

BOOK REVIEW

IDENTITY FEVER

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**Book review of Colin Bennett and David Lyon (eds),
*Playing the Identity Card: Surveillance, Security and
Identification in Global Perspective* (2008)**

Anxieties about national identity document regimes are like influenza: reappearing every generation, with exciting new labels, predictions of doom, calls for urgent action by public guardians and mutterings about the perils of globalisation. This year's swine flu has coincided with alarms about national health 'smart cards' (an iteration of the government services 'access card' program that fizzled amid interdepartmental rivalries and worries that the technocrats couldn't quite get all the pieces to work), and announcements about tougher offences for false identities¹ or remedies for victims.²

A sense of those anxieties and legal frameworks for identity is provided by *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective*.³ That book is a collection of essays on past and contemporary identity document regimes. It ranges from a discussion of colour-coded identity cards used for social sorting by the UK government during the 1920s through 1940s through to critiques of 'stealth registration' in the United Arab Emirates during the past five years, the INES biometric card as an embodiment of the 'politics of national identity assignment in France', identity standards in South Africa, cards in Hong Kong and China proper, ICAO involvement in development of the biometric RFID passport and the politics of Australia's access card.

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1 For example, Crimes Legislation Amendment (Serious & Organised Crime) Bill 2009 (Cth) as of 23 June 2009.

2 For example, *Crimes Amendment (Identity Crime) Act 2009* (Vic).

3 Colin Bennett and David Lyon (eds), *Playing the Identity Card: Surveillance, Security and Identification in Global Perspective* (2008).

The collection is edited by Colin Bennett and David Lyon, two of the grand old men of ‘surveillance-industrial complex’ studies. It is an addition to a rapidly growing genre of works that attempts to bridge divides between black letter law, criminology, history, public administration and sociology. Examples include works on governmentality such as Caplan and Torpey’s *Documenting Individual Identity*⁴ or Kerr’s *Lessons From The Identity Trail*,⁵ explorations of law’s construction or denial of personhood,⁶ and more restricted studies such as Groebner’s *Who Are You?* on deception and semiotics in early-modern Europe,⁷ Millett on common law treatment of identity crime,⁸ Cole and Lynch on forensics⁹ or Gross and Leissner’s analysis of the consequences of naming.¹⁰

Playing The Identity Card is likely to interest Australian legal scholars and practitioners for three reasons.

The first is as an illustration of differences in how societies, governments and individuals have perceived and established identity document regimes.

Contrary to the book’s title, we cannot usefully conceptualise identity card schemes from a single global perspective and should be wary about assumptions that ‘intensified surveillance’ through national registration affects everyone equally. Instead it is more fruitful to consider variation in the technological, cultural and legal bases of ‘identity papers’. Why have some states adopted ubiquitous identity document schemes on an ongoing or exception basis? Why have populations accepted, even celebrated, particular cards? Is abuse by the state (and by nongovernment partners) best addressed through broad privacy frameworks, legislation specific to official use of a multi-function card or through use of a basket of cards, each narrowly

4 Jane Caplan and John Torpey (eds), *Documenting Individual Identity: The Development of State Practices since the French Revolution* (2001).

5 Ian Kerr (ed), *Lessons from the Identity Trail: Anonymity, Privacy and Identity in a Networked Society* (2009).

6 Jane Collier, Bill Maurer and Liliana Suarez-Navez, ‘Sanctioned Identities: Legal Constructions of Modern Personhood’ (1995) 2(1) *Identities* 1–27.

7 Valentin Groebner, *Who Are You? Identification, Deception and Surveillance in Early Modern Europe* (2007).

8 Peter Millett, *On Villainy* (University of Queensland, McPherson Lecture Series, 2007).

9 Simon Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* (2001); Michael Lynch, Simon Cole, Ruth McNally and Kathleen Jordan, *Truth Machine: The Contentious History of DNA Fingerprinting* (2008).

10 Aeyal Gross, ‘Rights and Normalization: A Critical Study of European Human Rights Case Law on the Choice and Change of Names’ (1996) 9 *Harvard Human Rights Journal* 269–84; James Scott, John Tehranian and Jeremy Mathias, ‘The Production of Legal Identities Proper to States: The Case of the Permanent Family Surname’ (2002) 44(1) *Comparative Studies in Society & History* 4–44; Omi Leissner, ‘Jewish Women’s Family Names: A Feminist Legal Analysis’ (2000) 34(4) *Israel Law Review* 560–99.

restricted to a particular purpose? Is it indeed meaningful to focus on pieces of plastic rather than on how the data that those cards represent is processed behind the counter or beyond the border?

One conclusion from the introductory chapters by Bennett, Lyon and Louise Amore might be that we should be sceptical about polemic from proponents and opponents of national identity card schemes. In Australia that disagreement has often involved technocrats and critics shouting past each other rather than engaging with modest but meaningful benefits of a national card scheme and establishing a substantially stronger national privacy regime that represents global best practice (thus moving beyond the European Union data protection standards and keeping pace with landmark privacy decisions in Europe such as *von Hannover*¹¹ and *Mosley*¹²). A similar willed incomprehension is apparent overseas.¹³

The second reason is that readers can infer that identity cards are here to stay. Their prevalence is irrespective of whether they are promoted as an *Australia Card Lite* that will miraculously reduce terrorism and welfare fraud without threatening civil liberties, as the drivers licences that are now so ubiquitous as to be unthreatening, or as government-issued proof of age and entitlements cards whose absence substantially crimps an individual's personhood.

The legal system faces the challenge of managing pervasive identity documents (including witness protection and '100 Points' payment schemes)¹⁴ rather than choosing whether or not to accept identity cards. That challenge is ignored by some of the more triumphalist accounts of why we don't have an Australia Card and won't have in the future but is acknowledged in criticisms by Greenleaf and Hart,¹⁵ in qualified support by other analysts¹⁶ and in accounts from a government perspective of what went wrong.¹⁷

11 *Von Hannover v Germany* (2005) 40 EHRR 1.

12 *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 (QB).

13 Joseph Eaton, *Card-Carrying Americans: Privacy, Security & the National ID Card Debate* (1996).

14 *Financial Transaction Reports Act 1988* (Cth).

15 Graham Greenleaf, 'Australia's Proposed ID Card: Still Quacking Like a Duck', University of NSW Law Research Paper No. 2007-1 (2007); Caroline Hart, 'The Conjuror's New Card Trick and the Illusion of Privacy: A Discussion of the Privacy and Transparency Issues Associated with the Proposed Australian Government Health and Social Services Access Card' (2008) 25(1) *University of Tasmania Law Review* 5-43.

16 Margaret Jackson and Julian Ligertwood, 'Identity Management: Is an Identity Card the Solution for Australia?' (2006) 24(4) *Prometheus* 379-87; Lucy Craddock and Adrian McCullagh, 'Identifying the Identity Thief: Is it Time for a (Smart) Australia Card?' (2007) 16(2) *International Journal of Law and Information Technology* 125-58.

17 Peter Graham, *Bureaucratic Politics and Technology: Computers & the Australia Card* (1990).

An informed and nuanced response is important because of increasing use by governments of identity documents within and across jurisdictions in addressing perceptions of administrative efficiency (eg reduced welfare fraud), expectations about strengthened national security and migration control, and cards as an expression of modernity (a value apparent in promotion by technology vendors of biometric or other technologies in ‘smart’ cards and passports). Criticisms of mandatory card systems have both a symbolic value, assessing specific weaknesses in information systems and critiquing the relationship between individuals, community and government. That critique is arguably more important than substantive benefits or injury associated with the documentation highlighted in *Playing the Identity Card*.

The third reason is that the book offers a historical dimension to contemporary developments, notable because few bureaucratic initiatives are truly original and instead are founded on past innovations. From a legal and public policy perspective a disappointing aspect of debate about the ‘Australia Card Lite’ under the Howard Government was the lack of acknowledgement by critics that other liberal democratic states such as the Netherlands were using ubiquitous identity card schemes, indeed using them more actively than officially contemplated in Australia. We can learn from what other countries have done, how initiatives have been marketed by governments and how advocates have engendered community opposition to specific measures.

Playing the Identity Card features recent information, is written in accessible prose with detailed citations and includes contributions by leading figures such as Graham Greenleaf, David Wills, Cheryl Brown and Pierre Piazza. It is thus an attractive work for many Australian lawyers, criminologists or administrators rather than merely specialists grappling with a particular flavour of biometrics or data carrier in rolling out a robust identity card.

Are there deficiencies in its coverage?

For lawmakers and scholars a fundamental criticism is that the book embodies the United States hermeneutic in which questions about surveillance are to be construed in terms of abuses, or potential abuses, by the state. That tool for legal analysis elides concerns about the systemic weakness of statutory and common law restrictions on privacy abuses in the private sector in the United Kingdom, United States and Australia.

As Solove noted in *The Digital Person*,¹⁸ such concerns become particularly salient where government buys data collected by private sector bodies,

18 Daniel Solove, *The Digital Person: Technology and Privacy in the Information Age* (2004).

including nongovernment organisations and for-profit entities, few of which have a commitment to what some have characterised as ‘humane datamining’. In an environment of pervasive data assembly and integration an Australia Card (or a basket of government-issued cards) is less likely to be significant: the surveillance that concerns several contributors to *Playing the Identity Card* will instead involve trawling for ‘atoms’ of information scattered throughout a global data cloud rather than reading a few official registers.

The ‘state = big brother’ hermeneutic is of concern because opposition to official identity cards may be at the expense of substantive action to regulate both how the private sector deals with data and government’s use of private entities as its agents, particularly a use empowered under national security, crimes, corporate regulation or revenue legislation.

Some specialists will question the historicity of particular assertions throughout the book, regret that some criticisms were accepted at face value (rather than for example acknowledged as fevered expressions of a religious fundamentalism that conceptualises RFIDs as ‘the mark of the Beast’ and his universal government)¹⁹ or recognise that some inferences are untenable.

Suggestions that identity numbers or documents are deeply unpopular or somehow at odds with a national psyche are for example inconsistent with the way that the law and most demographics in Australia and the United States have embraced – and frequently subverted – mechanisms such as the driver’s licence, proof of age card,²⁰ the social security number, the passport²¹ and the credit card.²² Irrespective of government registration, the identity of most Australians on a day to day basis is founded on the cards and other documents sighted by people in the private sector when opening a bank account, renting a DVD, signing up for a university course or validating an identity when registering in a hotel. Habituation on occasion breeds contentment and indifference rather than merely content. Is the price paid for that contentment too high? It is a question that the readers rather than contributors must answer.

19 Katherine Albrecht and Liz McIntyre, *The Spychips Threat: Why Christians Should Resist RFID & Computer Tracking* (2006).

20 For example, *Photo Card Act 2005* (NSW).

21 Jane Doulman and David Lee, *Every Assistance & Protection: A History of the Australian Passport* (2008); John Torpey, *The Invention of the Passport: Surveillance, Citizenship & the State* (2000); Mark Salter, *Rights of Passage: The Passport in International Relations* (2003).

22 Ronald Mann, *Charging Ahead: The Growth and Regulation of Payment Card Markets Around the World* (2006).

