

日本DPO協会 第13回個人情報保護セミナー
「米国におけるプライバシー法制の潮流と最新動向」

講師：当協会 顧問
西村あさひ法律事務所 パートナー
弁護士 石川 智也 先生

2023年7月13日(木)15:00～16:00

あいさつ「米国におけるプライバシー法」

一般社団法人日本DPO協会代表理事

堀部 政男

(一橋大学名誉教授・元個人情報保護委員会委員長)

プライバシー権の歴史的展開(19世紀末以降)

Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193
(1890)

HARVARD

LAW REVIEW.

VOL. IV.

DECEMBER 15, 1890.

NO. 5.

THE RIGHT TO PRIVACY.

"It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage."

WILLES, J., in *Millar v. Taylor*, 4 Burr. 2303, 2312.

THAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in

Warren and Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, at 220 (1890)

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HARVARD LAW REVIEW.

the rights of the individual. Each man is responsible for his own acts and omissions only. If he condones what he reprobates, with a weapon at hand equal to his defence, he is responsible for the results. If he resists, public opinion will rally to his support. Has he then such a weapon? It is believed that the common law provides him with one, forged in the slow fire of the centuries, and to-day fitly tempered to his hand. The common law has always recognized a man's house as his castle, impregnable, often, even to its own officers engaged in the execution of its commands. Shall the courts thus close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?

*Samuel D. Warren,
Louis D. Brandeis.*

BOSTON, December, 1890.

プライバシー権の歴史的展開

- プライバシー権 (right of privacy) という言葉は今日ではよく知られているが、この権利が最初に提唱されたのはアメリカにおいてであった。1890年のハーバード・ロー・レビュー (Harvard Law Review) という法律雑誌に掲載された、サミュエル・D・ウォーレン (Samuel D. Warren) とルイス・D・ブランドイス (Louis D. Brandeis) の論文「プライバシーへの権利」(The Right to Privacy) は、当時、新聞・雑誌などのプレスが個人の私生活を取り上げるようになってきたことに対して、新たにプライバシーの権利を主張し、私的な事柄を法的に保護する必要性を論じた。そのような主張の中で、プライバシー権は「ひとりにしておかれる権利」(right to be let alone) と理解されていた。

プライバシー権の歴史的展開期(19世紀末以降)

- **Louis D. Brandeis(1856-1941)**

from Brandeis NOW Saturday, February 28, 2015



Louis Brandeis at his desk



Louis Brandeis looks out his office window, circa 1890

By Leah Burrows July 24, 2013

The Celebration of Privacy

June 3, 2015
Hyatt Regency Washington on Capitol Hill
Washington, D.C.

Patient Privacy Rights Presents the 2015

LOUIS D. BRANDEIS Privacy Awards



The right to be let alone is the most comprehensive of rights and the right most valued by civilized people.

—Justice Brandeis, 1928, *Olmstead v. United States*, dissenting

Program

Patient Privacy Rights welcomes you to the fourth annual *Celebration of Privacy*. We are deeply honored that the family of Louis D. Brandeis placed their trust in us to chose those deserving of an award that exemplifies great achievement in the protection of the most sensitive personal information of all — health information.

WELCOME & INTRODUCTION

Deborah C. Peel, M.D.

PRESENTATION OF AWARDS

Professor Alex Pentland

Presented by Adrian Gropper, M.D.

Professor Masao Horibe

Presented by Deborah Hurley

CONCLUDING REMARKS

Deborah C. Peel, M.D.

The Louis D. Brandeis Privacy Awardees are recognized for their significant intellectual, legal, and technical contributions to the field of health information privacy. Standing on the shoulders of Supreme Court Justice Louis D. Brandeis, these heroes work to ensure that the “highest right of civilized man” remains the foundation for all electronic systems, and for law and policy governing the use and control of sensitive health information.

2015 Recipients

Professor Masao Horibe

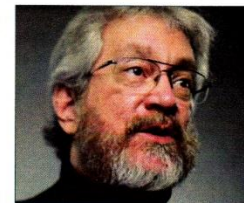
Professor Emeritus, Hitotsubashi University, and Chairman, Specific Personal Information Protection Commission, Government of Japan.

On January 1, 2014, Dr. Masao Horibe was appointed as the first Chairman of the Specific Personal Information Protection Commission, a new independent data protection authority, by the Prime Minister, with the consent of both Houses of the Diet. He has been researching both privacy and data protection and freedom of information for more than half a century and has written extensively in the areas of privacy, data protection, freedom of information, media law, etc. He served as Vice-Chair of WPISP (the Working Party on Information Security and Privacy) of the OECD (1996-2008). He is “Privacy by Design Ambassador” of the Information and Privacy Commissioner of Ontario, Canada, and one of the five honorary members of the Digital Enlightenment Forum, established as a not-for-profit organization in Luxembourg in 2011.



Professor Alex Pentland

MIT, Advisor UN Secretary General’s Office, World Economic Forum



Alex ‘Sandy’ Pentland has helped create and direct MIT’s Media Lab, the Media Lab Asia, and the Center for Future Health. He chairs the World Economic Forum’s Data Driven Development council, is Academic Director of the Harvard-MIT Data-Pop Alliance, and is a member of Advisory Boards for the United Nations Secretary General. In 2012, Forbes named Sandy one of the ‘seven most powerful data scientists in the world’, along with Google founders and the CTO of the United States.

ルイス・D・ブランドイス・プライバシー賞の受賞者①

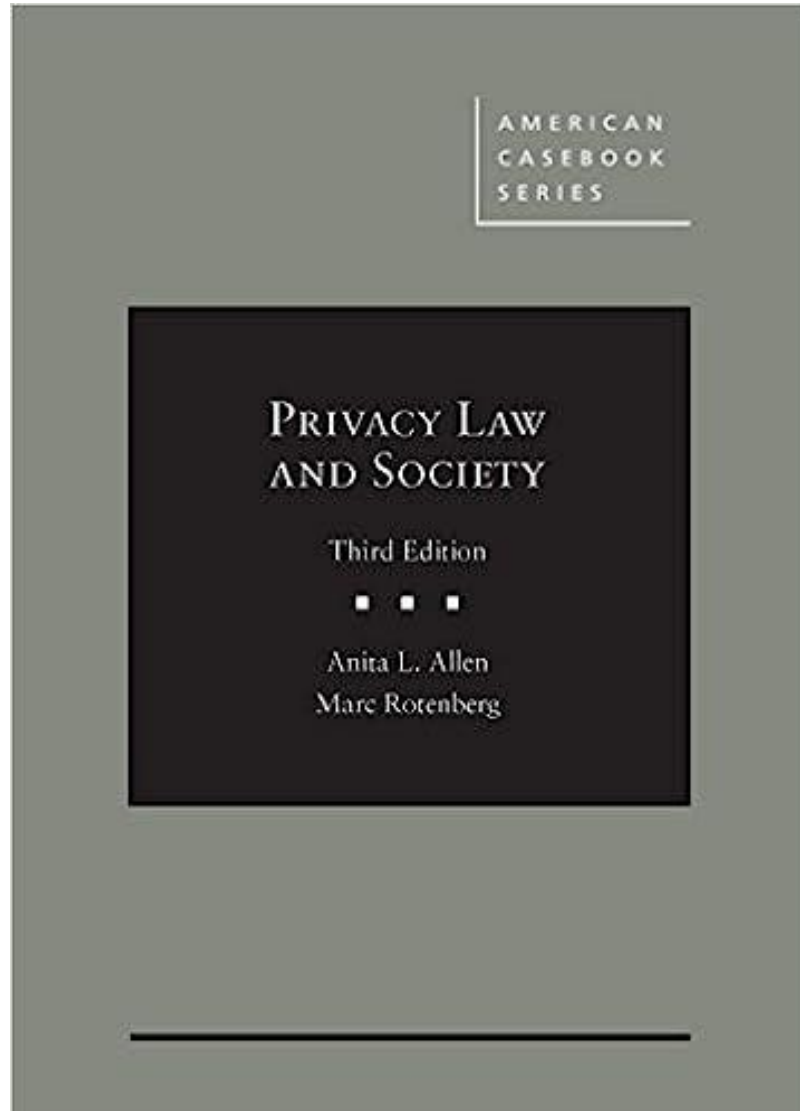
- ○2012年
- The Honorable Joe Barton, U.S. Representative for Texas's 6th Congressional District
- The Honorable Ed Markey, U.S. Senator for Massachusetts
- Ross Anderson, PhD, University of Cambridge Computer Laboratory
- Alan F. Westin, PhD, Advisor, Arnall Golden Gregory, Atlanta and Washington DC; Professor of Public Law and Government Emeritus at Columbia University
- ○2013年
- Peter J. Hustinx, European Data Protection Supervisor
- Mark A. Rothstein, JD, Herbert F. Boehl Chair of Law and Medicine, University of Louisville Brandeis School of Law

ルイス・D・ブランダイス・プライバシー賞の受賞者②

- ○2014年
- Latanya Sweeney, Chief Technologist; Federal Trade Commission
- Peter Schaar, Chairman; European Academy for Freedom of Information and Data Protection (EAID), Germany
- ○2015年
- Professor Masao Horibe, Professor Emeritus, Hitotsubashi University, and Chairman, Specific Personal Information Protection Commission, Government of Japan
- Professor Alex Pentland, MIT, Advisor UN Secretary General's Office, World Economic Forum

Anita L. Allen & Marc Rotenberg

Privacy Law and Society (Third Edition 2016)



- American Casebook Series
- pp. 1591, 2654g
- An Introduction to Privacy Law
- Chapter 1. Privacy in Tort Law
- Chapter 2. Constitutional Privacy
- Chapter 3. Federal Privacy Statutes
- Chapter 4. Communications Privacy Law
- Chapter 5. International Privacy Law

First paragraph of “An Introduction to Privacy Law”

- The subject matter of this textbook is the privacy and privacy-related confidentiality, publicity and data protection law of the United States. We will refer to this body of law as “privacy law,” for short. Privacy law is not found in a single document or code. It is located instead in state common law, within state and federal constitutional law, and in a multitude of local, state and federal statutes and rules.
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仮訳

- この教科書の主題は、米国のプライバシー及びプライバシー関連の機密性、パブリシティ、データ保護法である。この法律体系を要約して「プライバシー法」と呼ぶことにする。プライバシー法は、単一の文書又は法典では見られない。その代わりに、州のコモンロー、州及び連邦の憲法、並ぶに多数の地方、州、及び連邦の法令・規則に存している。

インターネット時代以前の法令収集

- *“Compilation of State and Federal Privacy Laws”*
by Mr. Robert Ellis Smith

Mr. Robert Ellis Smith (1940–2018) and his Privacy Journal



 **Privacy Journal**
AN INDEPENDENT MONTHLY
ON PRIVACY IN A COMPUTER AGE
PO Box 28577
Providence RI 02908

September 2014 Volume 40, Number 11 *Electronic Edition*

Japan Pushes Forward on Reforms

Fifty years ago this month, the district court in Tokyo recognized privacy as “the legal right and assurance that one’s private life will not be unreasonably disclosed to the public.”

This decision led to legal and social reforms in Japan culminating this year in creation of an independent commission to take steps to assure the proper handling of personal identifying numbers and other personal information.

This effort was long advocated by Masao Horibe, a law professor at Hitotsubashi University in Tokyo who specialized in what had been an overlooked concept in Japanese culture: that individuals are entitled to safe havens and protections from exploitation of their personal information. His efforts were regarded as instrumental in passage of a national data protection law in 2005. He was also instrumental in recognizing the concept of public access to government documents.

When the Japanese government declared last year an intention to be “the world’s most advanced IT nation,” Horibe was assigned the responsibility to convene a working party on personal data, to deliberate on how to change the current personal data protection system. Its report led to the establishment of a new independent supervisory Data Protection Authority last January, and Horibe – after more than 50 years experience in freedom of information and privacy – was appointed chair by the Prime Minister, with five other commissioners.

PRIVACY JOURNAL Publisher Robert Ellis Smith interviewed the emeritus professor in the commission’s office in downtown Tokyo last month. The authority, which now employs 40 staff members, has a focused responsibility, to protect against abuses of personal identifiers and other specific personal information “while taking into account [their] utility.” But Horibe has used this narrow authority to promote privacy impact statements among national and local government agencies (with guidelines published April 18). While the commission has supervisory authority over national and local government agencies, Professor Horibe also has asserted authority to “enlighten” private businesses on data protection and to offer opinions to the Prime Minister and report to the Diet (the parliament).

He also foresees expanding the functions and powers of the current commission into an independent data protection authority, much like those in European nations. He expects that by next January the parliament will receive a proposal to do this.

PRIVACY JOURNAL **OCTOBER 2014**

From Masao Horibe, chair, Data Protection Authority, Japan: Thank you very much for the article “Japan Pushes Forward on Reforms” in your **PRIVACY JOURNAL** September 2014. I am very much impressed by it. You reported, “[Horibe’s] efforts were regarded as instrumental in passage of a national data protection law in 2005.” That should be 2003.

“Its report led to the establishment of a new independent supervisory Data Protection Authority last January” should be replaced by “His 2011 report.” “. . . With five other commissioners” should be replaced by “with two other commissioners.”

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