日本DPO協会第24回個人情報保護セミナー 講演「米国データセキュリティ法の課題の日本への示唆」 講師: 当協会 顧問

中央大学 国際情報学部教授 小向太郎 先生

(中央大学大学院大学院国際情報研究科委員長)

2024年3月21日(木) 15:00~16:00 あいさつ「米国の議論注視の必要性」 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)

情報法分野の最近の傾向と紹介対象

- 情報法、特にプライバシー・個人情報保護分野の最近の傾向
- EU法への関心増大、例: GDPR (General Data Protection Regulation)
- 例:AI法—2024年3月13日、欧州議会は、欧州連合全体の AI 規制に関するAI 法を採択した。賛成523票、反対46票、棄権49票の多数で承認された。この法律は、AIセクターのイノベーションが安全性、基本的権利、コンプライアンス基準と確実に一致することを目指している。
- 今回紹介の共著書の執筆者は、いずれもプライバシー・個人情報保護の分野の研究者であるので、アメリカにおけるプライバシー関係の著作類について、歴史的に見ることにする。

米国議論注視の歴史

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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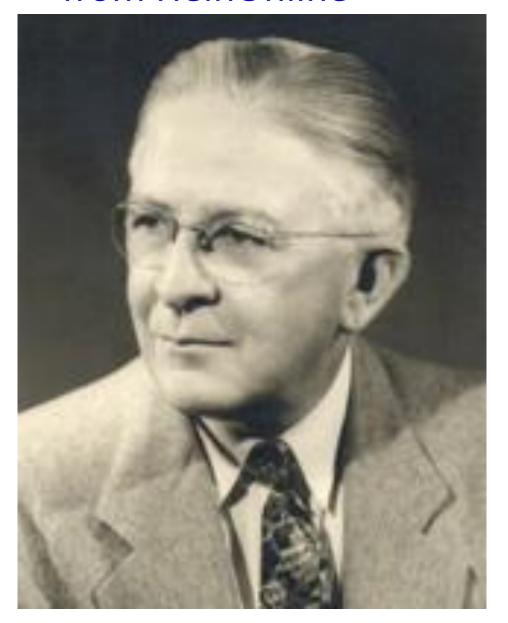
HARVARD LAW REVIEW.

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.

William L. Prosser (1898-1972) from HeinOnline



William L. Prosser, *Privacy*, 48 Calif. L. Rev. 383 (1960)

California Law Review

Vol. 48 AUGUST 1960 N

Privacy William L. Prosser*

TN THE YEAR 1890 Mrs. Samuel D. Warren, a young matron of Boston, I which is a large city in Massachusetts, held at her home a series of social entertainments on an elaborate scale. She was the daughter of Senator Bayard of Delaware, and her husband was a wealthy young paper manufacturer, who only the year before had given up the practice of law to devote himself to an inherited business. Socially Mrs. Warren was among the èlite; and the newspapers of Boston, and in particular the Saturday Evening Gazette, which specialized in "blue blood" items, covered her parties in highly personal and embarrassing detail. It was the era of "yellow journalism," when the press had begun to resort to excesses in the way of prying that have become more or less commonplace today; and Boston was perhaps, of all of the cities in the country, the one in which a lady and a gentleman kept their names and their personal affairs out of the papers. The matter came to a head when the newspapers had a field day on the occasion of the wedding of a daughter, and Mr. Warren became annoyed.2 It was an annoyance for which the press, the advertisers and the entertainment industry of America were to pay dearly over the next seventy years.

Mr. Warren turned to his recent law partner, Louis D. Brandeis, who was destined not to be unknown to history. The result was a noted article, The Right to Privacy,³ in the Harvard Law Review, upon which the two men collaborated. It has come to be regarded as the outstanding example of the influence of legal periodicals upon the American law. In the Harvard

^{*} Dean, University of California School of Law, Berkeley.

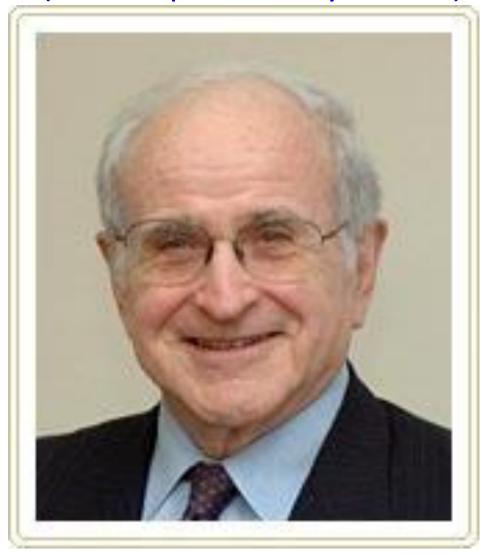
^{1 &}quot;The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury." Warren and Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193, 196 (1890).

² Mason, Brandeis, A Free Man's Life 70 (1946).

^{3 4} HARV. L. REV. 193 (1890).

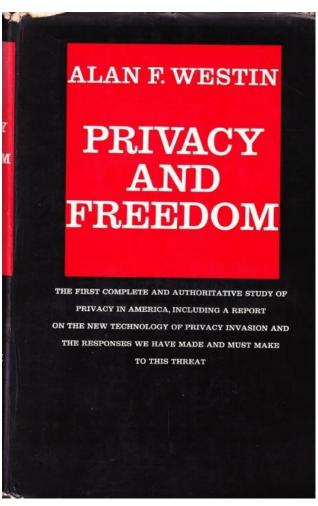
アメリカの1960年代のプライバシー論議

Dr. Alan F. Westin (1929 –2013) (From Japan Privacy Center)

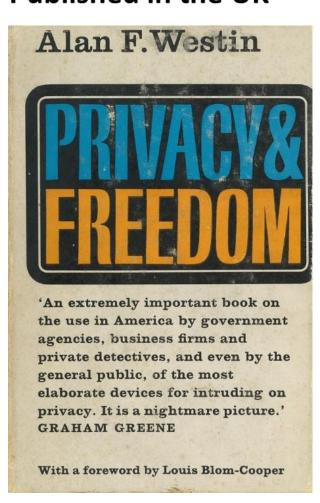


ALAN F. WESTIN, PRIVACY AND FREEDOM (1967)

Published in the USA



Published in the UK



日本経済新聞2015年2月10日朝刊交遊抄 堀部政男「研究の先達」

半世紀以上にわたり研究者としてプライバシーの思想を究めてきたなかで、研究の先達と多くの出会いがあった。なかでもコロンビア大名誉教授の故アラン・F・ウェスティン博士との交流は30年以上にわたった。アランは1967年、プライバシー研究の金字塔である「プライバシーと自由」を著し、注目され、各国のプライバシー思想に大きな影響を与えた。

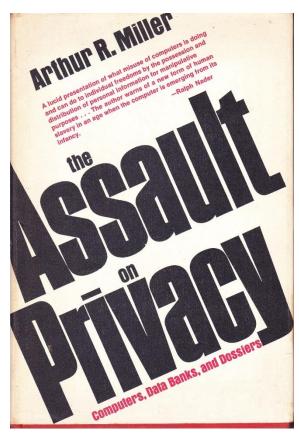
私が彼と出会ったのは80年。京王プラザホテルでの国際会議でパネリストとしてともに出席した時だ。当時日本では電子化された個人データに関する議論が活発化し始めていた。 以来私はアランを何度か日本に招き、政府関係者などとも意見交換の場を持った。

日本での個人情報保護法制定を喜んだアランは、自ら編集していたニューズレターで日本特集を組み、私もその編集に協力した。特集の扉絵は、米国と欧州連合 (EU)のプラカードを持った2人の間の道を浴衣を着た日本人が歩くというもので、独自の道を選んだ日本を前向きに評価してくれた。

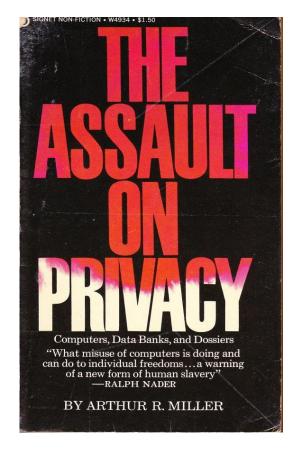
2013年2月に83歳で帰らぬ人となった際、米各紙は紙面を大きく割き評伝を掲載した。彼の研究が現代社会に与えた影響の大きさを再認識すると同時に、先達からの学びを後輩に引き継ぐ大切さも痛感した。(ほりべ・まさお 特定個人情報保護委員会委員長)

Arthur R. Miller (1934-), The Assault on Privacy (1971)

Arthur R. Miller, *The Assault on Privacy* (1971) hardcover



Arthur R. Miller, *The Assault on Privacy* (1971) paperback



Arthur R. Miller教授のプライバシー権論

- ・ 本書でミラー教授は、次のように述べている。
- 「最近、法律家や社会科学者は、効果的なプライバシー権の基本的特質は自己に関する情報の流れをコントロールする個人の能力—社会関係や個人の自由を維持するのにしばしば不可欠なカーであるという結論に到達するようになった。これと呼応して、個人が自己に関する情報の流れを統御する栓のコントロールを奪われるならば、ある程度までその者は栓を操作することができる人々や機関に屈従することになる。」

Arthur R. Miller教授との懇談①

• 1973年秋、ハーバード・ロー・スクールで研究していたときに、ミラー教 授と懇談したことがある。ミラー教授は、私が日本人であることから、 「今年(1973年)2月に日本のテレコミュニケーションズ・ワーカーズ・ ユニオンの招きで日本に行き、東京、京都、広島で開かれたコンファ ランスで講演をしてきました」と切り出した。そして、「日本もすぐにアメ リカと同様な問題に直面するでしょう」と語った。 ミラー教授は、連邦では、プライバシー保護法をどうするかという議論 があり、また、マサチューセッツ州でも近くプライバシー保護を検討す る委員会ができることについて話してくれた。

Arthur R. Miller教授との懇談②

- ミラー教授の示唆で、連邦議会議員には手紙で資料の送付をお願いし、マサチューセッツ州についてはボストンにある州政府の担当者に電話をして、会うことにした。マサチューセッツ州の担当者は弁護士で、様々な資料を集めていた。その一部をいただいた。
- このようにして認識することができた連邦議会の状況、マサチューセッツ州の議論については、ジュリストで書いた「アメリカにおける行政とプライバシー」で紹介するしたことがある。ジュリスト589号(1975.6.15)特集「行政とプライバシー」

Mr. Robert Ellis Smith (1940–2018) and his Privacy Journal (since 1974)





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 loog 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

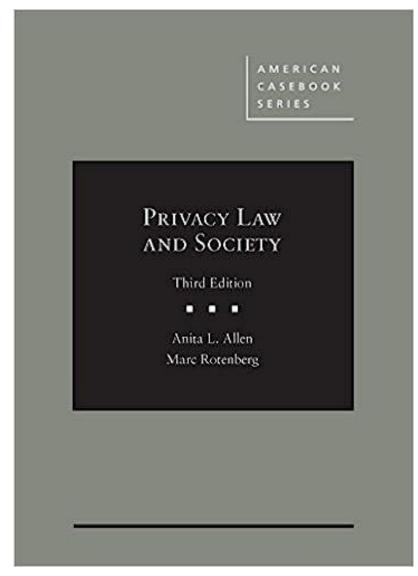
From Masso Horibe, chair, Data Protection Authority, Japan: Thank you very much for the article "Japan Pushes Forward on Reforms" in your PRIVACY JOURNAL September 2014. I am very much impressed by it. You reported, "[Horibe's] efforts were regarded as instrumental in passage of a national data protection 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."

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
- ・プライバシー関係の著作多数

Anita L. Allen & Marc Rotenberg Privacy Law and Society (Third Edition 2016)

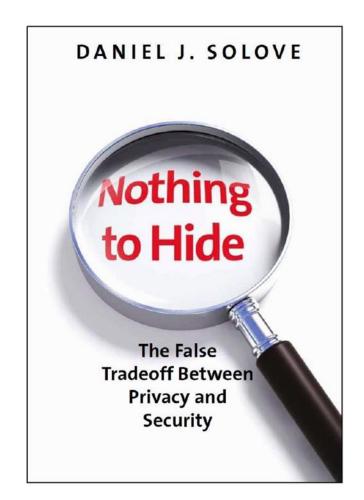


- American Casebook Series
- pp. 1591, 2654g
- An Introduction to Privacy Law
- Chapter 1. Privacy in Tort Law
- Chapter 2. Constitutional Privacy
- Chapter 3. Federal Privacy Statutes
- Chapter 4. Communications Privacy Law
- Chapter 5. International Privacy Law

Daniel J. Solove (1972~), Professor, George Washington University Law School

2011

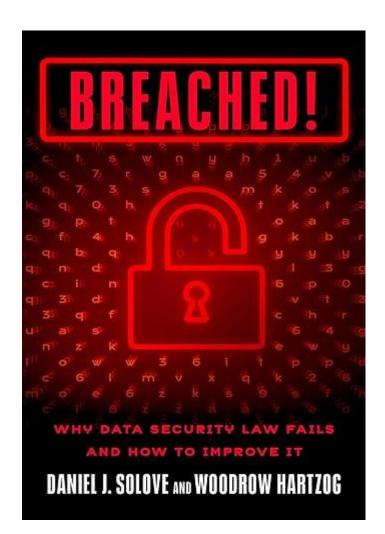
2017年、勁草書房、





Daniel J. Solove & Woodrow Hartzog, Breached! Why Data Security Law Fails and How to Improve It

2022



勁草書房、2023年



小向太郎監訳『データセキュリティ法の迷走』

- 小向太郎監訳『データセキュリティ法の迷走—情報漏洩はなぜなくらないのか』(勁草書房、2023年11月20日)
- 翻訳者
- 加藤 尚徳
- 木村 匠
- 藤井 秀之
- 村上 陽亮