FOREWORD

The Senior Editors of this Journal asked me to write this foreword. If they ask, I can't say no. I was a bit worried – was I buying a pig in a poke? What if this, the COVID-19 year for the Journal, was all rubbish. What would I say? Could I find any way to commend a collection of mediocre stuff? I even thought of a review I once read. It was of a long novel. The review began, "Every reviewer should try to write at least one nice thing about the book reviewed. Well, this book is printed on very nice paper!"

I needn't have worried. When I came to read the contributions, I felt more than happy, honoured indeed, to write this. The contributions are powerful, incisive, and about highly relevant law. Anyone judging the state of UCL Laws by this volume would not be surprised UCL Laws is so high in the world rankings.

Mercy Milgo's contribution is about whether compulsory mediation is a good idea. She critically examines judicial consideration and views about this – saying they are muddled and contradictory. I doubt anyone could advance a stronger case for the courts to have the power to order mediation. As an ex-judge I think I would have exercised such a power sparingly – for two reasons: cost and the old proverb, "You can lead a horse to water, but you can't make it drink".

Ignacio Oltra Gras' piece about online courts is of course entirely appropriate for the time of COVID. So many courts went largely online – in common law countries more readily than in civil law countries, many of which had inflexible requirements for court sitting in person. Thus, our civil courts went fully online well before those in many civil law countries. I attended a hearing in Holland last summer – the judges sat unmasked in a courtroom. The lawyers attended online. It was apparently essential that the judges met despite the COVID risk. At that time much of the work of our civil courts had been wholly online for months. The article contends enthusiastically and compellingly for more online hearings in the future – and not merely for small claims. I think it will happen.

Claire McCloskey tackles the problems of a right to privacy and the power of big data to invade it, largely looking at the US position. Big data is largely controlled by private rights and the market – contract and intellectual property are dominant. She convincingly argues that current regulatory system inadequately protects privacy. Notice and choice simply does not

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work. There is little redress for consumers for breaches of privacy. Regulatory powers are inadequate. In her words, "the market-based system is a wholly unsuitable model for privacy protection".

The problems big data and the mighty near monopolies of the big tech firms are rightly causing unease – nay very serious concern – and in many fields. Rightly so—too much power in any commercial firm is always a worry. Actually, I have never understood why having too much power and control over a whole industry should not itself be a reason for intervention by competition (antitrust to US readers) law. But it isn't. So, what's to be done? Deirdre Ryan's discussion of how the essential facilities doctrine could be harnessed to free up competition in the field of the creative industries a masterful discussion of the problem and what might be done.

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