ABSTRACT

'The Human Rights Act, Private Law and the Pursuit of Equalitarian Justice'

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This paper critically examines the effect of the Human Rights Act on English private law by focusing on an area that is generally considered to have been shaped by the indirect effect of human rights: civil liability for invasion of privacy. Despite the appearance of progress, the paper argues that English law does not conform to the 'regulative ideal' of equality before the law. This is because in developing a tort of invasion of informational privacy, English courts have responded to the privacy concerns of a very small class of potential claimants: public figures. In doing so, they have (surely unintentionally) ensured that every other privacy concern is pushed to the margins of judicial and academic debate. English lawyers are thus left with a skewed understanding of privacy as the preserve of the rich and famous. But given the importance of privacy for normative agency, it cannot be the case that only public figures suffer invasions of privacy that are serious enough to merit the law's attention. Drawing on the work of John Rawls, Gregory Vlastos and others, this paper argues that courts must explore the bounds of legal possibility if they are to ensure 'equalitarian justice'. This does not simply mean that the equality of each individual should be formally recognized by the legal system. It further requires the equal distribution of benefits at the 'highest obtainable level'. Only in this way can we ensure true social justice.