



Privacy and Civilization

"Civilization is the progress toward a society of privacy."

— Ayn Rand

When the U.S. Supreme Court voted in *Lawrence v. Texas* (2003) to overturn criminal sodomy statutes nationwide, the conservatives railed—predictably—against the “right of privacy” that the decision seemed to imply. They dissented in favor of “states’ rights” and “federalism”—as if there could be a right for any state to abrogate the freedom of individuals to engage in private consensual sexual activity. When I heard their dire warnings that this would lead to mass social degeneration—to the legalization of prostitution, bigamy, gay marriage, narcotics, and so forth—I wanted to shout out loud: Bring ‘em on! If only such a ruling could decriminalize what Robert Nozick once called all “capitalist acts between consenting adults,” privatizing even the marriage contract, American society would have taken a giant leap forward.

While I do not pretend to be a constitutional scholar, I am persuaded by Randy Barnett (“Justice Kennedy’s Libertarian Revolution,” Working Paper Series, Boston University School of Law) that the majority decision in the Texas sodomy case did not depend upon any “right of privacy” as such; rather, it provided “an important step in the direction of a more balanced protection of liberty . . .” Philosophically speaking, however, there is no contradiction between a “right of liberty” and any “right of privacy.” And neither of these rights is possible without *private* property rights.

Ayn Rand objected to the conservatives’ desire to censor or otherwise erode people’s freedom to choose their sexual associations “precisely because [sex] is a value, an exception-making value that requires privacy” (“Thought Control, part 3,” 22 October 1973). Rand argued, however, that “a clear definition of the right to privacy . . . cannot be discussed outside the context of clearly defined and upheld individual rights.” But when such rights are “being evaded, denied, negated and violated by the dominant philosophical theories and political practices of our time,” it is no wonder that so much confusion surrounds the concept of privacy (*Letters of Ayn Rand*, 622).

“Privacy” is defined as “the state of being private.” “Private” derives from *privatus*, Latin for “belonging to oneself, not public or pertaining to the state.” The “right of privacy” is, fundamentally, an expression of

the right of private property—even if the “property” in question is the use and disposal of one’s own body. It is the right to separate oneself from, or to unite with, others—the right to exclude or include—by one’s own voluntary *choice*. All rights are moral principles that sanction the individual’s ability to act upon private choices in a public or social context—free from violent interference.

State encroachment on such rights is, in effect, an encroachment on the private. To destroy freedom of speech, press, and assembly, governments often target privately-held newspapers, radio and television stations, auditoriums, and electronic media through which individuals express agreement or, more importantly, *disagreement* with public policy. As Rand puts it: “It is the institution of private property that protects and implements the right to disagree—and thus keeps the road open to man’s most valuable attribute . . . the creative mind” (“What is Capitalism?”). The right to disagree, of course, does not extend to anyone who would seek to express that disagreement *physically* in a way that violates someone else’s liberties.

The war on privacy is a war against voluntary human association of every kind. Just as government seeks to regulate business by dictating the terms upon which privately-held property is exchanged, so too does government seek to regulate individuals’ rights to act on their sexual desires within the confines of their own private bedrooms—which is where the plaintiffs in *Lawrence v. Texas* were arrested. It is within these confines that consenting adults engage in *private* practices whether or not other individuals in the society “agree” with their sexual choices. Indeed, the expression of *private* sexual desire in *private* confines is equally an expression of *the right to disagree* with dominant sexual mores, traditions and customs. To forfeit the right to that which is private is to forfeit all rights.

Yet, Rand understood that privacy was much more than a right. It was a requirement of human cognition and civilization. Rand’s claim that “[t]here is no such thing as a collective brain” is an implication of the fact that “the process of reason” is “the primary act” that human beings must perform in the *privacy* of their own minds. “We cannot digest [a meal] in a

collective stomach,” Rand writes. “No man can use his lungs to breathe for another man. No man can use his brain to think for another. All the functions of body and spirit are *private*” (*The Fountainhead*, emphasis added).

In criticizing the anti-conceptual, anti-individualist character of contemporary education, Rand stressed that “[a] child needs periods of privacy in order to learn to think.” But modern schools provided the child with “less privacy . . . than a convict in a crowded concentration camp. He has had no privacy even for his bathroom functions,” Rand observed, “let alone for such an unsocial activity as concept-formation” (“The Comprachicos”). Instead, the child is taught to submit, to obey, to conform, to “fit-in.”

It is no coincidence that the erosion of institutions both of learning and of private property have gone hand-in-hand with the advancement of statism. It is no coincidence that this erosion has had a deleterious effect on people’s privacy. Statism requires a population that is stunted in its ability to think, to criticize, to disagree. It requires systematic invasions of people’s privacy—through regulations and prohibitions of their associations, or by outright surveillance of their peaceful activities.

Capitalism made possible the eradication of slavery, serfdom, and poverty partially because it institutionalized the sphere of the private. It is crucially significant that the material advancement brought about by even a semi-free capitalism has enabled the poor to rise above the herd existence, to produce, earn, and keep the product of their efforts, and to acquire *private* estates within which to pursue *private* joys. “[T]he worst curse of poverty,” said Rand, “was the lack of privacy” that it entailed. “*Civilization is the progress toward a society of privacy*. The savage’s whole existence is public, ruled by the laws of his tribe. Civilization is the process of setting man free from men” (*The Fountainhead*, emphasis added).

It is a tragic, ironic twist that some conservatives have posed as the guardians of capitalism and civilized culture in their fight against moral decay. But in failing to grasp the inextricable link between privacy and civilization, they are no friends of either. And in their struggles against privacy, they stand on the side of barbarism.