Issue: “Whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual; and, if it does, what the nature and extent of such protection is.”

Note that the focus of the essay is on the first part of the issue, with ten of the 13 pages discussing the right to privacy. The remaining three take up the limitations of the right to privacy and remedies granted for its enforcement. This latter discussion seems less controversial and with fewer substantive issues.

The authors’ position: the law does afford a principle which can be invoked to protect the privacy of the individual; there is such a right. Warren and Brandeis refer to a right to life which has come to mean the right to enjoy life. The right to enjoy life includes the right to be let alone, which in turn includes the right to privacy. How do the authors support their claim that a right to privacy does indeed exist? They cite several supporting rationales, including:

1. The right to privacy is found in the common law (“That the individual shall have full protection in person and in property is a principle as old as the common law…” “…the common law recognizes and upholds a principle applicable to cases of invasion of privacy…”)

2. The right to privacy is founded upon the broader rights to enjoy life and to be let alone (...the protection afforded to thoughts, sentiments, and emotions, expressed through the medium of writing or of the arts, so far as it consists in preventing publication, is merely an instance of the enforcement of the more general right of the individual to be let alone.)

3. The common law has the capacity to grow and develop in response to political, social, and economic changes, and recent developments necessitate its further growth and development to cover and protect one’s privacy.

4. Solitude and privacy are essential to the individual (the principle of an inviolate personality; man’s spiritual nature, his feelings and intellect; the need for retreat from the world, the value of solitude)

5. Protecting one’s right to privacy is increasingly necessary due to the advance of civilization and the development of technology. We must protect the very personality and innermost feelings of the individual, jeopardized by modern inventions.

6. The harms and evils of gossip (“even gossip…is potent for evil. It both belittles and perverts. It belittles by inverting the relative importance of things, thus dwarfing the thoughts and aspirations of a people….Triviality destroys at once robustness of thought and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its blighting influence.”)