



Introduction

Though the incredibly rapid proliferation of new avenues of communication, especially via the Internet, has generated enormous discussion about problems of protecting privacy, there is surprisingly little pertinent constitutional or statutory law aimed at doing so. The word "privacy," in fact, does not appear in the Constitution of the United States.

Even so, in 1965, the Supreme Court discerned a broad "right of privacy" implicit in the Constitution in a case originating in New Haven, *Griswold v. Connecticut*. Later this ruling served as the basis for protecting many other rights, including a woman's right to choose to have an abortion prior to fetal viability. These kinds of privacy rights, however, are fundamentally rights to make certain sorts of decisions basic to one's life. They are not primarily about keeping information secret.

In 1967, in *Katz v. U.S.*, the Supreme Court adopted a new approach to the Fourth Amendment guarantee against unreasonable searches and seizures, ruling that the Amendment protected all areas and activities about which persons had a "reasonable expectation of privacy." Since that time privacy concerns have helped define 4th and 5th Amendment limits on governmental law enforcement practices. Again, however, these rights are not primarily about keeping one's personal information private.

Only since these *Griswold* and *Katz* rulings has "privacy" been an official element in American constitutional law. Yet it is not clear that these rulings really protect "privacy," so much as "autonomy" and "freedom from arbitrary police conduct." They also restrain only governmental actors, not the words or deeds of private businesses, organizations, or individuals.

In recent years Congress has sought to protect the privacy of medical, financial, and criminal records and e-mail through various laws, though these "rights of privacy" are statutory, not constitutional. So far, moreover, Congress has also chosen primarily to restrict governmental agencies and to leave communications industries, including "dot.coms," to self-regulation. It has, however, tried to prevent unwanted exposure to sexually explicit materials on the Internet. Those laws in some ways protect but in some ways restrain privacy, and they have also faced major First Amendment challenges.

Hence constitutional and statutory protections of privacy, particular safeguards for personal information, remain relatively sparse, even as privacy concerns are growing for understandable reasons. Governments and police are acquiring powers and technologies that make a "Big Brother" police state a potential reality. Corporations and inquisitive individuals can gain extraordinary access to personal data enhancing their power to shape all our lives. And with the completion of the Human Genome Project and the advance of technologies of cloning and genetic engineering, parents, voters, and/or bureaucrats may be in a position to make basic

decisions about the genetic makeup of future generations that could transform the very nature of the human species.

The seminar on "Constitutional and Statutory Privacy Protections in the 21st Century" explored all these issues primarily through examining legal cases described in Ellen Alderman and Caroline Kennedy, *The Right to Privacy*, along with excerpts from landmark Supreme Court cases, important statutes, and some pertinent news stories. Participants learned about the origins of constitutional privacy rights and the distinctions between *Griswold*-style "autonomy" privacy rights, 4th Amendment privacy rights, and "personal data" privacy rights. They discussed at length fascinating cases involving issues of drug law enforcement, school discipline, abortion, cloning, the "right to die," employer access to personal information and e-mail communications, press rights to publish personal data, limitations on sexual expression, and other "privacy"-related constitutional, statutory, ethical and public policy issues. Most participants began with a strong sense that heightened protections for privacy were desirable. Yet through the course of the discussions, many became wary of the consequences of extensive regulations to achieve this end, and some even questioned whether in most of these cases "privacy" really expressed well just what it was they most wanted to protect. All participants, including the seminar leader, gained a much richer knowledge of the legal and technological issues raised under various "privacy" rubrics today and a deeper appreciation of the vital but puzzling choices we now face.

The teachers drew on these readings and discussions to create curriculum units that skillfully employed "privacy" questions to advance learning by a wide range of students. High school business will learn by doing about the "cookies" that track their browsing habits, and they will discuss personal and legislative means of protecting privacy in face of such technologies. Business law students will examine the legal protections against "cybercrime" and the dangers that regulations pose for freedoms of expression. High school history students will learn about the systematic denials of privacy rights, along with other rights, many African-Americans have experienced at the hands of the criminal justice system and how these practices are to some degree now serving as precedents for limiting student rights. Students with disabilities and others will learn about the special concerns of the disabled not to be subject to special restrictions or to be compelled to disclose information that might subject them to job discrimination and embarrassment. They will also, however, explore the countering concerns to make sure that teachers and employers can provide best for the good of all in their classrooms and workplaces. Middle school students will vividly discover just how pervasive video surveillance in public places now is, including in many schools. They will then write and debate what, if anything, to do about such surveillance in ways carefully designed to meet New Haven Content Standards. Similarly, high school students will learn about the controversies over whether certain kinds of questions on writing assignments represent invasions of student privacy, even as they develop the writing skills to perform well on the state CAPT writing test. Finally, gifted middle school students will be invited to ponder and debate the emerging issues of whether the reproductive freedoms protected in the contraception and abortion "privacy" cases extend to new kinds of genetic engineering, including cloning and genetic enhancement.

These units are well researched, broad ranging, and stimulating. In the end, however, they can only begin to probe the profound questions about privacy and freedom that technological and social developments are now posing for us all. Many of these are topics that students are certain to find enormously intriguing. Hence, perhaps, the teaching of these units, and many others on different aspects of these "privacy" themes, will produce citizens better able to respond wisely to the constitutional and statutory challenges involved in protecting privacy in the 21st century.

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