総務省 情報通信政策研究所
情報通信法学研究会 AI分科会
令和7(2025)年2月13日
オンライン実施

プライバシーのグローバル保護
―域外差止命令を通じた「東京効果」の拡張可能性

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全体の構成

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引用等の詳細は、以下を参照

1) Itsuko Yamaguchi,[Draft as of Oct. 23, 2024－本研究会構成員限り], ***The Tokyo Effect****: How Law Can Unleash Dragons toward Global Privacy Protection amid AI-led Innovation*

2) Itsuko Yamaguchi, ***A Japanese Equivalent*** *of the "Right to be Forgotten": Unveiling Judicial Proactiveness to Curb Algorithmic Determinism, in* THE RIGHT TO BE FORGOTTEN: A COMPARATIVE STUDY OF THE EMERGENT RIGHT'S EVOLUTION AND APPLICATION IN EUROPE, THE AMERICAS, AND ASIA 291-310 (Franz Werro ed., 2020), https://link.springer.com/chapter/10.1007/978-3-030-33512-0_15

3)拙稿「**権力統制主体**としてのマスメディアの機能と課題――デジタル統治の権力監視機能の担保としての自由・公開性・透明性設計」公法研究83号(2022年)147-160, 317-318頁

4)拙稿「**言論被害への予備的救済**としての刑事罰・差止命令――自由とフェアネスを実現するデザインの苛烈性と先見性」憲法研究13号(2023年)19-26頁

5) Itsuko Yamaguchi, ***The Rise of "Global Information Law"****: Centennial Perspectives on the Conceptualization of Japanese Information Law*, 100 JOURNAL OF INFORMATION STUDIES 47-63 (2021), https://repository.dl.itc.u-tokyo.ac.jp/records/2000144

5) 拙稿「**情報権力分立**――自由と共創のためのデジタル統治構造の透明化・民主化」情報学研究(2021年), 101号39-61頁, https://repository.dl.itc.u-tokyo.ac.jp/records/2002826

以下、法令・判例等の引用文における太字・斜体等は発表者
ウェブサイトへのアクセスは、2025年2月12日現在

1. 問題提起／プライバシーのグローバル保護
―本発表の要旨

1)

・デジタル化や生成**AI**(人工知能)等によるデータ処理の**自動化**が加速し、

・社会の各方面でイノベーションが推進される中で、

・人間の本来的な**精神性**と**弱さ**ゆえに歴史で繰り返される難問

への対応が模索されている。

2) 本発表では、

・個人のプライバシーという人格的価値の侵害をめぐり、人格権に基づき日本の裁判所が海外のプラットフォーム事業者に対して発する、

いわば**域外差止命令**を取り上げる。

3) こうした

・判例法理の展開について、ブリュッセル効果と対比し

・「**東京効果**(The Tokyo Effect)」と称して、

・今後の拡張可能性とともに、これが日本の情報法の将来に与える示唆を、

探ることとしたい。

1.’「東京効果」とは？ーその議論の目的と概要

以下、発表者の考え
(Draft, The Tokyo Effect, *supra*)

The main **purpose** of this argument is to provide **a common theoretical framework** upon which all jurisdictions can **work together toward global protection of privacy** through **co-empowerment** of individuals, while at the same time respectfully acknowledging the distinctive historical and theological propositions of which each jurisdiction is proud.

In contrast to the so-called “**Brussels** Effect,” this presentation coins a new term, the **Tokyo** Effect, as a **conceptual** tool to **describe** a rising phenomenon **saliently** shown under **Japanese** law from which **normative implications** can be drawn.

This argument proceeds with an investigation of the following four questions on the Tokyo Effect: (1) **what** the Tokyo Effect is, (2) **where** it comes **from**, (3) **how** it works, and (4) **which direction** it will go in the **future**.

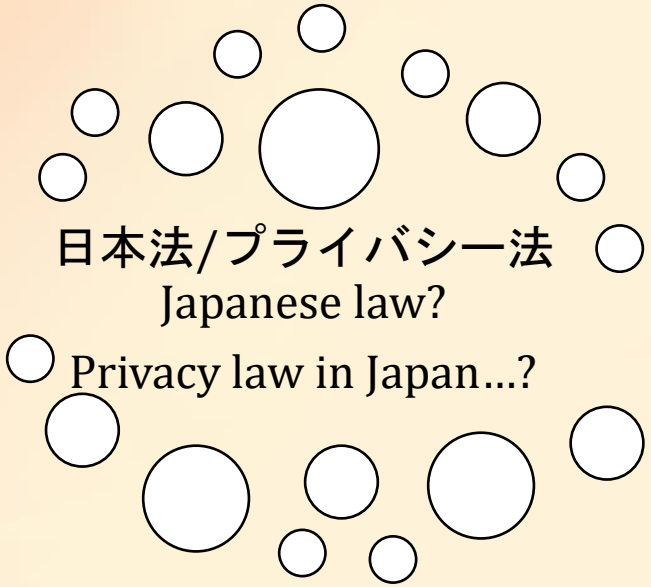
The story of the Tokyo Effect demonstrates **a way of protecting the human spirit** amid the challenges of **AI-led innovation** by unleashing dragons—the possibility of full availability of tough legal measures such as privacy injunctions based on the “right of personality” [人格権 *jinkakuken* in Japanese]—**even beyond national borders under certain conditions**.

This is not a local myth but a **particular** case of **parallel** legal development over millennia amid similar circumstances that we as individuals may often find ourselves in but cannot control. It is worth sharing this story about **the role of law in today’s globalising information societies** in which we all live.

日本の情報法の将来への示唆(結び)につながる

1.’ プライバシーのグローバル保護–なぜ必要か、またいかにすれば実現可能か

出発点となる問題意識



世界の中で、その役割は
十分に見えているか？

←Barely invisible…?

←**Global problems** relating to **DX・AI**

…would need solutions

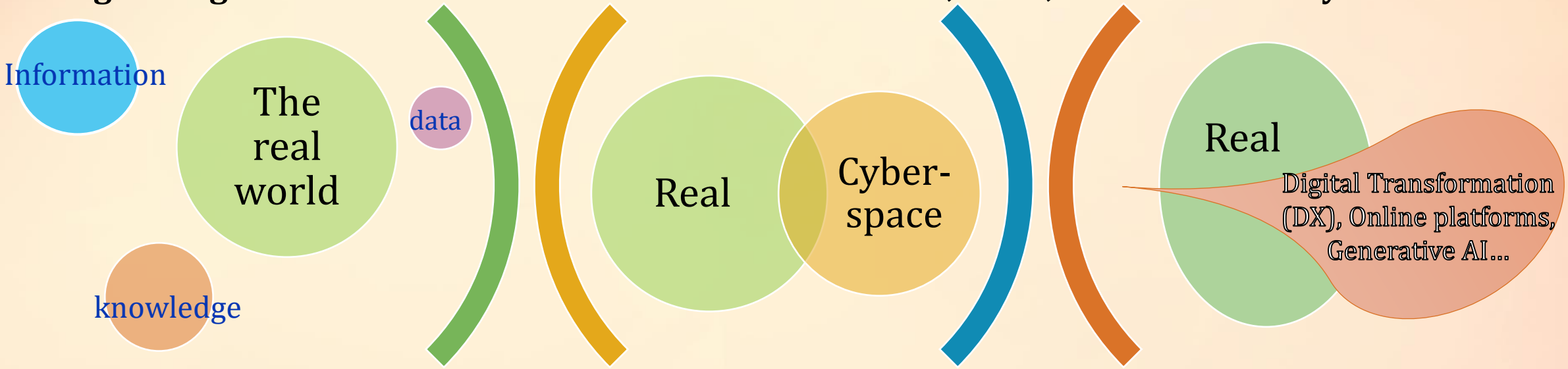
equipped with a **global scalable effect**

社会の「情報化」と呼ばれる現象を、日本では20世紀後半に経験した。その進化形とも言える、デジタル化/デジタル変革(DX)、生成AI等の先端技術を用いたデータ処理の自動化等に伴い、全世界的な規模で生じる法的課題には、相応の規模の効果を備えた対応策が必要となる。

その対処における選択肢？

2. 背景状況／社会の「情報化」現象の全世界的な拡張

Backgrounds: Over **a half-century** has passed since phenomena, called "***joho-ka* [Informatization]"** of society (the 1960s~). → How we interact with computers has dramatically changed since the 1990s* → → Surrounded by the unprecedented uncertainty due to the coronavirus disease (COVID-19) crisis, digitalization of conventional paper-based processes has been accelerated, thus inducing **a wider range of digital transformations in how we communicate, work, and live our daily lives***



See, e.g., Itsuko Yamaguchi, *Beyond De Facto Freedom: Digital Transformation of Free Speech Theory in Japan*, 38 STANFORD JOURNAL OF INTERNATIONAL LAW 109 (2002); I. Yamaguchi (David C. Buist trans.), *Cyberlaw*, THEORY, CULTURE & SOCIETY, Vol. 23, No. 2-3, at 529-531 (2006); I. Yamaguchi, *Protecting Privacy against Emerging "Smart" Big Data Surveillance: What can be Learned From Japanese Law?*, PERCORSI COSTITUZIONALI, Vol. 1, at 193 (2014); I. Yamaguchi, *The Rise of "Global Information Law, supra.*

2'. デジタル変革(DX)・生成AIによる自動化等に伴う法的課題←そもそも法・政策の対象としてのAIとは？そこでの人間の関与？

←例)日本におけるAI政策の全体像―
内閣府 科学技術・イノベーション推進事務局
「AI政策の現状と制度課題」(令和6(2024)年8月2日),
https://www8.cao.go.jp/cstp/ai/ai_senryaku/11kai/shiryo1.pdf

用語の定義 Definitions

例)総務省 経済産業省
「AI事業者ガイドライン」(第 1.0 版)(令和 6 年 4 月 19 日) 8-9頁,
https://www.soumu.go.jp/main_content/000943079.pdf
Ministry of Internal Affairs and Communications & Ministry of Economy, Trade and Industry, AI Guidelines for Business, Ver1.0 (April 19, 2024), p.9-10,
https://www.soumu.go.jp/main_content/000943087.pdf

・AI

現時点で確立された定義はなく…本ガイドラインにおける AI は「AI システム(以下に定義)」自体又は機械学習をするソフトウェア若しくはプログラムを含む抽象的な概念とする。No agreed definition has been existed as of now ***. AI in the Guidelines is an abstract concept, which includes AI systems (defined below) themselves or software or programs that perform machine learning. ***

・AIシステム/AI system 活用の過程を通じて様々なレベルの自律性をもって動作し学習する機能を有するソフトウェアを要素として含むシステムとする（機械、ロボット、クラウドシステム等）。***人間が定義した所与の目標の集合に対して、コンテンツ、予測、推奨、意思決定等の出力を生成する工学的システム A system (such as a machine, robot, and cloud system) that works at various levels of autonomy during the use process and incorporates a software element that has a learning function. *** An engineering system that produces outputs such as contents, predictions, recommendations, and decision-makings in response to a given set of **goals defined** by **humans**.

・AI モデル(ML モデル)/AI model (ML model) AI システムに含まれ、学習データを用いた機械学習によって得られるモデルで、入力データに応じた予測結果を生成する。A model incorporated into an AI system and acquired through machine learning using training data. It produces prediction results in accordance with the input data. ...A mathematical structure that produces inferences or predictions based on input data or information. ...

・生成 AI/Generative AI 文章、画像、プログラム等を生成できる AI モデルにもとづく AI の総称を指す。A general term representing AI developed from an AI model that can generate texts, images, programs, etc.

Cf. 生成AIと著作権 例)文化庁著作権課「AI と著作権に関するチェックリスト&ガイダンス」(令和6年7月31日),
https://www.bunka.go.jp/seisaku/bunkashingikai/chosakuken/seisaku/r06_02/pdf/94089701_05.pdf ＋文化審議会著作権分科会法制度小委員会「AI と著作権に関する考え方について」(令和6年3月15日),
https://www.bunka.go.jp/seisaku/bunkashingikai/chosakuken/pdf/94037901_01.pdf
←開発・学習&生成・利用、AI生成物―著作物性?、著作権侵害―類似性と依拠性?、道具としてのAI? 人の創作意図&創作的寄与?

2’. (続き)定義ー例)米国 大統領令（2023年10月30日）
法･政策の対象としてのAI・AIモデル・生成AIとは？←人間がその目的を定義

US Executive Order 14110 of October 30, 2023, Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence

定義　Sec. 3. Definitions. For purposes of this order

(b) The term “artificial intelligence” or “**AI**” has the meaning set forth in 15 U.S.C. 9401(3): a **machine-based system** that can, for a given set of **human-defined objectives**, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an **automated** manner; and use model **inference** to formulate options for **information** or action.

(c) The term “AI **model**” means a **component** of an information **system** that implements AI technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

(e) The term “AI **system**” means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

(p) The term “**generative AI**” means the **class of AI models** that emulate the structure and characteristics of input data in order to **generate** derived synthetic **content**. This can include images, videos, audio, text, and other digital content.

＋ 15 U.S.C. 9401(11) →The term "**machine learning**" means an **application** of artificial intelligence that is characterized by providing systems the ability to **automatically** learn and improve on the basis of data or experience, with**out** being **explicitly** programmed.

2’. (続き)定義一例)欧州連合(EU) AI法
制裁金を伴う法規制の対象としてのAIシステム･汎用目的AI (GPAI)モデル/システム

EU→REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 June **2024** laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 **(Artificial Intelligence Act)**, https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng

定義 Chapter I Article 3 Definitions
For the purposes of this Regulation, the following **definitions** apply:

Chap. I & II→適用 Feb. 2, 2025~

リスクに基づく規制枠組み Risk-based (unacceptable→subliminal/high...)とはまた別に、汎用目的AIモデル規制も

(1)‘**AI system**’ means **a machine-based system** that is **designed** to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, **for** explicit or implicit **objectives**, **infers**, from the input it receives, **how to generate outputs** such as predictions, content, recommendations, or decisions that can influence physical or virtual environments;

(63)‘**general-purpose AI model**’ means an AI model, including where such an AI model is **trained** with a large amount of **data** using **self-supervision** at scale, that displays significant generality and is capable of competently performing a wide range of distinct tasks regardless of the way the model is placed on the market and that can be integrated into a variety of downstream systems or applications, **except** AI models that are used **for research**, development or prototyping activities before they are placed on the market;

(66)‘**general-purpose AI system**’ means an AI system which is based on a **general-purpose AI model** and which has the capability to serve a variety of purposes, both for direct use as well as for integration in other AI systems;

Chap. V Art. 53 GPAI model 提供者(providers)の義務(obligations)- Technical documentation…/Chap. XII Art.101 同提供者への制裁金 fines not exceeding **3 %** of their annual total worldwide turnover in the preceding financial year or EUR **15 000 000**, whichever is higher., when the Commission finds that the provider intentionally or negligently:(a)infringed the relevant provisions of this Regulation…

Chap. V, XII…→適用 Aug. 2, 2025~

3. 課題への対処／選択肢としての域外差止命令と「東京効果」

<前掲>プライバシーのグローバル保護―いかにすれば実現可能か？
→社会の「情報化」現象の全世界的な拡張に伴う法的課題に対処すべく、
採りうる措置の選択肢の一つとして…

個人のプライバシーという人格的価値の侵害を理由として、人格権に基づき日本の裁判所が海外のプラットフォーム事業者に対して発する、いわば「域外差止命令」
E.g., extraterritorial privacy injunctions under Japanese case law issued against digital platform service providers overseas

ブリュッセル効果との対比
Cf. The Brussels Effect

3.’ 東京効果とブリュッセル効果との対比

以下、発表者の考え (Draft, The Tokyo Effect, *supra*)

東京効果は、現象を記述するとともに、規範的含意を導く道具概念

・In contrast to the so-called “**Brussels Effect**,” this article coins a new term, the Tokyo Effect, as a **conceptual tool** to describe a rising **phenomenon** saliently shown under Japanese law from which **normative implications** can be drawn.

東京効果→次の4つの論点を通じて、プライバシーの法的保護に関する難問への回答を探求

・This presentation proceeds with an investigation of the following four questions on the Tokyo Effect:

(1) 意味・定義 what the Tokyo Effect is, (2) 淵源 where it comes from, (3) 保護の方法・態様 how it works, and (4) 将来の展開方向 which direction it will go in the future. In so doing, I hope to provide some answers to the century-old enquiry, stated at the outset, on the **nature** and **extent** of legal protection of privacy.

3.’ 東京効果とは何か？ –論点(1) 意味

以下、発表者の考え (Draft, The Tokyo Effect, *supra*)

(1) What is the Tokyo Effect? It is a phenomenon **salient** in Japanese legal development. The effect has the potential to become globally scalable **through parallelly accumulated applications of domestic law** in each jurisdiction. In comparison with **the Brussels Effect**, which shows **how the European Union (EU) has come to dominate global standards**, the Tokyo Effect works on **a different focus**. The potential global salience of the Tokyo Effect derives from the **scalability** of **remedial** or **redistributive** effects of domestic law.

Besides, for instance, adopting extraterritorial application through legislative measures, **recent developments in Japanese case law allow the individual to seek injunctive relief for removal of online content,** not just against Japanese subsidiaries but also **directly against the headquarters of global digital platform services located in the United States**. Such availability of global privacy injunctions against search engines or social media service providers is based on a judicially recognised right of “personality” [人格権 *jinkaku* in Japanese].

In so enabling, balancing, and thus justifying global protection of privacy, **domestic laws** in each jurisdiction can play a **proactive** role in **empowering individuals, especially those whose attention and resources are limited**, to defend themselves in the face of adversity. This empowerment is to **defend their own “spiritual nature” as humans**, which embraces each individual’s freedom, dignity, personality, conscience, emotions, and intellect.

3.’ 東京効果とは何か？—論点(1) 意味(続き) ・定義

For the purpose stated above, this presentation **defines** the Tokyo Effect as:

以下、発表者の考え
(Draft, The Tokyo Effect, *supra*)

各国内法の適用

＋

パラレルな効果の束

東京効果→国内法の適用により、個人に対して自らの精神的及び人格的価値を侵害から防御する権限が付与され、その救済または再配分の効果が、法域内に限らず、判例または立法で定められた条件の下では当該法域外にも及ぶという現象を指す/ a phenomenon, where individuals shall be empowered to defend their spiritual and personal value from injury, through the application of domestic law with remedial or redistributive effect within each jurisdiction, and even outside of that jurisdiction under certain conditions set by established case law or legislation.

現象を記述するとともに、規範的含意を導くための、いわば道具概念

Cf. 国家間の合意に基づく条約･協定等とは異なり、一方的(unilateral)
←ブリュッセル効果と類似

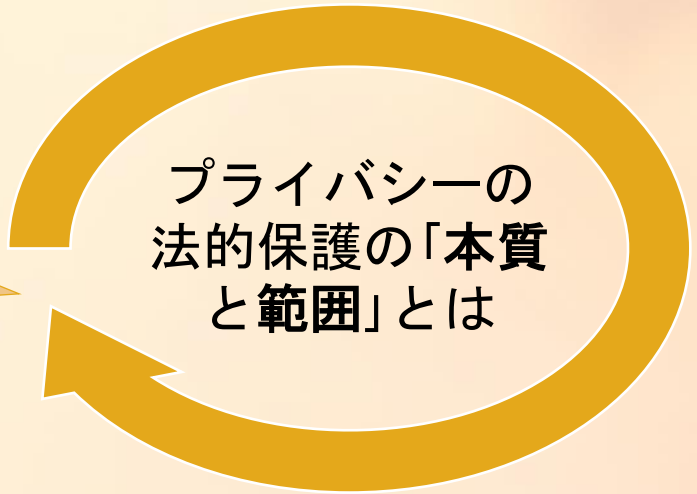
ただ、執行が問題。一国の国内法のみでは限界。他国・地域の幅広い関係主体間の連携を通じて、個人への権限付与を可能とする仕組みが必要
(←***co***-empowerment)

←The **root cause** of the Tokyo Effect is obvious: **globally extended protection** is needed to **solve a global-scale problem**. Each time innovative information technologies and business inventions emerge, a similar line of recurring systemic problems crosscut multiple areas of law and many parts of the globe. If jurisdictions work together to solve global problems **in a similar way toward** a commonly pursued future direction, **a bundle of parallelly accumulated co-creative effects** under the domestic laws of each jurisdiction could eventually be **scaled up** to the **full** extent. This is what this presentation regards as the Tokyo Effect.

3.’ そもそもプライバシーの法的保護とは？

「プライバシーに対する権利」と題するウォーレン・ブランダイス論文(1890年)における中心的な問いであり、難問である。その後も、プライバシー法の発展史の中で繰り返し問われ、その回答が今日もなお模索されている←<後掲>4. 歴史的展開

*Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” Harvard Law Review 4, no. 5 (1890): 193, 197, 213.



本発表の主要な目的—各法域間の連携を可能とする理論枠組みの提示

・The **main purpose** of this presentation is to provide a **theoretical framework as a common ground** upon which all jurisdictions can work together toward **global protection** of privacy through **co-empowerment** of individuals.

その背景として—　・This argument is developed against the factual background of digitalisation and globalisation, which has been characterized by some as another wave of major social change leading to what some have called the “information society” beginning in the latter half of the 20th century. While some ongoing change might be seen as just a matter of degree, other change amounts to a matter of kind. Frontier information science and technology such as big data analytics and machine-learning artificial intelligence (AI) are boosting the business logics of globally run digital platform services. **This wave of change with AI-led innovation** seems to be **permeating almost every corner of all human societies**, giving rise to **ethical and normative concerns**.

3.’ 域外差止命令←全世界規模の差止命令の兆し

Based on data protection law

欧州連合(EU)／データ保護法制—検索結果の非表示関係

データ保護指令(1995年)[EU加盟国にて国内法化]←(i) EU司法裁判所(CJEU), Case C-131/12, *Google Spain SL and Google Inc. v. AEPD* (May 13, 2014).

一般データ保護規則（GDPR）[2018年~全加盟国に直接適用] ←(ii) CJEU, Case C-507/17, *Google LLC v. CNIL* (Sept. 24, 2019)

EU／Cf.名誉毀損関係

(iii) CJEU, Case C-18/18, *Eva Glawischnig-Piesczek v. Facebook Ireland Ltd.* (Oct. 3, 2019)

域外差止命令
Extraterritorial injunctions

Cf. Injunctions based on privacy case law

日本／プライバシー侵害･人格権

(v) 最決平成29(2017)･1･31

(vi) 最判令和4(2022)･6･24

＋Cf. 発信者情報開示請求/著作権
-氏名表示権(人格的利益)
・最判令和2(2020)･7･21

Cf. 知的財産・営業秘密関係 *See, e.g.,* Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824 (Canada); see also (iv) Google LLC v. Equustek Sols., Inc., 2017 WL 5000834 (N.D. Cal. Nov. 2, 2017) (the US); Google LLC v. Equustek Sols., Inc., 2017 WL 11573727 (N.D. Cal. Dec. 14, 2017) (the US); Equustek Solutions Inc. v. Jack, 2018 BCSC 610 (Canada).

3.’ EU法(指令)+加盟国の国内法／域外に拠点がある事業者に対して、既存の法の適用をいかにして理由づけるか←事例(i)EU司法裁判所 グーグル･スペイン社事件2014年5月13日先決裁定 CJEU, Case C-131/12, *Google Spain SL and Google Inc. v. AEPD*

当時→1995年EUﾃﾞｰﾀ保護**指令**（加盟国で国内法化）

→検索--ｽﾍﾟｲﾝ日刊新聞の1998年の2ﾍﾟｰｼﾞにﾘﾝｸ--社会保険料に係る債務返済のための差押手続に関する不動産競売の告知

ｽﾍﾟｲﾝの「ﾃﾞｰﾀ主体」(個人ﾃﾞｰﾀの本人)→

α)本件新聞社、
β)Google Spain SL & Google Inc.

を相手取り、削除等を求める申立て

ｽﾍﾟｲﾝのﾃﾞｰﾀ保護機関→α)に関する申立てを退け*、β)に対する限りで申立てを支持。

β)はこの決定を不服として国内裁判所に提訴。

ｽﾍﾟｲﾝ国内裁判所→β)国内係属訴訟--EU法の先決裁定手続の下で質問事項を「付託」(≠上訴)

EU司法裁判所→先決裁定** 付託事項への4つの回答のうち→①「管理者」、②「領域的」な適用範囲の論点を中心に

*α)新聞社による当該情報の公表は、競売への入札者確保のための周知＋労働社会問題省の命令に基づく→法的に正当化

**この訴訟の終局判決を下すのは、国内裁判所（ただ、司法裁判所の先決裁定は、付託を行った国内裁判所に対して、拘束力を有する）
→EU法の統一的な解釈･適用の実現

参考－拙稿「EU法における『忘れられる権利』と検索エンジン事業者の個人データ削除義務」堀部政男編著『情報通信法制の論点分析』別冊NBL153号(2015年)183-185頁

3.’ (続き) 域外の事業者に対する法の適用既存の法の適用

←事例 (i) CJEU, Case C-131/12, *Google Spain SL and Google Inc. v. AEPD* (2014) の理由-4つの回答のうち

①検索ｴﾝｼﾞﾝ事業者は、当時のﾃﾞｰﾀ保護指令の下での個人ﾃﾞｰﾀ処理の「管理者」か？

←Q① : the material scope of then-current Directive <meaning of ‘controller’>

On those grounds, the Court (Grand Chamber) hereby rules:

Article 2(b) and (d) of **Directive 95**/46/EC･･･**are to be interpreted** as meaning that,

first, the activity of a **search engine** consisting in finding information published or placed on the internet by third parties, indexing it automatically, storing it temporarily and, finally, making it available to internet users according to a particular order of preference…

…must be classified as ‘**processing of personal data**’ within the meaning of Article 2(b) when that information contains personal data and,

Cf. 法務官意見

…the operator of the search engine must be regarded as the **‘controller’** in respect of that processing, within the meaning of Article 2(d).

←「管理者」としての全ての義務

The Court of Justice of the European Union (CJEU), Case C-131/12, *Google Spain SL and Google Inc. v AEPD and Mario Costeja González* (May 13, 2014)←拙稿･前掲NBL･185-186頁

3.’ (続き) 域外適用-事例(i) CJEU, Case C-131/12, *Google Spain SL and Google Inc. v. AEPD* (2014)-②データ保護指令の「領域的」な適用範囲―米国のグーグル社に適用されるのか？

← Q ② : the territorial scope of then-current Directive

Article 4(1)(a) of Directive 95/46 is to be interpreted as meaning that **processing of personal data** is carried out in the context of the activities of an **establishment** of the controller on the **territory** of a Member State, within the meaning of that provision,

when the operator of a search engine sets up in a Member State a **branch** or **subsidiary** which is intended to **promote** and **sell advertising space** offered by that engine and which **orientates its activity towards** the inhabitants of that Member State.

←なお、いわゆる忘れられる権利、対抗利益間の調整の判断基準等の論点は、本発表では言及せず

←拙稿･前掲NBL･187頁

Cf. 領域的適用範囲
→GDPR3条＋事例(ii)
CJEU, C-507/17(2019･9･24)先決裁定等へ

3.’ 1995年ﾃﾞｰﾀ保護指令2条 「管理者」の定義（≒GDPR４条 定義）

Art.2 Definitions
個人ﾃﾞｰﾀ

処理

管理者

- (a) '**personal data**' shall mean **any information relating to an identified or identifiable natural person** ('**data subject**'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

- (b) 'processing of personal data' ('**processing**') shall mean **any operation** or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

- (d) '**controller**' shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others **determines the purposes and means of the processing of personal data**; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law;

GDPR Art.4 (7) ‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others**, determines the purposes and means of the processing of personal data**; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

Cf. (e) ‘processor’-- [...processes PD on behalf of the controller]

3.’ 事例 (i) CJEU, Case C-131/12, *Google Spain SL and Google Inc. v. AEPD* (2014)
理由: [②’] ←1995年ﾃﾞｰﾀ保護指令4条—同指令に基づく国内法の適用範囲

Article 4 National law applicable

1. Each Member State shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data where:

(a) the **processing** is carried out in the context of the activities of an **establishment** of the controller on the **territory** of the Member State; when the same controller is established on the territory of several Member States, he must take the necessary measures to ensure that each of these establishments complies with the obligations laid down by the national law applicable; ・・・

←本件での個人ﾃﾞｰﾀの処理は、「加盟国の域内における管理者の施設[拠点]の活動の文脈において行われた」？
←CJEU理由：ｸﾞｰｸﾞﾙ社の子会社であり加盟国内にある「施設[拠点]」としてのｸﾞｰｸﾞﾙ・ｽﾍﾟｲﾝ社による広告ｽﾍﾟｰｽの販売促進・販売活動…

CJEU, *Case C-131/12*, at ¶¶ 51, 55, 60.
←拙稿・前掲NBL・187頁

Cf. GDPR3条—領域的な適用範囲

3.’ Cf. GDPR 3条―領域的な適用範囲←EU域外も

Article 3　Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an **establishment** of a controller or a processor **in** the Union, **regardless of whether the processing takes place in the Union or not**.

2. This Regulation applies to the processing of personal data of data subjects who are **in** the Union by a controller or processor **not** established in the Union, **where the processing activities are related to**:

(a)the **offering of goods or services**, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or

(b)the **monitoring** of their behaviour as far as their behaviour takes place within the Union.　…

3.’ 事例 (ii) EU司法裁判所 CJEU, Case C-507/17, *Google LLC v. CNIL* (2019)–GDPRの下での検索ｴﾝｼﾞﾝ事業者の削除義務の明確化–2019年9月24日に下された2つのEU司法裁判所先決裁定の1つ←検索エンジンの非表示義務は、全ての加盟国の規模か、さらには全世界規模か？

CJEU, Case C-507/17, *Google LLC, successor in law to Google Inc., v Commission nationale de l’informatique et des libertés (CNIL)*

On those grounds, the Court (Grand Chamber) hereby rules:

On a proper construction of Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of **Directive** 95/46/EC …, and of Article **17(1)** of **Regulation** (EU) 2016/679 …,

where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is **not required** to carry out that **de-referencing** on **all versions** of its search engine,

but on the versions of that search engine corresponding to **all** the **Member States**, using, **where necessary**, **measures** which, while meeting the legal requirements, **effectively prevent** or, at the very least, **seriously discourage** an internet user conducting a search from one of the Member States on the basis of a data subject’s name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request.

ただ、その理由づけでは…

3.’ 事例 (ii) CJEU, Case C-507/17, *Google LLC v. CNIL* (2019)の理由-GDPRの目的との関連

In the present case, it is apparent from the information provided in the order for reference, **first**, that Google’s establishment in French territory carries on, inter alia, commercial and advertising activities, which are **inextricably linked to the processing** of personal data carried out for the purposes of operating the search engine concerned, and, **second**, that that search engine must, in view of, inter alia, the existence of **gateways** between its various national versions, be regarded as carrying out a **single act** of personal data **processing**. The referring court considers that, in those circumstances, that act of processing is carried out within the framework of Google’s **establishment** in **French** territory. It thus appears that such a situation **falls within the territorial scope** of **Directive** 95/46 and **Regulation** 2016/679.

… In that regard, it is apparent from recital 10 of Directive 95/46 and recitals 10, 11 and 13 of Regulation 2016/679, which was adopted on the basis of Article 16 TFEU, that the **objective** of that directive and that regulation is **to guarantee a high level of protection** of personal data **throughout** the European Union.

… It is true that a **de-referencing** carried out on **all the versions** of a search engine **would meet** that **objective in full.**

CJEU, *Case C-507/17*, ¶¶ 52-55.

3.’ 事例 (ii) CJEU, Case C-507/17, *Google LLC v. CNIL* (2019) の理由-「グローバル化された世界」において、情報の越境的な流れがもたらす即時かつ実質的な効果

The internet is a global network **without borders** and **search engines** render **the information and links** contained in a list of results displayed following a search conducted on the basis of an individual’s name **ubiquitous** (see, to that effect, judgments of 13 May 2014, Google Spain and Google, C-131/12, EU:C:2014:317, paragraph 80, and of 17 October 2017, Bolagsupplysningen and Ilsjan, C-194/16, EU:C:2017:766, paragraph 48).

In a **globalised world**, **internet users’ access — including** those **outside** the Union — to the referencing of a link referring to information regarding a person whose centre of interests is situated in the Union is thus likely to have **immediate and substantial effects** on that person **within** the Union itself.

CJEU, *Case C-507/17,* ¶¶ 56-57.

3.’ 事例 (ii) CJEU, Case C-507/17, *Google LLC v. CNIL* (2019)の理由- EU立法府の権限自体は否定せず→今後の可能性も

…Such considerations are such as to justify the **existence** of a **competence** on the part of the **EU legislature** to lay down the obligation, for a search engine operator, to carry out, when granting a request for de-referencing made by such a person, a de-referencing on **all the versions** of its search engine.

That being said, it should be emphasised that numerous **third States** do **not recognise** the right to de-referencing or have a **different approach** to that right. … Moreover, the right to the protection of personal data is **not an absolute right**, but **must be** considered in relation to its function in society and be **balanced** against other fundamental rights, in accordance with the principle of proportionality (see, …). Furthermore, the **balance** between the right to **privacy** and the protection of personal data, on the one hand, and the **freedom of information** of internet **users**, on the other, is likely to **vary significantly around the world**.

CJEU, *Case C-507/17*, ¶¶58-61.

…While the **EU legislature** has, in Article 17(3)(a) of Regulation 2016/679, struck a balance between that right and that freedom so far as the Union is concerned (see, to that effect, today’s judgment, *GC and Others (De-referencing of sensitive data)*, C-136/17, paragraph 59), it must be found that, by contrast, it **has not**, **to date**, **struck such a balance** as regards the **scope of a de-referencing outside** the Union.

3.’ 事例(ii) CJEU, Case C-507/17, *Google LLC v. CNIL* (2019)の理由-検索エンジンの全世界的な非表示←各加盟国の監督・司法機関の権限を肯定

…Lastly, it should be emphasised that, while, as noted in paragraph 64 above, **EU law** does **not currently require** that the de-referencing granted concern **all versions** of the search engine in question, it also does **not prohibit** such a practice.

CJEU, *Case C-507/17*, ¶72.

Accordingly, a **supervisory or judicial authority** of a Member State **remains competent** to **weigh up**, in the light of national standards of protection of fundamental rights (see, …), a data subject’s **right to privacy** and the **protection of personal data** concerning him or her, on the one hand, and **the right to freedom of information**, on the other, and, after weighing those rights against each other, **to order**, **where appropriate**, the operator of that search engine to carry out a de-referencing concerning **all versions** of that search engine.

Worldwide injunctionsも…?

Cf. カナダ最高裁2017年6月28日判決→(iv)米国**連邦地裁2017年11月2日判決**<後述>→→ｶﾅﾀﾞﾌﾞﾘﾃｨｼｭｺﾛﾝﾋﾞｱ州最高裁2018年4月16日判決

3.’ Cf.名誉毀損関係-事例(iii) EU司法裁判所 2019年10月3日先決裁定-EU電子商取引指令とSNS/ｿｰｼｬﾙﾒﾃﾞｨｱ事業者に対する全世界規模での差止命令?→1)「同一」の内容….

以下、発表者の説明 (Draft, The Tokyo Effect, *supra*)

Recent CJEU cases sparked debates on issues of injunctions against multi-national technology companies and digital platform service providers: in what cases, to what extent, and under what criteria should such injunctions be granted. These discussions are occurring not only in the EU but also in other parts of the globe and extend across multiple legal fields including privacy, data protection, **defamation**, and intellectual property.

→CJEU, Case C-18/18, *Eva Glawischnig-Piesczek v* ***Facebook*** *Ireland Limited (Oct. 3, 2019)*

On those grounds, the Court (Third Chamber) hereby rules:

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘**Directive on electronic commerce**’), in particular Article 15(1), must be interpreted as meaning that it does **not preclude a court** of a Member State from:

– **ordering a host provider** to **remove** information which it stores, the content of which is **identical** to the content of information which was previously declared to be **unlawful**, or to block access to that information, **irrespective of who requested** the storage of that information;

3.’ Cf. (続き)名誉毀損関係- 事例(iii) CJEU, C-18/18, *Eva Glawischnig-Piesczek v. Facebook Ireland Ltd.* (2019)→＋ 2)「同等」の内容である場合、3)関連する国際法の枠内→全世界規模での差止命令も

…

– **ordering a host provider to remove** information which it stores, the content of which is **equivalent** to the content of information which was **previously declared** to be **unlawful**, or to block access to that information, **provided** that the **monitoring** of and search for the information concerned by such an injunction **are limited** to information conveying a message the content of which remains **essentially unchanged** compared with the content which gave rise to the finding of **illegality** and containing the elements **specified** in the **injunction**, and **provided** that the **differences in the wording** of that equivalent content, compared with the wording characterising the information which was previously declared to be illegal, are **not such as to require** the host provider to carry out an **independent assessment** of that content, and

– **ordering** a host provider to **remove** information covered by the injunction or to **block access** to that information **worldwide within** the framework of the relevant **international law**.

拙稿･前掲 憲法研究24頁

→本先決裁定では、関係のEU法の解釈として、名誉毀損等の理由で当時のフェイスブック上の投稿の削除を同アイルランド社に命じる差止めの対象範囲をめぐり、次のような広範な射程で加盟国裁判所が差止命令を発することを、妨げるものではないとしている。すなわち、同一内容のみならず同等（equivalent）の内容を対象とすることも一定の条件で許容され、また、関連する国際法の枠内であれば全世界規模での情報のアクセスの遮断についても許容されうる、ということになる。これはつまり、全世界規模の差止命令の兆しである。

ただ、執行の問題？<後掲>

3.’ Cf. (続き)名誉毀損関係- 事例(iii) CJEU, C-18/18, *Eva Glawischnig-Piesczek v. Facebook Ireland Ltd.* (2019)→理由 –

名誉毀損内容と「同等」←監視・探知に自動化された検索ツール・技術...

CJEU, *C-18/18*, ¶¶ 46-47.

In those circumstances, an obligation such as the one described in paragraphs 41 and 45 above, on the **one** hand — in so far as it also extends to information with **equivalent** content — appears to be **sufficiently effective** for ensuring that the person targeted by the **defamatory** statements is protected. On the **other** hand, that protection is **not** provided by means of an **excessive obligation** being imposed on the host provider, **in so far as** the **monitoring** of and **search** for information which it requires are **limited** to information containing the **elements specified in the injunction**, and its **defamatory** content of an equivalent nature does **not** require the host provider to carry out an **independent** assessment, since the latter has recourse to **automated search tools and technologies**.

Thus, such an **injunction** specifically does **not impose** on the host provider an **obligation to monitor generally** the information which it stores, or a **general obligation actively to seek** facts or circumstances indicating illegal activity, as provided for in Article 15(1) of Directive 2000/31.

...一般的監視･積極的探知義務を課すものではないとつつも、自動検索ﾂｰﾙ･技術を用いた、特定情報の監視･探知･削除等の内容管理(content moderation)の仕組みを前提?　←AI利活用への含意？

3.’ 知的財産･営業秘密関係-Cf. 事例(iv) 米国連邦地裁判決(2017年)／カナダ最高裁判所
―検索結果非表示に関する全世界規模での差止命令←米国内での執行停止を求めた事案

ｶﾅﾀﾞ最高裁2017年6月28日判決(Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824)
→(iv) **米国連邦地裁2017年11月2日判決(Google LLC v. Equustek Sols. Inc.,** No. 5:17-CV-04207-EJD, 2017 WL 5000834, at *1, 4 (N.D. Cal. Nov. 2, 2017)) → Google LLC v. Equustek Sols., Inc., 2017 WL 11573727 (N.D. Cal. Dec. 14, 2017) → ｶﾅﾀﾞﾌﾞﾘﾃｨｼｭｺﾛﾝﾋﾞｱ州最高裁2018年4月16日判決(Equustek Solutions Inc. v. Jack, 2018 BCSC 610)

Plaintiff Google LLC brings this action against Defendants Equustek Solutions Inc., Clarma Enterprises Inc., and Robert Angus (together, “Equustek”) to **prevent enforcement** of a **Canadian court order** requiring Google to **delist** search results **worldwide**.

Google now moves for a preliminary injunction. Equustek has not filed an opposition brief. … Google’s motion will be granted.

…The Canadian order would eliminate **Section 230 immunity** for service providers that link to third-party websites.

By forcing intermediaries to remove links to third-party material, the **Canadian order undermines** the **policy goals of Section 230** and **threatens free speech** on the **global internet**.

→Cf. 表現の自由との関係　米国/連邦法― 1996年通信品位法(CDA)の免責規定(いわゆる230条)―47 U.S.C. § 230(c)(1)

3.’ SNS/ｿｰｼｬﾙﾒﾃﾞｨｱ …一個人利用者に対する越境的な法的救済？
←EU･米国間の越境ﾃﾞｰﾀ移転をめぐる十分性認定に関する一連の事例　Schrems I (2015) & II (2020)

以下、発表者の説明 I. Yamaguchi, The Rise of “Global Information Law”, *supra*

The Court of Justice of the European Union (CJEU) handed down a landmark ruling in Schrems I (C-362/14) in October 2015, which invalidated the European Commission’s Safe Harbor Decision on transfers of personal data from the EU to the US, pursuant to the “**adequacy**” requirement of Article 25 of the then-effective Data Protection Directive 95/46/EC.

The original proceeding of this case was based on a complaint by **a user of the Facebook social network**, who was an Austrian national residing in his home country. This Facebook user asked the Data Protection Commissioner to prohibit Facebook Ireland from transferring his personal data to Facebook Inc. located in the US, claiming that the US did not ensure “adequate” protection of personal data against **surveillance activities by public authorities**, with reference to the **Snowden** revelations*.

In the reasoning, the CJEU took into consideration particularly that **US law** permits the **public authorities** to have “**access** on a generalised basis to the content of electronic communications”, with**out** providing “for **any possibility for an individual to pursue legal remedies**” relating to access, rectification or erasure of personal data. According to the CJEU, the Commission must find that the US ensures a level of protection of human rights “**essentially equivalent**” to that guaranteed in the EU legal order, but the said Commission Decision **failed** to do so**.

*The CJEU, Case C-362/14, Maximillian Schrems v Data Protection Commissioner (Schrems I), ¶¶ 26-30 (Oct. 6, 2015). ** ¶¶ 74-75, 94-98.

3.’ (続き) SNS/ｿｰｼｬﾙﾒﾃﾞｨｱ一個人利用者に対する越境的な法的救済？
←特に外国諜報/国家安全保障にかかわる場合? EU･米国間の越境ﾃﾞｰﾀ移転をめぐる一連の事例

以下、発表者の説明 I. Yamaguchi, The Rise of “Global Information Law”, *supra*

*The CJEU, Case C-311/18, *Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems* (Schrems II) (July 16, 2020).
The CJEU, Schrems II, ¶¶ 180-181. * ¶¶ 134-149.

After the CJEU ruling in Schremes I, a renegotiated framework of the EU-US transfers of personal data, the European Commission’s **Privacy Shield** Decision, was **declared invalid** by the CJEU in the Schremes II (C-311/18) case in July 2020, whereas the validity of the Standard Contractual Clauses (SCC) Decision was maintained by adding up certain stricter requirements*.

In so doing, the CJEU avoided fatal practical consequences on EU-US data transfers. However, the CJEU still maintains that it is “apparent” that **Section 702 of the FISA** does **not** indicate “**any limitations** on the power it confers to implement **surveillance** programmes for the purposes of **foreign intelligence** or the existence of guarantees for **non-US persons** potentially targeted by those programmes”, and the US Presidential directive issued in 2014 does **not** grant data subjects “**actionable rights before the courts against the US authorities**”**.

Regarding a data transfer pursuant to the SCC, under Article 46(2)(c) of the General Data Protection Regulation (GDPR) enforced in May 2018, the CJEU says that the **controller** or the processor would be **required to "verify” on a case-by-case basis** whether “the law of the third country of destination” **ensures adequate protection**, and to provide “additional safeguards” if necessary***.

現状の救済措置に加えて、さらに採りうる選択肢は？

3.’ 最近の事例(米国-中国間)←DX/AI時代のプライバシー･表現の自由･国家安全保障

—SNS/ｿｰｼｬﾙﾒﾃﾞｨｱ･ﾌﾟﾗｯﾄﾌｫｰﾑのデータ収集/外国敵対者の支配下にあるアプリに関する米国人保護法に基づく、いわばメディア所有の排除措置命令(divestiture)←第1修正上の合憲性審査基準?

TikTok is **a social media platform** that allows users to create, publish, view, share, and interact with short videos overlaid with audio and text. … Opening the TikTok application brings a user to the “For You” page—a personalized content feed tailored to the user’s interests. TikTok **generates the feed** using a **proprietary algorithm that recommends** videos to a user based on the user’s interactions with the platform.

TikTok Inc. v. Garland, No. 24-656, 2025 WL 222571, at *1, 2-3, 7, 9-10 (U.S. Jan. 17, 2025).

連邦最高裁—合衆国憲法第1修正上の中間審査基準に基づき、控訴裁の合憲判断を支持

TikTok is operated in the United States by TikTok Inc., an **American** company incorporated and headquartered in **California**. TikTok Inc.’s ultimate **parent company is ByteDance** Ltd., a privately held company that has operations **in China**. ByteDance Ltd. **owns TikTok’s proprietary algorithm, which is developed and maintained in China**. The company is also responsible for developing portions of the **source code** that runs the TikTok platform. **ByteDance Ltd. is subject to Chinese laws** that **require** it to “assist or cooperate” with the Chinese Government’s “**intelligence** work” and to **ensure that the Chinese Government has “the power to access and control private data” the company holds**.

….we emphasize the inherent **narrow**ness of our holding. **Data collection and analysis is a common practice in this digital age**. But TikTok’s **scale** and **susceptibility** to foreign adversary control, together with the vast swaths of **sensitive** data the platform collects, justify differential treatment to address the Government’s national security concerns. A law targeting any other speaker would by necessity entail a distinct inquiry and separate considerations. …On this understanding, we can**not** accept petitioners’ call for **strict scrutiny**. No more than **intermediate scrutiny** is in order.

Against this backdrop, Congress enacted the **Protecting Americans from Foreign Adversary Controlled Applications Act**. … The Act makes it **unlawful** for any entity to provide certain services to “distribute, maintain, or update” a “foreign adversary controlled application” in the United States… The Act **exempts** a foreign adversary controlled application from **the prohibitions if** the application undergoes a “qualified **divestiture**.”

←米国内の利用者のデータを収集し、中国に送信してアルゴリズムの学習に利用?

←There is no doubt that, for more than 170 million Americans, TikTok offers a distinctive and expansive outlet for expression, means of engagement, and source of community. But **Congress** has determined that **divestiture is necessary** to address its **well-supported national security concerns** regarding TikTok’s data collection practices and relationship with a foreign adversary. For the foregoing reasons, we conclude that the challenged provisions do **not** violate petitioners’ **First** Amendment rights.

3.’ 日本-事例(v) 最決平成29(2017)年1月31日
Globally Scalable Injunctions←Search Engine Liability

JPN Sup. Ct. decision on Jan. 31, 2017

Case No. 2016(Kyo)45; http://www.courts.go.jp/app/hanrei_jp/detail2?id=86482 [in Japanese].
*This is a tentative translation, summarized & modified by the author.

…a case concerning a motion for **a preliminary injunction** to remove search results, based on **the right of personality** or **interest of personality**…

[T]he **illegality** of the conduct of providing website information including URLs containing articles with private facts of the said person as part of search results in response to search request terms about the person,

Should be decided by **weighing up** various circumstances concerning the following “**legal interest of not** having the said facts **published**” and “**reasons to provide information** including the said URLs as search results”:

[1] the nature and content of the said facts, [2] the extent to which private facts of the said person were distributed as a result of the provision of information including the said URLs, and the extent of the damage specifically suffered by the said person, [3] the social status and influence of the said person, [4] the purpose and significance of the said articles, [5] the social circumstances at publication of the said articles and the change followed after that, [6] the need to mention the said facts in the said articles, etc.;

and as a result, if it is **“clear”** that the “legal interest of not having the said facts published” is overriding, then it should be reasonably interpreted that it is **possible to request the search service operator to remove** information including the said URLs from search results .

[in this case→ × clear]

…Gray-zone cases?
Clearer criteria?

**I. Yamaguchi, A Japanese Equivalent of the “Right to Be Forgotten, *supra*

3.’ (続き)日本-事例(v)検索結果の削除請求ー判断基準?←最決平成29(2017)年1 月31日(許可抗告)

…本件は，抗告人が，相手方に対し，**人格権ないし人格的利益**に基づき，本件検索結果の削除を求める**仮処分命令**の申立てをした事案…

*[ ]・太字・下線等の加筆は発表者

個人のプライバシーに属する事実をみだりに公表されない利益は，**法的保護の対象**となるというべきである…

以上のような検索事業者による検索結果の提供行為の性質等を踏まえると，検索事業者が，ある者に関する条件による検索の求めに応じ，その者のプライバシーに属する事実を含む記事等が掲載されたウェブサイトのＵＲＬ等情報を検索結果の一部として提供する行為が**違法となるか否か**は，

[1]当該事実の性質及び内容，[2]当該ＵＲＬ等情報が提供されることによってその者のプライバシーに属する事実が伝達される範囲とその者が被る具体的被害の程度，[3]その者の社会的地位や影響力，[4]上記記事等の目的や意義，[5]上記記事等が掲載された時の社会的状況とその後の変化，[6]上記記事等において当該事実を記載する必要性など，当該事実を公表されない法的利益と当該ＵＲＬ等情報を検索結果として提供する理由に関する諸事情を**比較衡量**して判断すべきもので，その結果，当該事実を公表されない法的利益が優越することが**明らか**な場合には，検索事業者に対し，**当該ＵＲＬ等情報**を**検索結果から削除することを求めることができる**ものと解するのが相当である。…

[本件→×明らか]*

今後の課題→具体的な適用の場面におけるフェアなバランスのとり方？Cf. EU&米、表現・情報の自由とﾌﾟﾗｲﾊﾞｼｰ/名誉権/名誉感情/「忘れられる権利」等との調整、「人格権」に基づく差止請求と不法行為に基づく損害賠償請求等との共通点と差異、検索ｴﾝｼﾞﾝ&中間媒介者の責任/「検索事業者自身による表現行為という側面」、本案&仮処分、“Open justice”… さらに、検索サービスにAIの機能を組み込んだ場合の責任？

3.’日本-事例(vi) 最判令和4(2022)年6月24日
Privacy injunctions for removal of online tweets

JPN Sup. Ct. judgment on June 24, 2022
Case No. 2020 (Jyu) 1442;
https://www.courts.go.jp/app/hanrei_jp/detail2?id=91265 [in Japanese]. *This is a tentative translation, summarized & modified by the author.

個人のプライバシーに属する事実をみだりに公表されない利益は、法的保護の対象となるというべきであり、このような**人格的価値を侵害された者は、人格権に基づき**、加害者に対し、現に行われている侵害行為を排除し、又は将来生ずべき侵害を予防するため、侵害行為の差止めを求めることができるものと解される…

→*[The balancing test in this case is summarized as follows:]

Whether or not it is possible for the appellant who claims privacy infringement to request removal of the said tweets, based on **a right of personality**, against the appellee who operates Twitter, Inc. and keeps providing tweets at issue for public browsing, **should be decided by weighing up** various circumstances concerning the following: [a] the appellant’s “legal interest of not having the said facts published” and [b] “reasons to keep providing the said tweets for public browsing”:

そして、ツイッターが、その利用者に対し、情報発信の場やツイートの中から必要な情報を入手する手段を提供するなどしていることを踏まえると、上告人が、本件各ツイートにより上告人のプライバシーが侵害されたとして、ツイッターを運営して本件各ツイートを一般の閲覧に供し続ける被上告人に対し、**人格権**に基づき、**本件各ツイートの削除を求めることができるか否か**は、[1]本件事実の性質及び内容、[2]本件各ツイートによって本件事実が伝達される範囲と上告人が被る具体的被害の程度、[3]上告人の社会的地位や影響力、[4]本件各ツイートの目的や意義、[5]本件各ツイートがされた時の社会的状況とその後の変化など、上告人の本件事実を公表されない法的利益と本件各ツイートを一般の閲覧に供し続ける理由に関する諸事情を**比較衡量**して判断すべきもので、その結果、[a]上告人の本件事実を公表されない**法的利益**が[b]本件各ツイートを一般の閲覧に供し続ける**理由**に**優越**する場合には、本件各ツイートの削除を求めることが**できる**ものと解するのが相当である。… [1] the nature and content of the said facts, [2] the extent to which the said facts were distributed as a result of the said tweets, and the extent of the damage specifically suffered by the appellant, [3] the social status and influence of the appellant, [4] the purpose and significance of the said tweets, [5] the social circumstances at the time of the said tweets, and the subsequent changes, etc.;

and as a result, if [a] the appellant’s “legal interest of not having the said facts **published” overrides** [b] the “reasons to keep providing the said tweets for public browsing”, then it should be reasonably interpreted that it is **possible** to request removal of the said tweets.

本件→…上告人は、被上告人に対し、本件各ツイートの削除を求めることができる。…the appellant may request removal of the tweets at issue against Twitter Inc.

Cf. the 2017 search engine case/←the Japanese Supreme Court in this 2022 social media posts case did **not uniformly** require such a clarity element

3.’ 参考—日本法 Cf. Criminal **defamation** & injunctions

JPN **Penal Code** (1907): Criminal Defamation under Art. 230 + Art. 230-2 [the Post-WWII amendment in 1947 to include the so-called truth defense, public figure exception, etc.]

In 2020, a 22-year-old female wrestler, who starred in a popular reality TV show, was reported to have committed suicide because of massive online bashings against her…

→The crime of “insult”

E.g.,

Defamation

A new rule for **the Internet**? →Good old defamation statutes* +Act of 2001 for ISP immunity & disclosure of a sender’s information (Amended in 2024; will be renamed as: Information Distribution Platform Act)

Criminal

Not more than 3 years or a fine of not more than 500,000 yen

JPN Civil Code (1896), Art. 709, 710, & 723

Civil

Damages (in tort)

Appropriate measures to restore the reputation

Injunctions**

+Privacy?

*JPN Supreme Court decision on Mar. 15, 2010 [declined to establish a new, less stringent immunity rule for **an individual Internet user** in a criminal defamation case & sustained a conviction (a fine of 300,000 yen)]; JPN Sup. Ct judgment on Mar. 23, 2012 [applied the existing immunity criterion in an online civil defamation case].

** JPN Sup. Ct judgment on June 11, 1986 [upheld the constitutionality of a preliminary injunction against the publication of defamatory magazine article, based on “a right to reputation as a right of personality”→no violation of Art. 21 (freedom of expression)].

3.’ EU+US: Injunctions & criminal punishments

4 WILLIAM **BLACKSTONE**, COMMENTARIES *153.

The **liberty** of the **press** is indeed **essential to the nature of a free state**; but this consists in laying **no previous restraints** on publications, and **not in freedom from censure for criminal matter when published**. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the **consequences** of his own temerity.

- Art. 17, the **EU** General Data Protection Regulation (GDPR)
- →前掲事例(iii) The CJEU, C-18/18, *Eva Glawischnig-Piesczek v Facebook Ireland* Limited, (2019),

→a worldwide junction against online intermediaries to remove a defamatory post (+“equivalent”) may be allowed under the e-commerce Directive (2000/31/EC)? [→leaving this **legislative choice** to the EU Member States, given that such injunctions with a worldwide effect must be within the framework of the relevant international law…]

- The **US/Anti-libel injunctions**

←the broad immunity for online intermediaries under the Communications Decency Act of 1996--<47 U.S.C. § 230 (c)(1)>

←diminished effects of civil compensatory damages in cases when a defamer is penniless and thus judgement-proof.

- **Criminal** libel

→Surviving and rather **reviving** in about a dozen of states*

* *See, e.g.,* Garrison v. State of La., 379 U.S. 64 (1964); Eugene Volokh, “What Cheap Speech Has Done,” The UC Davis Law Review 54, no. 5 (2021): 2305-23, 2339-40; see also Eugene Volokh, “Overbroad Injunctions Against Speech (Especially in Libel and Harassment Cases),” *Harvard Journal of Law & Public Policy* 45, no. 1 (2022): 149-52, 213-25; David Pritchard, “The Social Foundations of Defamation in Trial Court,” *Communication Law and Policy* 27, no. 2 (2022): 128-30.

3.’ AI・イノベーション・リスク―歴史で繰り返される問題
←権力の不均衡、そして情報という権力の非対称性

以下、発表者の考え
(Draft, The Tokyo Effect, *supra*)

Besides judicial development, a series of legislative measures have gradually come into place to deal with **AI-led innovation**. High-speed, large-scale, automated data processing and decision-making systems are being practically implemented in our everyday lives. **Risks** and concerns are looming, especially about profiling, social scoring, surveillance, and subliminal intrusions on **brains** and **neural** systems.

Some of these problems are **recurring over long periods of time**. For instance, it has already been warned that the development of **subliminal** technology would challenge the assumption of all sages, including “**Kant**’s psychology, and that of the **Stoics** and **Christians** too,” that the **inner fastness of one’s mind** could be made “secure.”*

*Isaiah **Berlin**, *Four Essays on Liberty* (Oxford University Press, 1969), 138 n.1.

Power imbalances and **“the informational power asymmetry”** therein,** are a **common** cause of concern to every society. In particular, the EU has been active in taking legislative measures to make itself fit for the digital age, such as the Digital Services Act (DSA), the Digital Market Act, the Data Governance Act, and the recently passed AI Act. Like the GDPR, these measures might be able to acquire **global effect** as well.

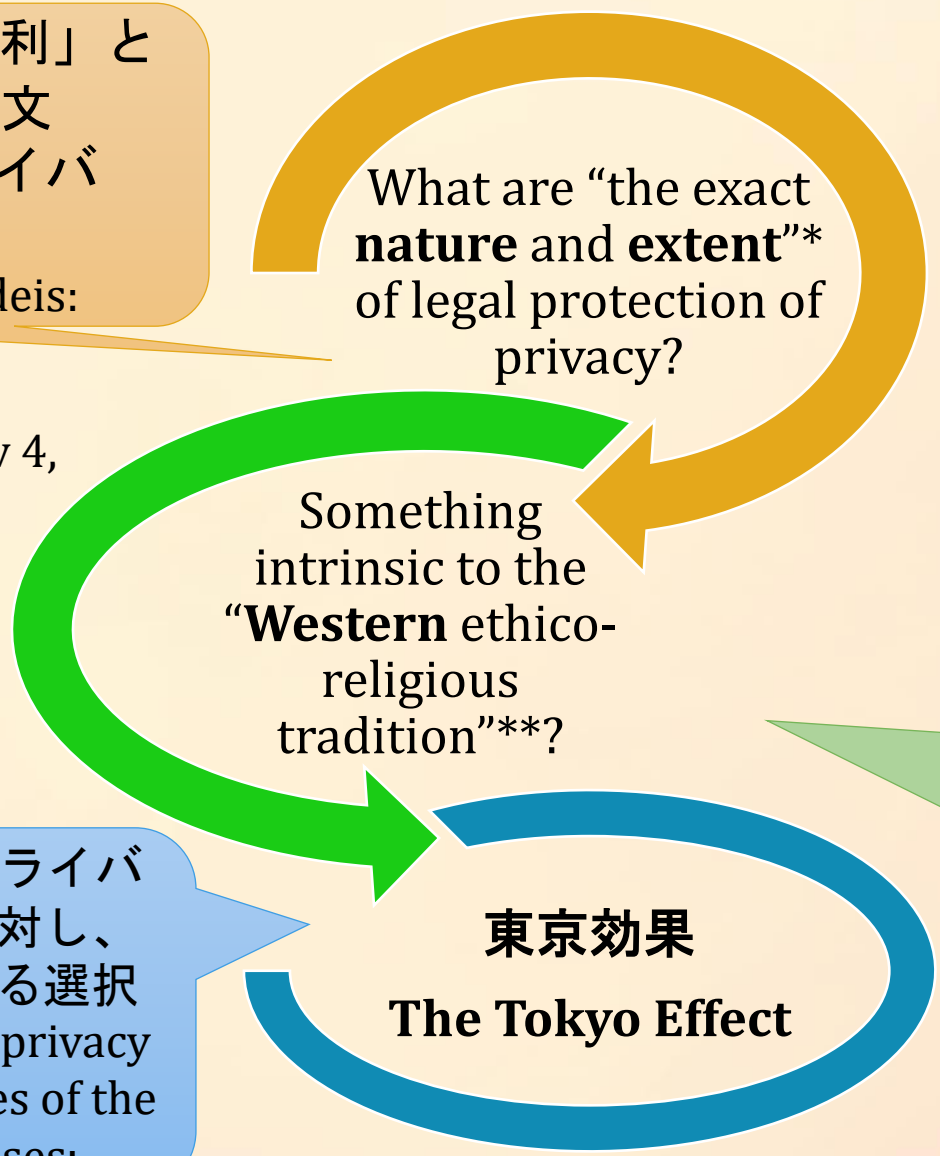
** Regarding problems of information technology and power asymmetry, particularly in the context of the EU data protection laws, see Indra Spiecker genannt Döhmann, “The More the Merrier,” in *The Law of Global Digitality*, ed. Matthias C. Kettemann et al. (Routledge, 2022), 79, 83-84.

さらに、プライバシーの法的保護の歴史的展開を遡ると…

4. 歴史的展開／ウォーレン･ブランダイスの難問

1) ←<前掲>「プライバシーに対する権利」と題するウォーレン・ブランダイス論文(1890年)における主要な問い→プライバシーの法的保護の「**本質と範囲**」とは
A conundrum posed by Warren and Brandeis:

*Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," Harvard Law Review 4, no. 5 (1890): 193, 197, 213.



** Edward J. Bloustein, "Privacy as an Aspect of Human Dignity," New York University Law Review 39, no. 6 (1964): 971; see also James Q. Whitman, "The Two Western Cultures of Privacy," Yale Law Journal 113, no. 6 (2004): 1181-82; Daniel J. Solove and Paul M. Schwartz, Information Privacy law, 8th ed. (Aspen Publishing, 2024), 21-22.

2)その後の議論では、**西欧**固有とされる倫理的･宗教的伝統との本質的な関連性が指摘されてきた
Privacy tends to be regarded as:

3) もしそうであれば、その他の国々ではプライバシーの法的保護は外在的となろう。これに対し、全世界規模での課題の対処に際し、採りうる選択肢の一つとして→ If this were true, however, privacy would appear to be merely extrinsic to the eyes of the rest of the World. This presentation proposes:

4.’ 東京効果—論点 (2)淵源—歴史で繰り返される課題
—社会の一部の人々に不均衡にかかる負担←救済･再配分の選択肢？

Where does the Tokyo Effect come **from**?
The **origin** of the Tokyo Effect can be traced back to the **commonly** held **spiritual nature of humans**, which is influentially explicated in Warren and Brandeis’s article of 1890.

Their argument offered **an archetypal theoretical framework**, with which each jurisdiction can carve its own path to defend the **full** extent of legal protection of privacy.

By using this framework, we can see **how similarly** Japanese law for privacy protection has developed to that of the West, particularly to that of the US and the EU. Key elements of this framework are **geminal**: (a) **underlying values** and (b) the **design of logics to justify** privacy protection.

This **parallelly** evolved path of privacy law implies that **the future direction** toward **global protection** will be **a logical extension** of the framework.

→ 法的保護の理論枠組みに通底する2つの要素
—(a)価値と(b)デザイン

Then, in theory, the **fullest extent** of privacy protection can be afforded not only within but **outside of the jurisdiction** as well, if certain **conditions** are set by established case law or legislation.

4.’ プライバシーの法理論―多軸的・複層的な発展

The aforesaid century-old enquiry on the **nature** and **extent** of legal protection of privacy has **no easy** answers.

Japanese academics, like scholars throughout the world, are engaged in an ongoing process of discussion drawing on diverse sources. In brief, **Japanese law** relating to privacy is **an elastically evolving mixture of several areas of law**, encompassing societal and individualistic, subjective and objective, negative and positive aspects.

For instance, there is an argument under **Japanese** law to conceive privacy **not** as a **subjective right enjoyed by individuals** but as an **objective “linkage”** between people: *vinculum*. This is based on the classic **Roman** concept of jus which represents the realisation of justice in a given society.*

Such historical wisdom teaches us that basic understandings of **human behaviour** do not change much over millennia.

*Yasuo Hasebe, *Towards a Normal Constitutional State* (Waseda University Press, 2021), 273-80. Regarding the pluralistic justification of the right to privacy, including its negative and positive aspects, see, e.g., Nobuyoshi Ashibe, revised by Kazuyuki Takahashi, *Kenpo* [*Constitutional Law*], 8th ed. (Iwanami Shoten, 2023), 122-34; for an English explanation on this point, see Hiroshi Miyashita, “The Evolving Concept of Data Privacy in Japanese Law,” *International Data Privacy Law* 1, no. 4 (2011): 229, n.7. As to a theoretical investigation of the subjective and objective nature of rights under the Japanese Constitution, see, e.g., Kenji Ishikawa, “‘Kihonteki-jinken’ no Shukansei to Kyakkansei,” [“The Subjectivity and Objectivity of ‘Fundamental Human Rights’”] in *Jinkenron no Shintenkai* [*New Development of Human Rights Theories*], ed. Hiroshi Nishihara (Iwanami Shoten, 2007), 12-18.

4.’ 日本のプライバシー法の歴史・学説・実務

As a classic form of legal protection against “physical” interference in a proprietary sense, Article **235** of the **Japanese Civil Code** stipulates meticulous requirements against peeping. It requires the installation of a screen in a window or porch at the boundary line with another person’s residential land within a distance of about three feet.

Likewise, as a general provision of tort liability, Article **709** of the Japanese Civil Code has been construed to provide a solid basis for **damages** in privacy claims. It states that “[a] person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damage resulting in consequence.”

Moreover, it has been recognized by the Japanese Supreme Court that privacy is protected under the Article **13** of the **Constitution of Japan**. In addition, the **academic study of comparative** privacy law has been active in Japan. For example, early American arguments about the “right to be let alone” and the right to “control” one’s information have been extensively investigated in Japanese legal studies.*

In **practice**, privacy has been strategically litigated, roughly since the 1960s, typically **in tort law cases** against **mass media** over the publication of private facts. It is exactly this right of “personality,” of which privacy is part, that is the basis for the full availability of privacy injunctions against digital **platform** service providers located in the **US**.

*For example, the aforesaid articles by Warren and Brandeis, William L. Prosser, “Privacy,” California Law Review 48, no. 3 (1960): 383-423, and Alan F. Westin, Privacy and Freedom (Atheneum, 1967) have been frequently cited in Japanese legal studies. See, e.g., Masami Ito, *Privacy no Kenri* [*The Right of Privacy*] (Iwanami Shoten, 1963); Koji Sato, “Privacy no Kenri (sono Kohoteki-sokumen) no Kenporontekikosatsu” [“A Constitutional Study on the Right of Privacy (Aspects of Public Law)”] (1)-(2), *Hogaku Ronso* 86, no. 5 (1970):1-53; 87, no. 6 (1970): 1-40; *Gendai Songai Baishoho Koza* [*Lectures on Contemporary Compensation Law*], ed. Toru Ariizumi, Vol. 2, *Meiyo, Privacy*, [*Defamation and Privacy*], ed. Masami Ito (Nippon Hyoron Sha, 1972); Masao Horibe, ed., *Johokokai, Privacy no Hikakuho* [*Comparative Law on Information Disclosure and Privacy*] (Nippon Hyoron Sha, 1996); see also Ashibe, rev. by Takahashi, 120-29. For an analyses of recent legal development and academic studies on privacy in Japan, see, e.g., Pardieck, 2-43; Shigenori Matsui, “Is ‘My Number’ Really My Number?,” *Syracuse Journal of International Law and Commerce* 47, no.1 (2019): 117-20, Dongsheng Zang, “Privacy and National Politics,” *Pace Law Review* 43, no. 2 (2023): 259-61, 270-78.

4.’ 東京効果―論点 (2)淵源(続き)–プライバシーの法的保護の理論枠組み ―人間の本来的な精神性への着眼←コモン･ロー上の救済／法的権利の範囲拡張の歴史

...the origin of the Tokyo Effect can be traced back to the spiritual nature of humans, which is influentially explicated in the aforementioned article by Warren and Brandies of 1890... To show how their argument paved the way for the Tokyo Effect, this presentation focuses on the following **two key elements** which constitute a theoretical framework: (a) underlying **values** and (b) the **design** of justification logics. Analysis on these elements sheds light on an **intriguing parallelism** in legal developments between the US and Japan.

以下、発表者の考え (Draft, The Tokyo Effect, *supra*)

Firstly, regarding (a) values which underlie legal protection of privacy, Warren and Brandeis started their article by describing the historical development of a common law principle regarding “**full** protection in **person** and in **property**” for the individual:

“...in very early times, the law gave a **remedy** only for **physical interference** with life and property, for trespasses *vi et armis*. ... 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 — **in**tangible, as well as tangible.”* * Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” Harvard Law Review 4, no. 5 (1890): 193.

4.’ 18-19世紀の産業化･イノベーションと米国法の歴史からの教訓
―法準則(ルール)の形成←社会から期待される役割を果たしているか

Unequivocally, history teaches that the effect of law cuts both ways, either ameliorating or deteriorating the recurring systemic problem of power imbalances in society.

Law has sometimes **failed** to play its expected role in bringing remedial or redistributive effect to those who most need it. It has been contended that judicial rulemaking on liability with respect to **industrialisation and innovation during the 18th and 19th centuries** might have had **regressive effects on society**. An American legal historian sharply pointed out this systematic problem:

“Change brought about through **technical legal doctrine** can more easily **disguise** underlying **political choices**… [I]t does seem fairly clear that the tendency of subsidy through legal change during this period was dramatically to throw the **burden of economic development** on the **weakest** and **least active elements** in the population…Thus, whether or not legal subsidies to enterprise were optimally efficient or instead encouraged **overinvestment in technology**, it does seem quite likely that they did contribute to an increase in **inequality** by throwing the **disproportionate share** of the burdens of economic growth on the **weakest** and **least organized** groups in **American society**.”*

*Morton J. Horwitz, The Transformation of American Law 1780–1860 (Harvard University Press, 1977), 100-01.

以下、発表者の考え
(Draft, The Tokyo Effect, *supra*)

The problem of **power imbalances** and **asymmetric power relationships** is sure to recur over a long period of history. It is being scaled up in increasingly **digitalising, globally connected societies**. The **US Congress** has made a **policy choice** to grant broad **immunity** from a certain type of content liability for interactive computer service providers under the relevant provision of the **Communications Decency Act of 1996**, and such immunity has been repeatedly upheld by the courts.

4.’ 東京効果—論点 (2)淵源(続き)—プライバシーの権利を基礎づける
「人格」の不可侵性という概念←米国よりもむしろ日本にて発展

以下、発表者の考え (Draft, The Tokyo Effect, *supra*)

...This is a predicament in terms of ensuring fair balance and distribution in society in midst of algorithmic content moderation on social media platforms. This seems to resemble the kind of circumstances in which Warren and Brandeis searched for “a **broader** foundation” for legal protection.

For Warren and Brandeis, this foundation was “the right to an **inviolate personality.**” *

Over the century, **law on privacy** has gradually developed in the **US** and many other parts of the World.

And yet, in defending the **full extent** of privacy protection, commentators generally concede that the “concept of a personality right” proposed by Warren and Brandies “has **failed** to gain traction” in US privacy law, although their article of 1890 has been “highly influential.”**

The idea of “a personality right” is said to have **flourished in Germany** and has formed “the basis of modern **German information privacy law**.”***

The article by Warren and Brandeis is regarded as the seminal effort to “introduce a **continental-style** right of privacy into American law,” and the “**relative failure**” of Warren and Brandeis demonstrates “how poorly continental ideas do in the American climate.”****

However, there is another jurisdiction where first principles of an individual’s personality toward global protection of privacy have thrived: **Japan.**

*Warren and Brandeis, 211. **Solove and Schwartz, 21-22. ***Solove and Schwartz, 22. See also Whitman, 1180-95. ****Whitman, 1204.

4’.東京効果―論点 (3) 保護の方法・態様

How does the Tokyo Effect work?

This presentation takes up the following **five strands** of Japanese law relating to privacy protection, which instance the recent trend to seek global effect: (1) **privacy case law** whose crown jewel is a right of “personality”, (2) law on another part of this right of personality relating to a person’s “reputation” or “honour”, i.e., **defamation law**, (3) law on the “**secrecy of communication**”, (4) law on the protection of “**personal information**” or data protection, and (5) law relating to criminal justice and procedure, especially **searches and seizures**.

例えば、(1) プライバシー侵害を理由とする人格権に基づく差止命令(前掲)のほか、(3) 電気通信事業法の一部改正により海外事業者にも規律が及ぶ等、日本法の下でも域外適用の場面が急速に拡大しつつある

These strands show (a) a **broad** range of underlying **values** of privacy law, which relates to the **spiritual nature of humans**, including the personality of individuals, “dignity” [*songen* in Japanese], “liberty” or “freedom” [*jiyu*], and “the pursuit of happiness” [*kofuku-tsuikyu*]. Those long-aspired values are buttressed by (b) **a multi-stranded** design of logics, in which privacy is **pluralistically** justified and **aligned in balance** with competing values such as **freedom of expression** and **transparency**.

東京効果―論点 (4) 将来の展開方向

4’: 東京効果—論点 (4) 将来の展開方向—プライバシーのグローバル保護

This presentation concludes by discussing ***the future direction*** of the Tokyo Effect.

In brief, the future direction of development will be **toward *global* protection of privacy**. To be sure, the Tokyo Effect under Japanese law **alone** would not have much efficacy in terms of **enforcement**.

Nevertheless, if other jurisdictions can **work together** for a **commonly pursued purpose** in the direction of realising similarly aspired values, it will be possible to **scale up to the fullest extent** of enforcement through a parallelly accumulated co-creative effect.

In the process of seeking an answer to the century-old enquiry stated at the outset, this presentation concludes by arguing the need to **shift** the conventional **Western focus** toward a **global undertaking to serve the unserved.**

西欧からの重心の移転

4’. 東京効果—論点 (4) 将来の展開方向(続き)

For those unfamiliar with Japanese law, it might be useful to invoke the idea of a **dragon**. While fearsome, dragons may become **protectors** of the human spirit, carrying us on their backs and flying high in the sky. This is not just a local myth.

From this story we can draw **the lesson** that **some old dragons** which should have been once extinct under the principles of modern law—**tough legal measures** such as injunctions and criminal punishments in cases involving the liberty of the press and freedom of expression—are **coming back** with rising global digital platforms and automated decision-making systems enhanced by innovative technologies including **AI**.

This is reminiscent of **similar** storylines about **recurring systemic problems in human history**, where law has served or ***failed*** to serve the **weakest** part of society, namely the **individual**, in the course of **industrialisation** and **technological innovation**.

Under **certain conditions** set by law, a dragon can be **unleashed** to protect the human spirit, literally against the world. This is a story worth sharing about **the role of law in today’s globalising information societies** in which we all live.

DX･AI関係の技術革新と社会変容に伴い、ルール形成の動きも速く、時には苛烈な法的措置も講じられる。全世界規模での法の歴史の大きな流れを捉えて、その中に日本法を位置づけ、社会から期待される役割を果たすべく、将来の展開方向への示唆を導き出す姿勢が有益 ←Global legal history

5. 結びにかえて←ウォーレン・ブランダイスの難題への回答

In summary, this article **answers** the century-old enquiry stated at the outset as follows.

On the "**nature**" of legal protection for privacy, such legal protection is about **empowering individuals to defend their own "spiritual nature" as humans**, which embraces each individual's freedom, dignity, personality, conscience, emotions, and intellect.

As to its "**extent**," the legal protection of privacy **can be broadened to its fullest**, i.e., **global**, scope.

To enable, balance, and justify the full protection of privacy, this article has provided a **geminal theoretical framework**, consisting of (a) a **broad** range of underlying **values** to which people everywhere similarly aspire, and (b) a multi-stranded **design** of logics in which privacy is **pluralistically justified** and **aligned in balance** with competing values.

This framework is drawn from the **archetypical line of reasoning** offered by **Warren and Brandeis** in their previously cited article, further elaborated in the subsequent development of **law in the areas** of **free expression** and **intellectual property**.

日本の情報法の将来への示唆
→　個人へのコ･エンパワーメント
を通じた救済・再配分効果の拡張

5.’ 情報の諸法に通底する理論枠組み—日本の「情報法」からの貢献

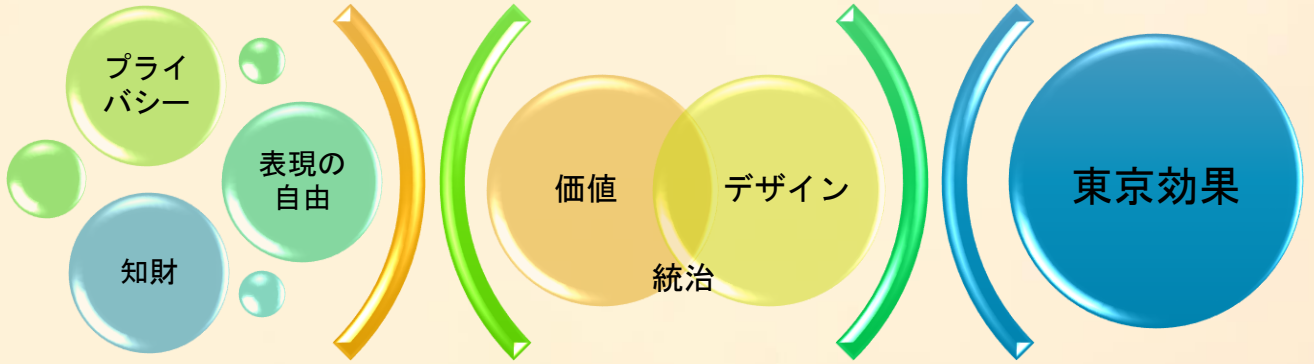
Indeed, **Brandeis** himself eloquently set out **a multi-stranded, pluralistic justification for free speech** in the well-known minority opinion of the US Supreme Court in 1927, which is said to echo **civic virtue** traced back to *Pericles' Funeral Oration*.* Brandeis’ commitment to open public deliberation as an aspect of civic virtue is regarded as **not in**compatible with his commitment to **privacy** and **individuality** shown in the said article in 1890.**

Aligned with such a broadened perspective and scope, for instance, to adapt to ever-advancing industrialisation and innovation since the rise of the aforementioned “information society,” **Japanese** scholars have been developing the theoretical framework of “**information law**” [***Johoho*** in Japanese]. This field of law deals with wide-ranging issues on freedom of expression, communication and media regulation, defamation, privacy, data protection, national security, transparency, business transactions, intellectual property, and any newly risen relevant problems.***

In a nutshell, this is an **ongoing undertaking** for the **purpose** of **making sense** of **a complex body of law governing the values and design of “information.”** In this theoretical context, the concept of information broadly refers to entities that have value without having physical form, such as expression, data, and knowledge.

* Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis, J., joined by Holmes, J., concurring). Paul A. Freund, “Mr. Justice Brandeis,” *Harvard Law Review* 70, no. 5 (1957): 780, 789-90; Pnina Lahav, “Holmes and Brandeis,” *Journal of Law & Politics* 4, no. 3 (1988): 453-54, 458-66. ** Lahav, 460 n.39; see also Solove and Schwartz, 22-23. *** See, e.g., Junichi Hamada, *Johoho* [*Information Law*] (Yuhikaku Publishing, 1993), 1-11; Katsuya Uga and Yasuo Hasebe, eds., *Johoho* [*Information Law*] (Yuhikaku Publishing, 2012); Taro Komukai, *Johoho Nyumon* [*Introduction to Information Law*], 6th ed. (NTT Publishing, 2022); Masahiro Sogabe et al., eds., *Johoho Gaisetsu* [*Information Law: An Introduction*], 2nd ed. (Koubundou, 2019); Eijiro Mizutani, ed., *Reading/Leading Mediaho, Johoho* [*Reading/Leading Media Law and Information Law*] (Horitsu Bunka Sha, 2022); Masahiro Usaki, *Johohousei no Ronten* [*Issues of the Information Legal System*] (Nippon Hyoron Sha, 2024); see also Shigenori Matsui et al. eds., *Internetho*, [*Internet Law*], 2nd ed. (Yuhikaku Publishing, 2015); Hidemi Suzuki and Kenta Yamada, eds., *Yokuwakaru Mediaho* [*Introductory Media Law*], 2nd ed. (Minervashobo, 2019); Susumu Hirano, *Robotho* [*Robot Law*], 2nd ed. Supp. (Koubundou, 2024); George Shishido et al. eds., *AI to Shakai to Ho* [*AI, Society and Law*] (Yuhikaku Publishing, 2020); Tatsuhiko Yamamoto et al. eds., *Kojindatahogo no Global Map* [*Global Map of Personal Data Protection*] (Koubundou, 2024); Kaori Ishii, *Kojinjohohogoho no Genzai to Mirai* [*The Present and Future of Personal Information Protection Law*], Rev. (Keisoshobo, 2017); Motoki Shizume et al. eds., *Joho Keiho* [*Information Criminal Law*] (Koubundou, 2022).

5.’ 世界の中で日本の情報法が果たす役割への期待
←共通の目的に方向づけられた、法の救済・再配分効果の拡張とその条件設定の明確化



・To conclude, the “exact **nature** and **extent**” of legal protection for privacy in such **a larger conceptual history** should be conceived as something capable of **serving unserved individuals as a common good, irrespective of geographical location**.

・Privacy law, like any other field of law, must **serve ordinary people as much as it serves those in power**. Otherwise, privacy law could easily fall down like the proverbial multi-storey high-rise building on sand [*sajo no rokaku* in Japanese], the equivalent of a house of cards or a castle in the air in English.

・The Tokyo Effect may be invisible or appear mystic from outside of Japan. However, the story of the Tokyo Effect demonstrates **a way of protecting the human spirit amid the challenges of AI-led innovation** by unleashing **dragons** even **beyond national borders as long as conditions clearly set by established case law or legislation are fulfilled**. To make the aforesaid castle sustainable for the purpose of serving every living spirit, a dragon is a perfect match.

Thank you!

質疑･意見交換