2. An enduring value

Raymond Wacks

The notion of ‘privacy’ in its broadest, and least lucid, sense is founded upon a conception of the individual and his or her relationship with society. Individuals need privacy for psychological, emotional, and social purposes. Autonomy, creativity—and even sanity—depend on a degree of private space. Society has an interest in facilitating these goals. Privacy, moreover, enhances democratic ideals by ensuring the privacy of political choice. The pursuit of a satisfactory definition of privacy has borne little fruit, largely because the premises upon which the proposed definitions are based are materially different. The concept, particularly in the US, continues to provide a forum for contesting, inter alia, the rights of women (especially in respect of abortion), the use of contraceptives, the freedom of homosexuals and lesbians. This chapter endeavours both to set privacy in its wider social context and to clarify the issues.

8. How modern genetics is testing traditional confidentiality

Michael Dunn and Tony Hope

Medical ethics is under challenge from developments in medical science and technology, raising new ethical questions or old questions in new ways. The work of genetics clinics worldwide is forcing us to re-think the traditional ways in which we think about medical confidentiality. A genetic test from one person can provide information about a relative. ‘How modern genetics is testing traditional confidentiality’ considers the foundations of medical confidentiality and the fundamental reasons why maintaining medical confidentiality is important: respect for patient autonomy; to keep an implied promise; and to bring about the best consequences. It also discusses two models of confidentiality: the personal account model and the joint account model.
4. Confidentiality and privacy

Charles Foster

Should doctors disclose any of their patients' confidences? When is disclosure justified? Is disclosure ever mandatory? Should there be an absolute rule of non-disclosure? If not, why not? ‘Confidentiality and privacy’ considers these questions and shows that national and international codes of medical ethics acknowledge the undesirability of an absolute rule. Why confidences should be respected, to whom the information should be confidential, and balancing competing interests are all discussed. The cases where the duty of confidentiality must or may be breached are studied and the confidentiality and privacy of children, incapacitous patients, and the dead are also reviewed.

1. Privacy in peril

Raymond Wacks

Electronic and aerial surveillance, biometrics, closed circuit TV (CCTV), identity cards, radio frequency identification (RFID) codes, online security, encryption, the Google ‘right to be forgotten’ controversy, interception of email, the monitoring of employees, DNA, cloning, stem cell research, the ‘war on terror’—to mention only a few—all raise fundamental questions about privacy. Reports of the fragility of ‘privacy’ have, of course, been sounded for at least a century. In respect of the future of ‘privacy’, there can be little doubt that the questions are changing before our eyes. And if, in the flat-footed domain of atoms, we have achieved only limited success in protecting individuals’ privacy, how much better the prospects in our binary universe? An account of some of the major forms of intrusion is provided, and controls over their use proposed.

The U.S. Constitution: A Very Short Introduction

David J. Bodenhamer

The U.S. Constitution: A Very Short Introduction explores the major themes of American constitutional history—federalism, the balance of powers, property, representation, equality, rights, and security. Informed by the latest scholarship, each theme illustrates how the Constitution has served as a dynamic framework for legitimating power and advancing liberty. Today, we face serious challenges to the nation’s constitutional legacy. Endless wars, a sharply divided electorate and deadlocked government, economic inequality,
immigration, cybersecurity and privacy, and foreign interference in the nation’s democratic processes have placed demands on government and on society that test our constitutional values. Understanding how the Constitution has evolved will help us adapt its principles to the challenges of our age.

6. Balancing rights—free speech and privacy

Andrew Clapham

‘Balancing rights—free speech and privacy’ considers the human rights that have built-in limitations. The thrust of international human rights law for these rights is that limitations to rights must be justified by reference to pre-existing accessible laws that allow for proportionate action necessary to achieve a legitimate aim such as national security, public order, or the rights of others. Human rights simultaneously claim to protect freedom of expression and the right to privacy, but how do you balance these rights and put them into practice? It all depends on the context and proportionality.

Introduction

Allen C. Guelzo

Abraham Lincoln is one of the most famous Americans world-wide. What has made him so well known? For Americans, in the years after his death, he was famous as the Great Emancipator of slaves, but this was tainted for subsequent generations by the fate of the Negroes that Lincoln freed: they became re-bound under an era of legitimate apartheid. The Introduction looks at Lincoln's legacy and the man as he really was. The challenge of seeing the real Lincoln is compounded by the fact that he was an intensely private man who did not keep a dairy of any sort. He was a man of ideas and behind this shield of privacy his ideas can at least be glimpsed.

Privacy: A Very Short Introduction

Raymond Wacks

While no brief book can hope to provide a comprehensive account of the manifold features of a concept as complex and controversial as privacy, this one introduces readers to the main features of what has become one of the most important rights or interests in contemporary society. In Britain the Leveson Inquiry Report of 2012 is the most
comprehensive investigation into the ethics and practice of the media, with a significant section devoted to privacy and media intrusion. Its recommendations relating to media self-regulation continue to engender heated debate in Britain. The extraordinary revelations by the whistleblower, Edward Snowden, of the extensive surveillance conducted by the National Security Agency (NSA) in the United States (US) continue to generate an enormous international debate about the legitimate balance between security and privacy. And the courts—particularly in England and Strasbourg—have reshaped the protection of privacy afforded to individuals under Article 8 of the European Convention on Human Rights. New questions are routinely spawned about privacy on Facebook, Twitter, and other social media sites. And, of course, novel forms of electronic and technological surveillance devices pose almost daily challenges to privacy both online and in the ‘real’ world. The book attempts to describe the essential features of both the invasion and the protection of privacy in our digital world.

6. The death of privacy?
Raymond Wacks

Privacy is under attack from several quarters. The ‘war on terror’ has amplified this pressure. The Internet, increased surveillance, and sensationalist journalism seriously undermine individuals’ control over their private lives. Many advocates believe that the protection of privacy stands in need of urgent renewal. Has the Internet sounded privacy’s death knell? The rapid advance of information technology, especially the Internet, has generated widespread concern about protection of personal data, with many jurisdictions adopting data protection legislation. Ironically, technology generates both the malady and part of the cure. While the law is rarely an effective tool against the dedicated intruder, advances in protective software, along with fair information practices of the European Directive and laws of several jurisdictions, afford a rational and sound normative framework for the collection, use, and transfer of personal data. Some of these questions—likely to dominate 21st-century discussions of privacy—are considered in this concluding chapter.

2. DNA
Aysha Divan and Janice A. Royds

Another significant milestone was the publication in 2003 of the complete sequence of the human genome—the entire DNA contained within the forty-six chromosomes located in the nucleus of each human somatic (body) cell. Once this was published, further worldwide projects were launched to work out what the functions of these genes and other regions of
the genome actually were. ‘DNA’ outlines the components of the human genome and their organization; DNA replication; mutations and correction mechanisms; polymorphisms; and new DNA technologies, including gene cloning, the polymerase chain reaction, and sequencing methods. Finally, bioinformatics and the subsequent issues of privacy and how this information could be used are discussed.

4. Privacy and freedom of expression
Raymond Wacks

The genesis of the American law’s protection of privacy was its concern to limit or control the extent to which an individual’s private life is subjected to unauthorized publicity conducted by the media. The tabloid press in Britain has been embroiled in a number of cases involving royalty, pop stars, film stars, fashion models, and the like. The telephone hacking scandal in the United Kingdom led to the the Leveson Inquiry Report of 2012—the most comprehensive investigation into the ethics and practice of the media, with a significant section devoted to privacy and media intrusion. Its recommendations relating to media self-regulation continue to engender heated debate in Britain. The Internet raises new, intractable problems that surface almost daily. The extent to which privacy is voluntarily relinquished by users of social networks such as Facebook, Twitter, and YouTube is examined, and proposals for reform are considered.

6. The future of the law
Raymond Wacks

In our rapidly changing world, growth and adaptation are more pressing than ever if the law is to respond adequately to the novel challenges—and threats—that it faces. ‘The future of the law’ attempts to uncover some of the major shifts in contemporary society and the formidable challenges they pose to the law. It considers the globalization of law and its internationalization through the United Nations, regional organizations, and the European Union; how privacy and freedom can be reconciled with the threats of terrorism and extremism; and the massive impact of technology on the law, from cybercrime to technologies such as DNA profiling and CCTV that have transformed criminal trials.

3. A legal right
Raymond Wacks
Privacy is acknowledged as an essential human right, recognized by a number of international declarations, among which the European Convention on Human Rights and the International Covenant on Civil and Political Rights are the most significant. Interpreting these provisions, the European Court of Human Rights provides important guidance in respect of the attempt to balance privacy against competing rights and interests, and this is briefly discussed. Leading decisions of the courts of various jurisdictions illustrate the problems of definition and the attempt to balance privacy against other competing rights. Cases before the US Supreme Court have generated an enormous, divisive debate concerning, in particular, the subject of abortion, which the Court has conceived to be an element of the right to privacy. A discussion of the celebrated US Supreme Court judgement in Roe v Wade is fundamental to an analysis of the meaning and limits of individual privacy.