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In Defence of the Right to Out Others

MILOŠ KOVAČEVIĆ*
University of Belgrade, Belgrade, Serbia

Unlike visible, stigmatised personal characteristics, sexual orientation can be relatively successfully hidden. By staying in the closet, many queer people manage to minimise stigmatisation. However, intergroup contact is of key importance for increasing tolerance and liberalising the straight majority. The choice not to disclose one's sexual orientation thus leads to a collective action problem. Although the social stigmatisation of queer people could be more effectively overcome through mass coming out, suboptimal results are achieved owing to the strategic use of the right to privacy in passing as straight. This problem is most conspicuous in countries where the cost of coming out remains significant, while the cost of staying closeted is too low to trigger substantial, progressive change. I discuss the issue of the permissibility of outing through an analysis of both Jean Louise Cohen's reflexive conception of privacy and Judith Jarvis Thomson's reductionist conception of privacy. I argue against the understanding of the right to privacy as a right that prevents others from obtaining information about one's sexual orientation through legal means and from disseminating such information if it is not conditioned on confidentiality.

Keywords: Privacy; collective action; intergroup contact; sexuality; outing.

1. Introduction

It seems that philosophers rarely have the opportunity to straightforwardly contribute to the current public debate, as in the case of the outing controversies that have been happening in Croatia for several years. In the summer of 2022, the well-known Croatian journalist Mis-

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lav Bago committed suicide. The day after queer activist Viktor Zahtila outed him, tweeting the following:

> I knew Mislav Bago superficially, but enough to know how deeply he suffered because he was in the closet. The last time we met, I was persuading him to come out. Not just to encourage young journalists/colleagues, but also because of personal happiness, self-confidence, and mental health. (@v_zahtila, August 19, 2022)

The reactions to Zahtila's tweet were overwhelmingly negative. The angry commentators, both queer and those who perceive themselves as allies, overwhelmed social networks: "You outed him by force!" "Why did you bring *that* up in public?!" "The closet was his *choice*!" etc.

Zahtila had a lot to unpack here. And he did. In his article, "Mislav Bago was being killed by Croatian homophobia. We cannot be silent about it," Zahtila noted that Bago's homosexuality was a public secret. He denounced attempts by the straight public to monopolise public memory of Bago and criticised the internalised homophobia of the queer community. Of special importance for my purposes is Zahtila's defence of public outing:

> Homophobes tell us to keep our sexuality "within our own four walls", *abusing terms such as "intimacy" and "privacy"* because violence is most easily reproduced in secret. *It is easiest to oppress someone when you know they will not rebel.* Therefore, there is no worse thing you can say to an LGBT person than that sexuality is their 'private matter' [...] we not only have the right but also the duty to do everything we can to encourage and help people to come out of the closet so that they can live in freedom and not rot in the dark [...] As an emancipated queer, I will not let yet another gay person be left in the darkness of death. A man should be remembered exactly as he was and not keep his homosexuality as a dirty secret that casts a shadow on his public image. (Zahtila 2022, emphasis added)

Two years later, two more high-profile outing cases followed. In the winter of 2024, President Zoran Milanović, apparently unwittingly, outed Minister Damir Habijan while responding to a journalist's question regarding a joke that had been made about Minister Habijan. Reacting to the chuckle that spread among the journalists after he disclosed the minister's sexual orientation, President Milanović seemed genuinely perplexed: "Habijan is gay, right? The man is not in the closet; he lives a normal life." President Milanović's reaction indicates that Minister Habijan inhabited a "glass closet", i.e., living authentically while refraining from any official declaration of his sexual orientation. Nevertheless, unwritten social rules create a strong expectation that everyone should participate in hiding the fact that he is gay, or at least remain silent about it. This sentiment was perhaps best expressed by one commentator criticising President Milanović, who stated that "no matter how much this [Minister Habijan's sexual orientation] was 'known' in certain circles, according to basic etiquette, such private information should not be publicly discussed" (Modrić 2024).

Not long after, the segment of the public critical of outing shifted from enforcing etiquette against transgressors to suspecting them of actually breaking the law. In other words, complaints about violations of unwritten rules were soon replaced by accusations of violating rules written in nothing less than the Criminal Code. Several months after President Milanović outed Minister Habijan, the major LGBTIQ civil society organisation Zagreb Pride outed several prospective members of parliament (hereafter MPs) during the 2024 election campaign by publishing an LGBTQ+ compass, i.e., a publicly available list of queer MP candidates. In an article titled "Zagreb Pride violated the legality of the election. This requires a response from the Constitutional Court and smells like a criminal offence", lawyer Vlaho Hrdalo argued that Zagreb Pride, by publishing the pre-electoral LGBTQ+ compass, violated Article 146 of the Criminal Code, which prohibits the illegal use of personal data of individuals (Hrdalo 2024).

I will discuss two questions. The first concerns conceptual confusion around the notion of *privacy* and its potential weaponisation against queer people. What does it mean to violate someone's privacy? Why would we bother sanctioning this type of violation? And on whom exactly should the burden of protecting privacy fall? The other question concerns the relationship between oppression and *secrecy*. Does secrecy make us more or less vulnerable? If the closet is so bad, why are so many queer people still not out?

My hope is that, through answering these two questions, I will at least offer some clarifications and a more nuanced picture of the increasingly politicised practice of outing, if not a persuasive enough justification for its legal permissibility. This is my argument:

1. Inequalities based on prejudices are unjust.
2. Intergroup contact reduces prejudices.
3. There is almost[1] no contact between heterosexual and queer people as such without the disclosure of sexual orientation.
4. If (1), (2), and (3) are true, anything that blocks the disclosure of sexual orientation perpetuates injustice against queer people.
5. The right to privacy, which does not allow outing as such, is not justified.
6. Therefore, the right to privacy, which does not allow outing as such, unjustifiably perpetuates injustice against queer people.

All premises seem non-controversial, save for premise (5). However, to explain the free rider problem faced by the queer community, I delve into premises (2) and (3) in the first part of the paper. In the second part of the paper, I focus on premise (5), building both on the influential Judith Jarvis Thomson's reductionist conception of privacy and on Jean Louise Cohen's more recent, reflexive conception of privacy that specifically targets intimate relations. Here, I want to explain what I mean when I say that the right to privacy, which does not allow outing,

[1] See footnote 4.

as such, is not justified. Privacy concerns can be paired with violations of other rights. For example, I can break into one's home and, through that independently illegal act, simultaneously violate one's privacy. I am not interested in these types of cases but only in *pure* cases of privacy infringement; that is, situations in which information about one's sexual orientation is not obtained through any illegal deed or used in a way that violates a previous agreement.

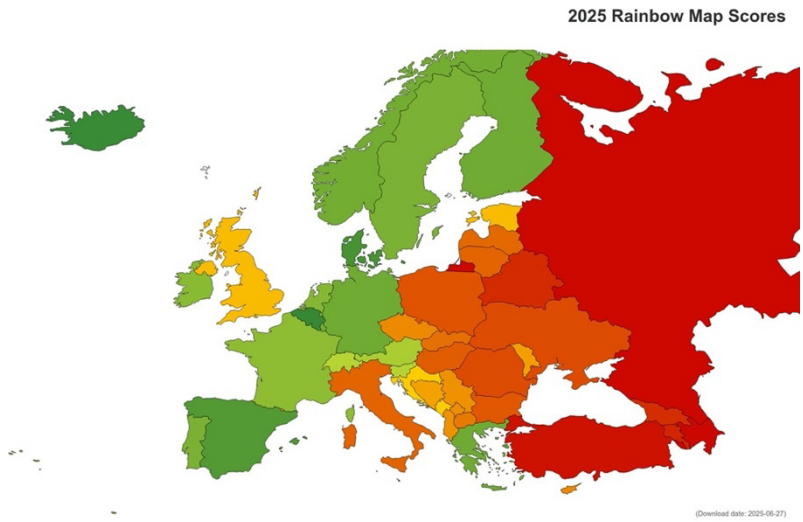
Let me briefly state what I am not defending to avoid potential objections. First, my argument is not about the moral permissibility of an outing. Importantly, there are acts that are morally wrong but nevertheless legal (e.g., lying). I am only defending freedom to out queer persons, but not a more demanding position according to which outing is morally justified or even a prudent thing to do in every single case and in each context. Therefore, legal permissibility in this context should be understood only as a juridical restriction on the right to privacy, but not as a legal duty to out queer people.

Second, I am not stating that intergroup contact is the only way to reduce prejudices. Although it seems to be one of the most effective, at least when we consider the achievements of the queer movement in the United States, I recognise that there are also other valuable ways of reducing prejudices, such as education or the employment of bias-correcting heuristics. One should also keep in mind that in highly prejudiced contexts, community-building is a prerequisite for any future activities that directly target prejudice against queer people. In the early stages of movement-building, queer communities can even benefit from privacy protections, as they encourage closeted individuals to participate in certain activities without fear of their sexual orientation being disclosed. However, as the movement matures, privacy protections increasingly become an impediment rather than an enabler of social change.

This dynamic leaves queer communities in "middle-equality countries" trapped in a way similar to how middle-income countries are stuck at their level of economic development[2]—unable to progress from anti-discrimination laws and same-sex unions to more robust legal protections and, more importantly, genuine acceptance by the heterosexual majority. Croatia, Serbia, and nearly all other former Yugoslav countries serve as examples of middle-equality countries in terms of queer freedom and equality.

[2] The middle-income trap refers to a situation in which a country experiences a significant slowdown in economic growth after achieving middle-income status, failing to transition to a high-income economy. This stagnation occurs because the country loses its competitive edge in labour-intensive, low-wage industries but struggles to compete in high-value, innovation-driven sectors. Essentially, rising wages make it difficult to compete with lower-income countries, while a lack of innovation and productivity hinders its ability to compete with higher-income countries.

One might imagine these countries as existing somewhere between Russia and Germany in terms of queer rights. They roughly correspond to the countries marked in yellow and orange on ILGA-Europe's Rainbow Map, which ranks European nations on a scale from red (gross human rights violations, discrimination) to dark green (respect for human rights, full equality) based on laws and policies directly affecting queer people's rights.



In these places, the cost of coming out remains too high, while the cost of staying in the closet is too low to trigger substantial progressive change, keeping the queer movement in stalemate. Although the closet is generally not a good place to be, some closets are better than others. While queer people in low-equality countries live in narrow, dark, and suffocating closets, those in middle-equality countries generally inhabit lighted, spacious, walk-in, and even glass closets. What does this mean in terms of real-life experience? It means the social pressure to pretend to be straight is much lighter, and thus the burden one must bear living in the closet is far less severe. There is no need for fake marriages or opposite-sex relationships. Individuals can live with a same-sex partner, and though it may raise some eyebrows if they continue to live with a 'roommate' after their twenties, few will confront them directly.

Perhaps most importantly, the process of disentangling homophobia from straightness is largely complete in middle-equality countries, so closeted queer people are protected from the most humiliating forms of self-betrayal. They do not have to perform casual homophobia to prove

they are straight, as individuals in low-equality countries often must. In certain contexts, they can even be queer allies or have openly queer friends without anyone challenging their perceived 'straightness'.

This comfortable closet is facilitated by some legal protections, allowing individuals to behave more freely because they are less terrified of the consequences of being outed compared to those in low-equality countries. But even more crucial is the operative institution of the public secret. There seems to be a tacit understanding in these societies that queer individuals can live as they wish, provided they refrain from ever explicitly stating they are queer or publicly showing same-sex affection. Society, in turn, will wholeheartedly help them to remain in their comfortable closets, pretending not to see the obvious.

Third, many discussions of outing are limited to a special group of queer people. For example, in the case that I have described, part of the public discussion went in the direction of questioning whether dead people can have rights at all, including privacy rights. Other examples include the Barney Frank rule, according to which public outing is defended, but only for closeted right-wing politicians who use their power to harm the queer community. On the other hand, my argument in favour of outing is broader in scope and includes all queer people in middle-equality countries, regardless of whether they are dead or alive, celebrities or ordinary people, helping or harming the cause. However, I am excluding trans people from my discussion about the permissibility of outing because, for many of them, in contrast to lesbians, gays, and bisexual people, passing is important to being who they are (Overall and Sellberg 2016).[3] Therefore, I use the term "queer" as an umbrella term that refers only to all persons of a sexual orientation different from heterosexual.

2. Faustian bargain

In the book *The Nature of Prejudice,* Gordon Allport developed the hypothesis that contact between members of different groups under conditions of equal status, shared goals, and cooperation reduces prejudice among a normally prejudiced population (Allport 1954). Empirical findings support the idea that positive intergroup contact leads to a reduction in prejudice. In their meta-analysis, "A Meta-Analytic Test of Intergroup Contact Theory," Thomas Pettigrew and Linda Tropp examined hundreds of studies on intergroup contact and its effect on

[3] In principle, my argument in favour of the right to out others could also be applied to trans individuals who find the very notion of passing oppressive. This application, however, requires two specific conditions. First, the closeted trans person subjected to outing must hold that belief. Second, the country in question must qualify as a middle-equality country for trans people, not just for LGB people. In practice, this second condition is often not met, as the level of legal protection and general social acceptance for trans people is frequently significantly lower than for their LGB counterparts.

prejudice reduction. They found consistent evidence that positive contact between members of different groups was associated with reduced intergroup prejudice. Moreover, the same trends are observed in studies involving racial or ethnic groups as well as those involving different demographic groups. This finding implies that the contact hypothesis, initially developed for interactions between racial and ethnic groups, can also be applied to other groups (Pettigrew and Tropp 2006).

Employing the contact hypothesis in the context of homosexuality, Jeremiah Garretson, in his book *The Path to Gay Rights*, emphasised the importance of coming out and direct intergroup contact for the liberalisation of homophobic people (Garretson 2018). One of the most powerful tools for changing deep-seated prejudices is the act of coming out. When queer individuals disclose their sexual orientation, they are challenging preconceived ideas that prejudiced people have about them. Once the possibility of intergroup contact is unlocked, interactions between queer and straight people play a crucial role in reducing prejudice. Garretson emphasised that, owing to intergroup contact, in just 25 years, more than one-third of Americans completely changed their attitudes towards homosexuality. Positive attitudes towards queer people are critical for the advancement of their rights, as they create an environment where discrimination is less tolerated. Ultimately, the liberalisation of the straight majority is instrumental for legal change in support of equal rights for queer people, such as anti-discrimination laws and marriage equality. Thus, direct intergroup contact is a powerful way to address challenging prejudices. By strengthening personal connections, these processes pave the way for full equality between queer and straight people.

However, what blocks the liberalisation of the straight majority is not a lack of interaction with queer people, but rather the fact that their sexual orientation remains unknown. Even though intergroup contact undoubtedly exists, it cannot contribute to the liberalisation of the straight majority because they perceive it as interaction that occurs within their own group. Social stigma is normally the reason why queer people hide their sexual orientation. At the same time, staying in the closet maintains the power of prejudice because it prevents straight people from correctly interpreting their experiences with queer individuals and potentially changing their attitude for the better.

The vicious cycle of stigma that encourages staying in the closet, which in turn further maintains the stigma, persists due to the free rider problem. Prospective liberation for an oppressed group usually entails a certain cost for its members. We can look at it as an investment in a better future. By disrupting the *status quo*, we make a certain sacrifice now to live far better in the future.

Consider a simple model with three agents: A, B, and C. In an ideal collective action scenario, all begin at an equal baseline utility, contrib-

ute equal effort during a transition, and reap equal rewards from the resulting change.

In a free-riding scenario, the same collective good is produced but with a disproportionate distribution of costs. The entire transition cost can be borne by C alone, allowing A and B to retain their pre-transition utility without sacrifice. While this outcome is utility-maximising for A and B, it is clearly suboptimal for C.

Of course, social groups have many more members, and they also differ in the degree of utility they derive from the state of affairs that preceded the change. Additionally, it is possible that not everyone will benefit equally from the change. However, the inequality that interests me in this paper is the one that we find in the phase that divides oppression and liberation, i.e., in the phase of *change*. How is the burden of change shared?

In reality, change rarely depends on a single factor. An oppressed group may employ different liberatory tactics to achieve the same goal. For example, Garretson argues that indirect intergroup contact mediated by the media, more specifically, queer characters who were given a more prominent place in television shows, was another important factor in the liberalisation of the straight majority in the United States. Thus, it is possible to imagine a society with an extremely low level of coming out, but where the stigma towards queer people decreases due to the high consumption of queer-friendly media content.

The point is not that liberatory tactics unrelated to direct intergroup contact are ineffective at reducing prejudice towards queer people, but rather that they do not work equally well at every stage of queer liberation. This is especially visible in queer communities caught in the middle-equality trap. In the absence of widespread outing, old tactics yield diminishing returns until they can no longer produce significant change.

Within the context of the middle-equality trap, the contribution of other tactics to positive change approaches zero, so we can simplify our model. For the sake of analytical clarity, let us imagine that only direct intergroup contact drives the affective liberalisation of the straight majority.

As much as certain queer persons interact with straight individuals, their contribution to intergroup contact cannot be considered effective if heterosexual people are not aware of their sexual orientation; i.e., if they assume that they are also straight. Therefore, coming out is a *conditio sine qua non* of non-negligible intergroup contact and the consequent reduction of stigma.[4] In the absence of other sufficiently effective liberatory tactics, group members who do not meet this necessary condition are free riders who will reap the benefits of the change

[4] A baseline level of intergroup contact is inevitable, as certain queer individuals do not pass as straight. Nevertheless, depending exclusively on the interactions of this specific group would be ethically problematic and strategically ineffective for generating meaningful positive change.

without sacrificing for it. From an individual perspective, free riding is a rational behaviour because it avoids costs in the phase of change and achieves gains in the liberation phase. From a collective perspective, however, it is undesirable, but it can be tolerated if only a small part of the group resorts to it. Problems arise when free riding becomes the dominant strategy within the group, as the desired effects are not sufficiently produced, thus delaying liberation.

Free riding is not always as obvious as when a closeted queer individual has no political engagement that challenges homophobia. It can also take a highly active form, as when closeted individuals participate in a type of queer activism that no longer yields results. The reasons for this behaviour can be a genuine failure to recognise that their community is caught in a middle-equality trap, or a willful ignorance that rationalises remaining in the closet. This means that free riding does not have to be intentional. Many closeted individuals may mistakenly believe they are doing something meaningful to combat homophobia when, in reality, they are simply spinning their wheels.

The queer movement can encourage queer individuals to come out, explain its importance for the community as a whole, and highlight the personal benefits that it brings. However, such incentives are unlikely to be sufficient to overcome the grim reality of discrimination and violence that the individual is likely to face if they decide to take such a step. Queer people are stuck in making "a Faustian bargain: a duty of privacy (secrecy, concealment, silence, shame) in exchange for benign treatment (being let alone)" (Cohen 2002) and act in accordance with "the sentiments of many conservatives who see the closet merely as a way for homosexuals to avoid discrimination, a position consistent with the idea that anti-gay discrimination cannot be compared to other sorts of discrimination because it is avoidable through closeting" (McCarthy 1994: 32).

There is even more reason for pessimism if it is taken into account that the effectiveness of such incentives is inversely proportional to the intensity of homophobia in a particular society. This leads to a situation in which, in societies where coming out is most necessary, the queer movement has the weakest tools to encourage it. How do we break out of this deadlock?

Free riding can be countered by structuring the situation to preclude the possibility of non-cooperation altogether. States do that every day. For example, the state will not wait for everybody to recognise the importance of public goods to collect taxes. Can we apply the same logic to the discussed problem? Can we simply out free riders to speed up collective liberation? To answer this question, we need to examine whether outing ought to be legal.

Is outing a violation of a *right* or merely the failure to meet one's *preferences*? If the first is the case, then it is wrong because it infringes on an interest that is recognised as legitimate. If the latter is the case, then it is permissible because the nature of political life in a plural soci-

ety is such that we have various conflicting preferences, and no group, be it marginalised or not, can expect a guarantee of all its preferences. In other words, preference satisfaction is the subject of legitimate political contestation.

The concept of privacy is often criticised for its lack of specificity (Solove 2006). While at the denotative level it serves to signify various interests, the connotative role of this term is persistent and serves to positively represent any of the numerous interests to which it allegedly refers (BeVier 1995). In a situation in which, in the words of Thomson, "the most striking thing about the right to privacy is that nobody seems to have any clear idea what it is" (Thomson 1975: 295), invoking privacy in connection with specific interests can serve to transfer a positive connotation from the concept of privacy to those interests, even though they have only contingent connections with it. In this way, mere personal preferences can be incorrectly inflated in importance, and failure to fulfil them can be misrepresented as a violation of the right to privacy.

I believe that the preference not to be outed is wrongly presented as a legitimate interest. The idea that preserving one's closet is somehow binding for the rest of us seems deeply problematic. All who have true information are effectively silenced through the imposition of the alleged obligation to hide the sexual orientation of closeted queer people. They are forced to perpetuate a false, biased, and harmful picture of the sexual orientation makeup of society, contributing to the further ossification of historic injustice (McCarthy 1994). That cannot be right. Let us see why.

3. Outing through the lens of a reflexive conception of privacy

In the book *Regulating Intimacy,* Cohen writes: "Privacy rights entail freedom from the obligation to conceal as well as informational privacy, i.e., the choice not to reveal or have revealed one's personal affairs. The correlative duty to such a right is that others respect it" (Cohen 2002). If the scope of the duty that stems from this definition of privacy is still unclear, Cohen explicitly adds in a footnote that it forbids both the enforced hiding of sexual orientation and *outing*. The equation that Cohen makes between the conservative imposition of secrecy on the queer community and the progressive rejection of privacy as an effective tool for fighting homophobia does not appear only in this particular place; rather, it looms throughout the entire chapter, in which she discusses the regulation of homosexuality. For Cohen, the imposition of secrecy and the rejection of privacy are nothing more than two sides of the same coin. Both positions are based on a misunderstanding of the right to privacy because they mistakenly take it as a duty of privacy, i.e., an obligation not to disclose one's queerness publicly. The only difference

is that while conservatives embrace the duty of privacy as a condition for a "respectful" way of being queer, progressives reject it.

The obvious problem with the conservative conceptualisation of privacy is that it is partial, i.e., inconsistently applied to the majority and minorities. The double standards for queer and straight people are sometimes explicit, as in the "Don't Ask, Don't Tell" policy,[5] which targets only same-sex conduct, but they can also be covered up, presenting themselves as a general impartial standard. Cohen correctly noted that "the allegedly neutral civic self usually turns out to be filled with particular content determined and privileged by the majority" (Cohen 2002). What conservatives put on the table is an unfair deal, according to which, in return for the duty of secrecy, the queer community will obtain what Rainer Forst calls *the permission conception of tolerance*. According to this conception of tolerance, minorities are tolerated but only as politically and morally inferior to the majority. As long as they do not challenge the dominance of the majority, they can count on non-interference within the limited domain determined by the dominant group (Forst 2018). In contrast, Cohen is advocating for the full moral and political equality of minorities and *the respect conception of tolerance,* which is based on reciprocity, i.e., the willingness to offer reasons for regulation that both sides could reasonably accept. According to Cohen, the right to privacy accompanies the respect conception of tolerance and facilitates the transition from the permission conception of tolerance to the respect conception of tolerance.

As explained in the previous section, the critique of the progressive camp is that the focus on privacy depoliticises the oppression faced by the queer community and offers a false way out of repression (Mohr 1988). Cohen replies that this argument is not applicable to the right to privacy that she defends because it recognises the discretion of individuals over the choice of whether they will disclose their sexual orientation. According to her, if the right to privacy is correctly understood and coupled with a conception of tolerance on the basis of respect, there is no reason to be concerned that queer people will be silenced.

I agree with Cohen that, in the context of tolerance, the right to privacy can function beneficially for queer individuals, just as it functions very well for straight people now. However, the problem is that many queer individuals do not live in that kind of context. The trouble with the right to privacy is not that it *inherently* harms queer people in *any* circumstances, but that it is harmful *today,* at *this particular stage* of the struggle against homophobia.

If Cohen approached the issue of outing only from the perspective of an ideal theory, her defence would be acceptable. However, she clearly

[5] The 'Don't Ask, Don't Tell' policy was the official United States military policy from 1994 to 2011 regarding LGB service members. It was a compromise that barred military officials from investigating or asking about a service member's sexual orientation, while service members were prohibited from openly disclosing their homosexuality or engaging in homosexual conduct.

recommends her understanding of privacy for nonideal conditions as well. It is telling that Cohen defends the right to privacy in the phase of change, emphasising how even "if it is true that gaining the protective shield of privacy rights to cover gay sex will not of itself deliver full equality of power to homosexuals, the denial of this shield has played and continues to play a central role in supporting official and unofficial oppression, surveillance, and discrimination against them" (Cohen 2002). Similarly, she adds, even if the right to privacy "(...) will not yield the full panoply of rights that gays and lesbians need (...) it would pull the rug out from under the rhetorical legal construction of gays and lesbians as a tendentially criminal population undeserving of the rights that others enjoy" (Cohen 2002). Thus, according to Cohen, the right to privacy is preferable both at the end-state of full equality, because it enhances personal autonomy, and at the transitional state, because it lowers the costs of resisting oppression.

It seems that Cohen is conflating lowering the costs of *resisting oppression* with lowering the costs of *giving up*. If there are tools that can lower the costs of confronting injustice while still effectively resisting it, they are always welcome. However, that is a totally different thing from simply quitting the confrontation through a cover-up and then, in addition, imposing an unconditional legal obligation on others to tacitly support one in the withdrawal. Instead of being a tool for empowering changemakers, this rather looks like a recipe for their failure. I have explained in the previous section how the right to privacy causes very concrete harm to the queer movement by enabling free riding. It is not enough to show that, in a particular case, some queer individuals can use the privacy right to shield themselves against homophobia to argue that privacy helps queer liberation. It should be shown that:

1. The queer individual does not protect herself at the expense of the group's interest;
2. The benefits that the right to privacy brings outweigh all costs that it imposes on the queer community as a group, especially its facilitation of mass free riding.

In the context of middle-equality countries, queer individuals rarely use their right to come out and predominantly decide to stay in the closet. Therefore, even if they do not have a *de jure* duty of secrecy, they have one *de facto*. Queer people end up with equality only on paper if their real-life circumstances are not taken into account. In one way, Cohen presupposes toleration on the basis of respect that has yet to be established. The other problem is that she states that the right to privacy will be helpful in queer liberation, offering a justification that does not separate personal benefits from collective benefits and that does not make an overall cost–benefit analysis of the criminalisation of outing.

Am I begging the question here? If there is a right against being outed, then it seems that the cost–benefit analysis is misdirected since the rights cannot be violated, even if that would bring a greater overall benefit. This is generally true once the right is established, but here I

am discussing whether such a right should exist at all. For the introduction (or contestation) of any right, a cost–benefit analysis is crucial.

One could respond that even if the closet is what queer people choose, that is all right, because the whole point of the right to privacy is to protect the personal autonomy of individuals. If the closet was Bago's *choice*, as one commentator wrote, his autonomy should be respected. There are choices that the queer movement would probably not like, but that are nevertheless autonomous and should be protected by the right to privacy.

To answer this objection, we need to dip into the muddy waters of personal autonomy and raise a difficult question about how much we can rely on the expressed preferences of oppressed people, especially given their adaptability to unfair and distorting social conditions. Broadly speaking, we differentiate between internalist and externalist accounts of personal autonomy (Colburn 2022). While internalist accounts emphasise the importance of alignment between lower-order and higher-order preferences, sidelining the conditions in which identification occurs, Marina Oshana's externalist socio-relational account of personal autonomy denies the authenticity of the expressed preferences of oppressed agents. According to Oshana, if individuals are not independent from others in a way that enables them to effectively contest and block arbitrary influences without placing an unreasonable burden on themselves, then their choices cannot be considered autonomous (Oshana 2016). It is clear that the opportunity to easily and effectively challenge arbitrary influences does not exist for many queer people, at least when it comes to issues regarding their sexual orientation. Moreover, the level of independence inversely correlates with the actual need for an outing. In societies where homophobia and transphobia are particularly strong, we can expect that the autonomy of queer people is particularly compromised; therefore, the authenticity of their expressed preferences is even more unreliable.

One might question the need for such strong safeguards against arbitrary influences, as closeted individuals, by not disclosing their sexual orientation, avoid direct exposure to homophobia. This could foster the mistaken belief that their choice renders them less vulnerable and more autonomous, even in hostile settings.

However, the republican nature of the independence that is required for personal autonomy does not allow oppression to be wished away. In contrast to a liberal understanding of freedom, republicans demand that free people have certain options open to them, even if they do not actually use them. Therefore, if one cannot block arbitrary influence without undue burden, they are not independent, even if they are in the closet and not even planning to come out.

One could still argue that even if queer people are not autonomously deciding to stay in the closet, that does not make outing them permissible. Consider an armed robber who orders me to give him my money under threat of being shot. Since this is a textbook violation of au-

tonomy, one cannot plausibly argue that my decision to hand over my wallet is autonomous. Nevertheless, this does not mean a bystander should stop me from doing so and risk my life in that way. In the same way, a third party should not interfere with an individual's decision to remain closeted, because that decision, however non-autonomous, preserves their livelihood.

There is some merit to this counterargument. On an individual level, a closeted life is obviously better than death, and it is difficult to imagine a collective benefit high enough to compensate for the loss of human life. Yet this is precisely why a cost–benefit analysis is so crucial for properly addressing the issue, and why I limit the scope of my argument to middle-equality countries. In my view, the right to out others is redundant in high-equality countries and too dangerous in low-equality ones. The thought experiment with the armed robber reflects the typical experience of queer individuals in Chechnya, but not in Croatia. What is also missing from the example is the presence of other people whom the robber is threatening, and a description of how my cooperation negatively affects their situation.

A better model for a middle-equality country would be a schoolyard bully who demands lunch money from everyone, threatening social torment rather than a shooting. Some victims endure the bullying, others comply to avoid it. Here, the act of handing over money directly resources the bully, and, more critically, each act of compliance signals to the wider group that his power is legitimate. This perception makes his harassment of those who resist more frequent and severe. In this scenario, it is far less clear that a bystander should refrain from intervening. But even if we conclude that a bystander lacks the right to interfere, it does not follow that other victims must also refrain. On the contrary, those actively being tormented for their resistance have the right to stop those whose compliance enables their torment.

4. Outing through the lens of a reductionist conception of privacy

Thomson argued that every attempt to find a necessary and sufficient condition for a violation of the right to privacy fails (Thomson 1975). According to Thomson, the right to privacy is best understood as a derivative right; that is, a type of right that always overlaps with other rights—e.g., the rights to property, life, and liberty, and the cluster of "un-grand rights" that encompass minor things that can be done with our bodies, such as cutting one's hair while they sleep, touching one's knee without consent, and similar. These are not normally considered violations of the right to bodily integrity, which Thomson calls "the right over the person" (Thomson 1975: 305). Although it is possible to violate both grand rights and un-grand rights without violating the right to privacy, it is impossible to violate only the right to privacy, i.e., without violating some other right.

To argue for a derivative character of the right to privacy, Thomson constructs several thought experiments through which she examines various possible scenarios of its violation. One that seems particularly useful for our discussion is one about Professor Jones, the owner of a pornographic picture. Thomson recognises the right to property, which allows Professor Jones to control who can look at the picture and, in that way, protect his privacy. Therefore, it would be a violation of Professor Jones's right to privacy if one gained knowledge about the picture by stealing it, spying on him, threatening him, or torturing him. However, if Professor Jones waived his right to stop someone from watching his pornographic picture, his privacy would not be violated. For that reason, Thomson suggests a shift of focus from defining the right to privacy to detecting other violations of rights. If we adequately protect other rights, the right to privacy will also be automatically protected because its violation is always a result of infringement of other rights.

The right to privacy can be violated both at the input and output levels. More precisely, the right to privacy can be violated on both ends of the process of *knowing something*, but the possession of information itself is not a violation of any right (Persson and Savulescu 2012). On the input level, i.e., the level of acquiring information, if I did not threaten you, torture you, spy on you, or violate any other of your rights to find out that you are queer, I have not violated your right to privacy either. Let us say that you freely told me about your sexual orientation or that I saw you kissing a same-sex person at a party. I have not violated your right to privacy because hearing what people tell me and looking at people at parties do not violate any right.

However, when we speak about the legality of outing, concerns are normally not about how someone acquired information about another person's sexual orientation. After all, no one accused Zahtila of spying on Bago. Nor did Hrdalo imply that Zagreb Pride committed a criminal offence by illegally acquiring the personal data of closeted prospective MPs. They were concerned with the output level, i.e., how information was *used*.

Just as there are cases in which the way of *acquiring* information violates one's privacy, it is also possible to *use* the information in ways that would also violate the right to privacy. At the output level, breaching confidentiality is a way to violate the right to privacy. If one freely tells me that they are queer, they can, in advance, condition the dissemination of that information on confidentiality. Otherwise, I have no default obligation to "cooperate with the closet," even if outing could lead to others harming the outed person (Mohr 1992; McCarthy 1994: 37). In the cases where I simply saw someone kissing a same-sex person at the party, there is obviously no obligation to hide that information either. Thomson makes it clear that if an obligation of confidentiality does not exist, one should be allowed to speak freely and publish information acquired in a legitimate way (Thomson 1975).

Rights can be waived, both intentionally and unintentionally. The latter type of case is of special interest to us because it cannot be conditioned on confidentiality. Unintentional ways of not claiming the right include cases where, although the person who held the right did not intend to waive it, they nevertheless did so accidentally, due to negligence.

If we make the reasonable assumption that all cases of intentionally waiving the right to privacy in regard to information about sexual orientation will be made conditional on confidentiality by closeted people, then it seems that the issue of the legality of the outing boils down to the question of what counts as unintentional waiving of the right to privacy. Thompson says that there are many factors that should be considered when estimating whether a right has been waived, including the following:

1. How important is the right?
2. How costly is it to secure the right?
3. What are the customs and conventions?

In the case of (1), the important difference is who is actually the holder of the right. If the holder of the rights is an autonomous person, then the right to privacy is important to her because it facilitates her personal autonomy. However, if one's autonomy is compromised, this right has little value. Privacy will then be invoked only to perpetuate and ossify preferences produced by illegitimate influences. As I have already shown, there are good reasons to believe that, owing to homophobic oppression, queer people do not enjoy adequate independence for their choices about coming out to be considered autonomous. Therefore, the right to privacy in this domain is not particularly important for queer people because it does not necessarily protect interests that can be justifiably recognised as their own. Nevertheless, the importance of the right to privacy could still be defended on paternalistic grounds, emphasising how it can shield queer people from harm. However, it is important to separate outers from the people who harm queer people. The freedom of speech of the outer and the right to a dignified life of queer people who are outed without permission are not necessarily in conflict. They are only in conflict if we wrongly suppose that the outer is responsible for the homophobic behaviour of other people (Mohr 1992). However, that would be a mistaken imputation of responsibility that violates the basic rule that every capable adult is responsible for their own behaviour. An authentic concern for the well-being of queer people requires protecting them directly from violence and discrimination through the effective prosecution of perpetrators, not indirectly through infringement of freedom of speech.

With respect to factor (2), Thomson is clear about the need to find the middle ground between excessively stringent and insufficiently rigorous security measures. On the one hand, there are privacy-protecting precautionary measures that put an unreasonable burden on the person. On the other hand, there are also cases in which one obviously has

not done enough to protect their privacy. For the first type of case, she says that it would be unreasonable to expect that Professor Jones pays for a platinum wall safe just because an imaginary X-ray device (which, according to Thomson's thought experiment, could be used to look at his picture) cannot penetrate this very expensive material.[6] Regarding the second type of case, in which the right-holder has not done enough to protect their privacy and, in that way, has waived their right, Thomson illustrates it with the example of a couple having an argument next to the open window of their flat, so that passers-by cannot help but hear what they are saying.

Now, the question is whether the situation in which I see someone kissing the same-sex person at a party[7] is more similar to the case of Professor Jones, who cannot afford a platinum wall safe and in that way enables the owner of the X-ray device to see his pornographic picture, or to a couple who are having an argument next to an open window and in that way enables passers-by to hear what they are saying.

Before I delve into this question, I want to point out a tension between Thomson's factor (2) and the problem that I am addressing. The whole point of my critique of privacy is that it makes staying in the closet easier. In other words, extensive privacy protection creates a low-cost closet and, in that way, slows queer liberation. However, if the high costs of precautionary measures are a contributing factor that limits our understanding of waiving the right, then only utterly careless acts will be plausible indicators that information about one's sexual orientation may be freely disseminated by third parties. For that reason, it is difficult to see how factor (2) would make staying in the closet a less attractive choice. If anything, it makes it more appealing because it limits the effort one needs to put into protecting their privacy. Although the low-cost closet is compatible with Thomson's understanding of waiving the right to privacy, we should bear in mind the derivative nature of the right to privacy and that Thomson's factors—which are supposed to govern our estimation of waiving—do not apply in cases where no other right is violated.

This raises the question of whether looking at someone at the party is more similar to the couple fighting next to the window than to Professor Jones, who cannot afford a platinum wall safe. Thomson, rather controversially (Scanlon 1975), believes that people have the right not to be looked at or listened to. They are part of the un-grand rights that she recognises. Although I agree with Thomson that we should have these rights, I believe that the distribution of the burden of protecting any particular un-grand right will depend on the very nature of that right. This means that the distribution of the burden of protecting the

[6] More radically, Savulescu and Persson even argue that there is no state obligation to protect the privacy of citizens, even in cases in which the personal costs of securing privacy are very high.

[7] It is not known how Zagreb Pride activists discovered that the closeted MP candidates are queer, but we can imagine that they did so in this way.

right not to be looked at or listened to is quite different from that in the case of the right not to be touched. I believe that this is the case for two reasons.

The first is the libertarian idea of self-ownership, i.e., that we possess our bodies in the same way as we possess other things. Thus, just as you can watch my house, but you cannot enter without my permission, you can also watch me, but you cannot touch me.

The other reason is the different levels of intrusiveness of touching compared with listening and looking. Although they can all cause belief-induced distress, only touch entails an objective foundation—i.e., physical contact. Touching, unlike listening and looking, involves a factual, non-subjective change in the state of the person who experiences it. The objectivity of the change in the state of a person who is touched demonstrates that it is truly difficult to touch people without their noticing, whereas you can easily look at or listen to them without their awareness.

Indeed, we treat touching differently from looking and listening in everyday life. Consider how the burden of privacy protection is asymmetrically split. I can simply demand that you not touch me without any particular explanation, and there is indeed a strong social expectation—which could lead to a possible accusation of harassment—that you withdraw from such an act without question. On the other hand, asking someone not to listen to you or not to look at you would not only seem strange and rude but also unfairly infringe on their freedom. This is the reason why, in the case of listening and looking, the burden is distributed differently than in the case of touching. If I do not want to be listened to, I need to whisper. If I do not want to be looked at, I need to turn off the camera during a video meeting. The costs of securing privacy are put on the right-holder in regard to listening and looking.

I am not saying that there is no right not to be looked at or listened to. If someone were to demand that I turn on the camera on a video call, I would consider that an infringement of my privacy. However, that is a totally different thing from expecting others not to look at us when we have not even tried to hide ourselves. That is exactly what is happening when we treat seeing a same-sex couple kissing at a party as a violation of their privacy. Thus, although factor (2) is inherently antagonistic to queer emancipation, the most common cases of finding out about someone's sexual orientation do not involve placing an extraordinary burden on the right-holder to secure his privacy.

Factor (3), customs and conventions, is so vague and inherently conservative that it is of little use in this—or any other—discussion about privacy. Even if it is accepted as a factor that should govern our understanding of waiving rights, we must pay close attention to the level of generality at which it is interpreted. One cannot look at customs and conventions about homosexuality *per se,* as this would risk including homophobic norms in discussions. Nor is it acceptable to treat customs and conventions about sexuality in general as relevant, because this

sphere of life is treated unjustifiably differently from others owing to sex-negativity. It is only plausible to take customs and conventions about privacy in the broadest sense, but that is precisely what is at stake in the entire discussion. The conventions are made and remade in various ways, including through rational public deliberation. Granting existing customs and conventions around privacy legitimacy, regardless of their content and the way they are generated, maintains a *status quo* that is not necessarily just. Thus, factor (3) blocks social change through which customs and conventions could be re-formed in a more reasonable way.

5. Conclusion

The desirability of a particular choice is always context-dependent, so it makes little sense to speak of staying in the closet as a categorically desirable or undesirable choice at the individual level. On a collective level, staying in the closet is not conducive to queer liberation. The reflexive conception of privacy puts hope in supplementary anti-discriminatory legislation that ought to transform the current duty of secrecy into merely one option among others—a choice queer people could make without penalty. However, it fails to provide an explanation for how robust anti-discriminatory protections could be achieved without mass outing. Coming out is not only a valuable end goal but also one of the most effective ways to reach it. The queer movement could rely only on other means to achieve full equality, but it is unclear why it should make such a concession. This is especially true in middle-equality countries, which require widespread direct intergroup contact to attain full equality and where the personal cost of being out is not, on average, unduly high. Since queer individuals cannot make the independent choice of whether to come out in homophobic contexts, the choice we face is not between personal autonomy and heteronomy but between two types of heteronomy—one that maintains injustice and the other that strives for equality. If we accept that inequalities based on prejudices are unjust—including those based on sexual orientation—then it follows that we should choose liberatory heteronomy over that which perpetuates the *status quo*.

When the right to privacy is interpreted as a derivative of other rights, the issue reduces to finding the correct measure for allocating the burden of securing the right, both in terms of who bears the task and how difficult it should be. The analysis of un-grand rights as well as the conditions for waiving the right shows that the alleged obligation of others to conceal the sexual orientation of queer people places an unreasonable burden of securing the right on everyone except the right-holder. The right to private property, the right over one's person, and other rights protect individuals from the most intrusive ways of acquiring information about their sexual orientation. Similarly, confidentiality limits the dissemination of acquired information. However,

these rights cannot be overextended to include cases in which the right-holder has taken no precautionary measures to avoid being seen or heard. Therefore, the right to privacy is weaponised against the queer community when it is interpreted to block the outing of queer people, except in cases in which information about their sexual orientation is acquired through a rights violation or is used in ways that breach an agreed-upon confidentiality.

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