

## Schools and the right to privacy

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### ABSTRACT

This paper examines some of the many senses of 'privacy' and its justification as an important value in a liberal society. It argues that the basic idea is that for a sense of personhood the individual must have an area of her life which is 'her own' and not to be invaded without her consent. In this sense, privacy is a universal human value, but, of course, the form it takes may vary from society to society. This basic areas of privacy are: (1) One's inner life (thoughts etc.) and the external manifestation of these (such as intimate diaries). (2) Physical privacy, as in one's home, or, even more so, one's bedroom. (3) In public places where invasive techniques are used (e.g. hidden cameras, binoculars, telescopic sights). The analysis is then applied to children. While conceding that, because of their immaturity, children may sometimes be entitled to less privacy than adults, it is important to remember that they have to learn the values associated with privacy and hence ought to be accorded as much privacy as possible. This is then related to schools, which are particularly problematic, since schooling between certain ages is compulsory. There is a practical discussion of the limitations which privacy imposes on: school rules, research on children in classrooms; handling of personal belongings; diaries and personal notes; school record-keeping; and assessment practices.

In a liberal society privacy is widely valued. At the same time, most people believe that they are entitled to secure information relevant to their lives even if this includes information which someone would prefer not to reveal. In this country the tension between the two values is institutionalised: we have both a Privacy Act and a Freedom of Information Act. Given these points, it is not too surprising that there is an extensive philosophical literature on privacy. This tries to analyse the concept, to investigate the source of the value placed on it, to investigate its limits and to relate it to other social values. In this paper I shall touch on some of these issues but want to centrally address the question: to what extent is privacy, as viewed in the liberal tradition, applicable to young people especially in institutions such as schools?

There are a large number of different dimensions of privacy: not being unwillingly observed, especially in intimate situations; not having one's mail opened or one's belongings searched by another; being allowed to keep one's thoughts and values to oneself if that is what we want to do; and so on. Many of the differences in the analyses of the meaning of 'privacy' derive from the fact that the writers are thinking of rather different senses of privacy, or at least of different situations in which privacy is at stake. Schoeman (1984:199) has isolated three different philosophical approaches: (1) Some philosophers regard privacy as the *right* of a person to determine what information about herself may be communicated to others. (2) Others argue that privacy is the

measure of *control* that a person has over (a) information about herself (b) 'intimacies of personal identity' and (c) who has sensory access to the person. (3) Finally, some philosophers have regarded privacy as a *state* of limited access to a person.

In some of the literature on privacy there has been an emphasis on information. Indeed some have written this into the definition. Thus Parent writes:

Privacy is the condition of not having undocumented personal knowledge about one possessed by others. A person's privacy is diminished exactly to the degree that others possess this kind of knowledge about him. (1983:269-270)

But this account, while capturing an important aspect of privacy, is too restrictive: our objection to the voyeur and to the person who reads our personal mail is not sufficiently captured in terms of the knowledge gained about us. It is essential in discussing privacy in educational institutions that we keep a rather broad definition in mind so we can capture the various ways in which a child's privacy might be breached. On the other hand the definition should not be too broad. Andre (1986) exemplifies this error.

Putting forward the view, also argued by many others, that there is no separate and distinct right to privacy, Andre writes:

I will argue ... that we have no right to privacy as such. Apparent rights to privacy are special cases of rights that justified expectations about social conventions be fulfilled. (1986:309)

She adds: "One has privacy, in my sense of the word, to the extent that others do not recognize, perceive or know about one". Her argument for this depends on the view that *A* cannot have a right if others typically have contradictory rights against *A*. Since the so-called 'right' to privacy is easily defeated by the right which another person has to know certain things, there is no *right* to privacy. As Postow (1988:328) has pointed out, however, the conclusion is made plausible only by the wide definition which Andre uses. On that definition, being recognised on the street would violate privacy. Thus every human encounter diminishes privacy in this sense. However, if a narrower notion of privacy is invoked, the argument against a right to privacy loses much of its force.

I want to assume that people do have a right to privacy, though this (of course) is not an absolute right, and on a particular occasion it might be overruled by the rights of others or by the overall 'common good'. This, I believe, is true of all rights. Privacy is, nevertheless, an important social value not to be lightly overruled, especially for utility considerations. This I take it, is the fundamental moral point of all rights talk. Talk of rights always draws attention to the individual as against the 'common good'.

The definition which a writer is working with is also relevant to the *justification* of privacy. Without trying to give a tight definition, I shall simply suggest that the basic idea of privacy is that each person should have an area of their lives which belongs to them alone. In relation to this area, privacy involves two notions: (1) I am not required to share it with anyone else, unless I chose to do so; and (2) no one should invade this area (even if secretly) without my full consent. Expressed in this general way, privacy is a universal value. The extent of this area is, however, conventional, and different societies and different social groups differ on the breadth of the area in question. According to Westin, "Privacy appears to be a cultural value in all known human communities although the forms it takes may vary enormously". (Cited in Schoeman, 1984: 202).

I shall assume that one of the social values of liberal society is that the sphere of personal autonomy should be as wide as is consistent with the rights of others and with the social cohesion on which society depends. Hence, in a liberal society, the sphere of privacy should be very wide indeed.

The most basic privacy is that one must be entitled to one's own inner life. For this, essentially, is where I define myself and decide what kind of a person I am to be. Then there are external simulations of that. A prime example is keeping a personal diary, which, it seems, is a very common

practice in adolescence (presumably because it is a way of coming to terms with who an individual is). A diary, then, is, almost by definition, for the writer's eyes only. Slightly further out are the letters which are intended for a very limited audience (in the case of love letters, usually for one person only). Some degree of privacy here is logically necessary for the expression of intimacy. Intimacy, widely shared, ceases to be intimacy and the 'kiss and tell' lover is almost universally despised, for he has mounted a frontal attack on the very institution of intimacy. We would not enter into intimacy if we could not be reasonably sure that our privacy will be preserved. This explains our growing sense of horror when reading *Brave New World*.

Society also erects physical boundaries for privacy: one's home is restricted to family members and to others in limited ways. (When we are invited, we presume we can sit in the lounge and use the bathroom, but we are not entitled to try out all the beds or to go through the cupboards.) Further out still, our concern for privacy involves not being viewed unwillingly. Some take this too far and extend it to activity in public places. Speed cameras and shop surveillance are not invasions of privacy provided that people are given notice that such surveillance is carried out. (To some extent, their deterrent effect operates on that knowledge as much as on actually being caught.) In these areas there is no intrusion into one's *private* self, and hence no question of privacy arises.

This point is not to be confused with a different and, I believe, illegitimate one which is often made when there are proposals to 'bug' telephones or actual premises, say, in order to apprehend criminals. The proposal is often defended by citizens who say that anyone who is not breaking the law will have nothing to fear. This is true enough, but it is beside the point: these people are going about their legitimate activities and should not have their privacy violated. In getting clear about privacy, there is an important distinction between being in a public place or engaging in a public activity (such as motoring) and being in a private place or engaged in a private activity (such as talking to family in the lounge or on the telephone to a friend).

There can be no objection in principle to people being photographed at a football match or captured on camera in the busy street. A person might, however, have a legitimate grievance if the photo were used in a way which embarrasses her (when it is used in a cartoon, say, or to advance some product or some ideology to which she objects). Here what is public merges into areas of the private; and, although the original snap was 'public', it has been used in a harmful manner. It should also be said that even if a person is in a public place (e.g. the public beach) her privacy would be under threat if someone viewed her through binoculars or took telescopic pictures. Privacy depends on the extent to which it is reasonable to believe that one is likely to be observed. It is reasonable to believe that on the public beach one is subject to scrutiny by other users of the beach, and it is equally reasonable to believe that one is not being viewed from a distance by electronic means.

## Privacy and children

Privacy is directly related to one's personhood. In Lomasky's (1987) terms a person is a being with an identity over time which is, to a considerable extent (but not solely), related to the fact that she is a 'project pursuer'. It seems to follow, therefore, that the issue of privacy is directly related to the person-hood status of the alleged possessor of the right to privacy. I believe this to be the case. Thus a person who is mentally ill or senile, while certainly not losing all her privacy rights, can legitimately be deprived of some of them. A similar situation obtains with children. A small baby can be viewed in bed or in the bath without a breach of her privacy. But two important qualifications must immediately be made: (1) There is no abrupt change from non-person to person: the situation is developmental and even very young children can have projects for which they can legitimately demand some privacy. (2) Since having such projects and valuing privacy is a learned activity, respect for privacy has to be built into a child's upbringing if she is to learn to see herself as a person. Thus Kupfer argues:

Privacy contributes to the formation and persistence of autonomous individuals by providing them with control over whether or not their physical and psychological existence becomes part of another's experience. Just this sort of control is necessary for them to think of themselves as self-determining. (1987: 82)

Kupfer goes on to illustrate this point by reference to empirical work in 'total institutions', such as prisons, nursing homes, hospitals, religious orders, and military establishments. In these sorts of institutions people lose a sense of themselves as choosers and tend to become passive. This point is supported by studies of child development such as those of Piaget:

As [the child] recognises herself as determining whether and to what degree others have access to her, the child develops an autonomous self concept. She sees herself as having some power to determine what happens to her. (loc cit: 83)

In our society, the family is often treated as having particular rights, and included are the right to privacy (for the family) and the right to make decisions on behalf of children (such as the kind of education they are to receive). While not wanting to deny these kinds of rights, I believe that they have to be severely limited in terms of the rights of the child herself. This is particularly pressing at the present time when we are becoming acutely aware of the fact that in thousands of homes, 'family privacy' has sheltered abusers of all kinds, and these have done intolerable harm to children in terms of their bodily integrity, their self esteem, and their ability to become 'project pursuers'. Nor should the parents' rights 'over' children be allowed to damage the child's long term right to manage her own life, adopt her own set of values, choose a religion (or no religion) and hold social and political opinions. The rights of parents are severely limited by the fact that their authority is only 'provisional': the child must increasingly be encouraged to take control of her own life.

When we turn to schools and other educational institutions, these issues become intensified. For one thing, education to a certain stage is normally compulsory, and hence (in a sense) schooling is itself a breach of the child's privacy. There is a large area of her life over which she has no control: she is forced by law to 'share aspects of herself' with many others. It is important, therefore, that the school make a special effort to preserve children's privacy as much as possible. Once again, this will be age-related, and an adolescent might expect more privacy than a new entrant.

In fact, however, schools (including secondary schools) have a rather poor record in this respect. Forcing children to reveal 'secrets' has been common; lockers have been routinely searched; children have been required to reveal their emotional responses in public and have been ridiculed for their opinions. Where teachers have been duly sensitive, other students have not always been so. And researchers in many classrooms have uncovered brutality, sexism and racism to a degree seldom imagined.

Researchers themselves often endanger children's privacy. There have been occasions in which principals have given permission for interviewing or videotaping classrooms without the consent of the children. I believe that every child should have the right to opt in or out of such research regardless of how inconvenient that is for the school or the researchers. Adrienne Alton Lee and Graham Nuthall, the foremost classroom researchers in this country, have given a splendid example of ethical practice. Their work has involved close and detailed study of the learning of a small number of students in primary classrooms and increasingly has depended on the use of individual microphones around the neck of each child so that the researchers can record every word uttered. They write (1992):

Case study students were selected from those *students who wanted to participate* and for whom we had parental permission. (32)

Because of ethical issues concerning privacy we negotiated the use of these microphones carefully with teachers, parents *and the students themselves*. The students could wear the microphones unobtrusively around their necks and were instructed to turn the transmitter on at the outset of each instructional period. *The students were able to turn the transmitter off at any time* if they wanted to say something that would not be recorded. All students in each class who had

permission wore the transmitters but only those of the case study students and the teacher were live. (35) [My emphases].

Note that: the children themselves (as well as their parents) were required to give consent to taking part; and at all times they were in charge of the transmitter and could turn it off to preserve their privacy. When the work involved video taping a whole class, those who opted out were given equivalent lessons in another place. Would that all researchers were as sensitive to the privacy rights of the child.

A very blurred area, however, is opening up as teachers increasingly use their own classes for research. While one wants to encourage teachers to undertake research, this tendency is ethically problematic. For one thing, there may be conflict of interest: the prime task of a teacher is to teach, not to use her students as research subjects. Her research activity may detract from her teaching work.<sup>1</sup> The confusion between the role of doctor and researcher is what led some doctors at the Auckland Women's Hospital into grossly unethical behaviour.<sup>2</sup> Fortunately the harm wrought by teachers is normally less than that which can be caused by doctors, but the precedent is salutary.

If a teacher is researching on her own students, there is also the danger that informed consent will not be gained; and, indeed, students may even not be aware that they are being studied. In the reporting of the research it may be difficult to preserve the confidentiality of the sample and individuals might be identifiable. It is not easy to lay down hard and fast rules for such research, but there should always be a good deal of caution, and approval should always be sought from an Ethics Committee. Increasingly, each school may have to set up an ethics committee to oversee research, and there should be representation from the community. University Departments of Education and Colleges of Education should be providing leadership in these areas. It is, in fact, doubtful if many teachers in training have received any grounding in professional ethics at all.

The privacy issue for schools is complicated by the fact that the school is expected to educate children in the various branches of knowledge and to provide a moral education for a democratic and pluralistic society. This means that there may be a tension between respecting the privacy of students and promoting values (including respect for privacy) which are part of the life which they are to live in common in adult years.

## Educational recommendations

From the above discussion it follows that:

1. The school in its rule structure and procedures should model the values it is supposed to be teaching. As Justice Brennan wrote in dissenting from the majority opinion of the American Supreme Court:

Schools cannot expect their students to learn the lessons of good citizenship when the school authorities themselves disregard the fundamental principles underlying our constitutional freedoms. (Cited in Johnson & Crowley 1986: 223)

Privacy needs to be exemplified in the way the school deals with the students in order that they learn what kind of a value privacy is.

2. Pupils should, as part of their moral education, be helped to respect the rights of others and, in particular, the right of others to their legitimate privacy. The attitude that others are entitled to their privacy is one which the school should consistently reinforce. Once again, the staff must set the standards.

3. Each student's person and belongings should be treated as her private domain and not be subject to search. In the wider community, there are exceptions to this when police gain a search warrant to search a particular place where they have good reason to believe that there is stolen property or forbidden material, but a liberal society does not extend this to a global search of the



houses of the innocent. The school should be even more vigilant than the wider society, for here young people are being taught what kind of a society they are preparing to enter. Certainly indiscriminate searching of lockers, desks, and personal bags should never be condoned.

4. Students should be given opportunities to be alone if they choose. Given the architecture of most schools, this is not easy to achieve, but a quiet room (a secular version of a chapel perhaps) should be available or the library should be a place of silence where a child can read or day dream, an important aspect of finding out who we are.

5. In classrooms, children should be entitled to keep their opinions to themselves if they want to. The ideology in which all one's beliefs and values must be made public is a dangerous one, particularly in compulsory institutions. It is essential that young people learn that they have an area of privacy which they can, if they wish, share with another. They should never be forced to share it with the whole class. Respect for privacy should be a prime value in schools.

There is, however, a difficulty here. Schools are meant to help students learn the major areas of human understanding. While mathematics and science can probably be taught without much worry about privacy, the same is not true of history, literature, or social studies. It is quite interesting indeed to recall that in the 1877 Education Act, parents were entitled to ask for their child to be excused lessons in history. Privacy might not have been quite the point but the idea is instructive. Good pedagogy in history, especially at the senior level, may require discussions of political and religious values. Good literature teaching may require that students identify their own emotions and examine their personal experiences in relation to a novel or a poem. Balancing this educational task with the duty to respect privacy is not easy. This is perhaps another reason to plead for more ethical discussion in the preparation of teachers so that the issues have been thought through before the dilemmas really arise. In our concern for privacy it may be that some of the more delicate material should be in written form and restricted to a confidential exchange between student and teacher. The rest of the class has no need, and hence no right, to know about some of the more intimate reactions of an individual. Students should also be allowed to make notes which are for their eyes only. Such personal notes should never be 'confiscated' or read out.

6. Schools should take great care with student records. As far as possible these should contain only educationally relevant data and should be viewed only by those entitled to view them. The custom of handing records on to other teachers and other schools might be questioned. It is to be hoped that schools have long since abandoned the practice of allowing college students 'on section' to read files which contain personal material. And teachers should not 'gossip' about the personal affairs of their students.

7. The area of student assessment raises crucial concerns. For one thing, assessment is primarily a matter between the teacher and the student (and sometimes her parents), and yet, not infrequently, the achievement of each child is known by the others in the class. All forms of assessment should be based on objective criteria of knowledge, skill and understanding. A student should never be assessed on the basis of her own subjective states or her opinions on controversial issues and should never be judged on character but only on behaviour. The use of IQ or Scholastic Aptitude Tests is very problematic: they tend (probably unjustifiably) to carry more weight than ordinary achievement tests, and sometimes a 'score' gets attached to a person as if 'having an IQ of 105' is an objective and perduring fact about a person. Most problematic of all is the use of personality tests. These are of doubtful validity (particularly if used outside strictly clinical contexts) and can seriously invade a person's privacy as well as causing at times damaging loss of self esteem. The school should take particular care with its assessment policy to ensure that at all times there is no undermining of the children's privacy.

8. It should go without saying that where a student confides in a teacher, her privacy should be respected and the confidence preserved even in relation to the principal and the parents. As in all moral matters, such a requirement can never be absolute. Other moral principles come into play, such as the protection of the rights of others and the prevention of harm to the student herself or

to others. The moral dilemma of the priest in the film *Priest* indicates how stark such tensions can be. It is a sure sign of the maturing of the profession of school counsellor that counsellors now take very seriously their obligation to preserve the confidences of students even in relation to the school authorities. Where there are limits to that confidence, clients (and students in general) should be made aware of these limits, as is now required in the Codes of Ethics of most professionals.

## Conclusion

But privacy is not the only value which the school should foster. There is, after all, the need to be prepared not only for 'private life' but also for the shared life of the community. There are powerful people in our society who are determined that the school will foster individualism and competitiveness to the exclusion of any responsibility for constructing a humane society. They need to be confronted with a more communitarian approach to social matters, and the school which tries to be a moral community can play an important part in this. The school should model concern for others, especially those who are needy, and should stand firmly for justice and equality. Thus while the right to privacy is an important element of moral education, it is by no means all of it, or even the most important part of it.

## Notes

1. Note that 'research' here means the systematic collection of generalisable data. This is to be contrasted with situations in which the teacher 'experiments' with innovative teaching strategies in the hope of enhancing the students' learning. There can be no objection to this kind of sensitive experimentation.
2. In this notorious case, clinicians divided patients who were at risk from cervical cancer into two groups: one group received innovative treatment, and the other group was not treated. Some of the latter group may have died as a result. See Sandra Coney *The Unfortunate Experiment* (1988).

## References

- ALTON-LEE, ADRIENNE & NUTHALL, GRAHAM (1992) 'A Generative Methodology for Classroom Research', *Educational Philosophy and Theory* 24, 2, pp. 29-55.
- ANDRE, JUDITH (1986) 'Privacy as a Value and as a Right', *The Journal of Value Inquiry*, 20, pp. 309-317.
- CONY, SANDRA (1988) *The Unfortunate Experiment*. Auckland: Penguin Books.
- JOHNSON, JEFFERY L. & CROWLEY DONALD W (1986) 'T.L.O. and the Student's Right to Privacy', *Educational Theory*, 36, 3, pp. 211-224.
- KUPFER, JOSEPH (1987) 'Privacy, Autonomy, and Self-Concept', *American Philosophical Quarterly*, 4, 1, pp. 81-89.
- LOMASKY, LOREN E. (1987) *Persons, Rights, and the Moral Community*. New York: Oxford University Press.
- PARENT, W.A. (1983) 'Privacy, Morality, and the Law', *Philosophy and Public Affairs*, 12, pp. 260-275.
- POSTOW, B.C. (1988) 'Andre on Privacy', *The Journal of Value Inquiry*, 22, pp. 327-330.
- SCHOEMAN, FERDINAND (1984) 'Privacy: Philosophical Dimensions', *American Philosophical Quarterly*, 21, 3, pp. 199-213.