Book Reviews

Peter Hajnal, ed., *Civil Society in the Information Age,* 2002

It is a pity that the title and the cover illustrations of Hajnal's edited volume, 'Civil Society in the Information Age', are misleading. A more apt title would have reflected the book's focus upon non-governmental organisations (NGOs) as policy actors in the information age. To equate non-governmental organisations with civil society is problematical as sitting between NGO and civil society are complex issues of access, stakeholders, power, legitimacy, and accountability. These comments aside, the book is a welcome and valuable addition to the literature on NGOs *per se*. Moreover, its focus upon the ways that information and communication technologies (ICTs) are enhancing the effectiveness of these policy actors gives the book especial significance within the NGO literature, as this is an area that remains under-developed.

Through a series of twelve descriptive case studies the book examines the significance of ICTs for NGOs seeking to influence governments and intergovernmental institutions within the international policy arena. In doing this, a number of important questions are addressed. 'How has ICT helped civil society in advocacy, service delivery, and networking; and under what circumstances is the use of modern technologies inappropriate? How has ICT furthered civil society's aims and in some instances influenced government and inter-governmental organisation (IGO) policy and behaviour? How has ICT, especially the internet, shaped and altered NGOs and civil society coalitions? What role has ICT played in enhancing the legitimacy of civil groups?' (p. 7). To varying degrees the case studies address these questions, giving this volume a coherence and consistency of focus that is often lost in edited texts.

The case studies themselves are readable and informative, and encompass high profile NGOs such as Amnesty International and Oxfam International. Some of the case studies focus upon organisational coalitions such as we see in chapters six and seven respectively, in relation to the International Campaign to Ban Landmines and the NGO Coalition for an International Criminal Court. The rich detail that is conveyed in the case studies provides insights into these organisations that extend beyond ICT-related issues, encompassing their goals, programmes, governance, operational methods, and relationships with collaborators, saboteurs, and governmental and inter-governmental institutions. This provides a rich background against which to examine the contribution and effectiveness of ICTs and the new informational arrangements that they are enabling within and around NGOs.

The insights that this book conveys are not counter-intuitive or revelatory. It is not surprising, for example, to find that ICTs bring strategic advantages to NGOs associated with scale, speed, and cost, or that the technologies can facilitate collaborative arrangements and coalition-building amongst members of the NGO community. More significantly, the empirical evidence that is brought forward does demonstrate that some re-positioning is occurring both within the NGO sector and between NGOs and government institutions as ICTs enable information to be harnessed in new ways. This re-positioning has implications for the re-distribution of power and influence amongst these key policy actors, and it is in beginning to signal this shift and the ways in which it is occurring that this book makes its greatest contribution.

There are three criticisms that can be made of the book. The first two criticisms are relatively minor, and the third is more substantial. Firstly, there is a strong tendency in almost all of the case studies to

portray ICTs as entirely beneficial. The case study of Amnesty International provides a useful counter-balance to this viewpoint, illustrating some of the more problematical aspects that ICTs can raise for NGOs. Secondly, some of the case studies had surprisingly little to say about ICTs beyond descriptions of the facilities available on websites or the use made of email to reach mass audiences. Chapter nine on the 'The United Nations and Civil Society' was particularly thin in this respect. Thirdly, while the extent to which ICTs have enhanced the legitimacy of civil groups was touched upon, both the concept and the issue merit more substantial treatment than this book gives them. This was one of the more important issues that the book sought to address and it was disappointing that its treatment was implicit, superficial, and not grounded conceptually or theoretically within existing literatures.

This book will be of interest to students and scholars with an interest in NGOs as policy actors. It will be of particular interest to those who seek to understand the ways that these organisations are harnessing ICTs to re-position themselves more effectively (and more powerfully) within the polity. It is a book, too, that those who study 'social movements' would do well to read. There is a tendency to ignore the organisational underpinnings of social movements. This book is a reminder of the role played by NGOs in generating and organising these movements within the international polity.

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Coming To Terms With Privacy

Collin J. Bennett and Charles D. Raab, *The Governance of Privacy: Policy Instruments in Global Perspective.* Aldershot: Ashgate, 2003 (272 pages, hardback). ISBN 1 85521 473 3

Lee Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits.* (Information Law Series – 10) The Hague, London, New York: Kluwer Law International, 2002 (XXVIII + 426 pages, hardback). ISBN 90 411 9870 9

Over the last decades, theorists have fed the debates and controversies on privacy again and again with new definitions of privacy.[1] These definitions excel in simplicity and elegance, but, unfortunately, show considerable differences. Here are some stipulations:

– "being in a position to determine for oneself, when, how, and to what extent information about oneself is communicated to others" [10],
– "the control we have over information about ourselves" [2],
– "the ability to control who has access to us" [6],
– "immunity from the judgement of others" [4].

Theoretical accounts of the normative point of privacy tend to show a same kind of simplicity in combination, again, with a significant proportion of disparity. There is almost no consensus on the specific value(s) underlying privacy, i.e., values to which privacy as an instrumental value is subservient. That it

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[1]See for an overview, for instance, Parent [5] or Schoeman [7].

must be one, unique value, or at least a relatively small set of familiar values, is the preponderant point of view.[2] Monumental values such as (moral) autonomy, dignity, and well-being acted as candidates, and all of them in various versions.

Nonetheless, one must keep in mind that the authors do not present their stipulations as highly personal opinions. They assume that their proposed definitions catch the shared beliefs underlying the common use of the notion most adequately. It is praiseworthy that all of them are looking for the conceptual unity or conceptual core of the notion of privacy. First, in light of the public nature of our language, it is desirable to restrict idiosyncrasies and semantic subjectivism to a bare minimum. Language, which by its nature is a means of communication, cannot be a private matter.[3] Second, there is a more pragmatic reason. The process of searching for a conceptual unity has a purifying and clarifying effect. One is forced to compare and relate different conceptualisations to each other. In doing so, one has to meticulously articulate the particularities of the conceptions as well as their mutual relationships. This enables one to analyse, explain, and resolve miscommunications and misunderstandings in the societal and theoretical debates.

Nonetheless, we are in need of a more sophisticated theoretical account of privacy than most of the well-known theorists of privacy have to offer. The past decades have shown tempestuous developments in the fields of information and communication technologies (hereafter referred to as ICTs). Among experts, it has almost become commonplace to assert that these developments have had a tremendous influence on policy making, regulation and legislation with regard to privacy. Recent changes in these respects cannot be explained exclusively by the technical and technological developments that could be witnessed in the second half of the last century. Other factors have been of importance, too. First of all, the exponential growth of ICT applications was situated in an eventful socio-economic context. In many countries, a new demarcation of the private and public sectors of society took place. The privatisation and semi-privatisation of formerly public or semi-public institutions changed ideas about the permissibility of all kinds of ways in which personal data is used. Secondly, the last decades have witnessed a growing internationalisation, not to say globalisation, of what were until then regional or national activities. This not only gave rise to a growing exchange of different insights and uses of privacy. The increase in the border crossing traffic of persons and personal data also occasioned transboundary arrangements concerning all kinds of things that the people involved thought relevant for privacy. All of these factors – technological developments, socio-economic changes, the fading importance of national boundaries – did not only give a boost to the regulation of privacy, they also contributed to changes in the meaning and significance that are assigned to privacy and on the ways in which privacy and related notions are conceptualised in everyday language and in the language of legislators and policy makers. In turn, this increasing attention of legislators and policy makers for privacy has led to structural changes in the meaning of privacy. Law and regulation, through their authoritative status, have had a steering and enshrining effect on the definitions of privacy and the privacy vocabulary.

These claims are easily stated and, from a commonsensical point of view, their evidence is easy to understand. Nevertheless, these insights cannot easily be accommodated with the accounts of the meaning of privacy given by many theorists who favour "stable" factors like a carefully demarcated unique value or a neatly stipulated unique core meaning or core concept that is thought to transcend the murky waters of unstable and fickle reality.

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[2]Exceptions to this rule are: Rachels [5] and, perhaps, Thomson [7].

[3]Of course, this argument hinges on views as have been put forward in Wittgenstein [9].

What we need, then, is a different conceptualisation of privacy. Such a conception would amount to a contextual-functional account of privacy that would do justice to the influence of contextual factors and – at the same time – enable us to understand how the notion can retain a certain unity in spite of all the changes and extensions that it displays. The construction of such a theoretical account – to my mind – is complicated but not impossible.

Recently, two studies were published that contribute significantly to our understanding of the modern notion of privacy in relation to personal information. They are not only important to law and policy makers but also to scholars with a more theoretical interest in the notion of privacy. In 2002, Lee Bygrave published his Data Protection Law: Approaching Its Rationale, Logic and Limits. Colin Bennett and Charles D. Raab published The Governance of Privacy: Policy Instruments in Global Perspective in 2003. The two monographs show a significant overlap in their subject matter. Both of them focus on privacy (in the restricted sense of data protection) regulation in a global perspective. This means that the main centrepieces of the volumes consist of comparisons of privacy laws, regulations, and policies as they have arisen over the last decades in the economically advanced countries and in other states (mainly the USA, Canada, Australia and European countries), with special attention for transnational instruments, such as for instance the 1981 Guidelines on the Protection of Personal Privacy and Transborder Flow of Persons of the Organisation for Economic Cooperation and Development and the 1995 Directive on Data Protection from the European Union.

Nevertheless, the two studies differ significantly and interestingly with regard to their approach of the subject matter and their choice of additional materials. First of all, whereas Bennett and Raab restrict themselves to individual privacy, Bygrave goes further. He dedicates almost half of his book to privacy and data protection with regard to collective entities (including business enterprises and organised and unorganised groups) and privacy and data protection issues arising from profiling (of individuals and groups). Second, Bygrave transcends the traditional approach of comparative studies in law by combining legal analysis with ample pieces of jurisprudence and sociology of law. He also includes elements from computer science, sociology, philosophy and political science. His approach is based on the assumption that it is not enough to understand what is valid law with regard to privacy and data protection, but that it is much more illuminating to assess the arrangements from the perspectives of other study methods. Nevertheless, Bygrave himself characterises his study still as a piece of *legal* study. He is certainly right in this, since clearly the law is at once the point of departure and the final destination of the round tour on which he invites us to join him.

Bennett and Raab, political scientists by profession, confront us with an even broader approach in their book. They treat privacy-related problems and the corresponding regulation issues not only as legal topics, but as political, public policy, and technological ones as well. Governance of privacy is their key-word. Protection-arrangements is what they are interested in: different kinds of regulation that may take the form of policies, laws, technologies, and also of combinations of laws, policies, and technologies. In addition, the authors stress the importance of social studies for the comparison and evaluation of the different protection arrangements.

Exactly these differences in approach and outlook make the two books attractive and interesting to read, and to read them both. But there are other particularities to the two books. A salient one has to do with the matters of definition, to which I drew attention in the first part of this contribution. In the introductory chapter of this book, Bygrave shows himself to be gifted with a nice dose of semantic and analytical rigor. He is very keen on presenting his conceptual tool-kit as a clean and well ordered one, presenting meticulous methodological explanations of his scholarly enterprise, clear hypotheses and extensive definitions, stipulations and conceptual schemes of a large number of his key notions. In this

respect Bygrave tries to connect to and to build on the contributions from the side of legal and moral theorists to the debate on privacy. And he certainly succeeds in doing so. In his book, the author confronts us, first, with a stipulative definition of privacy as a condition of limited access and ample reflection on the role that this idea plays in existing privacy law and regulation. He then proceeds with what he considers to be the origins, the point, the logic and the limits of existing privacy laws and regulation; after that he explains why and to what degree (the principles behind) those laws should come to bear on information about collective entities and on profiling of characteristics of individuals and groups. All this is done in the light of what Bygrave refers to as the 'increasing electronic interpenetration of previously distinct spheres of activity': the use and re-use of information across traditional organisational boundaries and an ever increasing role for machines in the processing and control of data and information. Bygrave, in fact, tries to explore the consequences that important technological and socio-economic developments should have for the laws and regulations with regard to privacy in the light of what can be considered to be the original rationale of the existing laws and regulation. This enterprise is, of course, not identical with sketching the contextual-functional account of privacy, which, to my mind, is so barely needed in the debate on privacy; but it comes close to it and doubtlessly will contribute to our understanding of what such an account looks like. In this way, Bygrave not only succeeds in drawing a rather convincing sketch of how and to what degree the scope of our privacy laws and regulation could be widened so as to include information on collective entities and information deriving from profiling; he also implicitly provides us with insights into the ways in which our understanding of the notion of privacy changes under the influence of external factors.

Bennett and Raab do not offer a clear account of what they refer to as privacy. They even explicitly refuse to do so (o.c., p. 6). Instead, we are provided with what they call a 'privacy paradigm', i.e. a set of assumptions that lie at the basis of '. . . the modern claim to privacy'. (o.c., p. 14). According to the authors, this claim is based on 'a notion of a boundary between the individual and other individuals, and between the individual and the state. It rests on the pervasive assumption of a civil society comprised of relatively autonomous individuals who need a modicum of privacy in order to be able to fulfil the various roles of the citizen in a liberal democratic state.' (ibid.) It may be clear by now that the authors themselves have some latent idea of what the notion refers to and assume that the reader has some such idea as well. From the text just quoted, one would think that this idea comes very close to Bygrave's stipulative definition of privacy as a state of limited access; but it is not easy to tell, since the authors ostensibly refrain from stipulating the notion themselves. This refusal hangs as a heavy shadow over their whole enterprise. It compromises two of the main points the authors wish to make. First, the authors spend quite some pages on distributive questions with regard to privacy. They apparently want to contend that questions concerning (in-)equalities with respect to vulnerabilities regarding privacy deserve much more attention than they have obtained until now. It remains unclear what kind of attention and which attention by whom (theorists, social scientists, policy makers) the authors envisage. The most disturbing thing, however, is that despite their critical stand towards the controversies on the conceptualisation of privacy, the authors just add other vague and controversial notions to the debate (risk, trust, etc.). They do so without taking seriously the fact that this whole system hinges on the key notion of privacy which remains completely opaque in their work. A clear idea of privacy would tell us which forms privacy, but also the lack of privacy, can take in the real world (descriptive content) and how serious or significant instances of (the lack) of privacy are (prescriptive content). For this reason it is very difficult to analyse in which respects and on which grounds certain individuals or groups of individuals are more vulnerable or more in danger of being put to privacy risks than others. It is even difficult to tell which risk of loss of privacy is more important than others.

This is why, secondly, another main contention of the book is troubling as well: from the outset, the authors claim that they consider empirical research into information practices, and the ways in which privacy protection is carried out as vital for a good understanding of privacy and privacy policies. They even contend (and probably rightfully so) that privacy policies should be evaluated largely on the basis of empirical research into the degree to which the policies involved succeed in approximating their goal: the protection of privacy. Unfortunately, as the authors have to admit again on p. 192: '(E)valuation is complicated by the vagueness and contestability of the definition of privacy' . . .

The failure to underpin some of the main contentions lends a new dimension to this Bennett and Raab's book, probably not intended by the authors, but nevertheless, valuable in its own right. It invites us (willy-nilly) to consider the book as one extensive methodological study: a preparatory work for another book in which all the questions thrown up in this one are answered along the ways mapped out and carefully pre-explored in The Governance of Privacy – the first question being: What is privacy?

Bygrave's and Bennett and Raab's books are interesting studies of privacy protection against the background of the fading importance of traditional state boundaries. The two books offer much more in addition, each in its own way. Most importantly, however, they contribute to a better understanding of value notions, such as privacy – concepts the functions of which largely depend on ever changing factors in the context in which they are used.

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