



PRIVACY AND GENDER

POSC 261 / SWAGS 261
Professor Jessica Lake
Amherst College
Spring 2017

Course Time: Mon / Wed 12.30pm to 1.50pm
Office Hours: Tues / Thurs 10-11am, or apt.
Office: Frost Library A27

Course Location: Chapin 203
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The right to 'privacy' is often invoked in media and political discourse, yet with little interrogation of its meaning, history and significance. This course delves into the nature and origins of this assumed right and explores the gendered nature and political dynamics of claims to 'privacy'. Drawing upon a range of texts in feminist political philosophy, the history of women in the United States, court cases and film (still and moving), this interdisciplinary subject will consider the ways in which our understandings and experiences of privacy (or people's lack of it) have been embodied in sexualized, gendered and racialized forms. We will consider the contexts and circumstances in which ideas about privacy have been articulated and rights claimed and by whom. We will ask what kinds of privacy have been privileged politically and protected legally and why. We will question whether 'privacy' is a useful or problematic platform for asserting women's rights. This course will cover the emergence of 'privacy' as a social, cultural and political issue in the nineteenth century, interrogate women's leading role in the development of a legal right to privacy in the early twentieth century, the work of the private/public dichotomy in political and legal discourses, and current problems arising from the use of new media platforms in relation to the exploitation of people's images online (as in nonconsensual pornography) and with regard to controversies around data protection.

ASSESSMENT:

- Class participation (20%): You must come to each class having tackled and engaged with the reading and ready to contribute to a productive discussion. I am very interested in hearing your unique insights, opinions and arguments – and so is the rest of the class.

- Weekly response to the material (20%): After classes for each week, please write approximately 200-300 words responding to materials and class discussions. Choose the topic and readings that most interest you. Because these responses are short, please don't simply reiterate the author's arguments, a judge's reasoning or a film's narrative etc. I'm interested in *your* perspective and how these materials (articles, book chapters, cases or films) or elements of these materials resonate and connect with you / or not. Crucially, think about when these sources were created, by whom and for what purpose. These responses will not be marked, but in order to achieve a full credit for this task, you must complete responses for at least 8 out of 12 weeks. These responses should be submitted online via Moodle by Friday at 5pm.

- Outline for Research Paper (5%): The final assessment for this subject is a research paper on a topic of your choosing. One the first tasks related to the research essay is for you to define your topic and prepare an outline. This will not be graded but I will provide comments and feedback on it. DUE MARCH 22nd

- Research Paper Draft (5%): You must submit a draft of your research paper. Again, this will not be graded but I will provide comments and feedback to help you towards completing and polishing the final paper. DUE APRIL 12th

- Class Presentations (10%): During the final two classes for the semester a course conference will be held. You will be allocated to panels of 3-4 students based upon the nature of your research topics and will be required to give a 5 minute presentation of your research and arguments. Each panel of speakers will be followed by a short class Q & A session. This task will hopefully hone your arguments and give you further ideas regarding sources and materials.

- Research Paper (40%): During the examination period, you are required to submit a research paper of approximately 3000 words on a topic of your choosing. I will be available throughout the semester to assist you in defining a research topic and question. DUE MAY 8th

COURSE POLICIES:

- Attendance**:** I expect all students to attend every class because the classroom is where the most valuable learning takes place. If you have a medical condition or other issue that is interfering with your ability to come to class, please let me know about it as soon as possible.

- Technology: Class time is a technology free zone. Student laptops / tablets / cell phones are not allowed unless you have a documented need for one.

- Office Hours: Please come and see me during my office hours to discuss anything you'd like to, such as your ideas for the research paper, a reading you found particularly interesting or challenging, tips on how to improve your writing or plans for your upcoming Australian vacation! Office hours are first come, first serve. If you aren't free during office hours, please email me to schedule an appointment.

- Email: If you send me an email during the semester, I will endeavor to get back to you within 48 hours.

- Academic Integrity: Plagiarism means representing another person's words or ideas as your own. Plagiarism includes: submitting another person's paper as your own; inappropriate collaboration with another student; copying / close paraphrasing / cutting and pasting from an article, book, or website; incorporating an idea or discussion from another source without citing it. Plagiarism occurs most often when a student is overwhelmed or pressed for time. Please remember that submitting an assignment late is *always* better than submitting work that does not reflect your own, original ideas. An occurrence of plagiarism will result in the student failing the assignment and potentially the course and being reported to the Dean of Students.

- References and citations should either be in the Legal Style (as they are in this syllabus) or the Chicago style. For more information see https://www.amherst.edu/library/find/citation .

- Name: Please call me Jessica or Professor Lake.

ACCESS TO READINGS AND FILMS

All readings and films are available on Moodle. The readings are also available in a hardcopy course reader.

SCHEDULE OF TOPICS AND READINGS

Jan 23**: Meanings and Experiences of Privacy** (58 pages)
- Franzen, Johnathan, *Imperial Bedroom: The Real Problem with Privacy? We Have Too Much of It,* New Yorker, Oct. 12, 1998, at 48.
- Gavison, Ruth, *Privacy and the Limits of Law*, 89 Yale L. J. 421 (1980)

Jan 25: **Histories of Privacy and Private Life** (49 pages)
- Flaherty, David H. *Privacy in Colonial New England* (1972) (Chapter1: "The Home")
- Adams, Katherine. *Owning Up: Privacy, Property, and Belonging in U.S. Women's Life Writing, 1840-1890* (2009) (Chapter 1: "Imperiled Privacy")

Jan 30: **Protecting 'Privacy' and Private Property in the 19th century** (37 pages)
- CASE: *State v. Rhodes* 61 N.C. 453 (N.C. 1868)
- Danielson, Caroline. *The Gender of Privacy and the Embodied Self: Examining the Origins of the Right to Privacy in U.S. Law,* 15 Feminist Studies 311 (1999)

Feb 1: **A New Legal Right? (**65 pages)
- Warren, Samuel D. & Louis D. Brandeis. *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890).
- Allen, Anita L., & Erin Mack. *How Privacy Got Its Gender*, 10 N. Ill. U. L. Rev. 441 (1989)

Feb 6: **Photography, 'Pretty Girls' and the Right to Privacy** (33 pages)
- CASE: *Roberson v Rochester Folding Box Co*. 171 N.Y. 538 (N.Y. 1902)
- Mensel, Robert. E. *`Kodakers Lying in the Wait': Amateur Photography and The Right Of Privacy In New York, 1885-1915*, 43 American Quarterly 24 (March 1991)
- *Parker Taken to Task by an Indignant Woman--If I Can Be Photographed, Why Not You? Asks Miss Roberson*, New York Times, July 27, 1904, at 1.

Feb: **A Right to Privacy and Masculinity** (28 pages)

- Godkin, Edwin Lawrence. *Rights of the Citizen: To His Own Reputation*. 8 Scribner's Magazine 58 (July 1890)
- CASE: *Pavesich v. New England Life Insurance Co*., 50 SE 68 (Ga, 1905)

Feb 13: **The Whiteness of Privacy?** (46 pages)

- Osucha, Eden, *The Whiteness of Privacy: Race, Media, Law*, 24 Camera Obscura 67 (2009)
- Anita L. Allen, *Natural Law, Slavery and the Right to Privacy Tort*, 81 Ford. L. Rev. 1187, at 1204-1210 (2012)

Feb 15: **Privacy, Professionals and the Right to Publicity (**71 pages)

- Glancy, Dorothy, *Privacy and the other Miss M*, 10 Northern Illinois University Law Review 401 (1990)
- Madow, Michael, *Private Ownership of Public Image*, 18 Cal. L. Rev. 127, at 147-178 (1993)

Feb 20: **Early Cinema, Surveillance and the Body as Spectacle** (34, 10 mins viewing)

- CASE: *Feeney v. Young*, 181 NYS 481 (AD, 1920)
- Lake, Jessica, *The Face that Launched a Thousand Lawsuits: The American Women Who Forged a Right to Privacy* (2016) ("Chapter 4: Privacy, the Celluloid City and the Cinematic Eye")
- FILMS: *At the Foot of Flatiron* (American Mutoscope and Biograph Company, 1903), *Manhatta* (Paul Strand & Charles Sheeler, 1921)

Feb 22: **Private Lives or Public Stories?** (28 pages, 118 mins viewing)

- FILM: *The Red Kimono* (Walter Lang & Dorothy Davenport Reid, 1925)
- CASE: *Melvin v Reid*, 297 P 91 (Cal Ct App. 1931)
- Barbas, Samantha, *Laws of Image: Privacy and Publicity In America* (2015) (Chapter 7 'The Freedom to Image: Sidis v. The New Yorker')

Feb 27: **Constitutional Rights and Women's Bodies** (70 pages)

- CASE: *Roe v. Wade*, 410 U.S. 113 (1973)
- Allen, Anita L. *Uneasy Access: Privacy For Women In A Free Society* (1988) (Chapter 4: "Reproductive Liberties")

March 1: **Commentary on Reproductive Rights as Privacy** (27 pages)

- MacKinnon, Catharine A. *Towards a Feminist Theory of the State* (1989) (Chapter 10: "Abortion: On Public and Private:")
- Bork, Robert H. *The Tempting of America: The Political Seduction of The Law* (1990) (pp. 110-126 "Judicial Moral Philosophy and the Right to Privacy")

March 6: **The Public / Private Dichotomy** (39 pages)

- Pateman, Carole, *The Disorder of Women: Democracy, Feminism and Political Theory* (1989) (Chapter 6: "Feminist Critiques of the Public / Private Dichotomy")
- Thornton, Margaret, *Cartography of Public and Private* in Thornton, Margaret (Ed), Public and Private: Feminist Legal Debates (1995)

March 7: **Feminist Defenses of The Private / Public Distinction** (19 pages)

- Judith Wagner Decew, *The Feminist Critique of Privacy: Past Arguments and New Social Understanding* in Roessler, Beate, and Dorota Mokrosinska (eds), Social Dimensions of Privacy: Interdisciplinary Perspectives (2015), pp. 85-103

MARCH 11 to 19 = SPRING BREAK

March 20: **State Surveillance, the Panopticon and "Big Brother"** (24 pages plus 110 mins)

- FILM: *Nineteen Eighty-Four* (dir. Michael Radford, 1984)
- Atwood, Margaret, *Handmaid's Tale* (first pub. 1985)
- Lyon, David, *Electronic Eye: The Rise of Surveillance Society* (1994) (Chapter 4: "From Big Brother to the Electronic Panopticon")

March 22: **Gendered Representations of Privacy and Surveillance in Cinema** (30 pages plus 1 movie)

- Watch at least one film depicting narratives of surveillance or invasions of privacy. For eg. *Rear Window* (Alfred Hitchcock, 1954), *Vertigo* (Alfred Hitchcock, 1958), *The Conversation* (Francis Ford Coppola, 1974), *Sliver* (Phillip Noyce, 1993), *Truman Show* (Peter Weir, 1998), *Ed TV* (Ron Howard, 1999), *The Net* (Irwin Winkler, 1995), *Enemy of the State* (Tony Scott, 1999), *Minority Report* (Steven Spielberg, 2002), *Red Road* (Andrea Arnold, 2006), *The Lives of Others* (Florian Henckel von Donnersmarck, 2006), *Bourne* series (2002-2016), *Cache* (Michael Haneke, 2005)
- Zimmer, Catherine. *Surveillance Cinema* (2015) (Introduction: "Surveillance Cinema in Theory and Practice")

March 27: **The Embodied Experience of State Surveillance** (50 pages)

- Browne, Simone. *Dark Matters: On The Surveillance of Blackness* (2015) ("Notes on Surveillance Studies: Through the Door of No Return")
- Dubrofsky, Rachel E., & Shoshana Magnet. *Feminist Surveillance Studies* (2015) (Introduction: "Feminist Surveillance Studies - Critical Interventions")

March 29: **Computers, National Databanks and the Next Wave of (Masculine?) Privacy Panic** (13 pages)

- Westin, Alan F., *Privacy and Freedom* (1967) (Chapter 7: "The Revolution of Information Collection and Processing: Data Surveillance")
- Bengelsdorf, Irving S. *Computers Could Abolish Privacy*, Los Angeles Times, Dec 13, 1965, p. B1
- Lardner Jr., George, *Center for Data on Everybody Recommended*, Washington Post, June 13, 1966, p. A3
- Miller, Arthur R., *The Computer Threat to Privacy*, Los Angeles Times, July 20, 1969, p. F7.

April 3: **Consumer Privacy and Personal Information as Property (**72 pages**)**

- Bartow, Ann. *Our Data, Ourselves: Privacy, Propertization, and Gender*, 34 U. of San Fran. L. Rev. 633 (2000)

April 5: **Data, Discrimination and Social Sorting (**33 pages**)**

- Citron, Danielle Keats & Frank Pasquale, *The Scored Society*, 89 Wash. L. Rev. 1 (2014)

April 10: **Islamic Women, Privacy and the Veil** (20 pages)

- El Guindi, Fadwa, *Veil: Modesty, Privacy and Resistance* (1999) (Chapter 5: "Sacred Privacy")

April 12: "**Racial Privacy Rights"?** (32 pages)

- Allen, Anita L. *Unpopular Privacy: What Must We Hide?* (2011) (Chapter 6: "Racial Privacy")

April 17: **Women and Online Culture** (48 pages)

- Allen, Anita L. *Gender and Privacy in Cyberspace*, 52 Stan. L. Rev. 1175 (2000)
- Martha Nussbaum, *Objectification and Internet Misogyny* in Saul Levmore & Martha C. Nussbaum (eds) The Offensive Internet: Speech, Privacy and Reputation (2010), pp. 68-90

April 19: **Nonconsensual Pornography** (48 pages)

- Citron, Danielle Keats, *Criminalizing Revenge Porn*, 49 Wake Forest L. Rev. 345 (2014)
- Wong, Julia Carre, "Sexual Harassment in Virtual Reality Feels All Too Real – 'it's Creepy Beyond Creepy'" *The Guardian*, 26 October 2016.

April 24: **Course Conference (student presentations)**

April 26: **Course Conference (student presentations)**

Some Recommended Further Reading

- Adams, Katherine. *Owning Up: Privacy, Property, and Belonging in U.S. Women's Life Writing, 1840-1890* (2009)
- Allen, Anita & Mark Rotenberg (eds), *Privacy Law and Society* (3rd ed, 2016)
- Areola, Daniel D. Race, *Class and Privacy in the Ordinary Post-War House 1945-1960*, in Schein, Richard H. (Ed), Landscape and Race in the United States (2006)
- Ashe, Marie, *Privacy and Prurience: An Essay on American Law, Religion, and Women*, 51 Am. J. L. His. 461 (2011)
- Bates, Alan P. *Privacy – A Useful Concept?* 42 Social Forces 429 (1964)
- Benn, S, & Gaus, G (eds), *Public and Private in Social Life* (1983)
- Citron, Danielle Keats, *Civil Rights in Our Information Age*, in Saul Levmore & Martha C. Nussbaum (eds) The Offensive Internet: Speech, Privacy and Reputation (2010), pp. 31-49
- Citron, Danielle Keat, *Hate Crimes in Cyberspace* (2014)
- Citron, Danielle Keats, *Spying Inc*, 72 Wash. & Lee L. Rev. 1243 (2015)
- Cohen, Jean L., *Regulating Intimacy: A New Legal Paradigm* (2002)
- Cooper, Pamela. *Sexual Surveillance and Medical Authority in Two Versions of the Handmaid's Tale*, 28 Journal of Popular Culture 49 (1995)
- Cooper, Peter W. *The Right To Be Virtually Clothed*. 91 Wash. L. Rev. 817 (2016)
- Elshtain, Jean Bethke, *Public Man, Private Woman: Women in Social and Political Thought* (1981)
- Friedman, Lawrence M., *Guarding Life's Dark Secrets: Legal and Social Controls Over Reputation, Propriety and Privacy* (2007)
- Gaines, Jane, *Contested Culture: The Image, The Voice, and The Law* (1991)
- Gandy Jr., Oscar H. *African Americans and Privacy: Understanding the Black Perspective in the Emerging Policy Debate*, 24 Journal of Black Studies 178 (1993)
- Gandy, Oscar H. *The Panoptic Sort: A Political Economy of Personal Information* (1993) (Chapter 2: "Information and Power")
- Garrow, David J., *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade* (1994)
- Gavison, Ruth. (1992). *Feminism and the Public/Private Distinction*. 45 Stan. L. Rev. 1 (1992)
- Hafetz, Jonathan L. *'A Man's Home Is His Castle?' Reflections On the Home, The Family, And Privacy During The Late Nineteenth and Early Twentieth Centuries*, 8 Wm. & Mary J. Women & L. 175 (2002)
- Henry, Nicola & Anastasia Powell, *Beyond The 'Sext': Technology-Facilitated Sexual Violence and Harassment Against Adult Women*. 48 Australian & New Zealand Journal of Criminology 104 (2015)
- Lake, Jessica, *Privacy, Property or Propriety: The Case of "Pretty Portraits" in Late Nineteenth-century America*, 10 Law Culture & the Humanities 111 (2014)
- Lake, Jessica, *Red Road (2006) and Emerging Narratives of 'Sub-Veillance'*, 24 Continuum: Journal of Media & Cultural Studies 231 (2010)
- Lessig, Lawrence, *Code and Other Laws of Cyberspace* (1999)
- Lester, Toby, *The Reinvention of Privacy*, The Atlantic, March 2001
- Lupton, Deborah, *Quantified Sex: A Critical Analysis of Sexual and Reproductive Self-Tracking Using Apps*. 17 Culture, Health & Sexuality 440 (2015)
- Lupton, Deborah, *Understanding the Human Machine*, IEEE Technology and Society Magazine 25 (Winter, 2013)
- Magnet, *Shoshana, When Biometrics Fail: Gender, Race and the Technology of Identity* (2011)
- Mason, Corinne & Shoshana Magnet, *Surveillance Studies and Violence Against Women*, 10 Surveillance & Society 105 (2012)
- Nissenbaum, Helen, *Privacy as Contextual Integrity*, 79 Washington Law Review 119 (2004)

- Palyan, Tigran. *Common Law Privacy in a Not So Common World: Prospects for the Tort of Intrusion Upon Seclusion in Virtual Worlds*. 38 Sw. L. Rev. 167 (2008)
- Parent, W. A., *Privacy, Morality and the Law*, 12 Philosophy & Public Affairs 269 (1983)
- Poster, Mark, *Databases as Discourse, or Electronic Interpellations* in Lyon, David, and Elia Zureik (eds), Computers, Surveillance, and Privacy (1996)
- Pratt, Ray, *Projecting Paranoia: Conspiratorial Visions in American Film* (2001)
- Eveleth, Rose, *How Self-Tracking Apps Exclude Women*, The Atlantic, Dec 2014.
- Rotenberg, Mark et al (eds), *Visions of Privacy in the Modern Age* (2015)
- Shamir M. *Inexpressible Privacy: The Interior Life Of Antebellum American Literature* (2006).
- Strikwerda, Litska, *Present and Future Instances of Virtual Rape In Light Of Three Categories Of Legal Philosophical Theories On Rape*, 28 Philosophy & Technology 491 (2015)
- US Department of Health, Education & Welfare, *Records Computers and The Rights Of Citizens* (1973)
- Vincent, David, *Privacy: A Short History* (2016)
- Weintraub, Jeff & Krishan Kumar (eds), *Public and Private in Thought and Practice* (1997)
- Westin, Alan F. & Baker, Michael A. *Databanks in a Free Society: Computers, Record-Keeping and Privacy* (1972)