Judgmental privacy and the special obligations of leadership

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This article defends the claim that followers are justified in using what would be considered private behavior to assess a leader's fitness. In defense of this claim, I make a liberal, autonomy-based argument. The argument is liberal in that it does not appeal to the intrinsic wrongness of the behavior in question. Rather, it appeals to the fact that leaders have voluntarily taken on special obligations to followers to behave in ways that promote, rather than detract from, the causes to which they are collectively committed. To make this argument, I consider whether Mill's analysis in On Liberty could be applied in leadership contexts to derive some special privacy protection for leaders, and I conclude that such an application ultimately fails. I conclude that judging the private behavior of our leaders does not inappropriately threaten the value of autonomy when their behavior would interfere with discharging these obligations. The special obligations of leaders extend, then, even into their private lives.

Keywords: *privacy, political leadership, autonomy, liberalism, John Stuart Mill, sex scandals, special obligations*

1 INTRODUCTION

Few would question the claim that we ought to protect the privacy of people outside of public life. Expectations that others – including the press – respect this value are built into our understanding of what it is to be a ‘private individual.’ Oftentimes our privacy claims are made against other individuals; in some cases, these claims are so morally important that they are protected by the state. But states can also infringe upon our interest in privacy, in which case an appeal to legal statute or the constitution may be necessary for protection. The strongest liberal argument for respecting our general interest in privacy appeals to the contribution it makes to the development and exercise of autonomous agency in our lives (see DeCrew 2006; Matthews 2008; Nagel 1998, especially pp. 6–7). Autonomy can be valuable for its own sake (as on deontological views) or because it is instrumental to achieving other goods (as on consequentialist views). In either case, according to the liberal argument for privacy, if we are to make real choices, we must be able to take ourselves out of the social realm to understand who we are, to determine what we really want, and to explore possibilities for achieving what we take to be the best lives for ourselves.

In this paper, I will be mainly concerned with privacy claims that individuals have against other individuals. The focus of my argument will be on potential claims a leader

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might make to privacy. Moreover, the claims I have in mind are not legal claims but, rather, moral appeals to the value of autonomy. Finally, the context for my argument is political leadership – though, as we shall see, the conclusions I draw will have implications for leadership in other contexts as well. My claim is that autonomy-based arguments for privacy do not apply with the same force in leadership contexts and, in fact, go in the opposite direction. By this claim I mean that the value of autonomy does not support leaders' appeals to privacy; instead, the autonomous choices of leaders (and followers) serve as the moral grounds for reductions in leader privacy. To make this argument, I consider whether Mill's analysis in *On Liberty* (1859 [1978]) could be applied in leadership contexts to derive some special privacy protection for leaders, and I conclude that such an application ultimately fails. This application fails because it ignores the special obligations that leaders have to followers and the ways in which private behavior can impede leaders' ability to discharge these obligations.

2 LEADER AUTONOMY

One influential sense of privacy marks off a specially protected zone for exercising the more general capacity associated with individual self-determination. What is commonly referred to as 'decisional' privacy '[protects] one's individual interest in independence in making certain important and personal decisions about one's family, life and lifestyle' (DeCew 2006, p. 5).¹ This sense of privacy helps explain how someone might suggest that leaders actually lose significant autonomy. Although leadership is typically associated with increased choice-making authority and control, it also calls for significant sacrifices in self-determination in other areas. Elected officials face special limits on what they are able to do, not only in public life but also with respect to what many of us would identify with private life (Schauer 2000, p. 307). For example, the president has little real choice but to live with his family in the White House, and the governor of South Carolina cannot simply disappear for a hiking trip on the Appalachian Trail.² We also restrict – formally or informally – the kinds of gifts public officials can accept from others, the business ventures into which they might enter, and even the individuals with whom they might associate.

Defenders of privacy would be hard pressed to use decisional privacy to mount serious objections to these restrictions on the behavior of leaders. With public office come expectations that our leaders be easily accessible, that they cooperate with security, and that they avoid what would be considered corrupting influences. Despite the fact that satisfying these expectations will sometimes preclude exercises of autonomy that the rest of us enjoy, we can readily justify sacrifices of this kind on 'pragmatic or empirical grounds' or because of 'others' countervailing rights' (ibid., p. 307). Housing presidents and their families in one fortified, central location in Washington, DC, is conducive to a safer and more effective executive, and restrictions on financial agreements and the associations of elected officials protect followers' legitimate expectations of honest and trustworthy government. Furthermore, in leadership, the practical is hardly separate from the moral (Ciulla 2004, p. 310). By living where it

1. See also Matthews (2008, pp. 132–133).

2. As it turned out, Governor Sanford was having an extramarital affair with a woman in Argentina.

makes sense to live, the president is better able to do the many things he 'ought' to do. Moral expectations of practical achievement come with the office and, in many cases, are grounded in promises made by candidates seeking office. Finally, and perhaps most importantly, these restrictions are not morally problematic, because leaders have consented to them. As Frederick Schauer (2000, p. 307) puts it, there is 'a host of other rights that are commonly and properly thought relinquishable by one's voluntary decision to stand for public office or to operate in the public domain more broadly.'

Other autonomous choices by leaders do not so obviously lend themselves to justified interference for either practical or moral reasons or on grounds of consent. A leader's sexual behavior is less relevant to day-to-day issues of efficiency, and any moral interest we might have in controlling what a leader does in the bedroom would have to be so strong as to override the very weighty countervailing interests he has in sovereignty in this area. Decisions about sexual behavior are arguably more central to an individual's personal identity than are choices about where to live and the people with whom one does business (Feinberg 1985, p. 37). Accordingly, this more-focused, context-specific notion of decisional privacy gets familiar support in Supreme Court cases establishing individual authority with respect to decisions about reproduction and sexuality – specifically, contraception, abortion, and same-sex behavior.³ It is the personal importance of decisions about what one does with one's own body that makes threats to decisional privacy most worrisome for advocates of autonomy. In addition, leaders may not see themselves as having consented to making significant changes to their sexual lifestyles.

Yet it is hard to see how concerns about a leader's decisional authority over her own sex life might successfully ground an autonomy-based complaint about a loss of privacy. Decisional autonomy cannot ground this complaint because *direct* interference with leaders' personal decisions is rarely a realistic threat. Of course, there are potential cases in which we would interfere directly with a leader's sexual choices (and be justified in so doing) – the most obvious being when the behavior is prohibited by law, as in cases of bestiality or sexual assault. However, in the cases we are more likely to face, no one is using force or the threat of force to stop leaders from engaging in the kinds of sex that meet their preferences; nor is anyone harnessing state power by means of legal statute, as in the Supreme Court cases, to make sexual decisions for these individuals.⁴ For example, the Southern governor who is forced to resign over a past abortion is not prevented from having an abortion. The same goes for the presidential candidate who pulls out of the primaries because of a discovery that he is a womanizer; he is not stopped from being a womanizer.⁵ What we need to consider are potential autonomy concerns other than those associated with decisional privacy. In particular, is there a real threat to the autonomy of leaders when we get increased access to the content of their decisions and use this access to make political judgments about them?

3. For brief summaries of respective cases – *Griswold v. Connecticut* 381 U.S. 479 (1965); *Roe v. Wade* 410 U.S. 113 (1973); and *Lawrence v. Texas* 539 U.S. 558 (2003) – see DeCew (2006, pp. 5–6).

4. In the cases of Bill Clinton and John Edwards, the charges were focused on something other than sex – namely, perjury and obstruction in Clinton's case, and corruption and violation of campaign finance laws in Edwards's case. See Mitchell (1998); Severson and Schwartz (2012). However, as my colleague Jess Flanigan has pointed out to me, the military context, in which adultery is legally prohibited, constitutes an exception.

5. I owe both examples to an anonymous reviewer at *Leadership and the Humanities*.

3 THE ROLE OF FOLLOWERS

Strong advocates of privacy point to the political irrelevance of a leader's sexual behavior – for instance, whether a leader is involved in gay or straight relationships or whether he is faithful to his wife. This kind of challenge moves us away from concerns about a leader's capacity to make choices based on his sexual preferences and draws our attention to questions about whether, and in what way, followers may rightly react to these choices.⁶ To answer these questions, we need two additional notions of privacy: 'informational' privacy (Matthews 2008, p. 131; DeCew 2006, p. 3) and what I will call 'judgmental' privacy. Informational privacy is at stake when others are in a position to find out things about us that they have no right to know. Judgmental privacy is different still. One might think that our privacy is threatened in this sense when access to personal information makes us susceptible to the critical reactions of others. For example, a person who is 'openly' homosexual might nonetheless complain that judgments expressed about his behavior infringe upon his privacy, arguing that his sexuality is no one's business but his own.⁷ In leadership contexts, we can ask both what followers have a right to know and whether they are justified in using that knowledge to assess an individual's fitness for a position of leadership. Put another way, to what extent can leaders appeal to these kinds of privacy concerns for moral protection, specifically, on grounds of autonomy? I will conclude that neither informational privacy nor judgmental privacy gets leaders the moral protection they might sometimes want – or that the rest of us rightly get.

One reason that different appeals to privacy are easily confused is that there is an important ambiguity in claims such as, 'What I do with my own body is my own business.' These claims can be used to make a point about informational privacy – namely, that you lack a legitimate interest in knowing the sexual or reproductive choices I make. But they can also refer to my decisional authority in such matters or to the inappropriateness of the judgments others might make of my choices. When I say that whether I marry a man or a woman, whether I have no children or a dozen, or whether I get a face tattoo and a nose ring are my own business, I am not making a claim to informational privacy. Marriage is a publically recognized arrangement, I am responsible to society for whatever children I do have, and my facial adornments will be hard to miss. Instead, what I am saying is that I get to decide what I do in these areas and that what I ultimately decide is beyond the rightful scope of your judgment. Think what you will about what you will undoubtedly find out, in the business of my own body I am the boss. Efforts to make what you may well know your business are therefore threats to my privacy – either decisional or judgmental.

Although we can separate out different notions of privacy, there are important normative connections between them. For example, a lack of informational privacy can undermine or impede particular autonomous behaviors – specifically, behaviors that can only be done, or that a person would like to do, outside of the knowledge of others. Some behaviors that people want to engage in would be impossible without informational

6. Matthews (2008, p. 132) distinguishes between pure 'liberty issues' raised by impediments to decisional authority and the 'privacy issues' associated with access to information, arguing that decisional privacy confounds 'the right to control over one's body with the right to control information about what one is doing with one's body ...'

7. By 'personal information,' I mean something broader than information that a person does not want to share. A matter's being public (for example, physical appearance, disability status, and the like) and its being a matter for public scrutiny are two different things.

privacy, at least under particular descriptions of those behaviors. If I want to carry out an unnoticed act of kindness, I cannot very well do so if someone who knows my identity sees me in action. Other actions can be very difficult without informational privacy. When leaders and public figures are recognized, their activities are regularly interrupted by requests to shake hands, answer questions, and sign autographs. What might be thought of as impediments to autonomous action come not only from journalists and the curious public but also from the nearly constant, intentional gaze of their own staff and security details.⁸ As a result, people ‘in the public eye’ often have to settle for less-desirable versions of what they once were *free* to do – for example, a night out on the town or a vacation, but, now, with secret service agents in tow.

Still, like sacrifices in decisional privacy, losses in informational privacy are ultimately justified as necessary costs of leadership in a democratic society. Political leaders, though perhaps not all public figures, voluntarily take on these costs when they seek out positions in government. What might initially look like privacy concerns (but must be rejected as such) are really the result of an epistemic problem: our information-seeking skills are woefully imprecise. Even if the public or the press do not seek to uncover private matters about our leaders, they are bound to arrive at many of these facts – or, at least, very strong suspicions – as part of more general efforts to learn about a candidate’s qualifications and to hold him accountable once he is in a position of leadership. John Edwards, for example, could hardly avoid being seen with his mistress given his central role in a US presidential election. Leaders such as Edwards are exposed in ways that the rest of us are not, and one by-product of the necessary increase in visibility is a fairly indiscriminate decrease in informational privacy. Because we cannot get access to what we have a right to know without also learning many other things about our leaders, we will unavoidably come to find out facts about them that we did not need, or want, to know.⁹ But, again, there is no moral room for leaders to complain that we know these things. It is by an exercise of their own autonomy that they came to be political candidates or officials in the first place.

4 JUDGING OUR LEADERS

Once we accept that losses in informational privacy are morally acceptable consequences of leadership, we can turn to (and ultimately dismiss) normative questions about what we are justified in doing with information about a leader’s private life once we have it. Autonomy-based concerns about *judgmental* privacy might seem to suggest that we ought to be careful in our public responses to the inevitable losses in informational privacy faced by leaders. Here, the connections between the different forms of privacy are perhaps at their strongest. Knowledge of what someone is doing, and especially the collective criticism that potentially follows, can create disincentives

8. Here, partly for the sake of simplicity, I am considering our interest in being outside the intentional gaze of others to be a matter of informational privacy. Matthews (2008, p. 131) would call what I have in mind ‘perceptual privacy,’ which he distinguishes from other forms of privacy. But, at least for the case of public figures, our perceiving them is primarily a means to getting cognitive information about what they are doing, what they are like, etc. For a discussion of anonymity, see Matthews (2010).

9. Most knowledge-seeking is like this. When we do not know something, we do not know exactly what we are looking for. So we cast our net wide and, in the process, find out things that we did not mean to learn. Rachels (1975, pp. 324–325) points to a similar problem regarding investigations into applications for credit.

for engaging in particular kinds of behavior.¹⁰ In other words, one way in which informational privacy is linked to autonomy is through the expressed judgment of society, making judgmental privacy part of the explanation for why we have an interest in what others know about us. In these cases, informational privacy is important because we care about what others think of us, and the fact that we care has implications for how we behave. If we were indifferent to their views, and if our behavior were immune to the force of social opinion, it would be difficult fully to account for the interest we have in people not finding out, say, what sexual preferences we indulge.

When our judgments about private behavior find their way into public discourse, one might worry that these judgments threaten autonomy, in John Stuart Mill's (1859 [1978], p. 4) words, not by means of 'the tyranny of the magistrate' but by 'the tyranny of the prevailing opinion and feeling.'¹¹ For the purposes of this paper, I will assume that Mill's argument applies not only to state action but also to the behavior of private individuals. According to this interpretation, people sacrifice individuality for conformity not only – and, perhaps, not primarily – because of state power but also because they are subject to severe social censure (Mill 1859 [1978], p. 4). Such sacrifices violate what would thus be understood as a liberal stricture that 'moral coercion of public opinion' can be justifiably directed at an individual's behavior, including that person's private behavior, only if the conduct can be impugned on grounds of 'self-protection' – that is, 'to prevent harm to others' (ibid., p. 9). Assuming an individual's private sexual practices are consensual, it is not easy to see how other members of society might claim that they are harmed by these practices. And, of course, alternative complaints would need to avoid the illiberal charge that what the person does in his private life is immoral or somehow contrary to his own good (ibid., p. 9; see also Devlin 1965; Hart 1963).

One might develop this Millian line of argument in an attempt to prohibit infringements on a leader's judgmental privacy. Here, the suggestion would be that when fear of a negative public response dictates a leader's private behavior, that leader is not as autonomous as he might be. Decreased informational privacy leads to reduced judgmental privacy, which then results in diminished decisional privacy. Because potential social censure makes it more costly for the leader to act on his sexual preferences, we can expect that he will be less likely to do so. Initially at least, this sacrifice in autonomy might seem unjustified because the private behavior is ultimately harmless. I will argue, however, that the Millian argument leaves open two autonomy-based routes to justify expressing, as well as acting on, judgments of the private behavior of our leaders. First, we can construe any consequent judgments about a person's fitness for serving in a position of leadership as exercises of our own autonomy (Mill 1859 [1978], pp. 75–76). Second, some private behavior by leaders is harmful after all (ibid., pp. 79–80).

Although autonomy-based arguments are typically aimed at protecting behavior that goes against the status quo or is seen as 'deviant' in some respect, these arguments can also support freedom of thought, freedom of discussion, and even the freedom to act on what one thinks – perhaps after debate with others – about such behavior. 'Though doing no wrong to anyone,' Mill writes, 'a person may so act as to compel us to *judge* him, and to feel him, as a fool or as a being of an inferior order...' (ibid., p. 75, emphasis added). In addition, Mill thinks we are permitted to express this judgment, for

10. For this reason, we have to soften Matthew's (2008, p. 133) claim that '[privacy restrictions] on others [are] quite separate from restrictions on others who wish to control my behaviour, or lifestyle...'

11. Nagel (1998, p. 27) makes the connection to Mill.

example by ‘caution[ing] others against him if we think his example or conversation is likely to have a pernicious effect on those with whom he associates’ (ibid., p. 75). Finally, and perhaps even more relevant for the leadership context, Mill claims that ‘[w]e may give others a preference over him in optional good offices...’ (ibid., pp. 75–76). In other words, we may justifiably judge our leaders and bring such judgment to bear in public life by working to diminish their influence on others and ultimately choosing to skip over them in the conferral of what is clearly a discretionary benefit – a position of leadership – all based on admittedly harmless behavior.¹² Mill thinks this kind of harsh treatment is permissible because we do not aim to punish the person for ‘[h]is own good, either physical or moral’ and, so, we are acting ‘not to the oppression of his individuality, but in the exercise of ours’ (ibid., pp. 76, 9, and 75).

Some advocates of autonomy will find this argument unconvincing for the reason that what society is permitted to do is so severe that it constitutes ‘moral coercion’ (ibid., p. 9). The argument seems to allow the collective to exert great pressure on our leaders without showing that the behavior being judged meets the liberal threshold for using social or legal means to interfere with their liberty. After all, Mill himself suggests that we ought to be willing to tolerate ‘the merely contingent or, as it may be called, constructive injury which a person causes to society’ unless there is ‘perceptible hurt to [an] assignable individual except himself’ or the behavior prevents the actor from discharging some ‘specific duty to the public’ (ibid., p. 80). Coercion not grounded in paternalism – for example, judgment aimed at expressing our own freedom, not suppressing the freedom of another for his own good – can be coercion nonetheless, especially when the pressure is exerted not simply by an individual exercising his own autonomy but, rather, by people acting in concert. Because what society is justified in doing is subject to the constraints of the ‘harm principle’ (Feinberg 1984, p. 11), the advocate of judgmental privacy would claim that I need stronger grounds for justification before defending ‘very severe penalties’ such as collectively refusing to associate with someone or excluding him from public office (Mill 1859 [1978], pp. 75–76). I now turn to the grounds that will allow us to reject leaders’ claims to judgmental privacy.

5 THE SPECIAL OBLIGATIONS OF LEADERSHIP

The case for using private behavior to judge a person’s fitness for a position of leadership would be stronger if it could establish harm. To be sure, there are all kinds of other reasons to which one might appeal in response to a leader’s claims to judgmental privacy. Perhaps the most important of these is the more conservative claim that a leader’s sexual behavior, though not harmful, signals a defect in his character, a defect that will have implications for leadership effectiveness. However, to reject leaders’ claims to judgmental privacy, a liberal argument would fare better with a solid appeal to harmful consequences. For example, one place the liberal might look for these consequences is in the marital relationship. In many cases of sexual indiscretion, the individual with the most obvious claim to harm is the leader’s spouse. The marriage contract generates ‘a distinct and assignable obligation’ (Mill 1859 [1978], p. 79) to the leader that he be faithful to his wife; she also has an obligation to be faithful to him.

12. In the previous sentence, ‘good offices’ referred to something much broader than political office. See ‘good, adj., adv., and n,’ *OED Online*, September 2012, Oxford University Press, <http://www.oed.com/view/Entry/79925?redirectedFrom=good+offices> (accessed November 13, 2012). I thank Sandra Peart for a helpful discussion of this passage of *On Liberty*.

However, it would be difficult to use the harm caused to the spouse to justify any social pressure we might exert on our leaders. For good reason, we normally leave these kinds of judgments to the married couples themselves. Each party to the relationship has at least initial authority to judge the extent to which the other party has lived up to, or failed to live up to, marital standards and, moreover, to act on these judgments by getting therapy, seeking and giving forgiveness, filing for divorce, as each chooses.

The argument would thus need to show that there is some special harm done to the spouse in the leadership context, a harm that merits third-party interference in the relationship. We might be tempted to draw attention to one distinctive feature of the affairs of leaders – namely that their failures to discharge marital obligations become very public and that this publicity makes the fallout all the worse for the spouse and the family as a whole. However, whatever added embarrassment there might be to the spouse in such cases, it would hardly call for making the affair *more* public and causing additional familial instability with efforts to stall a campaign or garner a resignation. As we have seen in real-life cases, the wife frequently supports the cheating husband as part of an effort to save his political career.¹³ We will have to look elsewhere to find a special obligation that would ground the claim that some private behavior by leaders is harmful.

A much more promising avenue for establishing harm (and one that I think we should accept) points to the special obligations public officials have to their supporters, to their staff, and to the public more broadly. Behavior that might rightly be considered private for the rest of us can greatly damage a competitive campaign or undermine the effectiveness of a leader once he is in office. Funders, volunteers, and staffers dedicate valuable resources – money, time, reputation, and significant parts of their careers – on the premise that the leaders they get behind will exercise good judgment in public, as well as private, life and make choices that promote group success. Sex scandals drain these resources, requiring significant damage control, making it harder to gain added supporters, and serving as near full-time distractions from the business of leadership. The same goes for leaders in private and non-profit sectors. A CEO or an academic dean has an obligation to the organization's employees and its investors or benefactors not to engage in behaviors that would do real damage to the credibility of the organization and impede the pursuit of its institutional mission. Even leaders of departments owe it to followers and team members to be mindful of how behavior outside the workplace can affect group cohesion and effectiveness.¹⁴

Here, the particular failing of the leader is not that the private behavior was wrong in itself – in other words, that it would be wrong even if done by someone not in a leadership position. Indeed, apologists for the leader may sincerely argue that the behavior was not wrong at all. Or, assuming the behavior would be considered wrong no matter who did it, this fact does not drive the central moral complaint. It is, rather, that the leader has privately done what many others, likely including some supporters, are bound to *see* as wrong that means that followers more generally are ultimately harmed by his behavior. Because others will judge a leader on what they take to be the immorality of the behavior, those to whom the leader has special obligations are justified in judging his leadership based on his private behavior as well.

This argument supports the claim that followers are justified in using what would be considered private behavior for the rest of us to assess a leader's fitness. Moreover, it is

13. See 'Stand By Your Man? Political Wives' Different Decisions During Scandal,' *Fox News* (June 16, 2011), available at: <http://politics.blogs.foxnews.com/2011/06/16/stand-by-your-man-political-wives-different-decisions-during-scandal> (accessed November 5, 2012).

14. I owe these examples to an anonymous reviewer for *Leadership and the Humanities*.

a liberal, autonomy-based argument. First, the argument is liberal in that it does not appeal to the intrinsic wrongness of the behavior in question. Second, leaders have voluntarily taken on special obligations to followers to behave in ways that promote, rather than detract from, the causes to which they are collectively committed. So judging the private behavior of our leaders does not inappropriately threaten the value of autonomy when their behavior would interfere with discharging these obligations. Rather, these judgments are ultimately in-keeping with the autonomous choices leaders make. The special obligations of leaders extend, then, even into their private lives because what would ordinarily be considered private behavior can impose costs on followers that they have not voluntarily assumed.

Of course, one way around any wrong done to followers is to make sure at the outset that they are aware of the costs they may face because of a leader's behavior. My point, however, is that merely calling such behavior 'private' is not enough to justify these costs for followers.¹⁵ Significant losses in judgmental privacy, no less than losses in decisional and informational privacy, are therefore legitimate characteristics of leadership positions. Individuals in public office, as well as those who aspire to it, can expect that they will have less choice in some arenas, that we will know things about them that they would rather we did not know, and that we will use what we know – even about private matters – to judge them as leaders. The freedom of those who aspire to leadership positions makes it possible for them to relinquish various forms of privacy to take on public commitments, and our freedom as followers allows us to use our judgment to hold them to the special obligations of leadership.

15. As Schauer (2000, p. 294) points out, 'Too much of the normative and conceptual work is elided by the terms "public" and "private," which turn out to have the attributes of normative conclusions masquerading as descriptions or analytic tools.'

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