



Book Review

Friedman, Lawrence. 2007. *Guarding Life's Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy*. Stanford, CA: Stanford University Press.

348 pp. \$20.95 (US) hardcover; ISBN 978-0-8047-5739-3.

Valerie Steeves

Department of Criminology, University of Ottawa, Ontario, Canada. <mailto:vsteeves@uottawa.ca>

Lawrence Friedman is a leading American legal historian with an impressive command of the case law dealing with defamation, blackmail and breach of promise. His breadth of knowledge and historical insight provide a good backdrop for his examination of the ways in which Victorian society used the law to both protect a strict code of morals, and provide leeway for those elites who violated that code. Critical scholars will see little new in the argument that the law works to protect the reputations of the rich and powerful, and be especially skeptical about how Friedman uncritically celebrates this “Victorian compromise” as a child of the American dream. However, in spite of its flaws, Friedman’s book makes an important point: privacy is a social value that has been articulated in legal discourses over time in a number of areas that predate the current data protection regime.

Friedman himself fails to fully develop this insight, primarily because he takes a relatively conservative approach to privacy. For the most part, he stays within the confines of the Westinian view of privacy as control over the flow of information about oneself, and frequently collapses privacy into secrecy. Given his focus on the Victorian discomfort with all matters sexual, this is perhaps unsurprising. However, he also limits the scope of his privacy analysis significantly when he concludes that the law has taken little interest in privacy *per se* until recently. On the contrary, his discussion of the complex social negotiation of reputation in a society that was driven by the ideals of self-control, sexual repression and the Protestant work ethic demonstrates how the laws of the day created a zone of privacy around certain people in order to promote individual autonomy and social cohesion.

Friedman starts by arguing that, in the increasingly mobile society of Victorian America, reputation could no longer be grounded in a lifetime of social interaction; respectability thus became the key to both social standing and access to credit. Respectability was also the key to social mobility. Since there was no landed gentry in the United States, those who struck it rich could entrench their social standing by conforming to a strict code of Victorian morals – by becoming “respectable.” This social mobility was also imbued with the “ethos of second chances.” Even though Victorian mores privileged self control and repression, the “respectable” man and, to a lesser extent woman, could stray from the path. Victorian society therefore needed a mechanism to reinstate them into good society, particularly because the stability of the young and “vulnerable” American democratic system rested upon due deference being given to those in authority.

Enter the “Victorian compromise.” The laws of the day enforced a strict moral code but, at the same time, created mechanisms to forgive certain people - mostly moneyed men - their indiscretions. In doing so, the law created a sphere of privacy for elites. Defamation, for example, sought to protect the reputations of the wealthy directly. Laws criminalizing blackmail further protected elites from the exposure of their “sins” by punishing their blackmailer, in effect protecting the “sinner” at the expense of the one who

Steeves, Valerie. 2009. Review of Friedman’s *Guarding Life’s Dark Secrets*. *Surveillance & Society* 6(1): 85-86. <http://www.surveillance-and-society.org> | ISSN: 1477-7487

© The author(s), 2009 | Licensed to the Surveillance Studies Network under a [Creative Commons Attribution Non-Commercial No Derivatives license](https://creativecommons.org/licenses/by-nc-nd/4.0/).

threatened to tell all. Breach of promise actions provided a mechanism to protect the reputations of “respectable” women who had sex outside of marriage by suing the man for not entering into marriage subsequently.

Friedman also provocatively suggests that, as the Victorian compromise gave way first to the strict moralism of the temperance movement and then to the free-wheeling ways of the permissive society, the balance of privacy shifted. He posits that today's popular belief, nurtured by the media, that the public have a “right to know” the intimate details of the heartbreaks, illnesses and misfortunes of the wealthy and the powerful means that elites now have far less privacy than the average person. On the other hand, that average person is given far more room to make personal decisions about abortion, birth control, sexual partners and lifestyle choices.

Friedman's analysis begs a number of questions. For example, he dismisses the role of reputation in the social interactions of the working class and assumes that the poor had no privacy to win or lose. And the slope between the “Victorian compromise” and an apologia for the abuses of the wealthy is a slippery one that he is only partially successful in avoiding. But the strength of the book lies in his walk through the case law of the day. The experiences of men and women who sought legal protection for reputation are a fascinating source of primary material evidencing the complex nature of the social negotiation and meaning of privacy.