This is a bold book, which impresses with its ambition and range and the confidence with which Stevens asserts his positions. Private lawyers should read it to be challenged and consider whether the world Stevens advocates is preferable to the one we have. But for this lawyer, despite Stevens's best efforts, when the marginal concerns he identifies are dealt with, as they can be, the Law of Unjust Enrichment emerges even stronger.

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Egalitarian Digital Privacy: Image-Based Abuse and Beyond. By TSACHI KEREN-PAZ. [Bristol: Bristol University Press, 2023. 272 pp. Hardback £85.00. ISBN 978-1-52921-401-7.]

In *Egalitarian Digital Privacy*, Professor Tsachi Keren-Paz seeks to address the distinctly twenty-first-century problem of disseminating intimate sexual images of individuals online without their consent. UK criminal law did not catch up with this phenomenon – colloquially termed "revenge porn" – until the Criminal Justice and Courts Act 2015, and despite shortcomings, section 33 of that Act was used to convict many disseminators, including reality TV figure Stephen Bear. Sections 188 & 190 of the Online Safety Act 2023 very recently repealed s.33 and replaced it with strengthened protections. But the focus of *Egalitarian Digital Privacy* is not criminal law but private law. Keren-Paz forcefully and persuasively argues that privacy and wider tort doctrine can and should be developed to address the problem of online dissemination of non-consensual intimate images (NCII) by providing meaningful, effective remedies for victims. In particular, he puts forward what is at first glance the rather ambitious argument that intermediaries or platforms such as Facebook and PornHub should not only have legal obligations to filter out NCII, but should also bear strict liability for hosting any NCII that might slip through the net. Furthermore – bolder again – online viewers of NCII should bear strict liability for violating the privacy of the depicted victims. More cautious tort lawyers may view such prima facie claims as a stretch or overreach. But over the course of the book, the author builds highly persuasive arguments – often using creative, convincing legal analogy – that show these proposals to be eminently reasonable and achievable developments of existing doctrine.

Egalitarian Digital Privacy starts by providing an account of the problem of NCII. It weaves together diverse doctrinal and extralegal sources to provide a comprehensive picture of the extent, severity and very real harms of the image-based abuse problem. Keren-Paz convincingly demonstrates that NCII entails a gendered form of sexual abuse that causes severe, irreparable and ongoing harms. He draws out the systemic and asymmetrical harms of NCII that affect not only individual victims, but also women as a group, such as by entrenching patriarchal double-standards regarding sexuality. Yet, as the author points out, disseminating NCII is an activity that private law treats less severely than disseminating a music album without permission, despite the fact that the latter entails only modest commercial harm.

Some of Keren-Paz's arguments are arguably "easy hits". For example, his critique of the controversial section 230 of the US Communications Decency Act 1996,

which provides legal immunity for platforms hosting NCII even after they have been notified of its presence, is highly persuasive. He claims that platforms have the clear technical capacity to remove NCII, especially as they operate notice and take-down regimes in other contexts, most notably to protect copyright works. Victims of NCII need similar effective take-down remedies and it is fair to impose liability on platforms because their business models rely on widespread content-sharing that contributes to the harms of NCII. The author's preferred solution entails strict liability for platforms hosting NCII on the basis they are akin to a merchant selling stolen goods. But even if one has reservations about such an extension, one is left convinced that section 230 post-notice immunity for hosting NCII is simply unjustifiable.

Perhaps *Egalitarian Digital Privacy*'s most ambitious and potentially contentious argument is that viewers of NCII should be strictly liable for violating the privacy of victims (subject to exceptions for innocent passive viewers who delete images promptly). The author relies on two analogies to support this proposition. First, he draws similarities between NCII and child pornography as forms of image-based abuse. Courts should hold viewers of NCII civilly liable for privacy intrusion as they have in the more extreme case of child pornography. Second, Keren-Paz argues that the NCII viewer is akin to a recipient of stolen property. By observing NCII, the viewer unfairly benefits from both a subjective use value (sexual gratification) and a (modest) trade value at the expense of severe harm to the claimant. This intrusive viewing thus constitutes a form of misappropriation.

Overall, the author's thesis addresses and raises a host of thought-provoking practical, doctrinal and ethical issues. For example, some readers may have privacy concerns regarding his proposed use of *Norwich Pharmacal* orders to obtain the identifying information of net users who have accessed NCII. Others may question how the author's proposed reforms might be achieved legislatively (in the face of extensive lobbying by "Big Tech") or judicially (given the prevailing climate of hostility to "activist" and "undemocratic" judges). But two aspects of *Egalitarian Digital Privacy*'s overall thesis are of particular interest to me and thus warrant further attention.

The first reservation lies in Keren-Paz's suggestion that the strengthened privacy protections he suggests need not be limited to NCII, but might potentially apply to non-sexual private images and information more generally. Even if the case for stronger protections for NCII is cogent, we should be wary of extending them to private information generally for two important reasons. First, some misuse of private information (MOPI) cases have involved arguably borderline wins for claimants concerning images or information that was not nearly as sensitive or harmful as NCII. Cases such as *Weller v Associated Newspapers* [2015] EWCA Civ 1176 indicate that harms from privacy violations vary greatly in severity. Second, strengthening protections for all private information beyond NCII would entail practical technological difficulties and threaten free expression. Filtering and moderating intimate images may be reasonably straightforward, but such processes would inevitably be more subjective and technologically complex when undertaken in relation to private information in its various forms. To be fair, Keren-Paz's point here is a brief digression and his overall thesis does not stand or fall with it. But his argument for "NCII exceptionalism" is stronger.

A second, more significant reservation concerns the role that notions of property play in Keren-Paz's account of privacy. Privacy torts such as MOPI clearly have a central role to play here; NCII unquestionably violates the victim's Article 8 ECHR

privacy right. Sexuality is a core activity protected by Article 8. Images are deemed more intrusive than equivalent text-based information. NCII causes severe harms – distress, humiliation etc – and undermines individual dignity and autonomy. Each viewing of an intrusive image represents a distinct, separate intrusion. All of these points are well-established in case law. But Keren-Paz gives property a central role in his conception of privacy by claiming that NCII (and possibly private information more generally) should be understood as a form of common law property. Property thus plays an important role in his thesis and a number of specific consequences flow from this propertised notion of privacy. Property forms the basis upon which the author justifies strict liability for intermediaries and NCII viewers by drawing on the rhetoric of theft and stolen goods. It gives the claimant more control or "dominion" and enables us to view NCII as a form of misappropriation. Using propertised terminology in this way is a legal means of vesting claims with the same significance as traditional interests in, such as land or "stuff". As Keren-Paz claims, "it does not make sense that the protection given to one's car [should be greater than that given] to one's intimate images" (p. 79). This propertised privacy approach is justifiable and brings discernible benefits. Its effect is to strengthen the claimant's position vis-à-vis platforms and viewers. Couching such claims in the liberal-legal language of the system enables practical, real-word gains that can genuinely improve lives and are not to be dismissed lightly. In this sense, the author's use of property is pragmatic and he acknowledges the realist influence of his method at various points. He calls property "useful", claiming that it leads to "desirable results", that its use is "principled" and "analytically" sound.

Keren-Paz defends his property-based conception of privacy against two principal objections. First, he dismisses economics-driven concerns that such protections will lead to an undesirable proliferation of property rights in relation to the same image, leading dealings to become more complex and less efficient. His convincing response is that this "inefficiency" is a justifiable trade-off to increase platform accountability and attain the countervailing policy goal of reducing NCII harms. But a second objection from the other end of the political spectrum – the anti-commodification critique – is trickier to dismiss. According to this critique, the privacy right is a personal inalienable right that should not be understood as alienable (i.e. transferrable) property. Privacy is a dignitary interest and propertising it enables its commodification. Keren-Paz's response is that this anti-commodification critique entails a paradox, which he terms the "inalienability paradox". Refusal to see the claimant's right as property-based due to its inalienable, dignitary nature has the *opposite* effect of making the claimant's entitlement *more* alienable, not less, because it results in weaker protection and remedies for claimants. In short, if the privacy right at stake is so precious that it cannot be transferred (at least in theory), then why is it given *less* protection than tangible or intangible objects that can be sold? Surely it should enjoy at least as much protection as property, if not more? Furthermore, the author claims that private information is already widely commodified in practice and such commodification is legally accepted as demonstrated by the prominent Court of Appeal and House of Lords judgments in *Douglas v Hello! Ltd*.

Keren-Paz's arguments are entirely defensible and cogent on their own terms and within the constraints of the system of private law torts. But in forthcoming research Lee McConnell and I have been looking at the influence of property terminology and notions in privacy law and, whilst acknowledging the real benefits such terminology

may bring in the context of NCII, we have reservations about the wider consequences of this rhetorical strategy. Keren-Paz is correct in his account of the "inalienability paradox", but it is arguable that the privacy he proposes entails a paradox of its own: let us call it the "property paradox". Privacy law seeks to protect the individual from harms that are largely driven and/or exacerbated by commercial motives (though, as the author explains, misogyny, sexual gratification etc also feature prominently in NCII). Yet to provide such protections, privacy paradoxically relies on property, a crucial component of the market. In doing so, it re-deploys as a defence the very liberal-capitalist notion of property that has facilitated the commodifying activities of the digital, porn and entertainment industries in the first place. Keren-Paz promotes this approach – a form of self-ownership – as a means to resist commodification. But this involves a paradox identified by Davies and Naffine, namely that "the person must become the property of themselves to avoid becoming the property of others" (M. Davies and N. Naffine, *Are Persons Property?* (Dartmouth 2001), 145). There is a risk that such strategies ultimately render individuals more susceptible to commodification. To be sure, property notions can buttress support for NCII victims who seek to prevent dissemination, but we claim this model is arguably less empowering than it first appears. More generally, it results in a privacy that can be put to work in the service of the market. It enables privacy protections to co-exist with technologies and cultures of hyper-commodification which also raise wider gender justice concerns (e.g. surrounding beauty, body-image and sexuality). In this sense, *Egalitarian Digital Privacy* perhaps overlooks privacy's crucial legitimating function and property's role in fostering the wider conditions which contribute to the very NCII problem that the monograph seeks to address so thoughtfully.

Ultimately, despite these points, *Egalitarian Digital Privacy* does what the best legal scholarship ought to do; it provides a rich, nuanced explanation of the NCII problem alongside concrete proposals specifying how private law can address it. The author's argument is multi-layered, constructed so that even if individual readers are unable to accept some of the more ambitious aspects of his thesis, the acceptance of persuasive plan Bs is the only convincing alternative. The reader is left with an overwhelming sense that NCII cannot just be a problem for criminal courts, but is an issue that private law torts can – and really must – address far more effectively than they currently do. *Egalitarian Digital Privacy* cogently demonstrates how private law doctrine can be readily developed and applied in line with first principles to meaningfully address and prevent NCII. All that remains is for legislators and adjudicators to have the will and courage to take the project further.

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The Right to be Protected from Committing Suicide. By Jonathan Herring. [London: Hart Publishing, 2022. xvii + 265 pp. Hardback £85.00. ISBN 978-1-50994-904-5.]

We have, Jonathan Herring argues in this passionate book, a right to be protected against, indeed to be prevented from, committing suicide (it would be worth

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