

BOOK REVIEW

Susanna Lindroos-Hovinheimo, *Private Selves: Legal Personhood in European Privacy Protection*, Cambridge University Press 2021, ISBN: 9781108781381

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Data privacy law has become a significantly important area for law and yet, the main research in this field of law has focused primarily on the doctrinal analysis and remains mainly under-theorised. *Private Selves* written by Professor Susanna Lindroos-Hovinheimo, however, gives us a novel view on the philosophical underpinnings of the EU data protection law, drawing on continental philosophy and contemporary political philosophy. It is within this context that the author distances herself from the idea that there is a pre-existing person whose privacy rights should be protected and starts her elegantly constructed study of legal subjectivity in the EU privacy law with a brilliant question: What kind of persons does European Union (EU) law think we are? To answer this question, Lindroos-Hovinheimo uncovers the philosophical foundations of the European privacy law and it is based on an analysis of the General Data Protection Regulation (GDPR), as well as a thorough analysis of the case law of the European Court of Justice (ECJ) that the main argument of the book is presented. Situated within the field of critical legal scholarship, the book explores in detail the ways in which human beings are constructed through privacy rights. The author engages with the kinds of presuppositions regarding the concept of legal personhood that lie at the heart of EU privacy regulations. Thus, the book doesn't concern criticising privacy right per se. In addition, it does not advocate a lesser level of privacy protection by the European legislature or courts. In the context of the European Union, the author's analysis emphasises the concern that the liberal economic paradigm, upon which the integration project mostly rests, threatens to privatise not only services and administration, but also citizens. The author aims not to show what privacy rights fail to accomplish, but rather to analyse the various things they do at all times. This book, as its title implies, is devoted to the study of how privacy rights and personal data regulations individualise people in Europe. Central to book's argument is that both the case law as well as the interpretations of the GDPR suggest some individualist tendencies. Even though the emerging individual in European privacy law is in no way uniform or unambiguous, they still align mostly with individualistic views and the view of the individual as autonomous is at the core of the current regulation of privacy rights. Throughout the book, the author explores how such tendencies can undermine community values such as solidarity and equality.

The book is divided into chapters based on the various kinds of persons that derive from the material under study. Lindroos-Hovinheimo walks us through certain forms of personhood

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that arise from the GDPR and ECJ case law. Yet, according to the author, to differentiate between their paradigmatic appearances is not an easy task. They often overlap and, in addition, seem to have contradictory logics. Despite this, there are various types of persons that can be discerned. The person in control is the first such form of personhood. As the author suggests, an emphasis on the control of data, which is integral to the current privacy law, implies that there are individuals who control, can control, and should control their data. A law that seeks to empower is usually in line with a specific view of personhood. The existence of competent persons is presupposed and is sought in legal mechanisms of empowerment.¹ Individual empowerment is particularly evident in the self-management ideology of the GDPR whereby consent is emphasized. According to law, there exist individuals who are aware of themselves, their preferences, and their opinions. As such, the law presupposes and consistently produce an autonomous person.² One explanation, according to Lindroos-Hovinheimo, for the prevalence of privacy concerns could be found in the rise of an increasingly individualistic society in which people have become independent actors rather than group members or citizens. Individualism in this sense makes each individual solely responsible for the decisions they make. Control is of great significance in data protection law, which is in line with individualism.³ The author demonstrates that privacy rights construct the person first and foremost as an individual in control.

The next chapter makes the starting point that the aim of enhancing individual control is consistent with the widely shared belief that privacy is valuable because it is an integral part of individual autonomy.⁴ The predominant interpretation of privacy rights emphasises on the autonomous, self-determining individual, as appears to be the next person constructed by the EU data privacy law. It is the concept of a self-same and autonomous individual that is at the core of privacy rights. Since humans contain an autonomous core, they are not completely defined by external forces. This core, however, as Lindroos-Hovinheimo argues is neither concrete nor substantial. It is the power structures that impose on us the way we behave, the lives we live, and the values we hold dear.⁵ Such view is premised on a rather simplistic and self-contrary understanding of what it means to be a human being. Currently, the privacy regulation finds it difficult to accommodate the inevitability of the fact that we are all incomplete and uncontrollable members of society. Privacy regulation, in her opinion, both produces autonomy by emancipation, and presupposes it while protecting the person in control. Accordingly, the autonomous individual constitutes both the assumption and the goal of the privacy law.⁶

In the following chapter, Lindroos-Hovinheimo, examines the construction of personhood in terms of immunisation logic. She discusses the ways in which privacy rights seek to protect individuals by making them immune. Therefore, privacy can be seen as akin to

¹ Susanna Lindroos-Hovinheimo, *Private Selves: Legal Personhood in European Privacy Protection* (Cambridge University Press 2021) 44.

² *ibid* 37.

³ *ibid* 51.

⁴ *ibid* 71.

⁵ *ibid* 81.

⁶ *ibid* 171.

immunisation: the individual has the right to withdraw and resist intrusions. The right to privacy can be viewed as an instrument of individualisation, through which the law draws the boundaries of each individual's personal domain.⁷

Next, Lindroos-Hovinheimo explores the economic agent created by privacy law. According to the author, the free-moving economic agent has been a dominant form of legal personhood in the Union historically.⁸ The link between data protection and economic liberty as the author demonstrates is clearly evident. The purpose of data protection rules, therefore, is not only to protect fundamental rights but also to facilitate the enjoyment of free movement rights by individuals. Although there is no clear consensus on the ideological underpinnings of privacy regulation, the purpose of privacy law is not merely that of protecting individuals. It also aims to ensure the free flow of data within the internal market. In any case, even if the primary objective of data protection is the development of rules that are beneficial to individuals, the Regulation does harmonise the market. Therefore, the fourth person is certainly the one formed by the economy.

Following an analysis of how privacy is connected with political personhood and is a prerequisite for a democratic society, the author provides insights into alternative approaches to counteract individualistic tendencies within EU privacy law in the final chapter – although the purpose is not to advance any normative claims. Throughout her investigation, singular plurality has served as the framework.⁹ In light of that, being-in-common defines the person, which suggests that persons are not primarily autonomous and self-same agents. The singularity of a person can only exist in the context of a community, and community can only exist if the singular plurality of its members is respected.¹⁰ One of the most important aspects of privacy rights, as she remarkably demonstrates, is that they provide means of regulating relations between people, and human beings as relational beings. As such, privacy should not be used to protect individuals alone, but rather as part of sharing a world. In this sense, privacy rights can influence how the world is shared and how a community is upheld. The author suggests that when this kind of thinking prevails, and if the relational aspects of these rights are considered in their entirety, balancing will need to be considered in most cases. The ECJ should consider other rights and values to a greater extent than it usually does. It is essential to evaluate privacy claims on the basis of a spectrum encompassing many values, not just individualistic ones.¹¹

One of the greatest strengths of *Private Selves* is that it sheds light on how privacy rights are of substantial value since they provide opportunities for regulating the relations between individuals as incomplete beings. Alternatively, one might see privacy not as an individual right, but rather as something that is born in relations. Privacy should therefore be regulated based on its relational nature.

⁷ *ibid* 97.

⁸ *ibid* 117.

⁹ The author draws on Nancy's theory of singular plurality to explore personhood as intertwined with community. See Jean-Luc Nancy, *Being Singular Plural* (Stanford University Press 2000).

¹⁰ Lindroos-Hovinheimo (n 1) 160.

¹¹ *ibid* 169.

On the whole, Lindroos-Hovinheimo's work is a convincing defence of the role of viewing privacy rights as born-in relations as opposed to individual entitlements. Such relations define the person and are the basis of rights. Consequently, a community must be presupposed simultaneously with a person.¹² An important contribution to one of the fundamental debates in political and legal philosophy is made by this book. *Private Selves* is beautifully written, novel, innovative, and traverses a wide range of legal, political, and philosophical issues within 175 pages. *Private Selves* is an essential read for anyone seeking to reconcile doctrinal analysis of this realm of law with theoretical insights into the nature of legal subjectivity offered by the author.

¹² *ibid* 80.