

**‘We have Ways of Making You Talk: Privacy, Democracy and
Neuroethics ’**

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Recent developments in neuroscience create new opportunities for understanding the human brain. The power to do good, however, is also the power to harm, so scientific advances inevitably foster as many dystopian fears as utopian hopes. For instance, neuroscience lends itself to the fear that people will be forced to reveal damaging thoughts and feelings which they would not have chosen to reveal, and of which they may be unaware.¹ It also lends itself to the worry that people will be subjected to medication or surgery which, though otherwise beneficial, alters their brain in ways that undermine their identity and agency. As Kenneth Foster notes, neural implants can have surprising and unintended adverse effects, even when they help to mitigate the loss of bodily control associated with Parkinson's disease, or help to provide hearing for children who would otherwise be profoundly deaf. While the risk of adverse outcomes are scarcely specific to neuroscience, he thinks that 'These issues are perhaps more acute' with the latter than with other medical interventions, 'because they are intimately and fundamentally related to a person's communication with the outside world'. [2006 196]

Neuroscience, like genomic science, then, is likely to create new ways of harming people. Many of these will involve violations of privacy.² However, these are unlikely fundamentally to challenge the reasons to value privacy, or our ability to protect it in the foreseeable future. Rather, I would suggest, the major threat to privacy comes from the difficulty of determining its nature and value in a democratic society, and when, if ever, efforts to protect privacy are justified. I will therefore start by examining some contemporary threats to privacy, and their implications for neuroscience, before turning to philosophical problems in understanding the nature and value of privacy, and the practical consequences of those philosophical difficulties.

¹ As Neil Levy says, 'There has been a great deal of interest in the possibility of brain reading as a lie detection technology. The problems with existing lie detectors are well known: they produce high rates both of false positives and of false negatives, and they can be "beaten" by people who deliberately heighten their responses to control questions, which are used to establish a baseline for comparison'. However, as Levy explains, while the hope is that 'lie detection technology can hone in on the neural correlates of lies', it is implausible that 'for every *type* of thought there is a *distinct* neural correlate', so the interpretive problems bedeviling lie-detection are unlikely to go away. Hence, Levy suggests, 'the most immediate ethical problem arising from ...new techniques of measuring the neural correlates of mental states stem from the dangers of premature adoption. The aura of prestige and objectivity which surrounds science generally', and neuroscience in particular, means that pictures of brains 'are apt to be given a weight they do not deserve'. Neil Levy 2007 ch. 4 on 'Reading minds/controlling minds', especially pp 132-3 and 144.

² Ronald M. Green, 2006 'From genome to brainome: charting the lessons learned', provides a helpful comparison of the ethical issues raised by genomics and neuroscience. Specifically, he suggests that the privacy issues raised by genomics are much greater and more troubling than those raised by neuroethics, although in both fields, 'research and clinical activities... must start from the premise that information gathered, if wrongly used, can be as toxic as a dangerous drug', p. 106 and 108-9

Neuroscience holds out the prospect that we can read minds, or find out what other people think, without their permission and, possibly, without their knowledge. But as Thomas Nagel makes clear, we do not need new technology for the latter, at any rate. Nagel is troubled by the way in which otherwise scholarly autobiographies of Russell, Wittgenstein and HLA Hart implicate us, as readers, in intrusions into matters that most of us would consider, and would wish to keep, private. [Nagel 2002 and 2005] He is particularly disturbed by the way that these autobiographies carefully scrutinise some of the most excruciating, piteous and demeaning features of their subjects' lives, thereby opening them to the salacious, obtuse and moralistic scrutiny of people who were not, and would not have been, trusted with such intimacies when Russell, Wittgenstein and Hart were alive. Thus, he refers to 'the indecency of being exposed to the depths of Russell's misery and the expression of his sexual passions' and asks 'Why does a great philosopher, or a great artist, or a great scientist, forfeit his privacy forever, so that we all get to read his love letters and sneer at his weaknesses? What such people create is always something far finer than they are. It is extracted from a flawed and messy self so that it can float free, detached from the imperfect life that produced it'. [2002, 63, but see Mendus 2008]

Or consider recent controversy surrounding torture, and its use by liberal democracies. [Lukes 2006 and 2007; Levey 2007; Scarry, 1981 ch. 1; Sussman, 2005] As Jacobo Timerman so memorably showed, one can be tortured in order to extract information about imaginary and, frankly, incredible events, in his case reflecting the paranoid anti-Semitism of his torturers and of the Argentine junta itself.³ Nonetheless, it seems that torture can sometimes generate information about something other than the horrors that people are willing to inflict on others, or the implications of those horrors for the personality of torturer and victim. Having summarised the evidence on the matter, Steven Lukes says,

' I agree with Sanford Levinson that we really have no idea whether or not torture is a reliable way to secure information and that the evidence is inherently anecdotal. But that should give us pause and make us less secure in endorsing Professor Shue's conviction about the vast distance between imaginable artificial cases and the real world. Besides which, it is not at all difficult to imagine cases posing the problem of torture that are far more plausible than that of the proverbial ticking bomb.' [2006, 12]

On the face of it, therefore, neuroscience is unlikely to pose a special challenge to privacy, although it may provide new means to make people reveal themselves, and new motivations for trying to do so.

The reason why people's thoughts are not as accessible to us as we might like is because of the obstacles created by law and custom, quite as much as any intrinsic difficulty in

³ See Jacobo Timerman 1981. ch. 6. 'It sounds absurd to read that my torturers wanted to know the details of an interview they believed Menachem Begin had held in 1976 in Buenos Aires with the Montoneros guerrillas. It's less absurd when you're being tortured to extract an answer to that question. To anyone at all familiar with Begin, such an interview sounds unreal. But it seems quite coherent to someone who believes in the existence of an international Jewish conspiracy prepared to utilize any method to seize world power...For many years, Argentine Nazi ideologues had claimed the existence of a Jewish scheme for seizing Patagonia, the southern zone of the country, and creating the Republic of Andinia'. (pp. 72-3).

determining what other people think or believe. For example, if laws did not forbid employers from quizzing female employees about their sex lives, marital status and reproductive plans, employers would be able to learn facts about their employees that they might have been unable to discover simply by looking at them, or by investigating their work experience, interests and abilities. So while it is possible that neuroscience will enable us to reveal things that we would otherwise be unable to learn, we currently have plenty of ways to find out what other people are thinking, and of manipulating or altering their dispositions, beliefs and plans. However, we do not always act upon on these, even when we could, because we conclude that doing so would be immoral, and in some cases morality makes the possible inconceivable.

Most of the time we do not weigh up the pros and cons of rape, theft and murder as a way of achieving our ends, because we have internalised norms which rule these out as means of getting our way. Our best protections of privacy, then, are likely to depend on people sharing the conviction that invasions of privacy are wrong and ought to be prevented and, if necessary, punished by law and custom. However, the nature and value of privacy are deeply controversial. Indeed, the difficulty of defining a right to privacy is sometimes thought to be a stumbling block to the statutory recognition and protection of privacy in the United Kingdom.⁴ If neuroscience threatens privacy, then, this is as likely to reflect uncertainty about the value of privacy, as dangers inherent in new sciences and technology.

Conceptual Disagreement About Privacy

Although the philosophical and legal literature on privacy tends to dwell on the difficulty of defining a right to privacy, it is unlikely that privacy is intrinsically more difficult to define than any other complex right or value. After all, the main reasons why it is hard to define privacy – the absence of a set of necessary and sufficient conditions which would enable us to agree on what counts as a case of privacy [Allen, 1988, Decew, 1997] - suggest that the fuzziness of allied concepts, such as liberty and equality, are themselves reasons why the boundaries of privacy are so hard to fix for philosophical and legal purposes.⁵

⁴ See, for example, this oft-quoted line from the Younger Report on privacy: ‘One of the obstacles to the development of a satisfactory law of privacy has been the difficulty of definition’. Para 37, p. 10. The report notes that some people giving evidence before the Committee favoured the legal recognition of a general right to privacy, (para 34, pp. 9 – 10). However, ‘this has not been the way in which English law in recent centuries has sought to protect the main democratic rights of citizens. Neither the right of free speech nor the right of assembly is embodied in statute law. Reliance has been placed on the principle that what is not prohibited is permitted and the main emphasis in the field of civil rights has been placed therefore on keeping within acceptable limits, and providing precise definitions of, the restrictions imposed by the civil and criminal law on the individual’s freed of action’. The incorporation into British Law of the European Convention on Human Rights and Fundamental Freedoms by the Human Rights Act of 1998 has changed this legal situation somewhat, although in practice incorporation had been going on for a while.

⁵This explains the difficulty with Judith Thomson’s critique of privacy in ‘The Right to Privacy’ (Thomson, 1984). I agree with Thomson that it can be useful to disaggregate privacy into its component parts, however, I am not sure that these parts are best described as claims to liberty, private property and

For example, the concept of liberty is often now thought to have a tripartite structure, so that when we think of liberty we should think in terms of an agent/agents who is/are in a position to do certain things, free from certain obstacles.[Rawls, 1972, para. 32; Miller, 2006] But while this can help us to finesse old debates about the relative merits of ‘positive’ and ‘negative’ liberty, it may not help much when distinguishing privacy from liberty. For example, by itself, it cannot tell us whether Judith Thomson is correct that the moral right to decide who to invite for dinner is best thought of as a right to liberty *rather than* a right to privacy. Nor will it tell us whether, given the difficulty of resolving such disputes, we should conclude that there are cases where a putative moral or legal right can be described and justified in rather different ways.

The concept of equality is likewise contested, and the depth of this disagreement helps to explain why the injunction to treat people as equals fails so often to illuminate the nature and limits of privacy. [Clayton and Williams 2002] For example, even people who care about equality may reach different conclusions about the morality of Joyce Maynard’s decision to publish her account of life with the famously reclusive author, John Salinger. Doing so, clearly, undermined his privacy, while enabling her to describe and explain aspects of her private life as a talented 18 year old writer, pursued by a distinguished, and much older, novelist.⁶ If the boundaries of privacy are obscure, in other words, this is partly because we are unsure how best to think about liberties of thought, association and expression, and what it means to treat people as equals.

The difficulty of defining privacy, then, is that we have no hard and fast way of distinguishing a case of privacy from a case of liberty, equality, friendship and happiness. However, this appears to be no obstacle to philosophical elucidation of concepts like liberty and equality, which have received a great deal of attention in recent years, and this suggests that our ability to clarify the nature and value of privacy does not depend on our ability to define or sharply to distinguish it from allied concepts. Conversely, our ability to define privacy for philosophical or legal purposes will not alter the fundamental fuzziness of the concept, or resolve controversy about its nature and relationship to other values.⁷

The word ‘privacy’ is associated with a variety of rather different things, typically polarised around control of personal space, control of personal information, and control

bodily integrity, let alone that rights to this trilogy are any easier to define, or more basic normatively, than the right to privacy itself. For similar worries with Thomson’s arguments, see Thomas Scanlon, 1975

⁶ Daphne Joyce Maynard published *At Home in the World* in 1998, which described the 10 months, in 1972, when she had lived with Salinger. In 1998 she also sold the letters which Salinger had sent her. A court case held that Maynard was entitled to sell them, but nobody was entitled to publish their content without Salinger’s permission.

⁷ The Younger Committee on privacy put the matter well when they wrote that ‘The concept of privacy causes little difficulty to the ordinary citizen. He can readily identify the part of his life which he considers to be peculiarly his own, and for which he claims the right to be free from outside interference or unwanted publicity. Nevertheless, the kinds of privacy to which importance is attached and the intrusions against which protection is sought differ ... widely from one individual to another and from one category to the next..’ para 13, p. 5

of personal relationships, because privacy sets limits to the way that outsiders can interfere in our lives. Thus, some synonyms for privacy refer to seclusion, to selective access to an area such as a garden, or a house or apartment, and also to its exclusive or selective, rather than inclusive, character. When associated with control of personal information, synonyms for privacy centre on ideas of confidentiality, anonymity, secrecy, limited disclosure and control of access to information – whether factual, artistic, scientific, legal, religious and metaphysical. Finally, when referring to personal relationships, privacy is associated with the intimate, the sexual, the familial and the domestic.

These are rather different things, and though it is fairly easy to see certain practical, historical and psychological associations amongst them, the things ‘privacy’ refers to are not tightly related from a logical or a normative perspective. For example, private space can foster control of personal information and enhance our ability to define and shape our personal relationships, but it is equally clear that it can prevent us finding out who knows what about us, who has been saying what about us, and who plans to do what to us. In that sense, privacy can inhibit and, even, threaten intimacy, fostering hypocrisy or mistrust rather than frankness, mutual confidence or love. Conversely, while privacy for our friendships, family and intimate associations can enable us to limit access to our homes and possessions, and protect unpopular scientific and religious beliefs from a hostile world, sex, family and domestic life are notorious harbingers of chaos, limited time, lost and broken objects, intrusions and even assaults on our energies, bodies, mental peace and stability. So it is not entirely clear that privacy in personal relationships bears any but a contingent connection to privacy when used to refer to places or information, or that it enhances our autonomy, peace of mind or the integrity of our bodies and possessions.

Nor is that all. Even within each category, the things to which privacy refers seem only loosely connected to each other. Exclusivity may foster seclusion, but is scarcely necessary for it – how necessary it is probably depends on what sort of access one has to secluded public spaces like parks, roads and countryside, as well as to cinemas, museums and other public buildings which can be quite deserted and peaceful. Confidentiality may protect our anonymity, but people can clearly value the anonymity of a mass demonstration or protest without presupposing, or desiring, that it be confidential. While we sometimes want to confide in others anonymously, the ability to give and keep secrets often depends on a close personal or professional relationship. So the different aspects of privacy as used to refer to control of information are not intimately connected. Nor can anyone who has much experience of the sexual, the domestic or the familial suppose that these all refer to the same thing, even if the one often leads to, and is associated with, the other. Indeed, many aspects of our supposedly intimate relationships are so bound up with complex social conventions and legal requirements that they say less about us and our desires, interests, needs and feelings than about the society we live in, or the needs and desires of others.

Normative Disagreement About Privacy

However, privacy is controversial not simply because it can be difficult to decide what is, or is not, a case of privacy, but because people often disagree about privacy on evaluative grounds as well. For example, while moral philosophers tend to believe that privacy is valuable, and associate its value with the importance of love, care, individuality, and autonomy, feminists tend to see the association of privacy with these things as reasons to fear that privacy threatens the freedom and equality of women.⁸ As Catherine Mackinnon trenchantly puts it,

‘It is probably not coincidence that the very things feminism regards as central to the subjection of women – the very place, the body; the very relations, heterosexual; the very activities, intercourse and reproduction; and the very feelings, intimate – form the core of what is covered by privacy doctrine. From this perspective, the legal concept of privacy can and has shielded the place of battery, marital rape and women’s exploited labor; has preserved the central institutions whereby women are *deprived* of identity, autonomy, control and self-definition; and has protected the primary activity through which male supremacy is expressed and enforced’. [101; but see Lever 2000]

Nor are feminists the only ones who are skeptical. Communitarian political theorists, such as Michael Sandel and Amitai Etzioni, worry that paeans to the importance of privacy exaggerate the importance of individual choice morally and politically, and underplay the moral and political significance of social solidarity, and of unchosen ties of affection, loyalty and fraternity. [Sandel 1996; Etzioni 1999] Indeed, the distinguished anthropologist, Edmund Leach, believed that ‘Privacy is the source of fear and violence...I am isolated lonely and afraid because my neighbour is my enemy’. [Leach 1968, 46]

Such worries about privacy are not inherently illiberal. After all, in his reflections on democracy in America, Tocqueville famously expressed the fear that individuals in modern societies might come to attach so much importance to their private affairs that they would sacrifice the substance of self-government to a form of administrative despotism, or paternalist government.⁹ So, even when people agree on what counts as a case of privacy, they may still disagree quite fundamentally about its value.

⁸ Quintessential philosophical accounts of privacy, including those by James Rachels, Jeffrey Reiman and Charles Fried, can be found in Ferdinand Schoeman (1984), alongside classics of the legal literature, such as the article by Samuel Warren and Louis Brandeis, reprinted from the *Harvard Law Review*. Quintessential examples of feminist concerns with privacy can be found in Boling, 1996; Jean Cohen 2004; MacKinnon, 1987; Okin 1998.

⁹ Alexis de Tocqueville, *Democracy in America*, vol 2, ch. 6 ‘What Sort of Despotism Democratic Nations Have to Fear’. Of the modern citizen, he thinks, ‘Each one of them, withdrawn into himself, is almost unaware of the fate of the rest. Mankind, for him, consists in his children and his personal friends. As for the rest of his fellow citizens, they are near enough, but he does not notice them. He touches them but feels nothing. He exists in and for himself, and though he still may have a family, one can at least say that he has not got a fatherland’. Tocqueville, 1966, 692).

This might suggest that controversy about privacy is irresolvable philosophically – and therefore, that the regulation of neuroscience, at least in this area, can only be decided by the forces of chance, or by the weight of numbers, money and force. However, such a conclusion would be premature. Granted, some disagreements about value are inevitable in free societies, as Rawls saw, and not all disagreements are reasonable, or consistent with the best interpretations of fact and value. [Joshua Cohen 1993, 281-5 and 2009, ch. 5] Within those constraints, it should be possible to achieve some points of agreement about the nature and value of privacy, although whether these will be sufficient to resolve ethical controversy over people's claims to anonymity, confidentiality, solitude or intimacy, and their relative importance as compared to the quest for scientific understanding, or the development of safe and effective therapies, is another matter.

Privacy, Democracy and Neuroethics

I have argued, thus far, that the main threats to privacy in contemporary societies are less likely to come from developments in neuroscience or genomics, than from the difficulty of securing agreement on the nature and value of privacy. These problems are particularly acute in democracies because liberties of conscience, association and expression facilitate the airing of differences and, to some extent, encourage the creation and identification of different beliefs, identities and ideals. But the problem, as well, is that we do not well understand the point of protecting privacy in societies in which people's political liberties are secure, and in which people do not live in fear of arbitrary arrest and imprisonment, religious or racial persecution, the confiscation of their homes and possessions, enslavement, kidnapping and forced labour. Put simply, part of the difficulty we have in deciding how best to respond to the challenges of neuroscience and genomics – or of terrorism, economic depression, environmental catastrophe or political alienation, for that matter – is that we do not know whether privacy is valuable in democratic societies and, if so, how to identify and describe that value.

Our ideas about privacy are, in many ways, relics from a distant past, predating constitutional government, as well as representative democracy. [Boling 1996, ch. 2] Hence, the ideas of individuality, choice, responsibility, equality and solidarity which they presuppose and license are bound up, in all sorts of complex ways, with sexist assumptions about the nature and value of men as opposed to women; of heterosexual, as opposed to homosexual, love and sex; and of ideologies of race and class fundamentally at odds with the idea that most people are capable of governing themselves, and ought to be able to do so.

For example, until the Guardianship Act of 1973, the outcome of Joan Vicker's Private Members' Bill of 1965, women lacked legal guardianship of their children, and this meant that they had to seek the consent of their husbands, even if they were estranged from them, in order to obtain surgery for their children, or to obtain a passport for them. [Cretney, 1998 180-3] So, regardless of what was going on inside their heads, British law rendered otherwise competent adult women incapable of taking moral and legal responsibility for key aspects of their children's wellbeing. Privacy, in other words, was understood in ways that denied women, as parents, freedoms which were taken for

granted by men, with deleterious consequences for sexual equality within the family, and outside it.

In order to resolve contemporary controversy about privacy then, we have to concentrate on the value of privacy implicit in, or compatible with, democratic rather than undemocratic forms of government. This requires us to consider the different forms that democracy can take, and how best to understand the different principles and values which define democracies as a group, and distinguish them from other forms of government.¹⁰ Consequently, the philosophical analysis of politics, as well as more empirical forms of political analysis, have a central place in neuroethics, and in practical ethics more generally. Arguments for protecting privacy in democracies stand or fall on the connections we draw between people's claims to participate in government and their claims to solitude, seclusion, anonymity and the rest. Familiar differences between moral theories, such as between deontology and consequentialism, or between virtue ethics and critical theory, may or may not help us in this task. By contrast, the differences between democratic government will – or should.

Implications

What practical conclusions, if any, can we draw from these methodological remarks?

- 1) The *secret ballot* can help us to understand the value of privacy for democracies, because it is unquestionably democratic, and an example of our rights to confidentiality and anonymity.¹¹ Although a familiar justification for the secret ballot is that it helps to protect people from coercion and intimidation, a moment's thought suggests that this is not its sole justification, important though that undoubtedly is. After all, once universal suffrage is in place, it is *legislators* voting within legislatures, rather than *citizens* electing legislators, who are the most likely targets of efforts to corrupt the electoral process, since they are fewer in number and have much greater power than ordinary electors. Yet legislators, unlike citizens, are generally required to vote openly, not secretly.

This is because legislators in representative democracies hold their position on behalf of citizens, rather than as a matter of right themselves. Citizens must, then, be able to judge how adequately their representatives are fulfilling their duties and this requires information about how they have voted on parliamentary bills, as well as what they

¹⁰ This is not easy, partly because the social-scientific literature classifies democracies in so many different ways, but also because the relevance of some of these differences for ethics is not apparent. The real difficulty, however, is that democratic government cannot simply be identified with universal suffrage, common though it is to identify the two, as this risks confusing authoritarian plebiscites and democratic elections. On the other hand, too stringent a set of conditions for using the term 'democracy' risks turning it into an unrealisable ideal, excluding anything that most people would recognize as an instance of democratic government. How we should navigate between hopelessly minimal and excessively demanding conceptions of democracy, then, bears further study. Two helpful places to start are Albert Weale 1999 and Joshua Cohen 2008.

¹¹ The following paragraphs draw on A. Lever, forthcoming, 2011 and Lever 2007, 2006 and 2005.

said in parliamentary debates, and how they have conducted themselves in their constituencies and in any governmental offices that they have held. By contrast, democratic citizens have a right to vote whether or not other people agree with their political views. The secret ballot, importantly, symbolizes this right, and helps to protect it, by making sure that people do not have to justify their votes to other people, or even discuss how they intend to vote, unless they want to.

What the secret ballot suggests, then, is that people's claims to privacy depend, in part, on the nature of the powers and responsibilities that they hold, and that citizenship, itself, provides the baseline for determining what constitutes *special* power and influence over others, and special responsibility to and for them. Not all threats of coercion or intimidation, in other words, generate claims to privacy, even when rights of confidentiality, anonymity, seclusion and intimacy might, indeed, serve to lessen those threats, or make them easier to resist.

In evaluating the implications of neuroscience for people's privacy, therefore, it is important to see that protection for privacy can mark our status as citizens as surely as can the right to vote. Hence, the justification for protecting privacy, from a democratic perspective, is not purely instrumental – important though the consequences of protecting privacy are to the assignment and justification of legal rights – because our status as citizens, and the rights and duties which constitute that status, importantly depend on the protection of privacy.

- 2) As the secret ballot suggests, people's identities, from a democratic perspective, are not purely personal, but have an important political dimension. That is, as citizens, we are required to see each other as equals, equally entitled to participate in determining the laws that govern us all, and equally entitled to stand for positions of power and responsibility in our society.

This is not the same as recognizing our duties to see each other as people capable of suffering and happiness, though Utilitarians are surely right to suppose that morality *also* requires us to recognize this fact about each other, as about other sentient beings. Nor is our duty to recognize each other's capacities for citizenship the same as the Kantian duty to treat each other as ends, rather than simply as instruments, or obstacles, to our purposes. Morality certainly requires this, too. But these are duties which we would have whatever type of society we live in. By contrast, the duty to treat our fellow citizens as our peers – controversial though its content can be¹² - is intrinsic to democratic morality and politics, and we would have no particular obligation to see compatriots this way but for a shared status as citizens.

¹² One of the main forms of controversy, here, concerns the extent of socio-economic inequality which is compatible with democratic government – though, of course, it is also controversial how much inequality is consistent with Kantian forms of respect, or Utilitarian efforts to prevent suffering and promote wellbeing. The key point, however, is that there is no reason, a priori, to suppose that answers to Kantian, Utilitarian and democratic controversies about economic inequality must be the same.

The content of our claims to confidentiality – and to privacy more generally, then, are partly conventional, and dependent on what threatens, rather than promotes, people's freedom and equality as we best understand them. It depends, in other words, on facts about people's desires, needs, interests and resources, and on the ways that these are likely to conflict. People's claims to participate in government, therefore, have an important place in determining such things as the rules for acquiring and disseminating neurological information, for determining how far, and in what ways, neuroscience can influence crime-prevention and counter-terrorism,¹³ or for deciding how much time, energy and money should be dedicated to neurological research and to restoring, rather than enhancing, people's capacities.[Chan and Harris, 2006; Harris 2007]

(3) From a democratic perspective, our identities importantly include our citizenship, because this sets limits to the ways we can treat others, and helps to determine the ways in which we may be treated. Within those constraints, we can see ourselves as members of families, churches, sporting associations, and of various political and professional groups, as well as members of various national, ethnic and racial ones, transcending the boundaries of our country. The point, however, is that there is no particular way that we have to see ourselves, or define our identity, so long as we are willing to abide by our different duties to others.

This implies that while having a human brain is a *precondition* for our identity as humans and as citizens, it is not therefore an essential *component* of our identities. Empirically, most people are as little of aware of their brains as they are of their hearts, so as a matter of fact having a human brain does not seem to be an essential part of our identities. Nor, normatively, is it clear what importance we *should* attribute to our brains, as opposed to our skin, our sexual organs, our history, culture, citizenship, habitat – all of which can distinguish us from other animals, as well as from each other. From a democratic perspective, at any rate, there seems no particular reason to give priority to one, rather than another set of these variables in determining what we should do and how we should treat each other. On the contrary, there is every reason to suppose that people who are free to investigate their world, and their place within it, will come to different conclusions about the moral and political significance of these attributes.

If these points are right, we should be wary of a tendency in neuroscience and neuroethics to exaggerate the importance of people's brains to who they are, and of how they should be treated.¹⁴ Certainly, damage to the brain can change people's behaviour in all sorts of

¹³ For debates on privacy and CCTV see Ryberg 2007, Goold, 2008 and Lever 2008 in the journal *Res Publica*. For an introduction to philosophical debate on racial profiling see *Criminal Justice Ethics* 26.1. (2007) with articles by Mathias Risse, Annabelle Lever and Michael Levin, and the special issue on the topic forthcoming from *The Journal of Ethics: An International Philosophical Review* vol. 15 (2011).

¹⁴ See, for example, Colin Blakemore 2006 p. v: 'If one accepts that the brain, and the brain alone, is responsible for the entirety of consciousness and action, including the sense of right and wrong, and the capacity to contemplate moral values, then it is legitimate to ask whether there is any sort of ethics other than neuroethics'. But, surely, it is not our brains 'alone' which are responsible for all these exciting things, but our brains in conjunction with a complex concoction of chemicals secreted by our other organs,

unexpected, and often unwanted, ways; and seemingly slight differences in brain structure or development can have profound consequences for people's capacities, including their ability to have a sense of themselves as agents, to have some personal sense of identity, a sense of their personal history and an ability to project themselves, into the future, at least in thought. It does not follow, however, that brain transplants must pose a greater challenge to our sense of self than face transplants, or than the transplanting of families through adoption and surrogacy.¹⁵ Nor need brain transplants prove more challenging ethically than changes which, for much of human history, were all but unimaginable, and in many parts of the world remain impossible, such as the ability to change one's nationality, one's employment, one's marital status, or one's sex and one's gender.

For good and bad, there are many ways to transform the lives, identities and prospects of people by surgery, as by other means. *Apriori*, there is no reason to think that surgical forms of change are more threatening or malevolent than the alternatives, or that we can adequately evaluate the ethical threats posed by the former without considering the latter. As we have seen, the reasons to devalue or ignore privacy are as likely to have philosophical and legal, as medical or scientific, causes. So, reflection on the threats that neuroscience poses for privacy highlight the importance of the humanities and social sciences to neuroethics, because the ethical significance of glamorous and exciting scientific developments partly depends on what we think about more mundane forms of human change, enhancement and repression.

by oxygen pumped through our blood by our heart, and so on. Brains are thrillingly complicated and important organs, but it seems as misleading to make such grandiloquent claims on their behalf as there was or is to make comparable claims about our DNA. See also Michael S. Gazzaniga, 2006, ch. 10, and, in particular, his aspirations for a 'brain-based philosophy of life' and his claim that 'consciousness...is uniquely human' - a view which seems to suppose that we know a great deal more about how various non-human animals see themselves and the world around them than we do. Pp. 141-2. For a rather different, but influential, take on the differences between human and animal consciousness see Michel de Montaigne's famous question from 'An Apology for Raymond Sebond': 'When I play with my cat, how do I know that she is not passing time with me, rather than I with her?' 1987,505.

¹⁵ The main worry about brain transplants, (other than the complexities that may make them technically impossible) is that replacing your brain with someone else's will remove access to your memories, your desires, feelings and hopes, even if it does not actually replace them with those of someone else. These are not trivial worries, and were brain transplants possible, we would obviously have to take them seriously. But as impostors and actors show us, and as the weird sensation of reconnecting with one's childhood letters, photos and books may remind us, we can come to 'think like' other people, including our past selves. So transplanting brains may be rather like transplanting faces, in that transplants, if medically justified, would be more like 'becoming ourselves' once more, than turning into someone else. For a fascinating historical account of how one person can recreate themselves as someone else see Natalie Zemon Davis 1984, which was made into an engrossing movie starring Nathalie Baye and Gerard Depardieu.

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