

The Gilded Closet: Media, Privacy, and Power in Unequal Times

by

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Bachelor of Fine Arts, Integrated Media  
St. Cloud State University, 2013

Submitted to the  
Department of Architecture  
in Partial Fulfillment of the Requirements for the Degree of  
Master of Science in Art, Culture and Technology

at the

Massachusetts Institute of Technology

September 2020

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## ABSTRACT

This thesis broadly interrogates the way three media technologies in the history of the United States have been used in relationship to wealth, sexuality, and the emergence of “the right to privacy” in the late 19<sup>th</sup> century. This includes photography in the First Gilded Age, cable television in the 1970s and the beginnings of the neoliberal economy, and networked media in the 2010s with the rise of surveillance capitalism and what some refer to as a Second Gilded Age. Drawing on Marxist and Queer theorists to analyze the inherent power structures across media, privacy, sexuality, and wealth, this text exposes new media environments as consistent sites of conflict between various classes of people and forms the theoretical and conceptual basis of my artistic practice.

Thesis Supervisor: Judith Barry

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## **Acknowledgements**

This thesis would not have happened without the help of many people. Judith, thank you for the opportunities, your time and patience, and for pushing this to be better. Lara, thank you for being a great co-worker, trusting me with your students, and reminding me that photography is still relevant. Jesal, Nida, Tobias, Katarina, Mario, Gediminas, and Renée, for reminding me that there are bigger things. Marion, for continuously holding us together. Kevin, for the laughs and understanding. Marissa, John, and Chelsea, for organizing our ideas even when we didn't know what they were. Gary, Zach, Erin, Ringo, and Rikas, for showing me what's actually important. Chucho, Aarti, Faruk, Emma, and Pohao, for jumping in and keeping up the momentum. I'm sorry this country is so messed up right now. Nancy, Rae, Luiza, Matt, and Casey for continuously raising the bar and lifting each other up (and for the parties—we're short one, don't forget). And to Bart, for talking me through this. I couldn't have done it without you.

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## **Introduction: Economics of Media and Power**

*the metamorphosis principle: established forms of communication media must change in response to the emergence of a new medium—their only other option is to die.*

— Roger Fidler, *Mediamorphosis: Understanding New Media*

First the elephant in the room: I can't emphasize enough that the times I'm writing this in are anything but normal. We have a reality television president who is simultaneously incompetent and incredibly destructive. The COVID-19 pandemic has shut down the country and killed over 150,000 people, with the numbers continuing to rise as misinformation around masks, medicines, and vaccines have stopped people from taking precautions that would stop the spread. Mass protests over racial justice issues have been met with retaliation of Federal agents who have basically gone to war with citizens. The power of media technologies, painfully obvious in this moment, is the primary concern of this thesis.

Two Marxist theorists, Walter Benjamin and Antonio Gramsci, made separate but complimentary arguments about the power of media in society. Benjamin argued that technologies of reproduction (primarily photography) undermines power structures by liberating artworks from the ownership of elite institutions,<sup>1</sup> and, at the same time, Gramsci, writing about the dominant power structures in society he called hegemony, argued that cultural production through media reinforces capitalist power structures.<sup>2</sup>

In the following text, I will look at three media technologies at three different time periods in the history of the United States to show that both theories, Benjamin's idea of media undermining existing power structures and Gramsci's idea of media creating power structures, are true. Each new iteration of media technology, from photography to cable television to algorithms, undermines existing power structures while creating new ones, and, despite the ongoing promise that media is being democratized in some way,

<sup>1</sup> Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," ed. Hannah Arendt, in *Illuminations* (New York: Schocken Books, 1969): 1-26.

<sup>2</sup> James Lull, *Media, Communication, Culture a Global Approach* (New York: Columbia University Press, 2000): 33-36.

the power structures continuously align to a top-down model. For example, tech companies like Facebook were able to undermine traditional media companies by giving narrative control to a wider swath of people. But, as the 2016 election showed, this shift in control did not lead to a more democratic electoral process, but arguably one that is less democratic. And, with each new iteration of media technology, that power structure becomes better at maintaining itself, making counterhegemonic uses of media more difficult than they were before.

I will show how these transformations occurred within photography in the late nineteenth century during the Gilded Age, with cable television in the decade after 1969 and the rise of neoliberalism, and, finally, over the last ten years of networked media and the rise of what Shoshana Zuboff refers to as surveillance capitalism.<sup>3</sup>

Drawing from anthropological approaches that view technology as not only physical mechanisms, but as broader ways of achieving certain objectives,<sup>4</sup> I will also discuss what I will refer to as a fourth technology—privacy—or more specifically the advent of “the right to privacy,” which has an ongoing and fraught relationship across all three of the time periods and media technologies listed above.<sup>5</sup>

My analysis of these technologies assumes that they are both social and physical, and is informed by technopolitics, which Edwards and Hechts define as “hybrids of technical systems and political practices that produced new forms of power and agency.”<sup>6</sup> It also includes theorists such as Bruno Latour and Langdon Winner who

<sup>3</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: PublicAffairs, 2020).

<sup>4</sup> Beth Coleman, "Race as Technology," *Camera Obscura: Feminism, Culture, and Media Studies* 24, no. 1 (May 1, 2009): 177-207.

<sup>5</sup> Foucault, in one of his last lectures, “Technologies of the self,” refers to four kinds of technologies: technologies of production, technologies of sign systems, technologies of power, and technologies of the self. Privacy can be either a technology of power or a technology of self.

Michel Foucault, “Technologies of the Self,” Lectures at University of Vermont Oct. 1982, in *Technologies of the Self*, 16-49. (Univ. of Massachusetts Press, 1988): 16-49.

<sup>6</sup> Paul N. Edwards and Gabrielle Hecht, "History and the Technopolitics of Identity: The Case of Apartheid South Africa," *Journal of Southern African Studies*, 36, no. 3 (September 2010): 619.

reject both social determinism and technological determinism to analyze how society and technology continuously influence each other.<sup>7</sup>

Building on theories of media convergence (which has several definitions and typically refers to media's integration into digital platforms),<sup>8</sup> I will consider media convergence more broadly, in form and time, to include things like photography and radio technologies converging into television.<sup>9</sup> I will also use definitions of media convergence that include not just the combining of media forms themselves, but the convergence of media into corporate,<sup>10</sup> military,<sup>11</sup> and social structures, something James Der Derian refers to as the military-industrial-media-entertainment network.<sup>12</sup>

I will also draw from Nancy Fraser and Michael Warner's concepts of counterpublics, which they define as public spaces, often regulated through media, that remain distinct from dominant power structures.<sup>13</sup>

Through these case studies I will show how media technologies have historically been contested sites of power struggles, where the technologies are used to both reinforce existing social norms and hierarchies, as well as reshape them. I will also argue that each new iteration of media technology, constantly remade by capitalists in pursuit of profit, makes current counterhegemonic uses of media more difficult. But with enough effort in creation, use, and regulation of media, new counterhegemonic forms can be found. And, finally, I will argue that the main culprit in these transformations of media is wealth.

<sup>7</sup> Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2008): 141.

Langdon Winner, "Do Artifacts Have Politics?" *Daedalus*, Vol. 109, No. 1 (Winter 1980): 121-136.

<sup>8</sup> Michael O. Wirth, "Issues in Media Convergence," in *Handbook of Media Management and Economics* (Mahwah, NJ: Erlbaum Associates, 2006): 445.

<sup>9</sup> Roger Fidler, *Mediamorphosis: Understanding New Media*, (Thousand Oaks, CA: Pine Forge Press, 1997): 27.

<sup>10</sup> Cinzia Dal Zotto and Artur Lugmayr, "Media Convergence as Evolutionary Process," in *Media Convergence Handbook Vol. 1: Journalism, Broadcasting, and Social Media Aspects of Convergence* (Berlin: Springer, 2016): 3-16.

<sup>11</sup> Lisa Parks, *Rethinking Media Coverage: Vertical Mediation and the War on Terror* (New York, NY: Routledge, 2018): 1-4.

<sup>12</sup> James Der Derian, *Virtuous War: Mapping the Military-Industrial-Media-Entertainment Network* (New York: Routledge, 2009).

Parks, *Rethinking Media Coverage*, 3.

<sup>13</sup> Michael Warner, *Publics and Counterpublics* (New York: Zone Books, 2014): 65.



Starting in the late nineteenth century, chapter one will look at how rapid industrialization in a liberal economy created wealth inequality, and how corresponding class criticisms with the proliferation of photography pushed for the advent of a right to privacy. The chapter will end with the philanthropy of George Eastman whose wealth was created by the inventions of popular photographic technologies, and how even in the age of mass media wealth still determines access to power structures in the United States.

Chapter two will look at the decade after 1969, the post-Great Depression economic regulations began to be undone, forming the beginnings of our current neoliberal economy. A major push in civil rights on race, gender, and sexuality coincided with the proliferation of a new media technology—cable television (itself a product of deregulation)—which had the potential to remove media control from local communities until regulatory resistance mandated public space for consumers to become content producers and broadcasters.

Chapter three will look at what I loosely refer to as “networked media,” first at digital piracy as an acceptable means of access in the age of mass media consolidation, and then at the impact of media on surveillance capitalism and what Shoshana Zuboff refers to as the “right to the future tense.”<sup>14</sup>

The final chapter will look at how my artistic practice brings all of these concepts together, broadly interrogating questions around the intersections of history, identity, privacy, and class structures, and how they can be told through media technologies which act as tools of oppression and repression.

Deeply rooted in my own identity and the ways in which active media consumption was foundational to it, my practice aims to problematize and illuminate my position in terms of broader power struggles. Media theorist Stuart Hall, expanding Gramsci’s theory of hegemony, writes that hegemonic power structures require constant work to be maintained and are constantly being renegotiated.<sup>15</sup> By exploring the places

<sup>14</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: PublicAffairs, 2020): 329-45.

<sup>15</sup> Stuart Hall, "Culture, Media, and the 'Ideological Effect'," in *Mass Communication and Society* (Beverly Hills, CA: Sage Publications, 1979): 315-48.

where I and others are able to penetrate power structures, my hope is to translate these counterhegemonic uses of media into models for others to do the same.

## The First Gilded Age

*For readers fond of the male body, the year 1891 makes an epoch. For readers who hate the male body, the year 1891 is also an important one.*

—Eve Sedgwick, *Epistemology of the Closet*

I start this analysis in the late nineteenth century for several reasons. Economically, this time was similar to today in many ways: new and rapidly expanding industries like oil, steel, and railways created extreme wealth inequality by funneling massive profits to a handful of monopolies that dominated these new technologies.<sup>1</sup> Then it was Rockefeller, Carnegie, and Ford; today it's Jeff Bezos, Mark Zuckerberg, and Peter Thiel, who I will talk about later. Mark Twain famously called the late nineteenth century the Gilded Age,<sup>2</sup> and some are starting to refer to today the same.<sup>3</sup>

It was also the first moment when contemporary notions of privacy, homosexual identity, and the advent of consumer photography—three concepts at the crux of my artistic practice—took hold in the United States. As I will show, all three of these concepts developed in ways that are deeply interrelated.

Foucault first pins the conception of the homosexual as a distinct category of people to a specific moment in 1870 primarily through new critical and medical discourses around sexuality.<sup>4</sup> Eve Sedgwick expands on Foucault's theory of sexual categorization, at this moment in particular, in the seminal queer theory text *Epistemology of the Closet*, which largely argues that the hetero/homo binary has been a defining aspect of society since the late nineteenth century. The most prominent example of this, she argues, is the mass dissemination of the metaphor of "the closet." It

<sup>1</sup> Sean Dennis Cashman, "Titans at War: The Industrial Legacy of Rockefeller, Carnegie, and Morgan," in *America in the Gilded Age: From the Death of Lincoln to the Rise of Theodore Roosevelt*, 3rd ed. (New York: New York University Press, 1994), 36-72.

<sup>2</sup> Mark Twain and Charles Dudley Warner, *The Gilded Age: A Tale of Today* (Mineola, NY: Dover Publications, 2020).

<sup>3</sup> Linda Yueh, "Are We Living in the Second Gilded Age?" *BBC News*, May 15, 2014, accessed August 01, 2020, <https://www.bbc.com/news/business-27419853>.

<sup>4</sup> Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (New York: Vintage, 1990): 43.

is no longer just used to refer to queer people publicly stating their sexuality, but of anyone disclosing any aspect of their identity.<sup>5</sup> This expanded in/out binary intrinsically ties homosexuality to ideas privacy. Sedgwick makes this argument primarily using literary analysis of works of the time, including Oscar Wilde's *The Picture of Dorian Gray* (1890), arguing that this time period, through art, was "prodigally productive of attempts to name, explain, and define this new kind of creature, the homosexual person..."<sup>6</sup>

Concurrently, in 1888, Kodak released their first consumer camera with roll film, making photography more accessible and pervasive than it had ever been before.<sup>7</sup> This proliferation of amateur photographers coupled with the increasingly bold declaration of homosexuality in public society coincided with a first call for a legal right to privacy in 1890.<sup>8</sup> The history of court cases around privacy rights suggest that this timing is not just a coincidence, but, as I will show, directly influenced each other in their conceptions.

<sup>5</sup> Eve Kosofsky Sedgwick, *Epistemology of the Closet* (Berkeley, CA: University of California Press, 2008): 72.

<sup>6</sup> Sedgwick: 83.

<sup>7</sup> Robert E. Mensel, "'Kodakers Lying in Wait': Amateur Photography and the Right of Privacy in New York, 1885-1915," *American Quarterly* (1991): 28.

<sup>8</sup> Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (1890).

## **The Right to Privacy**

Privacy, something I've been concerned with for a long time, is an abstract concept: it means different things to different people and often exists in contradictory ways. Some people are more open than others, or we might actively publicize aspects of our lives but feel aggrieved if that same aspect is publicized without our consent.

Broadly speaking, here I am defining privacy as anything that is separate from the public sphere (like privacy, what constitutes "public" is highly contested). Habermas defines the public sphere as a space where private individuals come together to form consensus—something that is later critiqued by Nancy Fraser and Michael Warner from feminist and queer perspectives, respectively, who argue that because not all private individuals are participants in consensus building, there is no singular public but many publics (and counterpublics).<sup>1</sup>

In the following text, I will focus specifically on "the right to privacy," which, as I will discuss in this chapter, from the late 19<sup>th</sup> century changed privacy from an idea to a technology that could be wielded as a tool for political gain. This means focusing less on what privacy "is," but what it "does."

While I begin this analysis in the late nineteenth century, discussions of privacy have been around to varying degrees for thousands of years. One of the earliest recorded instances is when Aristotle made distinctions between public and private life in Ancient Greece. He argued that government and politics, what he called "polis", is distinct from family life, or what he calls "oikos."<sup>2</sup> Though it's obvious now that there is no clear line between politics and our personal lives,<sup>3</sup> there is a space between them that can be and is regularly negotiated.<sup>4</sup>

<sup>1</sup> Nick Crossley and John Michael Roberts, eds., *After Habermas: New Perspectives on the Public Sphere* (Oxford: Blackwell, 2006): 1-10.

Warner, *Publics and Counterpublics*, 65.

<sup>2</sup> Andrew McStay, "Nothing to Hide, Nothing to Fear: Myth and Western Roots of Privacy." In *Privacy and the Media*, (55 City Road, London: SAGE Publications Ltd, 2017): 16.

<sup>3</sup> Carol Hanish, "The Personal Is Political," in *Radical Feminism: A Documentary Reader*, ed. Barbara A. Crow (New York: New York University Press, 2000): 113-16.

<sup>4</sup> Warner, *Publics and Counterpublics*, 21.

But, while Aristotle argued that there was a distinction between the private and public spheres of our lives, the ability to practice these distinctions was largely predicated on having wealth and social status—two things that are difficult to untangle. The slaves of Ancient Greece would not be able to separate their politics and family because they were not allowed to participate in politics, and they did not have their own homes to retire to. The same could be said of serfs under feudalism, or subjects under a strict monarchy. If privacy is defined as its separation from politics, as Aristotle claims, those who cannot participate in politics cannot have privacy.

It was not until the capitalist economic expansion around the Industrial Revolution, when owning property and private homes became available to more people, that the concept of privacy would permeate large sections of the population.<sup>5</sup> But, in conjunction with, or perhaps in response to, its expansion, privacy went through a change during the Second Industrial Revolution when there was a push for defining privacy as a legal right.<sup>6</sup> This changed privacy from a philosophical concept into a functional political tool that could be used—something, in Foucauldian terms, I will refer to as a technology.<sup>7</sup> How this happened is important to understand.

As a common law state, legal rights in the United States are more often created by precedent, or a series of court cases that can span the entire length of a country's existence, than they are by explicit legislation (the common law system itself is a precedent, adopted by the United States from its origins as an English colony). So, when someone in a common law state wants to argue for a new right, or to argue that a current restriction of a right is unconstitutional, they typically need to argue to a court that this new right is an extension of another right already granted. For example, *Obergefell v. Hodges*, the Supreme Court case that legalized same-sex marriage in 2015, cites *United States v. Windsor*, the case that struck down the Defense of Marriage Act a few years earlier, which cites *Lawrence v. Texas*, the case that struck

<sup>5</sup> Tim Wu, "How Capitalism Betrayed Privacy," *The New York Times*, April 10, 2019, <https://www.nytimes.com/2019/04/10/opinion/sunday/privacy-capitalism.html>.

<sup>6</sup> Dorothy J. Glancy, "The Invention of the Right to Privacy," *Arizona Law Review* vol. 21, no. 1 (1979): 1-40.

<sup>7</sup> Michel Foucault, "Technologies of the Self," Lectures at University of Vermont Oct. 1982, in *Technologies of the Self* (Univ. of Massachusetts Press, 1988): 16-49.

down sodomy laws before that, which was fundamentally a case about a right to privacy.<sup>8</sup> In the United States' common law system, going back to the sexual revolution starting in the 1960s,<sup>9</sup> there is a direct line from privacy rights to sexual rights.

And if we follow the case law back far enough, privacy rights in the United States can be traced back to one specific essay: "The Right to Privacy," which was written by Samuel Warren and Louis Brandeis in 1890 for the *Harvard Law Review*.<sup>10</sup>

A call for formal recognition of a right implies that that right is being infringed upon in some way. In 1890, when "The Right to Privacy" was published, the Second Industrial Revolution had created an aggressively expanding economy, and one of its authors, Samuel Warren, was a very wealthy man who was deeply rooted in the upper social structure of Boston.<sup>11</sup> He shouldn't have been someone who needed to worry about privacy, because it had always been available to him. So, what motivated Warren and Brandeis' argument for a legal right to privacy, if privacy was as pervasive as it had ever been? Was the ongoing expansion of privacy suddenly being rolled back?

One of the reasons they call for a right to privacy is in response to the expansion of the press that came with new reproduction technologies that made printing newspapers and taking photographs easier and faster.<sup>12</sup> While the essay contains some grandiose statements about privacy being necessary with the increasing sophistication of contemporary men,<sup>13</sup> most of the essay is an attack on newspapers and photographers for spreading what the authors call "idle gossip."<sup>14</sup>

<sup>8</sup> Lawrence v. Texas, 539 U.S. 558 (2003).

<sup>9</sup> Clayton Howard, *The Closet and the Cul-De-Sac: The Politics of Sexual Privacy in Northern California* (Philadelphia: University of Pennsylvania Press, 2019).

<sup>10</sup> Sarah E. Igo, *The Known Citizen: A History of Privacy in Modern America* (Cambridge, MA: Harvard University Press, 2020): 35.

<sup>11</sup> Martin Green, *The Mount Vernon Street Warrens: A Boston Story, 1860-1910* (New York: Charles Scribners Sons, 1989).

<sup>12</sup> Igo, *The Known Citizen*, 34.

<sup>13</sup> "The intensity and complexity of life attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual."

Warren, "The Right to Privacy," 196.

<sup>14</sup> Warren, "The Right to Privacy," 196.

Warren and Brandeis source many of these attacks from another essay, “The Rights of the Citizen IV: To His Own Reputation,” written just a few months earlier by E.L. Godkin, the first editor of the ongoing left-leaning magazine *The Nation*.<sup>15</sup> This early argument against the press, in the press, talks about the importance of men’s reputations in civil society (specifically men’s), saying: “...each member should, in a greater or less degree, enjoy the confidence and good opinion of his fellows.”<sup>16</sup>

To Godkin, it was the free press that was destroying men’s reputations, not their actions. He wrote that “universal suffrage” had increased the attacks on men’s reputations because elections had become more contentious—because politicians had to appeal to a wider base, it made it more likely for candidates to attack each other on a personal level. But what he means by universal suffrage needs to be addressed, because, at the time he was writing, women could only vote in one state,<sup>17</sup> and, while non-white men had legally been given the right to vote, in practice they were mostly still not able to.<sup>18</sup> So, what Godkin actually means when he wrote “universal suffrage” is that non-land-owning white men were able to vote. If there is still any doubt about where Godkin is coming from, he returns to this again later in the essay—saying, “[p]rivacy is a distinctly modern product, one of the luxuries of civilization, which is not only unsought for but unknown in primitive or barbarous societies. To dwellers in tents and wigwams it must always have been unknown.”<sup>19</sup> This aligns with Aristotle’s concept of privacy, which is based on an idea of access for few.

At this point it is clear that the shift of privacy from a philosophy to a technology was not engineered to expand privacy, but to limit its growth. The things that allowed privacy to flourish across different classes, such as voting rights and wealth distribution, are the very things that undermined the power structure of the ruling class, and so, to them, must be stopped.

<sup>15</sup> E.L. Godkin, “The Rights of the Citizen: IV. To His Own Reputation,” *Scribner’s Magazine* (1890): 67.

<sup>16</sup> Godkin, “The Rights of the Citizen,” 58.

<sup>17</sup> Katy Morris, “‘More Reputation than She Deserves’: Remembering Suffrage in Wyoming,” *Rethinking History* 21, no. 1 (March 2017): 48–66.

<sup>18</sup> Jim Crow laws largely restricted voting access to non-white people.

<sup>19</sup> Godkin, “The Rights of the Citizen,” 65.



Because the common law system requires an existing area of the law to begin arguments, “The Right to Privacy” and Godkin’s essay both pitch the right to privacy as an extension of slander and libel laws. So, while slander and libel laws protect individuals from the dissemination of falsehoods, privacy laws are then designed to stop the dissemination of truthful statements.

What these statements would look like, I am not entirely sure: neither texts give any concrete examples of what these supposed invasions of privacy actually look like. There are no examples of news stories that have crossed the line, or even hypothetical situations. They rely mostly on vague moral arguments. These men seem to have an axe to grind, but why?

This is explained by Amy Gajda, who shows why Warren and Brandeis were so critical of the press by analyzing news stories that were written about Samuel Warren and his family at the time. She finds that his wedding (to a Senator’s daughter) was covered in both *The New York Times* and *The Washington Post*, and, with a few more examples, Gajda argues, convincingly, that if Warren had not married his wife and received the amount of media attention that he did, he may not have written “The Right to Privacy” in the first place.<sup>20</sup>

The general argument put forward in “The Right to Privacy” is that certain aspects of our lives are not relevant to the public, and so should not be made available, regardless of truth. However, I believe that it is important to understand who people are in order to understand their motivations. If the very “gossip” Warren argues against was the motivation for a foundational aspect of our legal rights, and if his immediate family is so influential in articulating these rights, as Gajda argues, it is then worth exploring who the Warrens are.<sup>21</sup>

<sup>20</sup> 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,” *Michigan State Law Review*, Illinois Public Law Research Paper No. 07-06, 2008, no. 1, Spring (2007).

<sup>21</sup> I focus on the Warrens not to erase Brandeis’ contributions to the right to privacy, but because Brandeis later admitted that the essay was Warren’s idea. Dorothy J. Glancy, “The Invention of the Right to Privacy,” *Arizona Law Review* vol. 21, no. 1 (1979): 5-6.

## **The Warrens**

The Warren family owned what was at the time the world's largest paper mill in Maine, and the five siblings lived mostly off of a trust fund from that mill. They used their economic freedom for philanthropy, writing, and patronizing the arts.<sup>1</sup> One of the first thing I discovered about the Warrens is that, for people who demanded privacy, their lifestyles did not match their demands. They lived lavishly and followed eccentric pursuits, often in public ways, which garnered them a lot of attention in the press and in the art world at the height of the first Gilded Age.

There are various eccentricities in the entire family, but I focus on Samuel and his brother Edward because of their close involvement with the art world, and because of their respective interests: Samuel's close involvement in conceptualizing the contemporary right to privacy, and Edward's theorizing of homosexuality. This is also because of the particularly antagonistic relationship the two shared throughout their lives, some of which was rooted in Samuel's overt masculinity (a proper Bostonian, the biographer writes), and Edward's more feminine characteristics.<sup>2</sup>

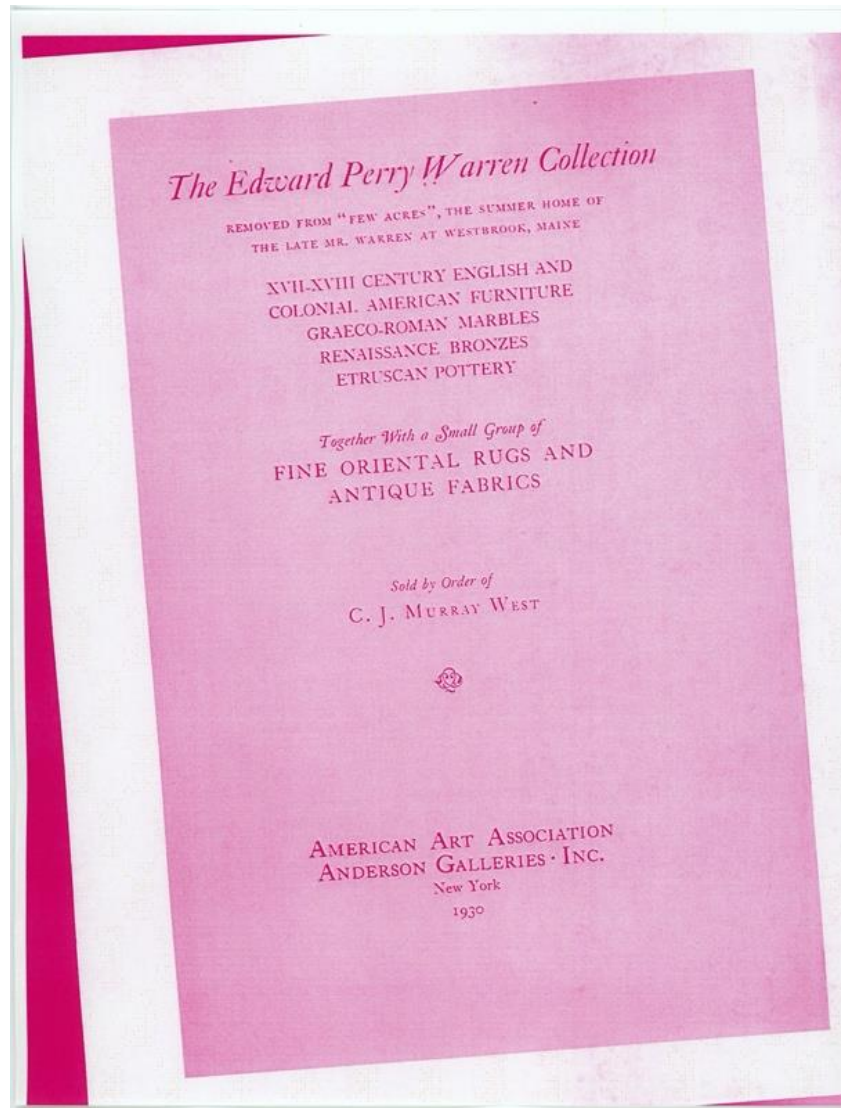
Edward's art collection, the most expansive in the family, exemplified his obsession with Greek and Roman culture—most of it was Greek or Roman artifacts, and much of that was phallic, if not homoerotic. While Edward's familial tension was centered on his lack of masculinity, his art collecting was preoccupied with it. Edward Perry Warren is probably now best known for his namesake Warren Cup, which the British Museum paid nearly two million pounds for in 1999.<sup>3</sup> The Greco-Roman cup features two different graphic scenes of an older man having sex with a younger male, one of whom is very young looking. The Warren Cup so much embodies Edward's ideal view of sexual relationships that, in combination with the uniqueness of the object itself

<sup>1</sup> Martin Green, *The Mount Vernon Street Warrens: A Boston Story, 1860-1910* (New York: Charles Scribners Sons, 1989).

<sup>2</sup> Green, *Mount Vernon Street*, 5.

<sup>3</sup> Stuart Frost, "The Warren Cup: Highlighting Hidden Histories," *International Journal of Art & Design Education* (February 2007): 63-72.

(it is the only known artwork of the time to feature such explicit imagery between younger and older men), the cup has been called a forgery.<sup>4</sup>



A catalog of Edward Perry Warren's art collection made after his death. Photocopy by Author.

<sup>4</sup> In its claim to be a forgery, its uniqueness and reflection of Warren's desires is compounded by the fact that Warren had previously commissioned a replica of a famous artwork to be made more homoerotic.

Maria Teresa Marabini Moevs, "The Warren Chalice in the Imagination of Its Creator and as a Reflection of His Time," *Bullettino Della Commissione Archeologica Comunale Di Roma* 114 (2013): 157–84.



Artworks now in the Museum of Fine Arts, Boston collection from Edward Perry Warren.  
Photocopy by Author.

Writing about the cup in a 1999 issue of *Art Bulletin*, John Pollini (who explicitly argues the cup is not a forgery) breaks down the cultural aspects of these kinds of homosexual relationships in Ancient Rome: “it was legal and generally socially acceptable for an adult Roman male to have homosexual relations with another male, whatever his age, provided that, first, the other male was a slave, freedman, foreigner,

or male prostitute... and, second, the Roman male citizen was the active, not the passive, sexual partner in the relationship.”<sup>5</sup>

Writing under the pseudonym Arthur Lyon Raile, Edward advocated for the acceptance of these types of relationships, which are modeled on a Greek tradition called pederasty. He wrote about these often in his poetry, but more extensively in his book *A Defense of Uranian Love*, also published under his pseudonym, which he considered to be his “magnum opus,”<sup>6</sup> but is what I would call a semi-coherent theory on masculinity.

These relationships that Edward Perry Warren longed to normalize were historically about exercising a power structure of the upper class dominating a lower class, and in the case of his writings and the Warren Cup, I mean that quite literally. But I don’t think Edward Perry Warren ever thought about the power structure inherent in relationships between different classes of people, as there is evidence that he was aware of their power imbalances but saw them as benevolent or philanthropic.<sup>7</sup>

Aristotle, who as I wrote made early distinctions between public and private life, is referenced extensively in *A Defense of Uranian Love*. It is important to note that when discussing his ideal forms of government, Aristotle argues that democracy is undesirable because the majority is incapable of making good decisions (although, to be fair, he says it’s not the worst form of government). And by majority, he does not even mean a majority of a city’s residents, as *Politics* includes exclusionary arguments that are explicitly pro-slavery and anti-women.<sup>8</sup>

Edward Perry Warren’s uses Greek philosophy and culture to defend his ideal of homosexuality in that, to him, it promotes a societal structure that does not include

<sup>5</sup> John Pollini, “The Warren Cup: Homoerotic Love and Symposial Rhetoric in Silver,” *The Art Bulletin* 81, No. 1 (1999): 22-23.

<sup>6</sup> Osbert Burdett and E. H. Goddard, *Edward Perry Warren: The Biography of a Connoisseur*. (London: Christophers, 1941): 85.

<sup>7</sup> “If the lover have money to give the boy an education superior to his birth, he may, as the phrase is, make a gentleman of him. Certain aptitudes of mind would be necessary to this result. He must have fed on butter and honey. But he need not be clever...”

Edward Perry Warren (as Arthur Lyon Raile), *A Defense of Uranian Love* (1928): 33.

<sup>8</sup> Aristotle, *Politics* (Cambridge, MA: Harvard Univ. Press, 1977).

women.<sup>9</sup> He was at one point in serious discussions of donating money to Oxford University with the agreement that the money be used to teach Greek literature, that it be taught only to men, and that there be bathing houses where the men of the college could be naked around each other.<sup>10</sup> This shows how Edward Perry Warren's preferences for art, culture, and sexuality are highly rooted in a class power structure—one that favors money and patriarchy.<sup>11</sup>

This is just one example of how wealth allows people to influence society in ways that reflect their personal interests and ideologies—which I will talk about in more depth in the next section. Edward Perry Warren believed that society should be more influenced by the Classical societies of Greece and Rome, so he put his money to use by filling museums and schools with that knowledge.<sup>12</sup>

Not only did the Warrens believe that they had an indispensable right to manage their image through privacy regulations, they, as philanthropists, also believed that they had the right to manage the image of general society. Often those two things go hand-in-hand, in that managing the image of something else is an opportunity to manage your own image. This hasn't changed: today it's Epstein, Koch, Schwarzman, and Sackler, to name a few, whose money funds universities and museums around the world. Importantly, though, it is the information we know about these people's personal lives that makes these donations contentious. Without that information we would be left with just the positive associations of their names on buildings, not their greed or abuses of power.

The Warrens lived very public lives with concerns about their legacies, and so their demands for privacy seem suspect. A biography published in 1941 after Edward

<sup>9</sup> Aristotle's idea of separating politics from family life is famously challenged during the Second Wave Feminist movement, and the beginning of the gay rights movement, with Carol Hanisch's essay "The Personal is Political." And that the gay rights movement owes much of its successes to feminism is a stark challenge to Edward Perry Warren's view of a homosexual world without women.

<sup>10</sup> Burdett, *Edward Perry Warren*, 371.

<sup>11</sup> For contemporary links to privacy, see the relationship between NDAs and the #MeToo movement.

<sup>12</sup> Nearly 4,000 items in the Museum of Fine Arts, Boston collection are credited to Edward Perry Warren in some form.

[https://collections.mfa.org/search/objects/\\*/edward%20perry%20warren](https://collections.mfa.org/search/objects/*/edward%20perry%20warren)

Perry Warren's death was largely self-planned and includes a partial and unfinished autobiography. Like "The Right to Privacy," concern about "idle gossip" appears in his directions to the author: "...Warren had himself expressed the wish that any Memoir should so far as possible be limited to statements of fact and that gossip and expressions of authors' opinions should be excluded."<sup>13</sup> Privacy, as a hegemonic technology, could be wielded to shield philanthropists' actions from criticism—and therein lies the reason the right to privacy was invented.

<sup>13</sup> Osbert, *Edward Perry Warren*, vii.

## **Photography, Philanthropy, and Mr. Smith**

By 1890, photography had been a well-known technology for several decades. But, as Ariella Azoulay argues, photography was not invented by a single person, or even a few people, but the plethora of people who use photography.<sup>1</sup> Therefore, I start this analysis of photography in the late 19<sup>th</sup> century, not with its invention which was several decades earlier, but when photography became truly popular due to the industrialization of the medium which made it more affordable and accessible to the average person. Azoulay continues these thoughts, defining a photograph as “the product of an encounter of several protagonists, mainly photographer and photographed, camera and spectator,”<sup>2</sup> and “[p]hotography is an apparatus of power that cannot be reduced to any of its components: a camera, a photographer, a photographed environment, object, person, or spectator.”<sup>3</sup> I argue that the relationship photography had between various parties involved—photographer, subject, viewer—is what made the practice so contentious. While, on one hand the photographer has some control over the act of photography, the subject is also implicated in its process in a reciprocal relationship. As I argued in the previous chapter, if Samuel Warren demanded privacy because, as he wrote, “instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life,”<sup>4</sup> it was largely about maintaining the power structure of the wealthy.<sup>5</sup> This became real when the New York Court of Appeals, the first court in the United States to formally address the legal right of privacy, was directly responding to the proliferation of consumer cameras.<sup>6</sup>

<sup>1</sup> Ariella Azoulay, *The Civil Contract of Photography*, trans. Rela Mazali and Ruvik Danieli (New York: Zone Books, 2014): 92-93.

<sup>2</sup> Ariella Azoulay, “What Is a Photograph? What Is Photography?” *Philosophy of Photography* 1, no. 1 (March 1, 2010): 9–13.

<sup>3</sup> Azoulay, *The Civil Contract of Photography*, 85.

<sup>4</sup> Warren, “The Right to Privacy,” 195.

<sup>5</sup> Photography also had the power to undermine Edward Perry Warren’s power, which was partly owed to his art collection: in Walter Benjamin’s critique of the museum, he argues that photography undermines the museum’s power by allowing artworks to be reproduced, which frees the art from the limits imposed by its owners.

<sup>6</sup> Mensel, “Kodakers Lying in Wait,” 24-41.



But, if it is the case that photography's existence is founded on its relational activity across several beings—photographer, subject, viewer—as Azoulay writes, there is still one person who had a significant impact on the mass adoption of photography which makes this possible: George Eastman. And while Benjamin's concept of the "optical unconscious" states, in simple terms, that photography does not create new things but instead makes already existing things visible, the camera, by making existing class structures visible, created plenty of changes in the social structures of modern society—as well as a whole lot of new wealth for Eastman. When Eastman got rich making a camera that could be placed in the hands of everyone, it began to pull the tightly self-managed image of the wealthy from their grip.<sup>7</sup> This is when the proliferation of philanthropy, something George Eastman liberally participated in, came to proactively re-mend the image of the wealthy to appear more benevolent than greedy.

At the same time Edward Perry Warren tried and failed to create a new college at Oxford that would teach students a way of life in the Classical tradition,<sup>8</sup> wealthier patrons were putting massive amounts of money into universities in the United States: Andrew Carnegie established the Carnegie Technical Schools (now Carnegie Mellon), and Rockefeller provided the seed money that would aggressively expand the University of Chicago.<sup>9</sup>

This has continued today at universities around the world, but especially here at MIT. In 2007 David Koch of Koch Industries gave \$100 million for the creation of the Koch Institute for Integrative Cancer Research.<sup>10</sup> In 2018 Stephen Schwarzman of

<sup>7</sup> "The new papers made exposure their mission, their primary target the exclusive parties and displays of wealth that had come to define the upper echelons of American urban society. These affairs inspired a brew of popular curiosity and hostility in a class-conscious culture..." Igo, *The Known Citizen*, 32.

<sup>8</sup> Burdett, *Edward Perry Warren*, 373.

<sup>9</sup> The University of Chicago would go onto to define neoliberalism in the last part of the 20<sup>th</sup> century—paving the way for the reincarnation of people like Rockefeller. Azra Dawood, *Building Protestant Modernism: John D. Rockefeller Jr. and the Architecture of an American Internationalism (1919-1939)*, PhD diss., Massachusetts Institute of Technology, 2018, 125.

Robert Van Horn, Philip Mirowski, and Thomas A. Stapleford, *Building Chicago Economics: New Perspectives on the History of America's Most Powerful Economics Program* (Cambridge; New York: Cambridge University Press, 2011).

<sup>10</sup> "David H. Koch gives \$100 million to MIT for cancer research," Massachusetts Institute of Technology, October 9, 2007. <https://news.mit.edu/2007/koch-institute-1009>

Blackstone gave MIT \$350 million for the creation of the Schwarzman College of Computing.<sup>11</sup> And in 2019 tech investor David Fialkow donated \$1.1 million for the establishment of the Transmedia Storytelling Initiative, of which I directly benefited from as an inaugural Fialkow Fellow.<sup>12</sup> In all of these instances the philanthropists have a personal connection to the schools they are created: Koch was a longtime cancer survivor, Schwarzman is a longtime Republican ally who is anxious about the United States losing dominance in artificial intelligence development,<sup>13</sup> and Fialkow is a film producer. So, while philanthropists may not tell MIT what their money can be used for in minute detail, they are certainly creating a framework, based on their personal worldviews, within which the rest of us operate.

During my time at MIT these donations were an ongoing point of antagonism between students and administrators at MIT.<sup>14</sup> While this is certainly not new to my tenure (as I will discuss below, MIT was built with corporate money), it started for me personally with a student organized protest against the opening reception for the new Schwarzman College of Computing.<sup>15</sup>

Little did I know that the issue would explode again in the summer immediately following the opening of the College of Computing, when it was revealed that MIT, and the Media Lab specifically, had been accepting donations from convicted sex predator Jeffrey Epstein. The director of the Media Lab resigned,<sup>16</sup> but other people directly

<sup>11</sup> Amanda L. Gordon, "Schwarzman Parties to Celebrate \$350 Million Donation to MIT," *Bloomberg.com*, March 1, 2019, <https://www.bloomberg.com/news/articles/2019-03-01/schwarzman-dances-to-ai-beat-after-350-million-donation-to-mit>.

<sup>12</sup> Ryan Aasen, "City of Palms," 2020.

<sup>13</sup> Steve Lohr, "M.I.T. Plans College for Artificial Intelligence, Backed by \$1 Billion," *The New York Times*, October 15, 2018, <https://www.nytimes.com/2018/10/15/technology/mit-college-artificial-intelligence.html>

<sup>14</sup> Julia La Roche, "Schwarzman Backs Artificial Intelligence to Make Sure It's Done Right," *Yahoo Finance*, February 7, 2020, <https://finance.yahoo.com/news/steve-schwarzman-on-artificial-intelligence-194627303.html>.

<sup>15</sup> Tiffany Kary, "Schwarzman College at MIT Spurs Outcry by Students, Faculty," *Bloomberg.com*, February 18, 2019, <https://www.bloomberg.com/news/articles/2019-02-18/schwarzman-college-at-mit-spurs-backlash-as-group-scolds-school>.

<sup>16</sup> Marc Tracy and Hsu Tiffany, "Director of M.I.T.'s Media Lab Resigns After Taking Money From Jeffrey Epstein" *The New York Times*, September 7, 2019, <https://www.nytimes.com/2019/09/07/business/mit-media-lab-jeffrey-epstein-joichi-ito.html>.

involved in the donations, including MIT's current president,<sup>17</sup> have largely escaped any consequences for these decisions. These donations opened another conversation about anonymous donations—whether they are better, worse, or should be accepted at all.<sup>18</sup> But, again, these are not new conversations.

In order to accommodate a growing student population, MIT moved its campus from Boston to Cambridge in the early 20<sup>th</sup> century, and this move was funded in large part by a mysterious benefactor only referred to as Mr. Smith, who was eventually revealed as George Eastman, of the Eastman Kodak Company.<sup>19</sup>

Whereas Epstein's donations were made semi-anonymously because the knowledge of his presence on campus would rightfully cause outrage,<sup>20</sup> in correspondence between Eastman and MIT's president at the time, Eastman repeatedly asked that his name not be publicly disclosed as the source of donations because he did not want the "fuss" of "notoriety."<sup>21</sup> This is a markedly different take than Koch or Schwarzman, whose money has placed their names on buildings all over MIT.

George Eastman gave MIT a substantial amount of money: in 2020 dollars, hundreds of millions. The donations, initially only for building MIT's current campus, were later expanded to help establish the Department of Chemical Engineering and to increase the Institute's endowment.<sup>22</sup> And, like the more recent major donations I listed above, Eastman had a vested interest in MIT's expansion: photography is a technological invention and (at least at the time) a chemical process. Forming a close relationship with a university focused on technical and chemical innovation would help the company in the long run: as Kodak floundered nearly a century later, it spun off the

<sup>17</sup> Marc Tracy and Tiffany Hsu, "M.I.T. President Says He Thanked Jeffrey Epstein for Gift in Letter," *The New York Times*, September 12, 2019, <https://www.nytimes.com/2019/09/12/business/mit-president-jeffrey-epstein.html>.

<sup>18</sup> Laura Wanger, "Harvard Professor Lawrence Lessig Sues New York Times for Describing What He Said," *Motherboard*, January 13, 2020, [https://www.vice.com/en\\_us/article/5dmbx5/harvard-professor-lawrence-lessig-sues-new-york-times-for-describing-what-he-said](https://www.vice.com/en_us/article/5dmbx5/harvard-professor-lawrence-lessig-sues-new-york-times-for-describing-what-he-said).

<sup>19</sup> "MIT's Most Famous Donor, "Mr. Smith"—George Eastman, 1912-1920," *The MIT Museum*. <http://museum.mit.edu/150/72>

<sup>20</sup> See MIT's commissioned report on Jeffrey Epstein, 56-57. <http://factfindingjan2020.mit.edu/>

<sup>21</sup> Letter from George Eastman to MIT President Mclaurin, October 15<sup>th</sup>, 1919. MIT Archives.

<sup>22</sup> Letter to George Eastman from President Mclaurin, undated. MIT Archives.

chemical engineering portion of its business to keep afloat.<sup>23</sup> Today the Eastman Chemical Company is doing better than Kodak itself.<sup>24</sup>

The president of MIT at the time applauded Eastman's philanthropy, while at the same time downplaying questions of equity in the United States. In doing so, he asked Eastman to contribute to the Institute's endowment so that its professors could be paid more and stop teaching students about inequality. Eastman, while not explicitly entertaining the president's aggressive stance on labor politics, did agree to also donate shares of his company to MIT in order to increase the size of its endowment.<sup>25</sup>

In its earliest days, photography was a complicated, cumbersome, and sometimes dangerous process that was only available to users who were trained in the specialty.<sup>26</sup> Photography is now available to anyone who wants it to be (and to those who don't, too). While Walter Benjamin wrote about the power of photography through the lens of Marxism,<sup>27</sup> the widespread adoption of photography, necessary for its consideration as the democratic medium, ignores the capitalist marketing techniques that propagated its spread.

And for Kodak, this goes deep: the name "Kodak" itself was a marketing strategy, created to be bold and untranslatable.<sup>28</sup> Not unlike today's tech companies with names like Google, Tumblr, or Grindr, it aimed to exist as something entirely new and lifechanging, a noun and a verb. Early advertising of Kodak cameras espoused how

<sup>23</sup> Bloomberg News, "Company News; One Eastman Chemical Share Set for 4 of Kodak," *The New York Times*, December 11, 1993, sec. Business, <https://www.nytimes.com/1993/12/11/business/company-news-one-eastman-chemical-share-set-for-4-of-kodak.html>.

<sup>24</sup> Ernest Scheyder and Liana B. Baker "As Kodak struggles, Eastman Chemical thrives," *Reuters*, December 24, 2011, <https://www.reuters.com/article/us-eastman-kodak-idUSTRE7BN06B20111224>

<sup>25</sup> Letter to MIT's President Richard C. Maclaurin from George Eastman on June 18<sup>th</sup>, 1919. MIT Archives.

<sup>26</sup> Reese V. Jenkins, "Technology and the Market: George Eastman and the Origins of Mass Amateur Photography," *Technology and Culture* 16, no. 1 (1975): 1–19.

<sup>27</sup> Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," ed. Hannah Arendt, in *Illuminations* (New York: Schocken Books, 1969), 1-26.

<sup>28</sup> West, *Kodak and the Lens of Nostalgia*, 19-20.

Mr. Eastman - 2.

The doctrine of the extremists that all wealth comes from the efforts of the workmen (meaning by that the men who labor with their muscles) is so palpably false that we may hope that reason and common sense will ultimately prevail and down it. If this be so, the main question will be one of fairness, namely, what is a fair division of profits. Much of the present unrest seems to arise from a sense of unfairness whether this be well founded or not. One sees it even in the relative calm of academic life. There has been much comment of late on the prevalence in our schools and universities of pernicious teaching regarding social and economic questions. The amount of this teaching is perhaps exaggerated, but the evil undoubtedly exists and will have grave effects. It is due, mainly, as I see things, to the sense of unfairness under which many professors labor when they compare their incomes with those of other men of like intellectual qualities, and their consequent feeling that there is something radically wrong with the social order that makes possible such inequalities. It seems to me especially unfortunate that this feeling should be strong in places that train "picked" young men at a critical period of their lives and that is one of the reasons why I am anxious to see better salaries prevail in a place like this Institute.

Yours sincerely,

April 9, 1919.

Mr. George Eastman,  
900 East Avenue,  
Boston, Mass.

*The doctrine of the extremists that all wealth comes from the efforts of the workmen (meaning by that the men who labor with their muscles) is so palpably false that we may hope that reason and common sense will ultimately prevail and down it.*  
—MIT President Richard C. Maclaurin to George Eastman. April 9, 1919.

Photocopy by author

easy they were to use: “you press the button, we do the rest” was a common phrase in Kodak ads as far back as 1890, the same year “The Right to Privacy” was published.<sup>29</sup>

MIT philosophy professor Sally Haslanger, at an unofficial event organized in response to the opening celebration of MIT’s College of Computing, lambasted the relationship of philanthropy to research, arguing that we live in a plutocracy that controls the research agenda of major institutions.<sup>30</sup> Ruth Wilson Gilmore refers to philanthropy as “twice-stolen wealth”—first stolen when through underpaid labor, and stolen again through tax deductions.<sup>31</sup> Erica Kohl-Arenas argues that philanthropy, rather than improving the systemic issues that cause inequities, reinforces capitalist exploitation by favoring “self-help” programs, including education, instead of offering direct help—or, what she says is wealth stolen a third time.<sup>32</sup> I would offer another time this wealth is stolen—when philanthropy goes to the cultural institutions enjoyed by the wealthy.

This idea is certainly no stranger to the art world: the cancellation of Hans Haacke’s 1971 Guggenheim exhibition being perhaps the most notable,<sup>33</sup> but there are more recent examples like Nan Goldin’s crusade against the Sacklers,<sup>34</sup> Forensic Architecture’s work about Warren Kanders in the 2019 Whitney Biennial,<sup>35</sup> and Gulf Labor.<sup>36</sup> With the exception of Forensic Architecture’s Tripe Chaser video, these actions and criticisms of funding in the art world are often not seen as artworks themselves—they are relegated to activism. This is because artworks, as artist Hito Steyerl writes,

<sup>29</sup> West, *Kodak and the Lens of Nostalgia*, 21.

<sup>30</sup> “AI Can’t Fix This: MIT, Imperialism, and the Future of AI,” Conference, Massachusetts Institute of Technology, February 26<sup>th</sup>, 2019. Video by MIT Students Against War: <https://www.facebook.com/328543951122099/videos/296135054385543/>

<sup>31</sup> Ruth Wilson Gilmore, “In the Shadow of the Shadow State,” in *The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex*, ed. INCITE! Women of Color Against Violence (Durham: Duke University Press Books, 2017)

<sup>32</sup> Erica Kohl-Arenas, “The Self-Help Myth: Towards a Theory of Philanthropy as Consensus Broker,” *American Journal of Economics & Sociology* 74, no. 4 (September 2015): 796–825.

<sup>33</sup> Hal Foster et al., *Art Since 1900: 1945 to the Present*, 3rd edition (Thames & Hudson, 2016): 589-590.

<sup>34</sup> Angelique Chrisafis, “Artist Nan Goldin Protests against Sackler Wing at the Louvre,” *The Guardian*, July 1, 2019, sec. World news, <https://www.theguardian.com/world/2019/jul/01/nan-goldin-protests-against-sackler-wing-at-the-louvre>.

<sup>35</sup> Vartanian, Hrag, “Forensic Architecture’s Project at Whitney Biennial Reveals Museum Vice Chair’s Company May Be Complicit in War Crimes,” *Hyperallergic*, May 13, 2019, <https://hyperallergic.com/500055/forensic-architecture-whitney-biennial/>.

<sup>36</sup> Brian Boucher, “Protest Shuts Down Guggenheim Museum,” *artnet News*, May 1, 2015, <https://news.artnet.com/art-world/gulf-labor-protest-shuts-down-guggenheim-museum-293998>.

have become an alternative currency for the wealthy, a place to escape taxation, or to steal wealth.<sup>37</sup> It would be a contradiction for an artwork to attack philanthropy.

In 1925, MIT tried to commission a portrait of George Eastman by John Singer Sargent, but Sargent died before it could be arranged. Well known for painting wealthy clients, including the Warrens, Sargent's work is far removed from the aesthetics of mass photography. Had the portrait happened, an original Sargent painting of George Eastman would have been a healthy addition to MIT's endowment. I'm sure it's something they regret.



John Singer Sargent's painting Mrs. Fiske Warren (Gretchen Osgood) and Her Daughter Rachel, a portrait of Samuel and Edward Perry Warren's sister-in-law and niece (yellow channel). Photocopy by author.

<sup>37</sup> Hito Steyerl, "If You Don't Have Bread, Eat Art!: Contemporary Art and Derivative Fascisms," *e-flux Journal* #76, October 2016.

## **The Rise of a Network**

*“If the ‘wired nation’ becomes a reality, clandestine electronic surveillance will be greatly simplified.”*

—Charles Tates, *Cable Television in the Cities*

The 1968 election came at a time of high political instability in the United States. There were mass protests over the country’s involvement in Vietnam and riots following the assassination of Martin Luther King, Jr. This was shortly followed by the assassination of presidential candidate Robert F. Kennedy, who was running on a platform of racial equity. Outside the Democratic National Convention in Chicago that summer, police viciously beat student protestors. The country, sharply divided over the civil rights movement and the corresponding civil unrest it created, narrowly elected Vice President Richard Nixon, whose campaign promised a return of “law and order” to the country. While Nixon rode the backlash against the 1968 race riots into the White House, another major riot happened shortly after he took office: the 1969 Stonewall Riots, which are generally credited with starting the gay rights movement in the United States.

Despite the pervasiveness of these counterhegemonic moments, Nixon was reelected in a landslide 1972. Before resigning two years later in the wake of revelations that he had spied on his Democratic opponent in what is known as the Watergate scandal, he (somewhat ironically) called for clearer definitions and protections of privacy in his final State of the Union address in 1974:

One measure of a truly free society is the vigor with which it protects the liberties of its individual citizens. As technology has advanced in America, it has increasingly encroached on one of those liberties--what I term the right of personal privacy. Modern information systems, data banks, credit records, mailing list abuses, electronic snooping, the collection of personal data for one purpose that may be used for another--all these have left millions of Americans deeply concerned by the privacy they cherish.

And the time has come therefore for a major initiative to define the nature and extent of the basic rights of privacy, and to erect new safeguards to ensure that those rights are respected. I shall launch such an effort, this year, at the highest levels of the administration, and I look forward again to working with this Congress in establishing a new set of standards that respect the legitimate needs



of society, but that also recognize personal privacy as a cardinal principle of American liberty.”<sup>38</sup>

While the Watergate scandal is what brought down his presidency, Nixon had been operating an illegal domestic surveillance program for his entire presidency. Called Operation CHAOS, the CIA program was meant to control political dissent by keeping track of anti-war and civil rights activists.<sup>39</sup> This included things from collecting documents to recruiting activists to work as double agents. Because the program was illegal, Operation CHAOS was shut down preemptively as the Watergate scandal broke,<sup>40</sup> and the public learned about it a few months after his resignation.<sup>41</sup> Given the pervasive illegal spying done by the Nixon administration, it is doubtful that he was genuinely concerned with privacy protections for ordinary Americans.

I’m speculating on Nixon’s intentions, but if, like Warren and Brandeis, who I argue advocated for defining privacy in order to wield it as a tool, Nixon were to define privacy into law, it could have given him some protection from investigations into his own scandals. It would also prevent privacy from being used as an argument for advancing progressive policies: a string of Supreme Court cases during his presidency liberalized sexual rights in the United States, all of which cited a fundamental right to privacy as the main motivation for such rights.<sup>42</sup> In rapid succession, the United States Supreme Court struck down restrictions on pornography (1969),<sup>43</sup> contraception (1972),<sup>44</sup> and abortion (1973).<sup>45</sup>

This political unrest, social activism, and mass government surveillance was the backdrop in which a new media technology—cable television—brought the potential for

<sup>38</sup> Richard Nixon, 1974 State of the Union address.

<sup>39</sup> James M. Banner, Jr., *Presidential Misconduct: From George Washington to Today* (New York: The New Press, 2019).

<sup>40</sup> Douglas Valentine, *The CIA As Organized Crime: How Illegal Operations Corrupt America and the World* (Clarity Press, Inc., 2016): 160-161.

<sup>41</sup> Seymour M. Hersh, “Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years,” *The New York Times*, December 22, 1974, <https://www.nytimes.com/1974/12/22/archives/huge-cia-operation-reported-in-u-s-against-antiwar-forces-other.html>.

<sup>42</sup> Mary Ziegler, *Beyond Abortion: Roe v. Wade and the Battle for Privacy* (Harvard University Press, 2018): 1-14.

<sup>43</sup> *Stanley v. Georgia*, 394 U.S. 557 (1969).

<sup>44</sup> *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

<sup>45</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

expanded government surveillance and intrusion into private lives. But it also created opportunities for new access and representation of historically marginalized groups, including sexual minorities.<sup>46</sup> While cable infrastructure itself greatly expanded the geographic range of media transmission, this technological advancement became a site of political contestation at various, often lower, scales of governance, with regulations democratizing access at the local level and providing spaces for radical voices.

<sup>46</sup> In an interview with James C. Goodale about cable television and freedom of speech, Lou Maletta, founder of the Gay Cable Network in New York City, repeatedly claims that cable television was invented to give minorities a platform.  
<https://www.youtube.com/watch?v=s3f0slBgQJc>

## **Cable Television and Public Access**

*Television was the key link between society's public and life and the private lives of citizens.*

—Jostein Gripsrud “Television in the Digital Public Sphere”

If we use Roger Fidler’s definition of media convergence as “a crossing of paths or marriage, which results in the transformation of each converging entity, as well as the creation of new entities,”<sup>47</sup> then we can see television as the resulting convergence of two media technologies: cinema (itself born from photography) and radio. With this, television acts as an extension of photography in that it is, at its core, a technology for transmitting and viewing images. Cable television, at its root a newer form of media conveyance, represented several changes from broadcast television in the way people consumed media.

First, it vastly increased the amount of data that could be sent into communities. Whereas broadcast television was limited by the physical space of the radio spectrum, cable television’s limitations were much less restrictive—its limit was the amount of data it could send through a wire. This allowed more channels and more programs to exist, opening the door to the possibility for programming that wasn’t targeted to a general audience.

Second, cable television was able to send data in two directions. Not only could cable networks send data into homes, but data could be sent (or taken) from those homes. This led to forms of two-way broadcasting that did not take off immediately but are now quite common, including pay-per-view and home shopping.<sup>48</sup> But, multi-directional data also rightfully created fears that cable networks would be used as

<sup>47</sup> Roger Fidler, *Mediamorphosis: Understanding New Media* (Thousand Oaks, California: Pine Forge Press, 1997): 27.

<sup>48</sup> Noah Arceneaux, “The Many Sides of QUBE: Interactive Television and Innovation in Electronic Media, 1977-1983,” *Journal of Broadcasting & Electronic Media* 62, no. 3 (September 2018): 531–46.

surveillance networks. A proposed solution to this problem was community control of the cable networks.<sup>49</sup>

The biggest shift in media consumption cable technology created, however, was that it was not limited in physical distance like broadcast television was. As long as there was a cable, data could be sent anywhere in the world. The previous limit of broadcast television was partially technical, in that broadcast signals are physically limited in the distance they can travel, but it was also regulatory: the Federal Communications Commission (FCC) purposefully limited the distance television stations could be broadcast.

This is because one of the longstanding missions of the FCC is to promote “localism” in various forms of media (although the current FCC is arguably no longer interested in this).<sup>50</sup> This included regulations that limited the number of stations owned by a single company, limiting cross ownership in single communities (meaning a company that owned a newspaper couldn’t also own a radio station in the same community, for example), and the “main studio rule,” which required that broadcast stations maintained studios in the communities they serve.

Even though the technology for cable television had already existed for several years, deregulation in the early 1970s finally allowed cable television to flourish. Despite some early experiments in community cable networks, cable television from the 1970s typically operated with the goal of becoming nationally available—something that went against decades of regulatory precedent.

There are two sides to the loosening of localism rules: one, it undermined the responsiveness of media networks to local communities. For example, CNN is unlikely to provide news coverage of corruption in a local government, but a local broadcaster might. But this national expansion also allowed minorities a chance to be targeted with content across several communities. Queer people, outside of a small number of large

<sup>49</sup> Charles Tate, *Cable Television in the Cities: Community Control, Public Access, and Minority Ownership*, ed. Charles Tate (Washington: Urban Institute, 1971): 37.

<sup>50</sup> Brian Fung, “The FCC Just Ended a Decades-Old Rule Designed to Keep TV and Radio under Local Control,” *Washington Post*, accessed July 24, 2020, <https://www.washingtonpost.com/news/the-switch/wp/2017/10/24/the-fcc-just-ended-a-decades-old-rule-designed-to-keep-tv-and-radio-under-local-control/>.

cities, are too small of a population to make program targeting them worth the money. Coupled with the expanded broadcast capabilities of cable vs. broadcast networks, this niche marketing was possible.

These two things, providing minority representation and maintaining responsiveness to local communities, did not have to be mutually exclusive. In light of the concerns about the new power of cable networks, concessions from cable companies were made to make sure they complied with the localism requirements: one, lobbied for by the existing broadcast networks, was “must-carry requirements,” which required cable companies to also carry the local broadcast channels, if the local broadcast channel asks them to.<sup>51</sup> The other concession, lobbied for by community activists, was public access television.

New York City’s 1971 cable franchise agreement required public access, and the FCC followed the next year with a rule that allowed other communities to do the same.<sup>52</sup> The Alternate Media Center at New York University, founded by George Stoney and Red Burns in 1971, worked to train local community members on how to create and broadcast television content.<sup>53</sup>

Probably most well-known as parodied on the *Saturday Night Live* sketch Wayne’s World, public access television is one or several dedicated channels in a local cable system mandated through regulation and made available to local residents for airing content that is produced locally. Generally, anyone in a community with a public access channel who wants a TV show can have one as long as it meets the technical standards for broadcast. And, most radically and unlike all other broadcast mediums before or after it, public access television is protected by the First Amendment—local communities could not regulate what content was to be aired.<sup>54</sup>

<sup>51</sup> Federal Communications Commission Media Bureau. <https://www.fcc.gov/media/cable-carriage-broadcast-stations>.

<sup>52</sup> Nicholas Johnson and Gary G. Gerlach, “The Coming Fight for Cable Access,” *Yale Review of Law and Social Action*, vol. 2, no. 3 (1972): 227-37.

<sup>53</sup> Robin White, “Great Expectations: Artists TV Guide,” *Artforum International* (1982): 40–47.

<sup>54</sup> Laura R. Linder, *Public Access Television: America’s Electronic Soapbox*, (Praeger Paperback, 1999): 20.

This allowed shows like *Gay USA*, a New York City news show focused on issues that directly impacted the queer community, to provide critical information about the AIDS crisis in the 1980s when mainstream society wasn't. But this hands-off approach also means that public access channels created a range of controversial television shows all over the country, from shows about pornography to the Ku Klux Klan.<sup>55</sup> Attempts to prevent these shows from airing have been repeatedly struck down by the courts.<sup>56</sup> For better or worse, voices traditionally on the periphery of society suddenly had a wide platform to be heard.

Because public access shows were local by design, it is difficult to find examples of how pervasive these shows were—the ones which made it into the archives are largely from major cities like New York City. One example is *The Robin Byrd Show*,<sup>57</sup> which met many of the controversies around local cable shows: Robin Byrd, a pornographic actor, interviewed other pornographic actors, showed clips from adult movies, talked about sex, took live calls of inappropriate questions, and would end each episode by slowly stripping down to her lingerie.<sup>58</sup>

The production value was low, and, as such, Byrd didn't just break the fourth wall—there wasn't really one in the first place. She's constantly speaking to someone behind the camera, and transitions to prerecorded segments continuously failed, leaving Byrd wondering out loud what is happening, dragging each of her words out to fill time. The show didn't just radically shift the content that was appropriate to air on television, but the way it is told on television. These highly visible production values are aesthetics I regularly employ in my work. There is no trickery, and the cheap materials act exactly how they are meant to.

<sup>55</sup> David A. Kaplan, "TV VIEW; Is the Klan Entitled to Public Access?," *The New York Times*, July 31, 1988, sec. Arts, <https://www.nytimes.com/1988/07/31/arts/tv-view-is-the-klan-entitled-to-public-access.html>.

<sup>56</sup> Jesse McKinley, "Real and Live, but Maybe Not Nude," *The New York Times*, November 29, 2012, <https://www.nytimes.com/2012/11/30/theater/robin-byrd-onstage-live-but-not-nude.html>.

<sup>57</sup> The Robin Byrd Show was technically on leased-access cable—which was created at the same time as public access television. Leased access is similar in concept to public access other than it requires some fees to use.

<sup>58</sup> *The Robin Byrd Show*, 1980. <https://www.youtube.com/watch?v=eQi08l2bVtQ>



Screenshot of *The Robin Byrd Show* from YouTube.

In defining the public sphere, Jürgen Habermas argues that we have become passive consumers of political decisions rather than active participants—a shift partially driven by the monetization of information by mass media.<sup>59</sup> Public access television offers a counterpoint to this argument: by removing the necessity of corporate profit, we allowed community members to become active participants in a medium traditionally view as passive. As Thea Sklover wrote, “at Open Channel we optimistically believe that the use of simple video equipment coupled with the proper development of public access television can break down these artificial barriers and can stimulate regular dialogue. Ironically, we plan to use a new kind of television to fight Television.”<sup>60</sup> Public access television, like Kodak Cameras in the nineteenth century, broke the façade of

<sup>59</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge, Mass.: MIT Press, 1989): 169.

<sup>60</sup> Nicholas Johnson and Gary G. Gerlach, “The Coming Fight for Cable Access,” *Yale Review of Law and Social Action*, vol. 2, no. 3 (1972): 227-37.

broadcasting and showed that it was easy for everyone to participate in new media technologies.

Nancy Fraser's expands on Habermas' concept of the public sphere with her idea of the subaltern counterpublic, which, as Michael Warner defines, "enables a horizon of opinion and exchange; its exchanges remain distinct from authority and can have a critical relation to power; its extent is in principle indefinite, because it is not based on a precise demography but mediated by print, theater, diffuse networks of talk, commerce, and the like."<sup>61</sup> Fraser argues that the existence of one single public sphere naturally represses the views of marginalized groups, and that the only solution to this is the simultaneous existence of several competing public spheres, rather than one uniform one.<sup>62</sup> Public access television is a counterpublic in that it is contained within the parameters of dominant media structures, but is largely created outside of them.

When FCC first asserted their power over cable networks in 1972, which was published in their "Cable Television Report and Order." An early footnote, added without much acknowledgment, lists all of potential future uses of cable networks, showing that they were considered, even if they weren't a priority in their regulatory decisions:

[F]ascimile reproduction of newspapers, magazines, documents, etc.; electronic mail delivery; merchandising; business concern links to branch offices, primary customers or suppliers; access to computers; e.g. man to computer communications in the nature of inquiry and response (credit checks, airlines reservations, branch banking, etc.), information retrieval (library and other reference material, etc.), and computer to computer communications; the furtherance of various governmental programs on a Federal, State and municipal level; e.g. employment services and manpower utilization, special communications systems to reach particular neighborhoods or ethnic groups within a community, and for municipal surveillance of public areas for protection against crime, fire detection, control of air pollution and traffic; various educational and training programs; e.g. job and literacy training, pre-school programs in the nature of 'Project Headstart,' and to enable professional groups such as doctors to keep abreast of developments in their fields; and the provision of a low cost outlet for political candidates, advertisers, amateur expression (e.g., community or university drama groups) and for other moderately funded organizations or persons desiring access to the community or a particular segment of the community.<sup>63</sup>

<sup>61</sup> Warner, *Publics and Counterpublics*, 56-57.

<sup>62</sup> Craig Calhoun. *Habermas and the Public Sphere*. Studies in Contemporary German Social Thought. (Cambridge, MA: The MIT Press, 1992): 122.

<sup>63</sup> Federal Communications Commission, Cable Report and Order and Reconsideration, 1972.



Today we clearly read this list as talking about the internet. And, cable networks, feared to be disguised surveillance networks, eventually turned into internet networks, often times using literally the same infrastructure, and these fears have been realized.

This all may seem insignificant now that anyone can broadcast whatever and whenever they want on social media, but at the time this was a profoundly huge win for the public. We have to think about the relationship this had to the media landscape at the time. Posting something on a social media network is difficult to compare to airing a TV show in the 1970s. The landscape of social media, which instead of hundreds of channels has billions, is much too diluted today to make any meaningful parallel between the two.

Cable television had the potential to further remove communities from the media they consume, but the public access model of regulation, fought hard for by media activists, found a middle ground which allowed both local and national publics to form in a way broadcast television before it did not. Unfortunately, these types of regulations—for the public good—have been largely forgotten by politicians deeply entrenched in the “third-way” neoliberal policies. These regulations could make sure there is space available for true public benefit and use of any new medium and is incredibly pertinent to the current radical shift in digital technology like algorithms, quantum computing, and artificial intelligence. These looming technologies have the potential to shift every aspect of our society, and there is little accountability or input in their uses by publics, or counterpublics. We’ve finally become active participants in older mediums but remain passive consumers in the new.

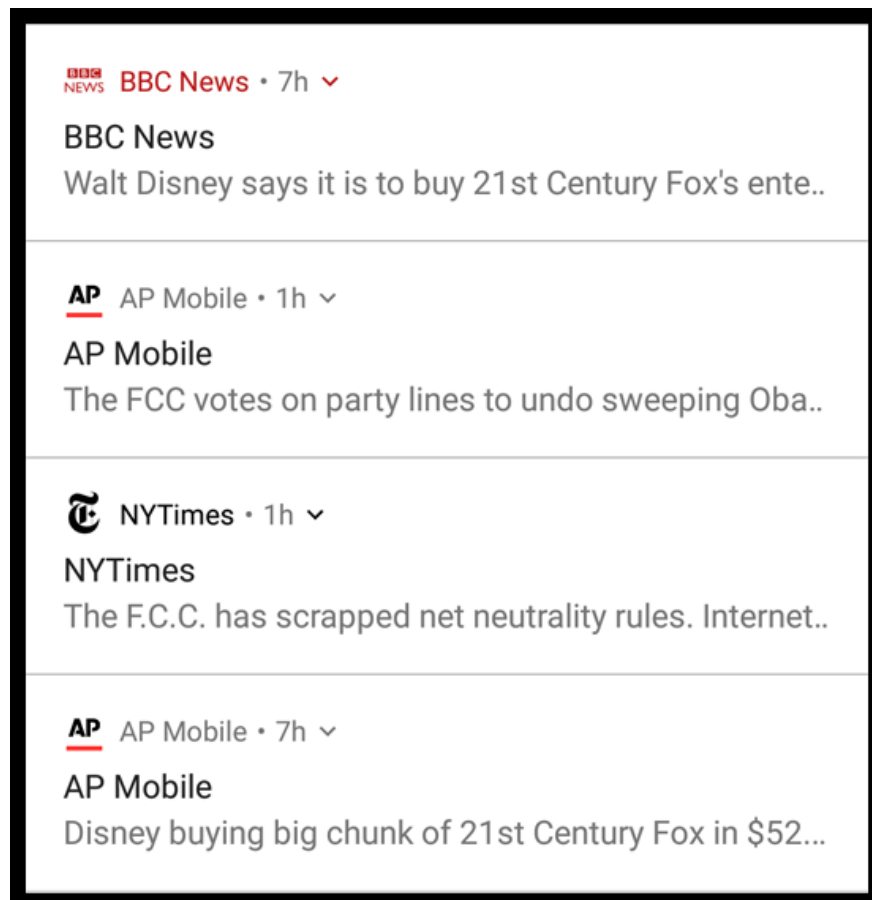
The long transition from photography to cable television had the potential to radically separate community control from the medium, and with it its ability to act a counterhegemonic force. At a time of great activism across many different counterpublics, public advocates acted quickly, using state regulatory mechanisms to make sure cable television maintained a space for public use. As Stuart Hall writes, “the concept of hegemony is not a ‘given’ and permanent state of affairs, but has to be

actively won and secured: it can also be lost.”<sup>64</sup> Social and political environments are a major factor in determining how new media technologies are deployed, and who benefits from them.

<sup>64</sup> Stuart Hall, “Culture, the Media and the ‘Ideological Effect’,” *Mass Communication and Society* (Beverly Hills, CA; London: Sage Publications, 1979): 333

## Butt Pirates

I've now written about two media technologies that have been used in two different ways for counterhegemonic purposes: photography was able to expose power structures by turning the camera back on its owners, and cable television, potentially taking away the public use of the medium, was preemptively regulated to provide public access use. Now I will propose a third solution for the protection of private media consumption: theft. As the advent of photography and public access television happened before I was born, this is where it gets personal. Media piracy, particularly digital media piracy, is foundational to me and my practice as an artist for, as I explain below, personal, political, and technical reasons.



Screenshot of breaking news updates on December 14<sup>th</sup>, 2017, when the FCC repealed net neutrality rules the same day Disney announced it was buying 21<sup>st</sup> Century Fox's entertainment catalog. Screenshot by author.

Since the advent of cable television, which greatly increased the amount of media available, the amount of media continued to expand exponentially with its transition onto the internet. But, in some ways, the creation of more and more platforms is an illusion. While we have increasing number of ways to access media, platforms are being increasingly consolidated into fewer and fewer corporate owners. From 1983 to 2012, 90% of media consumed by Americans went from 50 companies to six.<sup>65</sup> “Local media,” once protected from consolidation by the FCC, is now dominated by giant national corporations.<sup>66</sup> The difference now is that what was once considered local media still pretends to be, with national corporations like Sinclair operating individual affiliate stations across the country.

I grew up in rural Minnesota, and it wasn't until I left that I started thinking about how small-town culture has impacted my identity. One of the biggest things I have struggled with since living in New York City and then at MIT, is that there are truly powerful people—celebrities, politicians, billionaires—who are not far removed from my social circle. This is not something I ever imagined when I was growing up, but why? I almost did not apply to MIT, thinking there was no chance of me ever getting in: I distinctly remember hovering over the “pay now” button on the \$100 application fee, minutes before the deadline, wondering if it was actually worth it.

Maybe one of the reasons I never imagined I would rub shoulders with these types of people is that I did not see people like me represented in those circles. If it wasn't that, then what was the representation I saw growing up?

I remember watching TV as a kid in the late 1990s and thinking there was something wrong with my generation, that it had been taken over by some sort of a violent epidemic. Tabloid talk shows like *Maury* (1991-) and *Ricky Lake* (1992-2004)

<sup>65</sup> James B. Stewart, “When Media Mergers Limit More Than Competition,” *The New York Times*, July 25, 2014, sec. Business, <https://www.nytimes.com/2014/07/26/business/a-21st-century-fox-time-warner-merger-would-narrow-already-dwindling-competition.html>.

<sup>66</sup> Eli Rosenberg, “Trump Said Sinclair ‘Is Far Superior to CNN.’ What We Know about the Conservative Media Giant.,” *Washington Post*, accessed August 2, 2020, <https://www.washingtonpost.com/news/style/wp/2018/04/02/get-to-know-sinclair-broadcast-group-the-conservative-local-news-giant-with-a-growing-reach/>.

often portrayed teenagers as out-of-control wildings who would do anything, violent, sexual or otherwise, regardless of the legality.

This narrative was tapped into outside of TV with movies like *Kids* (1995) and *Thirteen* (2003), both featuring out of control children, but this narrative was really pushed into the national dialogue after the 1999 Columbine shooting, when all forms of popular media came under intense scrutiny, and people starting blaming this narrative on violent video games,<sup>67</sup> or musicians like Marilyn Manson.<sup>68</sup>

But, in spite of all of these anxieties and media attention, there was no data to back up these claims. Violent crime in the United States actually peaked around 1990 and dropped significantly since. So, despite my impressions, my generation is actually *less violent than my parents'*, and by some measurements, significantly so.<sup>69</sup> It was many years later I learned this, and, by the way crime is still talked about by politicians in this country,<sup>70</sup> I would guess that many people are still not aware of this.



*The Jenny Jones Show*, screenshots from YouTube.

<sup>67</sup> Mark Ward, "Columbine families sue computer game makers," *BBC News*, May 1, 2001. <http://news.bbc.co.uk/2/hi/science/nature/1295920.stm>.

<sup>68</sup> Joe Dangelo, "Colorado Governor, Congressman Support Anti-Manson Group," *MTV News*, June 17, 2001. <http://www.mtv.com/news/1443825/colorado-governor-congressman-support-anti-manson-group/>

<sup>69</sup> John Gramlich, "5 facts about crime in the U.S." *Pew Research Center*, October 17, 2019. <https://www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s/>.

<sup>70</sup> Jake Horton, "Are US Cities Seeing a Surge in Violent Crime?," *BBC News*, August 2, 2020, sec. US & Canada, <https://www.bbc.com/news/world-us-canada-53525440>.

One of the talk shows that really capitalized on this narrative, and one I (probably ill advisedly) watched as a kid, was *The Jenny Jones Show* (1991-2003), a semi-scripted tabloid talk show about eccentric but otherwise regular people. The show was all about creating conflict: the guests of the show were often lied to about the premise of the episode and provided alcohol before filming to impair their judgement. Then they would be ambushed on camera not just in front a studio audience, but for the whole world to see on television.<sup>71</sup>

In 1995 there was such an egregious example of this type of sensationalism the episode was shelved before it even aired. The episode was called “Same Sex Secret Crushes” and its premise was that a gay man confessed his affection to an unsuspecting male friend. That male friend did not know why he was invited to be on the show, and the surprise was meant to be entertaining. Three days after the episode was filmed, the gay guest of the show was murdered by the man he had just confessed his affection to. The violent narrative I thought was true about a generation of people was an exaggeration, if not a complete fabrication. And that by pushing this narrative it could become a self-fulfilling prophecy.

At trial, the man’s lawyer used the “gay panic” defense, which is the argument that a violent response to a same-sex advance is simply a reflection of homophobia in society, so the murderer should not be held accountable for their reaction.<sup>72</sup> The defense attorney also argued that the public nature of his client’s humiliation on the episode was a major factor in the murder.

While this episode of *The Jenny Jones Show* episode was a trashy media representation of a gay man, and it ended in a violent tragedy, the following decade saw a massive expansion in LGBTQ+ legal rights, including laws on hate crimes, discrimination, the decriminalization of sexual activity, and marriage. How did this happen? How did queer identity so quickly saturate society in the United States?

Dick Hebdige, in defining subcultures, argues against what was, according to him, a traditional view of subcultures: that they are generational rebellions from our

<sup>71</sup> *Talked to Death*, Directed by Eames Yeates, HBO: 1997.

<sup>72</sup> Joseph R. Williams, “‘I Don’t Like Gays, Okay?’ Use of the ‘Gay Panic’ Murder Defense in Modern American Courtrooms: The Ultimate Miscarriage of Justice.” *Albany Law Review*, Vol. 78.3 (2014): 1129.

parent's morals and conceptions of life. Instead, Hebdige argues that subcultures are a visual exhibition of class structure, created through either wealth or race, and so are deeply rooted in the ideals of previous generations, not rejections of them. While seemingly rebellious, subcultures are actually a visual solidarity among class members.<sup>73</sup> For his analysis of English punks and skinheads, this is a compelling argument. But when gay people are born into every facet of society, regardless of class, race, or geography, this same logic cannot apply to gay subcultures. So, where do gay subcultures come from?

Collective gay and lesbian identity in the United States was first developed in the 1970s through networking within large cities like New York and San Francisco.<sup>74</sup> These identities and cultural products, first developed in cities, are then disseminated to the rest of the world through media representations.<sup>75</sup>

As Eve Sedgwick writes, there were subtle and coded representations going back to literature by Oscar Wilde and Herman Melville, but explicit queer representations became more common starting in the 1960s, with positive portrayals coming much later.<sup>76</sup>

While talking about queer culture and communities in relation to urban spaces, New York City and San Francisco are often used as the stand-ins for these spaces, but there are growing neighborhoods for queer people in almost every city in the United States. In *Global Gay*, author Frédéric Martel thinks the most dynamic gay neighborhoods are in cities in Texas.<sup>77</sup> In *Real Queer America*, Samantha Allen writes about the propagation of what she calls "oasis cities" in red states, where groups of queer people congregate.<sup>78</sup> Scott Herring writing about "metronormativity," or the idea

<sup>73</sup> Dick Hebdige, *Subculture, the Meaning of Style*, New Accents (London: Methuen, 1979): 73-75.

<sup>74</sup> Jeffrey Escoffier, *American Homo: Community and Perversity* (New York: Verso Books, 2018).

<sup>75</sup> Frédéric Martel, *Global Gay: How Gay Culture Is Changing the World* (Cambridge, MA: The MIT Press, 2018): 221-40.

<sup>76</sup> Wendy Hilton-Morrow and Kathleen Battles, *Sexual Identities and the Media: An Introduction* (Routledge, 2015).

<sup>77</sup> Martel, *Global Gay*, 14.

<sup>78</sup> Samantha Allen, *Real Queer America: LGBT Stories from Red States*, (New York: Little, Brown and Company, 2019).

that queer identity is synonymous with urban spaces, advocates for what he calls queer anti-urbanism.<sup>79</sup>

If the violent portrayals of tabloid talk shows could stick with me as a child, maybe an increase in diverse and positive queer portrayal can stick with the generation younger than me, but we need to be diligent that these portrayals are not only accurate and inclusive, but continue to be accessible to the people who need them the most. The most prominent television shows with nuanced queer characters air on premium channels like HBO and Showtime.<sup>80</sup>

So, let's talk about queer communities in rural spaces, and go back to my childhood for a second. My memory of the violent perception I had of my generation was based on broadcast television, not on the internet. Choice was limited, especially during the day, so I watched what was presented to me. This has now changed slightly with the internet, but, at the time, the only way I accessed the internet was through a dial-up connection on a shared computer.

So, while the internet was culturally enlightening for me, the limit, though, was in the speed of the connection: the average time to download a song was about a half-hour, and a full-length movie could take a day to download. Because I was using a phone line that had to double as an actual phone line, this was not an option. So, stealing media was often the only way I could access them when I was using a dial-up computer, and a lot of this is due to the way peer-to-peer (P2P) files work.

P2P file-sharing networks were first popularized by Napster, which was created by Shawn Fanning in 1999.<sup>81</sup> When downloading files over them, a computer gets fragments of files from several other computers, which the file client then assembles into a single file. This is significant because a P2P client can operate in the background, for as long as it needs to, until the file is complete. Regular downloads operate in a linear function, needing to download the file in its entirety at once. If the connection is

<sup>79</sup> Scott Herring, *Another Country: Queer Anti-Urbanism* (New York: New York University Press, 2010).

<sup>80</sup> Frédéric Martel, *Global Gay: How Gay Culture Is Changing the World* (Cambridge, MA: The MIT Press, 2018): 222.

<sup>81</sup> Aernout Schmidt, Wilfred Dolfsma, and Wim Keuvelaar, *Fighting the War on File Sharing* (Cambridge, UK: Cambridge University Press, 2007).



interrupted, the download needed to restart from the beginning. The decentralization and non-linear creation of remote file sharing was a profoundly impactful technology.

Certainly, twenty years later, dial-up connections no longer have the same prevalence, but internet speeds are still significantly slower than rural areas than they are in urban areas. And the problems I faced growing up have scaled with the increased speeds of internet infrastructure: downloading a video might have taken me several hours, but that was standard definition (or even lower than standard definition television standards). Now we have 4K or 8K videos that are four+ times larger file sizes, and even larger files like video games are now being exclusively offered as downloads instead of being sold on physical discs.<sup>82</sup>

There is a limit in that P2P networks also operate in a democratic fashion—instead of getting a file from a server owned by a company, files are downloaded by a community of people who host the files all over the world. This means that there are not enough people online with the file you are trying to access (called seeds), the download usually does not work. This means P2P networks naturally favor popular media, or, put another way, they inherently favor stealing than working to distribute or promote any niche original content.

Another problem is that these programs often make the locations of the computers visible to anyone on the network, exposing the criminality of the copyright infringements. An example of how these questions of accessibility through technology became real in 2011 when the gay pornography studio Corbin Fisher began sending cease and desist letters to people accused of pirating their films over P2P networks.<sup>83</sup>

The film in question is called *Down on the Farm* and is described as “our All-American guys in the most All-American setting—a rural and rustic Midwest farm—the very setting where the film would be inaccessible.

<sup>82</sup> Paul Tassi, “Microsoft Was Right, Video Game Discs Are Stupid,” *Forbes*, March 8, 2016. <https://www.forbes.com/sites/insertcoin/2016/03/08/microsoft-was-right-video-game-discs-are-stupid/>

<sup>83</sup> ryant, “Will Corbin Fisher’s Gay Porn Piracy Crackdown Inevitably Out Gay Teens?” *Queerty*, February 11, 2011. <https://www.queerty.com/will-corbin-fishers-gay-porn-piracy-crackdown-inevitably-out-gay-teens-20110211>

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

LIBERTY MEDIA HOLDINGS, LLC,

Plaintiff,

vs.

SWARM SHARING HASH FILE  
AE340D0560129AFEE8D78CE07F2394C7B5B  
C9C05 ; AND DOES 1 through 38,

Defendants.

Civil Action No. 11-cv-10802

**JURY TRIAL DEMANDED**

**COMPLAINT FOR COPYRIGHT INFRINGEMENT**

Plaintiff, Liberty Media Holdings, LLC (hereinafter "Liberty" or the "Plaintiff") files this complaint against multiple unknown Defendants and alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff is the registered owner of the copyright to a motion picture, "Down on the Farm" (hereinafter the "Motion Picture"). A true and correct copy of the Certificate of Registration for the Motion Picture is attached hereto as Exhibit 1.
2. Defendants, whose true identities are currently unknown, acted in a collective and interdependent manner in the unlawful reproduction and distribution of Plaintiff's Motion Picture using the BitTorrent file transfer protocol.
3. Each time a Defendant unlawfully distributes a copy of Plaintiff's copyrighted Motion Picture to others over the Internet, particularly via BitTorrent, each recipient can then distribute that unlawful copy of the Motion Picture to others without degradation in sound or picture quality. Thus, a Defendant's distribution of even a single unlawful copy of the Motion Picture can result in the nearly instantaneous worldwide distribution of that single copy to a

*Corbin Fisher's parent company's lawsuit against anonymous file downloaders*



Promotional photos for Corbin Fisher's film *Down on the Farm*. Author unknown.

As the news of Corbin Fisher's cease and desist letters was picked up by various gay blogs at the time, there was real concern about the damage this could do to someone living in the closet. Lawsuits over pirated content often start before the identities of the pirates are even known. Whether it is suing "John Does" or, as in Corbin Fisher's case, referring to them as "swarms...whose true identities are currently unknown", but "acted in a collective and interdependent manner..."<sup>84</sup>

These speculations put people in physical danger by outing them,<sup>85</sup> as these cease-and-desist letters are often not delivered to the people they are meant for. How could they? Where do you mail a letter addressed to a swarm? Some studios have been accused of extortion by sending these kinds of letters.<sup>86</sup> Corbin Fisher's legal team

<sup>84</sup> Rhett Pardon. 2011. "Corbin Fisher Suit Describes Day in Life of a Pirated Movie." *Xbiz*, March 29, 2011. <https://www.xbiz.com/news/132263/corbin-fisher-suit-describes-day-in-life-of-a-pirated-movie>

<sup>85</sup> jd, "This Gay Teen 'Will End My Life' If He's Outed By A Corbin Fisher BitTorrent Lawsuit," *Queerty*, March 9, 2011. <https://www.queerty.com/this-gay-teen-will-end-my-life-if-hes-outed-by-a-corbin-fisher-bittorrent-lawsuit-20110309>

<sup>86</sup> It is important to note that Corbin Fisher is not the only porn studio to sue torrent users for copyright violation. More recently, in 2017, a different studio sending similar cease and desist letters was counter-sued for extortion for demanding payments to settle out of court.

dismissed criticism and the danger of these letters, as well as the humanity of their targets by simply referring to the defendants “thieving little shits.”<sup>87</sup>

Something that was not considered in much depth at the time is the question of why someone would steal a pornographic movie in the first place. As the copyright holders often want to portray piracy, the person illegally downloading something really is a “thieving little shit” and has the money and the resources to pay for the content but simply does not want to. But, in reality, there are many other reasons people steal media. Besides access to the media being limited by technical and geographic barriers, as I discussed earlier, there are studies on pornography use across various social groups that show people often use pornography to express their sexuality in the moments which, for whatever reason, they are not able to express it physically. This is a common issue for a queer person who is in the closet, or for a person who lives in a rural area and does not have access to as many potential partners as a person in a major city would. It also says those who earn less money, as is often the case for people in rural areas, are more likely to use pornography.<sup>88</sup>

In *Wired Shut*, Tarleton Gillespie looks at the way copyright law shapes culture in the digital world:

Democracy demands that every citizen be well informed, literate about the pressing issues, and capable of making informed decisions. The ‘marketplace of ideas’ should expose citizens to lively, adversarial debate: Multiple and conflicting voices should all be heard; consensus will arise from citizens rationally considering alternative viewpoints... In academic research, scholars should ‘stand on the shoulders of giants,’ learning what the field has accomplished thus far, then contributing to its emergent edges. The scientific principle itself depends on past work being available for study and current work being available for scrutiny. Artists similarly learn their craft by being surrounded by the work of others; they emulate great masters and eviscerate mediocre contemporaries; they lift ideas and techniques from the work they encounter.<sup>89</sup>

<sup>87</sup> Kevin Farrell, “Corbin Fisher Calls Gay Teens ‘Thieving Little Shits’; Lies About Charitable Donations,” *Hornet*, August 15, 2018, <https://hornet.com/stories/corbin-fisher-calls-gay-teens-thieving-little-shits-lies-about-charitable-donations/>.

<sup>88</sup> Xiaozhao Yousef Yang, “Is Social Status Related to Internet Pornography Use? Evidence from the Early 2000s in the United States,” *Archives of Sexual Behavior* vol. 45 issue 4, 2016.

<sup>89</sup> Tarleton Gillespie, *Wired Shut: Copyright and the Shape of Digital Culture* (Cambridge, MA: MIT Press, 2007): 24.

Politics of the last few decades, on several fronts, makes all of these things more difficult: inequities across subsections of wealth, race, sexuality, and geography make access to culture vary significantly. This affects what Shoshana Zuboff calls the “right to the future tense,” which is “the individual’s ability to imagine, intend, promise, and construct a future.”<sup>90</sup> As my own experience shows me, imagining a future requires a model of what that could be—an idea that there is something other than what is our immediate surroundings.

And Adam Haupt argues in *Stealing Empire* that culture, particularly youth and minority cultures, are co-opted by corporations, repackaged, and sold back to the people who produce it.<sup>91</sup> This argument could easily be applied to queer culture in the last decade: Corbin Fisher is trying to sell me a fantasy of young white straight men in rural America, or a ridiculously sexualized version of my hometown. If we’ve done the labor to create the premises in these media representation, can’t we collect our paychecks by viewing the media for free? Or, at the least, to better understand the way others will inevitably perceive us by fault of representation?

Yes, by legal definition torrenting a movie is stealing. But it is often theft without any real loss to the producer, because, one, there is no physical product with digital media and so no loss of production costs, and, two, there is little evidence that illegal downloads translate into lost sales.<sup>92</sup> Copyright holders often not only exaggerate their losses to copyright violations, but ignore the benefits of a larger platform.<sup>93</sup>

No, losing the ability to pirate pornography isn’t the end of the world. Yes, there are much larger social and economic power structures to blame for issues around discrimination, but blindly and brutally enforcing copyright laws over small infractions could quite literally be a life or death situation for vulnerable populations.

<sup>90</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: PublicAffairs, 2020): 19.

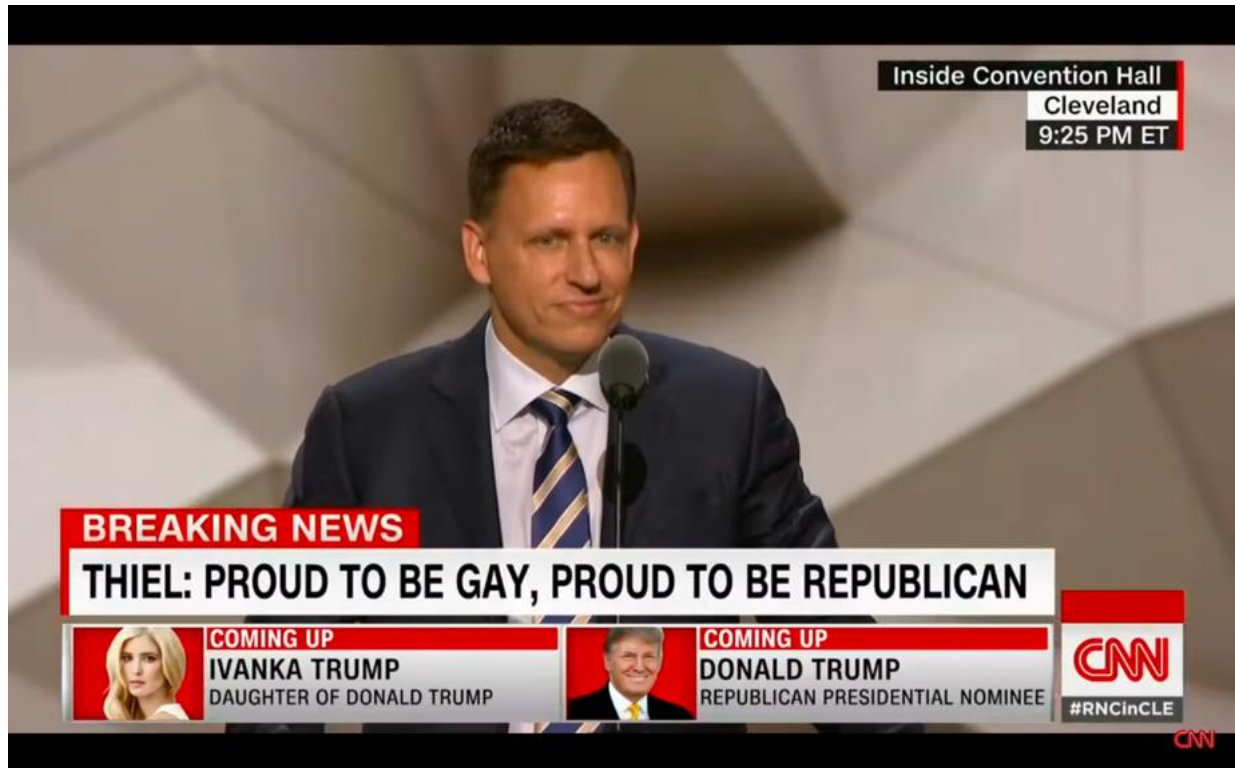
<sup>91</sup> Adam Haupt. *Stealing Empire: P2P, intellectual property and hip-hop subversion* (Cape Town: HSRC Press, 2008).

<sup>92</sup> Felix Oberholzer-Gee and Koleman Strumpf, “The Effect of File Sharing on Record Sales: An Empirical Analysis,” *Journal of Political Economy*, vol. 115 no. 1 (2007): 1-42.

<sup>93</sup> Gillespie, *Wired Shut*, 35.

Which brings me back to Jenny Jones: maybe I was a criminal, after all. But I am confident that I would not be writing this without stealing media. Until there is an equal playing field, the crime pays.

## Networked Media



Peter Thiel's speech to the 2016 Republican National Convention on CNN. Screenshot from YouTube.

I've now outlined three media technologies that have changed the landscape of media: the mass commercialization of photography by Kodak, the expansion of corporate mass media into national networks and its corresponding opening of local markets to the public, and an illegal platform for stealing corporate media and sharing it directly between the public. All in their own ways had the potential to create opportunities and power for marginalized communities and give access to resources that would have otherwise not been available to them.

Today, some are saying we're in a Second Gilded Age.<sup>1</sup> Decades of digital technology innovation, coupled with decades of corporate deregulation, have created

<sup>1</sup> Daniel Wortel-London and Boyd Cothran, "A Second Gilded Age? The Promises and Perils of an Analogy: Introduction," *The Journal of the Gilded Age and Progressive Era* 19, no. 2 (April 2020): 191–96.

new media technologies around things like data mining, algorithms, and artificial intelligence which are creating massive amounts of wealth for a few people.

In 2016, Peter Thiel told the crowd at the Republican National Convention that he was a proud gay man, after which he paused for a moment to bask in the chants of “USA! USA! USA!”<sup>2</sup>

Thiel became wealthy as a co-founder of PayPal and a billionaire as an early investor in Facebook. It’s likely not a coincidence that Thiel was the tech industry’s most prominent Trump supporter while Facebook was at the center of the disinformation campaign that pushed Trump to the White House:<sup>3</sup> Facebook’s continued resistance to regulate political ads is reportedly at the behest of Thiel.<sup>4</sup>

Thiel, who has had a frosty relationship with the press for some time, bankrolled a 2012 defamation lawsuit against the gossip-news site Gawker, which outed him as gay a few years earlier, saying “‘I refuse to believe that journalism means massive privacy violations,’ he said. ‘I think much more highly of journalists than that. It’s precisely because I respect journalists that I do not believe they are endangered by fighting back against Gawker.’”<sup>5</sup>

This argument is very similar to the one made by Warren and Brandeis in “The Right to Privacy,” and Godkin’s argument in favor of maintain one’s reputation. But this argument is now coming from a man who sits on the board of a company that has possibly done more to violate people’s privacy than any other company in the history of the world. And, on top of that, Thiel has spun his profits from Facebook into a new

<sup>2</sup> “Peter Thiel’s entire Republican convention speech,” *CNN*, July 21, 2016. <https://www.youtube.com/watch?v=oUTnQQZOYv0>

<sup>3</sup> Nicholas Confessore, “Cambridge Analytica and Facebook: The Scandal and the Fallout So Far,” *The New York Times*, April 4, 2018, sec. U.S., <https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html>.

<sup>4</sup> Lauren Feiner, “Peter Thiel reportedly pushed Facebook not to vet fake political ads,” *CNBC*, December 17, 2019, <https://www.cnbc.com/2019/12/17/peter-thiel-reportedly-pushed-facebook-not-to-vet-fake-political-ads.html>.

<sup>5</sup> Andrew Ross Sorkin, “Peter Thiel, Tech Billionaire, Reveals Secret War With Gawker,” *The New York Times*, May 25, 2016. <https://www.nytimes.com/2016/05/26/business/dealbook/peter-thiel-tech-billionaire-reveals-secret-war-with-gawker.html>



company, Palantir, which is primarily a surveillance company that often collaborates with the United States government and military.<sup>6</sup>

That Thiel says he cares about privacy would be laughable if it wasn't so scary. Peter Thiel has fascist sympathies and is interested in maintaining his tech-libertarian vision of the world even if it is at the expense of the will of the people.<sup>7</sup> So, despite being a gay man, Peter Thiel is no ally to equity.

How did we get to a place where a gay man would operate happily as an active oppressor in American society? Against Equality is a queer activist group that has been grappling with this question for more than a decade. They actively campaigned against the typical LGBT rights pushed by elected officials: marriage equality, inclusion as a protected class in anti-discrimination and hate crime legislation, and inclusion in the military with the repeal of "don't ask, don't tell."<sup>8</sup>

They do this because they see queerness as a fundamental rejection of the white-supremacist, patriarchal, and imperialist society of the United States, and they see the specific advancement of these rights less as a changing and inclusive society, and more as queer assimilation into these institutions: marriage into a conservative monogamous family structure, discrimination protections into the proliferation of policing and prisons, and military service into the acceptance of imperialist policies. In other words, it isn't society that is changing, but queer people.

This was further explored in *Terrorist Assemblages* by Jasbir Puar. Largely a queer theory analysis of Foucault through the lens of colonialism, Puar criticizes marriage as the goal of the gay rights movement, and its push by affluent white consumers, who do so without questioning the neoliberal model that made marriage illegal in the first place. And by embracing neoliberalism, she argues that the mainstream LGBT movement is allowing Western states to use LGBT rights to justify

<sup>6</sup> Aaron Mak, "How a JPMorgan Security Team Reportedly Used Palantir's Tools to Spy on Its Employees," *Slate Magazine*, April 19, 2018, <https://slate.com/technology/2018/04/jpmorgan-used-palantir-tools-monitor-employee-activity-bloomberg-report.html>.

Spencer Woodman, "Palantir Provides the Engine for Donald Trump's Deportation Machine," *The Intercept*, March 2, 2017, <https://theintercept.com/2017/03/02/palantir-provides-the-engine-for-donald-trumps-deportation-machine/>.

<sup>7</sup> Peter Thiel. "The Education of a Libertarian." *Cato Unbound*. April 13, 2009. <https://www.cato-unbound.org/2009/04/13/peter-thiel/education-libertarian>

<sup>8</sup> Ryan Conrad, *Against Equality: Queer Revolution, Not Mere Inclusion*, (AK Press, 2014).

surveillance and violence against non-western populations that are deemed less civilized based on their policies towards LGBT people, even when those policies are the results of previous Western colonial activity.<sup>9</sup> Here she coins the term “homonationalism,” in which gay rights are used as a justification for the advancement of nationalist ideas. Peter Thiel, in his ruthless quest to benefit the few, is a golden example of a homonationalist.

Essentially the arguments made by Against Equality and Puar amount to an attempt to direct a civil rights movement into a more expansive and inclusive direction—to include equity movements that span not just queer identities, but gender, race, and class. This is in contrast to the arguments put forward for a right to privacy, in which that right was going to be reserved for the already ruling class.

While it’s fine to want to use queer identity and the gay rights movement as a tool to remake the fundamental basis of American society, I think it is more fruitful to dwell on certainties, and that is that the nature of government surveillance has actually changed since the start of the gay rights movement.

Palantir is careful to use the word human when explaining their products, with their CEO Alex Karp once saying that Palantir “promote[s] human-driven synergies between humans and computers.” However, he then undermines this argument by saying that Palantir is specifically a product and not a service.<sup>10</sup> Surveillance is no longer something someone does, but something someone sells, and, on top of this, Palantir is not a government organization or even a publicly traded company, so there is no public accountability: their results are proprietary and not open to scrutiny. When digital technology has made virtually every aspect of our lives available to be intercepted, processed, and stored, this is incredibly dangerous.

This is what Shoshana Zuboff defines as surveillance capitalism: “Surveillance capitalists know everything about us, whereas their operations are designed to be

<sup>9</sup> Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times*, (Duke University Press, 2017).

<sup>10</sup> Evelyn Rusli, “Interview: Alex Karp, Founder and CEO of Palantir,” *TechCrunch*, February 16, 2012. <https://www.youtube.com/watch?v=VJFk8oGTEs4>

unknowable to us. They accumulate vast domains of new knowledge from us, but not for us.”<sup>11</sup> Media has converged with capitalism to perpetuate itself.

This is a major shift from when Foucault writes about the panopticon. To him, the panopticon represented a democratic internalization of surveillance into society: “anyone may come and exercise in the central tower the function of surveillance. There is no risk, therefore, that the increase in power created by the panoptic machine may denigrate into tyranny; the disciplinary mechanism will be democratically controlled.”<sup>12</sup> He viewed panopticism not as a top-down form of surveillance, but as a lateral-democratic one—one that we all internalize and practice on our peers. Whether or not this is true, that the general population ever actually had access to “the tower,” I am not so sure, but the expansion of AI and algorithms in surveillance techniques absolutely take this away as a possibility. Complex, opaque, and proprietary technologies are very clearly not accessible to the general population.

When studies are purporting that combinations of big data, algorithms, AI, and biology can accurately predict things like a person’s sexual orientation,<sup>13</sup> something James Bridle refers to as code/space,<sup>14</sup> how can we ensure that these processes are not used in negative ways? Or in ways that exacerbate already existing discrimination?

Here the metaphor of the closet is a fitting one: if we take it literally, a closet that someone can actually enter, inhabit and leave, is a luxury item not afforded to the average home. Generally, privacy has always been something that has only been given to those who can afford it. While there was a moment in the last century when the economic base was wide enough that privacy became a general expectation for the average person, these expectations have since been eroded.

To stop this, it is important to reaffirm how surveillance affects us individually, as humans. And queer people in this moment, who I believe better understand privacy on

<sup>11</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: PublicAffairs, 2020): 11.

<sup>12</sup> Michel Foucault, *Discipline & Punish: The Birth of the Prison* (Vintage Books, 1995): 207.

<sup>13</sup> Michal W. Kosinski and Yilun Wang, “Deep Neural Networks Are More Accurate Than Humans at Detecting Sexual Orientation From Facial Images,” *Journal of Personality and Social Psychology*, Vol. 114, Issue 2 (February 2018): 246-257.

<sup>14</sup> James Bridle, “Computation,” in *New Dark Age: Technology and the End of the Future*, Reprint edition (London; Brooklyn, NY: Verso, 2019).

an intuitive level than other people, are best equipped to articulate this. But it takes a broader understanding of intersectional issues across many different histories, geographies, and technologies, and class structures—something I aim to do in my artistic practice.

## **and the common law in its eternal youth grows to meet the demands of society**

I've now written about three moments in the history of the United States, three corresponding media technologies and examples of counterhegemonic uses of those mediums, along with their ongoing relationships with privacy, sexuality, and wealth, all of which are important concepts in my work.

While initially trained as a photographer, I quickly became taken with questions of what it means to use documentation when so much of our lives is already autonomously documented. While I still largely think of my practice as photography based, I now take a broader approach to the medium: through the concept of media convergence, I acknowledge photography's longstanding relationship to social and political structures, as well as other technologies. I'm also interested in using photography's contradictory histories—as a tool for equity, a representation of Marxist ideals, a surveillance device, and a product of unregulated capitalism—as a vehicle for exploring the often-contradictory nature of existing in these times.<sup>1</sup>

Coming into the Art, Culture and Technology program, I had a longstanding interest in surveillance. Up until this point, it was a regular focus of my work: the surveillance disclosures from Edward Snowden, first released just weeks after I received my bachelor's degree, were particularly formative to my professional practice.<sup>2</sup>

The flip side of surveillance, privacy, is something I didn't fully appreciate independently until I started the ACT program. Though deeply related, this change of focus represents a shift in agency for me: surveillance is something that happens to you, while privacy is something you own. I was also drawn to privacy because of its origins in the Boston-Cambridge area, where the Warrens were based and which I was new to. So, this research really served two functions: to orient myself in my practice,

<sup>1</sup> Contemporary painter Molly Zukerman-Hartung, in an artist talk at the Walker Art Center, memorably said "painting is dad," a play on the term "painting is dead." She means that the history of painting offers a narrative and a framework that she can anchor herself in her own work. I would say the same about photography, which is often proclaimed to be dead.

<https://www.youtube.com/watch?v=xU1A94GkZ5U>

<sup>2</sup> Ryan Aasen, "NSA," 2015. <https://ryanaasen.com/nsa>

and also in my new location—like a public access requirement of a national cable network, there are layers of locality.

This research on the origins of privacy, and its relationship to wealth and sexuality, is part of my ongoing project *and the common law in its eternal youth grows to meet the demands of society*. Titled after a quote from “The Right to Privacy,” it is meant to highlight the fluidity of the common law system: our history as a country is always available to be built upon and reinterpreted. I do this by using the Warren family as semi-fictionalized characters who represent the intersecting histories of wealth, power, and privacy.

Physically, the project exists as a multimodal and multimedia installation revolving around the use of a photocopier, which I use for several reasons: one is the Warrens’ wealth was largely derived from manufacturing paper, and the other is practical: in that research that isn’t about a contemporary moment often exists physically—on paper, books, and objects—all of which originals are not available to me.

Another reason I find the photocopier relevant is partly because of Douglas Crimp’s essay “On the Museum’s Ruins,” which, building on Benjamin’s critique, articulates the relationship between photography and the Museum. Quoting Leo Steinberg’s “Other Criteria,” he talks about how the work of Robert Rauschenberg, by incorporating photography into his paintings, creates a shift in the picture plane from vertical to horizontal, or what he calls a flatbed<sup>3</sup>—much like the surface of a scanner.

In the essay Crimp uses an analysis of the 1881 French novel *Bouvard et Pécuchet*, in which two copy clerks inherit money and quit their jobs, only to realize they aren’t able to do anything else and return to copying. Like Edward Perry Warren, they start collecting phallic objects: “chair-legs, cellar bolts, pharmacists’ pestles.”<sup>4</sup> To Crimp, this random assortment of objects, loosely phallic shaped, but in no other way related to each other, is commentary on the museum, which, again like Edward Perry Warren, tries to pass disparate fragments of a culture as an accurate representation of it.

And another important aspect of the photocopier is that I see it as the embodiment of media convergence, which is an important concept in understanding the

<sup>3</sup> Douglas Crimp, “On the Museums Ruins,” *October* 13 (1980): 41.

<sup>4</sup> Crimp, “On the Museum’s Ruins,” 49

power structure of media technologies. The photocopier is, on the surface, a camera and a printer, and in later versions it converged with the telephone as a fax machine.

And because media convergence also means its convergence with corporate, social, and political structures, the photocopier, as a hybrid camera-printer-telephone, is also a site of “unskilled” labor, often existing in a white-color labor environment (copies are often not made by those in charge, but by an assistant). At the same time, it is a site of access to exclusive information and knowledge—the place where copies can be made and removed from the circulation of informational power structures. In that sense the photocopier can be a site of theft and piracy, but it’s also a site of surveillance on several fronts: the copy machine created a proliferation of reproducible documents and archives that are used to identify us—things like identification records and financial records—but they also surveil us, literally. All color documents have nearly invisible tracking codes used for tracing the origins of documents.<sup>5</sup> By telling the story of the right to privacy, and the Warrens, through photocopies, the goal is that these issues around wealth, labor, privacy, identity, and media convergence are told not just with the content of the narrative, but also in the medium it is told in—a convergence, of sorts.

To me, these layers of meaning represent the multitude of publics that Michael Warner argues are perpetuated by media.<sup>6</sup> The goal of my work is to have multiple publics and audiences contained in it, and is made with the understanding that not everyone will get all of it at the same time. As I am constantly forced to negotiate my existence within multiple publics, the work must do the same.

These publics are evident in Andrew Norman Wilson’s “ScanOps,” which deals with the politics of documents, scanning, and knowledge, and their relationship to labor practices.<sup>7</sup> Started while he was working for Google, the project is a series of screenshots from Google Books in which fingers and hands belonging to the people doing the digitization work are made visible through scanning errors. Often women and

<sup>5</sup> Alexis C. Madrigal, “The Mysterious Printer Code That Could Have Led the FBI to Reality Winner,” *The Atlantic*, June 6, 2017, <https://www.theatlantic.com/technology/archive/2017/06/the-mysterious-printer-code-that-could-have-led-the-fbi-to-reality-winner/529350/>.

<sup>6</sup> Warner, *Publics and Counterpublics*: 56-57.

<sup>7</sup> Andrew Norman Wilson and Laurel Ptak, “Andrew Norman Wilson with Laurel Ptak: ScanOps,” *Aperture* no. 210 (Spring 2013): 126-133.

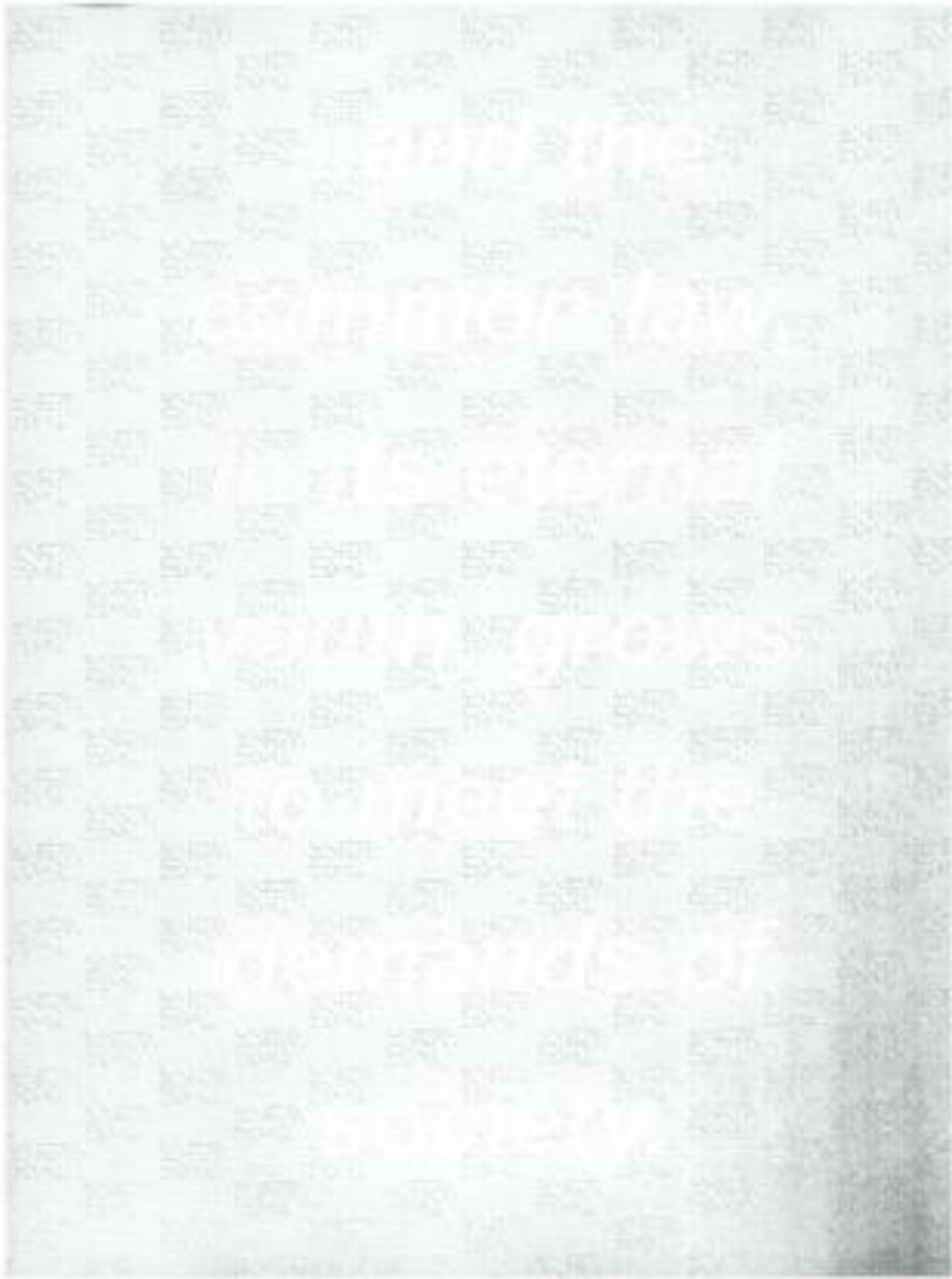
people of color, they worked in a separate building than Google employees, and do not get any of the same perks as the main Google employees.<sup>8</sup> Their labor of scanning, although necessary, is separate from the rest of Google's workforce. By literally making these people visible, Wilson shows that, like the man behind the curtain in the Wizard of Oz, mass computing projects like Google Books are often an illusion—low paid labor is used feed the future of knowledge production and artificial intelligence.<sup>9</sup> Like how the proliferation of early photographers made the wealthy visible, this project clearly shows the relationship Azoulay writes is inherent across photographer, subject, and viewer—the low paid scanners, who Google prefer remain invisible, make themselves visible to viewer, and make the labor structures behind new media technologies visible in the process.

In addition to my narrative work about the Warrens, I have currently done three actions or performances which offer counterhegemonic uses of the photocopier: the first was a way to implicate myself in the printer's surveillance through its use of tracking dots. By printing a ream of blank pages, the paper would appear blank, but the printer would actually be adding tracking dots associated with my personal computer to them. I would then disseminate the pages into various printers, forcing other people to unknowingly print pages with my identity on them. I see this nearly invisible act as an opposite action to the narrative story of the Warrens—instead of living lavishly while demanding privacy, I am actively undermining my own privacy in a way that, if even seen at all, could not be more mundane.

<sup>8</sup> McKenzie Wark, "Designs for a New World," *e-flux Journal* #58, October 2014. <https://www.e-flux.com/journal/58/61163/designs-for-a-new-world/>.

<sup>9</sup> Olivia Solon, "The Rise of 'Pseudo-AI': How Tech Firms Quietly Use Humans to Do Bots' Work," *The Guardian*, July 6, 2018, sec. Technology, <https://www.theguardian.com/technology/2018/jul/06/artificial-intelligence-ai-humans-bots-tech-companies>.





Enhanced scan of a photocopier's tracking code. Photocopy by author.



Stack of pages containing non-visible tracking codes.

On one hand, mundaneness is a tool for obfuscation, which has precedent in repressive environments, like Hong Kong protestors holding blank pieces of paper.<sup>10</sup> But it is also meant to highlight the inherent politics of everyday objects—that there is no escape from the politics of privacy.

I'm especially interested in the trend of politicians using paper as a visual aid to suggest a unit of measurement—like a large stack of paper implying a lot of information. This has been an excuse for the president to hide his tax returns, and a statement that there are too many government regulations.

<sup>10</sup> Joye Zhou, Jessie Pang, and Anne Marie Roantree, "Hong Kong Activists Skirt Security Curbs with Coded Slogans and Blank Walls," *Reuters*, July 6, 2020, <https://www.reuters.com/article/us-hongkong-protests-art-idUSKBN2471DH>.



Rep. Susan Brooks printed Hillary Clinton's emails in 2015. The larger pile is supposed to represent increased interest in a topic. Screenshot by author from C-SPAN.



In 1960, there were approximately 20,000 pages in the Code of Federal Regulations. Today there are over 185,000 pages, as seen in the Roosevelt Room.

Today, we CUT THE RED TAPE! It is time to SET FREE OUR DREAMS and MAKE AMERICA GREAT AGAIN!



Trump's 2017 press conference about further deregulating the economy of the United States. Screenshot from Twitter by author.

The second act was more visible: in the MIT Media Lab, instead of printing blank pages, I printed solid black, double-sided pages, running the copier until the toner was depleted. These prints, the only way to cover the copier's tracking dots, turn a cheap reproduction technology exponentially more expensive, thus highlighting the relationship between privacy and wealth. It also forged an unknown relationship across the publics of my studio building, people I share equipment with but don't often meet. By forcing the printer offline, this act puts a wrench in the system of resources expected to be available.

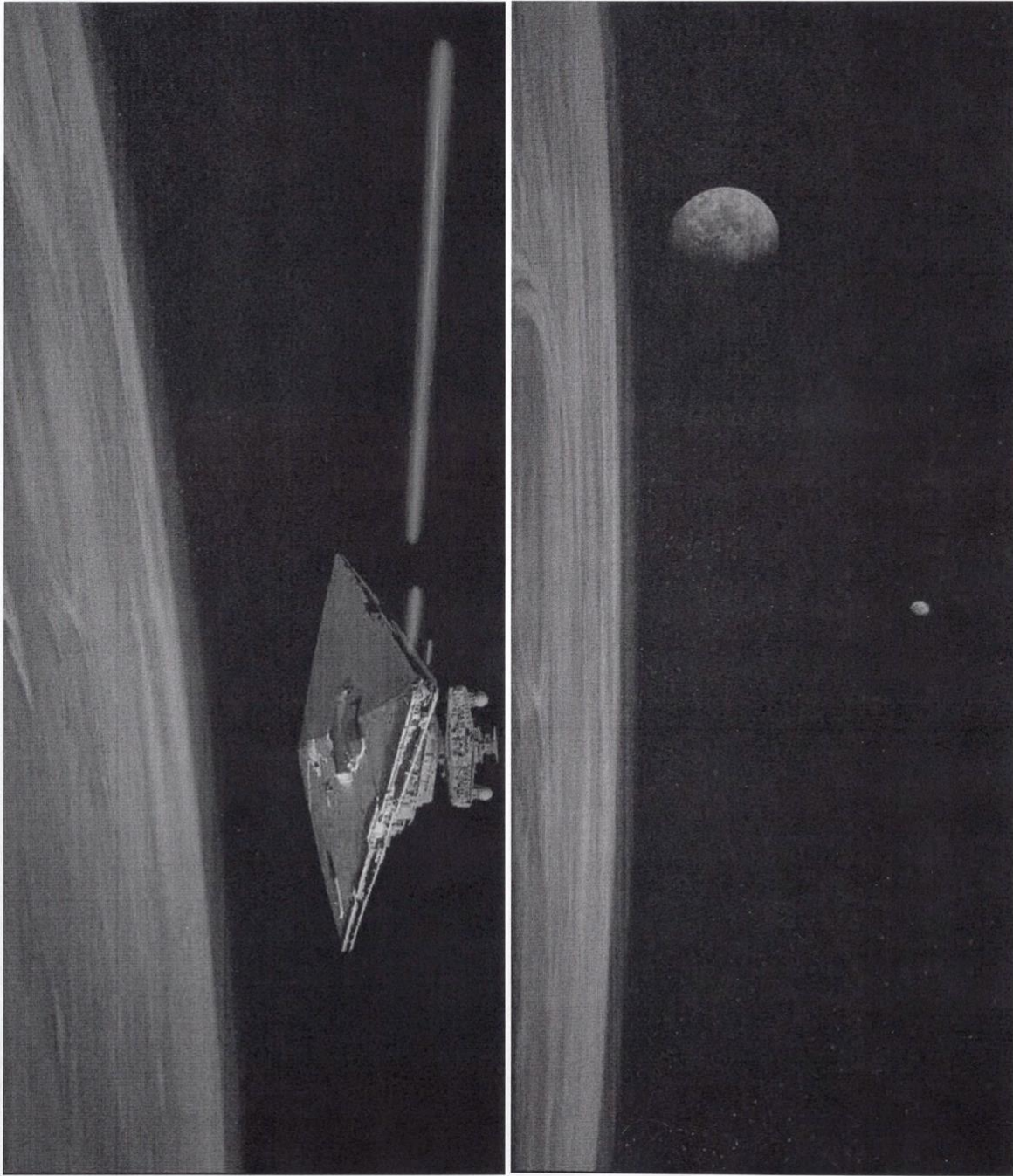
The third deals with the photocopier as a site of piracy, in which I printed scenes from the Star Wars movies in an attempt to translate the film's ownership through fair use and artistic transformation—while maintaining its identity as the cultural icon that it is. The first Star Wars, now more than 40 years old, has been swallowed by the increasingly monopoly-like Disney and will likely never enter the public domain. This translation is also an attempt to bypass the automated filtering technologies that reject copyrighted content in real time, now commonly in place on video and file sharing platforms. I'm interested in the tension between near-universal recognition of Star Wars in the American cultural imagination, and the tight control placed on its distribution. Fantasy is meant to be an escape from reality, but can we successfully disassociate the labor practices and wealth accumulation of corporate America from these franchises?

This work is meant to tap into, as well as build upon, the long history of xerography use as a counterpublic, as a declaration of autonomy in artistic production,<sup>11</sup> including things like graffiti<sup>12</sup> and queer zines,<sup>13</sup> and to recognize that, like photography and cable television, media technologies continue to offer uses long after they are reinvented in new forms.

<sup>11</sup> Kate Eichhorn, *Adjusted Margin: Xerography, Art, and Activism in the Late Twentieth Century* (Cambridge, MA: The MIT Press, 2016): 81-111.

<sup>12</sup> Eichhorn, *Adjusted Margin*, 95.

<sup>13</sup> Shannon Michael Cane, "Xerox, Paper, Scissors," *Aperture*, no. 218 (2015): 46.



Photocopy by author.



## **Conclusion**

Starting in the late nineteenth century, the rapid expansion of industrial technologies coupled with an unregulated liberal economy led to a Gilded Age, and the free reign of photographers threatened to undo this—until the concept of privacy was reinvented as a control mechanism. The crash of the Great Depression and the following New Deal politics led to decades of government regulation, which expanded the economic base and with it access to privacy. But this began to be undone at the time cable television— itself a product of deregulation—entered the market and became a first step in realizing surveillance capitalism. The following decades of deregulation led to a neo-liberal economy and a Second Gilded Age, in which the new media technologies of today are largely proprietary and black-boxed.

My research points to a need to understand the multiple ways in which media technologies are used to maintain power structures, as well as the ways these technologies can be used against those same systems. This include simply pointing them back at their owners, like photography, mandating a space for public use through regulation, like cable television, or stealing access when it is not available, like digital piracy networks.

As we are now entering a new frontier of media technologies with the proliferation of algorithms and artificial intelligence—technologies that have the potential to radically reshape and control our lives—it will take a layered approach of uses from multiple fronts to make sure our future is shaped equitably. At the same time, we need to approach these technologies from deeply human perspectives—not just our own, but with an understanding of the multitude of ways media technologies directly shape our lives and futures. As all of these ideas keep being made into new forms, with new relationships to power structures, the fight is never really over.

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