

Lake, Jessica: *The Face That Launched a Thousand Lawsuits: The American Women Who Forged a Right to Privacy*. New Haven: Yale University Press 2016. ISBN: 978-0-300-21422-2; 320 S.

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Thanks to the initiatives of individual women, who fought against the nonconsensual circulation of their images at the beginning of the 20th century, American privacy laws were shaped in the way we know them today. This is what Jessica Lake claims in her book, which is based on her doctoral dissertation in law and film studies at the University of Melbourne.

Typically, law and history scholars refer to Samuel D. Warren and Louis D. Brandeis as the inventors of the American right to privacy. In 1890, the two Harvard Law School graduates published an article titled „The Right to Privacy“ in the Harvard Law Review, which was repeatedly labeled as one of the most influential legal articles of all time.<sup>1</sup> The impetus for the article itself, as the story goes, was the intrusion of photographers at the wedding of Warren’s daughter. William L. Prosser later stated – in arguably the second most famous law review article about the right to privacy – that it was the face of Warren’s daughter „that launched a thousand lawsuits“ (p. 4).<sup>2</sup> Even though Prosser’s wording seems to have been the inspiration for the title of Lake’s book, the author does not provide another story for the genesis of the Harvard Law Review article.<sup>3</sup> Instead, Lake proposes new perspectives on the history of the right to privacy in the United States by placing „the legal activism of individual women front and center“ (p. 2). She wants to show „the legal and social disruptions produced by women (and a minority of men) who spoke out and publicly asserted their right to control the publication of images (both still and moving) of their faces and bodies“ (p. 4) and stresses the agency of women in a time when women did not yet have full citizen rights.

Lake begins by „[s]etting the scene“ (p. 19) with a survey of the technological developments in photography, printing, and film

in the last third of the 19th century, and at the beginning of the 20th century. However, the chapter does not stop at simply describing technological innovation. It also elucidates how promotion and advertising of photographic equipment introduced new tropes that created an analogy between capturing an image and capturing game with the male photographer equalized with a hunter, the camera with a weapon, and the pictured object – mostly female – with prey (pp. 32–33).

In the following five chapters, Lake offers a close reading of a number of diverse lawsuits brought forth by women to protect their own image. In the second chapter, Lake shows that although conservative and paternalistic language – previously coined by Warren, Brandeis, and others – was used in earlier image litigations, such as in *Roberson v. Rochester Folding Box*; the cases can be read as protest by women against the use of their photographs. In court, stereotypes of feminine virtues were used to enable women autonomy, self-ownership, and individuality (p. 88).

Similarly, legal medical cases also used the burgeoning language of privacy. Lake’s third chapter discusses how in cases such as *DeMay v. Roberts*, „a transition between the traditional ‘protection’ of women’s bodies as an extension of male private property and the introduction of the concept of privacy as part of a woman’s claim for bodily autonomy“ took place (p. 90).

Lake also discusses moving pictures and the entertainment industry in the following chapters. Whereas she investigates how women protested against being recorded in public for nonfiction films in the fourth chapter, the fifth chapter shows how the right to privacy became a professional tool for women who worked in the entertainment business and other fields – which involved „techniques

<sup>1</sup> Cf. Samuel D. Warren / Louis D. Brandeis, *The Right to Privacy*, in: *Harvard Law Review* 4 (1890), pp. 193–220.

<sup>2</sup> Cf. William L. Prosser, *Privacy*, in: *California Law Review* 48 (1960), pp. 383–423.

<sup>3</sup> This is welcome enough, since the story has long been refuted by many scholars: See most recent: Amy Gajda, *What If Samuel D. Warren Hadn’t Married a Senator’s Daughter? Uncovering the Press Coverage that Led to „The Right to Privacy“*, in: *Michigan State Law Review* 35 (2008), pp. 35–60.

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of appearing,” a term coined by Liz Conor (p. 153). While women who were recorded in public used the right to privacy against the competing (male) claim of public interest, the right to privacy was increasingly used by women who worked in entertainment to monetize their images, and converted the right to privacy to a right of publicity.

In the last chapter, Lake is interested in women and also men, who used the right to privacy to protect their own life stories – which were increasingly turned into fictional movies by the emerging Hollywood film industry in the 1940s. Lake convincingly shows that women could more easily invoke the right to privacy to protect their life stories than men. This created a contradiction: The right to privacy helped, on the one hand, „reinforce the connection of femininity with private life by seeking to return women’s portraits, bodies, and narratives to the private sphere“ and, on the other hand, „provide women with some respite from voyeurism and exploitation and offered some control over the terms of their public appearance“ (pp. 220–221).

Lake researches the contributions of women to the creation of American privacy laws, not only through looking at the reported decisions, but by consulting the cases and briefs, which distinguishes her work from most others concerned with image rights. By investigating these mostly overlooked sources, Lake is able to quote from affidavits, pleadings, testimonies, and minutes of cross-examinations to „better understand how the advent of still and moving film changed the relationship of individuals to their own ‘form and features’ and why their concerns were expressed in the language of privacy“ (pp. 8–9). However, her discussion or contextualization of these sources and how they became manufactured falls short. Furthermore, some of her citations are misleading. The cases and briefs of the Court of Appeals and the Appellate Division of the Supreme Court of the State of New York, for instance, are not located in the Special Collection, but the General Collection of the New York State Library, and are quoted by Lake without actual call numbers, which makes them difficult to find (For example I was not able to locate the cases and briefs of

Lane v. Woolworth Co.).

In general, Lake’s focus is not on the law itself. For example she does not discuss the cases in the context of broader legal thinking, such as the turn from legal formalism to legal realism at the beginning of the 20th century. This is perhaps why she hardly looks at the discourse about the right to privacy in legal reviews and other forums like trade journals. Instead, Lake places her story in the context of contemporary women’s movements. She proves at times the links to the broader women’s movement – for instance, in *Roberson v. Rochester Folding Box*, Roberson’s lawyer, Milton Gibbs, was also campaigning for women’s suffrage in Monroe County in the State New York (p. 61).

Despite this critique, Lake’s work is sound and deserves wider reception for two main reasons: First, the use of mostly overlooked archival material shows how legal history can benefit if researchers turn to archival research. Second, by pointing our attention toward women who fought the circulation of their images, Lake tells a new and previously neglected history and thus increases our understanding of the origins of American privacy laws.

HistLit 2018-3-013 / Philipp Schulte über Lake, Jessica: *The Face That Launched a Thousand Lawsuits: The American Women Who Forged a Right to Privacy*. New Haven 2016, in: H-Soz-Kult 05.07.2018.