

## Privacy: Should There Be A Right To It?

By Kenneth R. Conklin

Perhaps there have always been hermits. Certainly there is nothing new about the fact that most people feel a need for privacy, while some people would like to avoid all relationships. (A few might even regret the intimacy of contact they had with their mothers at the time of birth!) Concern about privacy has grown rapidly over the past two decades, probably in response to the growing scope and sophistication of communication, computerization, and misbehavior by governments and corporations. Violations of privacy are now so systematic and routine that much of the privacy we continue to enjoy may be due to the sheer size and ineptitude of information-processing bureaucracies.

Conversations about privacy invariably go through a ritual of deploring the violations of people's rights. It is always assumed that people have a right to privacy. This assumption is so deeply held that it may seem pointless to challenge it. Such is the job of the philosopher: to challenge fundamental assumptions. What follows is, then, a philosophical inquiry into the question whether there is, or should be, a right to privacy. This question comes to a focus in the helping professions, where the nature of the helping relationship requires a client to bare his body, mind, or soul to a doctor, psychiatrist, or clergyman who may be a relative stranger. The issue of privacy is particularly complex in the helping profession of education. Clients are often too young to know or care about their rights; furthermore, intimate information and records of the helping relationship may become public at the request of the client (transcripts, recommendations), his relatives (parents), or outside institutions (scholarship donors, police, F.B.I., employers, credit bureaus).

"Privacy" has various meanings, all of which are related to a desire for autonomy of action within an unviolated living-space. Even at a distance, we want information about us to remain limited, particularly when it is unfavorable. More intimately, there are things we wish to do without being observed at all (toilet functions), or without being observed by persons not directly involved (sex). We resist being touched, pushed, or restrained by strangers, and offer a hand to be shaken as a token which signifies that another person is no longer a stranger.

I shall use the term "informational privacy" to mean freedom from outside knowledge. Information about us may be written or electronically stored, so it can be used by complete strangers at times and places far removed from the circumstances under which it was generated. Such information consists entirely of verbal or numerical descriptions, but as the term is being used here it does not include actual samples of behavior such as films or tape recordings. "Remote observational privacy" means freedom from observation by an observer who is not physically present. We may be observed by spy camera or eavesdropping radio transmitter. The observer may watch or listen to a live performance, or may play back recordings. "Direct observational privacy" means freedom from observation by an observer who is physically present and who gathers information about us directly through his own senses of sight, sound, and smell. "Contact privacy" means freedom from touch, restraint, or interference by others. Contact may be physical, or it could also include any sort of interference by means of spoken language, legal or administrative command, denial of customary rights or privileges, economic manipulation, selective reinforcement of behavior (behavior modification), etc.

The four types of privacy described above are listed in an order which moves from remote and impersonal to direct and intimate. The first three types of privacy are fundamentally different from the fourth. Someone who violates informational or observational privacy may be merely a passive gatherer of data, while violations of contact privacy involve active interference in another person's life. It may be that people worry about informational and observational privacy primarily because people view these as guarantors of contact privacy. Of course someone could interfere with me even though he has no information about me. But so long as he isn't told or

*Kenneth J. Conklin* teaches high school mathematics in Norwood, Massachusetts.

doesn't see or hear what I do, he is not likely to want to interfere with me and will not know how to do so effectively.

Fear of interference is not the only reason we desire informational and observational privacy. Would I ever be willing permanently to give up informational and observational privacy? Suppose the entire world gave me a guarantee that I would not be interfered with, and that I would forever be treated precisely as I would have been if the extra information had remained private. Under such conditions I might give up informational privacy. I might even consider giving up remote observational privacy. But somehow I could not bring myself to give up direct observational privacy. Writing a letter to someone important (informational) somehow makes me less nervous (and also seems to be less of an intrusion upon him) than talking with him on the telephone (remote observational), while seeing him face to face (direct observational) could be very upsetting.<sup>1</sup> Direct observational privacy is a much stronger emotional need than remote observational or informational privacy.

Perhaps the fact that somebody is watching makes me worry that he might disapprove or interfere. My socio-cultural background makes it impossible for me ever to believe that adverse information about me will not eventually lead to action or at least prejudice against me, especially when I am watched by someone personally present. Even when I seem to be alone, religion tells me there is a God watching my every action who will use his infinite power to punish me for misdeeds. The personal presence of a flesh-and-blood observer makes me feel more nervous and more subject to immediate retribution than the remote and invisible presence of a hypothetically more powerful God.

Even if I am doing nothing wrong and am guaranteed there will be no interference, still I don't want people watching me. The fact that I am aware of being watched by itself establishes a kind of contact. It interferes with my flexibility, spontaneity, risk-taking, and authenticity. It may motivate me to increase my socially-approved productivity (the "Hawthorn Effect"). I wonder what "they" will think of me. I want them to admire or appreciate me, or at least not to think of me as immoral, clumsy, or stupid. Information recorded and used far away at a later time doesn't bother me so much, but performing while someone else is personally present and obviously paying attention disturbs me.

Even if I am not aware of being watched, still it seems objectionable in principle to be watched at some activities, and I would object if I found out later that I had been watched. It is as though the sacredness of some sacrament was being profaned, or an intimate secret was being exposed. Just as slaves had to avert their eyes so as not to make eye contact with their masters; just as peasant subjects had to lie prostrate with eyes closed when the King paraded by; so also there are certain intimate thoughts and deeds over which I want to be lord and King.

Nobody claims there could or should be total contact privacy. Physics shows that every action eventually impinges upon every object in the universe in at least a minuscule way. Sensory deprivation experiments show that people and animals cannot go without sensory stimulation for more than a few hours without suffering neurosis, psychosis, and eventual death. Thus, total contact privacy is impossible and undesirable. But there is also strong evidence that some contact privacy is a basic biological need. All animals in good health seek exclusive control over a piece of territory. Experiments have shown that when animals are crowded together, even if they have plenty of food and water, they soon begin to fight, to become neurotic, and die.

Arguments in favor of a right to choose temporary contact privacy are usually based on the right to freedom of action. So long as I do not violate the legal or moral rights of others, I should be free to choose what to do. My freedom of action is possible only if others are not restraining or interfering with me. In view of territorial

1. In an interesting science fiction novel, Isaac Asimov describes a society whose strongest taboo is to violate contact privacy. Direct observation is severely frowned upon and extremely rare, but remote observation in the nude is perfectly proper. See Isaac Asimov, *The Naked Sun* (New York: Doubleday, 1957).

needs and crowding experiments, together with the right to freedom of action, it is clear that there should be at least a limited right to contact privacy. That is, there should be some places I can go, and some activities in which I can engage, with the guarantee that nobody will interfere with me.

But aside from a right to limited territorial contact privacy, I shall argue that *ideally there should be no general right to informational or observational privacy*. I will try to show that in certain areas of human activity privacy is automatically guaranteed by the nature of the activity, so there is no need for a socially established right. Outside of such areas the desire for privacy is something we learn blindly as a cultural habit or something we develop as a defensive response to an unjust society. If people and society were perfect there would be no need or wish for privacy (except the limited territorial contact type). Maintaining privacy may seem necessary to protect genuinely good people against the bad reputations they might acquire and the consequent harm they might suffer when partial information about them is disclosed or when an unjust society makes improper judgments. But maintaining privacy also serves to perpetuate incompleteness of information and the resultant cognitive and emotional dispositions which lead people to make improper judgments. Thus, I will argue that the schools can help people become wiser and society become more just by helping children grow away from a need for informational and observational privacy.

Earlier it was mentioned that there can never be total contact privacy, since physics tells us that every action eventually impinges upon every object in the universe. The impossibility of total contact privacy is absolute: no human law can affect it. In a similar way, there is an absolute guarantee of some degree of informational and observational privacy with regard to some objects and activities such as ideas, perceptions, nuances of emotion, thinking, and deciding. The proof that some degree of informational and observational privacy is absolutely guaranteed in such areas is complex, but its outlines can be sketched rather easily.

Wholes are composed of parts. But a whole is an organization of parts, not merely a collection of unrelated parts. For example, a whole could be a philosophic theory composed of logically interconnected doctrines, or a molecule composed of individual atoms interconnected by means of electron orbits and force-fields. When one person knows a whole, he cannot express his knowledge completely or directly. Rather, the knower must communicate by sequentially listing some of the separate pieces of his knowledge. The knower can never guarantee that someone listening to the sequence of some of the pieces will infer the unlisted pieces and assemble all available pieces "correctly" so as to grasp the whole which they are intended to designate. Thus, a knower can never completely describe his knowledge, even if he wishes to do so. I have explained elsewhere some of the consequences of this for educational theory and practice.<sup>2</sup>

Since a knower can never completely describe his knowledge even if he wishes to do so, it follows that an observer can never be sure that he is correctly interpreting what is in the mind or heart of the knower, no matter how many clues the observer gathers. Whether information is gathered impersonally at a distance through printed records, or by remote observational means such as "bugs" and cameras, or by direct personal observation; such information will always be incomplete, and inferences may always be incorrect. By analogy to the Heisenberg uncertainty principle in physics, which says we can never be certain about the exact position and velocity of an object, we have here an uncertainty principle for communication, as follows: No knower can completely or accurately express what he knows, and no observer can be certain about what it is in the mind of a knower by relying upon observations of the knower's actions. As an old German folk song gleefully proclaims:

*Die Gedanken sind frei.  
Wer kann sie erraten?*

2. Kenneth R. Conklin, "Wholes and Parts in Teaching," *The Elementary School Journal*, LXXIV, 3 (December 1973), pp. 165-171. See also Conklin, "Why Are Lesson Plans Always Incomplete?" *Educational Forum*, XL, 1 (November, 1975), pp. 67-71.

*Sie fliehen vorbei  
Wie nachtlliche Schatten.  
Man kann ja im Herzen  
Stets lachen und scherzen  
Und meinen dabei,  
Die Gedanken sind frei!*

The fact that no observer can completely probe my mind or be certain that he is correctly inferring what I know or feel does not imply that I am always the best authority on what I know or feel. A number of philosophers and psychologists have argued persuasively that sometimes another person is a better judge of my thoughts and feelings than I am. Joseph Agassi has summarized some of the most important of these arguments, as follows:<sup>3</sup> Wittgenstein shows there can be no private languages; Freud shows that a psychiatrist can interpret my dreams better than I can; Duhem shows that a philosopher can know a scientist's methods better than the scientist himself; Malinowski shows that sociologists can be more accurate about the customs and habits of a society than the members of that society; and psychologists who study perception are able to make us see things which aren't real and can describe our perceptions better than we can.

All these philosophers and psychologists show that there are times when an observer may be more complete and correct in knowing my thoughts and feelings than I am. But these results do not contradict the uncertainty principle stated earlier. It remains true that no thought or feeling can be completely expressed, so that no observer can be completely certain about what is in someone's mind or heart by relying upon observations of him. Most of the time I am the best authority on what I know and feel, if only because I am the only one who has access to what is not expressed, and I am usually the only one who takes the time to be aware of my activities in detail over a period of years. Since I live inside my behaviors, I am able to integrate their joint meaning faster and more sensitively than any observer, except when unusual stress paralyzes or distorts my indwelling.

The fact that expression must always be incomplete and observers can never be certain of the accuracy of their inferences not only guarantees a minimal amount of privacy—it is probably one of the main reasons why people want substantially more privacy than is minimally guaranteed! If information about me is incomplete or inaccurate, I worry that negative information may be over-represented and negative inferences will be drawn. Indeed, a kind of Gresham's Law operates here: negative information and inferences seem more interesting or titillating than positive ones. Knowing that whatever seems negative draws most attention, and sometimes being unable to decide which information will be considered negative, I try to keep all information unavailable for routine scrutiny and I release selectively whatever I am sure will be regarded favorably. I behave like a public relations executive or White House information officer, seeking to publicize virtues and minimize vices.

The desire to control access to personal information is not innate. Whether we are born with the universal animal need for limited territorial contact privacy is not clear. Infants love to be cuddled and nursed. Many psychiatrists believe the greatest wish of an infant is to return to the womb (where territorial contact privacy itself is nil). Perhaps territorial needs, like Piaget's cognitive stages, are the result of biological maturational processes combined with environmental influences. But aside from any possibly-innate or maturational need for limited territorial contact privacy, all other needs for privacy are learned.

As children grow in our culture, they learn the principle that negative information and inferences attract the most attention. They learn that one must be a successful competitor, and part of the competition involves creating a public image that brings good will and rewards. They learn to hide their financial status, sexual preferences, drinking habits, and any significantly deviant physical, emotional, or intellectual blemish or imperfection. The result is the development and maintenance of cultural

3. Joseph Agassi, "Privileged Access," *Inquiry*, XII, 4 (Winter, 1969), pp. 420-426.

patterns based upon people's systematically inaccurate and distorted images of each other.

Not long ago it was taboo to discuss sex; yet sexual activity was probably about as widespread and routine as today. Surveys and even direct observation of sexual activity have started to become acceptable,<sup>4</sup> and the result is a wealth of information which helps people feel more normal about what they do and enables them to get well-informed medical or psychiatric advice when difficulties occur. Currently there are efforts underway to legalize the so-called "victimless crimes" such as gambling, homosexuality, and prostitution. The elimination of penalties for such activities would probably be hastened if everyone knew how widespread they are and how respectable and socially productive many of the unknown "criminals" are.

The net social effect of maintaining a right to privacy is often to punish people for harmless deviance from standard behavior while enabling harmful deviations to go undetected. Punishment for harmless deviance results because information is disclosed only partially or because privacy enables society to maintain a false facade concerning what is normal (as in the case of sexual behaviors discussed above). There are a number of ways in which harmful deviations go undetected or privacy makes it impossible to tell whether a deviation is harmful.

Consider the "right" to privacy of criminal, financial, and academic records. The fact that someone has a record of previous criminal convictions, financial indiscretions, or academic failure may or may not be significant. If such difficulties occurred in early youth or in the remote past, the person may now have quite a different character. Everyone should understand that remote virtues or vices do not predict current behavior. Such public understanding can be developed only if the public has plenty of information about numerous ordinary people who exhibit character change. While long-term character change is quite possible, short-term change is less likely. Recent criminal behavior, financial problems, or academic failure may be more or less reliable predictors of similar difficulties in the near future. To the extent the recent past is a reliable predictor of the near future, we do a severe injustice when we allow unsuspecting people or institutions to suffer losses through placing too much reliance upon the anticipated performance of people whose recent difficulties have been concealed. Of course people should have the right to challenge and correct false information, and to be sure their own interpretation accompanies other people's interpretations. But people should not have the right to suppress or conceal accurate information.

Surely one of the characteristics of an ideal society must be that each person could feel free to do whatever he wishes so long as he remains productive and does not harm others, and that each person will be protected against harm from others. In such a society people would have no desire for privacy, since they know that no amount of observation of their activities will ever result in interference with those activities unless harm to others is likely. Everyone's blemishes and perfections are so easily known that people learn to tolerate harmless deviations. There is no particular motive for people to pry into other people's affairs because there could be no titillation in exposing a secret which is not secret. Each person is protected against any harmful consequences that might result from another person's unfavorable opinion, with protection coming both from the social guarantee against interference and from the availability of information about that other person's activities.

In our society, which is not ideal, people want informational and observational privacy. Guarantees of such privacy are needed to protect people against the bad reputations they might acquire and the consequent harm they might suffer when partial information about them is disclosed or when an unjust society makes improper judgments. Yet, as we have seen, the maintenance of informational and observational privacy will prevent people from learning the truth about each other. Society cannot

4. The pioneer book in public disclosure of direct observation of sexual activity was William H. Masters and Virginia E. Johnson, *Human Sexual Response* (Boston: Little, Brown and Co., 1966).

become open and tolerant unless we increase the access that institutions and individuals have to information about (and observation of) each other.

Due to the competitive nature of our society, and the fact that part of the competition is based upon each competitor's ability to keep certain information private, it would be both unfair and unworkable to ask some people or institutions to give up privacy more rapidly than others. It is also inconceivable how we might design and implement a "mutual and balanced" step by step reduction in privacy. Finally, it would be psychologically and legally impossible to eliminate privacy totally and suddenly.

Is there any way to maintain the right of privacy for today's society while working toward a better society where privacy is not wanted or needed? People who have already become accustomed to privacy will not be able to give up very much of it without serious negative consequences. But young children have not yet become accustomed to privacy. As Rousseau might say, they have not yet been corrupted by social folkways.

Within the school children should have no right to privacy except for a place where they can retreat alone for some temporary "time out." By allowing temporary retreat to "time out" we recognize the biological need for limited territorial contact privacy. By denying children privacy in their relations with each other we help them become accustomed to living in a society without observational or informational privacy. By denying children privacy in their relations with teachers and school officials we help children feel comfortable about being observed by powerful institutions and governments. Furthermore, the absence of privacy ensures that teachers have access to the full information needed to design nurturing activities in accord with each child's uncensored wants and needs. The fact that teachers insist on some informational and observational privacy for themselves will alert the children to the fact that the current outside social situation recognizes privacy rights. Children will unite with each other in challenging and rebelling against such privacy.

While children should have no right to privacy within the school (except for temporary withdrawal to "time out"), their outside social rights must be protected by guaranteeing that in-school activities have a large measure of privacy from scrutiny by the external society. Intimate information will be freely offered and exchanged in the protected environment of the school, where great tolerance is based on accurate interpersonal perceptions. But that same information would become distorted and misjudged if released to the external society as presently constituted.

There have been some exhaustive expert studies to develop rules for protecting school children's privacy rights. Some proposed rules deal with the confidentiality of the teacher-pupil or counselor-pupil relationship. Other rules would govern school record-keeping, and the availability of school records to outside agencies.<sup>5</sup> But these proposals might not be appropriate in view of the gap envisioned here between privacy rights inside the school and privacy rights in the external society of the present.

A total absence of informational and observational privacy for students inside the school would be accompanied by a thorough system of information storage and retrieval for internal use. The unedited, detailed records should be available only to students, teachers, administrators, and scholars (note that students have access to information about other students). Parents would have access only to information about their own children, and as the age of a child increases the right of parental access would become increasingly limited. In most cases parents should be given information orally, with accompanying explanations and interpretations by school officials. Outsiders would be given only an edited transcript of essential scholastic data, and only with the permission of the student or (in the case of younger children) his parents.

The proposal to make the records of all students available to every student is unusual, but is obviously justified by the arguments presented earlier. Our objective is to help each person avoid acquiring a need for privacy. In the miniature society of the

5. Russell Sage Foundation, *Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records* (Hartford, Conn.: Connecticut Printers, Inc., 1970).

school, the next generation is obtaining accurate observations of human nature as a basis for future revisions in the social code. Wide tolerance for harmless intellectual and behavioral deviations will become universal, as everyone realizes their actual frequency and observable harmlessness. Secretiveness, unfairly damaged reputations, and unrealistic expectations of other people's virtues are eliminated.

The proposal to restrict outside access to school records is necessary to protect students against the inevitable misuse of complete information about them that would occur in the outside society. Current social standards have been established on the basis of systematic distortions in perception which accompany the maintenance of privacy. Hence, a student's failure to exercise privacy rights in the outside society could cause his behaviors to be labeled intolerably deviant and would put him at a disadvantage in competition against those whose "blemishes" remain secret. Perhaps after several generations, when the bulk of the adult population has been educated in privacy-free schools, there would be no need for such restrictions.

The proposal to restrict outside access to school records is already largely established by law. At the Federal level in the United States, the Family Educational Rights and Privacy Act of 1974 provides that between the ages of 14 and 18 both students and parents have access to school records, and after age 18 only the student has access (the parent then requires the student's permission!). Except in cases of a court order, outsiders (employers, police, F.B.I., etc.) are not allowed to see school records without the permission of the student or his parent (if the student is less than 18).

The notion that parents might be restricted from full access to information about school records is not new. Until recently it was routine to keep I.Q. scores and psychiatric findings secret from both parents and students on the grounds that such information could not be interpreted properly by them and that misinterpretation (or even correct interpretation!) might lead to unfortunate labeling or stereotyping. Such an argument is strikingly similar to the argument advanced in this paper, which is, that the general adult population (including parents) has systematic distortions of perception and needs help in interpreting the meaning of starkly accurate information. (It is precisely to avoid such systematic distortions in a child's perception that we open all student records, including his own, to the child himself.) School is a place where children should have some freedom to try out new behaviors for the future without fear of automatic retribution from parents whose views were formed in the past. As children grow toward maturity they deserve increasing independence from their parents. Finally, we note the legal and moral tradition which recognizes that a child is a social creature and that both society and a child have rights against a parent (e.g., healthy home environment, compulsory schooling, freedom from forced labor).

The proposal that school records be given to outsiders only in an edited version conforms well with current practice. Recent legislation provides that students and parents can insert comments and corrections into the record, request deletions of inaccurate information, and can grant permission for access to student records on a selective basis, specifying which items are included in the scope of the permission. Schools do commonly distinguish between the permanent transcript and the temporary record. In Massachusetts, for example, the transcript must be kept on file for sixty years (it can be used as proof of age when applying for retirement benefits), and includes the bare essentials of name, date of birth, address, courses, grades, year of school completed, and graduation date. According to Massachusetts law, the temporary record must be destroyed not later than five years after a student leaves school. This includes disciplinary record, scores on standardized tests (especially personality inventories), personal evaluations by teachers, etc. Thus, outsiders can be provided with essential information about a student's academic performance while personality problems from the remote past will not continue to haunt an adult years after graduation.

Before closing it seems important to emphasize the limited scope of these proposals. Neither social reconstruction in general, nor the problem of privacy, is the main focus of education. The proposals in this paper can be implemented in the context of virtually any curriculum content or teaching method, without regard to

whether we envision a traditional or "free" school. Adoption of these proposals might have little visible impact on the day-to-day operation of any school, except that teachers and counselors would make all student records, conversations, and activities totally open to all students. We have seen that how strongly a person feels a need for privacy may be a measure of how fearful he is that society is unjust or his neighbors are brutish. Yet the maintenance of privacy fosters systematically distorted perceptions and social codes. We have seen that the need for privacy is learned, except perhaps for a limited biological need for territorial possession. If children avoid acquiring the need for privacy, they will grow into adults whose accurate perceptions and open conduct will make more likely the development of individual wisdom and social justice. Privacy will then be regarded as a curious historical symptom of alienation, mistrust, and injustice.

A personal note: I feel somewhat pained and perplexed by my own conclusions. Privacy is important to me, both in the conduct of my practical affairs and as a seemingly necessary condition for personal intimacy and spiritual integrity. The arguments in this paper lead me to the conclusion that my need for privacy is the result of my upbringing; that I would be better off in practice without privacy, and there is no metaphysical or moral basis for privacy. Yet I cannot help wondering whether my need for privacy is warranted by some deeper reality whose demands are more powerful than my abilities to intellectualize. For example, it might be claimed that privacy is necessary to guarantee that thinkers or inventors can copyright or patent their creations, and that society gains by providing a profit incentive for creativity. (The arguments of Ayn Rand come to mind.) Yet I think a creator will create for the sheer joy of making the beauty of his creation manifest. Furthermore, the profit incentive could be maintained by using the absence of privacy to discover (and reward) the full extent of each individual's contribution to the conceptualization, production, and distribution of useful or interesting things. The process of dissemination would be faster, and the products perfected better, when people do not need to keep their best ideas secret to protect their economic and social rewards. But this argument concerning the economics of creativity is only an example of what I am talking about in this personal note. My feeling of unhappiness with the position taken in this paper prompts me to persist in raising all sorts of arguments in favor of privacy; yet, I can always find stronger arguments to show that privacy is superfluous and pernicious. I believe that reason is an important tool for understanding that which lies beyond reason. So I must follow where reason leads until "clear and distinct" intuition, or someone else's superior reasoning, is powerful enough to vitiate these arguments.