

Exchange of Views
Too Much Privacy? Or Not Enough?
An Exchange on *The Limits of Privacy*

James A. Morone
Brown University

Amitai Etzioni. *The Limits of Privacy*. New York: Basic, 1999.
280 pp. \$25.00 cloth; \$16.00 paper.

Some years ago, a young man got tossed out of Brown University for getting drunk and screaming racial slurs. He sued, of course, arguing that the university had violated his rights. When the inevitable media storm hit, I was in Ontario delivering a talk. Since I teach at Brown, the case of the racial epithets soon hijacked my lecture. After some heated back and forth, two views emerged pretty much along national lines. The Americans focused on the screamer's rights; what he did was repulsive, they kept repeating, but the university should have stood up for free speech. Not a single Canadian agreed. "Every community has to protect its fundamental norms and values," said one Canadian, "and that means taking a firm stand against racism."

Amitai Etzioni's great project has been to push that kind of communal thinking back into American heads. Good societies, writes Etzioni, "carefully balance individual rights and social responsibilities, autonomy and the common good, privacy and . . . public safety" (184). No other public intellectual has done more to rekindle America's communal urge.

Of course, community goes down a lot smoother when it's being pushed onto greedy rich folks or drunken racists. Lately, however, Etzioni has led the communitarian revival into more risky precincts. In *The Limits of Privacy*, he challenges America's passion for privacy rights.

While civil libertarians are launching great jeremiads about "privacy

under siege” or even “the end of privacy,” Etzioni trumpets the dangers on the other side. Privacy is too well protected, too privileged. We’ve let our guard down against pedophiles skulking in the suburbs, criminals lurking behind false IDs, and cyber terrorists zapping their encrypted plans around the globe. Public safety, writes Etzioni, is “systematically neglected out of excessive deference to privacy.” After all, he asks, don’t you think public authorities ought to be checking whether school bus drivers, pilots, or police officers “are under the influence of illegal drugs?” The school bus driver, in particular, comes up again and again (2, 8, 13).

Etzioni tossed this gauntlet just before the rampage at Columbine High School. Does that trauma lend new urgency to the call for collective health and safety? Or have we already overreacted? The tragedy infuses a new urgency into the underlying question: Just how do we strike that elusive balance between individual privacy and public safety, between personal rights and communal obligations?

Etzioni gives us a clear answer: It depends. He suggests a communitarian’s checklist for disrupting privacy rights: First, is there a clear and present danger to public health and safety? Second, can the danger be countered without restricting privacy? Third, if we are forced to introduce curbs, how can we make them minimally intrusive? And, finally, can we treat the undesirable side effects? All perfectly sensible suggestions.

Etzioni applies his rubric to five cases. He concludes that there is too much fussing over private rights in four of them—Megan’s laws, HIV testing for infants, national ID cards, and federal authority to decipher encrypted messages. When it comes to medical information, on the other hand, privacy rights are at risk. The argument adds up to more than the sum of individual cases: The American balance, says Etzioni, tips too far toward protecting privacy rights for our own (public) good.

Etzioni weighs the cases in what might be called a communitarian tone. He is generous to the other side, quick to entertain objections, more interested in stirring a discussion than in securing an outcome. I’d hand over my own privacy rights a lot more easily if he were the one moderating the community meetings. But, as James Madison famously warned us, “enlightened statesmen will not always be at the helm.” Before we start shucking privacy rights, let’s take a long hard look at that first criterion (yes, Etzioni’s checklist is a keeper). Is there a clear and present danger? Should we worry more about eroding privacy or about threats to public health and safety?

Well, for starters, crime has plunged for eight years in a row—the

longest decline on record. Analysts have started talking about matching those halcyon low-crime days of the Eisenhower and Kennedy administrations. As a society, we are safer today than we have been for decades.

Meanwhile, we've locked up an extraordinary 2 million Americans. That's twice as many people as we had incarcerated twelve years ago. By 1998, one out of every thirty-five adults had gotten tangled up in the criminal justice system and are either in prison, on parole, or under probation. For African Americans, the rate is an extraordinary one out of ten. And those sobering numbers—with few parallels anywhere in the world—do not seem to slake our urge to get tough on crime. Each fresh report about the soaring prison population ends on the same note. “Even as crime rates fall in almost every category,” reported *USA Today* recently, “the fear of crime continues to rise.”

The Columbine shootings powerfully stimulated the urge to “lock them up.” Forty-six states are now pushing children into adult courts. Officials in California have suggested executing fourteen-year-olds; Texans proposed getting capital punishment down to eleven-year-olds. Gary Trudeau perfectly caught the post-Columbine edginess in his *Doonesbury* comic strip: “How are you doing, son?” asks the Concerned Dad. The kid cuts straight to the punch line. “Just frisk me,” he snarls.

Here in Goshen, New Hampshire, that's more or less what we began doing. Two kids spray-painted graffiti in the Goshen/Lempster school. “You all die,” it said. The police caught the troublemakers right away. No one suggested giving the kids a second chance; both were thrown out of school. Just to be on the safe side, school officials began searching everybody's school bags. All this in a rural primary school where the police log runs to lost dogs, rowdy skateboarders, and the occasional firecracker in a mailbox. Only one of my neighbors was troubled by the searches. “What if you find something else, say cigarettes, in Neville's backpack while you're searching for guns?” he asked at the special town meeting. “Would you punish him?” The neighbors thought the question bizarre. The school principal gave my neighbor a stern talking to about the dangers of tobacco. Privacy rights? They never got any traction against the specter of school shootings. Or the hazards of tobacco.

In Goshen people saw a clear and present danger that probably never existed. In fact, even counting the Columbine horror, school violence has been falling even faster than the regular crime rate. (That's right, school violence *fell* more than 30 percent in the past five years; today less than 1 percent of violent deaths among youths occur at school or school events.) But bloodshed and body bags all over the television have buried

the boring crime statistics. My frightened townsmen did not stand on privacy rights. Moreover, the breathtaking size and scope of the criminal justice system—5.7 million Americans in prison, probation, or parole—suggest that little Goshen is no anomaly. Obsessions over privacy do not slow down the fearful. Sure, there will be cases where rights talk deflects sensible policies. But, on balance, the scales of justice weigh heavily toward conviction and punishment. In my view, we've already gone too far the other way.

Even worse, crime wars come with a terrible bias. Etzioni diagnoses the danger immediately. As we juggle privacy rights and the common good, he muses, we may be tempted to “employ a double standard, to enshrine our own privacy while denying that of others”(3). “We” are innocent, “they” are suspect. Always the decent communitarian, Etzioni waves that kind of prejudice away—“too cynical to be seriously entertained,” he says (*ibid.*). Alas, Etzioni is not at the helm when communities panic. Look again at the jail numbers. African Americans are six times as likely to be incarcerated as white men and women, twice as likely as Latinos. Study after study reports an extraordinary racial bias at every stage of the criminal justice system. For example, when youths are charged with drug offenses, blacks are an astonishing forty-eight times more likely to end up in prison.

Fears about “them” run through American history. After all, this is a protean nation crowded with different people claiming citizenship, competing for jobs, and (yes) calling for their rights. All the way back in the seventeenth century, Puritans founded their towns by signing covenants in which they pledged to hold one another in mutual love (like good communitarians) while fending off the “contrary minded.” The urge to fend off the Other yields the dark side of the American heritage—the legacy of the witch hunt, the lynch mob, the Indian war. The incarceration numbers suggest we are still crusading against Them. Privacy rights have not deterred us from sweeping the city streets of young black men.

Panics raise a difficult political question: Just who decides whether there is a clear and present danger to public safety? In the most combustible cases, frightened people have been egged on by their political leaders (who are often trolling for cheap votes). That's what yielded early American witch hunts, recurring bouts of race hatred, and the contemporary crime wars. Each case suggests how difficult that first question on the Etzioni checklist can be when political leaders must stand before panicky citizens and tell them there is no danger. It takes real courage to

stick up for the rights of unpopular others. All the political incentives push just the other way.

Of course, there are cases where public safety requires stricter measures. Etzioni's chapter on child molesters will chill you. But emphasizing these cases (I believe they are the exceptions) injects a terrible dimension into our policy discourse: the image of the predator. Public attention immediately turns to the dangerous others all about us who are menacing the children, blowing up federal buildings, or asking innocents to take dangerous packages onto airplanes. Images of depravity warn Americans to gird themselves. More cops, tougher laws, harsher sentences, and all that idiotic rigmarole every time you check in at the airport. These are all hell on the communal spirit. The fear of others—drilled into American heads at every turn—erodes our sense of shared community.

To understand the consequences, let's go back to blood tests for the school bus drivers. What could possibly be wrong with that? School bus drivers cannot, must not, drive drunk or stoned. However, lifting urine samples to the top of the policy agenda reinforces the corrosive fear of irresponsible miscreants all about us. Exaggerating the dangers the drivers pose obscures the problems they face.

The bus driver's job reflects the new economy—they generally get no health insurance or retirement package or other benefits. In the typical town, the school board eventually ran over the union (if there was any) and contracted out the bus driver's job. It did the same for the janitors and the cafeteria people. Saved the town a pile of money. But now the driver has no idea what she is going to do when she retires. Or what she'll do next week if the kids get sick. The greater danger—the more pressing communal problem—lies in a social system that puts working people in peril. The health care numbers are familiar: 44 million without health insurance, another 30 million with inadequate coverage.

The uninsured frame Etzioni's marvelous discussion of the one case where he believes we need *more* privacy. Corporate "privacy merchants" swipe and sell our medical records. But what makes the information peddlers so dangerous? Yawning gaps in health care coverage along with all-out competition among providers. Once they hear about that procedure you underwent (even if, thank heavens, it turned out to be benign), you'll never be able to buy health insurance again. Tough regulations might slow down the privacy thieves. But people will remain vulnerable till everyone gets decent health care. And winning that is not easy, to say the least.

452 Journal of Health Politics, Policy and Law

The Clinton administration surged into office promising health care for all. Eight years later, it was fighting for a far more modest health care “bill of rights”—with scant help for the medically underprivileged. The Democrats’ diminished goals did not come from an obsession with rights. They simply got clobbered when they reached for something more expansive (and expensive). Winning national health insurance would have required a broad commitment to the community, a genuine feeling of responsibility that all Americans bear toward one another. In Europe, they call it the culture of solidarity; in the United States, it is Amitai Etzioni country. But pictures of dangerous others wreck our sense of community. We will not make sacrifices for one another (say, paying higher taxes so that everyone gets decent health care) while our policy gaze remains fixed nervously on the depraved neighbors.

Amitai Etzioni offers us a thoughtful, provocative warning about our rights. It comes in a 280-page seminar on how to stir a fair-minded discussion. Moreover, there’s some basis for his warning: every society harbors dangerous predators. But it seems to me that we’re already doing more than enough to track them down.

The real communal trouble lies in our fraying safety net. We ought to stop hectoring the school bus driver and focus on the real dangers to our society: 2 million in jail, 7 million people on the brink of becoming homeless, 44 million without health insurance. Pushing for *The Limits of Privacy* is fighting the battle on the wrong front. Americans are already in full cry about the scary others who threaten our public safety. The passion for punishing them does not just pinch American privacy rights. It also makes a shambles of our fragile spirit of community.