

Available online at www.sciencedirect.com

ScienceDirect

www.compseconline.com/publications/prodclaw.htm

**Computer Law
&
Security Review**

Book Review

Asian Data Privacy Laws: Trade and Human Rights Perspectives, Graham Greenleaf, Oxford University Press, Oxford (2014). 579pp, ISBN 0199679665, 9780199679669, £115.

Law on data privacy has been the subject of an immense amount of scholarship over the last four decades. Indeed, the amount of literature generated by this scholarship seems to be increasing almost exponentially. The bulk of this literature focuses – implicitly if not expressly – on European and North American contexts. Yet, data privacy laws are being enacted at an ever faster rate with most of this growth in recent years occurring outside Europe, North America, and other ‘Western’ spheres. There is only a relatively small amount of scholarship dedicated to mapping this ‘non-Western’ growth. The scholar who has documented this growth most meticulously is Graham Greenleaf, professor of law at the University of New South Wales and veteran specialist in regulatory policy on information and communication technology. Greenleaf’s book *Asian Data Privacy Laws: Trade and Human Rights Perspectives* is the highpoint so far of this documentary effort. It is also a superb confirmation of his status as one of the world’s leading experts on law concerning protection of privacy and personal data.

The book provides the first comprehensive comparative treatment of the development of data privacy law across Asia. As such, it constitutes a timely addition to the predominantly Euro- and US-centric literature in the field. Adding to its value is that it is far more than a descriptive endeavour and goes much further than providing a mere legal dogmatic presentation and comparison of ‘black-letter law’ in the jurisdictions it covers; its narrative is infused with keen critique building on interdisciplinary insights. And while predominantly concerned with Asian developments, the book casts important light on the development and practice of data privacy law in other regions. Amongst the myriad issues it explores are the correlations between democracy and data privacy (e.g., to what extent is democracy a prerequisite for a fully-fledged, effective data privacy regime?), the degree to which data privacy laws are ‘legal transplants’ from the ‘Western’ sphere, and the possibility of delineating transnationally functional benchmarks for the comparative assessment of data privacy laws, particularly with respect to enforcement mechanisms. The book is thus essential reading for anyone who wants to gain a thorough understanding of the nature of data privacy law as a global phenomenon.

Greenleaf correctly notes that ‘Asia’ is a contentious, ambiguous, and often inconsistently applied term. For the purposes of his study, he pegs ‘Asia’ to ‘the countries extending from Japan

in the east to Afghanistan in the west, and from China in the north to Timor Leste in the south’ (p. 9). This region encompasses 26 jurisdictions that he divides into three sub-regions: (i) Northeast Asia comprising seven jurisdictions (the People’s Republic of China, Hong Kong Special Administrative Region (SAR), Japan, Macau SAR, South Korea, Taiwan, North Korea); (ii) South Asia comprising the eight member states of the South Asian Association for Regional Cooperation (SAARC) (Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, Sri Lanka); and (iii) Southeast Asia comprising the ten member states of the Association of Southeast Asian Nations (ASEAN) (Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam). Timor Leste, which is expected to join ASEAN in 2017, is also covered; Australia, New Zealand, Papua New Guinea, and other Pacific island states are not.

Greenleaf is interested more in the above three sub-regions than their larger ‘Asian’ dimension because, in his view, the development of data privacy laws across the region is being driven, or has the potential to be driven, to a considerable extent by sub-regional initiatives to protect human rights and promote trade, especially under the aegis of ASEAN and SAARC. At the same time, he shows that these initiatives are considerably weaker (and likely to be weaker) than the equivalent initiatives of intergovernmental organisations elsewhere – particularly the European Union (EU) and Council of Europe (CoE) – in engendering legally binding commitments to privacy and data protection at the national level. Indeed, he points out that SAARC has not yet taken any significant action in the field as yet. He notes too that, apart from the more broadly based Asia Pacific Economic Cooperation (APEC), there is still no transnational regulatory framework for the Northeast Asian sub-region equivalent to ASEAN or SAARC which is likely to give rise to data privacy standards, at least in the short term. Greenleaf downplays too the role of APEC in this context: one of the book’s findings is that APEC’s Privacy Framework, together with its Cross-Border Privacy Rules (CBPR) system, has had little real impact in shaping Asian data privacy laws. And strong question marks are placed against the ability of APEC’s CBPR system in being able to deliver strong data privacy protection for Asian consumers. In contrast, Greenleaf finds plenty of evidence of the ‘Brussels effect’ at work in many of the jurisdictions he investigates. Moreover, he argues that European norms – both in the form of the EU’s General Data Protection Regulation and the CoE’s Data Protection Convention – will very likely continue to play a significant role in shaping data privacy law in Asia. Concomitantly, Greenleaf is sceptical of arguments that the global development of data privacy law will

involve, by and large, weakening of standards for the protection of personal data.

The paucity of strong sub-regional intergovernmental institutions in Asia, combined with the extreme cultural, political, economic, and legal diversity of the above-listed 26 jurisdictions, means that the mapping and analysis of Asian data privacy laws are necessarily rooted in and circumscribed by national particulars to a much greater degree than is the case for Europe. As Greenleaf writes, '[f]rom one end of Asia to the other, there is . . . nothing comparable to the European-wide or EU-wide data privacy structures which are at the core of data privacy protection in Europe. Consequently, an Asian analysis of data privacy must take the national laws, in all their very considerable diversity, as the starting point' (p. 14). This obviously compounds the daunting nature of the task that Greenleaf has taken upon himself in writing the book.

The basic structure of the book is tripartite. Part I lays out the book's remit, describes global, regional, and sub-regional institutions and instruments affecting the development of data privacy laws in the above-listed 26 jurisdictions, and identifies standards by which to assess a country's data privacy protections. The latter endeavour is especially valuable. Greenleaf insists rightly that a key component of such assessment should be the effectiveness of a data privacy law – a view held by many others as well. But he then breaks new ground by utilising Brathwaite and Ayres' well-known theory on responsive regulation, with its hierarchy of regulatory sanctions and supports, to delineate benchmarks for assessing this effectiveness. This provides the basic framework for the cross-national comparisons further on in the book. It is a framework that, with some refinement, may usefully serve future comparative analyses of data privacy regimes whether in Asia or elsewhere.

Part II sets out, one by one, the data privacy regimes of the 26 jurisdictions. Particularly laudable is that Greenleaf places each regime in a broader historical, political, and legal context that includes surveillance practices and social attitudes to privacy in the jurisdiction concerned. Understandably, he devotes relatively large space to the longest established and most progressive regimes (those of Hong Kong SAR and South Korea) and to the geopolitical and economic 'heavyweights' of the region (China and India). But coverage of the other countries is also generous. What emerges is a fascinating, complex tapestry of regulatory norms, strategies, and experiences. While many of the data privacy regimes are relatively weak, inchoate, or nascent, Greenleaf points to numerous instances in which real protections for data privacy have been achieved, both through case law and administrative practice (see, e.g., the court decisions invoking constitutional protections of privacy and related rights in Hong Kong (p. 84), South Korea (p. 127), Indonesia (p. 379), and India (p. 409)). His presentation thus helps to debunk the idea that respect for individual civil liberties is

at odds with the putatively communitarian and pro-authoritarian preferences of Asian cultures – the so-called 'Asian values' thesis. Further, Greenleaf highlights examples of innovative regulatory norms being instituted in some of the Asian jurisdictions, in advance of European uptake (see, e.g., provisions on 'denial of service', data portability, and data breach notification in the Philippines' legislation (p. 346–347)).

Part III rounds off the book by making comparative assessments based on the material presented in Part II and the analytical framework drawn up in Part I. It attempts too to make careful predictions about the future of the regimes concerned. The basic message is that it is still too early to conclude with certainty about the long-term trajectories of Asian data privacy laws. Nonetheless, Greenleaf finishes on a cautiously optimistic note on the ability of Asian data privacy laws to make a positive contribution to the protection of privacy and related interests with respect to processing of personal data, both now and in the future.

My comments so far show a high degree of satisfaction with the book. Yet, it does have some weaknesses. While the explication of data privacy regimes in each of the 26 jurisdictions is generally excellent, for some jurisdictions I was left with little sense of *why* data privacy legislation has been enacted. This is the case for Malaysia and Vietnam. Further, the book lacks a bibliography. This surprising omission is offset a little by the inclusion of some author names in the index, but the latter does not list all authors who are referenced in the main text and footnotes. This detracts from the book's utility as a reference work. The book would also have benefitted from another round of copy-editing to weed out 'typos'. All these deficiencies, however, are minor blemishes on what is otherwise an immensely impressive work.

Most scholarship expands a particular field of knowledge in small incremental steps. Sometimes works are published that expand the field by a giant stride, but they are rare. Reading them is usually extraordinarily gratifying and memorable. I keenly remember, for instance, the great pleasure of reading David Flaherty's *Protecting Privacy in Surveillance Societies* (University of North Carolina Press, 1989) – a critical comparative analysis of the challenges facing the early data privacy regimes of the Federal Republic of Germany, France, Canada, the USA, and Sweden. Reading Greenleaf's *Asian Data Privacy Laws* has afforded a similar experience. Like Flaherty's book, it will stand as a truly classic study in its field for many years to come.

Lee A. Bygrave

Department of Private Law, University of Oslo, P.O. Box 6706,
St. Olavs plass 5, 0130 Oslo, Norway.
E-mail address: l.a.bygrave@jus.uio.no

0267-3649/\$ – see front matter
<http://dx.doi.org/10.1016/j.clsr.2016.08.002>