PRIVACY AT THE MARGINS

SCOTT SKINNER-THOMPSON

"*Privacy at the Margins* is a tour de force. It reinvigorates our understandings of why privacy ought to be protected by identifying the First Amendment values that privacy rights implicate. It convincingly argues that privacy ought to be protected not simply because invasions of privacy injure dignity, but also because they frequently function to subordinate marginalized individuals and communities. Scott Skinner-Thompson has written a book that will be looked to for generations to come — a major feat in the field of privacy."

Khiara M. Bridges, Professor of Law, University of California, Berkeley School of Law and author of *The Poverty of Privacy Rights*.

"This is an enormously important book about a crucial aspect of privacy law that has been overlooked: the way in which it affects historically discriminated against individuals. Professor Skinner-Thompson focuses on privacy for our public actions and for information about us and examines how this affects marginalized communities. His treatment of this topic is stunning in its originality, its clarity, and its insightful proposals for change."

Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law.

"*Privacy at the Margins* makes a significant contribution in helping us understand the importance of privacy for equality for the most vulnerable among us. It pushes legal conceptions of privacy in new ways, reframing privacy as expressive resistance to the powerful and as indispensable to equality of opportunity. It is thought-provoking, creative, and an important must read."

Danielle Keats Citron, Professor of Law, Boston University School of Law and Vice President, Cyber Civil Rights Initiative.

"In a world in which privacy has been privatized, the marginalized and precarious in society need it more than ever. Why then has privacy received such limited protection by courts and lawmakers? In his signature style, Scott Skinner-Thompson brilliantly wrestles with this critical question and proposes insightful ways to redress the problem, both as a legal and discursive matter. *Privacy at the Margins* offers a roadmap to transform privacy from an individualistic right into an anti-oppression legal tool. This is a crucial text for our new digital age and for anyone interested in surveillance, anti-subordination, justice, and privacy today."

Bernard E. Harcourt, author of *Exposed: Desire and Disobedience in the Digital Age* and *Critique & Praxis*, and Isidore and Seville Sulzbacher Professor of Law and Professor of Political Science at Columbia University.

PRIVACY AT THE MARGINS

Limited legal protections for privacy leave minority communities vulnerable to concrete injuries and violence when their information is exposed. In *Privacy at the Margins*, Scott Skinner-Thompson highlights why privacy is of acute importance for marginalized groups. He explains how privacy can serve as a form of expressive resistance to government and corporate surveillance regimes – furthering equality goals – and demonstrates why efforts undertaken by vulnerable groups (queer folks, women, and racial and religious minorities) to protect their privacy should be entitled to constitutional protection under the First Amendment and related equality provisions. By examining the ways even limited privacy can enrich and enhance our lives at the margins in material ways, this work shows how privacy can be transformed from a liberal affectation to a legal tool of liberation from oppression.

SCOTT SKINNER-THOMPSON is an Associate Professor at Colorado Law School, where he researches constitutional law, civil rights, and privacy law, with a particular focus on LGBTQ and HIV issues.

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SCOTT SKINNER-THOMPSON
Colorado Law School

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"Performative Privacy," 50 *UC Davis Law Review* 1673 (2017)
"Outing Privacy," 110 *Northwestern University Law Review* 159 (2015)

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Introduction

Privacy often suffers in courts of law and as a legislative or regulatory priority. Privacy, in effect, is marginalized as a right and frequently ranked below security or law enforcement concerns. Often it is even ranked below administrative, personal, or corporate convenience. At the same time, privacy is of acute significance for members of marginalized communities – queer folk, racial and religious minorities, women, immigrants, people living with disabilities, people living in poverty, workers, and those at the intersections.

Why is it that privacy receives limited protection from courts and legislatures notwithstanding the heightened necessity of privacy for communities fighting for lived equality; communities currently at the margins?

What are the particular doctrinal limitations of privacy law that exacerbate the precariousness of marginalized communities?

Are there nevertheless undercurrents within certain judicial contexts that, if emphasized, might lead to greater protection for those in precarious positions?

Are there ways of thinking about privacy rights that might lead to more robust privacy protection by courts and lawmakers and better capture why privacy is of critical importance, particularly for vulnerable communities?

Put differently, can privacy be transformed from a liberal, individualistic value into an anti-oppression legal tool?

Privacy at the Margins seeks to answer these questions in the context of constitutional law and, in so doing, to provide solutions in the form of legal theories or frames for privacy that will better advance the privacy rights of marginalized communities in courts and society. It is, at its heart, focused on ways to adapt legal doctrine so as to better protect the privacy rights of the precarious while simultaneously attempting to reinvigorate broader societal appreciation for why privacy matters – for everyone (albeit perhaps to different degrees). To do so, the book musters insights from critical disciplines (queer, anti-racist, feminist, and surveillance studies) and applies them to the law. And it emphasizes the ways technological

developments have made privacy more relevant – not less (as some have suggested) – underscoring how advances in technology require updates in law. The book focuses on two primary – and sometimes overlapping – privacy contexts or kinds or privacy: privacy in public (privacy while someone navigates physical or online space) and informational privacy (that is, unconsented to disclosure of an individual's information). As to each context, it involves three principal aims.

First, taking a critical view of several seemingly benign regulatory laws and background norms – and building on a rich body of new scholarship – *Privacy at the Margins* documents and highlights many of the ways in which the privacy of marginalized communities across several intersectional demographic groups is uniquely endangered by both government and privatized surveillance regimes (broadly defined), the dramatic, concrete harms caused by that surveillance and, correspondingly, why privacy for such communities is of heightened practical and material importance.

For example, law enforcement uses the lack of legal protections for privacy while in public to target racial and religious minorities for surveillance, which is a gateway, "but for" cause for the disproportionate degree to which black, Latinx, and Muslim communities are criminalized and subject to carceral punishment. (Of course, structural and individual prejudice are the principal cause). But such surveillance and the lack of public privacy also pushes these communities from the public square, deterring them from entering society on their own terms and, in effect, erasing aspects of their identities from society. Similarly, the government's purportedly "neutral" administrative surveillance apparatuses not infrequently out information regarding people's sexuality, gender identity, and HIV status, potentially subjecting people to discrimination on the basis of that information – discrimination that, in many instances, may not yet be universally impermissible (or, where technically forbade, is difficult to regulate due to underenforcement and access-to-justice barriers). The first goal of the book is to detail that those who are already in the most precarious social positions are disproportionately vulnerable to privacy violations, while the privacy of the privileged is more protected. This is no accident. And it occurs notwithstanding that (because?) these marginalized communities are most in need of privacy in order to avoid downstream discrimination and other negative consequences that often results when their sensitive information, including but not exclusively information directly to their minority status, is disclosed.

Simply put, the loss of privacy increases the precariousness of marginalized individuals' lives and vulnerable groups are less able to absorb the social costs associated with privacy violations that may impact large swaths of people, not just the marginalized. That is, members of marginalized communities not only suffer a greater amount of privacy violations, but any such incursions also inflict exponentially outsized harms on members of marginalized communities.

Second, the book scrutinizes particular aspects of privacy law that are facilitating the diminished privacy of marginalized communities and analyzes how existing

legal theories of privacy have, by and large, given inadequate attention to the amplified importance of privacy to marginalized communities and been unable to connect those privacy harms to doctrinal solutions. Instead, in various legal contexts, privacy continues to be conceptualized and framed as a broad, amorphous, universalist value – something akin to autonomy, dignity, or personhood – that fails to capture the discrete, particular, and *material* harms that directly result from privacy violations. For instance, in the informational privacy context (again, defined as trying to prevent the disclosure of information about someone), there has been a tendency to emphasize how the ability to keep certain information secret is key to indirectly ensuring that the person has control or autonomy over their lives. And with regard to efforts to maintain privacy in public by, for example, wearing a hoodie or using online encryption tools to obfuscate one's cyber activity, academics have primarily focused on public privacy's indirect constitutional benefits, such as its ability to make the freedom of association meaningful in practice. While undoubtedly accurate and important components of why privacy matters, to date, the focus on broad values or indirect benefits has been met with limited judicial purchase.

Third, then, *Privacy at the Margins* suggests alternative legal theories, and corresponding rhetorical frames, for a variety of privacy problems afflicting marginalized communities. In doing so, I draw on authorities ranging from critical social theory (including feminist and anti-racist movements), public health, and human rights activism – and connect them to law – to help underscore that privacy isn't all or nothing, but in some contexts, it is everything.[1] We don't necessarily need complete privacy in every situation in order for privacy over certain information or in certain settings to serve as a form of harm or risk reduction, mitigating concrete injuries – injuries that can have a tremendous material impact on people's lived experience. Privacy can operate as a form of safety, shielding people from what is, in effect, "surveillance violence" – privacy violations that often lead inexorably to grave, sometimes deadly, material harm.[2]

In a nutshell, I advocate that, in certain contexts, privacy's expressive and anti-subordination dimensions be centered in discussions about why we need privacy rights. Once privacy's ability to directly advance equality, anti-subordination, and expressive interests is comprehensively understood, privacy may receive increased societal appreciation and doctrinal protection. Specifically, efforts to maintain

[1] In this way, I attempt to connect the dots between legal discussions of privacy, which often focus on liberal, individualistic, and formalist approaches, and the more critical approaches adopted by other disciplines, including surveillance studies. *Cf.* Julie E. Cohen, *Studying Law Studying Surveillance*, 13 Surveillance & Soc'y 91 (2015).

[2] This draws from Anna Lauren Hoffmann's concept of "data violence" and Dean Spade's development of the theory of "administrative violence." Dean Spade, Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law (2011); Anna Lauren Hoffmann, *Data Violence and How Bad Engineering Choices Can Damage Society*, Medium (Apr. 30, 2018), https://medium.com/s/story/data-violence-and-how-bad-engineering-choices-can-damage-society-39e44150e1d4.

public privacy, rather than serving merely as an indirect incubator for freedom of thought or enhancing the ability to freely associate (though they are that), should be framed as direct, expressive statements of resistance to surveillance regimes and their subordinating effects, falling more squarely within the First Amendment's expansive protections. For informational privacy problems, rather than emphasizing the more attenuated relationship between privacy and dignity or autonomy, litigants should focus on the more palpable importance of certain categories of information (such as intimate, sexual, or medical information) and how, when disclosed, the information directly leads to downstream negative consequences. For instance, when a person's transgender status is disclosed by government policies that restrict the ability of an individual to correct the gender marker on a driver's license or birth certificate, that person is often subject to employment discrimination on the basis of their gender identity – discrimination that is still permissible in some contexts (for example, by small businesses in many states). More gravely, as a direct, material result of the privacy violation, the person may be exposed to harassment or physical violence.

In sum, the book is designed to highlight the acute need for privacy among marginalized communities, demonstrate how existing legal frames are falling short, and, finally, chart a way forward both doctrinally and in terms of public discourse in how we think and talk about privacy. In so doing, the book does not take a one-size-fits-all approach to privacy problems – and the doctrinal solutions proffered for threats to informational privacy and privacy while in public differ because the problems themselves differ. Likewise, the legal source of the right to privacy will vary depending on the context.

For example, the initial chapters focus predominately on problems of privacy in public and argue that the key to securing protections for both privacy while navigating physical space and online space may lie, as noted, in conceptualizing efforts to maintain privacy as outward statements of resistance to the surveillance regime. In this context, the doctrinal foothold is the First Amendment's protections for free expression and the particular doctrinal solicitude that has been shown to iconoclastic speech of marginalized voices. Similarly, to the extent private party recording of public space is itself expressive and protected against government regulation when targeted at, for example, police officers who may be engaged in the use of excessive force, the First Amendment's authorization of limitations on heckling speech provide an avenue for regulating the recording (particularly corporate recording) when it infringes on individuals' privacy – their expressive, performative privacy. Later chapters deal with informational privacy problems posed by both government disclosure of sensitive information and private party disclosure of such information. As to government disclosures, the book argues that constitutional due process protections embodied in the Fifth and Fourteenth Amendments limit the government's ability to out our sensitive information, particularly when disclosure of that information leads to material harms, which will often be the case when information pertaining to particular marginalized

characteristics is disclosed. Conversely, as to private parties, constitutional equality principles necessitate modifying public disclosure tort doctrine so as to more robustly and comprehensively provide remedies to those who have their information disclosed. Put differently, emphasizing the importance of equal, but contextually sensitive, informational privacy rights may help privacy advance anti-subordination goals. Importantly, as to both public privacy and informational privacy, the emphasis on direct expression and anti-subordination will not only lead to judicial recognition of the rights at issue, but more robust protection – moving from balancing tests embodied in much extant privacy law (such as the Fourth Amendment) to heightened scrutiny when the government is the privacy violator.

* * *

Contrary to the received wisdom, privacy is not dead. Or at least it needn't be. With greater attention to the ways in which even limited privacy can enrich and enhance our lives at the margins in concrete, direct ways, legal protections for privacy can be strengthened for us all, with particular benefits flowing to marginalized communities. Privacy can be transformed from a liberal affectation to a legal tool of liberation from oppression.

* * *

Before going further, though, some definitional explanations and related preliminary ground work will be useful.

ON PRIVILEGE AND MARGINALIZATION

"Privilege" can exist in many forms and people may be privileged in certain contexts, but not others. As explained by critical feminist/anti-racist scholar bell hooks, "[i]t is necessary for us to remember, as we think critically about domination, that we all have the capacity to act in ways that oppress, dominate, wound (whether or not that power is institutionalized)."[3] Relatedly, as underscored by Kimberlé Crenshaw, people can be made vulnerable or marginalized in multiple, intersecting ways,[4] but be privileged in other spaces. Consequently, as used throughout, the concepts of privilege, marginalization, and vulnerability are dynamic and may not align perfectly with the relatively narrow categories of protected classes recognized under traditional American equal protection analysis.[5] Instead, they operate as

[3] bell hooks, Talking Back: Thinking Feminist, Thinking Black 21 (Routledge 2015) (1989).

[4] Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139, 140 (1989) (explaining how people may be multiply burdened by intersecting forces and that "the intersectional experience is greater than the sum of racism and sexism").

[5] Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 Yale J.L. & Feminism 1, 2–6 (2008) (outlining the impoverished concept of equality in American law and proposing a more substantive approach that considers how

shorthands annotating that – in the particular context being discussed at a given moment – a person with certain characteristics may be marginalized by society because of those characteristics.

ON PRIVACY

Just as with overly broad and conversation-ending rhetorical appeals to "security," the word "privacy" can cover multitudes. As noted, but worth reemphasizing, in this book I am principally concerned with two types of privacy, or privacy contexts. First, public privacy – privacy or anonymity while someone navigates physical or online space. Second, informational privacy – unconsented to disclosure of information about a particular individual. Where there is a risk of conflation, I try to emphasize specifically which privacy variety I'm discussing, but, inevitably, at times I refer to "privacy" as a shorthand, but context and chapter focus should make clear which kind of privacy problem is being discussed.

ON ANTI-SUBORDINATION

A key argument of this book is that privacy (both informational and while in public) can serve important anti-subordination goals and, indeed, that where privacy does advance anti-subordination ends for marginalized groups, legal protections for privacy rights should be at their apex. "Anti-subordination" refers to the idea that legal equality principles ought not merely prohibit the classification of people based on various demographic criteria (race, sex, disability, etc.), but that lived equality – that is, substantive, material day-to-day equality as opposed to formal, "on-the-books" equality – necessitates dismantling facially neutral (non-classifying) laws that nevertheless oppress particular groups. An anti-subordination theory of equality supports, at times, being conscious of different classifications (rather than ignoring them) and, perhaps, using those classifications to level up those that are being subordinated, including through reform of facially neutral legal regimes that, as rendered, are anything but. When applied to privacy law, an anti-subordination approach to privacy law recognizes that even if a law does not facially classify based on a protected characteristic, there is, in reality, nothing neutral about surveillance systems – they are replete with normative ends and masked power that reinforce racial, sexual, and ableist hierarchies.[6] And the privacy rules that reinforce and facilitate these hierarchies ought to be overhauled.

vulnerability is a constant of the human condition and a product of more than the rigid identity-based typologies of equal protection law).

[6] Mark Andrejevic, *Foreword* to Feminist Surveillance Studies ix, xi (Dubrofsky & Magnet eds., 2015); Ruha Benjamin, Race After Technology 77 (2019).

ON SPEAKING WITH OTHERS

Finally, given that this book involves attempting to highlight how the lives of many different groups of people are made more precarious by administrative and carceral surveillance systems – and the potential synergies among these groups as a result of their related, though far from identical, struggles – at several turns I am writing about experiences with which, as a white economically privileged gay male documented citizen, I do not have direct experience. In an effort to be cognizant of that privilege and the false authority my position as a legal academic may supply my voice, in researching these themes, I have tried – imperfectly – to take up the charge of Audre Lorde: "where the words of [different marginalized communities] are crying to be heard, we must each of us recognize our responsibility to seek those words out, to read them and share them and examine them in their pertinence to our lives."[7] Correspondingly, throughout the book I endeavor to center and amplify the voices of those within the communities at issue, particularly those "who also ha[ve] the authority of lived experience."[8] Which only makes sense given that many within marginalized communities need no tutorial regarding the ways surveillance and lack of lived privacy impacts them – instead, it is those with relative power and privilege who need this information most acutely and to whom this book is primarily directed.[9]

[7] Audre Lorde, Sister Outsider 43 (rev. ed. 2007).

[8] bell hooks, Talking Back, *supra* note 3, at 44.

[9] One important caveat before diving deeper: the descriptions of the cases contained herein are largely taken from court opinions (with the occasional media report), which often evaluate allegations, rather than established evidence. I am in no position to confirm, and am in no way suggesting that any of the allegations discussed in any particular case are, in fact, true or false.

1

No Privacy in Public = No Privacy for the Precarious

Broadly speaking, both privacy doctrine and public discourse suggest that the right to privacy is significantly diminished once one enters the public realm or once one's information is shared with others.[1] In fact, certain doctrines provide that the right to privacy while in public is nearly nonexistent, that privacy is more or less "dead" once you walk out your front door or expose your activities to anyone else – even if you are fortunate enough to have your own property and still be on it.[2] Pursuant to this conception of the right to privacy, privacy is synonymous with secrecy – and, as described by Daniel Solove, this "secrecy paradigm" greatly limits legal protection for privacy.[3] As it stands, *without lived privacy, one has no claim to legal privacy or privacy rights – and without legal privacy, one has no ability to protect or maintain lived privacy.*[4]

But in a world of over seven billion people and almost constant surveillance by governments, corporations, and other individuals, keeping one's activities and information completely secret (and thus entitled to a right to privacy under the traditional "secrecy paradigm") is impossible.[5] Even more so for certain marginalized communities who are more likely to live in conditions where their information is exposed to

[1] Julie E. Cohen, Configuring the Networked Self 121 (2012) ("Generally speaking, surveillance is fair game within public space, and also within spaces owned by third parties").

[2] Michael Warner, Publics and Counterpublics 27 (2002) ("Modern American law frequently defines privacy as a zone of noninterference drawn around the home. So strong is this association that courts have sometimes refused to recognize a right to privacy in other spaces"); A. Michael Froomkin, *The Death of Privacy?*, 52 Stan. L. Rev. 1461, 1536–37 (2000).

[3] Daniel J. Solove, A *Taxonomy of Privacy*, 154 U. Pa. L. Rev. 477, 497 (2006).

[4] *Cf.* Harry Surden, *Structural Rights in Privacy*, 60 S.M.U. L. Rev. 1605, 1612 (2007) (analyzing the role of physical and technological structural restraints in protecting privacy rights).

[5] Andrew E. Taslitz, *Privacy as Struggle*, 44 San Diego L. Rev. 501, 504–05 (2007) (documenting the "requirement of superhuman individual efforts to attain secrecy . . . as an essential prerequisite to the existence of privacy" rights).

others and who are more likely to be subject to and targeted for government surveillance in the first instance.[6]

This chapter discusses the current doctrinal and discursive barriers preventing a meaningful right to privacy while navigating both physical and online space, and once information has been exposed to others, and also highlights how this prevailing anti-privacy ethos creates unique problems for members of different marginalized groups. The narrow conception of privacy as being largely nonexistent in public spaces (sometimes referred to as "situated privacy")[7] serves as a background rule or norm that enables and sanctions greater surveillance of marginalized communities.[8] The cramped legal frame leads to further loss of lived privacy with tangible consequences. It creates a self-fulfilling prophecy of privacy loss – once information is exposed to the "public" (even marginally), greater surveillance and loss of privacy is then often legally permissible. As another has put it, so long as legal privacy "is parasitical on private-sphere privacy, the former must die as its host dies, and this host is undoubtedly faltering today in the networked, monitored and digitized world we are calling our own."[9] And the secrecy paradigm is increasingly debilitating as privacy-invading technologies expand the reach of state and private, corporate surveillance regimes (which often work hand in hand).

The physical and informational zone of what is truly secret – known to no one else – is shrinking dramatically.[10] As such, under the "privacy-only-in-private" theory, the law protects very little indeed. Paradoxically, as government, corporate, and citizen surveillance regimes expand (decreasing what can functionally be kept secret), the right to privacy is extinguished along with it.[11] Instead of serving as a bulwark against encroachments on privacy, the "privacy-only-in-private" theory is defined in such a way to ensure that privacy will, in fact, be dead. And this constricted legal definition of privacy permits privacy-invading technologies and criminal, administrative, corporate, and interpersonal/individual surveillance systems to have relatively free rein.

[6] Virginia Eubanks, Automating Inequality: How High-Tech Tools Profile Police, and Punish the Poor 6 (2017) ("People of color, migrants, unpopular religious groups, sexual minorities, and other oppressed and exploited populations bear a much higher burden of monitoring and tracking than advantaged groups").

[7] Margot E. Kaminski, *Privacy and the Right to Record*, 97 B.U. L. Rev. 167, 203 (2017).

[8] *Cf.* Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 Yale L.J. 950 (1979).

[9] Jed Rubenfeld, *The End of Privacy*, 61 Stan. L. Rev. 101, 118 (2008).

[10] Joel Reidenberg, *Privacy in Public*, 69 U. Miami L. Rev. 141, 142 (2014); Bernardine Evaristo, Girl, Woman, Other 144 (2019) ("the borders between public and private are dissolving").

[11] Thomas P. Crocker, *From Privacy to Liberty: The Fourth Amendment after* Lawrence, 57 UCLA L. Rev. 1, 6–7 (2009) ("If public exposure forfeits privacy protections, then how constitutional doctrine defines public exposure determines what aspects of ordinary life receive protection from government interference. What receives constitutional protection in turn shapes the boundaries of ordinary life").

But there is nothing a priori about this definition of private and public – instead, it is an ideology; a normative architecture that has profound implications for who is protected, and who is not; who has room to flourish, and who is squashed.[12] The limited conception of what is legally protected as "private" is a form of social control, helping to buttress hegemonic social norms and ways of being; ways of existing, with devastating implications for many marginalized communities whose lives are too often overdetermined by government and corporate attempts to render their lives observable.

To be sure, while the secrecy paradigm plays a prominent role in erasing both the lived privacy and legal privacy rights of many marginalized communities, it is reinforced by other background rules and rhetorical frames, such as those that frame privacy as a commodity or an element of property rights. As powerfully underscored by others,[13] the commodification of personal information encourages and endorses a transactional approach to privacy rights, countenancing the trading away of privacy for other material goods, ranging from government benefits to social media accounts. Such a frame also devalues privacy as a mere object of commerce, rather than a foundational, material right critical to human flourishing. *But before a person can even trade away their information, they must be deemed to control that information in the first instance*. Hence this book's focus on legal rules and rhetorical frames that suggest people lack rights over their information at all once it is exposed to others.

LAW: PRIVACY AND PUBLIC ARE CONTRADICTORY TERMS

In several different doctrinal contexts, the law provides that privacy does not meaningfully exist in public space or once the information has been shared outside of limited confines. While what counts as "public" and "private" is driven by normative value judgments and choices, the law contributes to making them "seem to be preconceptual, almost instinctual" and powerfully shapes how we learn public and private, making the fixed conceptions "hard to challenge."[14]

Fourth Amendment criminal procedure law is a prime example. In theory, the Fourth Amendment prevents the government from conducting searches for the purpose of investigating alleged criminal wrongdoing without first securing a warrant from a judge after showing that there is "probable cause" to believe that evidence of a crime will be discovered. But no protected "search" requiring a warrant and a showing of probable cause occurs if the person did not have a

[12] Warner, *supra* note 2, at 27 ("Public and private are not always simple enough that one could code them on a map with different colors – pink for private and blue for public").

[13] *E.g.*, Shoshana Zuboff, The Age of Surveillance Capitalism 65 (2019); Julie E. Cohen, Between Truth and Power 50 (2019); Khiara Bridges, The Poverty of Privacy Rights 10, 66–68 (2017).

[14] Warner, *supra* note 2, at 27.