

Privacy, Surveillance, and Care Ethics

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I. Introduction

Are rights of privacy violated by the American government's massive electronic data collection programs?

Recently it has come to light that the U.S. government is collecting and storing data about most or all electronic and telephone communications by Americans and others. The electronic surveillance covers cellphone use and internet searches. The surveillance is done without warrants for searching particular individuals and without probable cause to think that the large majority of affected individuals have done anything wrong. This surveillance is typically defended in the name of security, in particular, as part of the fight against terrorism.

Is care ethics equipped sufficiently to evaluate these surveillance programs? That is, can care ethics provide a normative foundation for thinking convincingly about massive government surveillance of communications that citizens regard as private? Can care ethics provide any special insights to guide such an evaluation?

The value most often invoked to defend the massive surveillance programs is security. Security in this context is meant especially to include safety from terrorist attacks. A typical argument has it that the data we gain from surveillance programs might include citizen communications to people with known or suspected ties to terrorist groups. The communications might also include information about plans for terrorist attacks. It is sometimes claimed that surveillance programs, which have been in existence covertly for several years now, have already succeeded in helping the government to avert several planned terrorist attacks. Thus

security, in the sense of national security and including protection against terrorism, is a value invoked frequently to defend the government's massive secret data collection programs.

On the critical side, it is often argued against massive data collection programs that they invade the privacy of individuals. Data is collected and stored regarding individuals about whom there is as yet no probable cause to suspect wrongdoing. This practice seems to involve violation of the right to privacy. The data is apparently stored in a way that makes it accessible to later analysis by both government employees and employees of private firms that contract with the government to do this sort of security work. Further abuses might arise, for example, if those with access to the data reveal it for improper purposes such as destroying someone's political career. To the extent that privacy is a legitimate reason to end the government's massive data collection program, does care ethics support the moral importance of privacy?

The concept of privacy may seem to give great importance to individuality. Privacy seems to be about individuals secluding themselves from others or denying access to themselves or to information about themselves. So the question about whether care ethics supports the moral importance of privacy is importantly a question about how care ethics handles the apparent individualism of privacy.

The massive government surveillance programs thus present us with a conflict of values: security versus privacy. This discussion will give only modest attention to that dilemma. What this discussion will focus on is the treatment that care ethics seems to give to each of those values in its own right. How does care ethics deal with the value of security, in the sense of national security, especially efforts to prevent terrorist attacks? And how does care ethics handle the value of privacy with its seeming individualism? There are stumbling blocks that must be

cleared away in each case before the respective values can be fully assessed from a care ethical perspective.

This discussion aims to show that care ethics can give full-bodied attention to the values of both security and privacy. The main aim of this chapter is to explore how care ethics could handle the value of (national) security and the value of (individual) privacy. This discussion then clears the way for a discussion elsewhere of how care ethics would balance the two values.

First a caveat. The issues of security and privacy could obviously be raised for any society. However local norms and cultural practices might shape the debate in distinctive ways. This discussion will focus on meanings of security and privacy in a specifically American context without prejudging how the debate might change in another societal setting.

II. Security

How does care ethics handle the moral value of national security in principle? How does it assess surveillance programs as means to protecting national security? In discussing these questions, I shall set aside two issues. First, I will not explore the legal or *constitutional* status of the surveillance programs. Second, I will not discuss the issue of whether the surveillance programs are *effective* in achieving security. I am preparing the ground for a principled account of the *moral* value of national security.

Let us begin with what I regard as some facts about the world today. Aggression, force, and violence are in ample evidence around the world. Many different groups are at risk of being the victims of aggression and violence today. *The New York Times* of 22 January 2014, in its first seven pages, reported current and ongoing violent conflicts, or the threat of those, in at least the following countries: Syria (Hubbard & Kirkpatrick, 2014), Thailand (Fuller 2014), Ukraine

(Kramer 2014), and Pakistan (Masood 2014). On the same day, the U.S. and Russia were reported as engaged in talks over how to prevent anticipated terrorist violence at the then upcoming Winter Olympics in Sochi (Shanker 2014). On an individual level, and lest we forget that violence happens in the U.S., the same day's newspaper reports that a man attending a Florida movie theatre with a .380 handgun fatally shot another man near him in the audience simply because the other man texted a message during the start of the movie (Robles 2014).

Care ethics is certainly a perspective for coping with aggression and violence. However there are many different ways to cope with aggression and violence. There is no doubt that care ethics is opposed to the aggressive initiation of violence and the unjustified use of violence anywhere. Questions arise, however, over how best to respond to unjustified violence by others. Many people believe that some forms and instances of unjustified violence can be stopped only by the use of sufficient counter-force. In some cases involving nation-states, the sufficient counter-force, it is believed, may have to take the form of retaliatory military strikes. If an instance of unjustified violence can be stopped only by organized military actions, then these military actions need to number among the options that care ethics would at least consider when figuring out how to respond to unjustified violence.

Thinking about security in this way seems to invoke a militaristic attitude and a readiness to entertain militaristic solutions to problems. Militaristic thinking in general refers to thinking that is prepared to consider military action as a morally permissible solution to problems. Care ethics traditionally shies away from militaristic thinking. Would care ethics direct attention away from militaristic thinking even if it was the only available way to stop unjustified violence? Care ethics has always presented itself as an alternative to mainstream ethical frameworks, an alternative that promotes thinking about theoretically neglected or underappreciated aspects of

moral life and moral orientations. Moral theory, like all areas of philosophy, has been historically developed mostly by men. War has long been characterized as a masculine endeavor. It seems to me that, in the U.S. at any rate, (some) men are more likely than (most) women still today to include military action among the range of options they are ready to consider in discussion as a proposed solution to national problems involving aggressive first strikes against the U.S. by other groups.

Care ethics represents an alternative to this perspective, especially by those persons, including many women and others, who have not historically tended to manifest their moral agency through military action. In this way, care ethics persists in its earliest orientation, which is to embody certain moral options that might have been under-represented. Care ethics starts with a presumptive stand against militarism and violence.

More importantly, however, is the point that, regardless of whether the reactions to a large-scale threat of force are to be peaceful or to involve military retaliation, one needs to know what the dangers are. However peace-oriented it might be, a care ethical perspective should be open to information about the existence and nature of threats facing those whose care is in question. Actual conditions facing many persons in the world today include the threat of terrorist attacks. It should be an open question whether terrorist attacks warrant self-defensive violence in response. At the outset, it seems that military self-defense should not be ruled out as a potential, morally permissible response under appropriate circumstances.

This discussion will proceed on the assumption that U.S. society faces threats of mass violence today. This assumption need not take the Hobbesian form of expecting a “war of all against all” as if in a state of nature. Empirical assumptions need not be extremely pessimistic to warrant the assumption that U.S. society is not wrong to try to uncover threats to its security

before these have materialized into actual attacks. All one has to suppose is that there are *some* agents in the world today who are motivated to engage in large-scale violent attacks against the U.S. Given the potential for these sorts of threats to security, it would be crucial to engage in efforts to collect intelligence that has a good chance of revealing plans for future, large-scale violent attacks against our society that are being planned by others or are already imminent. This leads us directly to the NSA surveillance programs. (Of course the big question to follow is whether the surveillance programs are appropriate means to that end, all things considered.)

Thus, regardless of what should be included among the morally acceptable responses to terrorism, there is no anti-militaristic reason for opposing, in principle, the U.S. government's efforts to uncover information about whether to expect future terrorist threats or attacks. Intelligence efforts in their own right are simply data-gathering exercises. A purely pacifist stance can include agreement that trying to find out what will happen in the future is a legitimate endeavor. The big questions about these efforts have to do with whether they are properly tailored to their objectives and whether they involve morally unacceptable means or consequences.

Fiona Robinson's book, *The Ethics of Care: A Feminist Approach to Human Security* (2011), is a useful place to start searching for care ethical perspectives on the security interests that massive surveillance programs are aimed to protect. What makes Robinson's approach interesting for this discussion is that her care ethical perspective leads her away from strictly national security interests and toward what she calls "human security" interests. National security, as Robinson explains it, pertains to military security as understood in international relations. This sort of security involves the use of force and violence regarded as legitimate (2011, 7). Security in this sense is protection against threats of violence committed usually by

other states (2011, 6-7). (We should keep in mind that terrorist groups are not states but they are nevertheless relevant to this discussion because their violence is the type most commonly invoked these days as the threat that surveillance programs are meant to deter.)

The concept of “human security,” according to Robinson, pertains, by contrast, to such needs as those for food, health, and sustainable communities. Robinson aims to reveal “the importance of moral relations of care for the security of most people around the world.” This focus, she writes, calls for attention to those who are “constructed as weak, vulnerable, and dependent.” Robinson also explores how individuals, in their everyday social networks, are vulnerable and powerless in virtue of the ways in which they are constructed by everyday social relationships including those of care work (2011, 7-9).

Robinson does “not offer care ethics as a prescription for achieving human security” but does aim to show how “the dominant approaches may be failing to illuminate how insecurity is experienced for many of the world’s people.” (2011, 9) Robinson emphasizes that the subjects of security are relational beings, that caring relations determine people’s experiences of insecurity and security, and that victims may not be what they are portrayed as being (2011, 10). Most importantly, care practices sustain people’s security and well-being (2011, 11). Robinson also wants to get beyond the “state-centrism and military focus” of conventional notions of (national) security (2011, 14). Robinson’s suggestions for enhancing security among the world’s people include recognizing threats to security that stem from “damaged or severed” relationships of care. (2011, 10)

Robinson makes clear that her book is “not primarily a work of security studies” (2011, 15). She does not want to advance principles for a theory of global justice (2011, 15). Rather, she wants to use feminist ethical lenses to “interrogate critically the ethical ideas” that prevail in

the context of thinking about security (2011, 15). Her project includes discerning the different understandings that enter into security thinking and seeking new ways of understanding it (2011, 16). This is a crucially important endeavor.

An investigation such as Robinson's calls attention to a variety of issues that are not part of the usual discussions of national security. These issues are crucial additions to those discussions. However, they do not directly answer the question for which this chapter is laying some groundwork, namely whether national security, especially security against terrorist attacks, is sufficient to justify the surveillance programs now being conducted in its name. While current, trans-national contexts such as that of care work provide their own security issues, they do not eliminate the threats posed by terrorist groups that exist in the world today. The problem of a terrorist threat remains part of the challenges facing many societies and peoples in today's world. While it is important to consider alternative security issues, those issues do not eliminate the need to evaluate the recently disclosed U.S. government surveillance programs. Thus the question of whether U.S. national security interests warrant the surveillance programs remains a live issue on the table.

At the same time, some of Robinson's concerns do have a bearing on the questions about national security that I am addressing. I shall comment on the following three concerns raised by Robinson: First, she claims that, in the prevalent thinking about national security, women and children are conceptualized as "victims," "dependent," and "vulnerable." Robinson calls for this conceptualization to be challenged. Women do assert agency and, at any rate, everyone is dependent at some stages of life at least (2011, 10-11, 56-57, 94-100). Second, Robinson observes that relations of care are central in people's lives; damaged care relations should be recognized as fundamental in disrupting people's security (2011, 10-11, 28, 44-46, 55-60).

People won't have a sense of security in their everyday lives unless they are immersed in "*networks of care and responsibility*" (2011, 44, italics in original).

Third, Robinson maintains that the caring practices on which people depend globally are often carried out by women and are construed in "feminized" terms that "isolate men from these roles" and contribute to the "construction of hegemonic forms of masculinity that are associated with violence" (2011, 9, 22, 34-39, 57). These three concerns might seem to alter the defense of surveillance programs in terms of national security interests.

Regarding the first issue, are the security interests against terrorism really portrayed in ways that overemphasize women and children as victims? I think not. In general public discourse, at any rate, it does not seem that women and children are singled out as victims of terrorism. The potential victims of a terrorist attack would include anyone who was at the wrong place at the wrong time—people of any age, gender, class, race, religion, or other identity. The terrorist attack of September 11, 2001 illustrates this point. Many male employees of elite financial firms were among the victims of the September 11th attack and are known to have been victims (Wikipedia 2014a). A terrorist threat and attack can be directed against those who are "constructed" as strong, invulnerable, independent, and masculine just as easily as it can be directed against those who are constructed as weak, vulnerable, dependent, and feminine.

To be sure, some efforts toward national security take a greater toll on those who are vulnerable in certain ways, for example, there may be pressure on jobless young adults—including many young men—to put themselves in harm's way through military enlistment as their only legal alternative to poverty. Nevertheless, the victims of terrorism in particular can come from any social group. In the efforts to justify secret, massive electronic data collection,

security interests are invoked without differentiating any particular groups of citizens who would be more vulnerable to terrorist threats.

The second concern of Robinson's that I wish to address is her point that caring relations are a necessary condition for security in people's lives. This is clearly true. People's security is definitely disrupted by damaged relations of care and these disruptions should be socially recognized along with those that are commonly grouped under the heading of national security. At first glance, this might seem to be a separate issue from that of national security. Robinson might even agree. She notes that the idea of what is called "human security" is intended to contrast with the idea of national security (2011, 47). Human security is focused on individuals and groups and on such needs as "freedom from want," in contrast to national security which is, according to Robinson, focused on states (2011, 47).

Thinking about the daily securities that matter to people's lives is obviously a crucially worthwhile endeavor. If a single parent is having trouble taking care of his or her children while struggling to hold onto an income producing job, this will certainly disrupt the security of all family members. However, this situation need not have any necessary effect on the degree of national security experienced by this family or their community or society at large. Also, there is no reason why the idea of human security should completely replace that of national security. Even Robinson talks about a "wider spectrum of security issues," as if there were room for both concerns. At the same time, national security may well impinge on human security. A terrorist attack can explode in any neighborhood, causing havoc in lives that previously had the highest degree of human security.

Robinson portrays national security issues as being only state-centered (2011, 47, 61). On the specific topic of security against terrorist attacks, this portrayal is misleading. Terrorist

attacks might well have states as their ultimate targets. However they usually operate against intermediate targets which are ordinary people and communities *within* states. Thus, it is not simply states, as formal bureaucratic entities removed from the people, who are the targets of terrorism. This is one of the features that underlies the terror in terrorism: it manifests itself in random attacks that terrorize the *people* of a society, partly because of this randomness and unpredictability. Anyone at any time could be a target. Terrorism is not simply state-centered.

Still on Robinson's point that caring relations are a necessary condition for security in people's lives, note that another aspect of this issue is inequality. Robinson raises concerns about how "dominant norms and discourses sustain existing power relations that lead to inequalities" in the way that care is provided for members of the society (2011, 28). If national security practices, and in particular, surveillance practices promoted inequalities in the provision of care, this would be a serious detriment to those programs. However, these programs may involve a minor *lessening* of inequality. One major arm of the surveillance programs is the collection of data pertaining to electronic communications. This refers to cell phone and internet usage. Lower-income people are less likely to own computers or have access to them through work and perhaps less likely to own cell phones. If that is the case, they are therefore less heavily monitored—and violated—than are wealthier people, by the NSA surveillance programs. This would be an equalizing effect as an unintended coincidence of the sorts of surveillance the NSA is currently conducting. The surveillance thus seems to constitute in one respect a minor counterexample to Robinson's point about security inequality.

However Robinson's focus on the connection between caring relations and national security does point toward a different care-related contingency that should give us pause. Someone might argue that the attacks of September 11th constituted retaliation for damaged

forms of international *caring* exhibited by the U.S. toward peoples elsewhere, in the years prior to September 11th. A terrorist attack can be a reaction to past policies or practices by the state that is now targeted by terrorists. Perhaps past bad treatment by the US of other people elsewhere stoked the fires of resentment, resistance, and violent reaction on the part of Al Qaeda. Perhaps because Americans in the past, or still yet today, oppressed or violated the rights of people elsewhere, those people are rising up to defend themselves. These questions call for us to rethink what sorts of caring should infuse international relationships, especially by powerful affluent nations such as the US toward the poor nations and peoples of the world.

Here is one small example of bad treatment by the U.S. As I write this text, the news media is reporting that US government agencies, seeking to buy clothing at low prices, is buying them from overseas suppliers that impose harsh and dangerous working conditions on their employees (Urbina 2014). The conditions include “padlocked fire exits, buildings at risk of collapse, falsified wage records and repeated hand punctures from sewing needles when workers were pushed to hurry up.” The countries in which these conditions prevail included “Bangladesh, the Dominican Republic, Haiti, Mexico, Pakistan and Vietnam” (Urbina, 2014, A1). Thus it is no surprise to find that people in other countries blame the U.S. government as well as U.S. corporations and U.S. consumers for acting in ways that support trade policies that brutalize workers in other parts of the world. The foreign victims and critics of those policies might well be tempted to retaliate by supporting movements of violent protest against the U.S. In order to help forestall such violent reactions, it would be quite appropriate to use care ethics as a framework for thinking about how the U.S. and its citizens should improve its international trade policies so as to treat workers elsewhere with care and justice.

However, the road to just and caring international policies by the U.S. toward all other countries is a slow road. National and corporate interests stand in its way. During the time that it would take for our international treatment of others even to approach remotely a level of equal recognition and respect, the U.S. would likely still be vulnerable to terrorist threats from other groups. Also, some of those threats might be coming from forces that are themselves unjust. There is no reason to assume that all non-U.S. actors who engage in terrorism against the U.S. are morally upstanding persons who use violence only in legitimate self-defense against injustice by the U.S. In addition, some terrorist threats against the U.S. might be domestic and might not constitute retaliation against U.S. policies *abroad*. We should not forget Timothy McVeigh and his bombing of the Alfred P. Murrah Federal Building in Oklahoma City in 1995, a bombing that killed 168 people, including nineteen children who were in the day care center that was housed in the building (*Wikipedia* 2014).

Even if a terrorist attack constitutes understandable retaliation, it nevertheless involves excessive force against innocent persons who did not deserve that treatment. Think about the collectivism of terrorist attacks. A society, and its internal communities, suffer terrorist attacks collectively. A terrorist attack is indiscriminate in its impact. Most accounts of terrorism differentiate it from targeted assassination, which is by definition targeted at particular persons. A terrorist attack at a particular location harms anyone who is in the vicinity, regardless of whether or not they are a perpetrator of the alleged past wrongs that the terrorist is trying to avenge. People who had nothing to do with the alleged past wrongs committed by U.S. society, including especially young children, are just as much at risk of injury or death by an indiscriminate terrorist attack as are those in government or the corporate world who might have perpetrated wrongs against the states or peoples who would now seek to retaliate.

Thus, even if past bad American treatment of other persons elsewhere had indeed spawned a terrorist movement such as Al Qaeda, it would not be true that every single American alive today shared equally in the responsibility for that past bad treatment. Young American children of today, to take the most obvious example, do not share in responsibility for any past bad treatment of people elsewhere—unless “shared responsibility” is treated as an ascribed metaphysical status that has nothing to do with a person’s actual behavior. (That is a definition of “responsibility” that I try to resist.) So long as we conceptualize responsibility as limited to someone’s actual behavior and intentions, then young children, simply as children, are not responsible for the behavior of their elders and should not be punished for that behavior. Yet terrorist attacks against the U.S., which are often designed precisely to terrorize civilian populations, might well put young American children at risk of harm just as much as they would endanger the culpable elder generations. Older generations thus do not do wrong when they try to prevent terrorist attacks. Preventive measures would protect, among others, young children who could be the innocent victims of such attacks. Defending today’s generation of children is a special responsibility that falls on their elders. Trying to prevent terrorist attacks before they happen is a part of that defense.

These considerations suggest that, even if the U.S. has acted uncaringly or unjustly in ways that spawned terrorist attacks on itself, the U.S. is nevertheless entitled to defend itself against those threats. Terrorist acts constitute retaliatory violence without due process of law. Even a wrongdoer is not morally required to accept passively just any violence that is inflicted on her or on other members of her community without due process of law and without a legitimate verdict that she is guilty of wrongdoing.

National security against terrorism appears to require a division of moral labor, with different people using different moral frameworks or theories. Virginia Held suggests the idea of different moral frameworks for the different branches of the U.S. government (1984). My thought in the present context is to have different groups of persons working on different security-related goals. Some thinkers and policy-makers should focus on how to improve international treatment by the U.S. of persons elsewhere so as to engage with them all in a spirit of caring and justice. At the same time, other thinkers and policy-makers should focus on the question of how to defend the U.S. against possible terrorist threats regardless of whether those threats constitute retaliation for past bad treatment by the U.S. or the initiation of new aggression by non-U.S. actors. Collecting information that might lead to awareness of terrorist threats, in the abstract, is a legitimate part of that protective policy.

The third point by Robinson that I shall consider is the concern that caring practices are construed as women's work and distinguished from male roles, a conceptualization that contributes to the "construction of hegemonic forms of masculinity that are associated with violence" (2011, 9). It seems to me obvious that the military and intelligence programs involved in national security have long been dominated mainly by men and by masculine stereotypes and imagery. Even though women are now entering these fields in greater numbers, their presence does not seem enough yet to offset those masculine aspects.

First, we need to decide whether this is a problem. If national security is a good thing in itself to promote, why does it matter if it is stereotyped as masculine or has a masculine character? One possible answer is that men as a group might gain prestige and social power by their association with high status military and security achievements, and this social power might provide an aura of trust that enables men to take charge of *additional* social realms in which they

do not do any good but instead dominate others for their own ends. Robinson is concerned about how “hegemonic forms of masculinity license men’s neglect of caring responsibilities” and these practices are connected in turn to social norms that “perpetuate” men’s violence against women (2011, 37-38). Care in turn is devalued, she argues, and the devaluation of care is related to the “masculinist ‘cultures’ of violence that support militarism as an ideology” (2011, 38). This would be a negative spillover effect. Robinson urges us to regard all forms of violence as being on a continuum “that includes both intimate violence and militarized violence sanctioned by states and international organizations” (2011, 23). Robinson suggests that care work is increasingly devalued and carried out by poor marginalized women of color, while simultaneously the contrasting domain of sanctioned violence becomes more masculine (2011, 23).

This raises at least two questions. First, is the domain of sanctioned violence really becoming more masculine? Greater numbers of women are entering the military these days and greater numbers of men in the military are coming out as gay. Both changes might alter the stereotypes of the military and render the facts more complex than Robinson states. Second, and more importantly, we need to ask what bearing masculine character has on whether the U.S. should continue its national security efforts at self defense? Is masculine national security activity *intrinsically* problematic? Or is it problematic only because it spills over into *illegitimate* male violence in other realms? Finally, how does this question bear on the NSA surveillance programs?

In the “real world,” often we do not have to choose between two extremes. We might be able to forge a compromise. Here the relevant compromise would be retaining legitimate male military violence while stepping up efforts to eradicate illegitimate male violence. It would also

be important to alter the stereotype of military violence to remove its masculine character.

Robinson herself suggests that deliberating about the role of care in society may diminish violent behavior. She suggests that the skills of caring, which include “attentiveness, responsiveness, listening, and trust,” may help to end violence that is already occurring and ensure “that peace is real and enduring” (2011, 38).

Prompted by Robinson’s treatment of security, I have argued that efforts to make us secure against terrorism are, on the face of it, legitimate activities. Daniel Engster agrees that security is important and that care ethics supports this. He argues that a caring government must provide for the security needs of its people because this is something individuals cannot do effectively on their own (2007, 72, 80).

More specifically, I have contended, the following. First, efforts to secure our society against terrorism do not single out or overemphasize women and children as victims. Second, efforts should be undertaken to treat states and peoples abroad in more caring and just ways but during that time, the U.S. should not cease its legitimate anti-terrorism efforts even if it has treated other peoples badly in the past. Third, if anti-terrorism surveillance promotes illegitimate male violence, all efforts should be made to curb these negative effects without curbing *legitimate* anti-terrorism activities, even if stereotyped as male. Robinson seems to support this last suggestion. She writes that “no amount of attention to the values and practices of care in societies will eliminate violence altogether.” Humanitarian crises will keep happening and it is justified to explore various possible responses to them including the “legitimate use of military intervention” (2011, 95).

These conclusions are only part of the story. There is still the issue of whether the means of achieving security against terrorism are themselves permissible. This brings us to the question

of whether massive electronic surveillance is a legitimate means for the government to use as part of its resistance to terrorism.

III. Privacy

Various arguments against the surveillance programs have appeared in public debate. I have already indicated that I will ignore two of them: the argument that the surveillance programs are illegal or unconstitutional and the argument that the surveillance programs are ineffective in promoting security. Thus I am supposing that the programs are legally or constitutionally permissible and that they are effective enough to justify financially the resources expended on them. The overarching question is whether they are *morally* permissible given those assumptions.

The value most commonly invoked to challenge the surveillance programs is that of privacy. Ordinary people tend to expect that most of their telephone and electronic communications to other persons are carried out away from public gaze. The question for this section is modest: is care ethics able to give serious consideration to the value of privacy? There are at least two reasons why it might not be able to do so. First, care ethics might take on the feminist critique of the distinction between a public and a private sphere. It would be important to make sure the right to privacy does not manifest itself in practices that shield from the reach of justice various historic harms and wrongs against women and children. Second, care ethics might reject the value of privacy based on a rejection of the individualism of the *concept* of privacy. It would be important to determine whether the right to privacy is overly individualistic.

So, first, the feminist rejection of the distinction between public and private spheres. In recent decades, feminists such as Catharine MacKinnon have objected to the concept of privacy and a split between public and private aspects of human life. They object that the legal enforcement of this split has insulated the so-called private sphere from legal scrutiny, thereby allowing men in that sphere free reign to maintain social control and act in abusive and violent ways toward women and children (1989, 184-194). The so-called private sphere has centered heavily on the activities and practices of family, heterosexuality, and reproduction. Differentiating a so-called private sphere from the public sphere, according to this argument, has been especially bad for women and children.

Let us consider first the problem that a right to privacy has historically been used to shield men from the reach of the law and of justice and to protect them in the commission of various forms of domestic and intimate abuse against women and children. There is reason to think that the abuses of past practices of a right to privacy can be at least partly corrected. Domestic violence and abuse can be made subject to state regulation. The problems are far from fully solved but major efforts have been underway for several decades to reduce domestic violence against women and children. (This is of course an empirical argument.)

One key point is that the distinction between public and private is not a geographical distinction that divides spheres of life based on their locations (home versus street). It is a distinction based on the sorts of activity and interpersonal treatment that are going on, wherever they are going on. Mill's harm principle, however much additional work it needs to be fully specified, is not an irrelevant starting point toward one way of articulating a public/private distinction that would meet feminist concerns. Any activity in which one person threatens, harms, or wrongs others is "public" and a legitimate activity for government scrutiny and

control. Behavior that does *not* threaten, harm, or wrong others could be treated as presumptively private and beyond the legitimate reach of government regulation and surveillance.

This brings us to the second potential stumbling block for valuing privacy from a care ethical perspective. The question is whether privacy or a right to privacy is overly *individualistic*. Samuel Warren and Louis Brandeis offered an early statement to the legal community about the right to privacy. They called it “the right to be let alone” (1890). This limited formulation might be taken to suggest that privacy is simply about disconnecting from other persons. It could seem to be a right to be isolated, to avoid human companionship, as if solitude were a goal to be sought in its own right.

By contrast, care ethics, since its inception, has foregrounded the importance of interpersonal relationships and challenged individualistic conceptions of persons and their moral interests. Human beings are raised, develop, and gradually become adults in the context of interpersonal relationships and human societies. The attributes that characterize human beings arise from, and are often constituted by, human sociality. Recent ethical theory, including the ethics of care, has paid special attention to the various roles played by interpersonal relationships in morality and in the emergence of moral personality. In the view of many, this attention to relationality offsets a narrow individualism that had previously characterized moral theory and normative political theory.

Defenders of care ethics have tended to emphasize interpersonal relationships ahead of personal individuality. For example, Virginia Held observes that care ethics treats persons as if they were “deeply affected by, and involved in, relations with others” and “at least partly constituted by their social ties” (2006, 46). Fiona Robinson regards a “relational ontology” as

the “philosophical starting point” of care ethics (2011, 29). In Robinson’s view, human identity and subjectivity develop through “mutual constitution” among human beings and “relations of interdependence and dependence are a fundamental feature of our existence” (2011, 4).

Anita Allen defends the right to privacy and in the course of doing so, addresses concerns about individualism. Allen argues that women do have interests in protecting their privacy against government intrusion in many contexts, including those of sexuality and reproduction (1988, 35-53 and *passim*). The intrusions into privacy that were long perpetrated by anti-sodomy statutes provide just one example.

Allen differentiates between, on the one hand, accounts of the value of privacy that emphasize the creation and enhancement of personhood and, on the other hand, accounts that emphasize the creation and enhancement of relationships (1988, 37, 43-48). Allen agrees that to defend privacy in terms of its enhancement of personhood is indeed to rest one’s argument partly on individualism. However Allen regards the individualistic aspect of privacy as beneficial for women. She claims that privacy “can enable moral persons to be self-determining individuals” (1988, 44). Privacy can promote self-reflection and self-development which are among the activities that enable an individual to develop a sense of her own perspective different from that of the group and a sense that she is entitled to moral respect for her own sake (1988, 44-45).

However, as Allen argues, it would be a mistake to think that the only value of privacy lay in its individuality. Nothing is inherently wrong with solitude but solitude is not the only point of the right to privacy. The point is a right against *unwanted* intrusion by others--intrusion affecting one’s self, one’s possessions, information about oneself, and, most importantly in regard to surveillance programs, unwanted intrusion into one’s *relationships*. Thus, Charles Fried claims that privacy is needed as a context for developing relationships of friendship and

love (1968, 475). James Rachels argues that the ability to control access to ourselves and the dissemination of information about ourselves enables us to shape our interpersonal relationships in varied ways, allowing some persons to be very close while keeping others less close (1975).

Anita Allen observes that privacy has a point only in light of the “social character of human existence.” Separation makes sense only if there are others to whom one is connected in relationships. Privacy, she argues, enables individuals to become “morally individuated,” but also to develop the “character, personality and skills” that enhance the “*social* participation and contribution” that individuals make to group life (1988, 48, italics mine).

Thus care ethics can value privacy for both its individuality and its relationality. The individuality of privacy is not so excessive as to overshadow the relational value of privacy. Individuality does not preclude relationality and is therefore not a problem in principle for care ethics.

To be sure, care ethical systems differ in the degree to which they emphasize values for individuals. Daniel Engster, for example, claims that a caring government will guarantee rights to individuals against actions by the military or police that are unfair, unwarranted, arbitrary, or abusive (2007, 80). One reason he gives is that arbitrary government actions might interfere with the ability of individuals to care for themselves or others (2007, 80). Engster makes clear that his care ethics values “the care of individuals over group values and goals” (2007, 99). Individual dependency is what draws human beings together in groups, and it is as individuals that we claim care from others (2007, 99). Engster writes that “the group exists in care theory to support individuals and not the other way around” (2007, 99). Engster’s care ethics thus supports individualistic concerns. However, Engster also reminds us that violence interferes with the ability of individuals to care for themselves or others. Caregivers and care-recipients

might die in terrorist attacks or might survive with serious wounds, thus, obviously increasing their needs for care while at the same undermining their abilities to care for others. This is clearly a relational concern.

Virginia Held's care ethics seems to contrast with that of Engster on the question of individualism. Held writes that care ethics "conceptualizes persons as deeply affected by, and involved in, relations with others; to many care theorists persons are at least partly constituted by their social ties" (2006, 46). She claims that our "embeddedness in familial, social, and historical contexts is basic" (2006, 46). This is to see the person as an "embodied nexus of relations" (48). Held does allow that as a self develops, it becomes a "moral subject shaping her identity and life and actions" (2006, 48). However, personal autonomy should be conceptualized as relational; our relations may enable or inhibit our autonomy (2006, 48).

On the question of individualism, the difference between Engster's care ethics and Held's care ethics seems to be one of degree. Held's approach gives more emphasis than does Engster's to relational aspects. At the same time, even Held makes concessions to individuality. She writes, for example, that "we are not prisoners of our upbringing and circumstances" (2006, 48). We are "both enmeshed in and capable of shaping such relations" (2006, 48).

In accepting both the relationality and the individuality of persons, care ethics can avoid having to contest privacy or a right to privacy on the grounds of its individualism. Privacy has great value for both the individual and the relational aspects of ourselves. Indeed, it seems that various forms of privacy are important enough for privacy to reach to the level of a right. The way is cleared for care ethics to accept the value of privacy as a reason to oppose surveillance programs.

What are the abstract possibilities for reconciling the value of security with the value of privacy, given that the reconciliation will have to be enacted as a matter of law and/or public policy? Are security and privacy in a winner-take-all or zero-sum contest for moral priority? Does the more important of these values completely trump the other value, thoroughly eclipsing it? Or might both values retain moral significance to some degree, even if one is more important than the other? If that is possible, a compromise that incorporated consideration of both values would make moral sense.

This chapter ends with a recommendation for a balance between security and privacy for “normal” times in which there is no security emergency and no imminent threat. This recommendation is based on suggestions by Adam Moore (2010, Ch. 10). The idea is to permit surveillance programs to occur but only in regulated and limited forms. Surveillance would require a showing of probable cause, a warrant issued by a judge, and “sunlight” provisions in the form of a requirement that there be some form of public accountability after the fact. The process must not be thoroughly secretive and different authorized persons must agree to the legitimacy of surveillance for particular persons or particular groups. I see no reason why care ethics could not sign on to this approach.

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