City Research Online

City St George's, University of London

Citation: Mangan, D. (2018). 'Neighbours in a networked society'. Regulating for Globalization: Trade, Labor and EU Law Perspectives,

This is the accepted version of the paper.

This version of the publication may differ from the final published version. To cite this item please consult the publisher's version.

Permanent repository link: https://openaccess.city.ac.uk/id/eprint/20709/

Copyright and Reuse: Copyright and Moral Rights remain with the author(s) and/or copyright holders. Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge, unless otherwise indicated, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way. For full details of reuse please refer to City Research Online policy.

City Research Online: http://openaccess.city.ac.uk/ publications@citystgeorges.ac.uk

Neighbours in a networked society

Regulating for Globalization
08/10/2018

David Mangan (City, University of London)

Please refer to this post as: David Mangan, 'Neighbours in a networked society', Regulating for Globalization, 08/10/2018, http://regulatingforglobalization.com/2018/10/08/neighbours-in-a-networked-society/

The networked society as a new landscape for obligations

The neighbour principle
On 26 May 1932, the UK's House of Lords, released its decision in Donoghue v Stevenson. This decision has been influential for tort law in the common law world. Often referred to in less austere terms such as the 'snail in the bottle case' or the 'ginger beer case', Donoghue may be the genesis of another common phrase today, the duty of care. In defining the duty of care, Lord Atkin wrote of the neighbour principle; a concept he derived from the Bible. In asking 'who is my neighbour?' Lord Atkin bridged the gap between the emphasis in law (at that time) on liability through contract to the circumstances facing Mrs. Donoghue where she had no direct contractual relationship with the manufacturer, Mr. Stevenson. Lord Aktin established that contract was not the sole means of a relationship between two parties. In discussing the legal question of neighbourhood, Lord Atkin wrote: 'The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.'

In a networked environment, who is my neighbour?

The neighbour in a networked society: the labour perspective
There is a new platform for neighbourhood in a networked society; and it may be that the workplace most clearly illustrates. Employers have already been confronted with its challenges. The Canadian labour arbitration decision of Amalgamated Transit Union, Local 113 v. Toronto Transit Commission (Use of Social Media Grievance) illustrated the obligations businesses (as employers) have to their workers when developing a social media presence. The guidance coming from this decision was that a business' social media presence which interacts with the public would need to also be a space free of 'language that is vulgar, offensive, abusive, racist, homophobic, sexist, and/or threatening'. Prior to information technology, the toxic workplace existed as a characterisation of a physical space. With business promotion via social media platforms, toxicity can arise in a virtual environment with implications for the physical workplace.

The neighbour in a networked society: the tort perspective
With social media, the comments of one individual may also affect a neighbour. Moreover, information technology had added to the concept of the neighbour found in Donoghue to include an intermediary who facilitates a close and direct connection between two parties. Those familiar with the European Court of Human Rights may see echoes of the 2015 decision in Delphi v Estonia.

This post began with tort law and moved into labour law to illustrate how quickly a new realm of obligations has developed. It may be that tort and labour law are viewed as distinct areas without intersection. This does not diminish the fact that employers and employees are a classic example of neighbours who are so closely and directly connected that their acts can affect each other.

When considering the legal implications of the embedded nature of information technology, tort law has been looked to as a tool. Defamation, privacy: tort is looked to as the discipline providing the legal means for redress. We now additionally have further regulation. Obligations have been imposed on parties due to data protection regulations and these create another layer of risk management.

Do I have a neighbour in data protection regulation?
With the General Data Protection Regulation (GDPR), we are left to wonder about the contemporary relationship between parties that started with Lord Atkin's neighbour principle. Does the GDPR provide us with the means to confront the new queries of who is my neighbour in a networked society? With a networked society, are we compelled to consider the wider linkages amongst us and between legal disciplines?

It may be that the clearest obligation is the one being foisted upon us: the deep contemplation of the orthodoxy of our current tools and whether they provide us with the conceptual capacity to properly engage with the challenges posed to the law by innovations in information technology. Not until we look at neighbours as members of a society (and not only a workplace or a smaller geographical community) do we begin to tackle some of the considerations of these obligations.