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Gender

During the 1970s, when the women's liberation movement peaked in the United States, the slogan "the personal is political" became a popular feminist refrain. While most feminists adopted this motto in order to stress that traditionally "private" matters such as rape, domestic violence, and **sexual harassment** needed to be addressed on a



public level, it has been seen as a sign that feminists are, if not absolutely opposed, then at least highly suspicious of the right to privacy. While some feminists, such as Catherine Mackinnon, have denounced privacy as an inherently patriarchal value, an examination of mainstream feminist positions going back to the nineteenth century shows that women's rights advocates have generally struggled not to eradicate the boundaries between public and private, but to liberate women from their historical confinement in the private domain. Above all, feminists have stressed that sexual equality will not be achieved until there is general recognition of the role of gender in defining both the general concept of privacy and the traditional divisions between the public and private spheres.

In the United States, the women's rights movement preceded the Civil War, but it was not until the postwar period, after black men won the franchise and the word "male" had been specifically applied to voters in the Fourteenth Amendment, that the fight for women's suffrage became a militant national campaign. Throughout this era, however, the more women agitated for admission to public life, the more they were told that nature had designed them to devote themselves to homemaking, child-rearing, and other ostensibly sacred domestic duties. For example, when the Supreme Court upheld an Illinois court's rejection of Myra Bradwell's application to practice law in *Bradwell v. Illinois*, 83 U.S. 130 (1873), Justice Joseph P. Bradley, writing for the majority, held that it would be a violation not merely of social convention but of divine law if women tried to find fulfillment in the public sphere. "The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman," Bradley famously insisted, and "the constitution of the **family** organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood."

In sanctifying women's place within the private realm, Bradley fell into step with the cult of domesticity that consumed nineteenth-century American society and shaped popular perceptions of privacy well into the twentieth century. Throughout this period, as modern methods of manufacture stoked the home-building, household goods, and advertising industries, an obsession with the material and moral ingredients required to make a happy **home** took hold of the country. Books, pamphlets, magazines, newspapers, and almost every other conceivable publication offered seemingly endless instruction on how to achieve domestic well-being. The most common admonitions were directed at women, drumming in the message that their first responsibility was to attend to the needs of their husbands and children, a duty that could best be carried out within a clean, well-organized, smartly equipped, and tastefully decorated private home. The cult of domesticity thus reinforced the doctrine of separate spheres by defining the home as the site of women's highest calling, and it also raised the value of privacy by popularizing the notion that every family ought to occupy its own private refuge, a haven that, if it were filled with the right consumer goods, would enable every family member to attain the moral attributes appropriate to his or her gender-specific position in the world.

The impact of the cult of domesticity is apparent in **Louis Brandeis** and Samuel Warren's essay, "The Right to Privacy," which was published in the *Harvard Law Review* in 1890 and went on to become one of the most influential and frequently cited articles in American legal history. In constructing the first systematic case for

a legal right to privacy, Brandeis and Warren complained that devices such as the telegraph and instantaneous photography had made it increasingly difficult for men to shield themselves and their dependents from public exposure and shame. Consequently, quoting Lord Coke's dictum that "every man's house is his castle," the authors maintained that the home, an evermore necessary refuge from industrial civilization, would cease to serve its purpose unless the heads of families were provided with more effective means to safeguard the sanctity of their homes.

Among the various examples they used to illustrate why men required these new protections, Brandeis and Warren singled out newspaper stories about sexual misconduct and intimate relations as an especially virulent blight on modern consciousness. In their view, the press needed to be prevented from circulating details about sexual transgressions, not so much because these revelations shamed the girls and women who were the usual victims, but more because such publicity dishonored the men who were supposed to protect them. To support this type of censorship, the authors pointed to legal fictions commonly used to address "intrusions by seduction upon the honor of the family," that is, cases of statutory rape or child molestation, which enabled fathers to collect damages against guilty parties without actually specifying the nature of the violation. Such legal devices conformed to social propriety, Brandeis and Warren maintained, because they allowed men to avenge outrages to their honor and reputation, but did not require further disclosure of ostensibly unspeakable crimes.

Although it took decades for courts to embrace the broad range of privacy protections envisioned in "The Right to Privacy," the notion that sexual misconduct should not be the subject of news reporting or public discussion became a widely accepted social convention for most of the twentieth century. Whereas nineteenth-century newspapers had routinely published accounts of rape and sexual molestation, usually providing the names and addresses of both perpetrators and victims, these stories became less common with the evolution of **journalism** as a profession and the rise of newspapers such as the *New York Times*. Articles on sexual wrongdoing did not vanish altogether, but in general, in stories in which the mention of sexual assault and misconduct could not be avoided, as in cases involving additional crimes, reporters resorted to euphemisms such as "nameless outrage," "violation of the home," or even "outrage against her husband" to refer to sexual attacks on women.

The effect of this configuration of the right to privacy was not only to reinforce barriers to women's participation in public life, but also to make it difficult or impossible for them to escape violence, injury, and oppression in the domestic sphere. The curtain that privacy defenders drew around the family home was not lifted after women won the vote in 1920, and the gentlemen's agreement that generally precluded reporting on sexual transgressions remained in place until the late 1970s. Likewise, the idea that women might forsake domestic duties in order to assume more active roles in public remains controversial today. Advocates for sexual equality, consequently, did not specifically oppose the right to privacy, but they protested the ways in which it barred women from the public stage while also obscuring their experience in the private domain.

The nineteenth-century doctrine of separate spheres has in important respects lost its grip on popular consciousness, thanks in large part to the efforts of 1970s



women's liberationists to subject previously private matters such as rape and domestic violence, as well as the unequal division of labor within the home, to the public scrutiny that privacy defenders such as Brandeis and Warren strove to avoid. Sexual inequality, well-known feminists such as Betty Freidan and Gloria Steinem argued, stemmed not only from the active exclusion of women from the higher levels of business, academia, and government, but also from the dependency, boredom, and in many cases, physical and emotional pain they suffered within the home.

In stark opposition to idealized conceptions of the domestic circle as the space in which women realize their deepest wishes by ministering to the needs their families, many 1970s feminists derided the life of the typical housewife as a brainless existence built on sexual submission, vapid consumption, and deep-seated anxiety about meaningless routines. Women's rights activists declared, first in consciousness-raising groups and then in public demonstrations, that sexual equality would not be achieved until women enjoyed parity on both sides of the **public/private dichotomy**, not only receiving equal pay for equal work, access to higher education, and unfettered opportunity in every profession, but also casting off primary responsibility for childrearing and other domestic cares.

Ironically, at the very moment women's liberationists began to issue public demands for freedom from the restrictive bonds of conventional marriage, exit from the stultifying dreariness of housework, and relief from sole responsibility for child care, the Supreme Court responded to the pressures of the sexual revolution by reasserting the conventional divisions between public and private life. In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Court ruled that the decision to obtain and use contraceptives falls within the boundaries of marital privacy. Citing the "penumbras," or shadows, cast by various amendments to the Constitution, **William O. Douglas**, who wrote the majority opinion, argued that the choices made by married couples in respect to family planning are contained within a **zone of privacy** into which the government should not intrude. The privacy claims that belong to married couples stood on special ground, Douglas argued, because the marriage bond involves principles that predate the Bill of Rights and pertain to a relationship that is as significant, if not more significant, than any other: "Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred . . . it is an association for as noble a purpose as any involved in our prior decisions."

A few years after *Griswold* was decided, in *Eisenstadt v. Baird*, 405 U.S. 438 (1972), the Court abruptly dropped its previous focus on marital privacy and held that unmarried persons should have equal access to contraceptives because the right to privacy belongs to individuals rather than to married couples. The Court did not explain why the right of association, which had been accorded such high status in *Griswold*, was no longer relevant. Instead, Justice William J. Brennan, who wrote the majority opinion, simply declared, "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."

Eisenstadt set the stage for *Roe v. Wade*, 410 U.S. 113 (1973), in which the Court found that a limited right to **abortion** is included in women's general right to

privacy, although the state may step in to regulate or prevent late-stage terminations of pregnancy. While these rulings were welcomed by feminists because they gave women some control over sexual reproduction, they were seen by many as inherently problematic because the Court failed to address the role of gender in limiting women's ability to make choices within the domestic sphere and in constricting women's access to the material means required to translate their choices into action. The principle of government noninterference that informed *Roe's* reliance on the privacy right was and has remained especially burdensome for poor and marginalized women because they have always been more likely to require public assistance to access medical services, more likely to be caught in dependent relationships, and generally less likely to be able to assert their political rights. However, when women's liberationists pressed for abortion on demand during the late 1970s, the Supreme Court answered in *Harris v. McRae*, 448 U.S. 297 (1980) that the government had no obligation to provide financial assistance to women who would otherwise be unable to afford medically necessary abortions.

Without pretending that the oppressive elements within prevailing perceptions of privacy have been entirely resolved, feminist theorists, most notably law professor Anita Allen-Castellitto, have argued that it makes more sense to re-envision privacy from a feminist perspective than to jettison it altogether as incompatible with equal rights. On the one hand, feminists such as Allen observe, exposing the private sphere to greater public scrutiny and regulation is bound to hurt women if the gender-based assumptions that frequently shape this exposure go unrecognized. On the other, promoting the notion that "the personal is political" without reservation seems to preclude even the possibility that women might enjoy a considerable degree of dignity and autonomy within the realm of home and family.

The solution, according to these feminist reconstructionists, is to formulate a more nuanced and accurate view of privacy, one that takes account of the real relief that may be gained from protection from public intrusion without denying the subjugation, loneliness, abuse, deprivation, and violence that too many women endure in their homes. "Choice," which is the shorthand typically used to refer to reproductive freedom and most closely tied to women's right to privacy, is, after all, a painfully empty concept to those who have no means to act upon their decisions. At the same time, a world in which women have even less control over personal information and less control over intimate relations, like one in which they have less control over reproductive choices, would clearly not bring them any closer to genuine equality in either the private or the public spheres. Thus, while there is no settled view of privacy among present-day feminists, there is general agreement that it will not become a truly positive value until it is paired with an understanding of the gender-specific limits that are still placed on women's agency on both sides of the public/private divide.

See also: Women and privacy; Sexual violence

Suggested Reading: Allen, Anita, and Erin Mack. "How Privacy Got Its Gender," *Northern Illinois University Law Review* 10 (1990): 441–454; Duke University Library. *Documents from the Women's Liberation Movement*. <http://scriptorium.lib.duke.edu/wlm/>. Online, March 2006; Landes, Joan B. (ed.). *Feminism, the Public and the Private*. New York: Oxford University Press, 1998; MacKinnon, Catherine. *Feminism Unmodified*. Cambridge, MA: Harvard University Press, 1987; McClain,