



Book Reviews: A Miscellany

Ayse Ceyhan (ed.) (2007) *Identifier et Surveiller: Les Technologies de Sécurité*. Paris: L'Harmattan.

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Jonas Hagmann¹

The journal *Cultures & Conflicts* has become an increasingly important reference for international relations (IR) scholarship. In certain quarters of the Anglophone critical security studies field in particular, there had been a realization that 'Paris' provided as constructive analytical contributions to the analysis of novel security trends and discourses as 'Aberystwyth' or 'Copenhagen' did (for a good review see CASE, 2007). If *Cultures & Conflicts* had not appeared on the IR radar screen earlier, this had more to do with linguistic barriers than with scholarly quality, this particular special volume on security technologies suggests.

The special issue at hand has been dedicated to novel trends in security technologies and their utilities for threat identification and surveillance. Ceyhan's introductory article conceptualises the central notion of 'security dispositif' as a set of formal and informal, material and social institutions, discourses and processes that establish a broader national security apparatus. Central to this Foucauldian understanding of the security apparatus is its reach beyond immediate physical elements, hence its inclusion of wider social control mechanisms. Ceyhan argues that in western countries, the liberal governance dogma had a profound impact on the dispositif's structuring, as the inclusion of a constantly increasing number of stake-holders has gravely complexified its implementation and control, raising serious accountability and oversight problems. While this latter aspect of security governance has already been widely discussed elsewhere (Hänggi, 2003 or Krahnmann, 2003), the Foucauldian focus on social control is a useful addendum to the analytical debate. It allows Ceyhan to discuss whether the proliferation and refinements of mechanical security technologies had not deepened the public sense of insecurity, so effectively procreating its own market.

The second article, written by the same author looks at biometrical identification, this is technical surveillance based on age, name or DNA. Ceyhan claims that the technological emphasis on objective identity criteria for individuals reduces the latter to baskets of unchangeable digital classification criteria. With this, identification technologies increasingly omit to assess the ideations and personal relationships of those individuals it

¹ Department of Political Science, Graduate Institute of International and Development Studies (IHEID) Geneva. [Mailto:jonas.hagmann@graduateinstitute.ch](mailto:jonas.hagmann@graduateinstitute.ch)

seeks to cover. This omission arguably provides a fallible sense of technological certainty and societal security as crucial dimensions of intent and personal network are being neglected – contemporary security technologies are so not only reproducing subjective senses of insecurity by their mere presence, as Ceyhan’s first article argues. Their focus on stable biometrical codes also impairs their very ability to assess and control individuals effectively. Ceyhan’s argument is articulate and the critical discussion of biometrics-based identification catches a current theme. Yet, by neglecting to debate those socio-metric frames with which these increasingly ‘stable’ digital coordinates are actually being evaluated by security professionals, the article draws an ultimately incomplete picture of the issue at stake. Even though there is an increasing reliance on non-ideational and digitally collectable identity coordinates, socio-metric profiling respectively socio-metric interpretation frames have not become obsolete, our own international travel experiences confirm.

At the backdrop of these guiding conceptual considerations, Laniel and Piazza then provide rich empirical descriptions of British and French government efforts to introduce biometrical national identity cards. In the case of the United Kingdom, they focus on the identification of government discourses promoting such a political project. In their genealogy, Laniel and Piazza nicely trace the erratic shift away from conceptions of combat against fraud, hooliganism and illegal immigration in the 1980s towards anti-terror discourses in the late 1990s. In a well researched piece, they show in great detail how this latter argumentative turns has been stabilised since by political statements, despite the apparent oppositions of both British public opinion and British security experts. Also in his case study on France, Piazza confirms a primacy of mystified national security justifications over actual feasibility and utility debates and considerations on the contested issues of identity cards. In what becomes a quasi-critique of ongoing domestic politics, he demonstrates in detail how leading French politicians such as then-Minister of the Interior Sarkozy, but also other conservative figureheads such as Villepin and Raffarin constructed a nebulous, non-specific national security discourse which successfully evades any test of the scientific forensic utility of biometric identity cards. Echoing what Putnam (1988) had earlier circumscribed as the two-level game of domestic politics and foreign affairs, Piazza also notes how US demands on European authorities for biometrical data are being invoked by these same politicians in support of their agendas.

Preuss-Laussinotte’s final articles then shift the special issue’s attention towards more technical problems of security technology such as data storage and data protection. In so doing she goes beyond the often dominant government-centred focus of comparable works, describing how truly gigantesque and generally highly insufficiently protected personalised data bases have been established by, and are in possession of private companies. In a somewhat more legalistic and philosophical discussion, Preuss-Laussinotte also addresses the overarching contradictions between individualist personal safety and collective public security. Drawing on Hobbesian and other political conceptions of state-citizen relations, she assesses their current balance inside the European via an analysis of the European Court of Human Rights’ jurisprudence on the protection of the private sphere.

With its critical, French philosophy and sociology-based analyses and its impressively rich empirical descriptions, this special issue of *Cultures & Conflits* on ‘security

technologies' represents a useful and thought-through contribution to the international debate on the subject matter. The popularisation of Foucauldian and at times, Bourdieuan conceptions of politics is a particularly welcomed input into the largely Anglo-Saxon scholarly debate. Then again, learning and insemination between scholarly communities should be reciprocal interaction. In this vein, the articles presented in this issue often fail rather alarmingly to integrate international works into their analyses – such as Putnam's work indicated above. At times, such omissions of scholarly dialogue create the false impression of conceptual advancements in places where scholarly debates had already been held or resolved. Despite their well accomplished analyses, the authors of the issue reviewed here could clearly have shown themselves more open to such dialogue. Nonetheless, overall, the special issue is highly recommended for scholars critically engaging with the societal effects of modern surveillance technology and discourses. If French cuisine and literature were not sufficient to motivate readers' refinement of their French language skills thus far, this volume certainly provides another powerful reason.

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Eric A. Posner and Adrian Vermeule (2007) *Terror in the Balance: Security, Liberty and the Courts*. Oxford: Oxford University Press.

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Don Stuart²

According to the authors the predominant view of American history in times of state emergency is that American governments panic and overreact and enact measures which permanently jeopardise values of equality before the law, democratic deliberation, due process and political freedom. This is why civil libertarians try to persuade Congress and judges to scrutinise executive action during emergencies, varying only as to the degree of deference to be afforded.

In stark contrast the authors set out to debunk the "civil libertarian" view. Posner and Vermeule see American history in times of emergency as largely one of political and constitutional success. When an emergency threatens national security the executive is the only organ of government with the resources, power and flexibility to respond. The authors see it as natural, inevitable and desirable for power to flow to the executive. Their central theme is that government is better than courts or legislators in striking the correct balance between security and liberty during times of emergency. Congress and courts rationally acquiesce and only reassert themselves to adjust the balance once the

² Law, Queens University, Kingston, Ontario, Canada. <mailto:stuardt@queensu.ca>

emergency is over. The authors suggest that this deference has served Americans well and there is no reason for change. Although the authors admit that injustices do occur during emergencies in their view judicial scrutiny to stop the harm would do more harm than good. According to their “trade-off thesis” governments should and will reduce civil liberties in order to enhance security. Under their “deference thesis” the executive branch not congress or the judiciary must make the trade-off given the institutional advantages of secrecy, speed and flexibility.

This is a startling thesis given the much heralded American Constitution’s system of checks and balances between powers given to the President, Congress and the judiciary. One wonders whether the thesis speaks more to major systemic problems in current American institutions of government. Consider the following broadsides the authors’ salvo against Congress, the courts and lawyers:

Overall, adding congressional involvement increases the costs of adopting new emergency policies, and thus has several cross-cutting effects. It reduces the number of laws that embody unjustified discrimination against democratic minorities, which is good, but it also reduces the number of laws that embody justified security measures targeted against minorities, which is bad, and it retards panicky measures by adding delay to the system, which is essentially dangerous in times of emergency. (p.47)

In the United States, virtually every judge is a member of one of the two major political parties and is selected on the basis of two criteria: competence and proven loyalty. In most liberal democracies judges are members of the government bureaucracy but are trained as, and treated as, experts rather than partisans. (p.240)

[The] principal contribution that lawyers can make is to engineer process; the lawyer’s occupational hazard or professional deformation is the belief that more process is always better, a distortion caused by neglect of the costs of process, including the opportunity costs of governmental action that is delayed or foregone while the wheels of legal liberalism turn ponderously. (p.273)

Scholars of liberal democracies modelled on the British Parliamentary system have not suggested that the roles of Parliament and an independent judiciary should be diminished in times of state emergency. Surely too lawyers in America or elsewhere cannot all be dismissed as seekers of process for process sake. Think of the hundreds of Pakistani lawyers recently detained in their fight to preserve democratic institutions. Think too of the brave lawyers who fought for freedom under apartheid South Africa, where the State emergency to preserve White power and privilege lasted for some 50 years. There are important human rights and freedoms at stake in times of state emergency that have must be vehemently pursued and it is a role that some courageous lawyers take on. Deprecating this role of lawyers as quickly as the authors do at the end of this book is gratuitous and insulting.

The one institution of government that Posner and Vermeule do not submit to critical review is that of the office of the U.S. President. At several points the authors go out of their way to suggest that they hold no opinion about the merits of security measures adopted after 9/11 or the choices of the Bush administration (see, for example pp.8 and 158). Yet this position of fence-sitting is disingenuous given that the authors offer no criticism of, and often defend, such controversial Bush measures as military action without Congressional approval, detention of enemy combatants without trial rights, warrantless search and surveillance powers under the Patriot Act, racial profiling, coercive interrogation, military trials and censorship.

Consider their views on one of these topics: coercive interrogation. The authors define this as physically or mentally forceful interrogation used to extract information necessary to prevent future harms, such as terrorist attacks (p.183). They argue that coercive interrogation severe enough to amount to torture should be permitted and regulated under a range of emergency rules, roughly the way the law regulates the police use of deadly force, and that the judges should not invoke the constitution guarantee against cruel and unusual punishment to prohibit or restrict such power. They see torture as morally justifiable and effective, relying on Israeli data (although noting that the Israel Supreme Court has prohibited such conduct). They scorn slippery slope concerns advanced by David Luban and dismiss the evidence of torture at Abu Ghraib as “weak and tendentious” (p.201). Alan Dershowitz’ proposal for a torture warrant from a judge is considered empty formality as there would be a strong presumption to grant the warrant in the national security interest. The authors’ solution is administrative regulation with remedies for violation confined to internal disciplinary measures and criminal charges against violating state officials who would be permitted generous good faith excuses.

The effect of such a system with opaquely weak remedies would surely be to encourage water-boarding, and other forms of torture when dealing with anyone dubbed a terrorist. The authors do not address the history of the voluntary confessions rule in western democracies, which is rooted in centuries of experiences of despotism, overzealous interrogation and the documented risks of false confessions. Judges in western countries in interpreting that rule continue to play a vital role in setting the limits to how far interrogators should be allowed to go.

When it comes to America following international law the authors are defiant and arrogant. In its conflict with al Qaeda the United States should not consider itself bound by the laws of war unless this serves the American interest (p.260). The United States Supreme Court’s decision in *Hamdan v. Rumsfeld* 126 S. Ct. 2749 (2006) refusing to afford any deference to the President on matters of treaty interpretation bearing on national security is dismissed as “simply untenable in the long run” (p.272). The President should not be so hamstrung by decisions of judges.

The sad reality of this book is that these bright and articulate constitutional theorists show no sympathy for the plight of the many innocent victims of the American war against terrorism, and the invasion of Iraq in particular. If views such as these become more accepted in the United States, America will become further isolated from World opinion which may well jeopardise all our security.

Henriques, Adrian, (2007) *Corporate Truth: the Limits to Transparency*. London, Sterling VA: Earthscan.

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Ivan Szekely³

Webster's proclaimed transparency the 'Word of the Year' in 2003, and this was a spectacular proof of the growing popularity that this word has enjoyed in recent years. Coming up in more and more contexts, it has become something of a buzzword: it is frequently used but very rarely analyzed.

In his book Adrian Henriques has tried to redress this balance by undertaking a multifarious analysis of the content, the various manifestations and even the moral dilemma of the concept; he has also addressed other important problems that have emerged in connection with transparency. He placed at the centre of his investigations the specific aspects – in his own words, the physiology and the psychology – of corporate businesses, the morality and, in the context of all this, the transparency of their mode of existence and functioning.

The book has a provocative and, to some extent, baffling title. Readers are probably accustomed to works that either treat transparency as an absolute value or, contrarily, reject it, or look at it from a single perspective (for example, the aspect of environmental protection, legal compatibility or corruption). In construing the meaning of this book's title, therefore, they might get the notion that, according to the author, it is the 'truth of the corporations' that forms a legitimate limitation to transparency. However, in the Introduction the author immediately makes it clear that he is a dedicated campaigner for transparency.

In structuring the book, the author applies neither of the two basic approaches in their purest forms (i.e. presenting the subject in its entirety before dissecting and analyzing it versus building up the whole from its constituent elements). The various chapters of the book could easily be read as stand alone studies, yet the overall result, instead of forming a mosaic of disparate sections, constitutes a loosely joined, still coherent whole, originated from various roots. Such a structural arrangement invites nonlinear reading. To his credit, the author has avoided the worn out stereotyped method of beginning his treatise, in medias res, with a few intriguing cases, and then proceeding by drawing theoretical conclusions and offering normative descriptions without preceding them with a deeper analysis and reasoning. The text of the book is clearly structured: it is broken up into numerous chapters and short sub-chapters. There are many lists, bullet points and numbered questions, accompanied by an emphasis on the core issues, which verges on the didactic. It is clear that the author has targeted not only the scholarly audience, but also the interested citizen, and even the company managers who are accustomed to reading briefings and executive summaries.

³ Counsellor, Open Society Archives; Associate Professor, Budapest University of Technology and Economics, <mailto:szekelyi@ceu.hu>

The chapters that lay the theoretical foundations are both necessary and informative, although in places they also tend to be somewhat overly encyclopedic; nevertheless, they demonstrate the author's thorough familiarity with his topic. In view of the limitations set by the scope of the book, it is understandable that a few over-simplifications have shown up on the pages: a case in point could be the identification of business ethics with the ethical behavior of people working for the organization in question (20), when in fact in this particular context it would rather mean the relationship between the company along with the people representing the company on the one hand, and the outside world on the other. Elsewhere, for example, in the sub-chapter on corporate social responsibility (27–29), the author's treatment is both rigorous and emphatic, despite the brevity of the text. All things considered, the book can be used as a mini handbook – even in those areas of the corporate world, where transparency is only of marginal interest, if at all.

However, precisely because of its quasi-handbook aspiration, and also due to its multi-focal analyses, the book occasionally leaves the reader feeling shortchanged, as you discover that a number of areas and aspects have been left out of the book, which otherwise usually form part, or could form part, of the discourse on transparency. These include such limiting factors to transparency as the companies' resolve to gain a competitive edge; information and knowledge management as an important element in the company's immaterial assets; the business secret as a legal or public speech category; the relationship between freedom of information and business secret in relation to the public sector, evaluated on the basis of the public function; the impact of new information and communication technologies on power relations; the drastic shortening of the life cycle of commercial products; the operation of international financial and trade institutions (IFTI), which, instead of being founded on the basis of national law (as well culture and morals), are entitled to devise their own regulations, including those relating to transparency. All things said, the author, who has obviously not strived for an encyclopedic breadth, has managed to analyze a wide range of aspects of the corporate business world, from taxation to lobbying and from corruption to public relations.

The series of examples and case studies nicely counterpoint the theoretical sections. In the chapter on reporting, for example, the author provides an excellent list of the possible problem areas in connection with reporting obligations, complementing them with illustrative examples. The latter of the two detailed case studies discussed in a separate chapter is especially illuminating: it provides an excellent and amusing example of how companies can withhold damaging information about themselves by using the word 'transparency.' Near the end of the book, we find an analysis illustrated by numerous examples about the controversial nature of lobbying; and it is also very important that in the closing chapter the author – again, at the level of general principles – points out the close link between transparency and the issue of power relations.

The chapter on the media – a relatively short one, considering the complexity of the subject – offers a good analysis of the relations and conflicts of interests between journalists and editors on the one hand, and advertisers and influential companies on the other. However, readers may find it difficult to decide whether the media should be regarded here as a corporation or rather an agent in the service of transparency. They may also feel shortchanged on discovering that the author fails to mention the parallel existence of substantially different schools of journalism, ideologies and ethical codes.

The author makes an interesting point, one that is somewhat debatable, in suggesting that the characters of companies are very similar to the characters of individuals and, therefore, the ethical conduct of the companies could in fact be deduced from the ethical behavior of the persons who make up the companies. While we can readily accept the point that information rights have, by now, become an integral part of the catalogue of human rights, it is far from obvious that companies, too, should have 'human rights.' It is especially debatable that corporations have 'privacy' in this sense (53–54). (An alternative conceptual framework could focus on the relations between the stronger and the weaker players: between the state and its citizens, or the service provider and the customer).

Regardless of the chapters that discuss legal regulation, the author's – explicit or implicit – conviction that transparency is first and foremost an ethical issue runs through the entire book (top of 42 and elsewhere). Also, it is implicitly apparent that he works within the framework of 'global society' (see 43), which can perhaps explain why he has overlooked the social, legal and cultural differences between various countries and regions in his treatment.

Amassing an impressive volume of factual and bibliographical information, Adrian Henriques' thought-provoking book focuses not so much on transparency itself, as on an ideal society, in which corporate social responsibility and ethical behavior, honesty and sustainability (seen from both the general and the organizational perspective) could all be realized within the general – albeit rapidly changing – framework of modern capitalism. In this regard, his analysis of companies, both external and internal, is thorough; also, while he understands many components of corporate behavior, he never surrenders his critical approach and his own system of values. The book's main asset is that it studies the individual, the corporate and – if there is such a thing at all – the global values and interests in their complexity and interaction. And while it would be a delusion to believe that all these values and interests can be optimized at a global level, the book certainly helps us develop a better understanding of the complex system that has transparency – or the limits to transparency – as one of the forces of optimization.

Balkin, J., Grimmelmann, J., Katz, E., Kozlovski, N., Wagman, S. and Zarsky, T. (Eds) (2006) *Cybercrime: Digital Cops in a Networked Environment*, New York: New York University Press

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David S. Wall⁴

Much refined since their first airing at an Information Society project conference held at Yale Law School in March 2004, the contributions to this edited collection are very usefully organised by Jack Balkin et al. into five parts that each relate to new legal challenges posed by the digital environment. They comprise new scenes of crime, new forms of crime, methods of law enforcement, digital surveillance and crime prevention tools, and legal procedures.

The collection provides an interesting and insightful exploration of the digital environment in which cybercrimes take place and the conditions that affect their regulation. In so doing, it sends the reader some strong messages. The physics of the digital environment is going to require us to rethink some principles of law and especially with regard to Torts and privacy, but the big question is over how best to achieve this goal. On the one hand, software and hardware can be used with brutal efficiency as regulative tools, which makes sense because a range of protections can be built into the digital architecture. But this move can also be extremely problematic because of the ever-present potential to over-regulate - 'just in case.' On the other hand, strong law can be used as the main regulative instrument. But without sufficient thought about how it will be used then law can also be over-regulative and, thus, thwart its own mission. Getting the right level of legal and technological regulation is therefore crucial in a medium where public fears about security are often considerably out of proportion to the actual risks. Furthermore, once an acceptable balance has been achieved, then how will global crimes be policed? If it is to be by international, rather than locally configured police forces, then by using what evidential standards? The various contributors give wise consideration to these issues.

Running throughout this collection are some very real and expertly articulated concerns which boil down to the need to make sure that the digital baby should not be thrown away with the virtual bath water. To prevent this from taking place a suitable balance needs to be sought to provide online users with the security they require, but without restricting their freedom of legitimate virtual movement and infringing their privacy.

One of the book's enduring strengths is that it brings together commentators from a range of academic disciplines, professions and public and private sectors, and each has a slightly different and critical take on cybercrime. Although, such diversity is also one of its weaknesses, as the collection would have benefited from a conclusion that drew the themes together. And on the subject of limitations: to the non-US reader it is very US centred and very much oriented around the issue of privacy and freedom of expression.

⁴ Centre for Criminal Justice Studies, School of Law, University of Leeds. UK <mailto:law6dw@leeds.ac.uk>

Plus there are actually few cybercrimes mentioned in the book. Yet, most of these limitations curiously conspire to increase its longevity and are, with a degree of coincidence, or inevitability given the clumsiness of the human condition, one of the secrets of its strength. This is because we who are interested in cybercrimes are increasingly finding ourselves (certainly in the Western hemisphere) immersed in debates over mass governmental information losses and the potential havoc that they could wreak on individuals by increasing their risk of victimisation by cybercriminals.

One could legitimately ask what is the point in reviewing a book that will be two or three (real) years old, or in Moore's calculation, some eight to ten internet years, when this review will be published? But the answer in my view is simple: because this book still has something to say and will continue to speak for sometime to come. This is not a criminology book, it never claims to be, but it is a book that criminologists should read because there is much to be learned from it. It makes interesting links to theories of regulation, crime prevention and also the culture of fear (of crime) and it does what it says on the cover. It is a good, scholarly piece of work by heavyweight contributors who both individually and collectively make substantial contributions to the cybercrime debate.