

Privacy: Concepts, Rights, and Underlying Values

A spate of new privacy papers focussing on definitional questions has been published against the backdrop of new technologies, and especially AI, presenting complex novel threats to privacy. After all, a clear understanding of the concepts, values and rights at stake is vital to understanding the risks and to mounting a response. Many focus on several connected questions. First, how best to define the condition of privacy, in terms of others' limited access to information about one or some form of control over access. Second, how to define the right to privacy, and again whether this is best defined in terms of access or control. Third, whether we endorse the 'symmetry thesis,' stating that these definitions need to be framed similarly; can we, for instance, consistently have a descriptive definition of privacy as access, but a normative definition of the right to privacy as control? Finally, there is the question of how we ought to understand control in this context.

The current approach errs in several ways. Recent literature relies too heavily on thought experiments and intuitions in arguing for various conceptions of the right to privacy. While we should not do away with these entirely, I propose that we should also consider the values underlying the right to privacy in determining its structure, which I take to be non-domination and autonomy. This gives us a further reason to understand the right to privacy as control, which has a constitutive relationship with autonomy. This consideration of values will also give us a distinctive conception of control which incorporates not only the ability to block access to information, but also to disclose it where one chooses to.

Additionally, I suggest that an access account of the right to privacy which is truly distinct from a control account of the right to privacy is not even possible. Any right that is not inalienable will include various powers, thus incorporating an element of control. Under this framing, the question of whether we endorse the symmetry thesis is largely tangential; if the values at stake give us good reason to believe that the right to control over privacy is indeed a right we have, it seems not to matter a great deal whether or this can properly be called the right to privacy, so long as we can get a clear picture of what is at stake in normative terms, and offer an overarching account of the right to privacy which can give us action guiding principles in novel contexts. The account of the right to privacy I offer gives us reason to be concerned about current use and sharing of personal information, even where this is technologically mediated and data is not actually viewed by other persons, insofar as we do not have meaningful control over it. As such, it gives us a pro tanto reason to create structures of collective ownership and control of data, and ultimately points in favour of a platform socialist model.