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I'm Gonna Party Like It's 1499

By Mike Tully

Blake Masters thinks there can be a right to liberty without a right to privacy. So, apparently, does Samuel Alito. Masters wants to be a U.S. Senator from Arizona. Alito is a Supreme Court Justice who authored the draft opinion that overturns *Roe v Wade* and eliminates the right to choose, disparaging the right to privacy along the way.

They're both wrong. You cannot separate privacy from liberty.

Masters criticizes *Griswold v. Connecticut*, the U. S. Supreme Court case that articulated the right to privacy. "In *Griswold*, the justices wholesale *made up a constitutional right* to achieve a political outcome," he recently tweeted. "I am opposed to judges making law." In Masters' view, the right to privacy did not exist until the Supreme Court created it in *Griswold*. He believes there is no constitutional right to privacy because the Constitution doesn't specifically mention it.

Alito, in the leaked draft opinion in *Dobbs v. Jackson Women's Health*, makes a similar observation. He notes *Roe's* opinion "that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned." He added, "And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions." Alito is skeptical about constitutional privacy and weaponized his skepticism when he declared the right to choose, which is based on the right to privacy, doesn't exist.

Liberty is protected by the Constitution. Even conservative commentators who argue there is no constitutional right to privacy agree the Constitution explicitly guarantees liberty. Can you guarantee one, but not the other?

Suppose you had the right to do anything you wanted, anywhere you wanted, anytime you wanted, in any manner you preferred. No constraints; absolute liberty. However, there's a catch: you are under constant surveillance. Is that liberty or captivity? The answer is obvious: it's captivity. How free are you if you're constantly watched?

There's an inherent danger in mining the Constitution for individual rights. The Constitution was born out of the American Revolution, which was inspired by the Enlightenment. "Enlightenment thinkers in Britain, in France and throughout Europe questioned traditional authority," [notes History.com](#), "and embraced the notion that humanity could be improved through rational change." It adds, "The American and French Revolutions were directly inspired by Enlightenment ideals..."

Consider the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” This reflects the Enlightenment view that liberty is not conferred by the monarch, but is a human birthright. The Constitution is a governing document among free people who sacrifice some of their freedom for the common good. In that sense, the Constitution tempers liberty, but does not grant it.

You can’t separate liberty from privacy; they’re the same thing. You can’t have one without the other. There’s no need to infer a right to privacy from “five different constitutional provisions.” The constitutional guarantee of liberty includes it. Liberty without privacy is a form of captivity.

By overturning *Roe v Wade* because the Constitution doesn’t specifically articulate the right to choose, Alito is more in line with the pre-Enlightenment view that rights derive from the benevolence of the monarch. His judicial philosophy threatens to make the Constitution a stand-in for the king. Alito is not only acting to overturn *Roe v Wade*; he’s trying to reverse the Enlightenment.

If the *Dobbs* opinion becomes law, abortion opponents will rejoice. In their reverie, they are unlikely to acknowledge the potential reversal of centuries of growing liberty that is our inheritance from the Enlightenment. They will simply celebrate.

Heck, they’ll party like it’s 1499.