

Foreword: Fundamental Rights in the Digital Age

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*“There are new rules now in the meta, mom.
Switch to a private account, and
close your window.”¹*

- Thy Nguyen

“[Atget] observed and documented his surroundings. I am observed and documented by my surroundings.”²

- Lupini Bean

“Privacy, as we know it, has been lost.”³

- Camilla Dul

In the aftermath of a series of lockdowns during the height of the Covid-19 pandemic, when everyone turned online and the Internet use was pushed up by between 50% and 70%,⁴ the editorial board of the Queen Mary Law Journal decided to publish a call for papers and creative submissions that address the theme of *the fundamental rights in the digital age*. As the average screen time between both children and adults were rising,⁵ the amount of data gathered and analysed were reaching to unparalleled levels, and the role and capacity of AI-driven technologies and services were becoming more widespread, we felt that the fundamental rights discourse was yet again at a turning point.

The traditional role of law as the main institutional vehicle in governing human conduct has already been challenged by the regulatory regimes of the online private actors in the last two decades. Expressive content shared online is subject to not only the law but also the terms and conditions of the social media platforms such as Twitter and Facebook.⁶ Large e-commerce platforms like eBay have established their own dispute resolution mechanisms as early as 2002.⁷ Thomas Schultz offers three characteristics shared among the private regulations of

¹ Thy Nguyen, ‘Window’ (2022) 3(1) Queen Mary Law Journal x

² Lupini Bean, ‘Big Data, Little People. *After Eugène Atget*’ (2022) 3(1) Queen Mary Law Journal x.

³ Camilla Dul, ‘The Facial Recognition Technology vs Privacy: The Case of Clearview AI’ (2022) 3(1) Queen Mary Law Journal x.

⁴ Mark Beech, ‘COVID-19 Pushes Up Internet Use 70% And Streaming More Than 12%, First Figures Reveal’, (March 25, 2020, Forbes), available at <<https://www.forbes.com/sites/markbeech/2020/03/25/covid-19-pushes-up-internet-use-70-streaming-more-than-12-first-figures-reveal/?sh=7f3888203104>> (Last visited August 25, 2022)

⁵ See e.g. Sophie Domingues-Montanari, ‘Clinical and Psychological Effects of Excessive Screen Time on Children’ (2017) 53(4) Journal of Paediatrics and Child Health 333

⁶ Ben Wagner, ‘Governing Internet Expression: How Public and Private Regulation Shape Expression Governance’ (2013) 10(4) Journal of Information Technology & Politics 389.

⁷ David P. Baron, ‘Private Ordering on the Internet: The eBay Community of Traders’ (2002) 4 Business and Politics 245, at 246–247.

online platforms that makes them distinct from a legal system.⁸ They are non-territorial, non-comprehensive, and they are “devoid of the public policy considerations that typically partake of each system’s foundational precepts and vary from one public legal system to another.”⁹ For the last two decades, our digital presence has been subject to this fragmented regime of private regulations. The platforms are subject to rules and governance of national and international laws such as the EU’s General Data Protection Regulation, but as Camille Dul points out in ‘The Facial Recognition Technology vs Privacy: The Case of Clearview AI’ in this issue, the adoption and enforcement of such regulations are almost always *ex post*: “only after illicit conduct by tech companies has taken place, the law reacts.”¹⁰ Where the technology leads, law follows.

The editorial board decided to provide the submitting authors a space of interpretation for the theme. Neither the ‘fundamental rights’ aspect nor the ‘digital age’ was further narrowed down. As a result, the QMLJ received submissions on a number of topics such as AI and ethics, the role of the bots and algorithms in decision-making, and humanoid robots. The majority of the submissions – both for research papers and creative submissions – concerned the right to privacy, either in the contexts of data protection, surveillance, or both. The outcome of this is reflected in the issue at hand, two out of the four articles, and four out of the eight creative submissions concern privacy. Camilla Dul’s article ‘The Facial Recognition Technology vs Privacy: The Case of Clearview AI’ examines Clearview AI, a company that provides services to public and private bodies with its AI-driven facial recognition tool. Dul argues that novel forms of surveillance that comes with the data-driven technologies endanger the right to privacy through the power asymmetry among the private individuals and private companies with state-like power. Olayinka Adeniyi’s ‘Engendering Women Data Use, Privacy, and Protection in Africa: Focus on Data Laws in South Africa and Kenya’ offers an examination of the discourse of data privacy and protection in South Africa and Kenya through the lens of data feminism. Adeniyi illustrates how the influence of patriarchy extends to data privacy and protection, which is present in the language of the laws.

Ralph Vincent G. Catedral examines the case law of the Philippines on the online sexual exploitation of children in the paper titled ‘The Best Interest of the Child in the Philippines: Lessons from Supreme Court Decisions and Their Potential Application in Online Sexual

⁸ Thomas Schultz, ‘Carving up the Internet: Jurisdiction, Legal Orders, and the Private/Public International Law Interface’ (2008) 19(4) *The European Journal of International Law* 799

⁹ *Ibid.* at 829

¹⁰ Dul (n. 3), at 16.

Exploitation of Children Cases’. Catedral’s focus is on the best interest of the child principle and lessons to be drawn from the case law of the Supreme Court of the Philippines. Catedral provides important factors of consideration in the legal process concerning the online sexual exploitation of children, such as minimizing the risk of retraumatizing survivors, honouring the voices of children-survivors, and incorporating expert help.

The last article in the issue is ‘Global or Local? Freedom of Speech and Some Extraterritorial Court Decisions on the Internet’ by Gabriel Ernesto Melian Perez, where the author criticizes the orders of national courts around the globe that result in the worldwide removal of online content. Through an examination of judgments across different countries that rely on one-another in justifying the worldwide removal of content in intellectual property infringement, and defamation cases, Perez argues that the courts are in a ‘race to the bottom’, where “the law of free speech on the Internet will be that of the state with the lowest standard.” Perez lays out principles based on international comity for courts to consider in such extraterritorial judgments.

In this issue, the Journal decided to broaden the submissions beyond the academic papers and welcomed creative submissions. The law is primarily and dominantly a text-based discourse. Jack Tan argues, “law is bound up in and defined by specific operations of semiotics and grammar.”¹¹ Our purpose in accepting creative submissions was to gain a novel perspective towards the fundamental rights discourse that would challenge the established bounds of the legal language. While the fact that the Journal was publishing a call for creative submissions for the first time was initially a point of concern, we closed the submissions cycle with creative submissions that are double the amount of articles. The proportion is reflected in the issue, where we publish eight creative submissions along with four articles.

In ‘Big Data Little People, *After Eugène Atget*’, Lupini Bean adds icons of Google Maps and face recognition technology onto a photograph of an empty street in Paris taken by Eugene Atget in early 20th century. Bean’s work raises the question of surveillance that comes with the use of digital services. Wu Siou-Ming’s ‘Ocean of Information’ is a series of four images that are extracted from a program that continuously generates distorted codes. Ming imposes familiar symbols over the codes. Ming’s work points out the data and information traffic that is getting bigger and bigger in the daily use of the Internet.

¹¹ Swastee Ranjan, ‘Interview with Artist Jack Tan’ (January 3, 2018, Art/Law Network), available at <<https://artlawnetwork.org/interview-with-artist-jack-tan/>> (Last visited August 24, 2022)

Emin Mathers contributes two photographs to the issue. ‘Delivered Supper’ is a bird’s-eye-view photograph of a dinner table, where four people are selecting what food to order from their smartphones. There is a spear lying on the other side of the table, pointing out the changes in our eating habits in the digital age. His other work, ‘eyePhone’, is a close-up photograph of a human eye, where the spectator can see the reflection of the person scrolling down on their smartphone. Mathers defines this image as the portrait of the contemporary human, and argues that “eye, finger, and screen become our main body organs.” In her work titled ‘Adam and Eve 21st Century’, Kate Bortsova depicts Adam and Eve, and the logo of Apple in the middle of them. Bortsova argues that similar to the apple from the tree of knowledge, the modern gadgets tempt people with knowledge and information.

‘Window’ by Thy Nguyen is a poem that offers the reader an insight on patriarchy’s extension to social media. Through a dialogue between a daughter and her mother, Nguyen illustrates how the anxiety and concern that women are superimposed by the society translates to the digital age. To avoid unwelcomed eyes, the mother closed the window curtains at night, Nguyen observes, and the daughter turns her social media account into private. Evangelia Koratzinou contributes to the issue with an illustration called ‘A Closer Look’. The work illustrates ten polaroid photos of a female body pressed amongst the camera lens. Koratzinou’s illustration derives from the documentation of victims of physical/sexual abuse at a police station. Her work points out a contrast between the right to privacy and the detailed documentation of one’s life.

‘On the Road’ by Lale Duruiz is a photo-manipulation and digital painting. The work depicts a young woman on a bicycle, burdened under a vast amount of screens. Duruiz defines the digital realm as “dark and frightening” and the woman is feeling “alone, naked and vulnerable.” Her work is a call for policies and initiatives to make the digital realm safe and empowering women. Preda Pavel Silviu’s “IG Generation” is a series of four images, depicting the Instagram feed of a social media influencer. Silviu defines the content on Instagram and other platforms as ‘View-Me Media’ and offers a satirical remake of the said content.

This volume aims to contribute to the fundamental rights discourse and its transformation in the digital age. We follow the open-access publication model that has been adopted in the first two volumes of the Queen Mary Law Journal. I would like to thank the editorial board, the peer reviewers, and the article editors, who are postgraduate researchers at the Queen Mary University of London, whose voluntary work has made this volume possible.