categories and dichotomies that generate more heat than light. We should all engage in some "fiduciary reflections" – or be content to wander in the dark.

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Privacy Revisited: A Global Perspective on the Right to Be Left Alone. By Ronald J. Krotoszynski, Jr. [Oxford: Oxford University Press, 2016. xx + 292 pp. Hardback £69.99. ISBN 978-0-19-931521-5.]

Privacy Revisited: A Global Perspective on the Right to Be Left Alone is a curious title for Krotoszynski's engaging comparative analysis of privacy law in five jurisdictions. Whilst this analysis might be considered geographically "global" since it covers privacy laws of countries on three continents, it is an overreach to suggest that the book offers a "global perspective" on privacy law. Four of the five jurisdictions considered (the US, Canada, South Africa and the UK) share common legal genealogies and, in large part, an Anglophone common law tradition. The fifth (the jurisdiction of the European Court of Human Rights) shares broadly similar commitments to human rights and Western liberal democracy as the previous four. The title and book also refer to the right to privacy as the "right to be left alone". As Krotoszynski acknowledges, the concept of privacy is notoriously difficult to define. However, the right to be left alone is one definition that can safely be jettisoned. It is too broad in that it would include assaults, murders and other intrusions, which are not privacy intrusions, but also do not leave the individual alone; and it is too narrow in that it would omit forms of mass surveillance where the individual's personal information is accessed by others, whilst she is being left strictly alone. Whilst pedantic, these quibbles clarify what Krotoszynski's nevertheless impressive thesis does not in truth set out to achieve. Readers seeking to understand significant variations in local understandings of the scope and normative value of privacy can safely be redirected elsewhere, along with readers who seek a philosophically rigorous exploration of what it means to exist in a condition of privacy. For those seeking a lucid analysis of the development (or lack thereof) of constitutional privacy law in the jurisdictions considered, however, Krotoszynski provides a comprehensive and thought-provoking overview.

Through the lens of comparative law, Krotoszynski attempts to articulate the legal meaning of privacy. The focus, according to the author, is on developing a more global perspective of privacy as a legal concept. Stressing the importance of such an endeavour, Krotoszynski suggests that his comparative analysis of democratic polities sharing common constitutional commitments can assist in the creation of a workable system of transnational privacy law, which can identify and describe the distinct yet related interests that fall under the rubric of "privacy". Irrespective of whether a transnational system of privacy protection could be devised, Krotoszynski argues that engagement with transnational sources of law can benefit domestic lawmakers, strengthening the quality of decisions and increasing the consistency with which constitutional privacy protections are interpreted. The importance of this task becomes more pressing as privacy interests are increasingly threatened by technological advances in mass surveillance and "big data", which allow for personal information to be stored and disseminated beyond the borders of the nation state. Finally, and somewhat tangentially, Krotoszynski draws on

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Alexander Meiklejohn's work on the symbiotic relationship between free speech and democratic self-government to argue that privacy can enhance free speech. Consequently, Krotoszynski suggests, privacy forms an important ingredient in this relationship.

Through a survey of US Supreme Court jurisprudence, Krotoszynski presents the main features of the constitutional right to privacy in the US. He highlights how US privacy protections are grounded in concerns of personal autonomy and the individual's interest in the non-disclosure of personal information. This interest, according to Krotoszynski, is consistently overridden when pitted against a competing free-speech claim invoked under the First Amendment of the US Constitution. Krotoszynski argues that the US approach is ill-equipped to recognise, or afford adequate protection of, the plurality of privacy interests. According to Krotoszynski, the focus on non-disclosure and personal autonomy is too narrow, overlooking the dignity-furthering ends of privacy protection. Moreover, in focusing mostly on government intrusions, US privacy law does little to protect citizens against privacy interferences from other citizens or from corporations. Through a discussion of prominent case law examples, this approach is contrasted with the "European approach" to privacy protection, which, according to Krotoszynski, encompasses the protection of dignity, reputation and personal honour. Whilst Krotoszynski is not the first to highlight these deficiencies in the US approach (cf. Anderson, "The Failure of American Privacy Law" in Markesinis (ed.), *Protecting Privacy* (1999), ch. 6), his contribution provides a concise update of the more recent case law. Krotoszynski also paints in broad-brush strokes when outlining these general differences, omitting to examine some of the more nuanced features of US privacy law. This is, of course, inevitable for a broad comparative study of this kind. The chapter provides a useful basis of comparison between the other jurisdictions Krotoszynski covers and, in subsequent chapters, Krotoszynski gives a rigorous and original account of how historical differences have shaped approaches to constitutional privacy protection in each of the jurisdictions he considers.

Much of the legwork of showing the defects of the US approach is done through a comparison with the Canadian approach to constitutional privacy protection in the next chapter. Once again, Krotoszynski predominantly draws on the jurisprudence of the highest court in the jurisdiction, in this case the Supreme Court of Canada. First, Krotoszynski explains how the Supreme Court of Canada has used the "spartan" language contained in sections 7 and 8 of the Canadian Charter of Rights and Freedoms to create a robust and vigorous framework for privacy protection. The court views sections 7 and 8 – which respectively protect life, liberty and security of the person (s. 7) and persons, houses, papers and effects from unreasonable searches and seizures (s. 8) – as part of a statutory "living tree" whose application is to be interpreted in light of social, moral and technological developments. Employing the "living tree" doctrine, the Supreme Court of Canada has read a broad and free-standing constitutional right to privacy into sections 7 and 8. That has allowed it to recognise a broad range of activities – from assisted suicide to prostitution – are constitutionally protected from government interference. Krotoszynski commends the adoption of this doctrine, noting that it follows the approach of the European Court of Human Rights (ECtHR). The latter court has, for many years, taken a purposive and evolutive approach to interpreting the scope of rights contained in the European Convention on Human Rights (ECHR), especially article 8, which provides a right to respect for private and family life, home and correspondence. However, Krotoszynski embraces the purposive approach without addressing such concerns as whether it might be a fig leaf covering the court's

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enthusiasm for judicial activism, and whether it might extend the protections of the Charter and the ECHR to conduct which the original drafters might never have intended to protect. Notwithstanding this omission, Krotoszynski demonstrates how the purposive approach adopted in these jurisdictions guards against constitutional privacy protections becoming irrelevant and stagnant. As he puts it: "a privacy law entirely suitable for the age of the electric typewriter and copper wire technology simply will not do in the age of drones and metadata" (p. 64).

In chapters 4 and 5, Krotoszynski focuses on the constitutional protections of privacy in the Republic of South Africa and the UK respectively. In discussing the right to privacy in the Republic of South Africa, Krotoszynski gives an impressive account of how the Constitutional Court of the Republic of South Africa has developed a sophisticated and necessarily broad concept of privacy, which is rooted in recognition of the dignity of all human beings, equality before the law and the protection of freedom. Through an interesting survey of the Constitutional Court's jurisprudence, Krotoszynski suggests that this approach to constitutional privacy is at once forward-looking and backward-looking. It looks forward in that, like the Supreme Court of Canada, it takes a purposive approach to the interpretation of constitutional protections of privacy related interests. Yet it looks backward in that the Republic of South Africa's commitment to the protection of dignity and equality-based privacy interests draws strength from a deep commitment to avoid a return to apartheid. Turning to the UK, Krotoszynski argues that inadequate constitutional protection is given to privacy by the UK's mix of statutory provisions securing privacy in certain contexts, the quasi-constitutional provisions of the Human Rights Act 1998 (which transposes – at least partially – the rights enshrined in the ECHR into domestic law) and a culture of "judicial reticence" which has resulted in the judiciary interpreting ECHR rights narrowly. The author has valid concerns about the approach to privacy protection in the UK. But he places the transformative effects of the ECtHR on domestic privacy law too far into the background. Adverse ECtHR judgments in article 8 ECHR cases have led domestic legislators in the UK to recognise a broad range of activities and freedoms as falling within the individual's private life, from homosexual relations to the freedom not to have one's DNA data stored by the police following an arrest.

In chapter 6, Krotoszynski turns to the jurisprudence of the ECtHR in article 8 cases in an effort to include the continental legal tradition in his analysis. He commends the ECtHR approach to determining the scope of the right to respect for private life. Contrasting the approach of the Strasbourg Court to determining the scope of article 8 with the US Supreme Court's approach to interpreting the scope of the Fourth Amendment to the US Constitution, Krotoszynski notes that the ECtHR has interpreted the "reasonable expectation of privacy" test more broadly than courts in the US to cover situations where the individual occupies public space. According to Krotoszynski, for example, the European view takes seriously "the notion that all persons, in virtually all contexts, possess a right to object to the recording of their image or voice without their knowledge and consent, and also to object to the subsequent distribution of such recordings" (p. 153). This, for Krotoszynski, is to the credit of the ECtHR. Whilst this might be the case (and he makes some convincing arguments to suggest that it is the case) Krotoszynski sidesteps criticisms that the ECtHR has interpreted article 8 so broadly that it has become too imprecise and unwieldy to be a valuable human right (cf. Lord Walker, *The Indefinite Article 8* (Thomas More Lecture, Lincoln's Inn, 9 November 2011), 4). Krotoszynski also prefers the European approach to balancing conflicts between rights with the proportionality test in article 8(2) ECHR. This, he effectively argues,

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is more overt, direct and systematic than the US approach, in which that balancing is merely implicit.

In the concluding chapter, Krotoszynski consolidates one of the key themes touched upon throughout the monograph, the relationship between privacy and freedom of speech, to suggest that both are necessary in facilitating the project of democratic self-government. Here, Krotoszynski summarises how different jurisdictions have approached tensions between these rights. He suggests that it is important for constitutional courts to recognise that privacy is important, not only for the value it holds for the individual, but also for intellectual freedom, which is an essential precondition for democracy to flourish.

Privacy Revisited shows how domestic constitutional lawmakers can benefit from the experience of other jurisdictions. The book is also engaging. Krotoszynski does not merely explain the central features of each constitutional framework in terms of how they protect privacy rights. He also provides compelling insights into why privacy protections are manifested differently between jurisdictions. Whilst his forays into debates regarding the value of privacy lack rigour in parts, *Privacy Revisited* succeeds in describing the variations in privacy protections in the jurisdictions considered, and in showing how the scope of privacy protections in the US might logically be broadened. *Privacy Revisited* is required reading for academics and practitioners looking to develop their understanding of constitutional privacy law across Western liberal democracies.

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Regulating Judges: Beyond Independence and Accountability. By RICHARD DEVLIN and ADAM DODEK (eds.) [Cheltenham: Edward Elgar, 2016. xii + 420 pp. Hardback £105.00. ISBN: 978-1-78643-078-6.]

In *Regulating Judges: Beyond Independence and Accountability*, editors Richard Devlin and Adam Dodek encourage scholars to develop a more nuanced understanding of courts and judges through the application of regulatory theory. Although the thought of "regulating judges" might raise the hackles of judges intent on preserving their independence from outside interference, the editors point out that the regulation of judges is already a universal practice that exists in a variety of forms, both internal and external. Regulation includes, for instance, standards relating to judicial recruitment and promotion, codes of ethics, complaint and disciplinary processes and budgetary controls. By thinking more explicitly about regulating judges, and the values and objectives that regulation serves, the editors propose that courts can be designed more effectively to embody preferred values and maximise the public good. Relatedly, by identifying underlying values and tailoring judicial regulation to achieve desired outcomes, courts can be periodically assessed to identify areas for improvement.

In the first chapter, Devlin and Dodek describe a framework for analysing courts by making an analogy to a pyramid. In this model, the pyramid is made up of a floor and three walls, each a mutually supporting structure. The floor and three walls represent values, processes, resources and outcomes respectively. Based on their experience in studying courts, Devlin and Dodek sketch out some of the details of these components of the pyramid, while acknowledging that their content is likely to vary from place to place. At the pyramidal base, values that may be seen as

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