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# Guarding Life's Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy Book Review

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Lawrence M. Friedman. *Guarding Life's Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy*.  
*Guarding Life's Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy* by Lawrence M. Friedman  
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Burton K. Wheeler. In the process, the FBI's use of illegal methods such as wiretapping escalated and the liaison with British intelligence was forged, resulting in increased influence and autonomy of the Bureau, according to Charles a process that continued during the war and the ensuing Cold War.

This short but well-researched and well-written book adds to the existing literature about the origins of the Cold War national security state and about the link between international crisis and domestic surveillance. The book confirms previous portraits of FDR as a president with a somewhat relaxed view of civil liberties, and it shows compellingly how Hoover perfected the use of criminal investigations, launched to find evidence of unlawful activities and to gather, file, and disseminate political and other forms of noncriminal intelligence. It therefore fills a void in the scholarship on the FBI, which has tended to focus on the early political activities of the Bureau during World War I and the Red Scare of 1919–1920 or the Cold War era.

However, the book also suffers from several weaknesses. As Charles himself notes in the introduction, his study focuses on the conservative anti-interventionists, and he therefore avoids dealing with the FBI's surveillance of left-wing opponents such as the Communist Party of the USA (CPUSA) and its various front organizations. The CPUSA had close links to the Soviet Union, which opposed intervention in the "imperialist" war among Germany, France, and Great Britain during the period of the Soviet-German non-aggression pact from August 1939 to June 1941. Moreover, the Communists supported strikes in the war production industries and, we now know, infiltrated and spied against the administration. If the author had included the CPUSA in his analysis, the description would have been more balanced, and it would have shown that the FBI to a considerable extent reacted to a real threat to the security of the United States.

Moreover, Charles seems to underestimate the seriousness of the foreign connections of some of the conservative critics. For example, Lindbergh had visited Nazi Germany and expressed his sympathy for the regime, a German propaganda agent wormed his way into the office of Congressman Hamilton Fish, and Laura Ingalls was paid by the German embassy. Clearly, non-intervention or neutrality on the part of the United States was in the interest of the Axis powers, and it was the duty of the FBI to investigate information, however implausible, about the supposed foreign links of the noninterventionists and to determine whether they were in violation of the Foreign Agents Registration Act.

Furthermore, the expansion of the FBI's surveillance needs to be appraised in the proper political context. As Charles notes, Hoover referred cases under investigation to the lawyers in the Department of Justice for decision. Thus, the Bureau did not act on its own initiative. In fact, the Roosevelt administration intended to use the intelligence and security agencies aggressively to combat supposed subversive activities. For example, FDR in April 1941 authorized the creation of a so-

called "suicide squad" of FBI agents who were to operate "outside the law." When the FBI during "the Great Debate" used illegal methods to gather political intelligence for the White House, it must be seen as a response to the wishes and intentions of the Roosevelt administration. The reason why observers and historians often tend to underestimate the extent to which political leaders have knowledge of and condone the activities of the intelligence and security services is the doctrine of "plausible denial": there can be no written record of orders and instructions, as the administration must be able to deny any knowledge of illegal or controversial activities against its own citizens or foreign powers.

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LAWRENCE M. FRIEDMAN. *Guarding Life's Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy*. Stanford, Calif.: Stanford University Press. 2007. Pp. 348. \$29.95.

Lawrence M. Friedman probes the legal protection of private life and personal reputation during three historical periods: the nineteenth century's "Victorian compromise," the early twentieth century's era of vice, and the era of the post-sexual revolution. Friedman reads a wide range of legal cases involving sexual and moral impropriety in order to show how the legal protection of private life and reputation has changed. He argues that the nineteenth century's legal "leeway" in matters of sex and vice allowed for a greater protection of privacy than exists in the contemporary period.

In the nineteenth century, an era Friedman describes as dominated by the "Victorian compromise," there existed a tacit agreement that while the public sphere would adhere to norms of morality, especially in the realms of sex and vice, there was room for moral indiscretions in the private sphere. Thus during the nineteenth century, Friedman notes, there were laws regulating public indecency but also thriving vice districts containing brothels. Friedman presents a number of legal constructions that made possible the seeming contradictions contained in the Victorian compromise.

Friedman also documents how laws designed to protect reputation and privacy were used to rehabilitate a select group of privileged Americans. In a society built on dreams of upward mobility, and not on royalty or caste, reputation was something earned by achieving social standing. In this way, nineteenth-century law protected reputations for those that had achieved them. Those who were too poor or thought to be immoral could not protect their reputation because they had not earned or been granted one.

If the Victorian compromise led to a legal culture that protected the status of the elite by granting leeway in some legal matters, it eventually gave way to suspicions about the vulnerability of the masses to vice. During the late nineteenth and early twentieth centuries, courts upheld censorship of obscene material and film

that was thought to corrupt consumers. As vice crusades swept across urban cities, the Victorian compromise fell apart and gave way to anti-vice crusades.

By the twentieth century—if not as early as the 1870s—anti-vice crusades undermined and eventually curtailed the Victorian compromise. Where nineteenth-century culture tolerated some private indiscretion on the part of people of standing, in the early twentieth century laws were designed to fully contain and criminalize immoral behavior. Moral reformers rejected the premise that some “immoral” behavior was necessary and under the banner of hygiene, good government, and a range of other political and social reforms, sought to alter the permissiveness of nineteenth-century culture. The shift away from the more permissive culture of the Victorian compromise, according to Friedman, was inspired largely by a concern about immigrants, their morality, and their fertility.

By the middle of the twentieth century, the sexual revolution replaced the culture of vice created during the first half of the century. The fall of the vice culture also transformed legal approaches to privacy and the protection of reputation. Propriety was no longer a commodity that secured social standing, thus, less was lost when someone was defamed. Moreover, mass mediated culture enabled consumers to view the private lives of elite and famous people. Ironically, in the late twentieth century, as society became more permissive, Americans assumed fewer rights of privacy for elites and celebrities.

To a cultural historian interested in the social construction of privacy Friedman’s book offers an interesting and useful discussion of how the law has worked to protect reputation and privacy for some while leaving others unprotected. Moreover, Friedman subtly shows how the seeming prudery of the Victorian compromise enabled, and was based in, an understanding of privacy and toleration for indiscretions outside of the public sphere. Ironically, during the contemporary period, as morality is more permissive than it was in the nineteenth century, there’s less expectation of privacy.

While this book is provocative, it does not fully contextualize the historical transformation central to its argument. Major transformations in approaches to vice are explained rather quickly and without adequate use of secondary literature. Hence the fall of the Victorian compromise is rather quickly explained as the result of concern about immigration among other unexplained factors. Yet, it seems that a wide range of social forces may have contributed to this transformation including, most importantly, the ascendancy of the Federal State in the wake of World War I that increasingly saw regulating daily life as part of its responsibility. Historians may also balk at Friedman’s periodization of the entire nineteenth century as one block. That said, historians will nevertheless find Friedman’s book a valuable source for thinking about the meaning and history of privacy, reputation, and propriety.

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AMY L. FAIRCHILD, RONALD BAYER, and JAMES COLGROVE. *Searching Eyes: Privacy, the State, and Disease Surveillance in America*. Assisted by DANIEL WOLFE. (California /Milbank Books on Health and the Public.) Berkeley and Los Angeles: University of California Press. 2007. Pp. xxiv, 342. \$19.95.

This book analyzes the dynamic balance between disease surveillance and privacy in the United States during the twentieth century. The historical chapters examine tuberculosis, syphilis, occupational diseases, cancer, and birth defects. Other chapters focus on the contemporary medical issues of AIDS reporting and registries of childhood immunizations. Each chapter can be read independently.

Surveillance is defined as “the ongoing, name-based reporting of cases of disease to state and local health departments” (p. xvii). The uses of surveillance include investigation and tracking of cases of disease, contact tracing, quarantine, treatment, program development and evaluation, epidemiological studies of disease patterns, and sanitary inspections. Each use has raised privacy concerns.

Systematic disease surveillance by public health departments began around 1900 after bacteriology discovered modes of transmission of infectious diseases. Mandatory reporting of specific diseases by public health departments was upheld by the courts, which recognized the impact on privacy. Later the Cold War and computerized data collection elevated concerns about privacy, which the Supreme Court ruled a constitutional right in the 1960s, but excluded most public health surveillance. Throughout the century, public health departments steadily expanded patient privacy by reducing public access to information about cases of disease.

Tuberculosis, as the greatest cause of urban mortality, became a surveillance issue around 1900 after the discovery of its contagious nature. Most surveillance sought to identify, monitor, and inspect poor tuberculosis patients living in overcrowded tenements, but many cases were not reported. Opposition was based on traditional beliefs that tuberculosis was hereditary, and intrusions into the physician-patient relationship. Health departments protected patient privacy by limiting access to their tuberculosis registries.

Syphilis surveillance began in the 1910s, raising issues of patient privacy and the physician-patient relationship. World War I federal legislation funded venereal disease control programs, which led to universal state-level reporting using a variety of methods to protect patient privacy. The use of penicillin to treat syphilis in the 1940s expanded the goal of surveillance from locating the source to treating the patient, but this did not eliminate underreporting.

Occupational disease reporting changed the issues to vulnerable workers and industry regulation. By the 1910s several states required physicians to report a list of diseases related to employment, which produced problems of physician compliance and the occupational