

## Book Review

Newman, Abraham L. 2008. *Protectors of Privacy: Regulating Personal Data in the Global Economy*. Ithaca: Cornell University Press.

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Two types of works, often written by legal academics, dominated the first twenty years of information privacy literature. The first were normative; after sketching the dangers of digital information processing they often argued for improved protection of informational privacy. Once information privacy statutes had been passed, a second genre emerged, describing the application of these new laws. What was missing was the political science of information privacy laws: how information privacy statutes passed, and why they differed between jurisdictions. Then Colin Bennett's magisterial *Regulating Privacy* (Bennett 1992) came out in 1992, and established information privacy as a case study for political science analysis, and political science as a method to understand information privacy legislation. A string of works followed, some more general, others highly specific. Abraham L. Newman's *Protectors of Privacy* is a very recent addition, and bold in its claims.

In his book, Newman argues that in response to digital information processing in the 1970s two archetypical information privacy regimes emerged around the globe: a comprehensive system with information privacy rights enforced by an effective regulatory agency, and a limited regime based on guidelines and market forces. By the late 1980s many European nations had chosen comprehensive information privacy regimes, while the US and Canada opted for limited information privacy systems. The standard explanation put forward for this regulatory divergence, Newman argues, is Europe's history with dictatorships; but according to Newman this is wrong. What really happened, Newman suggests, is that certain comprehensive privacy laws faced fewer "veto points" – specific hurdles in the political process that privacy opponents can exploit – than in the US.

For Newman this led to the next stage of information privacy regulation: Once comprehensive regimes had emerged in European nations, privacy regulators began to network with each other, creating pressure for a pan-European regime. This culminated in the 1995 European Union Data Privacy Directive, which in turn forced many more European nations to adopt comprehensive regimes. The rise of the comprehensive system then "spread globally, coming to dominate international data privacy efforts" (p. 142). Newman sees the international dominance of the European-rooted comprehensive privacy system linked to Europe's regulatory capacity. Privacy institutions and regulators across Europe continue to network ever more closely around a common core (the Privacy Directive); due to that core they speak with a strong, united voice to the rest of the world, essentially forcing upon others their comprehensive privacy system.

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In short, for Newman it was the emerging transnational network of national regulatory agencies of information privacy in Europe that caused the global success of the comprehensive privacy regime, rather than (according to Newman) any of three major alternative explanations of European values (based on history), a confluence of national interests, or an inevitable coordinative pull of European institutions.

Newman argues deftly and confidently, and clearly states his argument. Much of the political contexts of European privacy legislation he describes with elegance and eloquence. It's in these vivid encapsulations of the history of privacy legislation where Newman's book truly shines.

In contrast, his core argument that institutional setup and national regulatory networks drove the success of comprehensive privacy laws in Europe and later its internationalization disappoints; not because it is necessarily wrong, but because he at times oversells and short-changes. He short-changes because he spends relative little time explaining how national regulators network. He mentions their meetings, but fails to retrace in detail how through these transjurisdictional interactions over time an esprit the corps, a shared vision and mission evolved. It could have been a home run - a fantastically persuasive application of Anne-Marie Slaughter's trans-governmental networks approach, shedding light on the trajectory of information privacy, and adding important evidence to the study of networks in political science. But alas this he does not do.

At other times he oversells. His "evidence" that European dictatorial history plays no role in the emergence of comprehensive privacy regimes is a regression analysis on a questionable set of data points. He correctly concedes the weakness of his quantitative analysis, only to then accept his conjecture as proven. His "veto points" analysis is intriguing, but (as he, too, concedes) holds little explanatory value; at best it helps categorize explanations for the success and failure of privacy legislation.

Perhaps Newman is trying too hard to make the facts fit his model. Take his two archetypical models: the comprehensive and the limited regime. He characterizes the former as a combination of strong information privacy rights covering the public and private sector (comprehensiveness) and an independent regulatory agency entrusted with enforcement, while the latter lacks both comprehensiveness and enforcement. Thus he has two opposite poles. In reality, however, comprehensiveness and enforcement are not necessarily correlated; they could be orthogonal dimensions. For example, Germany has comprehensive privacy laws, but not necessarily an independent regulatory agency with a strong mandate for enforcement. In fact (and in contrast to Newman's view), the European Union Privacy Directive itself does not foresee enforcement only through such agency mandates. Or take Newman's contention that the rise in comprehensive privacy regimes post-1990 in Europe and the world was mainly caused by European Union pressure: Couldn't it simply have been the massive increase in flows of personal information due to the rise of personal computing and the Internet that prompted lawmakers to act?

Or, Newman writes that German Federal Privacy Act was enacted in the "late 1970s" although it was actually passed in 1976 (p.43); he contends European regulatory agencies are "actively modeled" after the FTC and FCC, although he can only cite one (the French CNIL) (p. 53) and the contemporary others (Sweden, Germany, Austria) were in fact not. He characterizes information privacy laws as founded on individual rights because that sharpens his divergence narrative, when in fact the first generation of privacy legislation featured strong elements of regulating a potentially dangerous technology (information processing). He calls leading German privacy advocates social libertarians (p. 70) as evidence for his theory that privacy cannot be easily placed on a left-right continuum. But Gerhard Baum, Burkhardt Hirsch, Hildegard Hamm-Brücher and others were "Sozialliberale"; the US label "libertarian" simply does not capture their spirit. He also oversimplifies the theories of liberal intergovernmentalism (LI) and neo-institutionalism to quickly discard them as lacking explanatory merit. On LI he overlooks national preference formation, on neo-functionalism he disregards the broader political context in which the European Commission decided to oppose privacy legislation.

In sum, I applaud Newman's approach as I gained fresh insights from his work, but wished he'd focused his book more squarely on the emergence and inner workings of trans-governmental networks of privacy regulators - what surely is his main, lasting (and valuable) contribution to our understanding of how information privacy laws evolved.

## References

Bennett, C. 1992. *Regulating Privacy*. Ithaca: Cornell University Press.