true moral evil or sin would ever be excusable or unassailable simply because it was done “in private.” Hence privacy should be considered, at best, only a *prima facie* value or entitlement, even if one’s wider ethical position is absolutist.
A and B mutual access to their mental experiences, and they can tell which experiences belong to whom.\textsuperscript{16} Now everything that A experiences, B will experience also—or at least be fully aware that A is having such experiences (and vice versa). If the separateness of persons thesis is alone sufficient, it would have to follow that A and B are fundamentally disrespecting each other’s essential natures as persons. And this would be true, even if they had both equally and completely agreed, with full informed consent, to the connection. It would also be true even if the arrangement in no way seriously affected their own individual autonomies or the autonomy of anyone else.

The problem here is that while we can think of many practical reasons why people might not, and perhaps should not, want to be connected like this, it is not at all clear that they have violated or devalued their own personhood in so being connected. This problem is further aggravated by the more ordinary fact that the close personal relationships that many people have developed seem to approximate the connection postulated in this hypothetical example. But, provided that all else is equal (e.g., the relationship is not marred by obsessive jealousy, distrust, etc.), it seems just false that such a relationship involves a fundamental disrespect for each member as a person to the extent that it approximates the converse of the separateness of persons thesis. In fact, in ordinary human relations, many people (lovers, life-time companions, family members, etc.) seek and value a similar closeness. No one usually takes anything to be seriously wrong when a close friend or loved one always seems to just know what the other is thinking, or what he or she is up to. In many contexts of love and trust such closeness is highly valued. Furthermore, exactly this sort of relation of complete openness seems to be the one that conservative theologians standardly defend as the appropriate way for human beings to relate to God.

So it is not at all clear that the separateness of persons thesis alone is sufficient to show that persons in any such relation are in a situation involving moral disrespect. The autonomy of the individual seems to be the crucial issue relating to disrespect. So let us turn to autonomy as a possible way of defending the claim that total observation is \textit{prima facie} wrong. And, of course, the crucial feature of God’s total observation of humans is that it does not depend on our consent. Does this mean that God’s observation of us would imply that our basic autonomy—and hence our essential nature as persons—is constantly and unjustly violated?

It is important to notice first that simply observing someone does not obviously cause a person to lose her autonomy. Observation interferes with autonomy only in those cases where the observation is explicitly unwanted. This general point is true both in situations where the observed is completely unaware that she is being observed and also in cases where she is completely aware of the observation.

An example may help to clarify and stress these different claims. Assume (for the sake of argument) that dealing in certain kinds of very harmful drugs is illegal and immoral. Consider an important dealer of these drugs who is carefully and

\textsuperscript{16} This means that the parties involved do not experience any \textit{loss of identity}. This is important to note because it might be (rightfully) argued that such a relationship could pose moral problems if it involved the loss of any one of the persons’ personal or social identity.
persistently watched (unknown to him) over a long period of time by police, and then is arrested for his crimes. In spite of the unknown observation, and given that there was no other interference with his autonomy, the dealer’s activities remained autonomous: it was he who chose what to do, and it was he, without interference from the observing police, who chose to break the law. Furthermore, he had no right—i.e., had no moral warrant because of his basic autonomy—to any privacy that would cover his illegal and immoral actions. He could not reasonably argue that his goal of committing an immoral act (say, the murder of a rival dealer) without observation had been violated, and thus his observers had disrespected him as an autonomous being. The point is that he had no moral right to that sort of autonomous action—namely, action which directly violates the autonomy of other people by harming them. So, in general, we could say that this person’s autonomy was not violated or interfered with when the observation was unknown. The observation, of course, was unwanted. And in this case, we can reasonably assume that if the dealer had been aware of it, he would have (autonomously) changed his decisions and actions. Thus observation seems to interfere with autonomy only when it is explicitly unwanted.

The above argument focuses on immoral actions. But what about moral or non-moral actions that are observed? It is important to note that even in cases where someone is engaged in a morally permissible action and is observed, it does not immediately follow that that person’s autonomy has been violated. To support a claim of privacy violation one would have to make the argument that the observation seriously affected the autonomy in this case of the observed person in order get any support for the claim of privacy violation.

The point here is that mere observation does not entail that a person’s autonomy has been violated. For one thing, people regularly make autonomous choices even though they know that other people either know or are observing what they do. This can be true even if they know that the observers disapprove of what they are doing. Put more schematically: It does not follow that if A knew that B wanted to do x, and A disapproves of x, and B knows of A’s disapproval of x, and where this disapproval might be coercive on B, then this alone would entail that B would be acting non-autonomously in doing x. Practical examples of this principle seem innumerable. Almost any adolescent that one can think of is, in at least some respect, acting under similar conditions. That is, she is often doing things where she knows that her parents both know that she is doing such actions and that they strongly disapprove of her doing those same actions. These features alone do not entail that the teenager is acting non-autonomously when, say, she gets some outrageous tattoo inscribed on her forehead. So it equally seems false that a person’s autonomy can be compromised simply when someone (a) knows what one is planning to do and (b) disapproves of this plan (and one is aware of this disapproval). Some other coercive element would seem to be necessary—e.g., a threat of serious negative outcome, a significant threat to deprive someone of something else that he or she might want, or some other effort to manipulate that person’s choices.

\[17\text{ McCloskey (1971, p. 299) stresses this point. For further discussion of autonomy and privacy, however, see Doyle (2009), Nathan (1990), and Taylor (2002).}\]
So merely being observed is not sufficient to entail that a person’s autonomy has been violated. But, again, what about those cases where a person wants to do something she has every moral right to do and she does not want to be observed? We think that a satisfactory answer to this question comes from a consideration of the following two points. First, as argued above, God’s omniscience entails that God’s essential nature requires that all human action is known to God. Given the unavoidability of this, God does not disrespect human autonomy because the total observation is something which cannot be avoided. No one is obligated to do something that one simply cannot do. And following the idea that morality is universally applicable to both God and all other moral agents, we must allow this in the case of God as well. This fact can help somewhat to explain the difference between human and divine obligations with respect to privacy. Since humans clearly can avoid knowing things about other humans, we have a prima facie obligation—which God cannot have—to respect a person’s autonomous choice to not be observed doing something that is morally permissible.18

The second point is that it is no obvious threat to a person’s autonomy that he or she must act under certain conditions over which he or she has had no choice—unless those conditions are such that they completely dictate the choice that a person makes. All human choice and action is performed under certain conditions. We take this, again, to be a widely accepted aspect of human action. So while we have no choice about the terms and conditions of our births, we do have autonomy with respect to many other choices—e.g., whether one will continue to live in the country of one’s birth, whether one will go to university or not, and so on. In connection with privacy, one’s choice of what things one can expect to be private meets analogous conditions about which one’s consent is not relevant. If, for example, I appear in public dressed in a certain manner, it is simply unreasonable for me to expect other people not to notice what I am wearing. This is simply a condition of what it means to exist in a society where I live and make all of my other choices. I ought to, of course, have some control over how much publicity I should be exposed to. So while I cannot avoid the observation of people that I can reasonably expect to meet during the course of my day, it may be wrong for someone to publish what I am wearing in every newspaper in the world—especially if I am not a “public” person.19 But I clearly should have no moral expectation that I should not be seen if I appear in public and other people are there and happen to observe me.

This basic point, generally accepted in human affairs, applies equally to the case of relations between God, humans, and other moral agents. Living in the presence of God—which traditional Christian, Jewish, and Muslim believers maintain that all of us do—just entails that I cannot expect God not to know what I do. I can, however, expect that whatever God knows about me will not be broadcast to the universe (at least not normally, and not without considerable moral warrant on God’s part for

18 We have expressed this point in terms of actions—i.e., doing things—but it equally holds for preserving information about oneself, and other matters that standardly relate to privacy.

19 Here we are assuming William Prosser’s definition of a public person as someone who “by his accomplishments, fame, or mode of living, or by adopting a profession or calling...gives the public a legitimate interest in his doings, his affairs, and his character.” See Prosser (1984, p. 118).
such a broadcast). I can also expect that whatever God knows about me will not be used in some way to treat me unjustly or to defame me maliciously. And if traditional Christianity is correct in its claim that God is morally perfect, all of these features would seem to be the case. Furthermore, God’s knowing what I do usually gives no one else—at least no other human—any knowledge of what I am doing. That remains, for the time being, private. I may some day have to account for what I do now in private before God and everyone else, but in the traditional Christian account this “judgment day” is something which God, as the rightful moral judge of creation, is completely morally justified in doing. And furthermore, traditional Christian theists maintain that in so judging, God will act in such a way that no one will have any legitimate moral complaint.

Thus the claim that God violates people’s privacy with total observation because God does so without their consent is a misguided argument. When I appear every day in public, it is irrelevant that I had no say over whether there is a society out there which is such that its members can know things that are placed before them. My consent about such a condition is not possible. It is simply a fact about social life that I must accept, and then find whatever autonomy I can while living under it. The same point, it seems to us, holds in the case of the Abrahamic conception of God. God’s being God is not something that has any possible relation to a matter that my consent could affect. And so it would be quite irrelevant to point out that God’s full awareness of what humans are doing is something done without human consent. We have also shown that it need not have any bearing on our autonomy of a sort that would put God in the position of disregarding and disrespecting human beings as persons.

**Justified privacy infringement: three criteria**

Thus far, our argument has only shown that God’s total observation can be excused. This is sufficient for the negative claim that at least God’s complete knowledge of human actions and mental states does not disrespect humans as persons. But we think that there is an argument, consistent with a fairly traditional version of Christian theism, which goes much further and would justify God’s total observation. If so, this argument will be useful, not merely as a way of understanding the conservative understanding of God–human relations, but as a defensible account of the conditions under which privacy may be infringed. That is, such an argument will provide us with the conditions—to the extent that they are applicable to human affairs—under which a person’s privacy ought to be respected, and when it may rightfully be disregarded.

Traditional Christian theism, of course, has specific teachings about many aspects of God’s nature, but only three main features are of concern here. First, God is understood to be the sole creator and sustainer of the universe, and thus equally of

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20 Given that humans are not all-knowing, a measure of seclusion from human society is possible— unlike, perhaps, the situation with God. However, even for the recluse, it remains true that he or she has no choice about the fact of society, and what it means to appear before it. This is the relevant aspect of the analogy given here.
all life within it. This position, it could be argued, gives God the moral authority to observe all of creation. From the fact that someone has created or generated something, it does not strictly follow that one is thereby in a moral relation to that thing. And it certainly does not follow, without further argument, that one would have ultimate authority over it. But, in spite of this lack of strict entailment, in ordinary morality we do seem to accept a version of this principle. If I have children, and all else is morally equal (e.g., I am a responsible person, am able to raise children properly, etc.), then it is generally accepted that I have particular responsibilities and obligations toward them. I have authority (tempered by morality, of course) over my children that other people do not have largely because I have taken it upon myself to bring them into the world (or to adopt them as my own). It seems reasonable, then, to argue by analogy that God has authority over persons because God is the ultimate source or cause of our appearance in the world and of our continued existence.

Secondly, traditional Christian theology teaches that God is a morally perfect being. As such, God is concerned about establishing perfect justice—cosmic justice, it could be called—in creation. This sort of justice may require that every immoral act done without the knowledge of other human beings will be subjected to judgment and possible punishment by a justified moral authority. The world, it might be said, would be unjust if (say) murderers could get away with killing people simply because they can elude human authorities. Since God has both the capabilities and moral perfection necessary to carry out such a task, it can reasonably be argued that God is morally justified in taking up the cause of cosmic justice, and hence engaging in total observation and documentation as the necessary means to achieve this goal.

Finally, God’s perfect goodness may justify total observation. That is, it could be argued that God’s purpose in total observation is not merely one of preserving justice; God’s goodness means that in total observation, the (objective) needs and interests of human beings are not being violated, rather they are being promoted. This suggests that God’s observation may be justified in terms of a maternal and paternal care for all humans (and all creation). There is surely nothing wrong—indeed, we standardly believe there is everything right—with a parent who constantly observes her infant child to provide needed care and love. Moreover, this reason is quite consistent with the previous reason mentioned, the pursuit of perfect justice. As children grow from helpless infants to active individuals, parents still watch and observe them closely to correct—i.e., to judge and perhaps punish—inappropriate behavior. And this correction is, or should be, completely in line with

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21 The Bible, indeed, begins with “In the beginning when God created the heavens and the earth” (Genesis 1:1). Ephesians 4:4–6 also states: “For there is one body and one Spirit...one God and Father of all, who is above all and through all and in all.” (Some translations here use the phrase “Father of us all”, which may leave it open as to whether St. Paul, with the word “us”, is referring only to believers. But the NRSV clearly seems to imply that Paul is referring to God as the parent of everyone, believer or not.

22 Note that the standard acceptance of this point in human affairs usually involves the idea that (all else being equal, of course) no child under legal age has the right to refuse to accept his or her parents’ guardianship. So if the parent–child relation is analogous to the God–human relation, the same point would also hold. But this analogy, as noted further on in this paper, is controversial and requires further defense.
their role as loving parents who have their children’s well-being at heart. Parents also closely watch a child’s activities to provide positive encouragement and the capacity for self-development, and to re-enforce the vital fact that the child is loved and cared for. So if, as some conservative theologians standardly maintain, the relation of God to human beings is primarily a maternal/paternal loving one, it would be entirely appropriate for God to be aware of everything that we do.

It may be objected that this argument may well apply to children and other non-autonomous persons, but it is inappropriate when applied to autonomous adults. Human parents would simply step over an immoral line if they were to engage in the total observation of their autonomous, adult children.

A traditional response to this kind of argument would maintain that the original analogy is correct: humans are in an analogous relation to God as infants are to their parents, and hence God’s observation is analogously justified. While this response might well be accepted by many conservative Christians, we do not believe that it is the most defensible reply to the objection. The response is helpful, however, to the extent that it points to the differences that exist between the relations of God to us, and human parents to their adult children.

One of the main reasons why the total observation of autonomous, adult children by parents is morally questionable is that parents cannot support the autonomous actions of their children in the same way that God can through observing our actions. In at least most Western cultures, my autonomy is defined in part by my ability to make my own choices irrespective of the wishes of my parents. Their will for me is something that I might (rightly and autonomously) follow, but equally it could be something that I could (again, rightly and autonomously) decide to go against. In fact, I could be promoting my well-being and following morality by exercising my autonomy in a way contrary to my parent’s wishes. But this would be an improper description of my appropriate relation to God considered as my divine parent. God’s will for me and everyone else (on the traditional view) really is what is best for me and everyone else as autonomous beings. Similarly, from this same view, God never wills anything for me that is ultimately wrong or evil. And so to the extent that I exercise my autonomy in such a way as to follow God’s will for me, I achieve what I really should be and become. In contrast, in the case of human parents, privacy assures to some extent that they will not interfere with my autonomy. And they could easily do this given that when I am an adult, my parents are in no better position than I am to determine what course my life should take. They are, generally speaking, as epistemically and morally fallible as I am. Hence, even if they are well-intentioned toward me, their choices or intentions could still seriously and negatively affect my life. In the case of God, however, this sort of privacy is not necessary because none of these conditions hold.

Lackey (1985, pp. 388–389) considers a very similar argument, and ultimately rejects it. He maintains that a parental relation does not entail that a child has no right to privacy (and hence, for example, it would simply be wrong for a parent to demand to see a child’s innocent diary). He also maintains that even if a child has no claim of privacy against her parents, adult humans do have a right to privacy. Both of these arguments might be telling against our claims here, but only if it were our position that humans, whether children or adults, have no right to privacy in relation to God. But this is not our claim. We maintain that humans normally do have a (prima facie) right to privacy but that God is both excused and justified in infringing it.
Moreover, not having privacy, for traditional believers at any rate, is standardly seen as a great good, something which God does that actively promotes one’s own well-being. No matter how dark, lost, or unknown to others my situation might be, it is traditionally taught, God is right there with me, caring when no one else can or does, empowering me in every way as I continue to put my trust in God. And since this great good would not be possible without God’s knowing what is happening to me or what I am doing at all times, God is morally justified in total observation. And, again, we can say this while affirming the traditional conception of God as a loving parent, without conceding that humans are in a situation that is analogous to their non-autonomous infants or children.24

A final, but important, point must be stressed about the three criteria we have just presented and defended. The criteria must be understood as jointly necessary conditions for privacy infringement. The reasons for this requirement should be obvious, particularly when we attempt to apply them to human political contexts. A state’s having the requisite moral legitimacy alone gives it no moral warrant to observe its citizens voyeuristically. Similarly, there must also be some issue of justice and well-being that is actually and immanently at stake. A state’s interest in preserving justice alone does not provide sufficient warrant if that state itself lacks moral legitimacy. It could be suggested that there is much more detail that may need to be provided about the conceptual relationship of these criteria to each other. However, it should at least be apparent that these relationships serve to support an adequate theory of privacy infringement justification when they are applied together.

Privacy infringement and human political contexts

So any person, and perhaps any institution of persons, who together has the requisite moral authority (due to being the generative and sustaining cause), has the intention of preserving justice, and is appropriately well-intentioned toward the persons observed, may, according to the above line of argument, engage in total observation. We must now ask whether these generally adequate criteria for God’s total observation of humans have any chance of applying to ordinary human political situations.

24 Lackey (1985, p. 390) has again raised what might seem to be a telling point against the argument we have just put forward here. He acknowledges that in personal relations people do often waive privacy for the sake of intimacy. But, of course, they do this voluntarily. People who desire closeness to God may waive their privacy, but this should not hold for people who, for whatever reason, do not want such a relationship. “Even if,” he argues, “it is a good thing for me to develop an intimate relationship with the Deity, it cannot be said that I am morally bound to enter into this relationship. It is permissible for me to refuse, in which case the right to privacy remains in effect”. And so, he concludes, God violates the privacy of those who are unwilling to become close to God. Lackey is surely right, here, in claiming that we have no moral duty to become close to God, even though it might be a good thing (objectively) to do so. Furthermore, we also agree that humans—whether believers or not—do indeed have a right to privacy that is infringed by God’s total observation. However, Lackey’s argument presupposes that there is no excuse or justification for this interference, whereas we have argued above, in ways not directly addressed by Lackey, that there is a defensible excuse and justification.
In the case of human families, as we have already argued, there is at least a surface reasonableness to the criteria. Parents are standardly the generative source of their children, and this entails that they have certain *prima facie* rights, privileges, and obligations with respect to the privacy of their children.\(^{25}\) Furthermore, since parents are also responsible for sustaining their children in various ways, this role too seems to give parents the moral authority to observe their children in ways that it would be wrong for other people or institutions to do. Part of parental responsibility and privilege is that of raising children according to certain moral standards. And this is widely accepted as justifying, for some period of a child’s development, a reasonably close watch over much of what the child says, does, possesses, and so on. Finally, as already mentioned, the care and love that parents have for their children morally justifies, up to some limit in development, the attention and observation that they give to their children. They have (or certainly ought to have) the child’s best interests at stake. These intentions often require closely watching the child’s behavior, communication, habits, and so on.

We take the argument which focuses on family life just presented to be fairly obvious and widely accepted. However, when one tries to apply the main criteria for total observation applicable (traditionally) to God and parents to the state, difficult and intractable issues appear to arise. Political philosophers profoundly disagree over the generative role of the state in relation to its individual citizens. Many communitarians and, at the other end of the spectrum, socialists and Marxists, tend to argue that the state plays a vital role in the formation of individuality, and hence the state possesses an authority in areas that might be seen as invasive by liberal political philosophers. On these non-liberal views, furthermore, the role of the state in ensuring the well-being and good of its citizens is not unlike that of a parent. Liberals, on the other hand, from libertarians to left-leaning Rawlsians, generally hold that the idea of the state as a sustaining parent is objectionably paternalistic. For these theorists, the claim that the state plays a crucial generative role in the formation of individuality is simply false and/or normatively objectionable. It is held that individuals bear primary responsibility for their own choices and thus for their own well-being. Hence the suggestion that the state could engage in anything approaching total observation would be *prima facie* wrong.

These preliminary observations seem to imply that, in the application of the three criteria defended above, we should expect fundamental disagreement particularly on the first and third criteria. This disagreement appears to be based largely on foundational issues in political theory; namely, the questions of the legitimacy of the state and the role that paternalism should play in governance. This leaves us with the second criterion that total observation would be justified in the pursuit of perfect justice. It seems here that most political theoretical perspectives should accept some privacy invasions in the pursuit of justice, simply because there does not seem to be any way to pursue many important forms of justice without such invasions. Hence

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\(^{25}\) Adoption is also consistent with this point. While the adoptive parent may not be the generative source of her child, the biological parent has legally transferred her parental rights and obligations which were based, in part, on the fact that she was the generative source. Other cases involving technologically assisted reproduction are obviously more complicated, but somewhere in the range of these normative issues this basic principle generally still seems to be operative.
the disagreement we should expect regarding the second criterion would only be about the precise content and scope of such invasions.

When we examine this matter more closely, however, we think there is in fact a much wider agreement about the three criteria, even among diverse political theoretical perspectives. Take, for example, a fairly strong libertarianism which affirms the basic liberty and rights of individuals. Such a libertarian would probably deny the generative relation of the state to individuals. In fact, she would argue, the truth is precisely the reverse: the *state* is generated by the interests and needs of its individual citizens, not the other way around. But even if this is true, any libertarian who defends the idea of state legitimacy will still not completely deny the sustaining qualities of the state. The properly functioning minimal state must acquire normative authority because, in part, it can provide adequate protection for its citizens, and hence allow them to be sustained as a community of individuals. This authority alone justifies the state in undertaking some—perhaps very minimal—observation of its citizens. Libertarians also seem committed to some form of the idea that the observation of individuals, and hence some infringement of their privacy, is warranted on the grounds that their well-being as individuals is preserved. If the proper state is the one which offers even minimal protection for its citizens, and even if the legitimacy is based on individual self-interest, it will still be the case that, in some contexts, the state would be justified in violating privacy. Unlike in the case of God, of course, we would not have any strong assurances that the information gathered by the state will only be used for morally defensible purposes, and so these contexts would be comparatively few and minimal in extent. So if the minimal protection state is acting correctly, it will sometimes be in an individual’s rational self-interest to permit the state to engage in some level of observation, as collectively agreed on by citizens, on the basis of the well-being of all citizens. Again, in such cases the observation would have to be fairly minimal and restricted in extent since, unlike in the case of God, we have much less—if any—assurance that the information will always be gathered for morally acceptable purposes.

Now if we accept that libertarianism is just an extreme or “strong” form of liberalism, other “weaker” versions of liberalism will yield to very similar considerations. It follows, then, that differing political theoretical commitments and perspectives do not provide any *prima facie* basis for rejecting the three criteria for total observation, provided these criteria are understood as *general* criteria. Disagreement on political theoretical commitment, then, will appear only as a difference of opinion regarding the precise *scope* and *application* of the criteria. Philosophers who are so committed should not reject their fundamental justificatory role in determining the value and extent of privacy.

**Conclusion**

We have shown that what might seem to be a serious moral difficulty in Christian philosophical theology can be effectively avoided, and that a potentially useful basis for a theory of just privacy infringement can be developed out of a response to this
same difficulty. This, we believe, should provide moral and political theorists with a theory of justification regarding privacy infringement in ordinary human affairs.

A theory of justification for privacy infringement, however, is only one aspect of what a moral theorist working on privacy needs to provide. Some account of what privacy is, its nature or definition, needs to be given as well—even if this account only amounts to the claim that privacy is best understood as a very broad, heterogeneous concept. On the question of the definition of privacy, however, the philosophical literature is considerably unsettled. Nevertheless, despite these difficulties, it seems reasonable to hold that any theory of the just infringement of privacy at least owes us some account of what privacy is. In closing, then, we shall restrict our attention to a brief consideration of whether the justificatory argument provided here is relevant to some of the main definitional accounts given to the concept of privacy.

Three definitional accounts of privacy have held considerable attention. First, privacy is frequently understood to involve the right to control information about oneself and one’s associates. Issues arise here, of course, as to what the scope and content of this “information” should be—i.e., whether it can be any trivial piece of information about myself that I do not want to become public, or whether it should be limited to something like “personal” or “intimate” information. Secondly, privacy has also been conceived as having autonomy over specific (or not so specific) kinds of access to oneself. Since one way of gaining access to a person is by getting specific or personal information about that person, access accounts generally allow that control over information may be necessary for privacy. But this concession must be seen as only one instance of all of the various other ways in which people can gain unwanted access to a person. An ex-husband who stealthily watches his former wife bathing is probably not gaining anything like information from his observation—at least not any new information, one might think. However, access-based theorists argue, it seems that the former spouse’s privacy has been violated simply by the unauthorized access to her that her ex-husband has acquired. Finally, privacy has been given a fairly distinct legal definition by the United States Supreme Court in a series of well-known cases beginning with Griswold v. Connecticut (1965), and including Eisenstadt v. Baird (1972) and Roe v. Wade (1973). The general idea here is that privacy consists in the right to make certain decisions of a “personal” nature. Constitutional privacy thus is understood as a particular form of autonomy that we should have in being free from state

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26 It was not the purpose of this paper to provide any such definition. For our own efforts in this regard see [Soifer and Elliott (2014, p. 195f)] where we argue that privacy is best understood in connection with the judgment of others or the concern about one’s reputation. This view, or something similar to it, can also be found in Prosser (1984, p. 112), Feldman (1994), Johnson (1989), Velleman (2001), and Marmor (2015).

27 Warren and Brandeis (1890) can be seen as an example of this way of understanding privacy. Even though they conceive of privacy as a specific tort that falls under the wider right that individuals have to be left alone, it is clear that it is certain kinds of information about an individual which needs to be “left alone.” A more recent and straightforward example of the informational account can be found in Parent (1983).

28 A widely discussed defense of an access-based account can be found in Gavison (1980, p. 428f). See also Solove (2008, pp. 18–21).
interference in making certain intimate and personal choices (e.g., family planning and contraceptive use [Griswold] or abortion [Roe]).

The question now is whether the account of invasion justification defended in this paper is relevant to any of these three main ways of understanding privacy. We would suggest that the account given here is directly relevant for either the information- or access-based conceptions. This is because the paradigm case of privacy violation is total observation. In total observation, whatever else might be at stake, it seems clear that at least information about and/or access to a person is of direct moral concern. Total observation acquires complete, non-consensual information about a person. And it equally seems to provide a tremendous extent of non-consensual access. Hence our account, which bases its justification from the context of total observation, is directly relevant to these two understandings of privacy.

In contrast, constitutional privacy defines privacy largely, if not exclusively, in terms of the exercise of certain kinds of choices, or establishes certain zones of autonomous choice surrounding specific issues. It is therefore not obvious that the privacy invasion theory presented here fits very well with constitutional conceptions of privacy. Setting aside cases where people do not want such decisions to be known or observed, as we have argued, people can still make the decisions covered by constitutional privacy, even if they are subject to total observation—although, of course, they would not be able to prevent others from knowing what decisions they had made. So how then can the account of privacy invasion justification we have defended be relevant to constitutional accounts of privacy?

An obvious response at this point would be to argue that constitutional “privacy” is simply not a true account of privacy at all. Many philosophers and jurists have defended just such a claim.29 For the purposes this discussion, however, we do not want to adopt this line of argument. Rather, the concern about constitutional privacy can be addressed by the following considerations. First, our account does apply to those cases of constitutional privacy where people do not want the state either to document or observe their protected choices. It seems that this condition is true for most understandings of constitutional privacy. Most people who would insist that citizens in a liberal democracy (should) have the legal right to make (e.g.) family planning decisions also understand—rightly or wrongly—that this same right includes the (prima facie) right not to have such decisions documented or observed by the state. Since it is possible, as argued above, for the autonomous actions in question to be carried out in spite of observation, this consideration alone may not seem to address the concern about the relevance of our account for constitutional privacy. Furthermore, the state, properly governed by considerations of public good,

29 H.J. McCloskey, in both (1971) and (1980), has argued extensively that it is a mistake to conflate privacy with autonomy (which, of course, is what most constitutional accounts effectively do). Parent (1983, p. 284) also writes that: “Confusing liberty with privacy only serves to impugn the intellectual integrity of the judiciary.” The reason for this, Parent argues, is that the conflation of privacy as a part of liberty is a conceptual confusion. The defining idea behind “liberty” is the absence of external restraints or coercion. But this is clearly distinguishable from the right to privacy which, as he puts it, should only be understood as that which “condemns the unwarranted acquisition of undocumented personal knowledge” (p. 274).
may have an interest in monitoring such decisions. If so, constitutional privacy understood strictly as a specific kind of autonomy may be protected even when something approaching total observation is in place. That is, it would make sense to think that there are private zones where certain kinds of autonomy can be exercised without direct interference by the state.

This last point, however, indicates, not the irrelevance of the account of privacy infringement defended here, but its significant relevance. Considerations of justice and well-being (and by implication, the basis of state authority over such matters) do provide clear limits on the exercise of constitutional privacy. Personal and/or physical intimacy with another person, which should clearly fall under the scope of constitutional privacy, may have to be documented if justice to all persons is in question because of (say) concerns about communicable disease. In the case of an outbreak of a serious communicable disease (e.g., the ebola virus or a nasty influenza pandemic), people can have their actions severely restricted. People can be forbidden to visit their loved one in a quarantined hospital, even if he or she is seriously ill or dying. Such patients are thus often required to suffer and even die alone, physically separated from any society which it is otherwise their right to have. It is difficult to think of a more important, personal, and private matter than that of providing care or holding the hand of a dying loved one. And yet even this invasion into the private lives of people can perhaps be defended in terms of justice and care for the public good. Whether measures like these really are justified invasions or not is not, however, the focus of this paper. The point is that the considerations noted are clearly relevant, and this shows that the account defended here is indeed relevant to constitutional understandings of privacy.

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30 Measures identical or similar to these were put in place some years ago in the SARS epidemic in Toronto, Canada in 2003. During this epidemic, when a patient in a particular hospital was discovered to have SARS, the entire hospital would be put under quarantine. The effectiveness of such an extensive quarantine, however, has since been strongly questioned. See Schabas (2004) for details.
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