

Outing Gay Priests: Toward a Theological Ethics of Privacy in the Digital Era

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ON JULY 21, 2021, CATHOLIC SUBSTACK *The Pillar* published an “exposé” on Monsignor Jeffrey Burrill, who had just resigned from his position as the general secretary of the US Conference of Catholic Bishops. *The Pillar* claims that Burrill had used the gay-only dating app Grindr on “a near-daily basis.”¹ The article obsesses over the details of Monsignor Burrill’s alleged sexual activity. After several paragraphs explaining how casual sexual encounters through Grindr work, the authors make the unwarranted move of implying that someone using Grindr must be doing so to abuse minors. Despite the fact that the article clearly states that the claims are based on circumstantial evidence and extrapolations made from incomplete data, the authors readily draw connections between the use of a dating service and the problem of minor abuse by priests. The authors apply homophobic frameworks to castigate a priest who they have no evidence is guilty of what they claim.

Flynn and Condon seemingly wanted to provoke outrage with their sensationalized piece, and they did. Not only did several Catholic outlets respond, including large media companies like *National Catholic Reporter* and the EWTN media conglomerate,² but also

¹ Pillar Staff (J. D. Flynn and Ed Condon), “Pillar Investigates: USCCB Gen Sec Burrill Resigns after Sexual Misconduct Allegations,” *The Pillar*, July 21, 2021, www.pillarcatholic.com/p/pillar-investigates-usccb-gen-sec.

² See Steven P. Millies, “The Pillar Investigation of Msgr. Burrill is Unethical, Homophobic Innuendo,” *National Catholic Reporter*, July 21, 2021, www.ncronline.org/news/opinion/pillar-investigation-monsignor-burrill-unethical-homophobic-innuendo; Raymond J. de Souza, “Msgr. Burrill’s Resignation and the Surveillance Age: 5 Points to Consider,” *National Catholic Register*, July 23, 2021, www.ncregister.com/commentaries/msgr-burrill-s-resignation-and-the-surveillance-age-5-points-to-consider; and Zac Davis, “Tabloids, Scandal, and Spying: The US Catholic Church Has Hit a New, Dangerous Low Point,” *America*, July 22, 2021, www.americamagazine.org/faith/2021/07/22/catholic-church-spying-pillar-burrill-grindr-usccb-privacy-241106?pnspid=kvFvpfMBCAWNdkxsuQfPhQjk_ucngeGEJs827fC6.

smaller outlets like *Where Peter Is* and *Church Militant*,³ as well as national secular media like *Vice* and *The Washington Post*.⁴ Even “Catholic Twitter,” the loosely bound group of self-identifying Catholic voices prominent on the namesake social network, was a-buzz with people who ordinarily share views locking horns on whether *The Pillar* should have done this or not. This story succeeded in gaining fame (or infamy) for the news outlet, whose founders wanted to distinguish themselves from the right-wing populism of EWTN and the liberalism of *National Catholic Reporter*.

The Pillar story and the reactions it generated lay bare numerous points of controversy. The first controversy, which the Archdiocese of Newark immediately decided to address with draconian measures, is the problem of a priest using a dating app.⁵ Since most Catholic priests make a promise of celibacy, the use of any dating service is problematic. Aside from the question of whether or not a priest is engaged in unchaste behavior, the use of a dating app—especially one that facilitates casual sex like Tinder or Grindr—provokes scandal. Equally scandalous is publicly shaming someone for sexual impropriety, especially someone in a pastoral position. Such public outing can be devastating, as witnessed by the 2015 Ashley Madison data breach, where hackers made public millions of site users’ personal data. One Christian pastor, who apparently had used the service, even committed suicide after his name was released.⁶ A further controversy lies in the investigation itself. Journalistic ethical standards require that journalists avoid making unwarranted claims, verify information, avoid employing “surreptitious methods of gathering information” and distorting facts,⁷ all of which were clearly

³ Mike Lewis, “More Shadow than Light,” *Where Peter Is*, July 22, 2021, wherepeteris.com/more-shadow-than-light/; Phillipe Champlain, “Grindr Cleric is Self-Laicized,” *Church Militant*, July 23, 2021, www.churchmilitant.com/news/article/grindr-bishop-is-self-laicized/; and Janet E. Smith, “The Limits of a Priest’s Right to Privacy,” *Crisis Magazine*, July 21, 2021, www.crisismagazine.com/2021/the-limits-of-a-priests-right-to-privacy/.

⁴ Marisa Iati and Michelle Boorstein, “Case of High-Ranking Cleric Allegedly Tracked on Grindr App Poses Rorschach Test for Catholics,” *Washington Post*, July 21, 2021, www.washingtonpost.com/religion/2021/07/21/catholic-official-grindr-reaction/; Joseph Cox, “The Inevitable Weaponization of App Data is Here,” *Vice*, July 22, 2021, www.vice.com/en/article/pkbbxp8/grindr-location-data-priest-weaponization-app; and Tim de Chant, “Catholic Priest Quits after ‘Anonymized’ Data Revealed Alleged Use of Grindr,” *Ars Technica*, July 22, 2021, arstechnica.com/tech-policy/2021/07/catholic-priest-quits-after-anonymized-data-revealed-alleged-use-of-grindr/.

⁵ Pillar Staff, “Newark Archdiocese to Investigate App Use Allegations,” *The Pillar*, July 24, 2021, www.pillarcatholic.com/p/newark-archdiocese-to-investigate.

⁶ Laurie Segall, “Pastor Outed on Ashley Madison Commits Suicide,” *CNN*, September 8, 2015, money.cnn.com/2015/09/08/technology/ashley-madison-suicide/.

⁷ “SPJ Code of Ethics,” Society for Professional Journalism, September 6, 2014, www.spj.org/ethicscode.asp.

violated in the sensationalism of this story. Finally, the *Pillar* story surfaces an ongoing problem within the church: the practice of exacerbating existing homophobia.⁸ A key component of current Catholic homophobic discourse is the lie that gay men must be pedophiles.⁹ What does it mean for a journalistic source to perpetuate such a discourse, either via insinuation or outright claims?

In short, the question at hand is a matter of sexual ethics and right to privacy. Across the write-ups and responses to *The Pillar* article, Catholics on the whole are ill-equipped to reflect theologically or ethically on the right to privacy. Contributing to this is a dearth in scholarship related to privacy within Catholic theological ethics; nearly every scholarly discussion of privacy is rooted in philosophical ethics or legal studies. In fact, a literature search surfaced fewer than ten articles focusing on privacy as a moral concern for Catholicism.¹⁰ Contrast this to the subject of sexual ethics: there is no shortage of well-researched papers tied to questions of priestly celibacy, homosexuality, and even anonymous sexual intercourse in Catholic

⁸ Flynn and Condon's implication is especially insidious for three reasons. First, as noted above, they levelled an unsubstantiated accusation of committing a heinous crime at a priest. Second, they made this claim based on the priest's alleged sexual orientation, furthering the persecution and violence against LGBTQ+ persons. Finally, if *The Pillar* had in good faith believed Burrill could be a pedophile, they had an obligation to cooperate with law enforcement and anti-trafficking organizations, rather than continue on their own for sensational reporting purposes. Their own actions undercut any basis for taking their claims as good faith.

⁹ The trope that gay men are most responsible for sexual abuse of minors is a long-debunked homophobic lie. See Kevin Ohi, "Molestation 101: Child Abuse, Homophobia, and the Boys of St. Vincent," *GLQ: A Journal of Lesbian and Gay Studies* 6, no. 2 (2000): 195–248. The trope has gained greater traction following the 2002 *Boston Globe* investigation into predatory priests with many, including Pope Emeritus Benedict XVI, promoting this lie. See Philip Pullella, "Ex-Pope Says Sexual Revolution Led to Abuse Crisis, Striking Debate," *Reuters*, April 11, 2019.

¹⁰ Very few good articles on privacy and Catholic ethics exist; this author's search through various library databases only yielded around five, of which only one was really relevant (see note 48). These include the following: John Hill, "Privacy and the Teaching of the Church," *Colloquium* 17, no. 1 (October 1984): 11–17; Yelena Mazour-Matusevich, "Privacy, Interiority, and Confession: A Historical Perspective," *CrossCurrents* 70, no. 2 (June 2020): 95–106; Eileen P. Kelly, "Privacy and Technology: Insights from Catholic Social Teaching," *Catholic Social Science Review* 6 (2001): 207–221; Bill Piatt, "Catholicism and Constitutional Law: More than Privacy in the Penumbra," *Journal of Catholic Social Thought* 7, no. 2 (Summer 2010): 337–352; Michael P. Orsi, "Priest's Privacy and Reputation Need Protection," *Homiletic and Pastoral Review* 104, no. 1 (October 2003): 54–57. Among these studies, the only one released within the past decade is a historical examination of the development of confessional practices. There are a great number of articles on canon law and privacy, but the above list covers all the author could find from an ethical perspective.

ethics.¹¹ This paper is an attempt to advance Catholic conversations on the theological ethics of privacy in a way that can set the tone for future reflections. I argue a straightforward thesis: moral impropriety carried out in private should be made public when it is a matter of injustice and a threat to the common good; it should remain private when it is not.

This article proceeds as follows. I begin with an overview of philosophical arguments surrounding the controverted right to privacy, including prominent voices on the subject like Louis Brandeis and Judith Jarvis Thomson, to more recent voices like Helen Nissenbaum and Luciano Floridi. I then contend that the right to privacy has a proper role in Catholic theological ethics, as rooted in magisterial teachings on the dignity of the person at home and in public. I then consider how the Catholic tradition helps us think carefully about the limits of the right to privacy. Finally, I illustrate why Flynn and Condon were wrong to expose Burrill and how Catholics should engage the ambiguity of data collection and sales.

PHILOSOPHICAL PERSPECTIVES ON PRIVACY

The philosophical literature on privacy is vast. As Helen Nissenbaum notes, there are many voices and hardly any consensus.¹² Despite this diversity, a number of clear points coalesce in philosophical discussions of privacy. Privacy comprises at least three important elements: 1) reputation, 2) liberty, and 3) personal fulfillment. The Universal Declaration of Human Rights includes the *right* to privacy within the following constellation: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.”¹³ The rights tradition does affirm all of these goods so, *prima facie*, privacy ought to be protected, whether it is seen as a general right or an

¹¹ Here is a brief hardly exhaustive list of English language journal articles on the subject “Sexual Ethics, Catholic” from 2021: Irene Alexander, “Magisterial Teaching on the Foundation of Sexual Ethics: A Reply to Melissa Moschella,” *National Catholic Bioethics Quarterly* 21, no. 1 (Spring 2021): 85–105; Stephanie Dallam, Marci Hamilton, and Sabine Glocker, “Survey of the Written Child Protection Policies of the 32 US Archdioceses,” *Journal of Child Sexual Abuse* 30, no. 7 (October 2021): 869–889; Maria Balata, “Serve Survivors: An Advocate Helps Survivors of Sexual Abuse Journey toward Wholeness,” *US Catholic* 86, no. 11 (November 2021): 12–13; Tara Isabella Burton, “Beyond Sexual Capitalism,” *Comment Magazine* 39, no. 3 (Summer 2021): 42–50; Eve Tushnet and Kerry Weber, “Catholics and Conversion Therapy,” *America* 224, no. 7 (June 2021): 30–40; Tinne Claes, “‘Catholic, but not According to the Rules’: Assisted Reproduction and Catholic Doctors in Belgium, 1940s–1980s,” *Journal of Religious History* 45, no. 3 (September 2021): 390–411.

¹² Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (Stanford, CA: Stanford Law Books, 2010), 2.

¹³ United Nations, *Universal Declaration of Human Rights*, December 10, 1948, Article 12, www.un.org/en/about-us/universal-declaration-of-human-rights.

umbrella term for other rights. But privacy has limitations, including contexts where a right to information takes precedence or, more pressingly, in situations where other rights are at risk. The question of privacy has mutated and taken on greater urgency due to the advancement of information technologies, especially the rise of social media and big data. At the heart of this discussion, then, are the questions of whether a right to privacy exists, what such a right entails, and what, if any, limits attend to this right.

The first challenge in considering privacy is how it is defined. The way privacy is defined in turn informs what license and limitations attend it. William Prosser and Judith Jarvis Thomson both allege that there is *no* coherent notion of privacy, because whatever falls under this vague concept really belongs to others, such as property or personhood. Prosser argues that the equivocation with which privacy is invoked renders it essentially meaningless.¹⁴ Privacy is often invoked to refer to the goings-on in a “private” residence or the protection of “private” information. Prosser argues that the rules protecting my domicile from invasion and those against slander and libel address entirely different concerns and thus cannot be held together under a single concept, that is, privacy. Thomson’s argument is similar, but more famous. She argues that the right to privacy does not exist because each case of violation of privacy is actually a violation of a separate right. For example, she contends that the right to prevent information such as “Professor Jones of State U. Keeps Pornographic Picture in Wall-Safe” from being published is not a question of privacy, but rather of suffering undue distress.¹⁵ Thomson believes “privacy” is an agglomeration of different rights which ought to have respective protections and provisions instead of being lumped under the nebulous rubric of “privacy.”¹⁶ Rights against torture, to property, to liberty, and so forth, she contends, are rights on their own merit; each case of “privacy” invokes a specific right as its justification. Hence, claims to privacy really are reducible to claims for other goods.

Others argue against this view. William Parent defines privacy as “the condition of not having undocumented personal knowledge about one possessed by others.”¹⁷ This definition admits some ambiguity, but it is important to see that there are clear limitations. For example,

¹⁴ William L. Prosser, “Privacy: A Legal Analysis,” in *Philosophical Dimensions of Privacy*, ed. Ferdinand Schoeman (Cambridge: Cambridge University Press, 1984), 107.

¹⁵ Judith Jarvis Thomson, “The Right to Privacy,” in *Philosophical Dimensions of Privacy*, 284.

¹⁶ Thomson, “The Right to Privacy,” 286.

¹⁷ William A. Parent, “Privacy, Morality, and the Law,” *Philosophy and Public Affairs* 12, no. 4 (Autumn 1983): 269.

a public statement or a public appearance made years ago are not subject to the right to privacy, even if one would like to obscure or expunge it from the public record. Alternatively, medical records, personal thoughts, unpublished writings or closed-door activities would be protected by such a right because they are “undocumented personal knowledge.” Parent also admits that the right to privacy is not absolute, though it does protect against instances of “wrongful invasion,” cases of acquiring undocumented information through illegitimate means, or for illegitimate or unjustified purposes.¹⁸ David Friedman speaks of three different types of privacy: physical seclusion from others (e.g., sitting in one’s home), informational privacy whereby information is withheld from other parties (e.g., medical history), and attentional privacy wherein a person is not solicited for attention (e.g., being left undisturbed in a public setting).¹⁹ Each of these forms of privacy involves protection and seclusion of persons and their information. The incongruence of these three arenas gives credibility to Thomson and Prosser’s objections but, as Catholic thought demonstrates, these are the typical arenas where one experiences an invasion of privacy. Friedman and Parent argue in favor of privacy as a means to protect people from extortion or violence. Blackmail, coercion, and harassment are made more difficult, if not rendered impossible, when individual privacy is protected. From this perspective, Friedman’s triple definition shows the clear connection between seemingly disparate interests of home, information, and attention.

The emergence of the Internet and the rise of “big data” has recast older questions of privacy into a new light. Contemporary scholarship is much more focused on “informational privacy” than the other two arenas of concern. Thomson’s thought experiment of someone wishing to keep secret their possession of a pornographic photo gains new life with concerns about website patronage and browsing history. In light of this shift, Luciano Floridi defines privacy as the right to be free from being the referent of a message received by another, such as the collection and sale of personal data.²⁰ Here, the issue is how messages sent between transmitters and receivers convey information about a third party unbeknownst to that third party. Like Parent, Floridi focuses on what pertains to public knowledge but, unlike

¹⁸ Parent, “Privacy, Morality, and the Law,” 280. Parent also notes “wrongful invasion” includes properly safeguarding legitimate information otherwise undocumented.

¹⁹ David Friedman, “Privacy and Technology,” in *The Right to Privacy*, ed. Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul (Cambridge: Cambridge University Press, 2000), 186–187.

²⁰ See Mireille Hildebrandt, “Location Data, Purpose Binding, and Contextual Integrity: What’s the Message?,” in *Protection of Information and Privacy—A New Equilibrium?*, ed. Luciano Floridi (Cham: Springer, 2014), 32.

Parent, Florida's new definition takes into account access to information not publicly available, such as information-collecting "cookies" or personal account information. José van Dijk and others have pointed out the problem of online "Privacy Policies," documents intended to legally allow websites to collect data which are poorly understood by users and often obfuscated behind technical language and lengthy contracts.²¹ She further notes technologies such as Facebook's "Like" button allow third parties to collect data even when there is no consent from the user.²²

Owing to the complications induced by different types of privacy, the limits of protections, and the differences in attitudes toward sharing different types of "private" information, Helen Nissenbaum reframes privacy as "contextually dependent information flowing in the right direction."²³ Under such a definition, the right to privacy admits of different boundaries and expectations depending on the situation in which it is invoked. Her definition corresponds to common-sense experience of privacy concerns: while I may have no objections to my attending physician sharing my medical record with a specialist who will treat me, it is legitimate for me to demand that this information not be shared with my employer. Likewise, while I may give permissions to Facebook or Twitter to gather information for better recommendations, I likely do not want them sharing this information with a company like Cambridge Analytica who will use it to sway my political beliefs. Nissenbaum argues that individuals may be willing to give up privacy in certain scenarios, such as sharing personal photos on Facebook, without relinquishing all claims to privacy whatsoever.

Just as there are various definitions of privacy, there is likewise a plethora of moral arguments regarding the basis for privacy. Some, like Edward Bloustein channeling Louis Brandeis, argue that privacy is part of "inviolable personality" and necessary for "the pursuit of happiness," setting it as the foundation of any rights we have.²⁴ Only by being able to make private determinations, including thoughts or feelings, am I able to authentically experience human dignity. While perhaps legitimate, the ambiguity of this foundation opens up critiques, such as Lloyd Weinreb's or Nissenbaum's arguments that privacy is culturally relative, and thus cannot be considered some

²¹ José van Dijk, *The Culture of Connectivity: A Critical History of Social Media* (Oxford: Oxford University Press, 2013), 59–60.

²² Van Dijk, *The Culture of Connectivity*, 53.

²³ Nissenbaum, *Privacy in Context*, 127.

²⁴ Edward J. Bloustein, "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser," in *Philosophical Dimensions of Privacy*, 186.

inviolable human essence,²⁵ or R. G. Frey's claim that privacy itself is only valuable as part of a constellation of goods and thus not intrinsically valuable.²⁶ Some suggest that (physical) privacy is necessary for our personal identity formation since the self is partially developed internally.²⁷ Others argue for (informational) privacy's importance for personal autonomy and decision making free from the constraints and pressures of society.²⁸ Others still emphasize (physical) privacy as essential for developing intimate relationships because intimacy requires private spaces.²⁹ Some critique these views from a non-Western standard, noting that in Eastern "collectivist" societies, (attentional) privacy is valued not for oneself, but rather often for others; one does not demand privacy for his own autonomy but so that others are not exposed to his goings-on.³⁰

The issue of privacy is further complicated by the fact that the limits of private information are by no means clear-cut. In reviewing real cases, we notice that to determine what is private is not as simple as discerning what makes one an autonomous person or who her confidants are. Nissenbaum, who prefers to understand the notion of privacy as interest, notes that while modern people value privacy, we often sacrifice it for perceived security, personal expression, obtaining property, or even simple efficiency.³¹ Bloustein admits that we readily surrender information to certain organizations, but notes that using

²⁵ Lloyd Weinreb, "The Right to Privacy," in *The Right to Privacy*, 42; Nissenbaum, *Privacy in Context*, 121.

²⁶ R. G. Frey, "Privacy, Control, and Talk of Rights," in *The Right to Privacy*, 66.

²⁷ Bloustein, "Privacy as an Aspect of Human Dignity," 188; Stanley I. Benn, "Privacy, Freedom, and Respect for Persons," 232; Jeffrey H. Reiman, "Privacy, Intimacy, and Personhood," in *Philosophical Dimensions of Privacy*, 310.

²⁸ Benn, "Privacy, Freedom, and Respect for Persons," 227; Reiman, "Privacy, Intimacy and Personhood," 310; Lorenzo Magnani, *Morality in a Technological World: Knowledge as Duty* (Cambridge: Cambridge University Press, 2007), 146. While Michel Foucault does not add substantially to this discussion, his analysis of the function of the "panopticon" in discipline demonstrates the role privacy plays in autonomous decision making. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1995), 209.

²⁹ Benn, "Privacy, Freedom, and Respect for Persons," 235; Reiman, "Privacy, Intimacy, and Personhood," 306.

³⁰ Soraj Hongladarom, "Privacy, Contingency, Identity, and the Group," in *Handbook of Research on Technoethics*, ed. Rocci Lippicini and Rebecca Adell (Hershey, PA: Information Science Reference, 2009), 503; Makoto Nakada and Rafael Capurro, "The Public/Private Debate: A Contribution to Intercultural Information Ethics," in *Handbook of Research on Technoethics*, 344. I personally encountered this distinction within my family during the last year. When I was visiting my American parents for a week, my mother requested sternly but politely that I instruct my pre-school-age child not to go into my parents' bedroom. A week later, in-laws in Korea were overjoyed when my child wanted to play with them in their bedroom. Despite the clear "open door" attitude my in-laws expressed, because of my own deeply Western inculcation, I always felt worried that my daughter would get in trouble.

³¹ Nissenbaum, 108–109.

information for a purpose different than that for which it was originally obtained (e.g., examining census data to deport undocumented immigrants) is a moral transgression.³² Thus, a corresponding *duty* to the *right* of privacy is *confidentiality*—maintaining in confidence what is conveyed in private. Finally, Weinreb notes that the information that *ought* to remain private is largely contextual: age and social security number are relevant to government officials, while HIV status is relevant to sexual partners.³³ The challenge then is that unlike a right to freedom of belief or freedom from torture, the right to privacy is mired in specific contextual questions.

Because the right to privacy requires context, there are legitimate cases when it can be trespassed. Parent notes that while a government agency may have a reasonable request for personal information to carry out specific duties, this only allows intrusion of privacy for information relevant to the agency's work and under legally necessitated cases.³⁴ Legitimate cases of trespassing the right to privacy may involve necessary intrusions for the sake of care, such as a medical doctor collecting health information, or a therapist asking invasive questions.³⁵ More obviously, commentators generally accept that privacy can be legitimately invaded for the sake of carrying out criminal justice, though even then it does admit of limits, such as the right to not self-incriminate.³⁶ The right to privacy has often been invoked to strike out laws perceived as unnecessarily intrusive.³⁷ In general, invasion of privacy is viewed as legitimate when carried out as part of the necessary procedure of criminal justice investigations or necessary bureaucratic procedures.³⁸ The burden of demonstrating the need to invade privacy falls on the agent who intrudes, not the person who has had his privacy intruded upon. As a clear example, law enforcement agencies in the United States either must have a warrant or "probable cause" for invading persons' privacy, including

³² Bloustein, "Privacy as an Aspect of Human Dignity," 185.

³³ Weinreb, "The Right to Privacy," 43.

³⁴ Parent, "Privacy, Morality, and the Law," 282.

³⁵ Ruth Gavison, "Privacy and the Limits of the Law," in *Philosophical Dimensions of Privacy*, 380.

³⁶ Robert S. Gerstein, "Privacy and Self-Incrimination," in *Philosophical Dimensions of Privacy*, 246–264. According to Parent's definition of "wrongful invasion," the work of a doctor or therapist would almost never be considered an "invasion" because, even though the information may be private, it is usually offered up freely by the patient. Of course, if a patient does not divulge important psychiatric or medical information, he will not be able to receive proper care. Whether or not information is freely divulged, doctors and therapists do gain access to their patients' private information by virtue of diagnostic procedures.

³⁷ Parent, "Privacy, Morality, and the Law," 283.

³⁸ Parent, "Privacy, Morality, and the Law," 281.

accessing their private data (informational), entering their homes (physical), and detaining them (attentional). Probable cause must be defensible in a court; the burden of determining if a violation is warranted falls upon the officer involved. The New York District Court case *Floyd v. City of New York* demonstrates how the ambiguity of “probable cause” was implemented by New York City police officers in a discriminatory fashion in so-called “stop and frisk” procedures, targeting black and Latino pedestrians at disproportionately high rates.

The strongest argument for the right to privacy resides in the fact that autonomous action requires it. In his discussion of privacy, Lorenzo Magnani recalls Sartre’s discussion of bad faith to bring the issue to bear: those who act while deprived of privacy do not act in an “authentic” way, those who act falsely under the guise of privacy also fail to act in an “authentic” way insofar as their assumptions of what is true about their actions are false.³⁹ If one is to be able to act in a way that is true to herself, those closest to her, and those outside her circles of intimacy, she will need a certain amount of what Erving Goffman refers to as “front region control.”⁴⁰ Having some control over what is publicly known and who one’s audience is, she is able to discern what actions will be best suited, try on different roles, and act in new ways. One of the most poignant explanations of privacy is “the freedom to pick one’s nose.”⁴¹ This somewhat distasteful example clarifies the relation between autonomous action and privacy in a playful manner: most adults find it embarrassing to be seen picking their nose, but this may not stop them from doing so in private. Our decisions about how to act depend largely on who is or is not watching us. Because of this social influence, privacy is a necessary part of adolescent identity formation—the manner in which they come to understand what it means for them to be autonomous individuals.⁴² When there is no privacy every performance is before a full audience, which does not allow any room for intimacy, self-development, uncoerced action, or even allowing others to act fully. The claim to privacy does not justify duplicitous actions, but the necessity of privacy allows me to make authentically moral decisions *because* I am able to act autonomously—that is, as a law to myself—and not subject to anyone

³⁹ Magnani, *Morality in a Technological World*, 146.

⁴⁰ Erving Goffman, *The Presentation of the Self in Everyday Life* (New York: Anchor Books, 1958), 137.

⁴¹ See, e.g., Carman Neustaedter, Saul Greenberg, and Michael Boyle, “Blur Filtration Fails to Preserve Privacy for Home-Based Video Conferencing,” *ACM Transactions on Computer-Human Interaction* 13, no. 1 (March 2006): 1–36.

⁴² Sherry Turkle, *Alone Together: Why We Expect More from Technology and Less from Each Other* (Cambridge, MA: MIT Press, 2010), 174.

else.⁴³ To be responsible moral actors, we need a modicum of privacy within which we can model and shape ourselves freely.

Privacy is a major source of *legal* as well as philosophical discussion for the simple reason that it is difficult to strike the proper balance between legitimate and illegitimate invasions of privacy. One cannot have a legal right to violate the law. At the same time, governmental agencies have at times used the law as an excuse to justify violating individual privacy, the most famous recent example was Edward Snowden publicly revealing the National Security Administration's monitoring of individual communication data under the FISA Amendments Act of 2008.⁴⁴ Court rulings offer nuanced development of an understanding of the proper middle range between violation of one's legitimate right to privacy and rightful trespassing of privacy to support greater rights. There is a need for privacy, despite former Google CEO Eric Schmidt's claim that "if you have something that you don't want anyone to know, maybe you shouldn't be doing it in the first place."⁴⁵

PRIVACY IN THE CATHOLIC TRADITION

Philosophically, then, privacy is an important, but primarily instrumental good—that is, not a good in and of itself, but for what it allows us to enjoy. Since *The Pillar* locates itself as a Catholic publication, the analysis of Flynn and Condon's story requires theological engagement as well. In what ways, we must ask, does the Catholic tradition deepen and nuance philosophical accounts of privacy, and how does it ground these accounts theologically? In this section, I provide a brief overview of privacy in magisterial writings before articulating three basic goods that privacy protects and that this tradition upholds as necessary for human dignity: personal reputation, family life, and conscience. This reflection foregrounds magisterial teaching for two reasons: first, as noted above, this is an un(der)developed concept in theological scholarship and, second, the clear support for privacy within magisterial writings provides solid grounding for further theological reflection.

As John Hill notes, magisterial teaching most coherently and consistently connects the right to privacy with "the dignity of the

⁴³ See Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. Allen W. Wood (New Haven: Yale University Press, 2002), 63.

⁴⁴ Barton Gellman and Ashkan Soltani, "NSA Infiltrates Links to Yahoo, Google Data Centers Worldwide, Snowden Documents Say," *The Washington Post*, October 30, 2013.

⁴⁵ Richi Jennings, "Google CEO: If You Want Privacy, Do You Have Something to Hide?," *ComputerWorld*, December 11, 2009, www.computerworld.com/article/2468308/google-ceo-if-you-want-privacy--do-you-have-something-to-hide-.html.

human person.”⁴⁶ Both the *Catechism* and *Gaudium et Spes* list it among a constellation of other rights tied to, in the words of the *Catechism*, “respect for the person as such” (no. 1907) and, in the words of *Gaudium et Spes*, “the exalted dignity proper to the human person” (no. 26). Few direct references to *the good* of privacy exist in magisterial writings, but *that* it is good is quite clear. The *Catechism* affirms the state’s obligation to protect the right to privacy for the sake of the common good (nos. 1907, 2498), as does Pope Francis in *Fratelli Tutti* (no. 42). The *Catechism* further ties privacy to freedom (no. 2492), a point on which Hill agrees.⁴⁷ Outside of these references, very little is said in broader magisterial writings. “Private” as an adjective is invoked to discuss things like one’s privately held beliefs and private associations (*Pacem in Terris*, no. 14; *Gaudium et Spes*, nos. 5, 72; *Fratelli Tutti*, nos. 164, 276). The most frequent invocation of the “private” is by far the question of “private property” (see, e.g., *Rerum Novarum*, nos. 8–11; *Quadragesimo Anno*, no. 49; *Gaudium et Spes*, no. 71; *Fratelli Tutti*, nos. 120, 123), an unsurprising emphasis given Catholic belief in the “universal destination of earthly goods” (*Gaudium et Spes*, no. 69). Nonetheless, despite the lack of clear attention to the issue of privacy, magisterial teaching clearly affirms its goodness and denounces its violation. To say privacy is constitutive of human dignity, however, does not say much, so we must turn to specific aspects of privacy clearly necessary to dignify the person.

First, personal reputation is an inherent good. *Gaudium et Spes* lists personal reputation as an important right, along with privacy, for respecting basic human dignity (no. 26). This right does not legitimize rewriting the past or suppressing information, as Prosser notes, but rather is a claim about one’s ability to work in fellowship with others—that is, to participate *freely* with others as a dignified human being. If people (falsely) believe me to be a seducer, they will treat me according to this belief, either with suspicion or intrigue. A woman suspected of being a thief will always be regarded with suspicion and her personal dealings will be hampered by this reputation. If it is rumored that a man abuses his children, the police may interfere with his family, even removing children from his custody. Furthermore, the right protects against libel, slander, and other acts which violate the eighth commandment, “You shall not give false testimony against your neighbor” (Exodus 20:16).

The right to privacy is important for reputation because even factual information not publicly known can cause unfair damage to reputation. The *Code of Canon Law* acknowledges this fact. Canon 220 thus states: “No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any

⁴⁶ Hill, “Privacy and the Teaching of the Church,” 15.

⁴⁷ Hill, “Privacy and the Teaching of the Church,” 16.

person to protect his or her own privacy.”⁴⁸ “Illegitimately” is an under-defined term here which I address below, but the *prima facie* position the Church lays out is that persons have a right to privacy as well as, or in order to, protect their reputation. The *Catechism* goes further and stipulates that states “should punish any violation of the rights of individuals to their reputation and privacy” (no. 2498).

Because public perception relies heavily on social acceptance and proper “role performance,”⁴⁹ separation between the public and the private is important for maintaining the ability to participate in the common good (*Catechism*, no. 2489). This is no blanket acceptance of all private behaviors, but there are many stigmatizing traits people may wish to legitimately keep private. A short list would include sexual orientation, immigration status, medical history or conditions, parentage, mental illness, religious belief, ethnicity, and financial status. Local mores will determine to a great extent which of these are more “shameful” than others, but we can easily identify persecutions based on each of these characteristics within the last century. Medical conditions in general present a compelling case for the need for privacy, as they often evoke stigmatization in the public realm despite being out of the control of those who suffer from them. For example, Ryan White—a hemophiliac teen infected with HIV in a transfusion of Factor VIII in 1984—was banned from re-entering his school because of the stigma tied to HIV/AIDS.⁵⁰ White’s case is instructive as his own tragic death led to greater social awareness and destigmatization of HIV, but the threats and epithets he and his family experienced as they fought for basic human *dignity* demonstrate the real danger that breaches of (informational) privacy hold for one’s personal reputation.⁵¹

Second, privacy is good for the family. Catholic tradition has uplifted the family as the basic unit of society, the domestic church,

⁴⁸ On this point, it is worth noting that there is a great deal more scholarship on the *canonical* right to privacy than there is about the *moral* right to privacy. Some examples (most are not in English): Martí Sánchez and José María, “El abogado ante las causas matrimoniales canónicas: ciertas cuestiones deontológicas,” *Ius Canonicum* 57, no. 113 (2017): 239–276; Michael C. Johnson, “Psychology and the Seminarian: Historical Developments and Praxis in the United States,” *The Jurist* 76, no. 2 (2016): 531–580; Dominique le Toumeau, “Le canon 220 et les droits fondamentaux à la bonne réputation et à l’intimité,” *Ius Ecclesiae* 26, no. 1 (2014): 127–148; and all of *Ius Ecclesiae* 31, no. 2 (2019). Since Condon and Flynn are canon lawyers, it would be baffling if they were unaware of the right to privacy in canon law.

⁴⁹ See Goffman, *The Presentation of the Self in Everyday Life*, 38–39.

⁵⁰ See “A Timeline of Events in Ryan’s Life,” *RyanWhite.com*, web.archive.org/web/20071012032359/http://www.ryanwhite.com/pages/timeline.html.

⁵¹ Sharon Cohen, “‘City of Firsts’ Struggles with Division over AIDS in School,” Associated Press, April 28, 1986.

an image of the Trinity (*Gratissimam Sane*, no. 17; *Lumen Gentium*, no. 11; *Amoris Laetitia*, no. 11). Magisterial teaching insists that the sexual relationship between spouses in the family requires intimacy and therefore privacy (*Gaudium et Spes*, no. 51; *Amoris Laetitia*, no. 123; *Humanae Vitae*, no. 12). Although magisterial teaching holds that not all consenting adult sexual activities are morally good, it does emphasize the need for privacy for morally good sexual intercourse, and extends this privacy generally in cases of consensual but “illicit” sex acts.⁵² Furthermore, intimacy does not merely mean sexual intercourse; it also means tenderness and friendship (*Amoris Laetitia*, no. 123). Nurturing family bonds between spouses, parents and children, siblings, and extended groupings requires time and space set apart from the intrusion of others. Intimacy—hence (physical) privacy—is important for developing these human bonds.

Moreover, in its role as the “domestic church” the family requires privacy. Catechesis does not begin in a church building but in the home, and education in a broad sense begins during infancy. The family provides a basic set of values, understandings, and beliefs which equip children to enter the public sphere (*Amoris Laetitia*, no. 273). Thus, Pope Francis attests that the need for privacy is not absolute: families are also to go into the world and make a difference (*Amoris Laetitia*, no. 325). Children should be raised so that they can contribute positively to the world of which they are a part.⁵³ The private and public function as spheres which, together, help us understand ourselves as “political animals.” But children are not born ready-made for public life, and the intimacy of the home provides a space where primary socialization occurs, where the language and belief systems of parents are first handed on to children before they are exposed to the secondary socialization of the public. Even in a thoroughly Christian society, the private instruction of children is important for their own development of belief and encounter with God, whom Jesus himself teaches us to relate to as children (*Amoris Laetitia*, nos. 287–290, especially 290).

⁵² See “Statement of the Holy See Delegation at the 63rd Session of the General Assembly of the United Nations on the Declaration on Homosexual Orientation and Gender Identity,” 18 December 2008. The statement of the Vatican delegation has been interpreted by many as in clear opposition to anti-sodomy laws, which justify violation of privacy under the auspice of “indecent” or “illicit” sex acts. See, e.g., Laura Ann Philips, “Church Supports Move to Legalize Homosexual Acts in Trinidad and Tobago,” *Catholic News Service* April 17, 2018.

⁵³ Hannah Arendt deftly articulated the distinction between the private world of the home and the public world of the market. For Arendt, the private world is the world of biology—sex, birth, consumption, excretion, and death are walled off in the home—while the agora is the world of politics—commutations, speeches, legislation, performances, and festivals all occur in public. Hannah Arendt, *The Human Condition*, 2nd ed. (Chicago: University of Chicago Press, 1958), 73–78.

Finally, privacy is important for conscience. Once again, *Gaudium et Spes* affirms this. “Conscience is the most secret core and sanctuary of a [person]. There he is alone with God, Whose voice echoes in his depths” (no. 16). Though the image of secrecy and sanctuary here is more metaphorical than literal, the task of reflecting on one’s conscience implies a need for privacy, if not physical at least *attentional*. The very desire to remove oneself from distractions that prevent a person from experiencing God (through physical isolation, retreat from non-important matters, and general silence) is the basis of monastic life. To go into the cloister is to remove obstacles to sanctity. The monastery or hermitage is itself an image evoking privacy, and it is no accident that people “retreat” to monasteries for this reason.

Aside from the call to holiness, privacy is important for discerning one’s conscience apart from other social influences. Fundamental moral theologians often distinguish between conscience and superego, the difference between what one feels God is calling her to do and what she feels others are calling her to do.⁵⁴ Removing oneself, either physically or mentally, from the expectations of others allows one to act authentically. One needs privacy to at the very least discern what her conscience is telling her to do. Indeed, we might consider how the Ignatian Examen is meant to be practiced at night, as one is preparing for sleep, typically removed from the distractions of public life in the private bed chamber. This archetypical setting of privacy is recommended as the ideal location for reflecting on one’s own conscience.

Privacy also has great potential for helping one develop morally and spiritually. The seal of the confessional ensures that the penitent, in conversation with the confessor, is able to open space for greater sensitivity to sin and truly repent of wrongdoing. It is thus no accident that confessionals provide physical privacy for both penitent and confessor. As a *sacrament*, this “physical manifestation of God’s grace” requires privacy and its attendant duty of confidentiality, a duty that priests hold beyond the legal bonds held by other professions (e.g., therapists, lawyers). Spiritual direction as well requires a private, intimate setting. The directee and director must be vulnerable to each other so that discernment and spiritual growth can occur. Without discretion and confidentiality, the directee cannot trust the director and the opportunity for shared spirituality is diminished. The one-on-one private conversation that occurs in spiritual direction or in confession is necessary for forming one’s conscience and growing spiritually

⁵⁴ See William Spohn, *Go and Do Likewise: Jesus and Ethics* (New York: Continuum, 1999), 171; Charles Curran, *The Catholic Moral Tradition Today: A Synthesis* (Washington, DC: Georgetown University Press, 1999), 189–190.

closer to God.⁵⁵ Without this privacy, honesty, openness, and vulnerability—that is to say intimacy, both with another human being and God—the Christian is unable to reflect upon where God is calling her and how she is to follow.⁵⁶

That privacy has an important function within the dignified life of a Catholic should now be clear. Within at least three different spheres—the public, the domestic, and the moral/spiritual—privacy plays an important function. Publicly, our reputations require informational privacy, even if we live the most upright lives, and protecting this contributes to the common good. Domestically, physical privacy is important for raising families who are loved and in turn love God and neighbor. Personally, attentional privacy is important for following our consciences. Respect for human dignity requires protecting rights of privacy for one's place in public, the home, and face-to-face with God, but this is not a total right: without some degree of social regulation, privacy could spill over into a license to do evil. Thus, it is important to note theologically what constitutes legitimate incursion on privacy.

THEOLOGICAL LIMITS TO PRIVACY

That privacy is good for facilitating intimacy, that people should not be subject to arbitrary attacks on their character, and that people should be able to faithfully follow their conscience all fit within most conceptions of the good Christian life. Indeed, the lack of deep reflection within magisterial teaching on privacy suggests this position has been accepted to some extent as self-evident. The obvious objection, at the heart of *The Pillar* article, is whether one's right to privacy includes the commission of immoral acts.⁵⁷

That the veil of privacy can also function as a shroud for misdeeds is evident even from biblical texts. Paul uses the image of darkness and secrecy in Ephesians 5 to encourage the church in Ephesus to practice good deeds worthy of being praised, going so far as to say that Christians should “expose” deeds done in the dark (v. 11). Jewish leaders plot secretly to kill Jesus out of fear of the public response (Matt 26:3–5). Jesus himself says, “Everyone who does evil hates the

⁵⁵ See Mazour-Matusevich, “Privacy, Interiority, and Confession.” The privacy of the confessional is not, of course, meant to provide cover for sin. A penance given by the priest may involve disclosing a private sin, such as telling the truth to one's spouse. Nonetheless, the seal of confession does not depend on whether the penitent carried out the penance, so the duty to confidentiality remains.

⁵⁶ The *Catechism* also ties privacy to issues of conscience and freedom of belief in no. 1907.

⁵⁷ Without wading into discussions of sexual ethics and the nature of sexual intimacy, we can note quite simply that, if the account that Flynn and Condon have articulated is correct, Monsignor Burrill probably violated his promise of celibacy as a priest, which is a serious accusation.

light, and will not come into the light for fear that their deeds will be exposed" (John 3:20). Although some verses use the image of privacy as a protection for those who have not done evil, such as the disciples hiding after Jesus's crucifixion (John 20:19), or as secrets to be gloriously proclaimed from the housetops (Matt 10:27), privacy remains a place of suspicion: secrets must be proclaimed, the light must shine in the dark, those who plot must be exposed.

Is this sufficient? What distinguishes between the right "exposure" of dark deeds Paul mentions and the unjust exposure of Christians when the church is oppressed? Which instances of secretive "misdeeds" should be rooted out? Historically, governments in ancient Rome, feudal Japan, the Soviet Union, and elsewhere have seen Christians in the same light as criminals or revolutionaries. Are they justified in "outing" Christians and churches the way they might root out terrorist cells? From a philosophy of rights perspective, privacy tends to be subordinate to other rights: my right to privacy does not permit me to violate anyone else's rights in private nor to shroud other rights violations in the cloak of privacy. Thus, the sole justification for trespassing the right to privacy is protection of other rights.

Theologically, the question is less clear since rights remain only a part of the greater constellation of Catholic theological social ethics. The anti-ecumenical slogan "Error non habet ius" ("error has no rights") holds some truth: the right to privacy is not a *right* to do evil, which cannot be a right. But neither is the right to privacy forfeited by every evil act. If I decide to stay home from Mass, it would hardly be just to intrude my privacy for this dereliction. Likewise, if I blaspheme within my own home, become drunk, or write (but not send) hateful messages about other people, I maintain my right to privacy. Even though Catholic sexual ethics often has a great deal to say about which sex acts are morally licit and which are not, even most hardline sexual conservatives do not advocate for breaching privacy to ensure only procreative sex acts are carried out. The fact that privacy is necessary to be able to freely do good does not in turn mean that using it to do evil automatically forfeits the right.

On the other hand, the decades-long abuse crisis demonstrates why privacy cannot be an absolute right. Thousands of priests protected by dozens of bishops sexually abused thousands of minors. The evil and injustice of this would have remained hidden if it were not for investigative reporters working diligently to uncover it. Indeed, the continuous legal findings of cover-up in dozens of dioceses across the world over the past century show how grossly the shroud of privacy has been used to maintain the illusion of propriety against the demands of justice. The survivors of priest abuse know intimately how privacy can be a cudgel used to inflict greater suffering on victims.

One could move casuistically through cases of what should and should not constitute privacy breaches, but to determine whether privacy should be protected in any given case requires being privy to the situation. One can acquire knowledge of the particulars of a situation, for instance, by being a party to the facts of the matter, having taken the initiative to encroach on privacy, or having been entrusted under confidentiality to intimate details. If a student confides in me about a problem she faces on campus or if my wife struggles with depression, I am entrusted with access to private information, but if I suspect my neighbor is having an affair, the only way I can truly know if this is the case is to intrude on his privacy. Since privacy is a right, however, the burden falls upon demonstrating when privacy should be breached rather than when it should be maintained.

Here, the thought of Thomas Aquinas provides useful insight. Writing on the function of human law, Aquinas notes that while the law should promote virtue, it is still

framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained: thus, human law prohibits murder, theft and such like. (ST I-II q. 96, a. 2)

What Aquinas is after in his discussion of law is the question of the common good, which he defines as “universal happiness” (ST I-II q. 90, a. 2). Since universal happiness requires freedom to choose good and bad, the law should not punish people merely for doing what is bad. At the same time, when one commits an act of injustice, which impedes the ability of others to experience happiness, the act should be punished. Not every vicious act is inherently unjust: to be intemperate or to be cowardly may affect only myself.⁵⁸ Note that this is what ideally happens as well in criminal investigations: the police investigate cases where injustice occurs, such as where other people’s

⁵⁸ The question of whether one can possess a vice that does not affect other areas of life is a matter of debate. Aquinas himself believed that the virtues and vices were intrinsically connected so a person could not be just without being temperate, wise, and courageous. Likewise, vices like intemperance often include a component of injustice. For the sake of simplicity, however, I follow the line of thinking of John Stuart Mill, who in *On Liberty* notes that while vicious, drunkenness is not unjust unless it causes me to commit acts of violence or shirk my responsibilities to others. For the sake of argument, then, we can say that an individual engaging in excessive drinking does not legitimate privacy violations, but if he becomes abusive in his drunkenness, then his privacy is forfeited.

rights are violated or where unjust actions impede others from achieving happiness, such as theft, assault, fraud, and the like.

This gives us approximate guidelines for judging which morally dubious acts can remain protected by privacy and which should be subject to exposure. Acts of injustice which rightly demand intervention by a third party ought to be rectified, while acts that do not fall into the category of injustice should not. *Pacem in Terris* rightly notes that “individual [human beings] may not pursue their own interests in a way that is unfair and detrimental to others” (no. 92). The *Catechism* likewise implies legitimate boundaries: “The good and safety of others, respect for privacy, and the common good are sufficient reasons for being silent about *what ought not be known*” (no. 2489, emphasis added). In cases where the common good and/or the “good and safety of others” are at risk, the question of “what ought not be known” changes. In other words, mere “wrong” is not sufficient to invade privacy; rather, the criterion is probable risk or actual harm to the well-being of *others*.

This is a critical point to understand: the sexual abuse crisis was not a problem because many priests broke their promises of celibacy; it was a problem because they committed acts of violence against children. The shroud of privacy under which they were routinely shuffled and reassigned was an illegitimate claim to privacy because those bishops who protected predatory priests failed to uphold their own duties *as* shepherds. Entrusted with a fiduciary responsibility for the spiritual well-being of the Catholic faithful, these men failed both to protect congregants from predatory priests and to make amends for that failure. This compounding of injustice—both the violent injustice of sexual abuse and the negligent injustice of covering over the abuse—was only eventually exposed by a third party. The Spotlight investigative journalism team carried out *their* responsibility to report injustice accurately and appropriately because too many within the hierarchy had failed to carry out *their* own.⁵⁹

Since much of the prevailing narrative in Catholic media has focused on celibacy, sexual ethics cannot fully be separated from the broader discussion.⁶⁰ Consensual sexual intercourse between

⁵⁹ Michael Rezendes, “Church Allowed Abuse by Priest for Years,” *The Boston Globe*, January 6, 2002; and Sacha Pfeiffer, “Geoghan Preferred Preying on Poorer Children,” *The Boston Globe*, January 7, 2002.

⁶⁰ Let us note that for centuries, the “sin of Sodom” has been improperly classified as homosexual intercourse, so much that the term “sodomy” means non-vaginal sex. In reality, the great sin of the men of Sodom in Genesis 19 is rape. See Michael Carden, “Homophobia and Rape in Sodom and Gibeah: A Response to Ken Stone,” *Journal for the Study of the Old Testament* 24, no. 82 (March 1999): 83–96. The failure to adequately make this distinction has justified political and popular violence against LGBTQ people for centuries while rapists have been and remain under-prosecuted.

unmarried adults, even if it is casual, anonymous, same-sex, or non-procreative, is not an act of injustice. Thomas Aquinas himself recognized this distinction; though he denounces homogenital sex as “the sin against nature,” he does not claim it is a violation of justice as adultery and rape are (ST II-II q. 154, a. 12). It is thus not morally licit to invade a person’s privacy because one suspects him of being gay, or even of engaging in consensual homogenital intercourse. Legitimate concerns about a priest using his position to rape, sexually assault, torture, coerce, blackmail, embezzle, defraud, or commit other unjust actions do, however, justify intrusion into his privacy. As suggested by Parent, though, even in such cases there are proper procedures and requirements for just invasion of privacy.⁶¹

Justification for doing so, however, requires discernment. The criterion for legitimate breaching of privacy is whether doing so is necessitated by the protection of the common good or rectifying violations of rights. This question is complicated because only having access to what is private will reveal whether it ought to be exposed. For too long, the church hierarchy have treated privacy of clergy as paramount over safety and justice for victims of clergy abuse. This is unequivocally wrong. The failure of dozens of bishops to correctly note the distinction between maintaining the reputation of a priest and upholding justice for the victims of abuse legitimates the suspicions of the laity and non-Catholics toward any priest. But the failure of bishops to act properly in the past does not forfeit the rights of priests today. Unfortunately, until the hierarchy makes sufficient efforts to be transparent and just about clergy sexual abuse, every claim for a priest’s privacy will be viewed with suspicion.

It thus falls to investigative journalists, or anybody else who may have a legitimate duty to investigate issues of injustice, in due diligence to make sure there is a credible reason to intrude on privacy. The Spotlight team’s investigation of the Boston Archdiocese constituted a justified breach of illegitimate privacy. The archdiocese had coerced survivors into being silent, transferred priests to obscure their behavior, and used the legal apparatus to prevent justice. Justice to survivors and the demand for accountability greatly outweighed predatory priests’ right to privacy.

TRESPASSING PRIVACY IN *THE PILLAR* STORY

Applying this to *The Pillar* scenario, we see a very different outcome. The *Boston Globe* story detailed minors being coerced and abused by priests. These were serial violations of justice of the grossest kind. The Spotlight team spent months pursuing leads,

Privacy to protect gay men from violence is good, but privacy to protect rapists from prosecution is evil.

⁶¹ Parent, “Privacy, Morality, and the Law,” 281–284.

obtained legal documents, and interviewed victims and even a perpetrator priest before finally publishing their story in 2002. The Boston story did have massive repercussions on the Catholic Church, setting off criminal investigations across the United States and the rest of the globe, though it remains to be seen if justice will ever be fully served. Without exposing the system of abuse and cover up, the voices of the abused would have remained silent, and injustice would have continued unabated. Twenty years later, clerical abuse lawsuits are still being settled, and groups like Survivors Network for those Abused by Priests are still demanding hierarchical accountability.

The Pillar story could not be more different. In contrast to the carefully conducted research of the Spotlight team, Flynn and Condon are sparse on details: all they factually report is that an anonymous data broker sold purported data to *The Pillar* showing that someone who shared the same travel schedule as Burrill used the dating app Grindr, an app intended to connect consenting adults. The number of men with whom Burrill may have engaged in sex, their consent, and their ages—none of this is included within the purview of *The Pillar* story. This information would be necessary for the work of truly assessing whether injustices had occurred. If they indeed had, they would have occurred to particular victims. Assuming Burrill really did engage in casual consensual sex for years as an ordained priest, which the Grindr dating app is perhaps most famous for, exposing him did nothing to vindicate any victims. Against the goals of investigative reporting, *The Pillar* accomplished no rectification. Rather, the story was carried by unsubstantiated insinuation and the prejudices of its readers. Unaddressed, the irresponsible behavior of Flynn and Condon sets dangerous precedent for other would-be Catholic journalists. The story may result in clerical reforms toward greater invasions of privacy. At the very least, the story exposed Burrill to a great deal of public shame. By virtue of Flynn and Condon's own doing, it also increases suspicion of priests, supports homophobia in the Catholic Church, and obfuscates the realities of the abuse crisis. So what good did it accomplish?

The case of a priest (accused of) being unfaithful to his vow of celibacy provides a useful, though deeply unfortunate, case for reflecting on the bounds of privacy. One might claim that a priest's promise forfeits his right to privacy or at least recasts it, but I contend that this is to assume that a priest has no right to the goods listed above—namely, his reputation, family, and conscience. Certainly, a priest's reputation is an important good, as demonstrated by the scandal that emerged in relation to Burrill's reputation. Nor should a priest give up his conscience, as St. Maximilian Kolbe demonstrated. One might argue that priests have no right to a family, as the sacrament

of priesthood ordinarily requires celibacy, but priests do have parents, siblings, nieces and nephews, and other family members with whom they share intimate familial life, if not a home.

On the other hand, within the hierarchical church, too often the protection of the privacy of priests has come at the cost of justice. When Pope Francis speaks of the problem of clericalism, he implicitly references the veils of secrecy which protected Theodore McCarrick, John Geoghan, and others. Knowing that the institutional church has too often protected its shepherds to the detriment of its flock, we should not be surprised if thousands or millions of Catholics fantasize that *The Pillar's* act of rooting out the secrets of a gay priest was some sort of step toward justice and purification.

But this too is misguided. Falsely accusing someone of sexual abuse does nothing to help victims of abuse. Promoting homophobic speaking points only inflicts further pain and suffering on LGBTQ persons, including those living chaste lives and those who have been victims of abuse. Rooting out abusive priests means taking seriously the testimony of *victims*, not casting aspersions based on presumptive promiscuous patterns. As long as victims are not the primary focus of the clerical abuse crisis, they will be afraid to come forward with their stories, and rather than a careful accounting of injustice, we will have witch hunts like the one provoked by *The Pillar*. Indeed, a “witch hunt” may be the most apt description, since like the Salem witch hunts or the 1950s Red Scare the claim of indecency is invoked as justification for invading privacy and destroying reputations, to make an unsubstantiated claim.⁶²

⁶² *The Pillar's* second “big” story, which came out four months after the Burrill one, was a focus on the recent life-sentencing of priest Robert McWilliams on child pornography and exploitation charges. McWilliams had been arrested in December 2019, and his trial was already beginning in Cleveland before the Burrill story was published. While the Burrill story is pitched as “investigative journalism,” the McWilliams story is a public interest piece in which Flynn interviews the mother of one of the victims and the victim himself. The material of the stories is, in fact, quite different—the first being an exposé involving illicitly obtained private information of a priest’s sexual life with adults, and the latter being an account from victims of a predatory priest. Nonetheless, the way Flynn and Condon set up the Burrill story and marketed the Burrill and McWilliams stories on social media lends naturally to the conclusion that Burrill’s case is similar. Regardless of whether the comparison was initially planned, *The Pillar's* implication that Burrill must be predatory because promiscuous, tied to the details of McWilliams’ sexual exploitation of male minors reinforces the homophobic narrative that a gay priest must be a predatory priest. See J. D. Flynn, “Cleveland Priest Gets Life. Victims’ Mother: God Is with Us,” *The Pillar*, November 10, 2021, www.pillarcatholic.com/p/cleveland-priest-gets-life-victims.

CONCLUSION

In this era of “big data,” it is ever more important for Catholic theological ethics to come to grips with the importance of privacy. The legitimate exposure and prosecution of people involved in the production and trade of child pornography is different from the illegitimate blackmail of people consuming legal pornography.⁶³ Beyond acts of moral impropriety are the moral problems of the sale of data to third parties, the use of data for behavioral manipulation, tracking people’s online activities and behaviors, protecting data from being used for criminal purposes, and so forth. Pope Francis even notes in *Fratelli Tutti* that amidst the rise of big data and its prevalence throughout our world, “the right to privacy scarcely exists” (no. 42). Catholics have a vested interest in reflecting and speaking on the matter. Recognizing the intrinsic relationship between privacy and other goods like reputation, freedom, the family, all of which are constitutive of human dignity, we should be active in addressing moral issues of privacy. As big data quantifies who we are through data points, marketing companies bombard our attention with tailored ads, and Internet of Things devices track our whereabouts, we ought to cry out against the dehumanizing tendencies of our digital culture and emphasize the critical importance of human dignity in the right to privacy.

Beyond protections against privacy violations through information and computing technologies, much work remains for moral theologians in delineating ethical questions on privacy. How does privacy fit, exactly, into the Catholic moral life? The following questions, some of which have been raised by reviewers of this article, suggest important avenues in need of careful theological reflection. Does the right to privacy look the same for religious, clergy, and laity or are there important differences? Does private impropriety affect the common good and, if so, how are we to mitigate this against the demand to protect privacy for the sake of the common good? What is the proper balance that bishops must strike between protecting privacy for their priests and permitting such priests to continue sinning—not including injustices—under the shroud of privacy? What unique challenges does the Sacrament of Reconciliation bring to the right to privacy? Do any ecclesial figures hold the authority required to dig into otherwise private information the way a detective or investigative journalist does? Is the *Catechism*’s insistence that those who trespass privacy should be punished (no. 2498) sufficient for addressing

⁶³ The production of even legal pornography is mired in various injustices, not least of which is the exploitation of those involved in its production. These cannot be extricated from the act of viewing pornography as it supports the system of exploitation and injustice.

trespasses into privacy, or should a more nuanced position be expounded? The aforementioned lack of scholarship in this area of Catholic morality leaves many questions unanswered; it is my hope that as other scholars consider these issues, the importance of privacy will gain greater emphasis and clarification.

I think it is only fitting to end with a reflection on Christ's own approach to privacy. The woman caught in adultery (John 8:1–11, NKJV) presumably had her privacy invaded by the men who accused her before Jesus. She never refutes the accusation of sin but sits face to face with an adjudicator of the law, knowing her shameful deed is one that might cost her her own life. Her private indiscretion, also a violation of justice to her husband, may mean the literal death of her. Christ's response is telling. Jesus does not grant the crowd the attention they demand of him. Their intrusion into her physical privacy is followed by a vocal breach of her informational privacy and an attempt to breach Jesus's attentional privacy, but he resists. Their spectacle does *not* require his reaction. He stoops and writes in the dirt, as though the crowd around him were not there. When pressed, he then reverses the conditions: let the one who is without sin cast the first stone. Did those gathered hold any shameful deeds in their private lives? No one else's sin is described in this pericope, yet every person present starting, we are told, with the oldest, leaves (v. 9). In the end, the woman is left face to face with the Lord. "There [she] is alone with God, Whose voice echoes in [her] depths" (*Gaudium et Spes*, no. 16). "Neither do I condemn you" (v. 11), is the voice she hears. "Go and sin no more." 

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