

BOOK REVIEWS

Protecting Personal Information: The Right to Privacy Reconsidered by ANDREA MONTI and RAYMOND WACKS, [Hart Publishing, Oxford, 2019, 192pp, ISBN 978-1-50992-485-1, £45, (h/bk)]

In 'Trust Me' (1862) by pre-Raphaelite artist John Everett Millais a rather stern, forbidding Victorian father holds out his hand gesturing to his reluctant daughter to hand over a letter she is hiding behind her back (rather conspicuously, it must be said). The image, which adorns the cover of Professors Monti and Wacks's new book, is an apt reminder that though the communicative technology might radically change, the human desire to know about others (and indeed conceal aspects of oneself from them) remains relatively constant. A contemporary equivalent might depict a slightly less forbidding parent anxiously scrolling through their offspring's social media page, and it is the challenge of protecting personal information in the digital age with which this book is concerned.

The authors' starting point is the proposition that privacy is currently undefinable, too broad and has been 'stretched close to breaking point' (126). They are critical, for example, of the expansive reading given to Article 8 of the European Convention of Human Rights (ECHR), particularly by the European Court of Human Rights. They advance a more focused definition of privacy, claiming that a narrower understanding will provide clarity, certainty and stronger protection for the core interests at stake. In the digital age the core interest with which privacy is concerned is no longer 'the right to be let alone', as per Warren and Brandeis's classic (perhaps even quaint) nineteenth-century formulation; rather, it is simply the security of our personal information (126). This new privacy 2.0 is comprised of two elements: 'first the right of an individual to choose what personal information should be shared, and, secondly, the right of the individual to maintain control over the personal information shared' (73).

The authors adopt an interesting strategy, methodically eliminating issues commonly deemed to engage privacy, but which the authors argue do not. It is a thought-provoking approach that takes the reader through a panorama of topical issues in the information age, from the activities of so-called 'digital robber barons' to cryptocurrencies, though some matters are unexpectedly whittled from the privacy field in the process. For example, Wacks and Monti suggest that bodily integrity should not be included in the ambit of privacy (42) and raise questions about its application to matters of sexual preference and reproduction (14, 77). They claim that the National DNA Database raises issues of social control rather than privacy per se (45). Even data protection is marginalised; though data protection laws such as the recent EU General Data Protection Regulation may afford indirect protection to privacy, this is incidental to their main purpose of regulating databases and 'allowing personal data to circulate (relatively) freely' (22–3). Though the overarching thesis is well made and its aims of clearer, stronger protection convincing, the legal pragmatist and/or the activist may hold on the contrary, that Article 8 ECHR has been a valuable tool to achieve progressive outcomes in 'hard' cases such as *Dudgeon v UK* (1981) and *Marper v UK* (2008), and that the imperfect opacity of a distended Article 8 is perhaps a tolerable trade-off.

That said, one key strength of this book is its contextual awareness; its pages are enriched with pertinent historic or contemporary examples from across the globe, from surveillance in the Roman Republic to intricate Japanese social understandings of privacy. Of particular interest to this reader, the book's treatment of photographs provides a fascinating discussion of street photography, drawing upon comparative examples from Italy and France (96–9). Elsewhere, Chapter 4 offers illuminating analysis of the impact of digital technologies on our consumer and political choices. The authors discuss activities such as polling and online profiling which pose particular dangers in a political context. For example, they consider the privacy and wider implications of the Obama campaign's use of sophisticated micro-targeting. Yet this chapter is curiously silent on more pernicious recent uses of similar internet-based tactics to 'manufacture consent' in Trump's election and the Brexit vote.

The authors conclude by stepping from the academy to the legislature, and append their book with a draft privacy bill which, among other things, sets out two distinct torts: intrusion, which covers certain information-gathering activities, and disclosure, which covers certain disseminations of private information. Such dual torts already exist in jurisdictions such as the US and New Zealand, and the authors' draft would likely enjoy the approval of leading commentators such as Moreham and Wragg who have argued of the need for an intrusion tort in English law. But irrespective of whether the authors' efforts find their way onto statute books, *Protecting Personal Information* is recommended reading for a range of scholars, particularly those working in privacy, media, information rights and cyber-law, all of whom will find intellectual treats to inform their work within. Overall, whether one agrees with Wacks and Monti's thesis in full, in part or not at all, this volume is a both a valuable attempt to provide clarity to this intriguing, sometimes perplexing area, and a reminder of why privacy is such a rich, fascinating and pervasively important subject.

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Property Law in a Globalizing World by AMNON LEHAVI [Cambridge University Press, Cambridge, 2019, 300pp, ISBN: 978-1-108-42512-4, £85.00 (h/bk)]

As a legal discipline, property law poses some unique issues for international coordination. Given that property law straddles both public law and private law, property law has long been resistant to private ordering and this resistance is thrown into sharp relief by the 'growing prevalence' of legal situations involving some element of 'cross-border property rights and interests' (9). These situations range from the bankruptcy of multinationals, the international trade of investment securities, the infringement of international human rights protections for property, and the clashes between the protection of assets offered by bilateral investment treaties and domestic property laws, to say nothing of the issues raised by cross-border transfers of data and digital assets. That property law has a role to play in these scenarios is not always obvious and, yet, because of the way property law operates there can be a gap between domestic laws and the processes of globalisation.

In *Property Law in a Globalizing World*, Amnon Lehavi argues that property law will require 'a particularly dramatic move toward interstate ordering' (4) given the variation between State-level property laws and the difficulty of private ordering where property rights are involved. By examining the current situation and likely future developments, he identifies four strategies—'soft law, conflict of laws, approximation, and supranationalism' (5)—which are used to lessen the gaps between domestic property law and the processes of globalisation. After a brief introduction, the book is organised into six substantive chapters. Chapter 1 sets out the structure of property law and seeks to explain what it is about property—even as jurisdictions differ on the details—that renders it more domestic and thus makes any attempts at harmonisation fraught. The second chapter examines various international institutions and how they interact with property law. Lehavi argues that, by their very nature, property rights require 'legislative lawmaking' (51) and the international coordination of such rights requires extensive cooperation and collaboration. Yet because international institutions often only deal with one aspect of property there is a risk of 'normative fragmentation and incomplete institutions' (53).

The next four chapters all examine a particular type of asset or assets in a cross-border context: land (Chapter 3); moveable assets (Chapter 4); 'intellectual property, data, and digital assets' (Chapter 5); and 'Security Interests and Proprietary Priorities in Insolvency' (Chapter 6). Each of these four chapters is structured similarly: all begin with a brief overview of the issues concerning the assets under study; then each examines the laws—both domestic and international—covering the assets; and, where relevant, other concerns specific to the asset—for example, human rights

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