

THE SYDNEY MORNING HERALD

LITERARY SECTION

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November 1981

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A wit once declared that we cannot even agree on the pronunciation of privacy, let alone upon how to define it and how to protect it by the law. It is curious, if you think about it, that the English, reputed for their aloof reserve, and the value they place upon privacy of the individual and his castle-like home, should never have developed a coherent legal protection for privacy as such. True it is, all kinds of legal remedies were developed by the judges and later by Parliament to protect particular attributes of privacy. It began with protection of the privacy of the individual by the law punishing murder and assault. It extended to the protection of his immediate environment and goods, by the law of trespass and nuisance. Now we are into the third phase : the protection of the information about people. Today, your privacy is much more likely to be invaded by interrogation of a computer data base or the use of electronic surveillance than by the peeping Tom.

Raymond Wacks's book, The Protection of Privacy, is one of the Modern Legal Studies series. Though it is copiously scattered with footnote references to cases and statutes, it is written in a style that is suitable enough for the informed layman who is seeking to come to grips with one of the main problems of the legal order as it struggles to be relevant in the world of science and technology.

Wacks has a simple theme. It is that too many people nowadays are trying to squeeze into the definition of 'privacy' too many concepts that just should not be there. He despairs of American legal efforts to solve such diverse legal controversies as abortion, criminal investigation, freedom of association, unfair press publication and data protection by reference to a nebulous 'happiness' principle called 'privacy'. He rejects the efforts tried in England (as unsuccessful there as efforts in Australia) to create a general legislative right to privacy, which leaves it to the judges to develop it to fit current community needs. Instead, Wacks urges the piecemeal approach, with the provision of new laws on such matters as:

- . limiting and controlling telephone tapings and electronic surveillance
- . preventing indiscriminate official searches and providing independent monitoring of official powers of entry and search
- . limiting the role of private detectives and the improper gathering of evidence, including by police
- . controlling unsolicited calls
- . providing effective checks on unreasonable media invasions of privacy
- . providing enforceable laws on data protection and data security.

None of this is terribly novel. All of it fits in with current Australian approaches to the development of laws in this country to protect what has loosely been called 'privacy'. The best section of the book is the first, where Wacks takes to pieces the efforts to employ 'privacy' to describe a whole series of community and individual values:

'Privacy' has grown into a large and unwieldy concept. Synonymous with autonomy, it has colonised traditional liberties, become entangled with confidentiality, secrecy, defamation, property and the storage of information. It would be unreasonable to expect a notion so complex as privacy not to be applied to numerous issues, but that this process has resulted in the dilution of privacy itself, diminishing the prospect of its own protection as well as the protection of related interests. In this attenuated, confused and overworked condition, privacy seems beyond redemption (p.21).

Before the privacy invaders (including in the media) get too carried away with this purple passage, it should be mentioned that Wacks is even more emphatic that new legal protections are needed to deal with the values that have been given the 'privacy tag'. He has a few choice things to say about the occasional efforts of the media to transform 'a private life into a public spectacle'. Nor do the courts come out unscathed. In a pointed comment, Wacks draws to attention the contrast between the willingness of the English courts to prevent publication by the Duke of Argyll of intimate facts concerning the Duchess' private life which she had communicated to him during the course of their marriage, and the refusal of Lord Denning to grant an injunction against the News of the World when the late John Lennon's former wife sold the story of her marriage for publication. In that case, Lord Denning refused relief on the ground that 'the relationship of these parties had ceased to be a private affair ... [neither of them] have had much regard for the sanctity of marriage'.

The role of the Press Council in protecting privacy by newspapers is also examined. But Wacks is unimpressed, as some Australian observers had been. He denounces the fears of the press about privacy laws as 'spurious' and 'preposterous'.

contending that, by invading the private zone without legitimate colour of public right, the press have no legitimate claim to legal protection. In fact, Wacks specifically applauds the efforts of the Australian Law Reform Commission to provide a defined, limited protection for privacy against the media. Media self-discipline, he says, is not to be disparaged but 'the matter of press freedom is too important to be left to the press alone'.

The section on computers and privacy is a succinct summary of the British and United States debate, with reference to the numerous reports that remain unimplemented in Britain and the several legislative adventures tried in the United States. Rightly, Wacks zeros in on the right of the individual normally to have access to computerised or other data about himself, so that he can check how others are seeing him. This right, which will be at the heart of Australian laws on information privacy, is necessary as the brigade of computer peeping Toms expands and increasing numbers of decisions are made about all of us on the basis of our data profile.

Wacks writes well. Any lawyer who begins his book with the sentence :

'Unlike most fairy tales, this one begins with the wedding',

is bound to raise the eyebrows of his professional colleagues. But here is an area of the law, where there are many modern problems of relevance to ordinary citizens today. Furthermore, lawyers have, so far, not made such a good fist of things. Wacks warns that there is no easy simple solution and no substitute for painstaking attention by the lawmakers to the multitude of specific problems that have been conveniently but inaptly pushed into the 'single indeterminate and unwieldy chimera' of privacy protection. Just the same, it is probably too late to stop talking about 'privacy'. It is like 'test tube babies'. We all know that no test tubes are used; but even Professor Carl Wood has given up efforts to change the terminology. So long as we realise that we are tackling a host of modern problems, many of them presented to us by the scientists and technologists, we will be heeding the valuable warning contained in this little book.

In fact I only wish there were more legal texts which were so easy to read. It is not quite the kind of book you would expect to find in your Christmas stocking, even if you were a lawyer. But as 1984 gets ever closer, we could do worse than to use the holidays to reflect upon the very modern and slightly frightening problems that are collected in this book.

Raymond Wacks, The Protection of Privacy, Sweet & Maxwell, London, 1980, Modern Legal Studies Series, 181 pages, Table of Cases, Table of Statutes and overseas legislative measures, Index (3 pp), \$15.10.

- * Chairman of the Australian Law Reform Commission. The Commission is expected to report in 1982 on Australian Federal laws for the protection of privacy. Mr. Justice Kirby is also President of the National Book Council of Australia.