Contents

			viii		
Foreword					
	Acknowledgements				
	List of abbreviations				
	Table of authorities				
1	Introduction				
		Introduction	1		
		A developing area of great importance	2		
	1.2	User guide (how to read this book)	4		
	1.3	User guide (now to read this book)			
2	Poter	nkin's laws	6		
	2.1	Catherine's 'ought'	6		
	2.2	Wiener's 'is'	9		
	2.3	Good rules	13		
	2.4	Good facts	16		
	2.5	Commanding sunsets	18		
	2.6	The spatial paradigm	22		
	2.7	Commanding data	25		
	2.8	Conclusion – a negative ontology of information law	27		
3	Inter	national information sovereignty	32		
J	3.1	Introduction	32		
	3.2	To regulate or not to regulate, that was the question	34		
	3.3	The international legal system: public, and private,			
		international law	40		
	3.4	Jurisdiction	43		
	3.5	Drawing upon analogies and metaphors from the offline	4.0		
		world	48 52		
	3.6		58		
	3.7	Sovereignty 1 (1) in (2) de l'alle (2)	65		
		Sovereignty, sovereign states and their 'gods'	68		
	3.9	•	70		
		Comity	70		
	3.11	Due diligence and no harm Consent – not the central concept it is assumed to be	73		
	2 1	Concent - not the cellular collection it is assumed to be	/ ~		

	3.13	Where does this leave us?	79
4	Priva 4.1 4.2 4.3 4.4 4.5 4.6 4.7 4.8 4.9 4.10	The century of privacy Being left to one's self Right to peace The limits to privacy Information privacy and information sovereignty First implication – independent existence of privacy Second implication – limitation or justified infringement Third implication – carving one out of another Fourth implication – consent No implication – personal data	81 84 86 89 94 96 100 103 104
5	The 1 5.1 5.2 5.3 5.4 5.5 5.6 5.7	egal culture of the horse Lex informatica vel lex nulla A new legal tradition End of the law as we know it Efficiency spoiled by lawyers No hierarchy needed Floyd's way forward Methodological dilemma	113 113 120 124 128 130 133 135
6	A po 6.1 6.2 6.3 6.4 6.5 6.6 6.7	Introduction Legitimate interest and substantial connection – their common origin and similarity Substantial connection Legitimate interest Interest balancing The proposed framework applied to data privacy Concluding remarks	140 140 143 144 145 146 153 153
7	Cybe 7.1 7.2	Virtualized security Privatized security	155 155 158
	7.3 7.4 7.5	Delocalized security Home or abroad No direct link between territory and data	161 165 167
	7.6 7.7 7.8	Object or procedure Diligent sovereigns Choosing the information sovereign	173 177 180
	7.9 7.10	Due diligence Foxes and hedgehogs	182 185

	Contents	vii
8	Law enforcement for hedgehogs 8.1 Introduction 8.2 The characteristics of the current landscape 8.3 Jurisdiction, but what type and over what? 8.4 An unhelpful obsession with single-factor tests 8.5 The stranglehold of territoriality 8.6 Applying the framework to law enforcement access to data 8.7 Achieving change – a task for us all	188 189 192 195 197 199 205
9	Cross-border data transfers for hedgehogs 9.1 Introduction 9.2 How data privacy law deals with cross-border data flows 9.3 European data colonization through global delisting orders 9.4 Concluding remarks	207 207 211 223 230
10 Bib Ind	Conclusions liography ex	233239257