



The Right to Privacy

Louis D. Brandeis (1856 - 1941) and Samuel D. Warren (1852 -1910)

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The Right to Privacy is an article that appeared in the *Harvard Law Review* December 15, 1890 that is considered the first document that argued for the inherent right to privacy, defining the right as one of the natural rights, the “right to be left alone”. The authorship is credited to both Louis Brandeis and his law partner Samuel Warren, but the article was apparently written mostly by Brandeis. The article was inspired by the coverage of intimate details of private lives made possible by the use of instantaneous photography and the mass circulation of newspapers.

The core argument is an extension of the fundamental right of the individual to full protection in person and property, and notes that the principle is continually reconfigured in light of political, social and economic change, in much the same way that protection against bodily injury came to include fear of injury in addition to actual injury, and that property grew to add intangible property to tangible property. The article examines libel, slander, and intellectual property law as possible protections and finds them inadequate, and proceeds to examine case law and attempt to define privacy itself, and finally imposes limitations on the protection. While short by contemporary standards, *The Right to Privacy* has been called one of the most influential essays in the history of American law and is especially relevant today as new technologies and business models seek ever more personal data and threats of terror invoke escalating surveillance tactics.

Louis Dembitz Brandeis (November 13, 1856 – October 5, 1941) was an American lawyer, Supreme Court justice, and champion of social causes known as “the People’s Lawyer”. Born in Louisville to immigrant parents from Prague, Bohemia, he grew up in a cultured household and entered Harvard Law School at age eighteen, graduating with the highest grades ever achieved. His successful Boston law practice in Boston brought the financial security to enable him to pursue progressive causes as an unpaid counselor. He felt that the law lagged behind the facts of life, and that the public interest was inadequately represented in legal matters where private interests were represented by strong counsel. He is well-known for developing the concept of an inherent right of privacy, helping codify principles of conflict of interest in public affairs, and for opposing monopoly control of railroads. He pioneered in the law as well by developing the “Brandeis brief”: the practice of using history, social research, relevant data, and topical expertise as evidence, which moved the law beyond its strict reliance on precedent and abstract principles. Woodrow Wilson enlisted his help in the establishment of both the Federal Reserve and the Federal Trade Commission. His nomination to the Supreme Court in 1916 was fiercely opposed and led to the first hearings to vet a nominee. His opinions, especially on the issues of the right to privacy and freedom of speech, are considered foundational. He died in 1941 and is buried beneath the portico of the Law School of the University of Louisville.