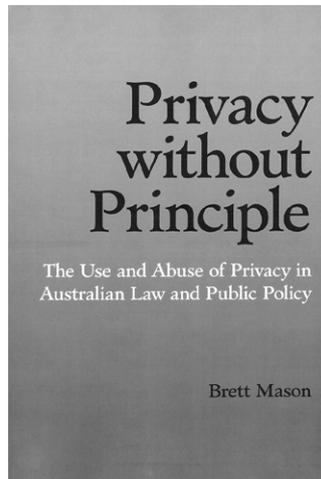


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# Orwell's Curse

Chris Berg reviews  
*Privacy without Principle: The Use and Abuse of Privacy in Australian Law and Public Policy*  
by Brett Mason  
(Australian Scholarly Publishing, 2006, 228 pages)



Both sides of politics ask a great deal of contemporary governments.

Privacy is a strange concept. Few debates over new technologies, changes in social structure or security measures are free from appeals to the right of citizens to conduct their affairs without surveillance, from either the corporate or the political sector.

As Brett Mason argues in *Privacy without Principle: The Use and Abuse of Privacy in Australian Law and Public Policy*, privacy has become a term of convenience for advocates of one or another political position.

The term itself has little conceptual core. Mason traces the variety of methods by which legislators, judiciaries and commentators have attempted to define the core of privacy—what is it that we are trying to protect? Privacy could be control of information regarding oneself, or deeply personal information that one may not wish to be made public. Privacy could be a manifestation of the autonomous individual, or could be the protection of intimacy.

In order to make consistent public policy decisions which respect the notion of privacy, legislators need an unambiguous and comprehensive definition. But none of the answers listed above, Mason argues, are conceptually clear, and provide little guidance for

practical policy decisions.

How, then, is the concept of privacy used in Australian politics? Mason singles out two debates within the last few decades—the 1994 *Human Rights (Sexual Privacy) Act* and the 1986 *Australia Card Bill*. Both of these debates exhibit the critical flaws in privacy discourse.

For example, why was privacy the vehicle upon which to legitimate homosexuality? While not always consistent with a liberal society, from a historical perspective, the state has always had an interest, or at least believed it had an interest, in the sexuality, sexual acts and reproductive habits of its citizens. The *Human Rights (Sexual Privacy) Act* sought to remove homosexuality from the interests of the state, but by hanging the act upon the concept of privacy, it did gay rights movement's cause a great disservice.

The 1994 legislation posited that homosexuality was acceptable, as long

as it was a private or intimate matter. If privacy is the foundation of the state's interest in homosexuality, homosexual 'legitimacy' is premised on a staying in, rather than out, of the closet.

Mason also raises some other, challenging questions. For instance, if privacy determines the state's interest in individual sexuality, does it follow that all (non-coercive) sexual acts are also legitimised? Such a formula would seem to legitimise acts which policy-makers may prefer not to condone, for instance, incest.

It is unfortunate that the debate over the government's interest in homosexuality in Australia led to a debate over what distinguishes homosexuality from incest. Advocates of gay rights are not well served by such appeals to privacy.

The Australia Card debate, and indeed, subsequent debates about national identification cards, have similarly used the concept of privacy loosely, often to their detriment.

In this sense, George Orwell has done civilisation a great disservice. Both sides of politics ask a great deal of contemporary governments. Government services need to be efficient. The terms of property have to be clearly defined. Laws need to be uniformly and rigorously enforced. Citizens need to be secure and, argue many from the progressive side of politics, they also need to be protected against their own choices.

Privacy is an inadequate focus of the debate over the relationship between the state and its citizens. That relationship, particularly in a time when social regulation and legislative paternalism are on the rise, needs to be closely examined.

But the doctrine of privacy against all else—undefined and unchallenged—does such a debate a great disservice.

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