Ways of Watching: Bringing Equality Thinking to Regulation of "New" Technology

Author : Sonia Lawrence

Date : September 24, 2019

Kristen M.J. Thomasen, *Beyond Airspace Safety: A Feminist Perspective on Drone Privacy Regulation*, 16 **Can. J. L. & Tech.** 307 (2018).

Equality scholars in law often concentrate on constitutional or other legislated equality protections, analyzing how they are applied and interpreted, and evaluating their impact. But this can have the effect of allowing law to narrow the places in which equality questions are seen as relevant. In *Beyond Airspace Safety: A Feminist Perspective on Drone Privacy Regulation*, Kristen Thomasen brings together emergent technologies, legal questions, and social context in interrogating the gendered implications of the way privacy is framed and regulated.

Professor Thomasen problematizes the safety-oriented development of North American drone regulation, by reference to feminist critiques of approaches to privacy in western law and philosophy. She carefully articulates the ways in which drone technology is not value neutral (noticing a variety of ways in which mainstream discourse has tended to assume that the newness of the technology designates it as a per se good). Instead, she focuses on the salient features of this particular technology – that it flies, that it can carry a variety of payloads, that it is separated from the operator, and that it is relatively low-cost. She is concerned that the technology be carefully set into the particular, existing, and gendered, context. Unfortunately, she contends, neither public discourses nor the work of regulatory agencies show evidence of this kind of approach.

The article thus uses of a wide variety of material and techniques in making the case for attention to gender in regulation of new technology and drones in particular. Thomasen argues that there is a culturally unsurprising but profoundly unhelpful focus on how drone technology might invade the privacy of women and girls in private spaces, with relatively little attention to the potentially significant problems arising from surveillance in public spaces. This fixation on relatively prurient fact scenarios, noted and named the “sunbathing teenager narrative” by Professor Margot Kaminski in a 2016 Slate article, tracks the way that women’s privacy is usually considered under the rubric of modesty rather than other potential conceptualizations of the importance and meaning of privacy. Thomasen then works to illustrate how interpretations of privacy in law continue to focus on modesty, and the gendered implications of this focus. (P. 312.)[1]

As in so much feminist scholarship, the notion of the public/private divide is of central significance to Thomasen’s work. Using Anita Allen’s work, Thomasen focuses on the question of privacy in public – not raised by the popular “sunbathing teenager narrative” – arguing:

> “[E]xisting conditions of inequality will impact and be impacted by the development and adoption of new technologies like the drone….it is necessary to consider how the technology might impact that social context–and how that social context might (or should) impact the development and regulation of the technology . . . .” (P. 322.)

The paper then turns to the question of what Thomasen identifies as a North American approach to drone regulation, arguing that the value neutrality of that approach limits awareness and acknowledgment of the impact of technologies on individuals and communities:

> "Regulations . . . focus on regulating the artefact (the 'drone' as an unmanned vehicle that takes to the airspace), rather than how it integrates into society. Accordingly, the particular politics embodied in the technology remain largely unaddressed." (Pp. 333-34.)

Thomasen finishes by offering recommendations for regulation of drones, within the "safety" framework, while recognizing that the underlying issues she identifies go far beyond drones and their regulation.

Read this paper. The writing is lovely and the paper is a good read, belying the amount of analytical work it contains. It offers an important contribution to feminist work on privacy and the public/private divide as well as to work on technology (it was published in a Canadian law and technology journal). It also illustrates what careful critical attention to the implications of new technologies requires, and the value of this kind of work. Looking into the legal future frequently requires a careful look to the legal past, for instance. The uses to which a new technology can be put should not be confined to those hyped by designers and vendors. And equality is not a concept that should be relegated to designated legal spaces where it is central and welcome.

1. Interestingly, the case Thomasen mentions at FN 38, R. v. Jarvis 2019 SCC 10, has since been decided by the Supreme Court of Canada. The case revolved around a highschool teacher charged with voyeurism under the Criminal Code of Canada after he ". . . . covertly photographed and filmed young women students in his high school using a pen camera . . . [focusing] on the women's cleavage." (P. 316.) The majority in R. v. Jarvis 2019 SCC 10 offered a new and heavily contextual approach to determining "whether a person who was observed or recorded was in circumstances that give rise to a reasonable expectation of privacy". Concluding that the students in Jarvis did have a reasonable expectation of privacy, the Supreme Court allowed the Crown appeal, entering a conviction for Mr. Jarvis. For more on this case and the place of technology and equality considerations, *see* Lisa M. Kelly, *A Tale of Two Cameras: Sex and Surveillance in R. v. Jarvis*, 52 C.R. (7th) 126 (2019); 52 CR-ART 126 (WestlawNext). Kelly considers the implications of the fact that the school did have static security cameras in place, and in fact recordings made by these cameras helped to confirm that Mr. Jarvis was recording his students. Kelly argues that the cameras "gained . . . legal significance for student privacy through . . . opposition to the other".

Cite as: Sonia Lawrence, *Ways of Watching: Bringing Equality Thinking to Regulation of "New" Technology*, JOTWELL (September 24, 2019) (reviewing Kristen M.J. Thomasen, *Beyond Airspace Safety: A Feminist Perspective on Drone Privacy Regulation*, 16 **Can. J. L. & Tech.** 307 (2018)), https://equality.jotwell.com/ways-of-watching-bringing-equality-thinking-to-regulation-of-new-technology/.