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Abstracts

PUBLIC PRIVACY BY DESIGN: THE CASE OF DATA TRANSFER TO POLITICAL PARTIES

MICHAEL BIRNHACK

The protection of our privacy is under a continuous crisis, intensified by new information technologies and their accompanying business models. One of the celebrated solutions in recent years is that of Privacy by Design (PbD), namely, designing technological systems to begin with so that they embed privacy protection measures to begin with. Thus far, the idea of PbD has not been successful in the private sector, but it seems that it stands better chances in the public sector. This article examines one successful case study of public privacy by design. The case study is that of data transfer from the Israeli national population registry to political parties, for the purpose of their internal primaries. Following a series of dubious practices, some without sufficient legal basis and some against the law, the Political Parties Act was amended, and regulations promulgated. The new regulations introduced a technological process of matching the national registry with the parties' datasets, without handing either of them the other's data. The article is based on legal analysis and interviews with the decision makers involved. The discussion is located within the research paradigm of law and technology, which is acutely aware of the complex relationship between law and technology.

HUMAN DIGNITY IN THE FAMILY COURT: CONSTITUTIONAL CRITIQUE OF CUSTODY EVALUATIONS

LIOR BARSHACK

In recent years, Israeli family law scholars have advanced criticisms of the psychological custody evaluations on which family courts base their decisions in custody disputes. The Israeli literature echoes the unease with custody evaluations that has been expressed by family law scholars worldwide. Mnookin's article on Child-custody adjudication (1975), remains a classic reference in the field. In this article, Mnookin emphasized two problems with custody evaluations: first, custody evaluations make predictions about the future that are invalid and unreliable; second, custody evaluations inevitably take a stance on "big" ideological, ethical and existential questions that are deeply controversial. The purpose of the article is to further develop the case against custody evaluations on the basis of the existing literature. The article claims that the practice of relying on custody evaluations in family court is contrary to human dignity (in cases that involve two "good enough" parents). Custody evaluations are offensive to human dignity because the nature of adjudication in custody disputes is inconsistent with the rule of law. This is due, first, to the conflation between ideological, normative questions, on the one hand, and the supposedly factual questions addressed to the experts, on the other hand; and ,second, because of the de facto delegation of judicial discretion to experts.

The main part of the article will focus on two other violations of human dignity that are caused by current practice. First, the public assessment, implicit or explicit, of the parenting of parties to custody disputes is in itself offensive to human dignity. This is due to the fact that, in our culture, the main dimensions of the child-parent relation – the transmission of tradition, and the "totality" of the interpersonal encounter between parents and children – are seen as foundations of human dignity. Thus, assessing the parent-child relation amounts to an assessment of the parent's claim to dignity as an individual person. Second, the very attempt to produce an official representation of the intimate relations between parents and children (in cases of "good-enough" parents) is in itself offensive to human dignity.

CRITICAL ANALYSIS OF E-TEXTBOOK REGULATION POLICY

YONI HAR CARMEL, NIVA ELKIN-KOREN &
MICHAL YERUSHALMY

Since the 1950's, the Israeli Ministry of Education (MOE) has applied a rigorous, multi-level textbook approval process that regulates the content, design, and price of all textbooks designated for use in state education institutes. The Israeli textbook-regulation policy is meant to achieve the following three objectives: (a) state-wide uniformity of curriculum; (b) selecting textbooks of the highest quality; and (c) lowering private expenses on textbooks.

While the MOE's textbook-approval policy did not change substantially since the first years of State Education, the regulated object itself, the textbook, has been undergoing an unprecedented evolutionary process during the second decade of the 21st century. Currently, e-Textbooks offer a sustainable alternative to the textbooks that defined what and how students learn in schools.

The evolution of textbooks is by no means only a technological matter. It is, in fact, a paradigmatic change bearing the potential to revolutionize pedagogy practices, the classroom culture, and the textbook publishing industry. Israeli policy-makers responded to that technological evolution by applying the policy that governs the use of traditional textbooks to e-Textbooks.

This paper examines the appropriateness of the Israeli e-Textbook regulation policy in view of their characteristics and use in schools in the digital age, asking: Does the policy effectively achieve its purposes? Is legal regulation still required in the digital age? What alternatives to textbooks regulation are warranted by technological progress? Taking an interdisciplinary approach, this paper discusses the legal, pedagogic, and technologic aspects of these questions.

A BROAD DISCLOSURE RULE AS A SOLUTION FOR THE COST OF LIVING CRISIS

LIMOR RIZA & NOAM SHER

The article examines the mandatory disclosure regime of food and consumer products prices adopted in the Promotion of Competition in the Food Industry Law, 2014. It questions whether it is appropriate to impose a mandatory disclosure rule in the food industry, in particular in view of the special characteristics of this industry in Israel, and discusses the optimal disclosure pattern.

The law is the result of the Kedmi Committee, set up in response to the social protest that began in the summer of 2011, and aimed at lowering the Israeli high markets' concentration and cost of living. The law includes a short "made in Israel" regime, which is not customary worldwide, requires large retailers to publish in an online database up-to-date prices allowing consumers to compare prices.

The article supports the legislation committees' recommendation to adopt a broad disclosure regime. But it indicates the failures in the law that makes social welfare maximization impossible, and proposes to add specific disclosure rules that are lacking. The article analyzes the issue thorough both neoclassical and behavioral economics, which has not been done before, to examine the advisability of the mandatory disclosure rule justifications and to explore the missing components in the law in order to maximize social welfare.

We conclude that the law, *inter alia*, should publish both historical and updated products price and quality information, in one nationwide database with a unified comparable, accessible and friendly format. In the current Israeli law a significant portion of these elements is still missing.

PROPERTY CATEGORIES IN A SHARING ECONOMY: HOME AS TEST CASE

SHELLY KREICZER-LEVY

The sharing economy is a rising social and economic phenomenon, based on peer markets. It includes various activities, such as renting out rooms to tourists, car-sharing, sharing personal items, etc. While it attracts noticeable media attention and academic research overseas, Israeli law seems to be lagging behind on the issue. This article explores the challenges that the sharing economy poses to Israeli legal regulation, mainly focusing on Airbnb activities. The article primarily argues that the sharing-economy brings commercial activity into our homes, changing our ideas of living with others. The sharing economy challenges the spatial dichotomy between personally-used property and commercial goods, particularly the special legal protection accorded to our homes. Legal regulation must first redefine current categories and acknowledge the variety of activities and relationships in the intimate and personal space. The article suggests a few guidelines for concrete rules that will apply to taxation, zoning, business permits, and antidiscrimination laws.