

## Adolescents, Privacy and the Law

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## Short Communication

Adolescents, Privacy, and the Law was written by Roger J.R. Levesque to show how the large shifts in nature, understanding and importance of privacy require a close look at their effects on human development. During the period of adolescence, a variety of contexts shape development and this book reveals how privacy rights shape adolescents. He evaluates the complexities of law and empirical understandings to better explain the limitations of privacy law, privacy law's influence on development, how much privacy law currently reaches its intended goals and the potential steps to change privacy law's increasing limitations. There is not one right to privacy and not all privacy is good. Roger Levesque believes that privacy is an inherently social phenomenon, and, because of this, the way adolescents' privacy rights and needs are shaped is crucial to society's broader privacy interests.

The book begins by giving an overview about adolescents' limited rights to privacy and the three central strands that relate to privacy. The following three chapters discuss in depth each central strand using court cases and key lessons about privacy rights. The final two chapters conclude with empirical research that explain how privacy rights impact adolescent development and offers principles to help improve the legal system regarding adolescents' privacy rights.

Privacy law developed during the 20th century and thrived during the 1960's and 1970's. Privacy rights have become so prominent that they are known as the most fundamental of all rights. Chapter 1 provides an overview of what is going to be talked about in further chapters and understandings about the different strands of privacy law. Privacy is important during adolescence because that is when privacy concerns and needs fully arise; and privacy is needed for healthy development. Rights are exceedingly different when they are applied to adolescents compared to adults to make sure there is full constitutional protection. An example of this is that adolescents can be excluded from receiving extreme punishments because they are looked at as too immature and are unable to be protected appropriately by the legal system. There are also court cases that give minors privacy rights to make medical decisions

if they can prove they are a mature minor. All cases are based on common-sense notions of developmental needs and social expectations. Privacy laws are complex and are categorized into three different strands that each address different issues require different considerations and have different responses to them. The three strands are decisional privacy, spatial privacy, and informational privacy and the following three chapters discuss each in detail about how they provide a better sense of ways to approach privacy using well known court cases. Even though each form of privacy is separate, they are all functionally interconnected and usually connected by the same situations. To fully grasp adolescents' privacy rights, an understanding about how the legal system approaches each strand is needed, not just how they strictly relate to adolescents.

Decisional privacy focuses on an individual's choice and their ability to make important decisions without having the government interfere. These choices are self-defining and have an influence their development. Most importantly, this deals with freedom to make important decisions about who someone is, how an individual defines themselves, and how they behave. Even though this strand is well known, it is usually misunderstood and addresses some of the most important issues of our time. Decisional privacy is protected by the Constitution, but it is not mentioned in it which is why substantive due process, which is the method the Supreme Court uses to identify rights, is so important. This area of law helps form adolescents' rights and how the Supreme Court now views this as a decisional liberty. *Meyer v. Nebraska* (1923) [1] and *Pierce v. The Society of Sisters* (1925) [2] set the foundation for the substantive right to liberty that later is known as including decisional privacy. Court cases later use the *Meyer* case as the jurisprudential foundation for allowing parents to have decisional authority over their children. These focus on the freedom of mind and character, and the place of the state in guaranteeing that freedom. An important point made is how decisional privacy makes a switch from a right that is not fully recognized to a liberty. "Rather than being based in the right to privacy, the right to make personal decisions is based on decisional liberties, the ability to take charge of one's life course and be an independent, self-sustaining, and equal citizen." [3]. When the case of *Gonzales v. Carhart* (2007)

[4] is discussed, it is shown how the court approaches decisional privacy as a matter of protecting liberty, but the members of that court have different opinions about just how much power should be given to the liberty.

The Constitution does protect the liberty to make important life decisions, but not necessarily the privacy to make them. Some liberties are protected and those are the ones that society thinks are worth protecting from the government's interfering. This has important repercussions for adolescents' rights. Courts have not moved forward to address decisional privacy as a broader liberty right of adolescents to control decisions that determine their development. So, the rights primarily focus on reproductive rights and personal health care but do not respect the rights of adolescents to act independently without interference from the government or their parent(s). It is made clear that adolescents generally do not have the ability to control their rights; it is assumed that parents will act on the child's best interest, so they are ultimately in charge of their decisional rights. *Bellotti v. Baird* (1979) [5] case gave three fundamental reasons why children do not have the same Constitutional rights as adults: They are vulnerable, they do not have the ability to make critical decisions, and it is believed that it is important to have a parental influence as children grow up. It has been argued that children ages 15 and older do have the capacity to make decisions like adults; which could be important to support appropriate decisional autonomy. The discussion of this strand is concluded by the argument that if decisional liberties are going to rely a lot on parental involvement, there needs to be development about ways to protect the privacy rights of adolescents when the right is not recognized as one that they can control.

Spatial privacy deals with physical space and the protection of spatial boundaries. It involves defending someone's personal privacy from invasion by unwanted signals, objects, and people. Also, it provides protection from unjustified governmental intrusions into social and personal activities. Decisional privacy questioned the existence of the strand, but spatial privacy causes a lot of controversies because of its focus on the kind of the protection it has. Due to this strand's having many exceptions, its power is reduced even though it considerably relies on due process rights and those relating to searches and seizures. There are limitations with spatial privacy because of the changes adolescents undergo, trying to address adolescents' developmental needs, and the practicalities of adolescents' place in society. *Boyd v. United States* (1886) [6] was the first case that stated the use of general warrants violated common law trespass notions and said that the search of private papers also went against expectations to be free from unreasonable searches. It is important to look at that jurisprudential development with spatial privacy. The Boyd case took over 80 years to recognize privacy's place in search and seizure law to influence this area of jurisprudence and transform it. The Fourth Amendment used to be a dormant doctrine until court cases brought it back up. There

are exceptions to the Fourth Amendment and some expectations of privacy are more protected than others because the court has created a hierarchy of spatial privacy interests. For example, the greatest protection would be the expectations of privacy that society is prepared to acknowledge as a gain. Due to court cases such as *Terry v. Ohio* (1968) [7] and *United States v. Jones* (2012) [8], protecting expectations of privacy and requiring probable cause and the protections that follow, created a limit for governmental intrusion.

Since spatial privacy is already bringing up a lot of protection issues with adults, it raises even more difficulties when determining the status of adolescents' spatial privacy. The Constitution does recognize and protect minors' rights but a doctrine has been developed that permits important intrusions. It is believed that what really matters in spatial privacy and adolescents is the reasonableness of the expectation, particularly the Supreme Court's view of what society thinks is reasonable. Just like decisional privacy, adolescents' rights involve the liberties of their parents and the expectations that society has about what is worth being protected. "Issues not yet addressed by the Court raise the fundamental need to determine what is meant by parents' liberty to control their children's upbringing, other adults' roles in socializing adolescents, societal respect for adolescents' sense of spatial privacy, and what those determinations mean in light of important developments in adolescents' rights" [3]. The first case that involved spatial privacy of adolescents is the most important case, [9]. That case determined whether students had recognizable Fourth Amendment spatial privacy rights, which they do against public school officials. This established their spatial rights to privacy against the government. Even though this was a major step, the law did not offer spatial privacy in homes due to someone else (typically parents) recognizing the rights for them and protecting them. It is easy to see that there are several limitations to adolescents' spatial privacy rights but that it has come a long way. The Court believes in two fundamental rationales for granting others protection over the child's spatial privacy and they are: the protection for whoever is under adult care and appropriate socialization. This has led to uneven development for adults and limited protections for adolescents. It is stated that the only significant way to counter the legal system is to use legal developments to reconsider the best way to remain realistic to the constitutional fears for protecting spatial privacy against unwarranted intrusions.

The final strand is informational privacy and it addresses the ability to control the collection, use and disclosure of one's personal information. It involves someone's actions, status, thoughts, emotions, sensations and their images. The main purpose is to protect individuals' personal information from inappropriate release from governmental and non-governmental individuals. The Court assumes that information should be open to exchange, but it can be a problem when dealing with adolescents who would benefit from

having more protection. Decisional privacy questioned whether the right existed, spatial privacy revealed the lack of protections, and now informational privacy is what determines if there should be protections on someone's informational privacy. When involving adolescents, there are two reasons more tension is brought up. First, they usually have few informational rights (even less than adults), and second adolescents have an unusual legal and developmental status. To understand adolescents' informational privacy rights, there has to be an understanding that there is little recognition and protection. *Whalen v. Roe* (1977) [10] is an important case involving constitutional protection for control over private information because it recognized an individual's interest in the nondisclosure of information. That case led to other important developments, and those developments are known for limiting rights. As a result, it is widely acknowledged that informational privacy exists, but there are still important limitations to it. Limitations come from how the right gains its protection and how people respect their own rights.

Adolescents have limited rights as the legal system has developed two doctrinal areas. The first involves laws that restrict their informational privacy; which means they are dependent children not able to exercise their own right themselves; the law gives control of the right to the care-taker. The second area gives power to the state to treat juveniles differently, either by limiting or giving extra protection. When considering to either give or take away protections, it is necessary to look at both of the areas that can adopt different approaches. There have been cases where adolescents have been self-incriminating themselves and this shows how important it is to take their vulnerabilities seriously. Doing so allows the legal system to give more protections that it used to not be able to do. Like the two previous strands, parents ultimately control the informational privacy rights of adolescents. One exception to that involves situations where the minor can emphasize confidentiality because it involves highly-protected rights. Due to adults' themselves not even having much informational privacy, it is important to find new ways of thinking about protecting this strand of privacy because this law reveals how little of protections there are for adolescents.

Chapter five looks closely at empirical considerations to show the significance of privacy for adolescents' development. "Key lessons useful for re-evaluating and re-envisioning adolescents' privacy rights are: (1) Privacy is central to adolescent development, (2) adolescents need control over their privacy; and (3) social forces shape adolescents' experience of privacy and its effects" [3]. The first section of this chapter emphasizes how privacy shapes developmental needs to have a successful transition to adulthood. Achieving a healthy sense of autonomy (emotional, cognitive, and behavioral abilities) is shaped by adolescents' privacy. They also need to gain a secure identity and privacy allows the ability to learn about multiple aspects of their identities. Identity

is a social process that relies on privacy. Another aspect discussed is how adolescents need privacy to establish meaningful relationships. This helps define the ability to be intimate and also the nature of specific relationships. They will all be different from each other, but they all have an importance because they further responsibilities. Developing a sexual self during adolescence is defining and brings a lot of important changes to their lives. Decisional, spatial and informational privacy are all important when developing a sexual self. The final important development is becoming competent. This is about knowing an individual's place in society and becoming a competent member in it whether it involves emotional competence, academic competence, etc. All of these rely on privacy rights of the adolescents, but motivation to deal with all of the tasks is what will determine if they become healthy, productive, and contributing members of society. The second part of the chapter focuses on the empirical foundation needed to determine if adolescents should have privacy rights, and to what extent because even though privacy rights support their development, that does not rationalize their privacy rights. For adolescents to have privacy rights and control over them, the legal system they must avoid vulnerabilities, (2) recognize that social forces highly influence adolescents' experience of privacy and the outcomes, and (3) realize that effective use of privacy can be developed. All adolescents are going to vary but respect for their privacy is the foundation of a healthy development and socialization. Having a developmental view shows how the legal system has a misunderstanding about privacy when it comes to adolescents. Research shows that society can shape how they use their privacy due to important social dimensions that create and support privacy.

The final chapter uses legal analyses to offer principles for improving legal approaches to adolescents' privacy. Society can shape adolescents' attitudes and their private experiences to help promote healthy outcomes. Education, the justice system, health care and family are the four privacy settings that form adolescents' developing attitudes and identities. A developmental view of the legal system understands it as a socializer because it does shape people's sense of identity and their attitudes, which are the two foundations for shaping adolescents' privacy rights. To shape the development of healthy adolescence, it is important to have social and familial environments support autonomy, provide structure, and provide involved socializing agents. The problem is that the legal system does not look at privacy as something that is able to control positive outcomes; so, it provides the broad outline and individual's own experiences will shape their attitude. The three main principles Levesque offers for improving legal approaches to adolescents' privacy are: broaden conception of legal competency, reinforce self-determination, and capitalize on the power of best interests' mandates. Even though approaches to recognizing and protecting adolescents' privacy exist, they offer very limited protections that do not properly address their needs. Legal compe-

tency gives legal rights to individuals who are capable of controlling them and if they cannot, it is given to someone else to act for them. This is considered the dominant approach to determining the rights of adolescents because the individual is controlled by another. This approach does have numerous problems associated with it due to its being a narrow approach to competence. Reinforcing self-determination allows individuals to gain more control over their own decisions while they are developing and also gain rights that are consistent with their maturing capacities. Current research does favor this principle, but the legal system applies it very narrowly in limited contexts. The principle of best interests' considerations is the fundamental starting point to determine how adolescents should be treated. The government is considered the guardian of all minors that are within its jurisdiction. Since this is based on the assumption that whoever is in charge of the minor is acting on their best interest, it is hard to say that society is truly following this. Acting on the best interest does provide the best standard for determining how to consider adolescents' interest in their rights. Also, this does address private and public actions, which is one of the main limitations of jurisprudence and legislation relating to privacy. These support the fact that the law needs to focus more on the ability of individuals to make decisions about privacy and also the ability to make good decisions and be responsible to create healthy developmental outcomes.

Because of how important privacy rights are to adolescent development and to societal betterment, the rights are not protected in ways that people would expect them to be. This book explained well the key issues involving privacy and how they specifically relate to and effect adolescents' development. Even though adolescents have rights, they are limited and not where they need to be. Decisional, spatial and informational privacy all require a different look on privacy, but Levesque revealed how adolescents have barely any protections when it comes to all of the strands. As it does so, the book highlights a critical point about adolescent research: the need to recognize the wide variety of situations involving adolescents' privacy. Several areas of research focus on privacy issues, such as those involving adolescents' media use [11,12], schooling [13], parental monitoring [14,15], interventions [16], peer relationships [17] and even research on the ability to conduct of research [18]. Yet, that research tends to ignore the appropriate role of adolescents' privacy needs and why they could be protected. This book was extremely effective in getting its argument across because it is broken down into sections to better explain different approaches to privacy and multiple methods were given to help improve adolescents' privacy rights. The author makes a significant contribution to the study of adolescents' rights because multiple principles were raised and all of them took a different approach to the legal system. The offered approaches are significant also because, if the legal system works to better embrace adolescents' best interests, privacy

rights for them would be approached in a much different and better way. That change must begin by recognizing privacy interests when they exist. As a result, *Adolescents, Privacy and the Law* offers excellent insight on how the legal system currently views and addresses adolescents' privacy rights and how changes are needed to help better develop healthy outcomes.

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