

champions structural reforms to fix democracy and capitalism.

Deriding the Chicago School of weak competition laws as focused only on consumer harm, Sinha argues that the monopolistic nature of technology behemoths need to be reigned in by a new age of global antitrust reform. In addition, campaign finance reforms can put an equal amount of accountability on state accumulation of power. Sinha is not the first to call for these structural reforms, nor will he be the last. More interestingly, he places them at the forefront of a technology discussion, linking the symptoms to the true underlying causes.

A fundamentally more competitive market and competitive democracy will lead to a Dewey's imagined public, wherein individual choice of information will inevitably lead to a cooperative, informed public: a sum of its parts that overshadows its bad apples. 'Perhaps Dewey's ideal of the public's social existence, and the ability to form associations, is where we need to look. The way a democracy can work is if the public can organize itself in a way that it can use the information that it drew from its social environment to inform its collective action. This would require a competitive market where the public can choose its sources of information and recognize privately owned platforms as public forums and have meaningful mechanisms to engage and associate with', he writes.

Right now, the pie remains mostly bad apples because of the growing authoritarian powers that be, in Sinha's eyes. Information arenas of passive thinking, echo chambers, political micro-targeting, polarizing speech, and the like overwhelm the market. They have become the features caused by and causing the democratic backsliding of the recent moment.

While Sinha's ability to understand the citizen's precarious positioning between corporate and state influence allows for an even-handed prescription, if a reader fundamentally disagrees with Dewey's optimism and freedom in choice, they might find the remedy shallow even if the diagnosis is clear. Sinha does dissect the beliefs of Dewey's foil, Walter Lippman, who saw an informed citizenry as an unattainable goal. But this Dewey-Lippman dichotomy does little to illuminate the realistic manipulations that even an open marketplace of information platforms would still grapple with. If any platform were built with the most addictive features of a casino, would the citizen's choice in platforms be any different? Would enough people choose platforms that prioritize the aspects of deliberative democracy that Sinha illuminates? Does one as a reader have

similar faith and trust in an individual's desire and strength for an informative public?

The merits of such a campaign remain debatable. Nonetheless, Sinha reminds us, it is a goal worth fighting for, attainable or not.

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**PRIVACY 3.0: Unlocking Our Data-Driven Future**  
by Rahul Matthan. HarperCollins, Delhi, 2018.

INDIA'S large state apparatus has always been Janus-faced: holding out the promise of greater public good often at profound human cost. Our newer digital infrastructures repeat this motif: harnessing our data to deliver services, but raising the price that we pay – the cost of our privacy. How might the law help navigate this tension?

In this context, Rahul Matthan's provocatively titled book, *Privacy 3.0: Unlocking Our Data-Driven Future*, sets out on an ambitious project: to trace the evolution of privacy in society, connect it to recent Indian developments and provide an alternative framework for privacy regulation. Ultimately, the central thesis of his book is that a certain inevitable pattern emerges in the way that society reacts to new technologies: first rejecting them because of privacy concerns, but eventually accepting them to harness their benefits.

This optimistic belief in the synthesis that technology can create for society from the dialectic between surveillance and privacy, is in many ways aligned with Matthan's long career as a prominent technology lawyer in India. He co-founded Trilegal (a leading Indian law firm) in 2000, and headed their technology, media and telecommunications practice until March 2020. He advised technology firms throughout his career while also keeping up a healthy engagement with policymaking on various aspects of technology. This book is therefore deeply personal: part memoir, part policy proposal and partly an assertion of Matthan's views on privacy given his experience. It is written engagingly with a pacy narrative style that can reach a cross section of non-specialist readers.

Privacy 3.0 is structured in three parts – 'Privacy 1.0' paints the evolution of privacy in broad strokes from the times of early humans to the 20th century; 'Privacy 2.0' begins the more serious intellectual engagement with the reader taking us through the expansion of the legal right to privacy with a particular focus on India. Here, Matthan deftly weaves his own role into the narrative, charting the behind-the-scenes race to create a

privacy legislation for India between 2010 and 2014; 'Privacy 3.0' sets out Matthan's proposals for an alternative framework for data protection regulation.

If Matthan's own story is mingled with the narrative arc of this book, the other protagonist pervading its pages is the Aadhaar project. Many of the motivations for writing this book are drawn from the Aadhaar architecture which forced India to confront the question of whether privacy is a fundamental right guaranteed by our Constitution. The book's prologue frames its relevance powerfully against the Aadhaar debate, but this framing remains unfulfilled: the book does not directly lay out a stance on the Aadhaar project's privacy features.

No doubt this was because the Supreme Court's judgment on the constitutionality of Aadhaar had not been delivered when the book was released in July 2018. Matthan's view will need to be complemented by other parallel stories of bureaucrats, technologists and activists that are beginning to emerge, such as Reetika Khera's edited volume, *Dissent on Aadhaar* and N.S. Ramnath and Charles Assisi's *The Aadhaar Effect*. The result in this book however, is that the long, unresolved shadow of Aadhaar extends across the book after its bombastic prologue, leaving the reader yearning for more: an unexpected homage to our ephemeral privacy rights.

The strongest parts of this book are those that draw out the legal history of privacy, as the transition from Matthan's construct of 'Privacy 1.0' to 'Privacy 2.0' takes place. Before this, despite the striking imagery (most notably of a pair of zebras in the Masai Mara), the early chapters exhibit an unnerving oversimplification of the development of pre-modern societies and privacy. Privacy is cast as non-existent in hunter-gatherer societies based on generalizations about the human development of certain tribes and broad assertions about social development in all early societies. For instance, the book asserts that the concept of a 'self' did not exist in early societies and it was created (along with the need for privacy) by the invention of walls.

Can such generalizations be made across all pre-modern societies? Are they rooted in political theory, history, philosophy, psychology or all of these disciplines? This heavy-handed approach is discarded as the book proceeds into the more modern history of privacy in 17th-20th century Britain and the United States. This story is recounted through the personal lives of key figures in the evolution of privacy law including Queen Victoria and Prince Albert in Britain, and Samuel Warren and Louis Brandeis who co-authored one of the

most influential legal articles in privacy jurisprudence in 1890 – 'The Right to Privacy' – in the US to highlight the human sides of many legal milestones. For instance, Matthan draws on a little-known fact that Samuel Warren had a sibling who was homosexual. This was particularly sensitive in 19th century America which was openly hostile to homosexuality, throwing new light on Warren's motivations for writing this article.

The most compelling part of the book relates to constitutional choices relating to privacy rights made by members of the Constituent Assembly of India in the 1940s. The impact of these choices are traced through the ages until, six decades later in 2017, a 9-judge bench of the Supreme Court pronounced that privacy is a right guaranteed by the Indian Constitution. Matthan's research into the role of various members of the Constituent Assembly, B.N. Rau in particular, are a delight to read. They reveal eerily familiar trade-offs that policymakers continue to confront when considering how (and how *much*) to protect individuals' privacy against state imperatives, including the trump card of national security.

Finally, Matthan sets out his Accountability Model for data protection regulation. He seeks to move to a more permissive approach for firms using personal information, focusing on 'remediation rather than on punishment.' This view can seem disconnected or overindulgent given the growing global recognition of the enormous scale on which technology failures can harm individuals as well as political, social and welfare systems. By placing the onus on a class of 'data auditor' intermediaries to keep firms honest, Matthan proposes abandoning the existing, ineffective approach of user consent-led regimes. The focus on accountability of providers is welcome, although the framing belies the author's forgiveness of data-driven systems making 'small algorithmic mistakes' that create 'inadvertent errors.'

Optimism and advocacy for technology-friendly regulation emerges as a clear theme from the book; although privacy is cast in the title role, it appears that technology is the real star. Some concerns would arise for privacy advocates in the 'technology versus privacy' framing; indeed, many (including this reviewer) see privacy as an enduring value like others in society such as fairness, accountability and security which technology can be built to accommodate to varying degrees, rather than as a zero-sum game.

Overall, Matthan has written an edifying, readable book which blazes a trail for more accessible books on Indian law to follow. Popular science, popular eco-

nomics and even popular history have created pathways into disciplines that are often inaccessible. With Privacy 3.0, Matthan strikes out to create a niche for ‘popular law’ writing in India – on a topic as complex as privacy – which will continue to raise byzantine conundrums for regulation in the years ahead. That is no mean feat.

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**DOES INDIA NEGOTIATE?** by Karthik Nachiappan.  
Oxford University Press, Delhi, 2019.

FOR years we have been battling to understand how Indian officials negotiate abroad. So far, there has been little more than inferential and anecdotal analysis. There have been suggestions that Indian negotiators reflect cultural and religious traits, based on the Hindu caste hierarchy or the strategic principles of the *Arthashastra*. Others have pointed at ideological drivers, based on India’s post-colonial, anti-imperialist and non-aligned rhetoric. In Stephen Cohen’s seminal book, India is described as a perpetual naysayer, a country that ‘can’t say yes.’ Many retired officials in the West, in turn, have described India’s negotiation style as obstinate, defensive or even obstructionist.

But the proof is in the pudding – and in scholarship that means evidence. Karthik Nachiappan’s book is a formidable feast of empirics based on four in-depth case studies. He helps us understand the ‘logic’ of India’s multilateral behaviour, which he describes as ‘sober, rational, driven by interests and institutional capacity’ (p. 10, 191). India may not be a proactive rule *maker*, but it is also not a passive rule *taker*. Indeed, in some cases it has been a rule *breaker*, but in most instances, the book argues, India’s dynamic negotiation style presents the country as a rule *shaper*.

He forwards that Indian officials negotiate based on flexible interests that adapt, varying institutional capacity, and different degrees of influence from domestic interest groups. His four case studies are short but specific and deeply researched, based on multi-lateral archives, interviews and other primary sources, reflecting the value of historical and case study methodology to understand the many undiscovered logics of Indian foreign policy.

On the WHO’s Framework Convention on Tobacco Control (FCTC, 2003), he defines India’s negotiation approach as ‘pointed and pragmatic’ based on a ‘fortuitous partnership’ (p. 37) between the government and domestic lobbies, leading to simultaneous

changes in domestic tobacco control legislation (COTPA). On the UN’s Framework Convention on Climate Change (FCCC, 1992), he describes the political rationale of India’s ‘defensive strategy’ (p. 54), which helped to reframe negotiations to focus on equity and financial assistance for developing countries.

On the Comprehensive Nuclear Test Ban Treaty (CTBT, 1996), India ‘strove to negotiate a tough CTBT that placed symmetric expectations on all [Conference on Disarmament] member states’ (p. 99), and its position only hardened *after* the indefinite extension of the Non-Proliferation Treaty. Finally, on the World Trade Organization’s Uruguay Round (1993), India’s negotiation was ‘tough but pragmatic and rational’ based on a ‘practical, yet sober, approach’ (p. 143).

Overall, Nachiappan’s superb book throws light on four different dimensions in India’s negotiation processes that deserve further research. First, coordination issues: the case studies show how the interests and organizational cultures of different ministries have at times either aligned or clashed. For example, on the FCC, the ministries of External Affairs (MEA) and Environment and Forests had different mandates abroad, which were eventually harmonized. As international negotiations become increasingly complex, for example on data governance, artificial intelligence or the outer space, it is unlikely that we will see the MEA remaining in the lead as it used to.

Second, the role of external expertise in shaping the government’s interests: on the FCTC, for example, evidence based research from civil society experts helped negotiators internalize that the tobacco industry benefits were outweighed by long-term health costs of tobacco consumption. Similarly, in the case of the FCC, think tanks like TERI and the Centre for Science and Environment played a determinant role in shifting India’s initial ‘defensive position’ to a more informed focus on ‘differentiated responsibilities’. On trade, the book illustrates the influential role of the Federation of Indian Chambers of Commerce and Industry (FICCI) or the National Association of Software and Services Companies (NASSCOM) and other organizations as sources of technical expertise, rather than just political lobbying. With the Indian Foreign Service and the overall bureaucracy more constrained than ever, a variety of domain specialists will have to step in to help bridge new knowledge gaps and support India’s negotiation stance.

Third, the case studies also show the crucial role of political leadership of Prime Ministers, whether Vajpayee’s personal interest in regulating tobacco use or Narasimha Rao’s determination to join the Agree-