

日本DPO協会第50回個人情報保護セミナー
「米国個人情報保護規制最新動向～CCPA規則改正・
子供保護のための最近の規制の動向を中心に～」
講師：森・濱田松本法律事務所・外国法共同事業
パートナー弁護士：ニューヨーク州弁護士
田中浩之 先生（当協会顧問）

2026年2月26日（木） 15:00～16:00

挨拶「米国における個人情報保護の歴史と特徴」

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・個人情報保護委員会初代委員長）

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

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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, *Privacy*, 48 CALIF. L. REV. 383 (1960).

California Law Review

VOL. 48

AUGUST 1960

No. 3

Privacy

William L. Prosser*

IN THE YEAR 1890 Mrs. Samuel D. Warren, a young matron of Boston, 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 élite; 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;¹ 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 "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).

- **William L. Prosser (1898-1972)**
- Dean of the School of Law at UC Berkeley from 1948 to 1961. Prosser authored several editions of Prosser on Torts, universally recognized as the leading work on the subject of tort law for a generation.

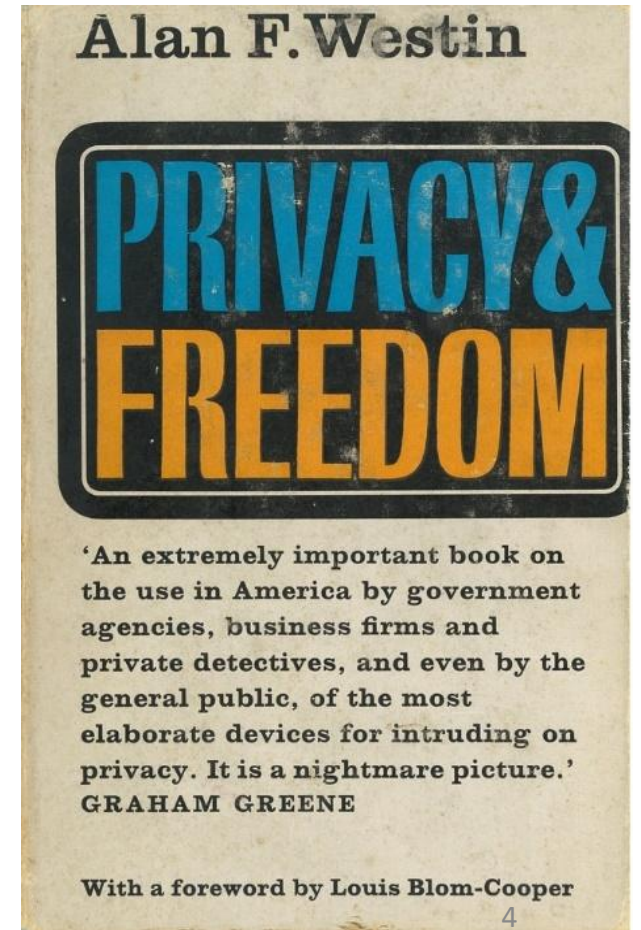
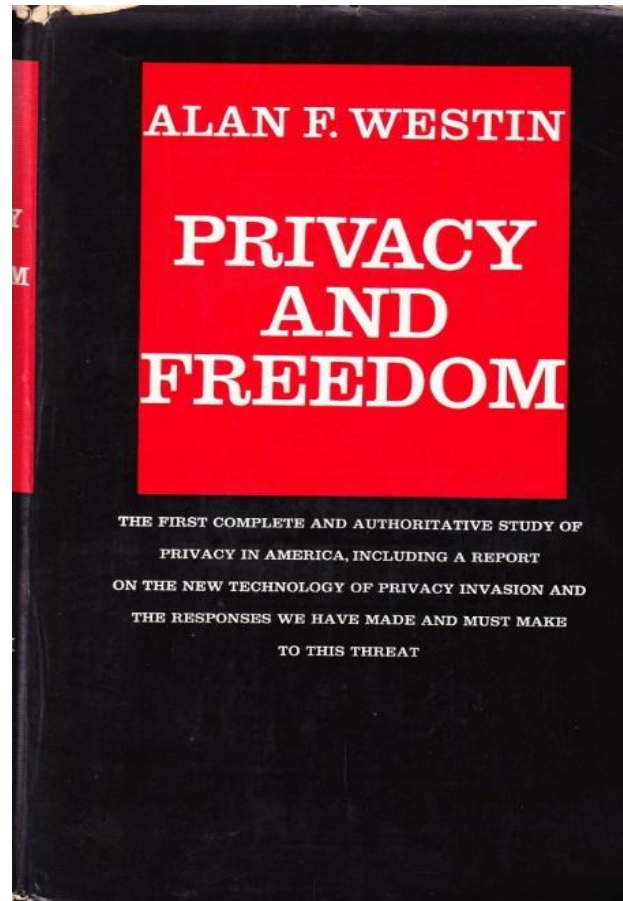
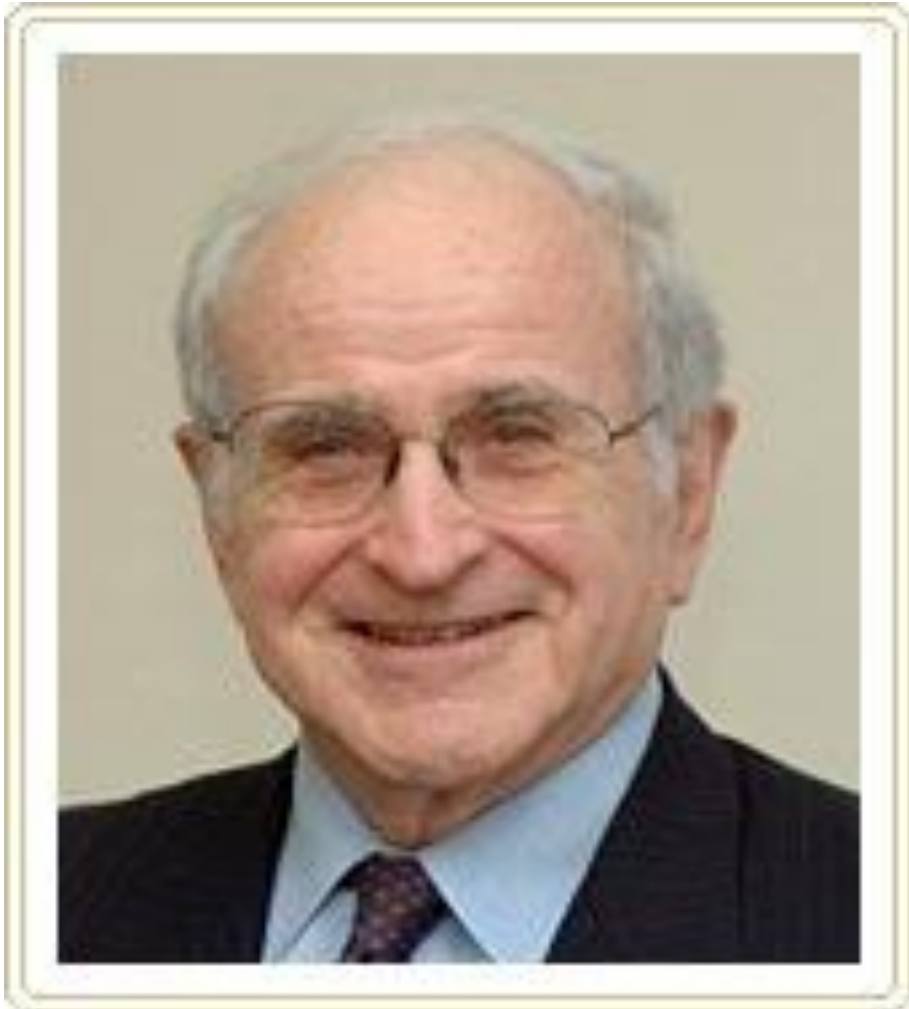
アメリカの1960年代後半のプライバシー論議

ALAN F. WESTIN,
PRIVACY AND FREEDOM (1967)

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

Published in the USA

Published in the UK



交遊抄

半世紀以下、国際関係はともかく、交遊の場は狭小化していった。

イギリスの政治家、ロンドンで暮らす

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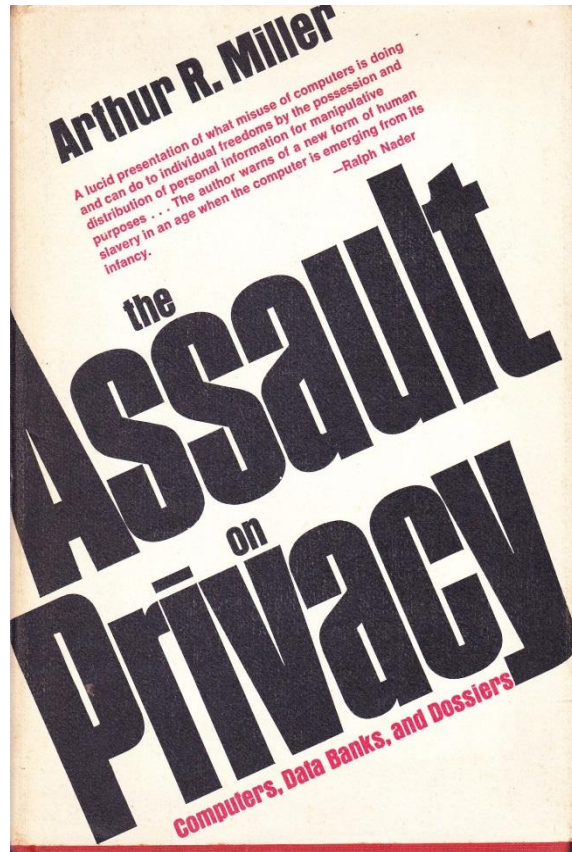
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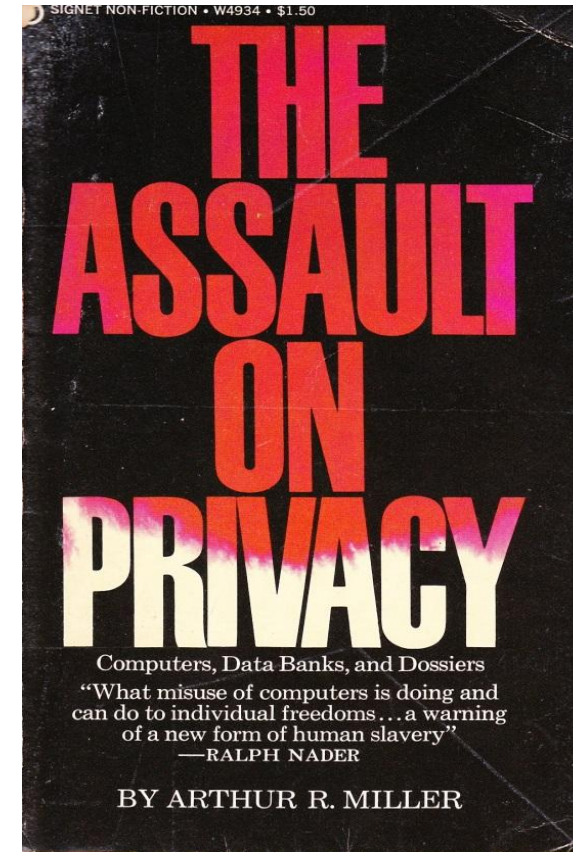
アメリカの70年代前半

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

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



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



アメリカ(連邦)

- 公正信用報告法 (Fair Credit Reporting Act of 1970)
- プライバシー法 (Privacy Act of 1974,)
- 家族教育権・プライバシー法 (Family Educational Rights and Privacy Act of 1974)、
- 金融プライバシー権法 (Right to Financial Privacy Act of 1978)
- 通信プライバシー (Communication Privacy)
- 医療保険の携行性及び責任に関する法律
(Health Insurance Portability and Accountability Act)
- 子どもオンライン・プライバシー保護法 (Children's Online Privacy Protection Act of 1998, COPPA)