**Allen, Anita L.**
*Unpopular Privacy: What Must We Hide?*
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Anita Allen's focus in *Unpopular Privacy* is rather unique in the growing philosophical and legal literature on privacy. Typically the discussion is presented on the assumption that privacy is something which most of us have some interest in protecting. As the title of the book itself suggests, however, Allen's main focus is on privacy as "unwanted, disliked, not preferred, and resented" (4)---that is, on privacy as something that the state may have a right to impose paternalistically on its citizens. And her main claim in this regard is quite bold: some forms of privacy are so important that moderate forms of paternalism, consistent with a fairly broad understanding of political liberalism (Allen has J.S. Mill's version particularly in mind), may be warranted in order to impose privacy laws "for the benefit of uneager beneficiaries" (xi). The discussion throughout the book is largely an effort to examine particular forms of these unwanted or enforced privacies. These forms include: Solitude, imprisonment, and quarantine (chapter 2); modesty and religious freedom (chapter 3); public nudity (chapter 4); confidentiality (chapter 5); racial privacy (chapter 6); Internet privacy in general (chapter 7); and the informational privacy of children in various forms of electronic communication, including the Internet (chapter 8).

Although no extensive argument is offered in defense of a pluralistic approach to the concept of privacy, Allen is clearly unwilling to enter into any debate over a specific definition of privacy. Under the broad rubric of physical and informational privacy, she considers these forms of privacy in an expansive array of legal, social, and moral contexts. Her argument in defense of the claim that some forms of unwanted privacy may be justified is also found in the context of these particular case studies. In other words, her discussion does not proceed first from some general, theoretical perspective which might justify a moderate form of paternalism in unwanted privacy cases. Rather, she begins by admitting her theoretical allegiances---libertarian liberalism and liberal feminism (11)---and then typically carries out a fairly careful examination of a case of unwanted privacy which yields her moderate paternalism argument regarding that case. In this way (although it never clearly sets out to do so) the book is also a laudable example of how a more particularist approach to legal, social, and moral issues can demonstrate its conclusions.

Allen first considers forms of unwanted seclusion, specifically imposed solitude, solitary imprisonment, and quarantine. Few, if any, of these unpopular privacies live up to Allen's liberal or feminist commitments. Quarantine, for example, Allen argues, can easily become an unjustified form of enforced seclusion. Part of the problem here is that we can easily miss the imposition that is actually being made on an individual because it seems that, even on basic liberal standards, quarantine measures have an obvious support from the liberal harm principle. Moreover, nonvoluntary health confinements often lead to imposed or unwanted pharmaceutical treatment. Allen provides no clear criteria that would allow us to have any confidence when such measures pass the harm principle, and when they might fail liberal principles, nor how to balance the competing considerations. Her main focus here is not to provide working principles, but to urge caution. This caution, she argues, is premised on a "traditional feminist critique...into the assessment of unpopular seclusion of all sorts...[i]t demands penetrating supposed havens (like homes and hospitals) for signs of hell...[and] it calls for honest reevalution by policy makers of

what might first appear to be necessary and inevitable coercive segregation demanded by public health and safety" (45-46).

Two of the most insightful and engaging discussions in the book address the issues of modesty and racial privacy. The discussion of modesty involves a lengthy analysis of the laws and practices surrounding various forms of modest apparel worn by Muslim women. Allen generally regards this unpopular exercise of privacy as an entitlement that international governments (France in particular) have wrongly encroached on with anti-privacy legislation that is "paternalistic and also culturally hegemonic." These governments, she claims, strangely instruct Muslim women that in private they may exercise their own conceptions of modesty, but in public "they must undress" (77). She recommends the trend that she sees in the United States as preferable. The US courts have fairly consistently protected Muslim womens' right to dress as they see fit, even when the form of dress is unpopular (e.g., the burqa).

The US attempt to deal with the opposite side of the modesty issue---public nudity---has been less praiseworthy, according to Allen. In *Barnes v. Glen Theatre, Inc* (1991), the US Supreme Court ruled on appeal that state authorities may require cloaking an erotic dancer's nipples and genitalia in contexts of nonobscene nude entertainment. The legacy of this legal decision has been everything from confusing to absurd, and Allen documents much of this admirably. A major part of the absurdity is found in the attempts by American courts to tie completely nude dancing to public harm concerns. Such attempts, she argues, mask the true principle behind these impositions of modesty: legal moralism, a principle at odds with a robust liberal perspective. The Canadian experience on this issue held more promise, and she compares it at some length. In the landmark decision *R. v. Tremblay* (1993) the Canadian Supreme Court held that, among other things, completely nude erotic dancing was not unconstitutional. Subsequent decisions have affirmed this same principle, but have limited such activities only when touching by a dancer or a patron is involved. Touching is the line in Canada---analogous to pasties and G-strings in the US---which crosses this activity over from unharmful to harmful. So although she recognizes many feminist elements in Canadian jurisprudence on this issue that are encouraging, nevertheless Canadian legal practice has simply followed its American counterpart by transforming the harm principle into a form of legal moralism. The result, Allen claims, is an "unsatisfying blend of feminism and sexual repression that does little to enhance the lives of female sex workers or their clientele" (77). American and Canadian courts, then, have made some movement toward a genuinely liberal society by decriminalizing nude and nearly nude dancing, and, she argues, this general direction "is the right one" (95). Allen nevertheless argues that laws which attempt to coerce sexual modesty should always be regarded with considerable "suspicion as illiberal impediments to personal choice" (96).

Allen notes that, surprisingly, the United States has no significant protections for racial privacy among its various legal provisions which regulate informational exchanges. Moreover, the act of compiling race data itself is not an established ground for civil or criminal liability or punishment (126). Part of the reason for this, she explains (127), is that in the United States racial disclosures have generally been viewed as crucial for correcting racial injustices and inequalities. Another reason for this is that, in the United States at least, racial differences are publicly visible (143), and hence are not really something that a person could reasonably expect to be regarded as private. In the main, Allen contends, this approach is basically correct: "Official bans on race collecting data-collection and sharing would be impractical, futile, and unpopular" (155). This recommendation, however, seems one of the least plausible of Allen's claims. First, it is not

obvious that merely because something is visible or in the public domain may not mean that someone has no privacy obligations with respect to that information. Suppose that, in the midst of a house fire, a victim of these circumstances runs outside to safety in a comparative state of undress. It is not obvious that awaiting journalists are morally (or legally) entitled to take and circulate whatever pictures they want. Or, to take another example, the mere fact that I am walking outside in public does not obviously entail that someone else who merely sees me has a moral or legal right to know my name. As many other privacy theorists have pointed out, the public domain may not be the best, or even the most practical, limitation of the private. Second, we can easily think of a set of circumstances (e.g., German Jews living in Nazi Germany; the Irish in 19th century North America) where racial differences are not so visible, and where there are good liberal reasons, directly related to the protection of individual liberty and harm prevention, that would seem to warrant the protection of racial information.

A final, noteworthy feature of *Unpopular Privacy* that may disappoint more philosophically inclined readers is its lack of depth in conceptual analysis and philosophical argumentation. Nevertheless, there are many admirable features of the discussion that are highly commendable. First, the topic of unpopular privacy is not a widely discussed issue in the existing literature. This, by itself, makes the overall discussion in the book interesting and important. Also, the discussion contains a remarkable breadth of social and legal case studies. These include a wide range of Canadian, European, and other international cases. Finally, Allen succeeds in demonstrating that privacy concerns are deeply connected, in ways often overlooked, to a wide array of moral and political issues. For Allen, this stems from the fact that some forms of privacy are "extremely important...'foundational' human goods---on which access to many other human goods rests" (xii). To some of us, this claim seems obvious. To others, of course, it may not. They, however, may need to look elsewhere for detailed arguments in support of such a claim.

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