

# IS A MORAL RIGHT TO PRIVACY LIMITED BY AGENTS' LACK OF EPISTEMIC CONTROL?<sup>1</sup>

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**ABSTRACT:** In their *Unfit for the Future*, Ingmar Persson and Julian Savulescu argued that there is no moral right to privacy, which resulted in a string of papers. This paper addresses an argument in their most recent contribution, according to which there is no moral right to privacy because individuals cannot control their access to information. Here their argument is first denied after which their epistemic conception of a moral right to privacy is criticized.

**KEYWORDS:** privacy, the right to privacy, epistemic analysis of the right to privacy

## 1. Introduction

In their *Unfit for the Future*, Ingmar Persson and Julian Savulescu argued that there is no moral right to privacy, which resulted in a string of papers (Bublitz 2019; Lundgren 2021; Persson and Savulescu 2019, 2022). Here I respond to their most recent clarifications, which in turn respond to a paper by me (Lundgren 2021). Granted that Persson and Savulescu ignore most of my arguments, I will not aim to further defend those arguments; instead, I will address one of their latest arguments, which concerns the question of whether the right to privacy can pose any limits on the epistemic and doxastic states of agents. Persson and Savulescu think that it does and that the right to privacy is impossible because it requires agents to perform actions that are beyond their control (in particular, control over their information acquisition).

In the next section, I deal with their argument under the presumption that we accept their analysis of a moral right to privacy; after that—in the final section—I turn to argue that we should reject their analysis of a moral right to privacy.

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## 2. The (In)ability to Control Information Acquisition

Before I present Persson and Savulescu's argument that there is no moral right to privacy, I need to clarify and explicate their terminology a bit. First, they presume that a moral right to privacy is a "right that outsiders do not acquire true beliefs or information about them that they reserve for themselves and a select group of others" (2022, 2). Second, they explain acquisition as follows: "to acquire information is in itself to be *caused* to be in a state and, to boot, a state *that is internal to the subject*" (2022, 2). This is an odd terminology; normally we would think that I *acquired information* when I downloaded Persson and Savulescu's article. Yet, by downloading the article, I did not *internalize the information*. Arguably, what Persson and Savulescu meant to communicate was about *the state of being informed* not *information acquisition*. Thus, instead of saying that a "right that outsiders do not acquire true beliefs or information about them that they reserve for themselves and a select group of others" (2022: 2), they should have said that: it is a right that outsiders do not have true beliefs or *are in a state of being (truthfully) informed* about them that they reserve for themselves and a select group of others<sup>2</sup> I will presume the latter rather than the former because otherwise, their argument will not be relevant given their conception of a moral right to privacy.

Turning to their argument, they argue that because "information acquisition"—that is, being informed—is beyond our control and not an action, it cannot violate any right to privacy (i.e., "It takes actions or omissions to act to violate or respect rights"). Therefore, we cannot have a "right against subjects that they are not put in such an internal state" (2022, 2).

To explain their reasoning they compare the state of being informed (i.e., "information acquisition" in their terminology) with having an emotion (i.e., being in a specific emotional state):

To the extent that we are able to control our emotional actions, we may be under an obligation to do so. Thus, others may have a right against us that we do not run away in fear and leave them in a fix or harm them by an angry blow. But we are under no obligation to have or to refrain from having emotions in so far as they are uncontrollable internal states of feeling certain bodily changes; consequently, others do not have rights to demand that we are or are not in these states. (2022, 3)

Basically, according to their analysis, we have no right that others are not in some emotional state because it is beyond their control—and the same holds for the state of being informed. However, if we deny this lack of control, the argument fails.

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<sup>2</sup> I write '(truthfully)' because their formulation does not make clear whether the scope of true only extends to *beliefs* or if it includes *information*.

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To illustrate this, consider what would happen if we were to deny that being in an emotional state is beyond our control.

Suppose that Joe knows that if he consumes alcohol, he will become aggressive beyond his control and hit Jane. Granted that Jane has a right not to be abused, we would normally conclude that Joe has a duty not to drink (presuming the standard view that rights correspond to duties). However, that conclusion only follows if Joe has a duty not to be in a state of drunkenness. While philosophers have questioned whether rights and duties can extend to our inner life, the discussion is often focused on the limits of an obligation to be in a certain emotional state (see, e.g., Manela 2015; Attie-Picker 2022), rather than *avoiding* a certain emotional state. It does not seem puzzling to say that we, in some situations, have a duty to *avoid* being in certain emotional states.

Although this is a complicated debate, there are two related reasons why we can side-step it. First, in the given situation, the relevant question is not about whether *emotional states* are beyond our control, but whether *being informed* (or in their terminology: *acquiring information*) is. Second, as Persson and Savulescu recognize, it is partly a question of whether an agent is in *control* (and whether that control corresponds to some actions, which the relevant agent can perform). Interestingly, contrary to their claim, we often have control over whether we are in a *state of being informed that p* because we can control our access to p. For example, suppose an individual A's right to privacy—according to Persson and Savulescu's analysis—supplies normative protection against—that is, implies duties for—outsiders being informed about the content of A's diary. Under their reasoning, such a duty will only apply if we are in a position to control whether we are in a state of being informed of the content of A's diary. However, we can control whether we are in that state because to internalize that informational content we need to perform a set of actions. Thus, the argument about lack of control fails. (*N.B.*, if we take a moral right to privacy to be a positive right, then irrespective of any individual's duty not to be in a certain state of being informed, others must ensure that individuals cannot access that information.)

Here it is possible to protest for various reasons. First, one may argue that the right, as Persson and Savulescu formulated it, is that others are not in a certain state, not that they avoid certain actions. However, my right to life implies all kinds of restrictions on what actions others can perform, although those actions are not listed in the right. There is nothing strange about a right that has implications regarding what actions others can perform, even if they are not analytically part of the right. Moreover, if “information acquisition” (using their terminology) is about being “*caused*” to be in a state of being informed (2022, 2), then it is clear that the right

actually includes a right against actions that cause such an outcome and if so, the violator is the one causing an outsider to be informed, which often is the informed party themselves, but—as I will explain at the end of this section—can also be another party.

Second, one may, echoing Judith Jarvis Thomson (1975), argue that “our privacy is protected by rights we have to our bodies and properties” (Persson and Savulescu 2022, 4), and that we have conflated these rights with a moral right to privacy. However, such an argument does nothing to establish that there is no right to privacy; all that can be shown is that there may be overlapping rights. Moreover, in the case of the diary, what would those rights be? The rights that Thomson proposed are “certainly more problematic than that of the right whose significance she wants to impugn” (Parent 1983, 279).

Lastly, one may attempt to argue that while we often have control over whether we are in a state of being informed, this does not hold for every informational state. However, that is precisely the point. There are situations when the fact that we are being informed is beyond our control. For example, if you tell me a secret, I cannot be said to have violated your right to privacy. However, if I pass that secret along to some outsider, then I contribute to (or cause) that outsider to be informed of that secret and, as such, I have violated your right to privacy. This example illustrates that even if we accept Persson and Savulescu’s analysis of a moral right to privacy, we can still make sense of the violation of that moral right to privacy in ordinary cases.

### 3. On the Limits of Doxastic Analyses of the Right to Privacy

Although my previous arguments are compatible with accepting Persson and Savulescu’s analysis of the right to privacy, I will now consider whether their analysis holds under scrutiny.

Persson and Savulescu’s view is similar to the epistemic analysis of privacy and the right to privacy (see, e.g., Parent 1983; Blaauw 2013). These views have been criticized before (Fallis 2013). However, Persson and Savulescu’s view does not require knowledge, merely true beliefs or being informed about some privacy-sensitive information (cf. Kappel 2013). However, this doesn’t work either. Consider the following example:

Joe knows something personal and privacy-sensitive about Jane, which she does not want her boss, Smith, to know. Despite Jane’s wishes, suppose Joe tells Smith Jane’s secret, but Smith does not believe Joe. If so, then Smith has no true belief, nor is he informed about Jane’s secret. Nevertheless, even if Joe’s action has not changed Smith’s belief [or state of being informed], the action is a standard example of what we must consider of a violation of Jane’s right to privacy. (Lundgren *Under*

review)

Thus, if there is a moral right to privacy, it cannot be what Persson and Savulescu take it to be.

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