

## How Does Stalking Wrong the Victim?\*

*Elizabeth Brake*

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Much stalking consists in behavior which would normally be permissible; indeed, many stalking behaviors are protected liberties. How, then, does the stalker wrong the victim? I consider and reject different answers as failing to identify the essential wrong of stalking: stalking perpetuates gender oppression; it threatens or coerces, disrespects autonomy, or violates privacy. I argue that the stalker forces a personal relationship on the target and that our interest in being able to refuse such relationships is strong enough to ground a right. It is a benefit if my account changes the standards of which intimacy-seeking behaviors we consider permissible.

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An account of the moral wrong involved in stalking must solve a puzzle: stalking consists in behavior which would normally be morally permissible, such as being in public places or sending mail. Many of these behaviors are protected liberties, and normally others could not limit these freedoms through their unilateral choice. How does the stalker wrong his victim by engaging in behavior which would normally be permissible, and how does her choice change his moral permissions and limit his liberty, obligating him to stay away?<sup>1</sup> What is the wrong involved in stalking?

\* For helpful comments and discussion, I am very grateful to Amy Berg, Gwen Bradford, Cheshire Calhoun, Eric Cave, Stephanie Collins, Jan Dowell, Dan Engster, Anca Gheaus, Christie Hartley, Jonathan Ichikawa, Uriah Kriegel, Rae Langton, Noa Latham, Ann Levey, Shaun Miller, Dan Nolan, David Shoemaker, Charles Siewert, David Sobel, Patricia Thornton, Aness Webster, Vida Yao, anonymous reviewers for and editors of this journal, and discussants at the 2020 Ethics Online Summer Series, Georgia State University, the University of California at Santa Cruz, the University of Kentucky, the University of California at San Diego Workshop on Agency, Values, Etc., and Oberlin College.

1. For convenience, I refer to stalker as “he” and target as “she,” their statistically likely genders. Of course, women can stalk men, and stalkers and targets can be of the same sex or nonbinary.

*Ethics*, volume 134, number 1, October 2023.

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Stalking is widespread and has serious consequences; understanding why it's wrong is not merely a philosophical puzzle but contributes to our understanding of an urgent social problem. But the question is underexamined in moral philosophy. A search on PhilPapers finds only five articles on stalking in this sense (there are ten times as many results which use the term metaphorically, as in "stalking horse"). Only two analyze the morality of stalking, and one of them focuses on stalking wild animals. Yet stalking of humans by humans is a widespread phenomenon which deserves moral analysis—and the full account of its wrong is surprising.<sup>2</sup>

Stalking wrongs by forcing a personal relationship on the target. This is to make two surprising claims: stalking forces such a relationship, and forcing such a relationship wrongs. Accounts of stalking as threatening, coercive, or violating privacy or autonomy fail to identify this essential wrong, the wrong arising from the essential features of stalking, which all instances of stalking have.<sup>3</sup> Moreover, forcing a personal relationship is a distinct wrong from forcing intimacy or association.

Recognizing the nature of the wrong will help to correctly classify wrongful activity in a range of cases and articulate a distinctive wrong experienced by the stalking victim. Articulating this wrong will also remedy a hermeneutical injustice, by naming the distinctive wrong which stalking victims suffer and thereby allowing the recognition and expression of this phenomenon.<sup>4</sup> We lack fine-grained concepts and language to discuss aspects of intimate partner violence; this article contributes the concept of forcing a relationship as a serious wrong, and as a wrong distinct from one-time privacy violations or physical assault.<sup>5</sup>

I intend this account of the moral wrong of stalking to contribute to identifying a wider class of neglected harms and moral wrongs which occur in personal relationships (hereafter "relationships"). These harms and wrongs, which I call relationship harms and wrongs, typically occur

2. The one full-length treatment of the moral question I have found does not appear in PhilPapers: John Guelke and Tom Sorell, "Violations of Privacy and Law: The Case of Stalking," *Law, Ethics and Philosophy* 4 (2016): 32–60. For the wild animal article, see Jason Kawall, "Is (Merely) Stalking Sentient Animals Morally Wrong?," *Journal of Applied Philosophy* 17 (2000): 195–204. Legal discussion of stalking law has not missed the tension between protecting victims and freedom of speech and movement. See, e.g., M. Katherine Boychuk, "Are Stalking Laws Unconstitutionally Vague or Overbroad?," *Northwestern University Law Review* 88 (1993): 769–801; and Robert A. Guy Jr., "The Nature and Constitutionality of Stalking Laws," *Vanderbilt Law Review* 46 (1993): 991–1030.

3. Thanks to an anonymous reviewer for suggesting this phrasing.

4. See Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007), chap. 7.

5. The *Washington Post*, e.g., reports difficulty in discussing abuse; see Monica Hesse, "The Slippery Language around Domestic Violence," *Washington Post*, April 5, 2023, <https://www.washingtonpost.com/lifestyle/2023/04/05/domestic-abuse-language/>.

in the context of relationships and involve abusing or exploiting a relationship and the norms surrounding relationships. But such harms and wrongs do not always occur within an existing relationship. In the case of stalking, the wrong consists in forcing a relationship.

I will proceed by showing that plausible accounts of the wrong of stalking fail to identify the essential wrong, before arguing that the wrong consists in forcing a relationship. Methodologically, my approach is bottom-up, proceeding by analyzing the phenomenon, rather than top-down, or driven by moral theoretical commitments (although I intend this account to be compatible with a range of deontological moral theories). I focus on the essential features of stalking and ask how these features explain its wrong.

## I. A PARADIGM CASE

To begin, I'll describe a paradigm case. This case isolates distinctive and characteristic features of stalking from other, confounding features, such as trespassing and assault. "Archie" is the stalker, "Veronica" his victim.

Stalkers and their victims can be related in many ways. Archie and Veronica may be former lovers or spouses or friends or coworkers or students. Perhaps they have only met once, online or in person. Perhaps he knows her only through media, as a celebrity.

Archie stalks Veronica by engaging in certain characteristic behavior directed at her. He drives by and walks past her house, comes to the public area of her workplace, and lingers outside it, over and over again. He follows her on the street and on transportation. He calls, texts, and sends her letters, gifts, and flowers, at home and at her workplace. When she blocks his number and email, he gets a new number and email address in order to continue contacting her. He contacts her friends and family and discusses her on social media. He leaves notes on her car. He goes through her garbage.

She asks him to stop. He persists.

## II. STALKING

Archie's behavior is a pattern of persistent unwanted contact. This is a case of stalking, and such behavior would in many jurisdictions be grounds for a restraining order, limiting Archie's access to public spaces—the street outside Veronica's home, her workplace, any public place where she is—under penalty of imprisonment and a fine.

Stalking involves certain characteristic contact-seeking behaviors: "making unwanted phone calls, sending unsolicited or unwanted letters or e-mails, following or spying on the victim, showing up at places without a

legitimate reason, waiting at places for the victim, leaving unwanted items, presents, or flowers, posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth.”<sup>6</sup> I define stalking as a pattern of persistent unwanted contact (consisting in such behaviors) which would be distressing, disturbing, or intimidating to a reasonable person and is directed at a particular individual as nonfungible. This definition is intended to fit the range of stalking cases and to capture the cases which are intuitively wrong. It follows definitions used in many legal jurisdictions, but where jurisdictions vary, I make choices. There are several things to note about this definition, which will be important later:

1. As a pattern, stalking is distinct from one-time, opportunistic street harassment; it requires repeated attempts to contact or approach. As Claudia Card describes domestic violence, it “is a campaign, a policy, not an isolated episode.”<sup>7</sup>
2. Stalking is distinct from other crimes associated with it—trespassing, vandalism, and assault. The wrong of stalking cannot be reduced to these other wrongs.
3. The definition incorporates a reasonable person standard. It does not require that the victim actually feel fear. The reasonable person standard rules out irrational fear, such as that based on racial bias. A reasonable person standard raises problems of how the reasonable person is defined, exemplified by the anecdote of a woman who called the police when a stalker sent her flowers, only to be told to enjoy the flowers. What is reasonable to fear will depend on one’s experiences and identity, such as being a woman in a society where stalking is correlated with violence against women or a victim of prolonged intimate partner violence.<sup>8</sup>
4. The requirement that the contact be unwanted need not imply explicit refusal. The victim may be unaware, be aware but afraid to communicate refusal, or not feel entitled to refuse.<sup>9</sup> It might be thought that this definition will count too many cases as stalking: stalking should be distinguished from permissible friendliness. For example, an extroverted acquaintance may repeatedly invite me to lunch, despite my desire not to receive such emails; absent

6. See the 2012 US Department of Justice report “Stalking Victims in the United States—Revised,” by Shannan Catalano (NCJ 224527), <https://bjs.ojp.gov/content/pub/ascii/svus-rev.txt>.

7. Claudia Card, *Confronting Evils: Terrorism, Torture, Genocide* (Cambridge: Cambridge University Press, 2010), 142 n. 22.

8. For discussion of the reasonable person/woman standard in law, see Susan E. Bernstein, “Living under Siege: Do Stalking Laws Protect Domestic Violence Victims?,” *Cardozo Law Review* 15 (1993): 525–67.

9. Thanks to Ann Levey and Jonathan Ichikawa for raising this point.

any other features, this is not stalking. To exclude such cases, remember that stalking involves persistent contact which would be intimidating, distressing, or disturbing to a reasonable person.

5. Some jurisdictions require that the stalker intend to threaten the victim; my definition does not.<sup>10</sup> Many stalkers do not consciously intend to threaten. Archie might believe that his behavior expresses his love for Veronica and that she would be grateful if only he could get her attention. Stalkers have a range of intentions and motives: obsession, romantic rejection, revenge, “erotomania” (the delusion that the target is in love with them), a sense of persecution.<sup>11</sup> These can overlap. What is consistent is a set of characteristic behaviors. Because stalkers may be self-deceived or deluded and their motives and intentions are so various, my definition focuses on characteristic behaviors, in order to capture all the relevant cases. However, my definition sets one condition on their psychological state: they see the particular target as nonfungible. This captures the obsessiveness which broadly characterizes stalkers. This rules out cases in which the target is fungible, meaning that the identity of the target does not matter—such as assassins or detectives who would track down anyone and have selected the target merely as “the person they were contracted to hunt” or “the guilty party.” This condition distinguishes stalking from such other cases involving similar behavior. (I am not proposing that this condition be incorporated into legal definitions. The agent’s motives may be opaque to the law, and there may be reasons to criminalize such behavior independent of motive.)

Stalking, then, is a pattern of persistent unwanted contact which would intimidate, distress, or disturb a reasonable person and is focused on the target as nonfungible. Discussion of the moral wrong involved in stalking must acknowledge that it is widespread, is gendered, is correlated with violence, and has devastating effects. It is important to keep these facts in view, like the “bloody footprints across [one’s] desk” which, according to Catharine MacKinnon, characterize feminist writing about

10. For cogent argument that “threat of violence aggravates rather than constitutes the core wrong,” see Guelke and Sorell, “Violations of Privacy,” 45; and Lambèr Royakkers, “The Dutch Approach to Stalking Laws,” *California Criminal Law Review* 3 (2000): 1–14. Royakkers argues that the credible threat and intent requirements in American law fail to protect victims; compare Bernstein, “Living under Siege.”

11. See Royakkers, “Dutch Approach”; J. Reid Meloy, ed., *The Psychology of Stalking: Clinical and Forensic Perspectives* (San Diego: Elsevier, 1998); Heng Choon (Oliver) Chan and Lorraine Sheridan, eds., *Psycho-Criminological Approaches to Stalking Behavior: An International Perspective* (Hoboken: Wiley, 2020).

women.<sup>12</sup> Roughly one in six women and one in seventeen men in the United States are stalking victims.<sup>13</sup> Most stalking victims are female, and most stalkers are male.<sup>14</sup> The majority of victims know their stalker, most often as a current or former intimate partner. Stalking is a prelude to violence, especially the murder of women by their current or former partners,<sup>15</sup> with unnerving frequency.<sup>16</sup> Even in the absence of violence, stalking victims experience continuing feelings of fearfulness, post-traumatic stress disorder, mental health issues, and disruptions such as missing work or school and having to move.<sup>17</sup>

I will argue that the wrong of stalking is not contingent on gender. Yet understanding the nature of the wrong is important from a feminist perspective because women disproportionately suffer this wrong. Moreover, it operates in conjunction with other gendered injustices, such as intimate partner violence, sexual assault, and the exploitation of care.<sup>18</sup>

Despite the differences I have noted, all cases of stalking share a wrong, one which arises from the essential features of stalking. Many cases involve additional wrongs, such as explicit threats or violence, and these wrongs may be more prominent in such cases.<sup>19</sup> But, even in the absence of these additional wrongs, it seems, intuitively, that stalking wrongs the victim; my account identifies the wrong which arises from the essential features of stalking and hence occurs in all cases, even though in some it is less prominent than other co-occurring wrongs.

12. Catharine A. MacKinnon, *Feminism Unmodified* (Cambridge, MA: Harvard University Press, 1987), 9.

13. Centers for Disease Control and Prevention, *National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_executive\\_summary-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_executive_summary-a.pdf) (hereafter NISVS 2010); and Centers for Disease Control and Prevention, *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief—Updated Release*, <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf> (hereafter NISVS 2015).

14. See NISVS (2010, 2015) and the 1998 National Institute of Justice and CDC report “Stalking in America: Findings from the National Violence Against Women Survey,” by Patricia Tjaden and Nancy Thoennes, <https://www.ncjrs.gov/pdffiles/169592.pdf>.

15. See J. M. McFarlane et al., “Stalking and Intimate Partner Femicide,” *Homicide Studies* 3 (1999): 300–316.

16. McFarlane et al. write that “violence among stalkers toward the person being stalked averages in the 25% to 35% range” (ibid., 302), citing Meloy, *Psychology of Stalking*.

17. A. S. D’Inverno et al., *The Impact of Intimate Partner Violence: A 2015 NISVS Research-in-Brief* (Atlanta: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2019).

18. In the empirical literature, see Mary P. Brewster, “Power and Control Dynamics in Prestalking and Stalking Situations,” *Journal of Family Violence* 18 (2003): 207–17. See also Claudia Card, *The Atrocity Paradigm: A Theory of Evil* (Oxford: Oxford University Press, 2002), chap. 7; Marilyn Friedman, *Autonomy, Gender, Politics* (Oxford: Oxford University Press, 2003), chap. 7; Kate Manne, *Down Girl: The Logic of Misogyny* (Oxford: Oxford University Press, 2018).

19. Thanks to Stephanie Collins for this point.

Finally, note that my focus throughout is on such “contact-stalking,” and not “surveillance-stalking,” which consists in mere information-gathering (I will briefly discuss this distinct phenomenon below).

### III. THE PUZZLE

Let’s return to Archie and Veronica. My intuition is that when Archie persists in following and contacting Veronica, despite her refusals, he seriously morally wrongs her. But how? The claim that *stalking wrongs* poses a puzzle.

Once again, the paradigm case involves acts which are normally morally permissible—frequenting public places, sending gifts or cards, seeking to initiate contact. If Archie does not wrong Veronica by sending an unsolicited greeting card or gift, how does he wrong her by sending multiple cards and gifts? If he does not normally wrong her by walking past her house or workplace, how does he wrong her by doing so repeatedly? Stalkers seem to wrong their victims by doing what people are free to do; if walking down the street or frequenting a public place is a protected liberty, how does exercising this liberty violate the rights of another?

Archie does act against Veronica’s request and without her consent. However, he would not normally need her consent to frequent a public place or send mail. The victim’s refusal changes the stalker’s moral permissions through her unilateral decision. Indeed, her refusal can change what he is legally permitted to do—if Veronica obtains a restraining order, she can control Archie’s access to public spaces and social media and invoke the coercive power of the state to enforce her refusal. Generally, one cannot unilaterally restrict another’s liberty thus. (Recall that we set aside wrongs which are not essential to stalking. Archie has not trespassed on Veronica’s property or explicitly threatened or assaulted her.)

To isolate what’s wrong with stalking, consider analogous behaviors which no one considers wrong. I might casually visit a coffee shop when the barista I like will be working or when I expect an acquaintance to be there, or frequent a restaurant where my favorite celebrity eats. The barista, acquaintance, or celebrity would have no right to compel me to stop. If a company persists in mailing me its catalogue although I have asked them to stop, or robo-calls me despite my being on the “do not call” list, it is arguably impermissible, but, intuitively, much less seriously wrong than stalking. Similarly, if an otherwise innocuous relative keeps emailing me pictures of kittens after being repeatedly asked to stop, their behavior would be disrespectful but not seriously wrong.

The wrong of stalking does not just consist in seeking contact or even overriding refusal (as in the kitten picture case). One feature that distinguishes stalking from these cases is that stalking behavior would be distressing, disturbing, or intimidating to a reasonable person. But, I will

argue, causing fear or distress alone does not account for the wrong (although the wrong may typically cause fear and distress). The full account of the wrong of stalking involves all its essential features: the pattern of persistent unwanted contact directed at a nonfungible target forces a personal relationship on her, and having such a relationship forced on one would distress a reasonable person.

First, I will argue that several plausible accounts of the essential wrong, suggested by the data about stalking and its essential features, fail to identify the wrong:

1. The gendered distribution of stalkers and victims suggests that stalking is wrong because it expresses misogyny and perpetuates gendered power imbalances.
2. That stalking would be intimidating, distressing, or disturbing to a reasonable person suggests that it is wrong because it causes or risks causing psychological harm.
3. That it is intimidating and correlates with violence suggests that stalking is wrong because it constitutes an implicit threat of violence (or is reasonably perceived as such) in order to coerce the target.
4. The overriding of refusal suggests that stalking disrespects the victim's autonomy.
5. The unwanted contact suggests that stalking is wrong because it violates a right to privacy.

A further account is needed, as I will argue, of the essential wrong of stalking: this is the wrong of forcing a personal relationship on the victim.

#### IV. ACCOUNTS OF THE WRONG OF STALKING

##### A. *Stalking as a Patriarchal Practice*

That most stalkers are men and most victims are women suggests a structural analysis of stalking as a practice of male domination. Card's analysis of domestic violence (including stalking) as terrorism provides such an account. In one of the few philosophical discussions of stalking, Card argues that acts of domestic violence are "low-profile terrorism": "the systematic uses of terror in the everyday lives of people who may never make headlines."<sup>20</sup> She argues that domestic violence fits two influential models of terrorism: the group target model and the coercion model.<sup>21</sup>

20. Card, *Confronting Evils*, 150; see her comments on stalking at 159.

21. *Ibid.*, 151–59. See also Card, *Atrocity Paradigm*, chaps. 6 and 7. Card cites Carl Wellman, "On Terrorism Itself," *Journal of Value Inquiry* 13 (1979): 250–58, and Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1977), as exemplars of the two models.



The group target model understands terrorist acts as aiming at harming or oppressing a group by targeting randomly selected members of the group. Although the group target model does not apply perfectly to stalking, as stalking victims are not randomly chosen, Card argues that it applies to the extent that women are targeted as members of a group perceived to be vulnerable and violable; moreover, violence against women (including stalking, domestic violence, and sexual assault) perpetuates gendered power hierarchies, contributing to women's oppression.<sup>22</sup>

The coercion model understands terrorism as aiming to coerce a primary, indirect target through harm to a secondary, direct target, as in bombing a building to coerce a government to take some action. In domestic violence, the victim appears to be both a primary and a secondary target, the target of harm and of coercion. Card applies the coercion model to the practice of rape, and her analysis can also be applied to stalking. A campaign of rape in war aims to coerce the indirect target, the enemy, by harming direct targets (women and girls). Card argues that civilian rape can be understood on the same model: civilian rape targets individual women (direct targets) to coerce women in general (indirect targets) into supposedly protective relationships with men. It thus functions as a "protection racket." Rape is not simply an isolated act but a "practice [which] creates an all-pervasive atmosphere of terror for women who would . . . violate the rules . . . that mandate female attachment to male protectors."<sup>23</sup> On Card's analysis, civilian rape sustains compulsory heterosexuality. The protection racket model also fits stalking: a campaign of terror against women which incentivizes them into supposedly protective intimate relationships with men.

Card's arguments illuminate the systematic, structural role of domestic violence and stalking within patriarchy. However, the wrong of stalking is distinct from the patriarchal uses of the practice. Not all cases involve men stalking women. As Card emphasizes in *Lesbian Choices*, stalking can be same-sex.<sup>24</sup> If men stalking women is patriarchal, same-sex stalking may be homophobic, as Carmen Maria Machado suggests regarding violence in her memoir of lesbian intimate partner abuse.<sup>25</sup> Further, a focus on gender can obscure different patterns of victimization among racial and ethnic groups.<sup>26</sup> Stalking can reinforce other structures of oppression, such as

22. See Card, *Confronting Evils*, 163, but also 159.

23. *Ibid.*, 162.

24. Claudia Card, *Lesbian Choices* (New York: Columbia University Press, 1995), chap. 6.

25. Carmen Maria Machado, *In the Dream House* (Minneapolis: Graywolf, 2019), 48 n. 13.

26. Tommy Curry, e.g., draws attention to higher rates of sexual violence against Black men; see Tommy J. Curry, "Must There Be an Empirical Basis for the Theorization of Racialized Subjects in Race-Gender Theory?," *Proceedings of the Aristotelian Society for the Systematic Study of Philosophy* 121 (2021): 21–44, 35. On racial variance in data on stalking, see also Fawn T. Ngo, "Racial Differences in Stalking Victimization, Police Reporting, and Coping Strategies among White, Black, and Asian Americans," in *Psycho-criminological Approaches*

racial or ethnic oppression. Furthermore, some wrongful cases of stalking are difficult to classify as instances of structural oppression. Women can stalk more powerful men; for example, a woman stalked a man described as a “wealthy CEO” in the affluent suburb of Paradise Valley, Arizona, reportedly sending him 150,000 texts over a ten-month period after a single date.<sup>27</sup> We need an account which will explain the wrong across all these cases.

Card’s account of the use of stalking as a patriarchal practice is crucial to a full understanding of stalking and of patriarchy. But just as we can ask about the wrong involved in rape in itself as opposed to the use of rape in patriarchy, we can ask about the wrong of stalking in itself. To put it another way, in a society free of gender oppression, stalking would still be wrong—but why?

To answer, I begin with Card’s suggestions: stalking terrorizes, and it coerces.

### B. *Stalking as Psychological Harm*

The terror stalking induces is itself a significant harm. Does the wrong of stalking consist in foreseeably inflicting terror and attendant psychological harms? If so, stalking is akin to psychological torture; it is wrong because it is harmful or, at least, foreseeably and avoidably risks severe harm.

Stalking does typically provoke fear, distress, and disturbance, with lingering traumatic effects. Because it is repetitive, it has cumulative effects on mental health: fear, depression, and anxiety. Stalking creates fear because it displays the stalker’s power to access the target and the victim’s powerlessness to prevent him: its repetitive nature, unpredictability, and overriding of refusal suggest the possibility of escalation.<sup>28</sup>

But this does not identify the wrong. Permissible behavior can foreseeably inflict fear, distress, or anxiety—without wronging. Professors announcing a test may cause students anxiety. Politicians ordering a lockdown foresee that this will cause mental health problems. Such cases might be justified by legitimate purposes, but much behavior which generates negative emotions in others is permissible even without a morally weighty reason

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to *Stalking Behavior: An International Perspective*, ed. Heng Choon (Oliver) Chan and Lorraine Sheridan (Hoboken: Wiley, 2020), 37–53.

27. For reports, see Perry Vandell, “Woman Accused of Stalking, Threatening Paradise Valley Man,” *Arizona Republic*, May 9, 2018, <https://www.azcentral.com/story/news/local/scottsdale-breaking/2018/05/09/woman-accused-stalking-threatening-paradise-valley-man/594909002/>; and Joshua Rhett Miller, “Stalker Accused of Sending 159K Text Messages Doesn’t Get Why She Is in Jail,” *New York Post*, April 19, 2019, <https://nypost.com/2019/04/19/stalker-accused-of-sending-159k-text-messages-doesnt-get-why-shes-in-jail/>.

28. See, e.g., Brewster, “Power and Control Dynamics”; Guelke and Sorell (“Violations of Privacy”) also emphasize the experiences of victims.

such as preventing deaths. For example, rejecting a potential friend may cause distress. People may intensely fear others who look or behave differently. We need to explain why the stalker's infliction of fear or distress is morally different from that of someone who turns down a date or fails to invite her sensitive friend to a party, triggering anxiety, or the member of a minority whose presence on a plane makes a biased fellow passenger fearful.

A reasonable person standard rules out many such cases; indeed, my definition of stalking incorporates a reasonable person standard precisely to rule out such cases. Thus, we might think that foreseeably inflicting fear is impermissible, unless such fear is unreasonable (such as fear driven by an anxiety disorder or racism). Thus refined, the account is that stalking is wrong because foreseeably inflicting reasonable fear is impermissible. However, some permissible behavior produces reasonable fear; not all acts which foreseeably inflict reasonable fear are impermissible. For example, mountain biking on a hiking trail, jogging outside unmasked in a pandemic, and walking one's dog pose a small risk to those nearby, and their fear of an accident, infection, or dog bite is reasonable. (I assume that there is a wide range of reasonable risk aversion.) But these behaviors are arguably permissible, so long as bikers, joggers, and dog-walkers take reasonable care. Many behaviors impose small risks which it is reasonable to fear but are still permissible, so long as the agent takes reasonable precautions.<sup>29</sup> Indeed, even in cases which can induce considerable distress, such as the person not inviting an acquaintance (who is then devastated by her exclusion) to her party, the agent has few if any obligations to take precautions regarding such effects of her own, self-regarding activity.

We can draw on a familiar concept of imputability to distinguish cases in which agents are morally accountable, or not, for foreseeably inflicting reasonable fear or distress: an agent is not responsible for certain bad consequences of her actions so long as she is acting permissibly.<sup>30</sup> If my behavior causes reasonable fear in bystanders but is otherwise permissible, I am not morally responsible for their fear. The stalker is not morally responsible for producing fear, then, unless the fear issues from wrongful behavior (including wrongful omissions). This returns us to the puzzle: what is the wrong done in stalking?

29. The ethics of imposing risk are beyond the scope of this article but raise problems for moral theory, including where to set the threshold; see Judith Jarvis Thomson, *Rights, Restitution and Risk: Essays in Moral Philosophy* (Cambridge, MA: Harvard University Press, 1986), chap. 11.

30. For the locus classicus, see Immanuel Kant, *The Metaphysics of Morals* (1797), in *Practical Philosophy*, ed. and trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), 353–603, 381–82.

### C. *Stalking as Threat or Coercion*

Card argues that domestic violence aims to coerce the target into remaining in a relationship through displays of dominance. She writes, “what is coercive is the whole relationship.”<sup>31</sup> The coercion model fits with the influential understanding of stalking as “a crime of power and control.”<sup>32</sup> It might be thought that the wrong, then, is coercion or an attempt to coerce.

But what is the stalker attempting to coerce the victim to do? Archie is not attempting to coerce Veronica to perform a specific action. While a stalker’s behavior may cause his target to change her habits or to move, it doesn’t seem that he is attempting to coerce her to take evasive maneuvers. Card’s suggestion, that he aims to coerce the victim into remaining in a romantic, sexual relationship, does not fit many cases of stalking. There is no coercion to remain in such a relationship where no relationship already exists. And stalkers need not stand in sexual or romantic relations to their victims, as in the case of a superfan like Alan Jules Weberman, the obsessive Dylanologist who famously went through Bob Dylan’s garbage. Although love-obsessives and erotomaniacs are prominent types of stalkers, obsession need not be sexual or romantic: targets can be former bosses, celebrities, and public figures. Some stalkers see themselves as wrongfully mistreated and seek revenge, or believe that they are being stalked by the target.

Furthermore, how does stalking coerce? Coercion typically requires a threat.<sup>33</sup> Stalking correlates with violence, and some jurisdictions define it as threatening. Thus, there is some initial plausibility to the thought that stalking implies a threat, designed to coerce. But how does it threaten, and what is it a threat to do?

Stalking may involve explicit threats, and it may constitute a threat as part of a cycle of violence, but this does not occur in all cases. Return to the paradigm case. Archie’s behavior does not involve explicit threats. Archie could stop without committing any violent acts. But perhaps the threat could be explained by the correlation between stalking and violence. Statistically, it is reasonable for a stalking victim to interpret the behavior as threatening. If Veronica has recently rejected Archie romantically and she knows the statistics regarding romantic rejection, murder, and stalking, it is reasonable for her to fear violence from Archie. And, in the context of intimate partner violence, a history of threats, controlling behavior, and

31. Card, *Confronting Evils*, 163.

32. National Institute of Justice, “Overview of Stalking,” <https://nij.ojp.gov/topics/articles/overview-stalking>; Brewster, “Power and Control Dynamics”; see also Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford: Oxford University Press, 2007).

33. See, e.g., Robert Nozick, “Coercion,” in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, ed. Sidney Morgenbesser, Patrick Suppes, and Morton White (New York: St. Martin’s, 1969), 440–72.

abuse may render a seemingly nonthreatening act threatening: “a victim who has endured the cycle of abuse may react to conduct by her abusive partner with a heightened level of fear.”<sup>34</sup> Victims may reasonably see stalking behavior as a precursor to violence.

Explicit threats, like behavior which foreseeably is reasonably perceived as threatening, are additional wrongs to the essential wrong of stalking. But these do not occur in the full range of cases. In cases where there is no explicit threat, no violence, and no context suggesting a heightened risk of violence, there is no apparent threat. Superfans and celebrity stalkers might reasonably elicit distress, but the statistics regarding femicide do not explain why targets would reasonably fear harm in these cases, or in cases of women stalking men.

Alternately, stalking behavior could be described as implicitly threatening, independent of any statistical correlation with violence. This is because the behavior itself displays the power to access, to surprise, and hence to harm the target. Rather than a specific threat, there is an implicit message that the stalker could harm the target. This interpretation is supported by the phenomenology—the unpredictable incursions of the stalker may leave the victim feeling trapped, powerless, and anxious.<sup>35</sup>

It might be thought that issuing a threat requires the intent to threaten, and many stalkers see their behavior not as threatening but as trying to get closer to their target—such as erotomaniacs, who believe that their target is in love with them. If threat requires an intention to threaten, such stalkers do not threaten. But perhaps intent to threaten is not necessary for issuing a threat: plausibly, repeated behavior can create an implicit threat by suggesting that the behavior will recur, and so the stalker’s persistence may create an implicit threat that he will continue. Moreover, the stalker’s unpredictable behavior and disregard of the victim’s boundaries may reasonably lead her to believe that he is unstable, and thus it might be thought that any stalking behavior issues an implicit threat.<sup>36</sup>

However, this does not identify the wrong of stalking. It is important to distinguish normatively such implicit threats arising from erratic, but nonviolent, behavior (which might be described as vague menace) from explicit threats of violence. Explicit threats of violence can clearly constitute coercion; it is not so clear that vague menaces do, particularly when they consist in seemingly permissible behavior. Aberrant behavior may reasonably create a sense of vague menace—without the aberrant agent’s having wronged anyone. This is similar to the point regarding inflicting fear made above (see Sec. IV.B); while the stalker’s behavior may be perceived as threatening, not all behavior perceived as threatening is wrongful.

34. Bernstein, “Living under Siege,” 549.

35. See discussion of victimology in Meloy, *Psychology of Stalking*; Brewster, “Power and Control Dynamics.”

36. Thanks to an anonymous reviewer for this point.

Perhaps, rather than coercing by threat, the stalker coerces by narrowing the target's options unacceptably, in effect using force to impose on her.<sup>37</sup> She can no longer choose not to encounter him. But for this to be wrongful, narrowing her options in this way must be morally unacceptable. She might be similarly unable to avoid seeing an annoying coworker or an unpleasant bus driver; why is it unacceptable that she does not have the option of avoiding the stalker in public? We need to answer this question to provide an account of the wrong. The coercion-as-force account does not identify the wrong unless we can explain why an acceptable option set must include the option to avoid the stalker (but not the bus driver). My account will answer these questions. First, I will consider another account: stalking violates autonomy.

#### *D. Stalking as Disrespect for Autonomy*

As unwanted contact, stalking might be thought to violate or disrespect the target's autonomy, understood as her protected decision-making power over a certain range of options. But this faces the same problem the coercion account does: for such disrespect to be wrongful, it must be directed at a decision over which the target should have control. For example, someone could ask a same-sex couple to stop holding hands; their refusal does not disrespect the homophobe's autonomy, because her autonomy does not extend to controlling the conduct of others. Once again, we encounter the puzzle: how is the target's autonomy disrespected by intrusion into public spaces which she does not control?

The thought must be that the stalker wrongly disrespects her autonomy because she has a protected choice to avoid him. But how can such a choice extend to controlling his access to public spaces? The complaint evidently must concern access to the target herself, not to the place. She has the choice to exclude him from her presence—not from the place itself. To explicate the wrong—the sense in which autonomy is disrespected or violated—we must consider access to one's person to be a protected choice. But a moment's reflection will suffice to show the difficulties this raises—does an innocent stranger walking toward me on the street disrespect my autonomy if I prefer that they get out of my way? We will return to the question of protected access to the person below.

There is another account of how stalking violates autonomy, understood as psychological deliberative capacity. John Guelke and Tom Sorell argue that stalking violates autonomy because it is “debilitating,”<sup>38</sup> diminishing the victim's deliberative capacity by intruding in her “psychological

37. For this understanding of coercion, see Michael Bayles, “A Concept of Coercion,” in *Nomos XIV: Coercion*, ed. J. Roland Pennock and John W. Chapman (Chicago: Aldine-Atherton, 1972), 16–29, 17.

38. Guelke and Sorell, “Violations of Privacy,” 49.

space for deliberation and choice.”<sup>39</sup> Drawing on the victimology, they argue that the victim suffers from “obsessive, anxious preoccupation” with the stalker, which amounts to a “psychological take-over” by the stalker of the victim.<sup>40</sup> This mental state diminishes her autonomy: “If the mental space is anxiously preoccupied, its value as the locus for reasoning, critical reflection, and deliberation is diminished.”<sup>41</sup> While Guelke and Sorell identify the “core *wrong* . . . [as] a privacy violation,” they ground the value of privacy in autonomy, understood as a psychological capacity.<sup>42</sup> They write that in order to articulate the wrong of stalking, “we need a new category of non-violent harm, or a widening of the scope of violence to include something like psychological violence.”<sup>43</sup>

It might be objected that their account makes the wrong depend on whether the victim is debilitated. Yet the stalker risks inflicting debilitation, and if debilitating someone’s psychological decision-making power is a wrong, then risking doing so—above a threshold—may also be wrong. But the account faces two other problems. The first is related to the question of whether debilitating someone’s decision-making power is a wrong. Deliberative mental space can be intruded on by anxiety emanating from many sources (social media, conspiracy theories, the news, work, social situations), as well as psychological states other than anxiety (infatuation, obsession, addiction). While Guelke and Sorell rightly emphasize that stalking, unlike state surveillance, is personal, the harm of intrusion on deliberative space is not distinctive to stalking, or to the personal, and in many cases, the intrusion is not wrongful (see Sec. IV.B). Thus, the account still lacks an explanation of why the intrusion is wrongful in the case of stalking. Second, by intent, their account does not fit the range of cases—it focuses on stalking by (ex-)romantic partners (the majority of cases). But stalking wrongs across the range of cases. The claim that stalking intrudes on mental space to a debilitating extent is more plausible the more intimate it is, but this only applies to a subset of cases. Their account identifies a significant harm which can be used to grade cases morally—but not the essential wrong.

#### *E. Privacy*

Much stalking behavior violates privacy. Privacy is a contested concept, but surveying different understandings of it can help to illuminate the wrong of stalking. Surveillance-stalking, in which the stalker collects information about the target, violates informational privacy if it involves

39. *Ibid.*, 34.

40. *Ibid.*, 33.

41. *Ibid.*, 43.

42. *Ibid.*, 49.

43. *Ibid.*, 45.

gathering private information, “peeping” into someone’s home, or filming them where they expect privacy.<sup>44</sup> But contact-seeking stalking need not involve surveillance or gathering private information; information such as addresses and workplaces may be public. While contact requires knowing the target’s location, it seems implausible that the wrong of stalking is learning someone’s address, that stalking is primarily an epistemic wrong of this kind. Websites which surreptitiously collect our information commit such a wrong; this does not seem the same kind of wrong as stalking (as Guelke and Sorell say of state surveillance, this lacks the personal element of stalking). Stalking may wrong by violating rights to informational privacy, but this does not identify the essential and serious wrong of contact-stalking.

The conception of privacy as restricted access to the person proposed by Anita Allen better suggests how contact-stalking violates privacy.<sup>45</sup> Unwanted phone calls, letters, emails, and so on, violate privacy, in this sense, by attempting to access the person. However, to identify unwanted attempts to access the person as a wrong, the account will have to hold that the right to privacy precludes such attempts. On such a view, unwanted contact would have to be wrongful, analogous to unwanted touch, because our rightful control over our boundaries extends to access.

But when does access to the person violate a (coercively enforceable) right to privacy? This conception of privacy as restricted access, as proposed by Allen, is descriptive; the extent of privacy rights is a separate question. It might seem that the demarcation between rights-violating access and permissible access is the line between private and public. On this view, intrusions into places where we expect privacy violate the right to privacy; stalking in public spaces and through publicly available information does not violate the right. But Allen argues that privacy can be violated in public (e.g., an upskirt photo). The line between private and public spaces does not demarcate where the right to privacy applies; it simply affects how much one can reasonably expect to restrict others’ access.

But visual and physical proximity in public does not in itself seem to violate a (coercively enforceable) right to privacy. To solve the puzzle, we need to explain how the target can unilaterally obligate the stalker to desist—and invoke the state’s coercive power to compel him. The kind of privacy intrusions in public which much stalking behavior consists in do not meet this bar. What distinguishes a stalker following at a distance from people-watching at a café (where the latter surely does not violate the right

44. On the conception of privacy as control of information, see W. A. Parent, “Privacy, Morality and the Law,” *Philosophy and Public Affairs* 12 (1983): 269–88. For one criticism of this approach, see Kevin Macnish, “Government Surveillance and Why Defining Privacy Matters in a Post-Snowden World,” *Journal of Applied Philosophy* 35 (2018): 417–32.

45. Anita Allen, *Uneasy Access: Privacy for Women in a Free Society* (Totowa, NJ: Rowman & Littlefield, 1988).



to privacy)? Likewise, someone's sitting next to me on an empty train might be intrusive, as Allen suggests,<sup>46</sup> but my discomfort does not obligate them to move; a fortiori, it is not a matter of justice which would license state involvement. What is needed is an account of why the stalkers' attempts to access the person, which individually might appear to be comparatively minor intrusions on privacy, are prohibited by the right to privacy.

There is a crucial feature of stalking which distinguishes it from the train and café cases: the stalker has not just invaded the target's space or attempted to access her person once; he has done so repeatedly and systematically. This repetitiveness points toward the essential wrong: forcing a relationship, something which extends over time.

Discussions of privacy which identify it as a condition for intimate relationships can explain the normative significance of forcing a relationship under the rubric of privacy. James Rachels grounds the value of privacy in protecting "our ability to create and maintain different sorts of social relationships with different people."<sup>47</sup> Andrei Marmor invokes this argument in his defense of privacy as protecting our interest in people's having a "reasonable amount of control over the ways in which they present different aspects of themselves to others."<sup>48</sup> More and less intimate relationships are defined by what we disclose: "the different patterns of behavior are (partly) what define the different relationships,"<sup>49</sup> and so we need control over what we disclose to protect intimacy. The goods of intimacy (which at least partly ground the value of privacy, on these views) depend on excluding nonintimates.<sup>50</sup>

But these arguments need supplementation in order to identify the moral claim against the stalker independent of the value of protecting other relationships. After all, stalking a hermit—who is not seeking any kind of intimacy—would also be wrong, though it would not interfere with his possession of the goods of intimacy. As Anca Gheaus has written, while there has been a good deal of attention paid lately to the goods of personal relationships, there has been less philosophical attention paid to their "bads."<sup>51</sup> Attention to the bads of unwanted relationships, not merely to the goods

46. *Ibid.*, 124.

47. James Rachels, "Why Privacy Is Important," *Philosophy and Public Affairs* 4 (1975): 323–33, 326.

48. Andrei Marmor, "What Is the Right to Privacy?," *Philosophy and Public Affairs* 43 (2015): 3–26, 7; cf. Allen, *Uneasy Access*, 19, 23.

49. Rachels, "Why Privacy Is Important," 327.

50. *Ibid.*, 330–31.

51. Anca Gheaus, "Personal Relationship Goods," in *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford, CA: Stanford University, 2018), <https://plato.stanford.edu/archives/fall2018/entries/personal-relationship-goods/>, sec. 5.8. To be precise, Gheaus writes that there has been less attention paid to the fair distribution of relationship bads than to the fair distribution of their goods, but the more general point also holds. My own previous work has defended the fair distribution of personal relationship goods; see Elizabeth Brake, *Minimizing Marriage: Marriage, Morality, and the Law* (New York: Oxford University Press, 2012).

of desired ones, is needed. Rachels, like Marmor, focuses on the value of having intimate relationships of various degrees. But the claim against the stalker should not depend merely on protecting valuable relationships; most directly, it protects the interest in avoiding unwanted relationships. The claim to control whether one is in a particular relationship at all deserves attention in its own right.

## V. FORCING A RELATIONSHIP AS A RIGHTS VIOLATION

Stalking, as contrasted with other intrusions on privacy, consists in a pattern of repeated attempts at contact focused on the target as nonfungible. I will argue that this behavior forces a personal relationship on the target. Further, there is a right, or a weighty moral claim, to control whether one is in a particular relationship. By forcing such a relationship on the target, stalking violates this right. (I intend this account to be compatible with a range of deontological moral theories; if a rights claim seems inapt, think of the claim at issue as a weighty moral claim, strong enough to allow the target unilaterally to obligate the stalker to desist and to invoke third-party assistance. Henceforth, for brevity, I refer to this as a right.)

In the following sections, I defend these claims. In Section V.A, I argue that stalking forces a relationship. In Section V.B, I argue that our interest in being able to refuse such relationships is strong enough to ground a right, which I will refer to as a right to control entry into relationships or to refuse relationships.

### A. *Forcing a Relationship*

Relationships consist in temporally extended patterns of certain behavior and attitudes. Behaviorally, they consist in contact and contact-seeking between particular persons, repeated and evolving over time.<sup>52</sup> Thus, someone who only daydreams about another is not in a relationship with her. Personal relationships involve the attitude of seeing the other as nonfungible. Parties to personal relationships are nonfungible to one another—it matters that it is this person, and someone else would not do just as well. In this respect, personal relationships contrast with professional relationships, in which parties are replaceable; typically, in professional relationships the connection serves a further purpose.<sup>53</sup> For example, a

52. This paragraph is indebted to discussions with Uriah Kriegel and Dan Nolan. On the temporal and particularity requirements, I follow Niko Kolodny, “Love as Valuing a Relationship,” *Philosophical Review* 112 (2003): 135–89, 148. There are many questions I cannot address here, e.g., what duration is required.

53. For a distinction between personal and professional relationships along these lines, see Elizabeth Brake, “Paid and Unpaid Care: Marriage, Equality, and Domestic Workers,” in *Philosophical Foundations of Children’s and Family Law*, ed. E. Brake and L. Ferguson (Oxford: Oxford University Press, 2018), 75–94.

customer is fungible to a salesperson if another customer would do just as well. Personal relationships, as I define them here, include both friendships and romantic relationships, and they can include abusive relationships and relationships characterized by negative attitudes between the parties. The definition of “personal relationships” as evolving patterns of interaction in which parties view each other as nonfungible is neutral regarding the type of relationship; it is also morally neutral, including defective or abusive relationships, as well as ideal ones.

The stalker engages in the behavior and attitudes constitutive of personal relationships: contact or contact-seeking with someone who is viewed as nonfungible.<sup>54</sup> (Recall the condition, set out above, that the stalker view the target as nonfungible; this distinguishes him from a private detective, assassin-for-hire, or salesperson who might engage in similar behavior, but for whom the target is fungible. Without this condition, the definition of stalking would be too inclusive.<sup>55</sup>) Stalkers behave as if they were already in a personal relationship with the victim, regardless of whether she consents.<sup>56</sup> The stalker forces the kind of interactions which constitute a personal relationship on her by repeatedly seeking contact without her consent—and hence forces a personal relationship.

While the stalker engages in the behavior and attitudes which constitute a personal relationship, he does so unilaterally; the contact-seeking behavior and attitudes are one-sided. On one conception of relationships, relationships require participation by both parties, so one cannot, for example, start a relationship with someone in a coma.<sup>57</sup> On this conception, the stalker is acting in a way which would constitute a relationship only if it were reciprocated; because the stalker’s victim does not reciprocate and does not consent to a relationship, he is merely trying to force a relationship. (More accurately, but more clumsily, we might say that he is acting in a way which would constitute a relationship, if it were reciprocated.) On another, thinner conception of relationship, one can have a relationship with someone unaware or not reciprocating, such as someone

54. That A sees B as nonfungible does not entail that A values B for B’s own sake. For a related discussion of fungibility, see Martha C. Nussbaum, “Objectification,” *Philosophy and Public Affairs* 24 (1995): 249–91.

55. It might be objected that this condition makes the account too exclusive, wrongly ruling out a misogynist who randomly picks one woman to stalk. It is true that the account would exclude such a hypothetical case. However, because stalking is defined behaviorally in law (rightly, in my view), this would not make a difference to how law should treat such a hypothetical stalker. It also seems plausible that at some point the misogynist would begin to focus on the woman as nonfungible and that his intentions might be opaque even to him; this opacity of intentions is why the law should focus on behavior, not intentions.

56. Thanks to an anonymous reviewer for this phrasing.

57. While we speak of relationships with the dead, or with fictional characters, such locutions may be interpreted as metaphorical. Thanks to two anonymous reviewers for this point.

in a coma; on this conception, we can simply say that he is “forcing a relationship.” For brevity, and to avoid imputing a specific intention to the stalker, I will use the latter formulation throughout. However, if the first conception seems more plausible, take this as shorthand for “trying to force a relationship.”

The stalker’s approach to seeking a relationship with the victim is abnormal relevant to widespread contemporary social norms. He is insensitive to his target’s willingness to reciprocate. But not everyone seeking a relationship does so with sensitivity. Moreover, such an approach is more normal in certain times and cultures.<sup>58</sup> From the normative view developed in this article, this style of approach is defective.

The concept of forcing a relationship, unlike the concepts of violating privacy and free association, captures the distinctive elements of stalking: its patterned, repetitive aspect and the nonfungibility of the victim to the stalker. By contrast, a privacy violation could be a one-time or impersonal occurrence.<sup>59</sup> Likewise, forced association can consist in a single event, and the concept of forced association does not discriminate between forced personal relationships and relationships such as being a fellow club member, fellow worker, or fellow customer.<sup>60</sup> Similarly, forced intimacy or proximity—as when patients, coworkers, or prisoners are compelled to share space—can occur without the attitudes constitutive of a personal relationship. The concept of forcing a relationship is needed to specify the more complex activity which occurs in stalking—and which is a distinctive wrong. Pragmatically, we need the concept of forcing a relationship in order to distinguish stalking from one-time approach.

The concept of forcing a relationship also tracks the distinctive phenomenology of discovering that one is being stalked. Even where there is no threat, the knowledge that someone is repeatedly seeking contact directed particularly at you brings, plausibly, a sense of violation distinct from that of knowing that a stranger has read your diary out of idle curiosity

58. Consider the behavior of characters portrayed as romantic heroes in old movies such as *Say Anything* and *St. Elmo’s Fire*—today, they come across as stalkers.

59. It may be thought that the right to control whether one is in a relationship is a privacy right, in which case this should be taken as supplementing the account of privacy rights.

60. See, e.g., Larry Alexander’s definition of free association: “the liberty a person possesses to enter into relationships with others—for any and all purposes, for a momentary or long-term duration, by contract, consent, or acquiescence. It likewise refers to the liberty to refuse to enter into such relationships, or to terminate them when not otherwise compelled by one’s voluntary assumption of an obligation to maintain the relationship.” ‘Relationship’ here is more broadly encompassing than ‘personal relationship’. Larry Alexander, “What Is Freedom of Association, and What Is Its Denial?,” *Social Philosophy and Policy* 25 (2008): 1–21, 1. The same point applies to forced physical proximity in institutional settings where people are assigned to bunk together, such as prisons, military, dormitories, and hospitals; this can, but need not, lead to a personal relationship. Thanks to Anca Gheaus for discussion.

or made a random prank call. The features of stalking foregrounded by the concept of forcing a relationship explain this distinctive phenomenology: the stalker's sustained attention is directed at you as a nonfungible object and the contact-seeking is ongoing—unilaterally, depending on the stalker's will.

Here an objector might suggest that this account applies only to love- or friendship-seeking stalkers. Above I criticized other accounts as unable to fit the full range of stalking cases; my account should fit the full range of cases. Indeed, the account does intuitively fit love-obsessional stalkers, erotomaniacs, and celebrity stalkers, who seem to seek relationships with celebrities. But it might not appear to fit stalkers motivated by revenge or resentment. However, a personal relationship can be characterized by intensely negative attitudes; to think otherwise is to risk idealizing personal relationships—which are not all good. We can think of examples such as “frenemies,” rivalrous peers, and high-conflict relationships. What makes these relationships personal is the nonfungibility of the parties and the ongoing pattern of interaction. The hostile stalker is forcing a personal relationship characterized by negative affect, or an abusive relationship, on the victim.

So far, I have argued that stalking forces a relationship on the victim. Now I turn to the second claim—that forcing a relationship wrongs the victim.

### *B. The Right to Refuse Relationships*

Persistent unwanted contact-seeking behavior which forces a relationship wrongs, analogous to unwanted attempts at touch or trespass. This revises Card's suggestion, regarding domestic violence, that abusers coerce victims to remain in preexisting relationships; rather, stalkers coerce victims into a relationship. We have a strong interest in controlling whether or not we are in relationships, an interest strong enough to ground a right. (For the sake of argument, I adopt an interest theory of rights here.)

Personal relationships characterized by closeness and reciprocity can greatly contribute to our self-understanding, mental health, and self-esteem. But just as relationships have such goods, when such relationships are bad—high-conflict, violent, or abusive—they have equally profound bads. The bad effects of such relationships on mental health and self-esteem are widely supported by empirical psychology.<sup>61</sup> And such relationships arguably have constitutive harms: if good relationships

61. For an overview, see Daniel Perlman, “The Best of Times, the Worst of Times: The Place of Close Relationships in Psychology and Our Daily Lives,” *Canadian Psychology* 48 (2007): 7–18; see also R. F. Baumeister and M. R. Leary, “The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation,” *Psychological Bulletin* 117 (1995): 497–529.

contribute to good lives, bad relationships presumably detract from the goodness of our lives.<sup>62</sup> The significant constitutive harms and side effects of bad relationships provide strong reason for thinking we have a right to control our entry into relationships and whether or not to remain in them. The right to refuse a relationship entails that forcing a relationship is wrongful.

There are additional interests grounding a right to refuse relationships which are not implicated in all cases of stalking. One is that personal relationships contribute to and shape our identity. Who we are depends, in part, on whom we are in relationships with. Personal relationships affect how we define ourselves, as well as our self-perception and how we grow over time. To the extent that the self is social or relational, and to the extent that we have interests in self-determination, we have interests in controlling what relationships we enter.<sup>63</sup> If a victim is unaware of her stalker or he is a stranger, this interest may be unaffected, but it is at stake in the many cases in which the stalker is a former intimate partner. Redefining oneself after a relationship has ended is significantly impeded if the other party will not desist from contact.

The relationships we enter also affect our moral obligations. Even in interactions with a stranger, unsolicited overtures make demands on the victim's attention which take time and energy to meet—at the least, civility.<sup>64</sup> In personal relationships, special obligations may arise, like a child's duties of gratitude to their parents. Because relationships give rise to moral obligations which can burden us, it is in our interests to be able to control entry into them.<sup>65</sup> Once again, this might apply in cases of stalking by a former intimate partner.<sup>66</sup> The victim has an interest in extracting herself from any special obligations (which she is morally permitted to extract herself from) as smoothly as possible.

Finally, personal relationships are normally important goods. If we only have limited bandwidth for relationships, then having them forced upon us reduces our capacity to access these goods (as argued by Rachels

62. See Gheaus, "Personal Relationship Goods," on the constitutive goods claim.

63. On trauma and the relational self, see Susan Brison, *Aftermath: Violence and the Remaking of a Self* (Princeton, NJ: Princeton University Press, 2002), 41–64. On the relational self, see also John Christman, "Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves," *Philosophical Studies* 117 (2004): 143–64; and Catriona Mackenzie and Natalie Stoljar, eds., *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (New York: Oxford University Press, 2000).

64. For discussion of such interactional duties, see Kimberley Brownlee, *Being Sure of Each Other: An Essay on Social Rights and Freedoms* (Oxford: Oxford University Press, 2020), 112. Thanks to Noa Latham and Charles Siewert for raising this point.

65. Compare Marmor, "What Is the Right," 9: "closeness to another typically involves expectations and responsibilities that one should, by and large, only undertake voluntarily."

66. There are complexities which arise with ending a relationship in which special obligations arose; some commitments may be ongoing. I set aside these complications here.

and Marmor).<sup>67</sup> Not only does the right to control whether we are in relationships allow us to avoid bad relationships, but it also enables us to have more good relationships.

Again, not all cases of stalking will affect all of these interests. Indeed, if the victim remains unaware, these interests may never be affected. But these interests provide independent grounds for a right to refuse relationships—a right which forcing a relationship violates, even if the attempt does not affect the victim’s interests in a particular case. Even if the victim remains unaware of the stalker, he risks affecting her interests and thereby wrongs her, like someone playing Russian roulette with an unaware target.<sup>68</sup>

Given the weight of the interests which ground the right, the victim can legitimately use third-party force to exercise this right. If the stalker refuses to desist, third-party intervention may be her only means of compelling him to stop and thereby exercising her right. (To be clear, I am arguing that there is a moral claim which could legitimate invoking third-party force, not for a particular legal approach to stalking. Any legal approach must take into account, for one thing, the disproportionate enforcement of domestic violence laws against communities of color.<sup>69</sup>)

This account discriminates between permissible friendly overtures and impermissible attempts to force a relationship based on whether the behavior in question could constitute a relationship. Imagine that Archie is trying to make friends with Veronica. She asks him to stop contacting her, and he sends one or two more emails. While we might agree that Archie should stop emailing Veronica, it seems implausible that at this point she can invoke third-party force to compel him to leave public places where she appears. Someone badgering another for friendship might seem to violate a duty of virtue, not of justice.<sup>70</sup>

To avoid such implications, the account sets a high bar for what counts as forcing a relationship. To return to the definition given above, the “persistent unwanted contact” involved in stalking must be persistent unwanted contact of a nature and extent which constitute a relationship.

67. See Rachels, “Why Privacy Is Important,” 330–31; and Marmor, “What Is the Right,” 7–9.

68. It might be thought odd that overt acts are required for the wrong to occur even if the victim might be unaware of them. Would not merely fantasizing about a relationship risk harming these interests too? However, as relationships are partly constituted by behavior, fantasy alone does not force a relationship. Moreover, because imaginings are opaque to others, they do not risk discovery as action does—nor do they meet a reasonable evidentiary standard for third-party intervention. Thanks to Dave Sobel for discussion on these points.

69. For discussion of different legal approaches, see Meloy, *Psychology of Stalking*; and, in a related context, Leigh Goodmark, *Decriminalizing Domestic Violence* (Berkeley: University of California Press, 2018).

70. Thanks to an anonymous reviewer for this point.

Forcing a relationship involves more than a few emails; it involves assiduous and repetitive approaches. If the bar is set high enough, the cases counted as wrongful will largely align with our intuitions. Setting the bar high is not ad hoc. Relationships involve extensive contact over time, which provides a rationale for setting the bar high. If there is extensive enough, and prolonged enough, contact to constitute a relationship, this grounds the claim that the stalker is forcing a relationship. (Of course, this raises an important question: how much interaction constitutes a relationship? If Archie sends one more email, it seems like a minor infraction, but if he sends dozens more, it begins to look serious, so where do we draw the line? I cannot answer this here, although I have suggested a pragmatic reason for setting the bar high.)

While the account should avoid categorizing morally benign overtures as wrongful, the account may rightly call into question some overtures which are currently considered acceptable, thereby forcing us to ask what kinds of attention- and intimacy-seeking behavior are permissible. I consider this a benefit of the account. Women are often expected to provide extensive and burdensome care, attention, and emotional labor simply because they are women.<sup>71</sup> My account entails that we have a right against some of the more egregious and persistent instances of such demands; arguably, some currently socially accepted interactions violate rights. This suggests a reason for changing social norms by, for example, incorporating an active consent standard to contact: repeated attempts at personal contact require active consent, and without it, they risk a rights violation.<sup>72</sup> When the account classifies cases as wrongful against our intuitions, this suggests that we should consider revising our pretheoretical intuitions.<sup>73</sup>

The account of the essential wrong of stalking as forcing a relationship can supplement some of the accounts which I rejected earlier as unable to account for the wrong of stalking. If the right to refuse relationships is a central autonomy right, this explains why stalking violates autonomy. The right to refuse relationships can also supplement the

71. See S. L. Bartky, *Femininity and Domination* (New York: Routledge, 1990); Elizabeth Brake, "Care as Work: The Exploitation of Caring Attitudes and Emotional Labor," in *Caring for Liberalism: Dependency and Political Theory*, ed. Amy Baehr and Asha Bhandary (New York: Routledge, 2020), 215–37; Kate Manne, *Entitled: How Male Privilege Hurts Women* (New York: Crown, 2020).

72. Thanks to Jonathan Ichikawa for this point. Of course, changing social norms is a complex matter; see, e.g., Cristina Bicchieri and Peter McNally, "Shrieking Sirens: Schemata, Scripts, and Social Norms: How Change Occurs," *Social Philosophy and Policy* 35 (2018): 23–53.

73. If you resist this in the case of someone seeking friendship, consider whether your intuitions would change if the person were seeking a romantic relationship rather than a friendship. Why should seeking friendship be a lesser violation than seeking a romantic date?



coercion account: coercing the target into a relationship is wrongful because we have a right to control entry into relationships. Finally, my account suggests a way to further specify privacy rights.

### C. *Objections*

This account has identified the wrong essential to stalking: forcing a relationship. I said at the outset that we should keep in view the gendered violence correlated with stalking. It might be thought that my analysis fails to do justice to this—after all (an objector might think), the wrong is only that of forcing a relationship. But my project is to identify the wrong essential to all cases of stalking, and not just those with gendered dynamics.<sup>74</sup> Identifying the essential wrong allows us to understand the wrong inflicted on anyone who is stalked. Further, identifying the essential wrong illuminates other contexts in which people are wrongfully pressured to enter relationships.

The last point—that any pressure to enter relationships should be subject to moral scrutiny—might prompt a different objection: that the argument for the right to refuse relationships dismisses valid claims to social interaction, entailed by what Kimberley Brownlee has termed “social human rights.”<sup>75</sup> Social human rights limit the scope of free association, on Brownlee’s view; such rights could obligate agents who are uniquely positioned to do so to interact with claimants who are especially dependent and lack other means to access social interaction—for example, a lonely child. On such a view, it might seem that socially isolated stalkers have a claim to interaction which conflicts with the right to refuse relationships. But we can distinguish stalkers from the lonely child: given that stalkers have the ability to seek contact, they could pursue other routes to social interaction. A right to access social interaction does not (generally) entail a right to interact with a particular other person, much less to a relationship with them.

A related objection takes the form of a *reductio*: children are brought into personal relationships with their parents and siblings without consent, and anyone can be brought into unwanted proximity as families or friends bring new members into the group, especially where large, extended, multigenerational families cohabit. If my account entailed that procreation, adoption, and introducing new friends or family members into a group violated rights to refuse relationships, this would surely be a drawback.<sup>76</sup>

74. Thanks to an anonymous reviewer for this point.

75. See Brownlee, *Being Sure*, 68–69; see also Stephanie Collins, “Duties to Make Friends,” *Ethical Theory and Moral Practice* 16 (2013): 907–21.

76. For these points, thanks to Anca Gheaus, Doug Portmore, Vida Yao, and Anes Webster.

While the details of each case will make a difference, I can offer a few general replies. Young children cannot exercise autonomy, and they need relationships with adult caregivers to develop and thrive. Being brought into a filial relationship with a parent does not violate the child's right to choose caregivers because children cannot exercise such choice, and they must have caregivers.<sup>77</sup> Among adults, many social circumstances will require interacting with new friends or family members. A single introduction would not violate a right to control entry into a relationship; so long as I can avoid a potential new friend, this doesn't constitute force, or a relationship.<sup>78</sup> But if someone persistently forces me, against my express request, into interacting with a third party in order to bring about a relationship between us, they wrong me.

It might be objected that my account does not capture what is truly distinctively wrong about stalking. One such objection is that the stalker's behavior is so unpredictable, abnormal, and inconsiderate that it always issues an implicit threat.<sup>79</sup> But even if victims did inevitably perceive stalking as threatening, one's experiencing something as a threat is not enough to make the behavior wrongful, as I argued in Section IV.C. For example, I might reasonably experience the erratic behavior of an un-housed person in the park as a threat, particularly if I am a woman walking alone at night, aware of assault statistics in my area, and so on, but that alone does not make their behavior wrongful. Furthermore, in cultures with different norms of approach, stalking behavior might not be experienced as threatening (see, e.g., the 1985 film *St. Elmo's Fire*, one character's behavior is clearly stalking and would be unacceptable today, but the victim is unfazed and declares herself "flattered"). In the absence of violence, whether the stalker's behavior is experienced as threatening depends on background social norms, but the wrong of forcing a relationship does not depend on whether social norms permit stalking behavior. Stalking wrongs the victim even if it is viewed as normal, harmless courtship behavior and so is not perceived as threatening. Finally, it might be thought that it is the combination of threats of violence, psychological damage, and forcing a relationship which produces the distinctive harm of stalking. But this combination characterizes the worst, not all, cases of stalking. However, my account does not ignore these additional wrongs; they can

77. See, e.g., Anne Alstott, *No Exit: What Parents Owe Their Children and What Society Owes Parents* (Oxford: Oxford University Press, 2004); although see also Anca Gheaus, "Arguments for Nonparental Care for Children," *Social Theory and Practice* 37 (2011): 483–509.

78. There are hard cases, e.g., when people are forced into proximity by a need for housing and care (like an elderly parent); if there is a wrong here, it seems to lurk in the background conditions of poverty and the failure of social institutions to provide assistance, which preclude family members from exercising choice.

79. Thanks to an anonymous reviewer for this suggestion.

be added to the essential wrong of forcing a relationship, allowing us to grade cases morally.

Finally, it might be objected that this account fails to capture cases of stalking which consist purely in information-gathering, or surveillance-stalking. As stated at the outset, my focus has been on contact-stalking. Indeed, the majority of stalking behaviors involve contact-seeking, but it is true that some involve only surveillance. Both types of stalking share a key feature: the surveillance-stalker, like the contact-stalker, focuses on the victim as nonfungible (this distinguishes both from Google collecting data as a source of ad revenue). But contact-stalking has the distinctive wrong-making feature of forcing a relationship—which surveillance-stalking lacks.

It may be objected that this distinction between surveillance- and contact-stalking is ad hoc; after all, I objected to other accounts on the grounds that they could not cover all cases of stalking, yet my account does not cover surveillance-stalking. But the distinction between surveillance-stalking and contact-stalking marks a salient distinction between two behavioral patterns: behavior which merely observes, and behavior which reaches out to, a victim.

My account of the wrong of contact-stalking does help us to understand the wrongs of surveillance-stalking. Surveillance-stalking typically involves privacy violations. But it involves an additional wrong if the information is used to force a personal relationship on the victim; in this case, collecting the victim's private and personal information has contributed to a further rights violation.<sup>80</sup>

## VI. CONCLUSION

A successful account of the wrong of stalking should fit across the range of cases, identify a wrong arising from the essential features of stalking, distinguish permissible contact from impermissible stalking, and distinguish cases which are morally better and worse. It is a further benefit if the account illuminates a range of further cases. My account satisfies these desiderata.

First, it explains the wrong in the full range of stalking cases: celebrity stalkers, cases with no preexisting relationship, same-sex stalking or women stalking men, cases which do not involve threats, and cases in which the victim is unaware of the stalking. Second, it distinguishes permissible from impermissible unwanted contact based on whether or not the contact in question is extensive enough to constitute a relationship. Third, it allows us to grade cases morally. I noted above that psychological harm is imputable to the agent if and only if he has done wrong. Because the stalker has

80. Thanks to Eric Cave and Anca Gheaus for discussion.

violated a right to refuse relationships, he is responsible for harm resulting from the wrong. Thus, the account can differentiate cases morally by imputing the resulting harm to him. Further, stalking which perpetuates gender, racial, and sexual orientation oppression or involves threats adds additional wrongs to the essential wrong of stalking.

Finally, the account has implications for other cases. As noted, it helps us to understand the wrongs of surveillance-stalking. It also has implications for other cases of pressure to enter relationships. As mentioned above, women are often inappropriately expected to provide emotional labor, attention, and care at work, in families, and with friends and acquaintances; this can extend to pressure to enter relationships, which might violate the right to refuse relationships. I leave more detailed examination of these further implications, as well as the scope of the right to refuse relationships, for future consideration.