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The Right to Privacy and Its Potential to be a Harbinger of Inequality

Shahin Berenji, BA
University of Southern California
Los Angeles, California, USA

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Since John Locke's *Second Treatise* in 1680, liberals have often used rights discourse as a way to advance freedom within society.¹ As special entitlements, liberals firmly believe that rights protect the liberty of the human subject by overriding society's will to use a person as a means to an end and/or impose a particular worldview on them. According to Ronald Dworkin, a noted American legal philosopher, "these rights function as trump cards held by individuals; they enable individuals to resist particular decisions in spite of the fact that these decisions are or would be reached through normal workings of the general institutions..." (71). Using this rationale, then, rights safeguard freedom by enabling individuals to: choose their own *telos* (purpose, end, fate), engage in certain activities, and make certain choices, irrespective of societal standards or beliefs. Perhaps no aspect of rights discourse more tellingly illustrates this concept than the right to privacy. This broad right permits individuals to exercise absolute freedom in the private sphere (referring to the home or domestic environment) without the political or social interventions of the public sphere (referring to the government and civil society). In this way, the right to privacy appears to maximize freedom by enabling human subjects to create and practice their own beliefs and values. Nonetheless, by isolating individuals from the public sphere, the right to privacy can (especially if it is interpreted as an absolute right) paradoxically limit one's freedom by sanctioning the cultivation and diffusion of values that may conflict and clash with the liberal values of equality and liberty.

In isolating the private sphere, the right to privacy permits individuals to cultivate their own values, thus liberating them from societal and governmental regulation. Since the late-nineteenth century, the right to privacy has always come to "mean the right to be let alone." As mentioned above, it is supposed to maximize one's freedom by providing *negative liberty*, or freedom from the arbitrary influences and/or interferences of the public sphere. However, while protecting one's freedom from outside regulation, the right to privacy acts as a gateway of unfreedom in that it allows any given action, conviction, or perspective to freely exist in the private sphere, regardless of its potential to harm or interfere with the personal rights of others.

In other words, the right to privacy enables individuals to cultivate their own values and principles, even if they contradict those of liberalism. For instance, as liberalism spread throughout the eighteenth and nineteenth century, the right to privacy allowed patriarchalism to trump liberalism in the private sphere. Consequently, the personal relationships associated with the family became most unequal and *unfree*, as was the wife's relation to her husband or the daughter's relation to her father. The right to privacy thus subordinated women to men (in the private sphere) since it held that "the private or personal and the public or political are separate from and irrelevant to each other" (Pateman 131). And so, by separating the public sphere from the private sphere, the right to privacy enabled men to overtly violate the rights of women in the private sphere. Nothing better illustrates this point than the practice that accompanied marriage called *coverture* whereby the wife yielded her identity, personal property, independence, and free will to her husband. This practice virtually suspended her existence as a separate individual by subjecting her physically, financially, and socially to the whim of her spouse. Needless to say, the practice of *coverture* was entirely contrary to the liberal values of freedom, equality, and independence that were being espoused in the public sphere at the same time. As Carole Pateman, a well-known feminist, points out "the public sphere, and the principles that governed it, were seen as separate from, or independent of, the relationships in the private sphere" (119). Because of this public/private dichotomy established by the right to privacy, the husband could exert absolute control and influence over his wife since the family environment was seen as a part of the private sphere. As this example illustrates, then, the absolute right to privacy can truly limit freedom in the sense that it legitimizes actions in the private sphere, no matter how unequal and unfree they may be.

More importantly, however, the right to privacy indirectly helps diffuse the attitudes and/or actions in the private sphere to the public sphere, the bastion of liberal values. This occurs because the public sphere or rather the individuals that participate in the public sphere instinctively carry over their personal values, principles, beliefs, etc. from the private sphere. And so, the 'concept of separate spheres' is wrong "because neutrality is impossible, and neutrality is impossible because

try as we might we can never wholly escape the effects of our conditioning" (Rudy 48). This is why the spheres are interrelated, meaning what happens in one sphere will ultimately happen in the other. Referring back to the old practice of coverture, it was eventually institutionalized, becoming the law of coverture in the United States, England, and many western European nations. The law of coverture is truly indicative of how the attitudes and perspectives that shape the private sphere can also shape the public sphere. This is why "it is impractical...to confine these ways...structures that give meaning to our lives...to the private sphere" (Rudy 49). Thus, the right to privacy can limit our freedom by cultivating and diffusing values and principles that may be contradictory to the tenets of liberalism within both the private and public spheres. The fact that this right has such far-reaching effects makes it relatively easy for it to reconfigure and transform the frameworks which help us see and assess the world, particularly in terms of freedom and equality.

Although many individuals believe that having an absolute right to privacy only protects or enhances our freedom, the author must challenge such a point of view. The right to privacy cannot entirely secure freedom because of the fact that it is not governed by any rules, regulations, or principles. Unlike the public sphere, the private sphere is not governed by the harm principle, thus meaning that violations, however restrictive they may be to one's freedom, are absolutely free to exist.² For instance, in the private sphere, if a husband physically abused his wife or child, the right to privacy (if interpreted without restrictions) would allow and even protect the action of the husband since it occurred in the family (a part of the private sphere). In essence, then, the right to privacy, without any restrictions or limitations, is quite dangerous in that it allows individuals to infringe upon the rights of others, without any form of punishment. It's quite ironic that while the right to privacy is supposed to free us from encumbrances and constraints, it does the exact opposite by allowing individuals to violate the rights of others. And so, while the right to privacy provides absolute freedom, this absolute freedom ultimately leads to *unfreedom* because it allows individuals to disregard the rights of others.

Therefore, while most rights protect our freedom, the right to privacy serves as an example of one that may not. By enshrouding individuals in a blanket of privacy, it isolates individuals in the private sphere, creating a climate for individuals to cultivate values and principles that may be in stark opposition to liberalism. Because the private and public spheres are so interrelated, what happens in the former will invariably happen in the latter. In this way, then, the right to privacy helps restrict the freedom of individuals by catalyzing a chain-reaction of events that may subsequently undo the fundamental tenets of liberalism.

About the Author

Shahin Berenji recently graduated magna cum laude from the University of Southern California with a BA in Political Science. His hobbies include, but are not limited to, watching ice hockey, playing the cello, and ballroom dancing. In the future, he wants to work for a political think tank and then attend graduate school

Endnotes

1. An example would be the United States Declaration of Independence (1776) - "...We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness..."
2. Harm principle - Harm is necessary condition to legitimate intervention in cases of other-regarding behavior (Mill 14)

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