
Privacy in the family

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Introduction

While the balance between individual privacy and government monitoring or corporate surveillance has been a frequent topic across numerous disciplines, the issue of privacy within the family has been largely ignored in recent privacy debates. Yet privacy intrusions between parents and children or between adult partners or spouses can be just as profound as those found in the more “public spheres” of life. Popular access to increasingly sophisticated forms of electronic surveillance technologies has altered the dynamics of family relationships. Monitoring, mediated and facilitated by practices of both covert and overt electronic surveillance, has changed the nature of privacy within the family. Parents are tracking children via GPS-enabled cell phone tracking software and are monitoring the internet use of family members. Parents, siblings, and children are also posting information about their family members online, often without consent, and are creating social media profiles for others online. Prior scholarly work in philosophy and law has primarily addressed the privacy of children from third parties, usually commercial entities, and in the context of making medical decisions.¹ Less attention has been directed at exploring a more general right of privacy of one family member against parents, siblings, children, or spouses. In this chapter we do just that. In the pages that follow we consider several moral rules that determine appropriate privacy boundaries within the family. More specifically, we will consider when overt or covert surveillance of a child, spouse, or partner by a family

¹ For example, the USA’s Children’s Online Privacy Protection Act (COPPA, 2000) gives parents a veto over the “further use” of information collected from a child but it also requires security and confidentiality of this information. 15 USC §§ 6501–6506.

member is morally permitted.² Our discussion proceeds within the conceptual framework developed in prior work. In the next section we define privacy as the right to control access to, and uses of, places, bodies, and personal information and discuss prior empirical and theoretical work establishing the moral value of privacy. While admittedly contentious, we adopt an essentialist or objective account of moral value tied directly human well-being or flourishing. For example, practices that cause disease or ill health are, on our account, morally disvaluable. Alternatively, practices that promote human health and well-being are morally valuable. The third section considers several studies that analyze the effects of different sorts of monitoring on adolescents. An established claim of child development theory is that children who are not monitored have a greater risk of engaging in problematic behavior – including drug, tobacco, and alcohol use, dropping out of school, and early pregnancy. Interestingly, children who are subject to covert spying, as well as other forms of surveillance both overt and covert, are subject to the same increased risks as adolescents who are virtually abandoned by their parents. Two-way information-sharing based in respect and caring, on the other hand, is connected to decreased risky or problematic behavior. In the final section we argue that privacy, understood as a moral and social mechanism that ensures the proper development and functioning of individuals, is essential for trust and provides the foundation for intimate family relationships. Included in our discussion is a critique of Anita Allen's defense of spying on one's children, spouse, or partner. We conclude by arguing for two rules. A rule of "two-way communication" establishes a practice of trust, respect, and caring. Such a standard would help preserve private spaces within family life – spaces where children, spouses, or partners can appropriately withdraw for purposes of self-development without fear of unjustified monitoring. If in a specific instance or as a practice the two-way sharing rule fails, we retreat to a probable cause standard to determine the appropriateness of parental or other intra-familial surveillance. Probable cause is established when a parent, spouse, or partner has discovered information through logical inquiry that would lead a reasonably intelligent and prudent person to believe that their child, spouse, or partner is subject to, or the cause of, a specific and serious threat to safety or well-being. If we are correct, covert or overt surveillance would only be justified in a narrow range of cases.

² We will not consider overt or covert spying between siblings. Nevertheless, the principles defended in the sections to follow could be extended to such cases.

Privacy: its meaning and value

While privacy has been defined in many ways over the last century, we favor what has been called a “control”-based definition of privacy (see Warren and Brandeis 1890; Westin 1967; Gross 1971; Parker 1974; Parent 1983; Gavison 1983; Allen 2003). A right to privacy is a right to control access to, and uses of, places, bodies, and personal information (Moore 2003, 2008, 2010). For example, suppose that Smith wears a glove because he is ashamed of a scar on his hand. If you were to snatch the glove away, you would not only be violating Smith’s right to property, since the glove is his to control, but you would also be violating his right to privacy – a right to restrict access to information about the scar on his hand. Similarly, if you were to focus your X-ray camera on Smith’s hand, take a picture of the scar through the glove, and then publish the photograph widely, you would violate a right to privacy. While your X-ray camera may diminish Smith’s ability to control the information in question, it does not undermine his right to control access (Moore 2007).

Privacy also includes a right over the use of bodies, locations, and personal information. If access is granted accidentally or otherwise, it does not follow that any subsequent use, manipulation, or sale of the good in question is justified. In this way privacy is both a shield that affords control over access or inaccessibility, and a kind of use and control-based right that yields justified authority over specific items – such as a room or personal information (Moore 2007). For example, by appearing in public and leaving biological matter behind, someone may grant access to specific sorts of personal information. We should not conclude, however, that by granting access this individual has also waived all control over any and all future uses of the biological matter or the information found within.

To get a sense of the importance of privacy and separation, it is helpful to consider similar interests shared by many non-human animals. While privacy rights may entail obligations and claims against others – obligations and claims that are beyond the capacities of most non-human animals – a case can still be offered in support of the claim that separation is valuable for animals. Alan Westin in *Privacy and Freedom* notes:

One basic finding of animal studies is that virtually all animals seek periods of individual seclusion or small-group intimacy. This is usually described as the tendency toward territoriality, in which an organism lays private claim to an area of land, water, or air and defends it against intrusion by members of its own species.

(Westin 1967: 8)

More important for our purposes are the ecological studies demonstrating that a lack of private space, due to overpopulation and the like, will threaten survival. In such conditions animals may kill each other or engage in suicidal reductions of the population.

Given the similarities between humans and many non-human animals, it is plausible to think that we share many of the same traits. For example, Lewis Mumford notes similarities between rat overcrowding and human overcrowding. "No small part of this ugly urban barbarization has been due to sheer physical congestion: a diagnosis now partly confirmed by scientific experiments with rats – for when they are placed in equally congested quarters, they exhibit the same symptoms of stress, alienation, hostility, sexual perversion, parental incompetence, and rabid violence that we now find in large cities" (Mumford 1961: 210). These results are supported by numerous more recent studies. Household overcrowding and overcrowding in prisons has been linked to violence, depression, suicide, psychological disorders, and recidivism (see Morgan 1972; Baum and Koman 1976; Edwards and Booth 1977; Megargee 1977; Paulus *et al.* 1978; Cox *et al.* 1980; Farrington and Nuttal 1980; McCain *et al.* 1984; Porporino and Dudley 1984; Ruback and Carr 1984; Clauson-Kaas *et al.* 1996; Fuller *et al.* 1996).

Cultural universals have been found in every society that has been systematically studied (see Murdock 1955; Nussbaum 2000). Based on the Human Relations Area Files at Yale University, Alan Westin has argued that there are aspects of privacy found in every society – privacy *is* a cultural universal (see Westin 1967; Roberts and Gregor 1971). While privacy may be a cultural universal necessary for the proper functioning of human beings, its form – the actual rules of association and disengagement – is culturally dependent (see Spiro 1971). The kinds of privacy rules found in different cultures will be dependent on a host of variables including climate, religion, technological advancement, and political arrangements. Nevertheless, we think it is important to note that relativism about the forms of privacy – the rules of coming together and leave-taking – does not undermine our claim regarding the objective need for these rules. There is strong evidence that the ability to regulate access to our bodies, capacities, and powers and to sensitive personal information is an essential part of human flourishing or well-being.

Barry Schwartz, in an important article dealing with the social psychology of privacy, provides interesting clues as to why privacy is universal (Schwartz 1968; see also Mill 1859; Rachels 1975). According to Schwartz, privacy is group-preserving, maintains status divisions, allows

for deviation, and sustains social establishments (Schwartz 1968: 741). Privacy also preserves groups by providing rules of engagement and disassociation. Without privacy or what may be called a dissociation ritual, there could be no stable social relation. As social animals we seek the company of our fellows, but at some point interaction becomes bothersome and there is a mutual agreement to separate. Thus, having “good fences” would be necessary for having “good neighbors” (Rachels 1975: 331).

Schwartz also notes that privacy helps maintain status divisions within groups. A mark of status is a heightened level of access control. Enlisted men in the armed services have less privacy when compared to commissioned officers. Line level employees work without doors or with secretaries who screen access to them. By protecting status divisions and determining association and disassociation rules, privacy has a stabilizing effect on groups or social orders (see McGinley 1959: 56). Privacy also protects and leaves room for deviation within groups. As J. S. Mill noted in *On Liberty* (1859, Chapter 2), when individuals engage in different forms of living, protected by the walls of privacy, new ideas are produced and, if good, are adopted.

Growing up can be understood as the building of a series of walls – the walls of privacy.³ Infants are without privacy. As infants grow into toddlers and begin to communicate with language, they express wishes for separation at times. This process continues as children grow into adults.⁴ Toddlers and small children begin requesting privacy as they start the process of self-initiated development. More robust patterns of disassociation continue as children enter puberty. Finally, as young adults emerge, the walls of privacy have hardened and access points are maintained vigorously.

As an example of the universality yet relational aspects of privacy consider the following set of cases. Privacy in Native American communities is best understood within the context of a philosophy that includes two critical values: relationality and the sacred. According to Wilson: “Rather than viewing ourselves as being in right relationship with other people or things, we are the relationships that we hold or are part of” (Wilson 2008: 80).

³ “Both animals and humans require, at critical stages of life, specific amounts of space in order to act out the dialogues that lead to the consummation of most of the important acts of life” (Spitz 1964: 752).

⁴ “The door of openness closes perhaps halfway as a recognition of self-development during childhood, it shuts but is left ajar at pre-puberty, and closes entirely – and perhaps even locks – at the pubertal and adolescent stages when meditation, grooming, and body examination become imperative” (Schwartz 1968: 749; see also Erikson 1963 and Kessler 1966).

Relationality means that matters of place, people, and community are inextricably intertwined. In addition, Native American knowledge systems and ways of life see the mental, physical, social, and spiritual domains of existence flowing into and informing one another. For Native people, this value system governs proper behavior in relation to people and the spaces in which they interact. As to place, “home” in this context is a sacred space, encompassing more than house. Recall that, until relatively recently, many indigenous dwellings consisted of one or two rooms that contributed to communal living practices.

There are numerous daily ceremonies and rituals that underscore the reverence that is essential to the concept of “home.” Marisa Duarte (2013) expresses this relationship in the Yaqui community in the following statement:

The sacred private space of the home is for the family who lives there, and is maintained with respect for the elders and children and women (in that order) who live in that home. Even good friends of the family and distant relatives are expected to enter the yard around the house by the front, and wait by the white cross in the front of the house to be greeted. Children are not allowed to participate in conversations among adults, and are expected to play outside, or sit quietly.

(Duarte 2013)

In comparison to the Mexican American side of her family, she recognizes a critical difference: “Where [on] the Mexican American side, children are allowed to close and lock their doors, not report their daily comings and goings, and not introduce their friends to the family. It is considered rude, but not inappropriate. When those things happen in Yaqui families, the child is considered spiritually unwell and in danger” (Duarte 2013).

Privacy exists in Native American communities to ensure the dignity and respect of persons. Nevertheless, proper behavior, in reference to physical contact, varies by tribal community. Duarte notes that:

adult women – the mother – can go into any place in the house, including the adolescent child’s room. Usually children share rooms until adulthood. The father can, too, although past a certain age, fathers maintain a respectful distance for adolescent daughters as young women. Women’s spaces are particularly sacred. Elders’ spaces may be filled with ancestors and other spiritual forces that can be overwhelming to children, and especially spiritually sick (anxious/depressed/ill) children. These places need to be prayed through, candles lit, and cleaned frequently, for the health of vulnerable young people

(Duarte 2013).

The impact of technology, mobile phones, and tracking devices on the behavior of Native children in reservation communities is difficult to assess, primarily because no comprehensive assessment of technology in Indian Country has been conducted. However, in contemporary reservation communities families rely on neighbors and other family members to keep track of their children's whereabouts. People know the kids in the neighborhoods/sections of the reservations. They know where the kids hang out or go to play. They know the place. It is important to recall that families have often lived in these places for hundreds of years.

Privacy and surveillance in the family

As mentioned above, the starting point for our discussion begins with a conceptualization of the role of privacy in human development and the place for surveillance in familial relationships. Scholars in a variety of fields, including developmental and clinical science, have investigated the impact of parental monitoring in a variety of settings. Ann Crouter and Melissa Head (2002) distinguish between two concepts that have historically been confused and under-conceptualized in the relevant literature, leading to disconnects between theoretical concepts and empirical measurement: parental monitoring and parental knowledge (see also Crouter *et al.* 2006). Traditionally, parental monitoring has been defined as “a set of correlated parenting behaviors involving attention to and tracking of the child’s whereabouts, activities, and adaptations” (Dishion and McMahan 1998). Crouter and Head argue that empirical measures used to investigate parental monitoring have often actually measured parental *knowledge*, while much less research has focused on the *practice* of parental surveillance (the activities and technological tools employed to keep track of children) (Crouter and Head 2002: 461).

Additionally, recent research has begun to identify that a high level of parental knowledge is much more closely related to “trusting parent–child relationship[s]” and a “child’s willingness to confide” in a parent than it is to the actual practice of parental surveillance. Thus parental knowledge can be described as “a relationship property” and speaks more to the importance of establishing trusting relationships than it does to the virtues (or practical benefits) of spying on family members. A “good monitor” is not a spy, but rather a parent who has made an effort to build trust with his or her child – although a child must also willingly disclose honestly (Crouter and Head 2002: 461; see also Stattin and Kerr 2000).

As children grow and begin to communicate effectively with language, they express wishes for separation. More robust patterns of disassociation continue as children enter puberty. Finally, as these children become young adults, walls of privacy have become rigid and access points are secured – although the formulation of these access points may be determined partly by the level of trust they maintain with parents and/or siblings. Thus, as parental knowledge depends, to some significant extent, on trust and two-way relationships, activities that damage trust, or have the potential to do so, are inherently risky and suspect, both ethically and for practical purposes. Spying, especially covert surveillance between family members that invades established boundaries or evades walls of expected privacy, bears a substantial risk to trusting relationships (Crouter *et al.* 1990: 656).

Empirical investigation of the impact of actual parental surveillance practices may be limited, but some do exist. In a study conducted by Czeskis *et al.* (2010), interviews were conducted with nine parent–child pairs. They were primarily concerned with understanding how technologically aided parental surveillance trends involving mobile phone monitoring impacted children and their parents. Cellular phones and other technologies allow family members to track each other’s geographic locations, record content, and activate cameras and microphones on mobile devices, initiate automatic alarms when entering areas deemed unsafe or off-limits, detect and report on devices that happen to be nearby, or even measure emotions (Czeskis *et al.* 2010: 1).

Czeskis *et al.* asked questions about possible mobile phone systems that could transmit information from the child to the parent under various conditions. The researchers found that eight of the nine teens would choose to limit the disclosure of certain information to their parents, and that most parents expressed support for these decisions, especially when they involved personal information about friends or significant others. Teens also expressed interest in the ability to disclose information and to write things to friends on Facebook that they would be uncomfortable having their parents read. Six of nine teens studied had lied to their parents about where they were on at least one occasion. Claiming laziness and changing locations as primary reasons – rather than pure intent to deceive – these teens deceived their parents, who were generally unaware of these misleading disclosures (Czeskis *et al.* 2010: 7).

In an important article by Stattin and Kerr (2000) we find compelling support for the claim that certain sorts of monitoring are harmful. Moreover, Stattin and Kerr conclude that two-way parent–child communication and

sharing – not monitoring or spying – is beneficial in promoting appropriate behavior. Surprisingly, children who are monitored by parental solicitation or with the use of rule sets (you have to be home by 7 p.m.; no playing with this or that kid; etc.) have the same rate of problematic behavior as those children who are not monitored at all. “[C]ross-sectional and longitudinal studies show that poorly monitored adolescents tend to be antisocial, delinquent, or criminal ... [they] also tend to use illegal substances ... tobacco ... do worse in school ... and engage in more risky sexual activity” (Stattin and Kerr 2000: 1072). Where there is two-way communication between parents and children, when all are actively participating, including the voluntary sharing of information, there is an associated drop in the behaviors mentioned above. In a follow-up article, Kerr and Stattin conclude: “[I]t appears that the less effective strategy, and the one that has the potential of backfiring, is to try to prevent adolescents from getting into trouble by rigorously controlling their activities and associations” (Kerr and Stattin 2000: 378; see also Kafka and London 1991; Barnes, Farrell, and Banerjee 1994; Eaton *et al.* 2009; Hare *et al.* 2011).

Covert monitoring by parents is first perceived as non-engagement by the child. Thus, if successful and never disclosed to the child, all of the risks of parental non-involvement are present. If covert monitoring is discovered, many of these adolescents will take countermeasures (keeping two diaries, secret email accounts, etc.) and resist or defeat parental surveillance. Citing Livingstone and Bober (2006), Kay Mathiesen notes: “in a survey of children 9–17 years old in Great Britain, 69% said that they mind their parents restricting or monitoring their Internet use; 63% of 12–19 year olds said that they took some action to protect ... privacy” (Mathiesen 2013: 264). Moreover, there is now the issue of trust that must be considered by the child – discovered covert monitoring will likely undermine the practice of two-way information sharing.

If correct, there are obvious and strong connections between flourishing or well-being and privacy for adolescents. Furthermore, problematic behavior or “poor adjustment,” including depression, violent outbursts, engaging in risky sexual behavior, and the like, increase with loss of privacy and control. Kerr and Stattin put the point succinctly:

[T]here are both theoretical and empirical reasons to believe that vigilant tracking and surveillance might be linked to some forms of poor adjustment. Research has shown that the perception of personal control is important to people’s physical and psychological health and well-being

(Kerr and Stattin 2000: 366).

We conclude that, as with adults, privacy – defined as the right to control access to and uses of locations and personal information – is morally valuable for children. In the following section we will consider when these privacy norms may be justifiably set aside, or trumped, by other important values.

Two-way sharing, probable cause, and Allen’s case for justified parental paternalism

Family life is not only an important setting for individual development, it is also a primary site for social development and socialization. The norms of coming together and leave-taking that occur within the family provide an important backdrop for meaningful and continuing social interactions. Thus privacy arrangements within the family have an important social function. We employ this argument to take issue with Anita Allen’s (2008) defense of the virtues of spying. After an analysis and critique of Allen’s position, we will defend the view that individuals within families have privacy rights that should only be set aside once specific conditions are met. While contextually dependent, the rules for setting aside privacy rights within the family will parallel the “probable cause” and “sunlight” provisions found in the legal traditions of developed societies.

Anita Allen is widely known for arguing that spying on one’s children or spouse is morally justified when specific conditions obtain. She begins with what she calls the anti-spying principle: “spying on other(s) ... is prima facie unethical. Spying ought always to be approached with caution and circumspection. Regardless of its motive, spying carries an ethical cloud” (Allen 2008: 3). Allen goes on to argue that the anti-spying principle can be overridden in a range of cases. Among others, Allen argues that obligations of caretaking and self-defense may allow for or perhaps require spying. Allen notes: “Sometimes, for limited purposes, responsible moral agents should be willing to make themselves the invisible monitors of others” (Allen 2008: 6). When used to protect one’s children from “seriously unsafe behavior,” spying is a matter of responsible parenting. Allen would go so far as to covertly monitor one’s children, read private diaries, and search bedrooms to look for signs of trouble. Surprisingly, even protecting one’s children from poor eating habits justifies spying in Allen’s view. Allen considers McCloskey’s position that adults who target children have no privacy claims. McCloskey writes:

Child Predators: People are thought to have a right to privacy in respect of the affaires [*sic*] they have ... Yet I suggest that if the girl involved in the affaire [*sic*] is a minor, a father who spied on the pair could not be charged with an improper invasion of their privacy; and if the man involved knew she was a minor, he could not complain that he had suffered a loss of privacy as a result of the father's spying, because by his actions he had put that area of his life outside the area of privacy.

(McCloskey 1971: 313–14).

Allen notes that parents should spy to stop statutory rape and child abuse, but not by any means necessary. She writes: "I think a better view is that the sexual offender has legitimate privacy expectations and interests, but that not all of them would be wrongly breached by spying" (Allen, 2008: 9–10). In a related case Allen drives this point home.

Plaxico: Glenn Michael filed for custody of his six-year-old daughter, who lived with his ex-wife and her friend, Rita Plaxico. Mr. Michael came to believe living with him was in the girl's best interest after he heard that his ex-wife was having a lesbian affair with her roommate. He surmised that the family court would view a heterosexual father as the better parent if he could produce strong evidence of his ex-wife's homosexual affair. One night Michael drove to the home shared by his ex-wife and Plaxico, sneaked up to a bedroom window, and observed the two women unclothed and having sex. Pleased by his good luck, Michael grabbed a camera from his car and snapped some semi-nude images. After presenting the photographs to the court, Michael won custody of his daughter. Ms. Plaxico, who had not been a party to the child custody matter, sued Mr. Michael for invasion of her privacy, but lost.

(Allen 2008: 10)

The court found that Glenn Michael, the father in the *Plaxico* case, had a compelling and overriding interest in protecting his child that was weightier than Plaxico's right to privacy. Allen contends that Michael's actions went too far – good motives, such as trying to protect one's children from harm do not justify the magnitude of the intrusion in this case. Moreover, there were other, less invasive ways to determine the facts surrounding his ex-wife's relationship status. A general form of Allen's safety argument proceeds as follows.

- P1. Parents are obligated to protect their children from harm.
- P2. Information about children and their activities is needed to protect them from harm.
- P3. Overt and covert monitoring are good ways to gather this information.
- P4. Overt and covert monitoring are most plausible when coupled with a "least harmful/invasive means" rule.
- C5. So it follows that parents ought to overtly and covertly monitor their children.

Given the plausibility of the premises, the argument appears strong. But if we take the results of the prior section seriously, most if not all forms of covert and overt monitoring would be ruled out. The harm prevented by spying, unannounced room searches, or coercive questioning would likely lead to further systemic harms, including the use of countermeasures, and loss of trust. Adopting a policy of two-way sharing avoids these risks and is much less invasive. We can imagine cases where parents have cause to spy, but this is only after failing to establish the sort of open relationship with a child that would render such spying unnecessary.

This is also true of McCloskey’s child predator case. A practice of two-way information-sharing between parents and children would likely yield the requisite information to determine if further inquiry or action was needed. In instances where the sharing rule fails, we employ a probable cause rule. To examine this second rule, we consider another case provided by Anita Allen – the case of Jeanine and Albert Pirro.

Cheating Spouse: Albert Pirro was not a very nice man when it came to his wife of many years, Jeanine. He was a classic louse. He was guilty of dating-while-married. He was unfaithful ... cheated on the family taxes ... and was convicted of a felony ... Ms. Pirro became a Republican candidate for the Attorney General of New York in 2006. She believed she had a shot at becoming the first woman in history to hold the post ... Pirro felt she had had to consider spying to find out if her husband was having an extramarital affair with one her friends. She knew Albert was dishonest about such things and that she could not trust his denials. Her hope was to make any such affair public before someone else did, catching her unawares on the eve of Election Day, ruining her chances for victory.

(Allen 2008: 14)

Allen claims that spying in this case would be justified. Her only complaint was that Jeanine Pirro made poor decisions about who to hire as a spy and what methods to use. It seems that Jeanine hired a less than honorable private detective who used questionable surveillance methods. Had Jeanine Pirro used different methods, Allen would have defended the surveillance on grounds of self-defense. A more formal version of Allen’s argument proceeds as follows:

- P1. Out of self-interest or self-defense adults are justified in spying on their spouses.
- P2. Information about one’s spouse and his/her activities is needed to protect oneself from harm.
- P3. Overt and covert monitoring are good ways to gather this information.
- P4. Overt and covert monitoring are most plausible when coupled with a “least harmful/invasive means” rule.
- C5. So it follows that spouses ought to overtly and covertly monitor their wives/husbands/boyfriend’s/girlfriends.

As with Allen's argument from child safety, the self-defense or self-protection argument in favor spying on one's spouse or partner seems strong. Who would deny that, when life or limb is at stake, covert and overt surveillance may be justified when less invasive means are unavailable. The problem is that these conditions will almost never obtain. First, establishing a relationship and practice of two-way information-sharing would be less invasive while at the same time preserving trust, love, and respect. While it is true that the Pirro's are well beyond such a relationship, and thus two-way sharing may not be an option, there are other options that could have been used.

In our view, probable cause coupled with a two-way sharing rule yields an appropriate balance in specific cases and as a general practice. Probable cause is established when a parent or other family member has discovered information through logical inquiry that would lead a reasonably intelligent and prudent person to believe that further monitoring is warranted on grounds of safety or self-protection. This basic standard is, of course, drawn from the criminal law, and generally applies to restrict state surveillance, search, or seizure. In American Fourth Amendment law, this standard outlines the boundaries of acceptable state intrusion into the private affairs of individual citizens. It prevents the state from engaging in "fishing expeditions," by limiting state action to situations where officers have a reasonable and articulable basis to believe criminal conduct has occurred. We argue that this standard also serves a valuable purpose in governing legitimate surveillance within the family. In concert with two-way information-sharing practice, such a standard would help preserve the ability to appropriately withdraw for purposes of self-development without fear of unjustified monitoring.

Intra-familial surveillance, especially covert surveillance, is only justified when it results from failed attempts to engage in two-way sharing or when such attempts are not feasible, and is then based on evidence reasonably amounting to probable cause. Additionally, if these conditions exist, the surveillance ought to be practically implemented in a minimally intrusive fashion. In any case, making determinations about the appropriateness of possible conduct is essential if we want a theory that can be used, practically, to guide moral behavior as it occurs.

Let's re-examine the *Plaxico* scenario presented above. First, in the *Plaxico* example, Allen contended that Mr. Michael was not justified in taking photographs of his ex-wife's lesbian encounter in her own bedroom because the privacy intrusion was overly severe, given the assumed security threat. We agree with Allen that being raised by a same-sex couple

does not, and should not, constitute a “serious risk of harm.” Nevertheless, assume there was such a worry present in this case. As a father Michael may justifiably inquire about the status of his daughter. Suppose while he is told that everything is fine and there are no safety concerns, he notices bruising on his daughter’s arms and a change in behavior. Suppose further that his daughter withdraws and refuses to share any information about what occurs at her mother’s home. After talking with teachers, neighborhood friends, and exhausting other information sources, Michael may well appeal to probable cause in justifying the use of technology to attain the requisite information. But this hardly sanctions becoming a covert peeping Tom or adopting a strategy to acquire total information awareness about his daughter, her mother, and the activities occurring when he is not present. Using probable cause along with a “least invasive means” rule promotes the values of safety, privacy, and trust.

Consider the case where a parent or spouse claims to “have a right to know everything” about a partner or child. A different way to focus on the inappropriateness of such a view and the forms of surveillance it implies is to ask if someone from an unbiased vantage point would have consented to monitoring in similar circumstances. Knowing about privacy and trust, would a rational and prudent individual unrelated to the case at hand agree that privacy should be waived on grounds of safety or self-defense? It may be true that we all want to know more about others while keeping our own secrets, but we should resist this impulse on grounds of privacy and respect.

Imagine upon returning home one day you find your partner (or child) searching through the trash, painstakingly putting your shredded notes and documents back together. In response to your stunned silence your family member proclaims: “I have a right to know everything about you – there is no reason to hide is there?” An appropriate reply to this sort of “fishing expedition” would be to highlight that privacy rights exist even within families, privacy is morally valuable and connected to human health, and that the principles of respect or trust would demand different sorts of behavior between loved ones.

The primary difference between our view and Allen’s is that we are more restrained when it comes to spying on family members. While we agree with Allen’s “least intrusive method” rule, we also employ a two-way information-sharing rule and a probable cause rule. Overt or covert spying on a family member is only justified in cases where a parent or partner has compelling evidence that safety or well-being is threatened. Allen writes: “Columbine and similar incidents around the country

point to why parents are justified in inspecting teenagers' rooms for signs of trouble ... even poor eating habits can be grounds for monitoring (Allen 2008: 7). We have argued against this view. Without good reasons, prying into the private lives of a child or partner is a violation that undermines trust and respect. As noted earlier, we can imagine cases where parents or partners have justified cause to spy, but this is only after failing to establish the sort of open relationship that would render such spying unnecessary.

Moreover, as citizens we certainly would not think that intrusions into private areas are justified because of relatively rare acts of terrorism at home and abroad. The remote threat of such travesties would not sanction governmental fishing expeditions into private lives of citizens in violation of the Fourth Amendment. Additionally, such remote threats should not be used to sanction privacy violations within the family.

Conclusion

Privacy, defined as the right to control access to and uses of locations and personal information, is morally valuable for children, adults, and within families. Moreover, privacy preserves groups, maintains status divisions, allows for deviation and personal growth, and sustains social establishments. Childhood problematic behavior or "poor adjustment," including depression, violent outbursts, engaging in risky sexual behavior, and the like, increase with loss of privacy and control.

To outline the proper balance between various privacy and safety interests within a family, we have argued for three rules. First, a rule of "two-way communication" establishes a practice of trust, respect, and caring. Such a standard would help preserve private spaces within family life – spaces where children, spouses, or partners can appropriately withdraw for purposes of self-development without fear of unjustified monitoring. Second, if in a specific instance or as a practice the two-way sharing rule fails, we retreat to a probable cause standard to determine the appropriateness of surveillance. Probable cause is established when a parent, spouse, or partner has discovered information through logical inquiry that would lead a reasonably intelligent and prudent person to believe that their child, spouse, or partner is subject to, or the cause of, a specific and serious threat to safety or well-being. Third, in cases where monitoring is justified, a "least invasive means" rule should be employed. If correct, covert or overt surveillance within the family would only be justified in a narrow range of cases.

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