# *The Right to Data Privacy: Revisiting* Warren & Brandeis

*Anthony Volini*
DePaul University College of Law

In their influential 1890 article *The Right to Privacy*, Samuel Warren and Louis Brandeis argued that privacy is an implicit legal right, focusing on information privacy—such as protection from public disclosure—rather than decisional privacy. Their work remains a valuable foundation for understanding modern privacy issues, especially as technology evolves.

This article compares key 1890 principles with today's privacy challenges. While information dissemination remains a core issue, modern technologies allow for mass data collection, retention, and analysis that threaten privacy in new ways. Warren and Brandeis recognized that legal protections must adapt to technological change—a concern still relevant today.

The U.S. lacks a broad, express privacy law. To move forward, two proposals are offered: (1) clearly separate decisional privacy from information privacy, and (2) consider a constitutional amendment ensuring broad protection from information privacy abuses by both government and private actors. Though difficult to pass, such an amendment could establish a national standard, empower courts to act without waiting on Congress, align the U.S. with global norms, and counter judicial reluctance to infer privacy rights post-*Dobbs*. A general federal right could offer a flexible legal baseline to address emerging threats while enabling further legislation.