

## **PHL370: Advanced Topics in Philosophy of Law**

*Privacy, Liberalism and Law*

Instructor: Steve Coyne ([steven.coyne@mail.utoronto.ca](mailto:steven.coyne@mail.utoronto.ca))

We meet every Tuesday and Thursday, from 6-9, in SS2108.

My office hours are Tuesday and Thursday, from 4:30-5:45, in JHB 420 (“The Conversation Lab”), and by appointment.

TA: Manish Oza ([manish.oza@mail.utoronto.ca](mailto:manish.oza@mail.utoronto.ca))

### Course Description

Privacy provides a rich yet largely neglected source of puzzles for the philosophy of law. Why is privacy valuable? Do people have rights to privacy that protect them from intrusions by the state and other persons, and if so, what is the nature of those rights? To what extent should a society’s laws protect the privacy of its citizens? How should we balance privacy with other important liberal values such as equality or liberty? We’ll conclude by looking at some recent Canadian and American legal decisions about privacy through a philosophical lens.

### Evaluation

Two Reading Assignments (500 words max)	20%
One Essay (2000 words max)	15% (first draft); 20% (second draft)
One Commentary (750 words max)	5%
Participation	10%
Final Exam	30%

### Readings

Readings will be made available on Blackboard.

### Assignments

*Two Reading Assignments (500 words):* You must complete two of the three reading assignments. (We will only accept the first two assignments that you submit.) In each assignment, you will be required to concisely explain the main conclusions and arguments of a paper that we have not yet discussed in class.

*Essay (2000 words):* You will be required to complete two drafts of an argumentative essay. The first draft should be no more than 1500 words. You will receive comments from your TA on this first draft, as well as the commentary of one of your peers, and on this basis expand it into a more fully argued 2000 word second draft.

*Commentary (750 words):* You will be required to write a short commentary on an essay written by one of your classmates, summarizing its argument and offering some substantive criticisms of it.

*Participation:* You are expected to keep up with the readings and make meaningful contributions to class discussion that reflect your preparation. There will be a few short group exercises.

*Final Exam:* The final exam is intended to test your mastery of what we’ve discussed in the course, and will require you to answer two or three essay questions. There will be some choice of questions, and the

pool of possible essay questions will be made available early on during the semester to help guide your thinking through the course.

### Late Policy

Extensions can be granted *in advance* for good reasons, but otherwise, late assignments will lose 2% of the assignment grade per day.

Because the *reading assignments* are intended to improve your ability to read a philosophical piece without assistance from the instructor, you will be required to complete an *alternative assignment* if you are unable, for whatever reason, excused or unexcused, to turn in two of the three reading assignments before we discuss the corresponding piece in lecture. Get in touch with the instructor by e-mail if this is the case.

### Accessibility

If you have a disability or health consideration that may require accommodation, please get in touch with me or Accessibility Services ([www.accessibility.utoronto.ca](http://www.accessibility.utoronto.ca)).

### Plagiarism

Plagiarism is a major academic offense and I am obliged to report all instances of plagiarism to administration. Please get in touch with me if you have any doubt whether your assignment appropriately credits the contributions of others. The university's code of conduct can be found here:  
<http://www.governingcouncil.utoronto.ca/policies/behaveac.htm>

### Schedule

*Tuesday, June 30: Introduction*

Solove, Daniel. 2011. *Nothing to Hide: The False Tradeoff Between Security and Privacy*. New Haven: Yale University Press. [Chapter 2]

Banks, Tim. 2015. "National Security: Removing Barriers to Intra-Governmental Sharing of Information," Blog. URL: <http://www.privacyanddatasecuritylaw.com/tag/bill-c-51>

Further reading on Bill C-51:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2560006](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2560006)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2565886](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2565886)

## **Part 1: Privacy and Privacy Rights**

*Thursday, July 2: Monism*

Warren, Samuel, and Brandeis, Louis. 1890. "The Right to Privacy," *Harvard Law Review*, 4: 193–220.

Moore, Adam. 2003. "Privacy: Its Meaning and Value," *American Philosophical Quarterly*, 40: 215–227. [Read only: 215-218]

Parent, William. 1983. "Privacy, Morality and the Law," *Philosophy and Public Affairs*, 12: 269–88. [Read only: 269-275]

*Tuesday, July 7: Pluralism*

Prosser, William. 1960. "Privacy", *California Law Review*, 48: 383–423.

Gavison, Ruth. 1980. "Privacy and the Limits of Law," *The Yale Law Journal* 89(3) [Read only: 421-440]

Bloustein, Edward. 1964. "Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser", *New York University Law Review*, 39: 962–1007.

***Reading Assignment 1 due at 6PM, July 8. No late assignments accepted, but you have a choice of which two you complete.***

*Thursday, July 9: Reductionism*

Thomson, Judith Jarvis. 1975. "The Right to Privacy", *Philosophy and Public Affairs*, 4: 295-314.

Scanlon, Timothy. 1975. "Thomson on Privacy", *Philosophy and Public Affairs*, 4: 315–322.

Parent, William. 1983. "Privacy, Morality and the Law," *Philosophy and Public Affairs*, 12: 269–88 [Read only 278-280]

*Tuesday, July 14: The Public and the Private*

Marmor, Andrei. 2015. "What is the Right to Privacy?" *Philosophy and Public Affairs* 43(1): 3-26

Arendt, Hannah. 2000. (1958) "The Public and the Private Realm," in *The Portable Hannah Arendt* (Ed. Peter Baehr,) New York: Penguin Books

***Reading Assignment 2 due at 6PM, July 15. No late assignments accepted, but you have a choice of which two you complete.***

**Part 2: The Value of Privacy**

*Thursday, July 16: Privacy and Freedom*

Westin, Alan. 1967. *Privacy and Freedom*. Atheneum: New York. [Read only: 23-52]

Gavison, Ruth. 1980. "Privacy and the Limits of Law," *The Yale Law Journal* 89(3) [Read only: 440-459]

Benn, Stanley. 1984. "Privacy, freedom, and respect for persons," in *Philosophical Dimensions of Privacy: An Anthology* (ed. Ferdinand David Schoeman.) Cambridge University Press: Cambridge

*Tuesday, July 21: Privacy and Relationships*

Rachels, James. 1975. "Why Privacy is Important", *Philosophy and Public Affairs*, 4(4): 323–33.

Nagel, Thomas. 1998. "Concealment and Exposure" *Philosophy and Public Affairs*, 27(1): 3-30

### **Part 3: Law, Liberalism, and Privacy**

*Thursday, July 23: Liberalism and Privacy (1)*

Mill, John Stuart. 1859. *On Liberty*. Excerpts

Austin, Lisa. 2010. "Privacy and Private Law: The Dilemma of Justification", 55 *R.D. McGill* 165

***First Draft of Paper due at 6PM, July 27***

*Tuesday, July 28: Government Surveillance*

Movie and discussion

Solove, Daniel. 2011. *Nothing to Hide: The False Tradeoff Between Security and Privacy*. New Haven: Yale University Press. [Chapters 5, 10, 12]

Etzioni, Amitai. 2000. *The Limits of Privacy*. Basic Books [Excerpt]

***Reading Assignment 3 due at 6PM, July 29. No late assignments accepted, but you have a choice of which two you complete.***

*Thursday, July 30: Liberalism and Privacy (2)*

Berlin, Isaiah. "Two Concepts of Liberty"

De Bruin, Boudewijn. 2010. "The Liberal Value of Privacy", *Law and Philosophy* 29: 505-34

***Commentary due at 6PM, August 2***

*Tuesday, August 4: Liberalism and Privacy (3)*

Rawls, John. 1971. *A Theory of Justice*. Excerpts

Pettit, Philip. 1996. "Freedom as Antipower," *Ethics* 106: 576-604

## **Part 4: Privacy in Canadian and American Law**

*Thursday, August 6*

*R v. Tessling (2004)*

*Kyllo v. United States (2001)*

*Jones v. Tsige (2012)*

***Second Draft of Paper due at 6PM, August 10***