an important role in the genesis of data-protection provisions within EU law itself. Thus, Chapter Two explores the meaning ascribed to the term "privacy" and how this evolved with the advent of computerisation, Chapter Three examines the emergence of national data-protection law within Europe during the 1970s, whilst Chapter Four focuses on early transnational data-protection and privacy instruments including the Council of Europe's Privacy Recommendations of 1973 and 1974, the OECD Privacy Guidelines of 1980, and the Council of Europe's Data Protection Convention of 1981. Part Two includes a further four chapters which more explicitly explore the development of EU law itself. Chapter Five elucidates a history of the EU's involvement in data protection up to 2000 (naturally focusing on the drafting of the EU Data Protection Directive 95/46), Chapter Six investigates the inscription of data protection as an EU fundamental right, whilst Chapter Seven explores the materialisation of this right both in CJEU case law and in the legislative package for a renewed EU data-protection framework presented by the European Commission in 2012. Finally, Chapter Eight offers some conclusions.

In essence, Fuster's book provides a compendious elucidation of the history of European data protection generally, albeit one which specifically emphasises data protection's pathway to the status of an EU fundamental right. Such a comprehensive perspective in a medium-length monograph will undoubtedly be of enormous benefit to both researchers and advanced students of data protection. This approach, however, does mean that the work's specific focus is sometimes somewhat lost sight of. Certainly, Chapter Six does include a valuable and clear consideration of the process which led up to the inclusion, and drafting, of the data-protection clause in the EU Charter. This chapter also considers the relationship between this and existing national rights traditions, the groundwork for which is also partially laid out as an aspect of Chapter Three. Despite this, there could have been more detailed emphasis on why and how many EU member states (and candidate countries) had included data protection as a separate right within their national constitutions even prior to 2000, whilst others had rejected this. Such discussion would have helped fill out our understanding of the extent of both continuity and change represented by the recognition of data protection as a fundamental right by the EU itself. Despite the almost encyclopaedic nature of the book, it surprisingly does not feature traditional finding aids such as an index, list of cases, and list of legislation.

Notwithstanding these limitations, however, the value of Fuster's work should not be underestimated. It tackles an extremely important issue, is meticulously researched, and is genuinely thought-provoking and enlightening. It will constitute an essential point of reference in the growing field of data-protection scholarship for many years to come.

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Persons, Parts and Property: How Should We Regulate Human Tissue in the 21st Century? Edited by Imogen Goold, Kate Greasley, Jonathan Herring, and Loane Skene [Oxford: Hart Publishing, 2014. 334 pp. Hardback £65. ISBN 978-1-84946-546-5.]

Although the question of whether property rights should be recognised in human bodily materials has long been the subject of debate, recent developments in the law combined with scientific developments that are transforming the value of

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these materials give new urgency to this question, requiring the deep and sophisticated attention that this collection provides. Over the course of 14 core chapters, the reader is presented with the significant limitations of how our law currently regulates human biomaterials and the potential advantages and difficulties associated with addressing these limitations through the grant of property rights versus the creation of a *sui generis* legal regime.

The collection begins, after the editors' introduction, with a chapter by Dianne Nicol, Don Chalmers, Rebekah McWhirter, and Joanne Dickinson (Chapter 2) that provides a useful overview of not only the case law addressing property claims in human biomaterials, but also the ethical and legal framework that currently governs research involving human tissue. Highlighting both the strengths and limits of the current framework, the authors conclude that property rights can serve as a useful weapon of last resort when research protocols fail.

A broader argument for recognising property rights is provided in the following chapter by Cameron Stewart, Wendy Lipworth, Lorena Aparicio, Jennifer Fleming, and Ian Kerridge (Chapter 3). After identifying the ways in which informed consent requirements in research can fail to protect the interests of tissue donors, they propose that the law of gifts could be a valuable tool in the regulation of research biobanks. They argue that treating tissue as property would allow tissue donations to be structured as conditional gifts, allowing donors to regain possession and control of their tissue in the event that the terms of their consent are breached.

Although the authors in this collection generally agree that our current law does not sufficiently protect important interests in human biomaterials, Thomas Krebs (Chapter 4) argues that tort law can protect more than has been recognised. Focusing on the recent case of *Yearworth v North Bristol NHS Trust*, he argues that court did not need to recognise property interests to award damages to the claimants whose semen had been destroyed by the hospital, as is widely thought. Rather, Krebs argues, the court could have reached the same outcome, with better reasoning, by finding that the hospital had negligently breached a duty of care established by a voluntary assumption of responsibility.

None of the authors suggests, however, that our current law is always sufficient, and a comprehensive case for recognising property rights is provided by Imogen Goold and Muireann Quigley (Chapter 14). Focusing on the legal difficulties and uncertainty that can arise when human biomaterials are stolen, donated, damaged, or lost, Goold and Quigley argue that property law has significant advantages over other potential legal approaches. They highlight that property law is our legal system's central means of managing conflicts over tangible objects and thus provides well-established tools for resolving the uncertain rights of possession, use, and exclusion that will arise when biomaterials have been transferred from their original owner or when their owner is no longer known.

The problems that can arise in the absence of property rights are further explored by Lyria Bennett Moses (Chapter 12), who identifies the limits of not only other common law approaches, but also *sui generis* legal regimes. Highlighting the value of broad legal categories such as property, she argues that *sui generis* rules may enable a more finely tuned approach, but at the risk of unforeseen regulatory gaps, higher administrative costs, and special interest capture. In addition, she provides a rich discussion of the concept of property, arguing that granting "thin" property rights in human biomaterials would avoid commodification concerns.

The commodification- and objectification-based objections to granting property rights in human biomaterials are the sole focus of Kate Greasley (Chapter 6), who provides an elucidating analysis of this issue. Drawing important distinctions within ethical and legal categories that are often treated monolithically, she identifies

the diverse ethical concerns that are often grouped under the headings of commodification and objectification, as well the various forms that property rights can take. In these ways, she not only reveals the danger of taking general positions in the commodification debate, but also provides an analytic framework with which to evaluate claims on both sides.

Further analysis of the various forms that property rights can take is provided by Remigius Nwabueze (Chapter 10), who argues that property-based remedies should be part of the class of remedies available for interferences with human biomaterials. In developing this argument, Nwabueze follows Hohfeld in claiming that property rights need not entail general ownership, but rather can consist of various other legal claims, privileges, powers, and immunities. Further, drawing on the work of Calabresi and Melamed, he argues that a property right need not always be protected by a "property rule". In these ways, Nwabueze highlights that the nature of property is neither monolithic nor predetermined, but rather turns on how it is specified along multiple dimensions – which is a common theme throughout the volume.

The idea that property rights can be granted without commercialisation rights does not, however, need to be based on a "bundle of rights" model of property. Rather, Simon Douglas (Chapter 7) rejects this model in a chapter that addresses whether bodily materials can be property as a legal matter, and whether they should be as a normative matter. In answering both questions in the affirmative, he argues that the fundamental property right is that of ownership, and that this provides a right of exclusion but not of use. These claims are controversial, but the broader conclusion that he derives from them is not: namely that the law can grant property rights in biological material without granting unrestricted rights to use and commercialise it.

It is widely agreed by the authors that human tissue can be property without being commercialised, but this possibility is explored in greatest depth by Cameron Stewart, Lorena Aparicio, Wendy Lipworth, and Ian Kerridge (Chapter 5) and Donna Dickenson (Chapter 11), who advocate for treating biobanks as charitable trusts. For Stewart et al., this proposal emerges from an attempt to find a framework for regulating public biobanks that gives the banks control over the tissue but imposes obligations of custodianship and stewardship. After identifying the limits of tort and contract, the authors identify charitable trusts law as the most promising option. For Dickenson, by contrast, this possibility is just one example of how we might operationalise her more general argument that human biomaterials should be understood not as private property, but rather as a modern form of commons. Introducing the idea of the "corporate commons" to describe the private collections of tissue and data that are currently being amassed by corporate entities, she argues that the old common law concept of the commons is better equipped than medical law to regulate this aspect of modern medicine.

While most of the authors in the collection draw on the nuances of property law to respond to critics of granting property rights, Imogen Goold (Chapter 9) and Jesse Wall (Chapter 8) are exceptions. The chapter by Goold presents a careful doctrinal analysis of the seemingly obscure issue of abandonment of property, which she argues may not actually be possible under English law – and further that, even if possible, may be very difficult to establish. Thus, for those scholars whose support of property rights in human biomaterials relies on the premise that these materials can be easily abandoned, Goold's analysis presents a fundamental doctrinal challenge. Wall's challenge, on the other hand, is built on his analysis of conceptual and structural dimensions of property law. He argues that property law is designed to protect interests that can exist independently of any particular property owner, and thus might not properly protect interests in bodily materials that are inextricably

connected to their source. He suggests that such connected interests can only be protected by an alternative legal structure – such as that of confidentiality – and thus cautions against the wholesale application of property law to human biomaterials.

A broader critique of recognising property rights in human biomaterials is provided by Jonathan Herring (Chapter 13), who advances two core arguments for creating a special statutory scheme, rather than relying on property law, to regulate in this area. The first is that property law would fail to protect important social, communal, and relational interests in our bodies – even if tailored to protect such interests – as it would create a baseline of individualistic values that protect rights of exclusion and control. The second is that property law would treat all bodily material in the same way, failing to account for important distinctions between different types of bodily material that may arise from both instrumental and expressive values.

The idea that property law is too blunt a tool for the challenges we face is further developed in the final chapter by Loane Skene (Chapter 15), who argues that the regulation of the collection, storage, and use of bodily materials should be tailored to the specific interests that we want to protect, rather than applying in an un-nuanced way to all separated bodily material. Thus, she argues that we should not deem bodily material to be property, or non-property, as a general matter. Instead, she advocates for a diverse set of rules that is based in complex legislation and supplemented by professional codes of conduct and ethical guidelines.

In conclusion, seen as a whole, this volume provides a rich picture of the legal and ethical challenges posed by human biomaterials and the strengths and weaknesses of the different possible ways of reforming the law in this area. It is worth highlighting, however, that the authors' disagreement about whether we should use property or a *sui generis* approach may not really be a disagreement about means, but rather about ends. For it seems to arise from very different conceptions of what is problematic with our current system, and therefore of what reform should be trying to achieve.

Further, this disagreement about what interests are worth protecting and why is often not explored in depth in the collection. The authors generally seem to share the premise that human biomaterials can be the object of important interests that are not currently given sufficient protection by our law – a premise grounded in their shared judgment that cases involving these interests have often been wrongly decided. From this conclusion, the central question is what legal form the protection of these interests should take.

As a result, some of the fundamental normative questions at stake in this debate – such as the question of whether people should have the power to impose enduring property-based restrictions on the use of their biomaterials in research – are not given the attention that they deserve, nor are some of the associated legal questions. For example, it is unclear whether common law property rights would, as several authors suggest, allow tissue donors to impose restrictions on the future use of their tissue. For, as Stewart et al. acknowledge, the common law does not generally allow a donor of a good to retain a property interest in it, and the sole exception to this rule that they identify – requiring that goods given in contemplation of marriage be returned if the marriage does not proceed – is inapposite, as it does not concern a use restriction nor an obligation that applies against the world. Further, an argument for allowing these restrictions would need to address a variety of compelling efficiency- and fairness-based reasons for prohibiting servitudes on personal property.

Such omissions are, however, inevitable and do not detract in any way from the significant value and contributions of this collection. By bringing together a broad

range of views in the body-as-property debate, as well as the disciplines of law, philosophy, and sociology, the editors have provided the reader with a deep understanding of the challenges arising from this surprisingly unsettled area of law and policy.

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Negotiations in the Case Law of the International Court of Justice. By KAREL WELLENS [Farnham: Ashgate, 2014, 350 pp. Hardback £90. ISBN 978-1-4724-0369-8.]

This weighty volume offers a detailed and minute assessment of the role of negotiations in the case law of the International Court of Justice, and is an original effort to explore the complexities of the interplay between negotiation and adjudication. Divided into three distinct parts, the author examines practice before proceedings have been initiated, whilst proceedings are underway, and after they have been completed. His principle concern is what he calls the "multifunctional role" of negotiation in the Court's jurisprudence: as a condition for the submission of the dispute, as means of dispute settlement engaged in parallel to adjudication, and as a catalyst for bringing the parties to a dispute back to Court after a judgment has been given.

The survey is prodigious in scope, which is no surprise given the Court's extensive case law on the matters discussed. Whether it offers clarification as to the interplay of roles is another matter, in view of the author's emphasis on description rather than analysis, particularly when it comes to the possibility of inconsistency in the approach taken by the Court, which will often turn on the factual particularities of a given case. The author adopts a degree of restraint in his critical approach. In relation to the important 2011 judgment of the Court in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia v Russian Federation*), for example, there is no thorough assessment of the consistency of approach with the (in)famous judgment of three decades earlier in *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States of America*). Nor is there a true effort properly to explain the difference of approach taken by the Court in the *CERD* case as between the provisional measures phase (2008) and the later judgment on jurisdiction and admissibility (a difference that might be said to hinge, in large part, on a small change in the composition of the Court).

There is too at least one striking absence in the discussion, namely the issue of the turn to Court to assist in obtaining a negotiated settlement. This recently occurred, by way of example, in *Aerial Herbicide Spraying* (*Ecuador v Colombia*), discontinued in 2013 following a negotiation between the disputing parties "that fully and finally resolves all of Ecuador's claims against Colombia". The use of litigation to leverage settlement negotiations is well known in domestic legal orders, and increasingly a feature of the international domain.

The work ought to be a significant point of reference but, in its current presentation, it may not achieve that objective in view of the absence of a thorough index and, even more significantly, a table of cases. This is unfortunate, since the author has performed a notable service in gathering so much material that is potentially useful and interesting, and which ought to serve as a basis for the research on the themes evoked that will surely follow. He has, to an extent, been let down by his publisher. These omissions and the obvious absence of editorial input result in a