regardless of incidental overlapping, than to evaluate such laws always by reference to complex, abstract philosophical ideas.

This book concludes with a concrete proposal for law reform in its Appendix. Along with presenting the case for a more modest, modern and concretely defined right to privacy, the authors opt for legislative reform (pp. 129–34; see also p. 127), as opposed to reform through, for example, judicial restraint in interpreting existing privacy laws, or the evolution of precedent to meet modern demands. Their draft Bill would enact two separate torts of intrusion and disclosure, both focused upon their specific concern with security of personal information: wrongful gathering, collection, use and dissemination of personal information. It is notable that the intrusion tort turns not upon the physical invasion of private space, but, true to the authors' vision of privacy, the obtaining of personal information. Such tortious remedies will be familiar to some jurisdictions, which have liability for intrusion and disclosure already (New Zealand and Canada – albeit in the common law), and which continue to consider (but have not yet acted upon) reform proposals and reports for such statutory torts over several years (for example, Australia). This proposal will add weight to the arguments for both a statutory (as opposed to common law) development of privacy protection, and a more modest (*contra*-Strasbourg) framing of the legal right to privacy.

Professors Monti and Wacks's work presents a new consolidation of different ways in which the law seeks to protect informational privacy. At the same time it offers a fresh approach to evaluating the objectives and boundaries of both the myriad of personal information laws currently in operation, and the underlying normative right to privacy itself. In presenting a twenty-first-century revision of the question of exactly what it means "to be let alone", and although not everyone will agree with the particular vision offered here, this book is an important reminder that, while legal fruits ought always to reflect their normative roots, legal rights ought to have clear and practicable boundaries.

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Beyond Punishment? A Normative Account of the Collateral Legal Consequences of Conviction. By ZACHARY HOSKINS. [Oxford University Press, 2019. 264 pp. Hardback £55. ISBN 978-0-19-938923-0.]

In many jurisdictions, people who are convicted of criminal offences not only receive a formal sentence but also face a broad array of additional legal measures that arise by virtue of their conviction. These include restrictions on housing, employment, welfare assistance and voting rights. Although these measures are well known to those with an interest in criminal justice, they have been subject to disappointingly little academic scrutiny despite their rapid growth in recent years. In *Beyond Punishment*, Zachary Hoskins considers the justifiability of such Collateral Legal Consequences (CLCs) in principle, both as forms of criminal punishment and as civil interventions. Although his discussion focusses on the legal systems he knows best (those in the US and England and Wales), it applies equally to the use of CLCs more widely. He argues that, while these measures can be imposed justifiably both as punishment and as civil interventions, their use must be tightly constrained by a plethora of limiting principles. The current heavy

usage of CLCs is unremittingly in breach of these principles and therefore goes beyond what is morally permissible.

The book is divided into four main sections. In the first, Hoskins explains his choice of terminology, taking care to state that he is mainly concerned with formal rather than informal repercussions for those convicted, though he acknowledges that the two are often connected (such as where the official publication of offender databases exacerbates the stigmatisation experienced by those identified). He briefly outlines some varieties of CLCs and explains that state policies contribute to these restrictions in three ways: by requiring them, by actively permitting others to impose them, and by facilitating their imposition. He then considers whether CLCs are best conceived of as punishments or civil measures. Instead of opting for either option outright, he sensibly advocates a context-specific approach, arguing that CLCs amount to punishment only where they are intended both to be burdensome and to express condemnation of the recipient's criminal wrongdoing. His approach here in setting out what is distinctive about punishment is a subtle and elegant contribution to penal philosophy.

Next, Hoskins considers whether CLCs may be imposed justifiably as punishment. He acknowledges that this will depend in part on the particular penal theory one adopts. However, rather than following any single approach, he discusses principles which he contends will play some part in any theory of punishment: cardinal proportionality, ordinal proportionality and a restriction against treating people contemptuously by not taking seriously the prospect of their reform. He argues that all three of these principles add up to significant constraints on the use of CLCs as punishments. For example, they rule out CLCs which effectively prevent people from obtaining access to crucial goods such as housing, welfare or reasonable employment. The principle of avoiding contemptuous punishment is arguably another important, unique contribution that Hoskins continues to develop from his previous work. It looks likely to fuel further thought in this field, due to its potential to constrain many other penal practices which may amount to contemptuous treatment.

Hoskins then turns to the justifiability of imposing CLCs as civil measures on convicted persons. He argues that offenders fully discharge their debt to society by serving their sentence, and that a strong justification is therefore required for any additional civil restrictions. While he is critical of non-instrumental justifications for such measures (for example, arguments based on a notion of offenders forfeiting their rights, or on offending behaviour demonstrating bad character that merits civil interventions), he argues that CLCs may be justified instrumentally as incapacitative or risk-reductive tools. Nonetheless, he again advocates robust constraints on their use in this way: the state can only impose civil CLCs which serve morally compelling interests, where they amount to the least burdensome alternative, and where negative consequences that would offset the benefit gained are avoided (including though the meaningful mitigation of any resulting obstacles to reform).

In the final part, Hoskins presents two additional arguments regarding the wider implications of CLCs. First, he compellingly contends that prosecutors (rather than defence counsel) ought to be under an ethical obligation at the plea stage to inform defendants of the CLCs they would face on pleading guilty. This would create a powerful brake on excessive charging practices and even provide a disincentive for the continuing legislative creation of further CLCs. Second, he contends that legislators should take into account the extensive CLC landscape when deciding whether the criminalisation of conduct is necessary in the first place.

A significant strength of the book lies in Hoskins's insight that the attitudes with which punishment is carried out matter for its legitimacy. His focus on one

conception of contempt, fascinating as it is, can be read as an invitation to consider in detail other attitudes that may also colour the permissibility of punishment. Perhaps the strongest aspect however is Hoskins' skill in making revealing connections between different topics, such as CLCs and criminalisation, or principled limits to state power in both criminal and civil measures. It is especially refreshing to see a penal philosopher confronting highly restrictive uses of state power that bear considerable resemblance to punishment even if they fall outside the classic case. Just as some criminologists have advocated a shift to "Zemiology" – a more inclusive study of social harms beyond just those that are criminalised (P. Hillyard et al. (eds.), *Beyond Criminology* (London 2004)) – punishment theorists too should be wary of letting the state demarcate disciplinary boundaries that would conveniently reduce normative scrutiny over intrusive uses of state power. Hoskins's joined up thinking should prompt more penal philosophers to ask probing questions that transcend conventional views of the boundaries between different legal fields.

There are inevitably a few shortcomings. In assessing whether particular measures are intended to be burdensome and to convey condemnation (and therefore count as punishment), Hoskins essentially uses a counterfactual approach, asking whether the function of a particular CLC could be fulfilled if it were not thought to be burdensome (p. 53). This question surely sidesteps the issue of how to decide what the functions of a given measure are – a matter which may itself be strongly contested. Moreover, surprisingly little attention is paid to the concept of intention. It is not clear, for example, why it should be construed more narrowly than it is in the criminal law itself. In certain contexts in England and Wales, "oblique" or "indirect" intention requires only that the defendant appreciates the relevant consequence to be virtually certain to flow from her actions. If we are virtually certain that people experience CLCs as burdensome and communicative of condemnation, is it tenable to argue that the measures are not intended as a form of punishment? Either way, if the core meaning of punishment is to turn on intention, a richer conception of that idea is essential. Similarly, regarding contemptuous punishment, it is not clear who in Hoskins's view is actually communicating the contempt. Reference to pragmatics or communication theory might help to ground this account further.

Turning to the imposition of CLCs as civil measures, no doubt some readers will be concerned that Hoskins's argument could lead to an expansion of the use of CLCs in one respect: on people who have not committed a criminal offence. He argues that the use of CLCs on convicted persons for risk reduction and incapacitation is only justifiable if the principle of equal treatment is respected, meaning that people without convictions but who nonetheless have exhibited voluntary behaviour indicative of similar risks should also be exposed to these measures (p. 182). Hoskins's suggestion that such situations will be rare may do little to assuage these concerns. Further, the constraint that the state must take action to mitigate negative side effects is arguably one of the most practically significant limiting principles, but it is found tucked away in a section about reform and is less well developed (p. 185). For readers who remain unconvinced that Hoskins's account provides sufficiently effective limitations on the use of CLCs, a deeper exploration of potential mitigating measures might prove persuasive.

Overall, Hoskins's arguments are principled, highly credible and beautifully clear in exposition. They amount to the first serious and holistic examination of CLCs through a normative lens, and he also makes numerous valuable contributions to a range of other important issues, from the nature of punishment and overcriminalisation to the ethical obligations of prosecutors. Prior familiarity with theories of punishment is a prerequisite to understanding this work fully (it is certainly not

an introductory text and nor does it claim to be), but anyone with an interest in criminal justice, punishment or intrusive state civil measures in the twenty-first century would do well to read this book.

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A Failure of Proportion: Non-Consensual Adoption in England and Wales. By Samantha M. Davey. [Oxford: Hart Publishing, 2020. x + 204 pp. Hardback £60. ISBN 978-1-50992-913-9.]

Adoption, as it is understood in English Law, is a process whereby a child acquires new legal parents, usually in place of the previous ones. While every country in Europe has a mechanism for permitting adoption without parental consent in certain circumstances, few allow it to the extent that it occurs in England and Wales (C. Fenton-Glynn, *Adoption without Consent: Update 2016*, Brussels (2016)), where it is used as a child protection measure. Samantha Davey opens her impressive book by referring to web-based accounts illustrating "many troubling stories alleging that the making of a care order and a subsequent non-consensual adoption have been disproportionate measures" (p. 1). This is a striking if somewhat populist beginning, and while conceding that adoption can sometimes be appropriate, Davey's thesis is that "adoption orders are sometimes made in England and Wales in circumstances where less intrusive and equally effective measures are available to protect children from harm" (p. 3). In other words, some such orders are disproportionate. In Davey's view, while proportionality is rightly considered important by appellate courts where parents seek to challenge adoption orders after they are made, it is given insufficient consideration when such orders are being made in the first place.

In the first substantive chapter of the book, Davey engages in a detailed discussion of the nature of, and interrelationship between, children's welfare, children's rights and parents' rights (including under the European Convention on Human Rights). This is a well-worn topic, but the somewhat adoption-specific nature of Davey's analysis adds utility. She makes the case that the UN Convention on the Rights of the Child can and ought to form an important part of the process when the courts determine the proportionality of non-consensual adoptions, with reference inter alia to some of this reviewer's own work (see e.g. B. Sloan, "Conflicting Rights: English Adoption Law and the Implementation of the UN Convention on the Rights of the Child" [2013] Child & Family Law Quarterly 40).

Much of the rest of the book's main body is taken up with analysis of adoption case law, first that of the European Court of Human Rights and then that of the courts in England and Wales, albeit that consideration of the legislative framework is also required in the latter case. The temptation must have been to focus heavily on the right to respect for family life under Article 8 in the chapter on the Strasbourg court, and Davey does engage in admirably close analysis and critique of the particularly pertinent cases of *YC v United Kingdom* [2012] 2 F.L.R. 332 and *R and H v United Kingdom* [2011] 2 F.L.R. 1236 (albeit that the latter involved the distinctive adoption law of Northern Ireland rather than that of England and Wales). She also, however, pays considerable attention to Articles 2 (the right to life), 3 (the right to be free from torture and human and degrading treatment) and 6 (the right to a fair hearing), and how the first two of these might clash with