

Philosophical Foundations of Privacy

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Foreword

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Much of the content of this report is taken from previously published articles, which are the outputs of this project. These are articles published in *Bioethics* and *Handbook in Research Ethics*. Please see the list in the Output page for details.

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Abstract

Privacy is an important issue that cuts across all sections of society, especially during this time and age when technologies have developed in such a way that they are ubiquitous. This report investigates the nature of privacy. After reviewing a number of salient literature in the field, it is found that privacy is best defended and justified through a *pragmatic* conception, where privacy is viewed as a key factor, an instrument, in bringing about democratic and just society, and not as something issuing from individual rights as previously assumed. The argument presented here hinges on an analysis of the individual person as a construction and as a conventional entity, which is different from the standard conception that takes the metaphysical status of the individual to be a given.

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Preface

Privacy in the World Today

Our societies, in the West and increasingly in the developing countries, are becoming saturated with technology. Let us imagine a day in a life of an ordinary person in such a society. He gets up from bed, and if he is a middle class worker in Bangkok his bedroom will almost certainly be air-conditioned. Then he might log on his computer, which is always connected with the internet through broadband network to check up morning news and his emails. Then he drives from his gated community from the outskirts of the city to work. He drives past the security post in front of his community, and his car is being observed and recorded through video surveillance in his community. Then he drives to work, stopping for gas. He uses his credit card to pay for it, and perhaps he does not know that his credit card number was submitted and recorded in the database of the bank in order to find out if he has had any bad credit records. Then when he entered his office, his entrance was recorded again by another system of video surveillance. He might enter his card into the employee system, recording the time of his arrival. He might even have to enter a set of numbers in order to enter the gate of his office.

Once he got to his room, he turned on his office computer again. There is a chance that his computer is being wired with the central server that records what kind of information passes through his computer; which websites he was watching; what keystrokes have been entered through his keyboard. He might buy something on the Internet, entering his credit card into the website, trusting that the seller does not abuse his number. Since he has bought something from this website before, the website has installed a cookie on his machine so that when he comes back the website knows his identity and his past purchase records. When he went back home, he orders a pizza for his family from the phone. But he is surprised to find out that once he gave the operator his phone number, she knew his name, his home address, and his

pizza preferences. He wonders whether the pizza company knows more about himself than what was told to him during the phone conversation.

Since he is a Thai citizen, he is carrying the Thai national ID card. The card is equipped with a computer chip which contains information about his citizen ID number, his house registration and perhaps many other kinds of information. There is a concern that his citizen ID card might conceivably carry far more information than he knows about, information that could be a ground for a discrimination against those who happen to find themselves on the wrong side. For example, the ID card could possibly carry his health information, and as soon as he applies for a new insurance policy, the insurance company might have a link with the national database server and find out information about him that could put him in an unfavorable situation. Not only does his ID card contain digital information about himself, his passport is an “e-passport,” meaning it also contains a chip, but one that is able to be read from a distance by a machine. So it is possible that wherever he goes, he always carries with himself all kinds of information about himself, broadcast everywhere for all who have the means to read it.

All these scenarios are not in some futuristic novel. It is already happening here and now. In Thailand, the use of national ID card with a computer chip, called smart ID card, is the norm, and practically every Thai citizen has a card like this in his or her pocket. Furthermore, Thailand also has been issuing the electronic passport for many years now. These technological advances have penetrated even the developing country, and Thailand is certainly not alone. In its attempt to join in the world community and to engage with it in terms of commerce, information flow and many other things, Thailand has adopted many, if not all, the technological advances that have found themselves first in the developed economies. What is happening in Thailand is also happening elsewhere in the developing world. As countries scramble to integrate themselves into the globalized arena of trade, commerce and information flow, the technologies that have arisen first in the developed countries eventually find themselves being used in other parts of the world too.

This has created a number of complicated problems. Concerns about

the social, cultural and ethical implications of these technologies have been around in the West for some time. These concerns naturally arise from the penetration and the saturation of technology into the people's daily lives. The scenario of a person whose personal data are being manipulated, systematized, categorized, and retrieved from huge population databases is commonplace in the West, but in the developing world this has just arisen. As the traditions and belief systems of the people in the developing world are not the same as those in the West, the concerns about ethical and social impacts are definitely not exactly identical. This is because in the developing world there is the added dimension where the technologies in question are not "home grown," so to speak. There are several problems with this. First of all, when the technology is not developed from within the cultural context where it is used, there is then the feeling that the technology is "alien" to the people who use it. When the technology is introduced into a non-Western country, it is usually transferred "wholesale" to the developing country without any clear understanding how the technology would fit in the cultural context or the value system of the country in question. This has created rather well known problems, such as the people's alienated attitude toward technology, or their uncritical acceptance of technology driven by desire for immediate self gratification.

Secondly, in many cases the technology that is introduced seems to be only the prerogative of those who can afford it, and in many developing countries, the middle class and the market system is not well developed. Thus the people who can afford and who enjoy the technology are usually those who are in the position of power, or those who are close to those in power so they can enjoy the benefits the power could bring. In these cases, implications that follow the use of the technology, such as privacy, take a back seat to the sheer fact that the technology is being used. Thus there are many dimensions of inequality here. On the one hand, there is an inequality, or a "divide" between those in the developing country who are in the position of power and those who are not. On the other hand, the richer and more powerful groups in the developing world are contrasted from their counterparts in the West because they the latter group are more numerous relative to the general population

whereas the rich and powerful in the developing country are much fewer in number. This results in the ethical issues that concern those in the West, such as privacy and personal data protection, are not perceived to be as serious. The issue seems to be rather the simple fact that the technology is being used at all and is being enjoyed by the powerful at the expense of the less fortunate.

Nonetheless, as the middle class continues to grow in these developing countries, the demand for the technology has skyrocketed. The demand for mobile phones in Thailand, for example, has risen dramatically in the last few years, and as of this moment the level of penetration of the mobile phone in Thailand stands at close to 50 percent. Hence, the ethical issue that have been the concerns of those in the West are increasingly being felt in the developing world too. This is compounded by the uses of advanced technology on the entire population, as in the case of the Thai citizen ID card. However, even if the ethical issues and other problems surrounding the use of technology might be familiar, the exact nature of the problems and how the problems and the ethical concerns are perceived and understood can be markedly different.

So this is the motivation for this book. This is, basically speaking, a book about privacy and its philosophical justifications and theories according to the perspective of a non-Western culture, which here is represented mostly by Thai culture and Buddhism. There are already many excellent books and research articles on privacy. There are also even quite a lot of directly philosophical works on the issue. However, most distinguishes this book from others, I believe, is that the book treats privacy from a perspective of a non-Western culture and belief system. There are a number of advantages in this, both for the readers in the West and outside. Firstly, as the world is expanding rapidly and as globalization is becoming all pervasive, looking how advanced technology and indigenous cultures interact is extremely interesting because we can see how the culture adapts to the new technology and how technology itself is a function of its cultural context. Furthermore, ethical problems and how they are conceived and solved might not be the same in all cultures. This has an advantage because the West, for example, could learn from fresh insights brought into the pool of the global intellectual resources by the intellectual

traditions of the non-West. Thirdly, the people in the non-West, who are relative newcomers in dealing with advanced technology, would benefit from the book, I believe, through an analysis and a system of justification of privacy which takes into consideration their own intellectual tradition, which could reduce the problem of alienation alluded to earlier. Even though the book will rely rather extensively on the resources of Thai culture and Buddhism, this does not mean that those in other cultures in the developing world could not benefit, because they can readily adapt the insights here into their own cases.

*

The book, then, is divided into five chapters. Chapter One deals with the philosophical foundations of privacy. Here the concept “privacy” will be analyzed and the various theories will be laid out to provide a background for the more elaborate and original treatment later on in the book. Privacy is a very difficult concept to pin down and to give a precise definition. Nonetheless, the chapter will review how the major theories have defined the concept. The analysis of the concept will also lead to a discussion of privacy in relation with other important philosophical topics, such as autonomy (How is privacy related to individual autonomy?), privacy and justice (How could enforcement of privacy contribute to justice?), and the metaphysical problem of privacy and the individual (How is privacy possible under the metaphysical system which does not allow a full status of the individual?). The last question in particular is important because many religious and intellectual traditions of the East presuppose this view of the individual as a construct, as something that does not exist on its own as a full metaphysical entity. This very interesting topic, among the others, will be the subject matter of the second chapter.

Chapter Two then discusses the cultural implications of privacy. As I have previously mentioned, the threat to privacy does not restrict itself only to the West, but as the technology is spreading to almost every corner of the globe, so is the threat. What is interesting is how the cultures of the world react to the issue. The chapter will then review some of the salient research on cultural responses to privacy. How does the Japanese culture, for example, deal with the issue of privacy? And what could the West learn from the Japanese in their

responses to the technologies that could imperil their privacy, and what are their attitudes toward the problem? In a nutshell, then, the chapter will contain my philosophical reflections on this topic.

Philosophical reflections, especially on how the developing world respond to the privacy issue, will then be taken up and elaborated in the next chapter. More specifically, the chapter will outline a Buddhist theory of privacy. Thus this will be the key chapter in the book. What is highly intriguing in the attempt to ground a theory of privacy on a prominent intellectual tradition of the East such as Buddhism is that Buddhism does not recognize the full ontological status of the individual. That is, for Buddhism, the status of the individual is that of a construction only. There is, metaphysically speaking, no such thing as an individual self. Thus there is the question of how a theory that is based on the idea that the self is non-existent could itself ground such a practical concept as privacy. Answering this question will form the overall content of the chapter. The main idea that I am proposing in the chapter, and indeed in the book, is that privacy should be grounded, not on the metaphysical presupposition that the individual human being or the individual self fully exists as a subsistent metaphysical entity, but on the idea that, even though the individual is not a fully subsisting metaphysical entity (that is, the individual self is dependent on other factors for their subsisting as a functioning self), their privacy should still be maintained because doing so will promote a set of goals and values that are desirable and are conducive to certain ends. I call this a *pragmatic* conception of privacy. This idea, I believe, is relevant not only in the context of a Buddhist culture, but also elsewhere in Asia, where the dominant cultural context is that the individual does not exist as a fully subsistent metaphysical entity.

The Buddhist viewpoint on privacy will then form a basis for further reflections on the emerging concept of 'group privacy.' Traditionally privacy is thought to belong only to individuals. It has always seemed that only individuals do possess the quality of being private, and the protection of sensitive information has almost always centered around the individual. However, as the data mining technologies have become more sophisticated, it is

now possible to collect information that belongs to groups of individuals on top of that belonging to each individual alone. It has now become possible, for example, to extract genetic information of a group of population who are close to one another genetically for a variety of purposes. Thus Chapter Four will deal with this issue of group privacy. I will argue that the traditional way in which privacy is analyzed and justified does not seem to do enough justice to the emerging phenomenon of group privacy and the need to protect it as well as how the need is justified. The questions are: What exact is group privacy? How is the concept going to be analyzed? Is there really such a thing, or is it just a collective way of characterizing the privacy of individuals considered together? The Buddhist viewpoint outlined in the previous chapter will figure prominently in my critique of the mainstream theories. Basically speaking, since Buddhism does not put emphasis on the metaphysical status of an individual self, then it becomes easier conceptually to delineate group privacy as a means toward a system of justification of the concept. After this Chapter Five will conclude the book.

Chapter One

Philosophical Foundations of Privacy

Introduction

Privacy is a concept that has received a rather scant attention from philosophers. Apart from a relatively small number of works, there are few philosophical analyses of the concept that deals with the topic in a substantial way. This is quite surprising, since privacy is an important concept and does play an important role in our lives. Compared to other topics in social philosophy such as equality, justice or freedom, privacy seems a minor issue indeed. Moreover, a number of philosophers have argued that philosophical discussions about privacy are reducible to other topics which are more fundamental, such as autonomy or integrity. In fact the debate whether philosophical discussion on the topic is in fact reducible is itself a thriving industry, as we will see in the course of this chapter.

What we will do in this chapter is then to outline what philosophers have said about privacy, and what the issues are that surround philosophical treatment of the subject. Thus, what we are doing is to outline a conceptual map of privacy in order to find out what the terrains are and what connections there are to other topics. In any case, before any attempt is made to outline the conceptual map, perhaps the first thing that we should be discussing is whether the concept of privacy does merit systematic philosophical investigations on its own, and whether the concept is reducible to other, perhaps more fundamental concepts. In an important anthology of philosophical analyses on the topic, Ferdinand Schoeman divides the debate into two main camps¹. What he terms “the coherence thesis” states that there are underlying threads that actually

1 Ferdinand Schoemann, *Philosophical Dimensions of Privacy: An Anthology* (Cambridge University Press, 1984), p. 5.

connect talks and discourses about privacy together, and these threads are objective in the sense that they point to some really existing underlying issue. On the other hand, Schoemann calls the contrary position, the one denying that there are such underlying, objective threads, “the distinctiveness thesis.” The first position holds, in addition, that talks about privacy, since they are coherent with the other issues, are in fact so reducible, while the distinctiveness position holds that discussions about privacy are not reducible.

This is not surprising at all, since privacy is a very complicated concept. Though many have attempted to provide a definition, no clear consensus has actually emerged as to the official definition of privacy such that it is universally agreed. Thus, it is conceivable that when privacy is looked at through one perspective, then it appears to be reducible to other concepts, such as autonomy or integrity. On the other hand, when viewed differently, the concept appears to be autonomous. Judith Jarvis Thomson, for example, argues that there is no such thing as the right to privacy, since anything that is thought to be an instance of such a right could be explicated in terms of other concepts such as those related to the concepts of property or the person. For example, cutting someone’s hair while she is asleep does not harm her, but her right is violated nonetheless, and that is the right over the person according to Thomson. In surreptitiously cutting her hair, her privacy is violated, so even though the act of cutting the hair does not cause bodily pain it is nonetheless a violation to her body. By thus violating her privacy, it is in fact her right over her own body that is violated. The basic idea, then, is that any putative instances of violation of the right to privacy turn out to be, on closer analysis, to be violation of the right to person or the property.² On the other hand, Thomas Scanlon argues that there is indeed a common ground to the right of privacy, and that is the condition of “being able to be free from certain kinds of intrusions.”³ And it is the intrusions of our bodies, behaviors and interactions with others are some of the clear examples of intrusions that violate the norm of

2 Judith Jarvis Thomson, “The Right to Privacy,” *Philosophy & Public Affairs* 4.4(1975): 295-314, pp. 305-306.

3 Thomas Scanlon, “Thomson on Privacy,” *Philosophy & Public Affairs* 4.4(1975): 315-322, p. 315.

privacy.⁴ Thus Scanlon would presumably argue that in cutting the hair of a person, the norm of privacy is violated in such a way that does not reduce to mere violation of the bodily integrity since the situation where one is free from intrusions such as cutting hair could be regarded as its own distinct category which is not one and the same as those of bodily harm or bodily integrity. In maintaining the privacy of one's own body, one has a certain amount of control over how one's body is perceived and is respected by others, and for Scanlon this constitutes the person's right to privacy in a way that does not reduce to the right to bodily integrity alone.

Even though privacy is closely related to other concepts, perhaps it would be beneficial if we maintained that privacy is a distinct concept and that talks about privacy were not reducible to other topics. One benefit of doing this would be a clear idea of what one is actually doing when one discusses privacy in a variety of settings. When one inserts a smart card into a machine, or when one carries an electronic passport equipped with an RFID chip, one's privacy would be threatened if the information related to the individual who carries the passport or who owns the card is used in a way that is not consented to by the individual in question. This could be reduced to some kind of bodily integrity, but in order for us to be able to focus our attention solely to the problem of information and of how such information is used, then a distinct concept of privacy seems to be in order. Furthermore, in having control over how one's own body can be viewed by others, an added dimension is available if the focus is on the fact that, even though no harm is done in case of violation of bodily integrity, for example in the case where somebody is watching a person taking a shower where the latter person knows full well that she is being watched, the latter's privacy is compromised. That she willingly opens up her private parts to her admirer does not necessarily mean her privacy is not lost. On the contrary that is precisely the point. However, no bodily harm is done. So perhaps there is a case to be made to distinguish bodily integrity or harm to the body or the right to the body from privacy.

4 Thomas Scanlon, "Thomson on Privacy, p. 315.

In Roman times, the conception of “being private” had more to do with one’s “private” domain where one is the master of one’s own house rather than the sense we have today where the emphasis is more on one’s private thoughts. The word *privacy* in English comes from Latin *privatus* which means “not in public life.” Another root of the word is *privus*, meaning “single, or alone.” Hence the etymological root of the word signifies the importance of the distinction between what is private and what is public. Moreover, the term also connotes the sense of being alone or single; that is, there is a line drawn between what one is for himself or herself and the relation one has with others. Thus, the conception of the Romans and presumably other ancients was geared more toward the sense of “private” in “private property.” Roman law and custom was such that the master could do much more in his household than it is possible today. For example, he could sell off his slaves or children, or do anything he pleases with them with relative impunity. The reason was that he was the “master” within his private domain where the reach of the law was valid only for those who were free only; that is, those who did not belong to any household or who were masters in their households themselves. Thus, there was a clear line between what is private and what is public, namely what is private belongs to an individual’s property, lying within his disposal, where the public was where those individuals who had their private domains and properties interacted.

This sense of “private” in the sense of “private property” and “private domain” still survives today with the legal recognition of the individuals’ right to property. Furthermore, it also survives in discourse about the public/private distinction when it comes to attitudes toward women and domestic workers in the household, where the law does not seem to reach them as they do to people in public arenas [reference]. However, the advent of modernity added another very important dimension to the sense. Instead of the private being understood to mean only the concrete private domain or property, the term became also understood to mean one’s private “thoughts” and “ideas.” This does not mean that the ancients did not have their private thoughts and ideas, but that the modern world became markedly different from the ancient

one in that much more emphasis was paid to these private thoughts and ideas, in other words one's "subjectivities" which the moderns believed to be the underpinning of epistemology and hence metaphysics. According to Descartes, the foundation of all true knowledge lies within an individual's sense of subjectivity of himself as a thinking, conscious being.

According to Tamás,⁵ privacy was once the privilege of the properties class, who enjoyed the "private" atmosphere of their homes. Vagabonds, refugees and slaves did not have any privacy because they did not own any property. However, as the conception became more subjectivized, the privacy of the individual came to mean increasingly that of the thoughts, desires and ideas of the individual herself. In one sense the thoughts and desires still belonged to the individual, in the same sense, generally speaking, as the land and other material properties belonged to the individual, but since the thoughts and ideas were not material and could not be quantified, the change was a significant one in that it underlined the metaphysical shift that took place as a result of modernity, namely the shift toward subjectivity in the Cartesian sense. What this relates to our preoccupation with privacy here is that, the modern conception of the topic, being more subjectivized, points to more pronounced emphasis on information as what is being thought about and what can be collected in the mind of the subject or the individual. It is not enough just to defend privacy through a system of rights that recognize people's private, concrete properties, their thoughts, feelings and sensibilities needed to be accounted for also.

This historical shift in the attitude toward privacy also points toward another important topic in the discussion on the general analysis of the concept. It is generally acknowledged that societies in the past did not pay as much attention to the protection of privacy as we do in contemporary times. In Thailand, for example, people lived in large households with little individual, private space; it was not uncommon at all for families to sleep together in one big bedroom and for children to be able sometimes to witness their parent's

5 G. M. Tamás, "From Subjectivity to Privacy and Back Again" *Social Research* 69(1): 201-221.

love making if the latter were not careful. There was also a closeness and a sense of trust among the family members and those who lived within close proximities toward one another. People shared their thoughts and feelings with one another seemingly more readily in this kind of social setting than in today's world. Furthermore, since the system of government was not as sophisticated and technology-laden as it is today, there was little effort or possibility by the authorities to snoop upon people's private lives, unless it was a matter of 'spying' on people using techniques such as eavesdropping and so on. There was also a possibility of the practice of neighbors informing the authorities of their neighbor's suspicious activities. However, such activities did not, of course, achieve the same level of comprehensiveness and depth enjoyed by today's authorities who have a large variety of technological tools at their disposal to enter upon people's private lives. Hence it seems fair to say that privacy as we know it today did not quite exist in past or in traditional societies.

However, this viewpoint is disputed in a number of research works dealing with anthropological investigations of the concept. According to Murphy, privacy was universally recognized in all societies as a necessary tool whereby people earn trust toward one another, trust which is essential in establishing communication.⁶ It is essential in establishing a sense of the self and in social relationships. Murphy also holds that privacy is necessary in maintaining relationships even among those who are close to one another, as a means of keeping certain distance in case there might be misunderstandings or ambiguities in the relationship. However, one might need to consider how close this conception of privacy is to what we are interested in the book, which is how the information pertaining to an individual might be used by the authorities or how one could protect the integrity of one's own sense of self. It might be true that all societies exhibit the traits outlined by Murphy. That is, it might well be true that all human relationships involve some kind of distancing from even the most intimate relationship to a certain degree. However, there is a difference between "privacy" in the sense of social distance, and the same in the

6 Ferdinand Schoemann, "Privacy: Philosophical Dimensions of the Literature," in Ferdinand Schoemann, *Philosophical Dimensions of Privacy: An Anthology*, p. 9. See also Robert F. Murphy, "Social Distance and the Veil," *op. cit.*, pp. 34-55.

sense of maintaining some kind of control over one's own information pertaining to oneself so that the authorities did not have the free hand to do anything they please with it. It is certainly possible for there to be the first kind of privacy without the second kind (say, in a fully totalitarian society), but if this is the case, then we still need an account of analysis and justification of privacy that does justice to the second kind and to be able to criticize that kind of society. To say that privacy has always existed could be taken to imply that there is no need to defend and justify privacy, because it is there all along.

Furthermore, Westin argues that, as an empirical matter, privacy is also universal in all societies. Practices such as covering of genitals, having sexual intercourse in a hidden place, are considered private and shows that privacy is practiced in all cultures. That is true, but still the account leaves open the question whether the privacy considered here is the same kind of thing with the concept we are interested in in this book. Practices such as having private conversations among trusted friends who do not want to share the information to outside circles may well be universal, but perhaps what concerns most people about their potential loss of privacy in today's world is that their private lives, the lives they can enjoy comfortably without having to subject to the glare of public attention, or attention by the authorities, is not strictly speaking on the same level as the private conversation. It is true that the state can use force to pry open the information being exchanged in private conversations, or to eavesdrop on them, which may suggest that privacy is already there even though the state or the authorities (such as the village elders and so on) are involved. Nonetheless, it seems to me that to maintain that privacy also covers these behaviors belonging to human's social nature may miss the more important point, which is the protection of privacy when it comes to the contemporary state utilizing the most up-to-date and sophisticated mechanisms to pry open our private lives. Hence, while it may well be true that all societies do enjoy some degree of privacy, this does not mean, and should not be taken to imply, that privacy is a thoroughly universal concept and practice. Even though a society does enjoy all kinds of traditional privacy, it is conceivable that these practices could continue unabated while the privacy issues arising from the

“Big Brother” snooping in on practically everybody in the kingdom is practically gone. If this scenario is conceivable, then we can conclude perhaps at this stage that the privacy discussed in Westin is not one and same as the privacy that is being threatened in today's globalized and technologized world.

Definitions of Privacy

It is natural for a complicated concept such as privacy has a large variety of definitions. The discussion above, where the differences in how privacy is understood is mentioned, adumbrates how complicated the concept really is. On the one hand, scholars such as Westin and Murphy believe that the same concept applies in the case of a primitive tribe who maintains some distance in their communication among their member, as it is in the case of privacy of, say, a group of individuals who have their genetic profiles stored and manipulated electronically in a population database. However, I have tried to point out that doing so might stretch the extension of the concept too far to do any useful work.

In this section we will review a number of definitions of privacy in the literature. The definitions we got from the discussion above refer to the conceptual connection the concept has, according Murphy and Westin, to concepts such as social distancing, trust and the need for maintaining a level of decency according to the norms of the community. However, if we agree that there is more to the modern conception of privacy which is effective in helping us fully understand the situation nowadays, this conception needs to be supplemented. In any case, the question is: What are we protecting when we claim that we need to be protecting our privacy against unwanted intrusions? It seems that we are protecting access to our own lives in terms of our information pertaining to our identity, or our inner sphere of life where we do not want outsiders to know them or to make them publicly available. According to Schoemann, the various proposals of definition of the term start first with the claim that privacy is a claim, an entitlement, or a right to determine what

information one should allow others to have access to.⁷ However, Schoemann is right in arguing that this definition begs the question of what is morally significant with privacy. If privacy as the right to control information intimately related to oneself needs to be protected, then there is something morally significant about it, and it should be the task of the theory of privacy to spell this out.

In fact providing definitions of privacy appears to be a thriving academic industry. In a well known article, Fried writes: "It is my thesis that privacy is not just one possible means among others to insure some other value, but that it is necessarily related to ends and relations of the most fundamental sort: respect, love, friendship and trust. Privacy is not merely a good technique for furthering these fundamental relations; rather without privacy they are simply inconceivable."⁸ In roughly the same vein, Parent states: "Privacy is the condition of not having undocumented personal knowledge about one possessed by others. A person's privacy is diminished exactly to the degree that others possess this kind of knowledge about him,"⁹ where personal information "consists of facts which most persons in a given society choose not to reveal about themselves (except to close friends, family, . . .) or of facts about which a particular individual is acutely sensitive and which he therefore does not choose to reveal about himself, even though most people don't care if these same facts are widely known about themselves."¹⁰

Furthermore, some claim that privacy means having control of access by others to one's information about oneself. Schoemann again objects that this definition begs counterexamples in a situation where one has lost all control one has over one's own private information, but still one does not seem to have privacy. A man naked alone in a deserted island has lost control over who has access to the information about his body, but we would think that he still has

7 Ferdinand D. Schomann, "Privacy: Philosophical Dimensions," in *Philosophical Dimensions of Privacy: An Anthology*, p. 2.

8 Charles Fried, "Privacy," *The Yale Law Journal* 77.3(1968): 475-493, p. 477.

9 W. A. Parent, "Privacy, Morality and the Law," *Philosophy & Public Affairs* 12.4(1983): 269-288, p. 269.

10 W. A. Parent, "Privacy, Morality and the Law," p. 270.

his privacy, since he is alone on the island. Schoemann's proposed definition, then, is "a state of limited access to a person." According to him, "[a] person has privacy to the extent that others have limited access of information about him, limited access to the intimacies of his life, and limited access to his thoughts or his body."¹¹

Schoemann claims that an advantage of this definition is that one can then distinguish between having privacy and having the right to privacy. By claiming that privacy is a state of limited access to a person, one leaves open the issue of the legal entitlement to such a state, thus making it possible for there to be a distinction between the two. One can then suffer loss of privacy without having one's right to privacy violated, such as when one willingly gives away information. Or in a reverse case, one can also have one's right to privacy violated without having one's actual privacy infringed, such as when the authorities routinely monitor telephone conversations of the citizens, but have not actually checked on a particular person. Hence that person's privacy is not violated, even though his right is.

Schoemann's definition does leave open the question what is actually meant by the 'person' whose access is limited, and another one of how much the limit should be. He gives three account on the person, namely information about himself, intimacies of his life, and his thoughts and his body. But perhaps there could be a case where the person himself or his privacy is not exhausted by these three conditions, such as when information, not of himself directly, but of something relatable to him, is obtained without his permission. The information does not even have to be relatable to him directly, but if that information belongs to someone who has an intimate connection with him, then perhaps it is conceivable that *his* privacy would be infringed too. Furthermore, there is the issue of the extent to which the limit on access should be determined. This shows that privacy is a relative concept. It is possible that what counts as violation of privacy for one might not be so for another.

In a different vein, Graeme Laurie argues that privacy should be

11 Ferdinand D. Schoemann, "Privacy: Philosophical Dimensions," In *Philosophical Dimensions of Privacy: An Anthology*, p. 3.

viewed as “a state of non-access from others.”¹² What he has in mind is a definition that combines two major strands of privacy, viz. spacial and informational privacy. Spatial privacy is the state of non-access to a person’s physical or psychological self, and informational privacy is the state where others do not have access to a set of information pertaining to a person. Furthermore, Laurie elaborates this, saying “privacy should be taken to refer to a state in which an individual is apart from others, either in a bodily or psychological sense or by reference to the inaccessibility of certain intimate adjuncts to their individuality, such as personal information.”¹³

It is in fact quite difficult how the concept of being apart from others could be a defining characteristic of being private. There is a sense in which, necessarily, an individual exists apart from all others, since we have different bodies and so on. But that does not necessarily mean that we all have privacy as a matter of course. According to Laurie, the definition is designed to combine the two senses of spatial and informational privacy in such a way that a common conceptual thread between them is recognized. However, by stressing only the “apartness” of individuals, it seems that his conception is perhaps too vague to be able to do any effective work.

It is not surprising that a very complicated concept such as privacy did spawn a large number of definitions. As such privacy is not different from fundamental concepts such as ‘time’ or ‘justice’ where precise definitions are very difficult to pin down. Nonetheless, everyone knows what time is (being reminded, of course, of Augustine’s dictum), and everyone instinctively knows when justice is missing in a certain scenario even though they might be hard put to come up with a specific account of it. I guess that perhaps privacy belongs to this class of concept. We all know what it is; more poignantly we instantly know when we do not have our privacy (except those who might not be aware of their privacy when it comes to their interaction with modern, sophisticated technology that mines their data, but this is a topic for later

12 Graeme Laurie, *Genetic Privacy: A Challenge to Medico-Legal Norm* (Cambridge University Press, 2002), p. 6.

13 Graeme Laurie, *Genetic Privacy*, p. 6.

treatment in detail in the book), or when our privacy is being taken away. So instead of trying to come up with a precise definition, I would propose that we at this stage rely on our intuitive understanding of the term. Later on when we deal with accounts or theories of privacy, the issue of defining it might not be so important after all. (Here I agree with Lucas Introna, who argues in the same way.)¹⁴ The assumption here is only that, in order to propose a systematic account or theory of privacy, one does not need a precise definition of the term. Only a rather vague and intuitive understanding should suffice. Nonetheless, Introna does give a number of intuitive accounts of privacy, which should provide a clearer view of what we are really talking about here in this book. According to Introna, privacy does exhibit the following properties:

- (a) Privacy is a relational concept. It comes to the fore in a community. Where people interact, the issue of privacy emerges.
- (b) Privacy is directed toward the personal domain. What is deemed personal is to some extent at least, culturally defined. In general one may state that personal or private aspects of my life are those aspects that do not, or tend not to, affect the significant interests of others.
- (c) To claim privacy is to claim the right to limit access or control access to my personal or private domain.
- (d) An effective way to control access to my personal realm is to control the distribution of textual images or verbal information about it.
- (e) To claim privacy is to claim the right to a (personal) domain of

¹⁴ Lucas D. Introna, "Privacy and the Computer: Why We Need Privacy in the Information Society," in Robert M. Baird, Reagan Samsower, and Stuart E. Rosenbaum, eds. *Cyberethics: Social and Moral Issues in the Computer Age* (New York: Prometheus, 2000): 188-199, p. 189.

immunity against the judgments of others.

- (f) Privacy is a relative concept. It is a continuum. Total privacy may be as undesirable as total transparency. It is a matter of appropriateness for the situation at hand. It is unfortunately (or fortunately) a matter of judgment.¹⁵

The complexity and the difficulty of privacy has led some scholars to effectively renounce the task of providing a definition of the term all together. Recently, Daniel Solove has proposed a new attempt at defining privacy.¹⁶ Inheriting the idea from Wittgenstein, Solove argues that any attempt to provide a unitary definition of privacy has always been, and will always be, futile, since privacy is a very complicated concept which has been used in such a wide range of areas that it is not possible to provide a single definition for it. Nonetheless, Solove believes that one could still regard the various uses of privacy as falling under some kind of umbrella, as these various uses do resemble one another in one way or another. Wittgenstein has proposed the concept of 'family resemblance' to refer to the situation where instances of a certain concept vary so much that a single, clear cut definition of the term is not possible but still the concept and the term denoting it can be used in ordinary discourse since these instances resemble one another, much like members of a family resemble one another.¹⁷ Thus, for Wittgenstein, it may be the case that two brothers resemble each other and one of the two may resemble their mother more than the other. The mother then resembles her father, but when the grandfather is compared with the brothers there might not so much resemblance, and so on. Hence there is a chain of resemblance, the sum of which is enough for one to gather, in ordinary discourse, that these members

15 Lucas D. Introna, "Privacy and the Computer: Why We Need Privacy in the Information Society," p. 190.

16 Daniel J. Solove, *Understanding Privacy* (Cambridge, MA: Harvard University Press, 2008).

17 See Ludwig Wittgenstein, *Philosophical Investigations* (Blackwell Publishing, 1953), especially §§66 – 68.

belong to the same clan. In the same manner, Solove argues that instances of the use of privacy, ranging from internet privacy to wiretapping on the telephone to attempts to peep into somebody's bathroom, are all instances of one and the same concept, even though there cannot be a single, unitary definition of the term 'privacy.'

According to Solove,

In contrast to attempts to develop a unified conception of privacy, I content that privacy should be conceived in a more pluralistic way. "Privacy" is an umbrella term that refers to a wide and disparate group of related things. The use of such a broad term is helpful in some contexts, but quite unhelpful in others. Consider, for example, the term "animal." "Animal" refer to a large group of organisms—mammals, birds, reptiles, fish, and others—and within each of these groups are subgroups. For some purposes, using the term "animal" will suffice. ... As with the term "animal," there are many times when the general term "privacy" will work well, but there are times when more specificity is required. Using the general term "privacy" can result in the conflation of different kinds of problems and can lead to understandings of the meaning of "privacy" that distract courts and policymakers from addressing the issues before them.

Nevertheless, it is no accident that various things are referred to under the rubric of "privacy." They bear substantial similarities to each other. The analogies between different things can be useful and instructive. We should classify something as involving "privacy" when it bears resemblance to other things we classify in the same way. ... Similarity, however, is not sameness, and we must also recognize where the many related things we call "privacy" diverge.¹⁸

¹⁸ Daniel J. Solove, *Understanding Privacy*, pp. 45 – 46.

Solove aims at arriving at a conception of privacy from the ground up, looking at how privacy issues play themselves out in real lives and how the term is used and understood, and build from that. This is a change from the usual philosophical method of arriving at a concept totally *a priori* and apply that onto local instances. Solove discusses many instances of privacy, namely the family, the body, sexual activity, the home, and communications.¹⁹ Instead of starting from an *a priori* concept, Solove proposes to look at what the problems actually are and view violations of privacy as interferences of integrity of certain activities and propose that these disruptions form the basis on which an understanding of privacy is developed.²⁰

In short, then, Solove would like us to give up any attempt to provide a single definition of privacy, exhorting us to rely instead on ordinary understandings of the term as it is used in daily life. I have quite a lot of sympathy with this approach. However, in relying on the everyday conception Solove has to assume that such a conception is already clearly understood, for otherwise it is hard to see how a theory of privacy is possible. In building up a conception of privacy from the ground up, looking at how the term is used and so on, there is always the problem of how these disparate instances could be tied up with one another to an extent that a theory is possible. According to Wittgenstein, no theory is possible since the actual relations among the instances of concepts are not there. The family resemblances among concept are but *pragmatic* ground on which language and concept use are possible at all. Perhaps this is what Solove intends to do with the concept of privacy. Still it begs the question of what to do when people's understandings of privacy do diverge in the beginning, as seems really to be the case when privacy concerns and issues have pervaded the world's cultures.

Privacy and Autonomy

¹⁹ Solove, *Understanding Privacy*, pp. 50 – 65.

²⁰ Solove, *Understanding Privacy*, p. 9.

Privacy and autonomy of the individual are closely related concepts. However, they do not necessarily related to each other. This point is in contrast with what is believed by many scholars, for the standard account seems to be that privacy is a necessary condition for autonomy. Without privacy, it would be very difficult, so the argument goes, to maintain any kind of autonomy of the individual. However, in a close-knit society where everybody knows everybody in very intimate details and where everybody trusts everybody else, it seems possible that autonomy is in existence although privacy is not. However, it seems more difficult to imagine a reverse kind of society where individuals enjoy privacy but lack autonomy. For that to be the case, the individuals in question would have to be able to distance themselves from one another in certain ways so as to maintain a degree of privacy. But they might not be capable of thinking for themselves or independently by themselves. Conceptually this is possible, but it is very hard in practice to find such a society. In any case, societies where people enjoy autonomy but do not have much of privacy are quite common. In fact most traditional societies are of this kind.

There are many arguments supporting the idea that privacy is necessary for autonomy. For Introna the issue has to do with being observed. It is likely, so she argues, that one is more likely to behave according to the wish of others rather than of one's own free will when one is observed.²¹ It seems that when one is observed, one feels being pressured by a variety of factors in such a way that one's judgments would be clouded by them. Again this would be a moot point in a thoroughly transparent society where trust absolutely prevails. However, in a transparent society there is a qualm, felt by Introna, that individuals in such a society might behave out of the mindset that values conformity over their own individuality, and presumably that signifies an erosion of autonomy. Indeed Introna argues that transparency and accountability are concepts that require privacy as a precondition. Without

²¹ Lucas D. Introna, "Privacy and the Computer: Why We Need Privacy in the Information Society," p. 194.

privacy, it would be impossible for accountability or transparency to have any valid meaning. For Introna, “privacy creates the clearing from which autonomy, trust, and accountability can emerge.”²² A machine cannot be accountable because it does not have autonomy. Trust is also not possible without autonomy either, and as Introna has argued, privacy is required for autonomy because trust and privacy are necessary for each other. So these concepts are intimately interconnected, with privacy as the linchpin of them all.

It may be useful here to inquire how and in exactly what sense privacy is related to such concepts as autonomy, trust or accountability. We have already seen that privacy is related to autonomy in the sense that the latter seem to presuppose the former. Without privacy, it is difficult to see how real and functioning autonomy can be present. However, we have also seen that this is not necessarily the case. In the atmosphere where there is complete trust of everybody to everybody, privacy does not really have to be there in order for autonomy to function. The reason is that when there is complete trust, there could even be a situation where everybody knows all the details about everybody else (this is of course not possible, at least for now, but we are talking here about a hypothetical situation), an individual in that situation could well maintain her autonomy when she makes decisions and judgments out of her own belief and free will. The fact that her details (inner as well as outer) are known does not seem to prevent that. If this is so, then privacy and autonomy are concepts which are very closely related to that of trust. When there is trust, there does not even have to be privacy, or enforcing of privacy rules preventing someone from ‘snooping’ on others without their knowledge or consent. So it seems that the need for privacy protection arises from lack of trust. Since lack of trust is pervasive in almost all human societies, the need for privacy protection then becomes almost universal. Furthermore, if one is not accountable for what one does, then there would be no means to sanction anyone’s behavior, including snooping and violating others’ private personal space. So if there is no accountability, it is very likely that there is no privacy either. On the other hand, in the hypothetical scenario where there is complete trust and lack of

²² Lucas D. Introna, “Privacy and the Computer,” p. 195.

privacy as mentioned earlier, the trust seems to ensure that everyone already is aware that he or she is accountable for what she is doing.

Of course such a hypothetical scenario where there is complete trust is a highly ideal one and is unlikely to be found in reality. But that should not deter us from pointing out that privacy and concepts such as autonomy, trust and accountability are distinct and their logical connections spelled out. This will help us understand the concept of privacy as well as these other related concepts better.

Privacy and Justice

Privacy is not only related to autonomy of individuals, but on a wider, social scale privacy also has a lot to do with justice. In fact the concern for privacy of individuals could be regarded as a concern for justice. When someone has an unfair advantage over others, such as when one has the power to obtain information about others' personal and private lives whereas others cannot do so in return, this would be a clear case of injustice. Furthermore, the issue becomes a standard one concerning the relation between the individuals and the state. In the case where the state has no justifiable reason to obtain private and personal information of the citizens, this would not constitute justice, and the individuals have a fair claim against the state on this regard.

It is precisely at this point where there is a conflict between privacy and justice. It is entirely possible that effort to realize some kind of justice requires some intrusion of privacy. If this is the case, then one has to decide which value trumps over the other. On this, Arneson has the following to say:

Suppose we say that justice requires equalizing people's opportunities for well-being. On this view, if one person is badly off now because she never had any opportunity to achieve a decent quality of life, there is a justice reason to compensate her for her

misfortune, whereas if another person is equally badly off now because she squandered the rich opportunities that were available to her, there is no justice reason to compensate her and there may even be a case for transferring resources away from her so as to improve the opportunities of those whose initial options were bleak. But on this view upholding egalitarian justice requires agents of society to ferret out the information about individuals that will enable these classifications of people into different levels of responsibility for their current fate. Moreover, agents of society must make complex and discriminating moral assessments of people's conduct of their lives. To some, theories of distributive justice with these implications amount to rationalizations for a Big Brother state.²³

Simply put, the state, in order to ensure distributive justice for their citizens, might need to obtain information from the individuals so that it has the necessary ingredient in their decision making of how best to approach their policies. It might be necessary to obtain some kinds of information from the households pertaining to each individual there so that the state knows how to proceed. So in order for the state to make any concrete decisions and to implement any measures that addresses injustice of entitlements and goods, they might need to infringe on privacy. Here the key issue is the relation between the individual and the state, a very old topic in political philosophy. Privacy seems to be a very individual matter, and to protect it sometimes runs into conflict with attempts by the state to ensure distributive justice.

Arneson argues further, however, that the infringement on privacy does not have to be too harmful to the individuals since the benefits that will accrue outweigh the loss. He compares this to a medical procedure where the patient has to undergo some pain in order to be cured. Thus it is apparent that Arneson trumps justice over privacy. If there comes to a choice between the

²³ Richard J. Arneson, "Egalitarian Justice versus the Right to Privacy?" *Social Philosophy and Policy* 17.2(2000).

two, it seems that one should choose justice first.

However, it is not clear that privacy and justice have always to be incompatible values. The question whether distributive justice raises its own problems regarding encroachment of individual liberty aside, there does not seem to be any prevailing reason why privacy and justice have to be an either or situation. Arneson's dilemma apparently rests on the idea that, in order to enact laws and regulations that ensure certain kinds of distributive justice, certain information pertaining to the individuals is required, and this means encroachment on their privacy. However, in a situation where the individual and public interests are perfectly balanced, or where the two interests merge ideally into one (in the Hegelian sense), then there would be no conflict. In such a situation individuals willingly give up their personal information, trusting that the authorities involved do the right things to ensure justice. It is true that there is no privacy, but there is no conflict. Private interests and those of the public are totally merged. Here the distinction between having privacy and having the *right* to privacy is relevant. Individuals in this ideal scenario do not have privacy (since they willingly give up the information), but it does not mean that they do not have the right to it.

Privacy and the Individual: the Metaphysics of Privacy

One of the most interesting topics in philosophical discussions on privacy is the conceptual relation between privacy and the individual. If anything, privacy seems to be a quintessentially individual concept. Perhaps the most salient aspect of privacy as a topic in social philosophy is that it functions as something belonging to the individual such that the state is not justified in taking it away without compelling reasons. We have seen that from the Roman times onward, privacy specifies what belongs to the individual and seems to presuppose a clear line between the individual and what is outside of him or her. What is private is something that an individual enjoys, a space for the individual to wallow without being observed. Private domain or private

property are those that the individual who is the lord of the domain or the owner of the property to enjoy and to dispose of it and she sees fit. What many are defending when they are defending privacy is a kind of boundary demarcating a space that functions, either actually or metaphorically, as the individual's own domain where outsiders are not allowed and where the individual herself is empowered to defend it if someone wants to intrude into the space without her consent.

Many arguments purporting to justify privacy relies on the conception of human dignity for support. Privacy is needed so that the dignity of individuals can be maintained. Schoeman has the following to say:

Defenders of the importance of privacy have generally followed two related strategies:

1. Arguments designed to show that respect for privacy is a key component in the more general regard for human dignity. The appeal here is to such conditions as moral integrity, individuality, consciousness of oneself as a being with moral character and worth, and consciousness of oneself as a being with a point of view, searching for meaning in life.
2. Arguments designed to show that respect for privacy is integral to our understanding of ourselves as social beings with varying kinds of relationships, each in its way important to a meaningful life.²⁴

The first line of arguments argue that, since individuals have their own moral worth, qua human persons, and since privacy is necessary for the expression or the viability of those worths (which include such notions as human dignity,

²⁴ Ferdinand Schoemann, "Privacy: Philosophical Dimensions," p. 8.

moral integrity, moral worth, and so on), privacy is thus needed and is justified. Here the underlying metaphysical issue seems to be that these moral worths do in fact rely on the conception of the individual as substantive, objective, and self-subsisting entity. For an individual to be autonomous, she has to be able to make judgments of her own, and for that to be possible she has to possess cognitive ability in such a way that she is able to understand language and to be conscious of her self. Thus Schoemann's condition that the individual be conscious of "oneself as a being with moral character and worth" shows that the individual needs to be able to be so conscious, and this ability is a necessary precondition for the individual to be autonomous. The moral worth and the dignity then follow from the autonomy. Hence it seems that these standard arguments for privacy ultimately rely on a notion of the individual as self-subsisting, substantive and objective entity.

What this actually means is that for an individual to be able to be autonomous and thus enjoys moral worth and dignity, the individual herself has to be self-subsisting; that is, she does not need other individuals for her very being. If it were to be the case that the individual here would be the only individual in the world, this fact would not have a bearing on the question whether she deserves moral worth or moral dignity, since her relations to other individuals appears to be irrelevant in this regard. This seems to be the presupposition of the standard arguments that purport to justify privacy through conceptions of autonomous individual, moral worth, or human dignity. These arguments seem to presuppose the metaphysical position that individuals are self-subsisting, namely they do not need to be related to other individuals, or other beings for that matter, for their status as an individual person. If the individual in question happens to be the only human person in the whole universe (supposing that there are no other cognitively advanced being, such as thinking robots or angels), then her moral worth or dignity would not suffer even a little. This is because the fact that she is now alone in the universe is not relevant to the question whether she possesses moral worth or dignity. The moral worth and dignity belong to her simply *qua* human person. Her relations to other individuals do not seem to have anything to do

with this.

Thus privacy according to these lines of arguments is needed because it follows from the metaphysical assumption that individuals are self subsisting in the sense outlined above. Hence if privacy somehow happens to be unavailable, such as in a prison camp, then the individuals in that situation stands in a very serious threat of having their moral worth and their dignity taken away. However, if we consider the hypothetical situation described earlier, one where there is complete trust among all the individuals and one where privacy is not actually needed because everybody is completely open and trusting toward everybody else, then it seems at least that privacy does not have to be necessarily tied up with moral worth and dignity as the standard arguments seem to require. In such a situation, individuals do not have privacy, but that does not seem to imply that they do not have moral worth or dignity. In fact the situation in which they are completely open toward one another and are respectful toward one another seems to imply the opposite. Each one in this situation enjoys moral worth and dignity even though there is no privacy. In the prison camp situation the link between privacy and dignity is such that when there is no privacy there is then no dignity is perhaps due to the fact that there is an obvious imbalance of power. The prison guards, ordering the prisoners to strip naked and so on, are responsible for threatening the dignity of the prisoners because they have more power and use that power in an unscrupulous manner. But in the hypothetical situation described here, there is no abuse of power. Everybody is open to everybody else, no one harboring any secrets, but the dignity of each one is maintained because of the prevailing trust. That is what is lacking in the prison camp situation.

If this can be the case, then privacy does not have to be always linked up with dignity and moral worth. The question then becomes whether such a hypothetical scenario is possible at all. But we will have to wait until later chapters in the book for a satisfactory answer to this question. What I am concerned with here is merely the conceptual possibility of the scenario. If this can be the case, then to justify privacy through conceptions such as human dignity or moral worth that ultimately rely on certain metaphysical conception

of the individual is suspect.

Privacy and Private Language

Another point in philosophical analysis of privacy is the relation between privacy as a social norm and the “privacy” we have as individuals who have our own private thoughts such that no one else can have access to. This is a standard topic in epistemology, when the topic concerns the “privileged access” of the first person. Arguments aiming to justify privacy through reliance on certain conceptions of the individual, such as through the moral worth or dignity of individuals that we have seen, appear to presuppose that individuals do have this capability to have sole access to the domain within their thoughts, their “private” mental domain. The individuals, as subjects, have privileged access to their own mental states. They alone know their own mental states in such a way that nobody else can. An individual, for example, can feel her own pain through her own phenomenological experience as the one who does have the pain, the subject of the feeling of pain. No one else can feel exactly the same pain as she does. Even though neuroscientists might succeed in locating the part of her brain that is responsible for her feeling, that is not the same as the subject, first person feeling of the pain because that phenomenological quality is qualitatively different from the data presented on the brain scanner. As a consequence, her private thoughts and feelings appear to be absolute, and this underpins the notion that the individual deserves moral worth and dignity, since they are capable of entertaining such private feelings.

The idea that the individual has sole privileged access to their mental states has much intuitive appeal. However, it has been criticized by a number of philosophers, most notably Ludwig Wittgenstein, who presents powerful arguments showing that the idea is incoherent. When one tries to make sense of one’s private sensations, for example, when I tell myself, when I have certain sensation, that I am having an itch, I have to follow certain rules that make my meaning making activities systematic. That is, in telling myself and in somehow

communicating to myself that I am having an itch, I have to follow the rule of English in the sense that I have to use the concept 'itch' which has its own systematic meaning. The meaning has to be systematic because if it were not, then the word would have no meaning at all, thus incapable of communicating any thought. Now Wittgenstein's point is that this systematicity cannot be arbitrary. This is so because, if meaning making were arbitrary, then there would be no systematicity and hence to meaning as we have just seen. But this implies that I cannot change how the words are used to mean anything by the sheer act of my will. I cannot, then, use the word 'itch' any way I like, and I have to follow the rules of English language even in making sense to *myself* that I am having an itch. Since I am constrained by this rule of systematicity, the meanings of the words I am using are not dependent on me, but in fact on the whole community of the users of English. For Wittgenstein this implies that the meanings of the words, even the words that refer to my own sensation such as my itch, are not private because if it were I would be able to change them arbitrarily. The fact that I cannot do so means that meanings are not private, and a rather startling consequence of this is that the content of my thoughts are not private at all, as it is possible in principle for another to learn about that content. In this case the meaning of 'itch' is the set of publicly available criteria that distinguish that kind of sensation from others, such as pain. The criteria have to be publicly available because that is precisely what the non-arbitrary condition requires.

Perhaps there might be an equivocation here on how the word 'private' is used. Privacy as a social norm refers to a social condition where individuals are accorded respect by others and the authorities so that their lives are not made open for everyone to see. On the other hand, in talking about 'private' language, Wittgenstein seems to be referring to some technical way of addressing language, in that 'private' language is the kind of language that only the subject has her own privileged access. (Such a language, it should be made clear here, does not mean a kind of language that functions like a code that the subject invents to herself which no one else understands because they do not know how to interpret it. Wittgenstein's argument against private language is

much deeper. It says in effect that a language that consists of parts that only the subject can know because those parts refer to the subject's private sensation, or first person perspective of the subject herself, is untenable.) So it might appear that the two domains of use of 'private' or 'privacy' are distinct. However, when one considers that the main criterion of 'private' language in Wittgenstein's argument is that it is the kind of language that *only* the subject has access to, then the relation between this apparently technical use and the normal use of the term in social philosophy becomes quite clear. What is private, intuitively speaking, is something that only the owner has access to. This is true both for the more mundane sense of one's private plot of land or domain, or the sense of one's private thoughts and sensations.

In a recent book, Susan Greenfield argues that privacy is a distinctly modern phenomenon which did not obtain in the ancient world.²⁵ Her argument resonates with that of many others, such as Lawrence Friedman.²⁶ Friedman in particular has the following to say:

In an important sense, privacy is a modern invention. Medieval people had no concept of privacy. They also had no actual privacy. Nobody was ever alone. No ordinary person had private space. Houses were tiny and crowded. Everyone was embedded in a face-to-face community. Privacy, as idea and reality, is the creation of a modern bourgeois society. Above all, it is a creation of the nineteenth century. In the twentieth century it became even more of a reality.²⁷

Those who are familiar with the situation in Asia or other non-western regions should be very familiar with the picture painted here. One thing that emerges

²⁵ Susan Greenfield, *id: the quest for meaning in the 21st century* (Sceptre, 2008), pp. 123-124.

²⁶ Lawrence Friedman, *Guarding Life's Dark Secrets: Legal and Social Controls over Reputation, Propriety, and Privacy* (Palo Alto, CA: Stanford University Press, 2007).

²⁷ Lawrence Friedman, *Guarding Life's Dark Secrets*, p. 258.

from Friedman's account here is that if privacy is a "modern invention," then it does not per se belong to the individual through her characteristic as a unique, autonomous, spontaneously rational being for the simple reason that these individuals were also present in ancient times when there was little or no privacy. Furthermore, Greenfield gave an account of the emergence of the modern novel, a literary genre that coincided with the rise of the middle class and the modern era. One main characteristic of the novel that distinguished it apart from the other, older genres such as the epic or dramatic poetry is that the novel relies on the first person narrative of the characters. We are invited to peer inside the minds of the characters in the novel, and what is going on inside the minds of these characters does drive the plot of the novel forward. This was in a contrast with the older genre where outward action was the norm. According to Greenfield,

Until relatively recently, up to the mid-eighteenth century, the social position into which you were born defined your identity, and broadly determined how you would live your life: there would have been little chance for a transformational inner perspective. ... Not only would you have had much less time than nowadays for introspection, but the very notion of 'individuality' in our modern sense of being truly and complete unique may have been a lot less obvious.

Then the Industrial Revolution came along to change everything. Just as a twenty-first century revolution in technology is currently transforming not only our lifestyles but how we might actually think and feel, so it must have been almost three centuries ago. ... For the first time, Someone could be defined not just by their place and function in society, but by what happened to them in particular, and, most importantly, by the much wider repertoire of potential actions open to them.²⁸

²⁸ Susan Greenfield, *id: the quest for meaning*, pp. 121-122.

The main difference between the pre-modern and the modern individual is that the former was defined through his or her relations to others, whereas the latter is free to give his or her own definition of he or she should be. This is a key to the difference between the modern and the pre-modern conception of the individual and has a profound implication toward the conception of privacy. Viewed in this light, Wittgenstein's argument against private language is a critique of the modern conception of the individual which has as its basis the notion that the individual possesses the ability to link up mental episodes and their referent in a completely autonomous manner. This spontaneous autonomy then provides a basis for arguments based on human dignity. So the upshot is that if Wittgenstein is right in arguing that private language is incoherent, then all arguments for privacy based on individual dignity are incoherent.

It is, however, not quite a straightforward matter how private language in Wittgenstein's strong sense is related to the ideas of human dignity and autonomy that function as the lynchpin of the traditional conception of privacy. In order for Wittgenstein's private language argument to have an impact on the conception of privacy, a connection has to be established between it and the idea of human dignity and autonomy. In any case, one of the strongest justifications of human dignity and autonomy is that human beings are alone among all animals in being able to make meanings and understand them. In other words, humans are *rational* animals or perhaps more clearly language using animals. This has profound implications. In being able to use language, humans can construct models representing not only their immediate surroundings, but their future plans, their memories, constructions of the past, their desires for the future, and so on, even their fictional scenarios. Let us grant that this language using and understanding ability is what makes humans unique and thus is a basis for dignity and autonomy. It is a common idea that humans possess dignity in virtue of their ability to process meaningful symbols. However, the idea that humans are to be accorded dignity and autonomy goes further. Not only must humans possess language using and understanding ability, but it seems necessary also that there be a set of objective criteria

whereby one individual human being can be distinguished from another. In arguing that human beings have dignity, the standard argument seems to start from the fact that humans are unique and another important step in the argument is that they are entitled to their individual, 'private' sphere. That is, they possess a 'world' which is theirs and theirs alone. Each individual human being possesses his or her own world, consisting in subjective experiences, thoughts, desires, episodes, memories and so on, which they do not share with any other. Chief among these subjective experiences are naturally those that refer to their sensations that they alone possess, such as their private feelings such as their itches and pains and so on. Now, then, we see the connection between the private language and the idea that humans naturally possess dignity and autonomy. So long as the idea of human dignity and autonomy is derived from the putative existence of subjective, first-person viewpoint constitutive of the private sphere, then there is a logical link between the two.

One of the most startling consequences of Wittgenstein's arguments against private language is that the putative private sphere of the individual alluded to above appears then to be destroyed. If there can be no private language, no possibility of referring to one's private sensations in such a way that only the subject is able to do, then it seems that there can be no individuals. However, that is rather far from the truth. From the statement that private language is an incoherent notion, one cannot deduce that no individual is possible. Individuals are possible, since they are obviously actual. There being no private language only means that there is no possibility of referring strictly to one's private sensations. The most one can do is to use publicly available language (or systematic language that can be learned—which is the character of all possible language) to refer to it. An upshot of this is that individuals still suffer from pains and itches, and they are still able to refer to them, talking about them and telling others about how they suffer and so on. But the meaning of their talks would then be public verifiable and sharable, not something that could belong strictly to one's individual domain alone.

Arguments purporting to justify privacy through conceptions of individual moral worth or human dignity presuppose that individuals are to be

accorded these worths because of their ability to think for themselves or to be autonomous cognitive agent. It seems clear that the ability to think for themselves is closely related to the individual's ability to have their private sphere of thoughts and feelings. It is presumably in virtue of their having their private, individual spheres that individuals are autonomous, thus becoming candidates for moral worth and dignity. But if Wittgenstein's argument is correct, then these arguments cannot rely on individuals' having privileged access to their private spheres of thoughts and feelings as a foundation for the conclusion that privacy is justified. If privacy is to be justified as a desirable social norm, then the justification has to be of a different kind.

Justifying privacy will be the topic of the next section. Here we focus on the relations between privacy as a social concern and the private in Wittgenstein's private language argument. This relation is scarcely noticed in the literature, perhaps due to the fact that social philosophers do not know much about the technicalities of Wittgenstein's arguments and those who specialize in the latter do not know much about social or applied philosophy. Nonetheless, one can see the connection between the two by noticing that one's private sphere of thought has become the foundation for the typical way of justifying privacy. As we have seen, privacy is usually justified through the individual autonomy, and this autonomy seems nothing more or less than the individual's capability to exercise free thought. What seems to be presupposed in this kind of argument is that the free thought referred to here utilizes the kind of language that Wittgenstein found deeply problematic. This does not mean, however, that Wittgenstein does not agree with the idea of free, autonomous thought, or that he thinks that thought should not be free. What the argument against private language implies is that usually the free, autonomous thought referred to by most arguments purporting to justify privacy through human dignity and autonomy is in fact constituted by a number of different factors. The proponents tend to believe that the meaning of the words found in free thought is fixed by the thought itself. It is as if language is transparent through which one gets at the meaning directly, thought being exercised at the level of the meaning or the proposition, and not on the level of

language itself. However, this transparency, as Wittgenstein argues, is possible only if private language is possible, for private language is just the kind of language that enables the subject to get at what the language means directly and transparently since the meaning is fixed by the subject alone. But we have already seen that this kind of language is incoherent.

Justifying Privacy

Among the vast literature on justification of privacy, perhaps the ones arguing that privacy is justified because individuals do have a right to their autonomy are the most prevalent. And among the numerous definitions of privacy, a common thread that binds them together seems to be that privacy is something that is cherished by the individual in question, something that she does not want to be exposed to the public. That could be the fact that she does not want other people to peer into her house, or data about herself, her 'personal' information.²⁹ What justifies this right to privacy is that, as an individual citizen, she is entitled to some form of protection against unwanted intrusion, which is considered to be a breach to her autonomy. In a hypothetical polity where the state has unlimited power to take any information concerning its citizens as much as they like, and to have a surveillance scheme, Big Brother style, that provides every detail of the lives of the individuals, in that case it would be correct to say that the individuals do not have any privacy. What is missing is that the individuals do not have a means to operate without the seeing eyes of Big Brother. They do not have a leeway, so to speak, within which they can function on their own without always being aware that their action is constantly being watched. So we might call what is missing here 'personal space' where the individual would feel to be free to do their things as they please, so long, of course, that these do not infringe on the rights and liberties of others. Talking about the potential loss of privacy by employees due to increased use of surveillance technologies by the employers, Miriam Schulman

²⁹ W. A. Parent, "Privacy, Morality and the Law."

quotes Michael J. Meyer as follows: “Employees are autonomous moral agents. Among other things, that means they have independent moral status defined by some set of rights, not the least of which is the right not to be used by others as a means to increase overall welfare or profits.”³⁰ Meyer then continues: “As thinking actors, human beings are more than cogs in an organization--things to be pushed around so as to maximize profits. They are entitled to respect, which requires some attention to privacy. If a boss were to monitor every conversation or move, most of us would think of such an environment as more like a prison than a humane workplace.”³¹ The key phrase here is ‘autonomous moral agents,’ and in fact we could extrapolate Meyer’s statement to include privacy for individuals in general. The linchpin of a standard justification for privacy is, then, that individuals are autonomous moral agents, which imply that they are entitled to some personal and private space where they feel comfortable and where they do not have to behave as if they are being watched all the time.

So the standard justification of privacy is that since individuals are autonomous moral agents, they are entitled to some degree of privacy. This argument hinges, of course, on a conceptual link between the two. How is it possible that someone’s being an autonomous moral agent entitles her at least some degree of privacy? Presumably the answer is that, as an autonomous moral agent, one should be accorded some degree of personal space, since if not, then one would not get the respect that one deserves in virtue of one’s being a human being. When we consider the hypothetical state where nobody has any privacy as mentioned above, the standard argument would have it that in such a scenario the individuals are not paid respect to, since the authority (or the employer) has the power to gather all kinds of information pertaining to them. This presupposes that gathering information and constantly monitoring and watching the individuals all the time are not instances of respect. Thus we can sum up the standard argument as follows. As individual humans are autonomous moral agents, which imply that they are capable of making

30 Miriam Schulman, “Little Brother is Watching You,” in R. M. Baird, R. Ramsower and S. E. Robenbaum, Eds., *Cyberethics: Social & Moral Issues in the Computer Age* (Amherst, NY: Prometheus Books, 2000): 155-161, p. 157.

31 Miriam Schulman, “Little Brother is Watching You,” p. 157.

decisions by themselves and that they deserve a degree of respect, their private lives should not be intruded because such intrusion would mean that the intruder does not respect the individuals in virtue of their humanity.

However, this argument depends on some other crucial factors. What if the individuals in question willingly give up their privacy and allow the authority to watch their every move? In fact we are already seeing something like this happening with people putting web cameras in their bedrooms and turn them on all the time for all the world to see. Would we say that those who do this do not have privacy? But is their right to privacy being violated? It seems clear that simply the fact that somebody's private life is being exposed for the whole world is not sufficient for her privacy right to be violated. In this case it seems that nobody is violating her right, since she willingly does all this by herself. Another factor is that the authority who has the power to intrude on people's private lives must act in such a way that harms those people through their intrusion; otherwise the authority's action might not be considered as a violation of privacy. The idea is this: Let us go back to the hypothetical scenario mentioned earlier. Nobody has any privacy; the authority has the all seeing power to know every small detail of their people's lives; nothing is hidden. Nonetheless, if the authority happens to be a wholly benevolent one and will not use the information in any harmful way, and if, in addition, the people are aware that the authority is watching them, but they don't mind since they trust the authority completely, then would we also say that their privacy rights are threatened? According to Meyer, privacy appears to be an inherent property of an autonomous agent, but these scenarios seem to complicate the picture. Privacy may still be an inherent property in the case where people willingly put up webcams in their bedrooms and even their bathrooms, and in the case where the people trust the all seeing authority completely, but even so their inherent property here is not expressed. Even if the property is there, it lies dormant, so to speak, since the people willingly forego it. However, if this is really the case, then what is the difference between someone's having the inherent characteristic of privacy but it lies dormant and someone's not having the right to privacy at all?

The difference, of course, lies in the fact that in the first case someone could decide at any time to enforce her privacy right, which happens when, for example, somebody shuts down her webcam, whereas in the second case that is not possible. But if this is so, then the justification of privacy is not simply a matter of someone's being an autonomous moral agent who deserves respect, his or her relation with those around her also play a crucial role. If she trusts the all seeing authority completely, or if she does not think her private life should be kept to herself alone and welcomes the world to see all of her, then the trusting and the willingness to let others enter one's private domain become important. These are all relational concepts; one trusts another person, and one willingly lets others enter one's private life. After all, protecting privacy means that one is protecting someone's private domain from encroachments by others. If one lives alone, like Robinson Crusoe, then there is no need to even start talking about privacy.³²

Another point is that it seems that one can even remain an autonomous moral agent without one's having privacy. In the scenarios described above, the one who trusts the authority completely, who lives in an environment where the authority is fully trustworthy, and who willingly foregoes privacy can still be an autonomous moral agent, since all her decisions are made through her free will in her rational capacity. An autonomous moral agent that willingly puts up webcams around her house is still so. But if this is the case, then the standard justification of privacy is in need of qualification. Being an autonomous moral agent alone is not sufficient, one also needs to relate with others and live in a certain kind of environment (such as one where it is not possible to trust the authority completely), in order for the right to privacy to actually have a force. Nevertheless, an objection to this line of argument is that in these scenarios the individuals always have their privacy rights all along, but as we have seen there does not seem to be much of a difference between having the right to privacy and keeping it dormant (perhaps

32 In the same spirit, Priscilla Regan also argues for the concept of privacy being relational, adding that the concept would be more useful if considered as relational rather than singular. See Priscilla Regan, *Legislating Privacy: Technology, Social Values, and Public Policy* (Chapel Hill, NC: University of North Carolina Press, 1995).

always so) and not having it at all. This, let me emphasize, is tenable only in a very special case where the authority can be trusted completely and where the individuals are willing to let others view their lives, and this could be extended to include the individuals' information about themselves, their communication and others.³³

In any case, relying on such conception as dignity makes privacy a non-relational concept whose justification relies on the property of an individual. Thus it would be possible according to this system of justification for there to be only one individual person in the whole universe and he or she does indeed possess privacy, simply in virtue of her being an individual person. However, that seems counterintuitive. If anything privacy seems to be a relational concept, one does have privacy when others behave in one way (such as not snooping or spying) toward the individual rather than others. Proponents of the non-relational view might say that the lone individual does have all the privacy she wants, because she is actually alone. Being utterly alone, however, seems to defeat the necessary requirement for there to be privacy in the first place. Imagine living alone without any other individuals around. Then the individual is in a sense utterly 'private' in the sense that she is alone. No one cares anything about her because there is no one around. But then the lone individual could well be in a position where she is not strictly speaking private either. For being private requires that others respect her privacy and not snooping around her. Since there is no one around then this necessary condition of privacy is not met. So privacy presupposes relations among individuals. Without other individuals, or in a condition where there is only one individual in the universe, then it could not be said whether there is privacy or not.

If this argument is somewhat cogent, then justification of privacy needs to take another turn. The argument above is purported to show that any type of argument relying on categorical properties of individuals such as their dignity or moral worth is suspect. Thus if there is to be a cogent argument for justifying privacy, then the relational character of privacy needs to be taken into

³³ Priscilla Regan, *Legislating Privacy*.

consideration. What I would like to propose is that privacy could be more effectively justified through a recognition of the goal that privacy is designed to realize. This sounds simple enough but strangely this way of justifying the concept has not been much recognized in the literature.

The goals that privacy serve the realize are actually quite varied, but in any case it usually includes the restriction of the power of the authorities to gain unfair access to the information pertaining to particular individuals. Thus our example in the introduction about the Thai government issuing 'smart' ID card containing chips which hold a large amount of individual information is a very appropriate one. Here the privacy of Thai citizens vis-à-vis the state is justified because ensuring privacy is a key toward realization of the democratic ideals. Arbitrary mining of personal data without clear reasons is an example of arbitrary use of power which is contradictory to the ideals. In other words, privacy is necessary because without it real democracy would not be possible. Hence if democracy is to be the most preferred and defensible form of government, then privacy does have a role to play.

One main objection against the relational or instrumental view of justification of privacy is that the value of privacy then depends on the value of the goal which privacy purports to bring about. If this is so, so the objection goes, then the value of privacy is not absolute. But it seems, according to the argument, that the value of privacy is absolute because it seems strongly to depend on the autonomy and the inherent dignity of individual human beings. We have seen, however, that the idea of individual possessing the unique domain, or one's own 'private' domain of thought depends on the viability of there being private language, but as Wittgenstein has shown, the whole idea of a private language is suspect; consequently the idea of one's private domain which is independent and well demarcated against others is suspect too. The upshot is that any argument purporting to justify individual privacy through their ability of forming and living in their 'private' domain of thought is suspect. If there can be no private language in the Wittgensteinian sense, then there does not seem to be the case that there is, ontologically speaking, the individual private sphere either.

We have seen earlier that Ferdinand Schoemann distinguishes between two types of arguments aiming at justifying privacy. The first kind relies on the conception of moral worth and dignity of the individual, and we have just seen how this type is problematic. The other type of argument is instrumental. Privacy is needed because it functions significantly in the individual's sense of well being and her ability to function in her community. In Schoemann's words, privacy is "integral to our understanding of ourselves as social beings." Since we are social beings, privacy then is needed because presumably privacy is constitutive of us human individuals as *social* beings.

This argument is better than the first one in that it recognizes the relational character of privacy. Nonetheless, it seems too broad. Since we humans are social beings any way, then Schoemann's argument would be tantamount to saying that privacy is integral to our constitution as unique individual human beings. But it does not seem that way. Privacy as we know it today is a thoroughly modern invention. It is fair to say that ancient people did not have the conception of privacy, either spatial or informational privacy, as we know it today. People in ancient times lived in closed, almost cramped, conditions and their private space was non-existent. A clear example of this is the Roman latrines, which consisted of rows of toilets on top of a flowing aqueduct with absolutely no partition in between, and it is said that both men and women did share the same latrine together. Even the upper class did not have any privacy, as every minute in the lives of royals was never alone, but always attended to by a host of 'attendants,' servants, royal pages, and the like. The situation was similar both in the East and the West before the onset of the modern, industrial age. If this is the case, then the idea that somehow privacy is integral of human life is not quite right.

So any attempt to justify privacy as we know it needs to take into consideration the values of our *modern* way of living. Justification of privacy then is part of justification of modern life, and of modernity in general. Since modern life revolves around the ideals and institutions of modern democracy, as well as its legal institutions and systems, then privacy cannot be considered in separation from these. As there is always a tendency in modern society for

the political authorities to employ techniques by which they gain advantage over the citizens for any reasons, then I think the best way one could justify privacy is to rely on the need for ordinary citizens to guard against the encroachment upon their lives by the political authorities. It is clear, then, that in the modern society, individual citizens need to be protected from their own political authorities because the very ideal and viability of the democratic system depends on it. Without guaranteeing a set of basic rights to the individuals, the democratic system with its systematic check and balance of power breaks down, as the political authorities would be given a free hand to exercise their arbitrary power through their snooping around the private lives of people with impunity. If that kind of scenario is not acceptable, then any situation where privacy is not respected, or where privacy is breached for no clear and acceptable reasons would be unacceptable too.

Conclusion

Privacy is a very multifaceted concept. We have seen that according to Daniel Solove, it cannot even be given a precise definition, since any attempts to do it would miss some important facet of the concept that is also recognizably an instance of privacy. Taking a cue from Wittgenstein, Solove argues that the concept could be understood more as a kind of 'family resemblance,' where instances of privacy are related one with another, but without an essential property linking them all together. Instead such cases are linked through a chain of resemblances where one pair of the instances might resemble each other more than other pairs, but when an instance is paired up with a third instance, the new pair might resemble each other more than the others in their own way. This may well be the case, but still we would need to find a workable understanding of the whole concept, lest we fall into a trap where no definition or even no understanding of the whole concept can be found.

I have attempted to provide some definitions of the concept that are

available in the literature. Perhaps more important than giving a precise definition is how to justify privacy. This will occupy the next chapters, but at least we have had a glimpse as to how this is to be done. No less interesting is the relations between privacy and other concepts, such as autonomy and justice. Here one has to accept that privacy is a concept perhaps on a par with those of justice, freedom or autonomy in that they are basic to our understanding and our bearings in the world, so basic that it is extremely difficult to give a precise definition. Nonetheless we can certainly discuss how privacy is related to these concepts. The fact that these concepts seem to be vague point to the fact that we are working at the fundamental level of philosophical, foundational concepts, and that any definitions we offer is very much a reflection of our own philosophical underpinnings.

Perhaps the most interesting topic that emerged from discussion of the philosophical ramifications of privacy is the relation between privacy and private language. The two are certainly closely related, as privacy is if anything a property that private language has. But it is surprising that there is little discussion of the relation in the literature. This may be due to the fact that privacy as commonly understood is a concept in social and political philosophy, whereas private language is more in the domain of logic, epistemology and philosophy of language. However, the two are certainly related, and I have shown that Wittgenstein's argument against the very coherence of the notion of private language demands equally strong argument to maintain or justify privacy as a social concept. If there can be no private language, then it seems that there can be no privacy as a social convention or a social norm either. Or at least that is what I am trying to argue. We certainly have covered some ground but by doing so we realize that there is more than awaits much further investigation.

Chapter Two

Cultural Implications of Privacy

Introduction

As previously mentioned, privacy seems to be a distinctly modern phenomenon. The threats of modern technologies in surveillance, manipulation of large scale data, and so on are only possible because of the technologies that are part and parcel of contemporary life. However, as these technologies spread to all corners of the globe, the problems arising from these uses do not limit themselves only to the West where most of these technologies originated. On the contrary the problems find themselves also in new cultural contexts to which they are introduced. This gives rise to a new set of problems and issues, and in this chapter we will explore these issues in some detail.

Even though the issues of privacy, especially those arising from modern technologies, are clearly new, it by no means implies that privacy itself is a new phenomenon. Nonetheless, the context of the pre-modern society was very much different what our own today, and privacy, even though it might be valued, was in fact not available in many cases of the pre-modern or agricultural societies. Solove mentions that in colonial America most families share the same room together, and it was not uncommon for the husband and the wife to have sex discreetly with their children sleeping in the same bed.³⁴ In many societies in the past, the whole family shared only one room, as a result privacy was quite impossible. In urban areas, houses were packed together so much so that acts generally considered now to be private were not possible to be so, as things done in one house can be seen or heard by the neighbors.

³⁴ Daniel Solove, *Understanding Privacy* (Cambridge, MA: Harvard University Press, 2008), p. 55.

One of the striking examples of how ancient people viewed privacy could be seen in the ruins of Roman latrines today. These are common latrines in the sense that there were no partitions between individual seats, so when people entered the latrine to go about their business they could see what others were doing in full view. This might sound shocking to us, but to the Romans this appeared to be a common occurrence, a general order of business of daily life. In many agricultural societies in the East, relieving oneself is generally a matter of going to a rather secluded spot outdoors, such as behind a tree. Thus it was always possible that those doing this could be seen. This kind of practice can still be found even today.

All this shows different attitudes toward privacy between the ancient or agricultural, pre-modern societies and the modern, technological one. The issue that I have raised concerns more everyday aspects of privacy, such as having sex, relieving oneself, and so on, but on the other hand, it was practically very difficult for an ancient society to have any kind of accurate data about the population within that society. Census taking did not come about until after the Industrial Revolution, and it only came about only two centuries or so ago.³⁵ Before that census taking, i.e., obtaining basic information about the population within a large society so that statistical profiling was possible, was unheard of. Rulers in ancient societies had only a vague and crude idea of the statistical information of their population. In a way such accurate data were not necessary, as the society was not complex enough to merit such action. Rulers relied on observation and reports of their subordinates, which were not always accurate. But that was enough for the purpose of running the society. This shows that even though privacy in the daily living sense was rather unavailable in ancient or pre-modern societies, privacy in the sense of not having one's information made accessible in a database was rather unknown in these societies. An upshot is that people in the ancient world appeared to enjoy

35 In the US, the first census took place in the year 1790 in order to find out information about the number and make up of the US population so that the nation's capacity for industry and military capabilities. Census needs to be taken every ten years in the US. See *Measuring America: The Decennial Censuses from 1790 to 2000*, available at <http://www.census.gov/prod/2002pubs/pol02-ma.pdf>

privacy of information much more than we do, even though they might not have the kind of privacy in daily life as we do.

In this chapter we will have a rather close look at how different cultures view privacy. However, what is perhaps more significant is a reflection on the conceptual or normative relation between privacy and culture. This will comprise the significant part of the chapter.

Privacy in Information Ethics: East and West

In the philosophical literature on privacy, much emphasis has been put on the definition of the concept and its justification. That is to be expected, because it is of course the task of philosophy to analyze concepts and to provide justification. In any case, what is interesting is that the majority of the works on the topic have been from the perspective of the West, and it is only recently that there is interest in what the East has to say on definition and justification of privacy. We have seen in the previous chapter that the volume of *Ethics and Information Technology* edited by Charles Ess³⁶ is a pioneering attempt in filling this lacuna. In this chapter I shall lay the background for my own argument by first detailing what the major published works in the West have to say on privacy, and then we will have a look on some of the articles in the Ess volume. The discussion in this section will then lead to my own argument in the next section.

In “Toward a Theory of Privacy in the Information Age”,³⁷ Jim Moor has perhaps a now classic conception of privacy. According to Moor, privacy consists in an expression of a core value that are held by all human groups; hence it is a universal value because being a part of the core values means that privacy is shared by all human groups. These core values are “life, happiness,

³⁶ Charles Ess, “Lost in Translation,” *Ethics and Information Technology* 7.1(2005).

³⁷ Jim Moor, “Toward a Theory of Privacy in the Information Age,” in Robert M. Baird, Reagan Ramsower and Stuart E. Rosenbaum, eds., *Cyberethics: Social & Moral Issues in the Computer Age* (Amherst, NY: Prometheus Books, 2002): 200-212.

freedom, knowledge, ability, resources, and security.”³⁸ Thus for Moor privacy is a universal value and he disagrees with attempts to ground privacy as something that has only instrumental value.³⁹ Privacy in itself does not figure in the core values, but Moor claims that it is an expression of one of the core values, namely security. Privacy is an expression of the value of security because it protects us from unwanted intrusion that would rob us of the information that we hold dear to ourselves. For example, having somebody wiretapping a person’s phone conversations would be a blatant violation of her privacy, because it is regarded as phone conversation is a private matter and a society that does allow wiretapping to be widespread would not protect the security of its members at all. Moreover, the authority that does the wiretapping would violate the democratic ideal because protection of private information is crucial in ensuring the authority does not gain an unfair advantage over access of information which could well lead to abuse of power. For Moor, privacy is justified through its being an expression of the core values which all human groups and communities share. It is more an empirical concept than a normative one.

In addition, Moor calls for a “control/restrict access” conception of privacy where the individual has control over his or her own information through the principle of informed consent, and only those who are authorized to gain access to personal information can do so.⁴⁰ His example is a tax investigator who looks at tax records of certain individuals. So far as the investigator acts in his capacity as an investigator, he is authorized to do so, but only to the extent allowed by his work as investigator. As soon as he is duping around and looks at the records just for curiosity, then he violates the principle, even though no new information is obtained.⁴¹ For Moor privacy is more complicated than the simple “Either I know or nobody knows” scheme. The level of access that a person is allowed to gain access to another’s information is defined through a complex of situations. Moor states: “Ideally, those who need

38 Jim Moor, “Toward a Theory of Privacy in the Information Age,” p. 204.

39 Jim Moor, “Toward a Theory of Privacy in the Information Age,” pp. 202-205.

40 Jim Moor, “Toward a Theory of Privacy in the Information Age,” pp. 208-209.

41 Jim Moor, “Toward a Theory of Privacy in the Information Age,” p. 208.

to know do, those who don't, don't."⁴²

Another conception is that of Adam D. Moore.⁴³ He agrees with Jim Moor in that privacy is an empirically grounded concept and is universal in all human cultures. In support of this claim Moore cites a number of empirical studies in anthropology and cultural studies claiming that privacy is empirically grounded in all cultures, and thus is part of cultural universals.⁴⁴ He adds that though privacy is universal, its specific form does vary across cultures.⁴⁵ This topic of universality and empirical grounded of privacy will be the subject of the next sections. He differs from Moor in that he advocates the control based definition of privacy, where privacy is "our ability to control patterns of association and disassociation with our fellows."⁴⁶ Moor would disagree with this, for he believes that it is not possible to control all the 'greased' information about ourselves that is available through all the electronic means. Hence Moor's is a weaker conception that allows for some space in which personal information can be obtained, but only through authorized personnel.

In another well known article, W. A. Parent defines privacy as "a condition of not having undocumented personal knowledge about one possessed by others."⁴⁷ The idea is that if the personal knowledge in question is documented then presumably it is in a public domain in the sense that anybody can look it up and learn about the information without thereby violating the privacy of the person whom the information is about. Parent disagrees with those, such as Fried⁴⁸ and Wasserstrom,⁴⁹ who argue more toward a 'control'

42 Jim Moor, "Toward a Theory of Privacy in the Information Age," p. 209.

43 Adam D. Moore, "Privacy: Its Meaning and Value," *American Philosophical Quarterly* 40.3(July 2003): 215-227.

44 Adam D. Moore, "Privacy: Its Meaning and Value," p. 222.

45 Adam D. Moore, "Privacy: Its Meaning and Value," p. 223.

46 Adam D. Moore, "Privacy: Its Meaning and Value," p. 215.

47 W. A. Parent, "Privacy, Morality and the Law," *Philosophy & Public Affairs* 12.4(Autumn 1983): 269-288, p. 269.

48 Charles Fried, *The Anatomy of Values* (Cambridge, MA: Harvard University Press, 1970), p. 141.

49 Richard Wasserstrom, "Privacy: Some Assumptions and Arguments," in Richard Brunaugh,

conception of privacy where privacy is defined more as the control an individual has over the information related to himself or herself. According to Parent, an individual should be entitled to reveal as much or as little information concerning herself to those she trust as she likes. She has control over the information about herself, but it does not seem that her privacy is then either threatened or protected, because she voluntarily reveals her private information to others. She has control, but not necessarily privacy. Another important point in Parent's view is his justification of privacy. The reasons why privacy should be valued are threefold, according to Parent. Firstly, if others have information of us they have power over us. Secondly, people are generally intolerant of others' lifestyles and so on, so privacy protects this, and lastly privacy is among the values that altogether constitute the 'liberal ethics'. In Parent's words, "individuals are not to be treated as mere property of the state but instead are to be respected as autonomous, independent beings with unique aims to fulfill."⁵⁰

Hence it seems that Parent subscribes to the 'instrumental' view of privacy as a value, since he believes that privacy is valuable because it brings about desired values, such as individual autonomy and protection against abuse of power by others, protection of diversity in lifestyles and so on, and the need for individuals to be treated as ends, not mere means, as Kant would say. This instrumental view accords with that of Fried, who argues for privacy as a necessary ingredient of intimacy among persons.⁵¹ Their views thus contrast with those of Moor and Moore, both of whom look at privacy as a more or less universal concept. We will discuss this point later on when we look at how the Buddhists look at the problem of privacy later on in the paper.

What is common in these conceptions of privacy, even though there are many differences among them, is their presupposition of the existence of the individual or the self whose privacy is the object of analysis here. For people like Moor, Moore, Fried or Parent privacy is that of the individual. The question

ed. *Philosophical Law* (Greenwood, CT: Greenwood Press, 1979): 148-167.

50 W. A. Parent, *Privacy, Morality and the Law*, p. 276.

51 See Charles Fried, *The Anatomy of Values*, p. 209.

is what it means for an individual to have privacy as well as why privacy is valuable or important to him or her. I would like to call this the 'individual-centered' view of privacy because it seems to take for granted the existence of the individual self. Parent's definition, for example, presupposes that there be personal knowledge which should be protected from others. Moor's idea that information about oneself needs to be controlled and only restricted personnel are authorized to gain it in relevant contexts also shares the presupposition that it is information about oneself, that is, about the individual self who subjectively purviews the information about herself and decides which information could be divulged to others and which not.

This does not mean that privacy does not exist at the broader levels. According to Westin, there are three levels of privacy, that of political privacy, socio-cultural privacy and individual privacy. The first is the kind of privacy that citizens in a political entity enjoys and can be violated only when the interests of the whole polity is at stake.⁵² The second level concerns privacy in lifestyles, beliefs, behaviors, that should be protected from undue intrusion by the authority. In other words, cultures can also have their privacy as do individuals. The third level is that of the individual, whose private life should be accorded some space which would allow her to make decisions and express her ideas, which are necessary for democracy.⁵³ Thus Westin sees privacy to be a "social good," which requires "continuous support from the enlightened public."⁵⁴

To turn to the right to privacy, Judith Jarvis Thomson famously argues that there is no such right;⁵⁵ instead there are a group of rights related to the person which are more basic. Her argument is that the right that is usually considered as right to privacy is in fact right to some more basic conditions such as property or person. A quarreling couple, for example, might not enjoy their quarrels to be eavesdropped through a bugging device, but Thomson sees this

52 Alan F. Westin, "Social and Political Dimensions of Privacy" *Journal of Social Issues* 59.2(2003): 431-453, p. 432.

53 Alan F. Westin, "Social and Political Dimensions of Privacy," p. 434.

54 Alan F. Westin, "Social and Political Dimensions of Privacy," p. 434.

55 Judith Jarvis Thomson, "The Right to Privacy" *Philosophy & Public Affairs* 4.4(1975): 295-314

more as the right not to be listened to, which is a part of the right over the person, not the right to privacy. Cutting someone's hair while she is asleep does not harm her, but her right is violated nonetheless, and that is the right over the person according to Thomson. The basic idea, then, is that any putative instances of violation of the right to privacy turn out to be, on closer analysis, to be violation of the right to person or the property.⁵⁶ Against this, Thomas Scanlon argues that there is indeed a common ground to the right of privacy, and that is the condition of "being able to be free from certain kinds of intrusions."⁵⁷ And it is the intrusions of our bodies, behaviors and interactions with others are some of the clear examples of intrusions that violate the norm of privacy.⁵⁸

From this brief review of the numerous literature on privacy in the West, it should be clear that a common thread that runs through all these differing conceptions is the presupposition that the individual exists objectively and distinctly from other individuals. The control theory of privacy assumes that it is the individual that should be in control of her information. The restricted-access view is also based on the belief that the individual exists access to whose information should be restricted. Parent views privacy as a protected given to personal knowledge, which is the kind of knowledge about an individual who, from her own first-person perspective, does not want others to share with her. The key issue here is the individual and the first-person perspective which is its defining characteristic.

This has not always been in the case even in the West. Tamás (2002) details the development of the conception of privacy in the West, and found that before the advent of modernity privacy consisted mostly in the 'private' life in one's own house or among one's own family.⁵⁹ It is only with the modern emphasis on the pure subjectivity of the individual (evidenced in René

⁵⁶ Judith Jarvis Thomson, "The Right to Privacy," pp. 305-306.

⁵⁷ Thomas Scanlon, "Thomson on Privacy" *Philosophy & Public Affairs* 4.4(1975): 315-322, p. 315.

⁵⁸ Thomas Scanlon, "Thomson on Privacy," p. 315.

⁵⁹ G. M. Tamás, "From Subjectivity to Privacy and Back Again" *Social Research* 69.1(2002): 201-221.

Descartes' famous "Cogito, ergo sum" statement) that the conception of privacy changed toward something based on the point of view of a single individual who is defined solely through her personal viewpoint, her idiosyncratic perspective which can be shared by no one.

In a critique of the modern conception of privacy, which clearly contrasts it with the ancient conception, Tamás has the following to say:

Privacy as subjectivity hurts itself at the unchanging public sphere and at its political might, which makes the subject feels inessential, politically irrelevant; the subject still remains free to be herself, indeed the more herself she is within her private moral homestead, the freer she is; but in the public realm she is increasingly unprotected as long as rebellion is redefined as dissent and, of course, she has a "right" to dissent.⁶⁰

So the ancient conception concerns having authority in one's homestead, and according to modernity such homestead has receded to lie solely within the limit of pure subjective consciousness, which as Tamás points out here, lies in danger of being eroded by the kind of politics which destroys the "public sphere" in which citizens exercise their right to take part in governance. What is interesting in our case is that all the key figures in contemporary debates and analyses on privacy in the West seem to subscribe to this modernist idea of "privacy as subjectivity". It is thus highly interesting to see how works on privacy from the Asian perspective compare with this Western conception.

As previously mentioned, Charles Ess has made an important contribution to this comparative perspective on privacy in his special issue of *Ethics and Information Technology*. The papers in the volume point to an emergence of a new perspective on privacy which does not rely solely on the metaphysics of 'pure subjectivity' that we have seen to be presupposed by the

⁶⁰ G. M. Tamás, "From Subjectivity to Privacy and Back Again," p. 220.

Western conception. For Ess the most salient different between the Asian and Western conception is this basing of privacy on the individual subject, and he points out that this runs counter to the teaching of Buddhism:

In particular, in those countries such as Japan and Thailand where Buddhism plays a central role in shaping cultural values and identity, the Buddhist emphasis on “no-self” (*Musi* in Japanese) directly undermines Western emphases on the autonomous individual as the most important reality (at least since Descartes), the source of morality (in Kant), the foundation of democratic polity, and in all these ways the anchor of Western emphases on individual privacy. As Buddhism stresses instead the importance of overcoming the ego as the primary illusion at the root of our discontent – it thus provides a philosophical and religious justification for doing away with “privacy” altogether, as in the example of Japanese Pure Land Buddhism (*Jodo-shinsyu*), which inspires some authors to move towards salvation by voluntarily betraying private, even shameful personal thoughts.⁶¹

Moreover, when the awareness of the need for privacy enters the lifeworld of the cultures of the East, Ess sees that what happened is a kind of ‘hybridization’ where the elements of the West (individualism, emphasis on pure subjectivity) and of the East (emphasis on community and dissolution of the individual self) are mixed up. It is a purpose of this present paper to elucidate the nature of this mixture, and it shall be seen in the next section how a theory of privacy according to the Buddhist perspective could be started.

For more specific perspectives of privacy in the East, Lü provides a detailed analysis of Chinese culture in terms of privacy.⁶² What is notable is that

61 Charles Ess, “Lost in Translation” *Ethics and Information Technology* 7.1(2005): 1-6, p. 5.

62 Lü, Yao-Huai, “Privacy and Data Privacy Issues in Contemporary China.”

Lü states that for the Chinese privacy is regarded as having an instrumental, rather than intrinsic value.⁶³ And this will also be an important topic in the discussion of the Buddhist view which I shall develop in the next section. Furthermore, Kitiyadisai presents a powerful critique of the Thai government's recent attempt to issue 'smart ID cards' to all its citizens, cards which have strong potential to violate the right to privacy of all Thai citizens.⁶⁴ As the much more personal information can be contained in the microchip that is implanted in the smart card, the potential for abuse is much greater than before. And more alarming is perhaps the tremendous power over the citizens that the Thai government could have once all the cards are issued to each citizen. (By law, each Thai citizen above 15 years old is required to have a national identity card.) This power includes population profiling, criminal records, genetic categorization and so on. Kitiyadisai correctly points out that the lack of legal mechanism against such abuse remains a thorny issue, and it appears that the government is not much interested in sponsoring a law which would restrict their own power.⁶⁵ Hence this is one of the many issues which the Thai citizens need to be constantly aware of so that the democratic ideal of checking and balancing the political power can be realized.

Another perspective comes from Japan. Nakada and Tamura says that privacy as practiced nowadays in Japan has its roots in traditional Japanese culture.⁶⁶ What is emphasized here is the contrast between the Western notion of the individual as somehow atomic, where one is more or less separated from another, and the Eastern notion of the individual as defined in terms of the relations the individual is having with other individuals and of roles he or she has within the society.⁶⁷ This is a standard Confucian teaching on the individual

63 See Lü, Yao-Huai, "Privacy and Data Privacy Issues in Contemporary China," and Ess "Lost in Translation," especially p. 2 and note 3.

64 Krisana Kitiyadisai, "Privacy Rights and Protection: Foreign Values in Modern Thai Context."

65 Krisana Kitiyadisai, "Privacy Rights and Protection: Foreign Values in Modern Thai Context."

66 Makoto Nakada and Takanori Tamura, "Japanese Conceptions of Privacy: An Intercultural Perspective."

67 Makoto Nakada and Takanori Tamura, "Japanese Conceptions of Privacy: An Intercultural

in society (For more detail, see Ames and Rosemont 1998).⁶⁸ The idea is reinforced by the Buddhist teaching on 'non-self'; hence it is highly interesting to see how according to Buddhism (and to a lesser extent Confucianism) the modern conception of privacy as discussed in Western literature (such as those by Moor, Parent, or Moore and so on) can be analyzed and justified. [perhaps more on Capurro article]

In any case, a broad picture emerges from this comparative review of the literature on privacy: On the one hand, the West tends to view privacy in terms of a property of an atomic individual. Being atomic seems to imply that the individual is accorded some degree of privacy. This can also be compared with the ancient conception where one's private domain is the estate which one possesses and no outside influences are not to intervene (within certain limits). Breach of privacy is tantamount to trespassing one's property. The difference is that for the modern conception the domain in question has receded to the individual consciousness or 'pure subjectivity'. This is not to say that the estate or the individual possession such as land and other property has no role to play. Obviously these have a large role to play in modern societies, but it points to the fact that in the modern consciousness, the justification of privacy ultimately relies on pure subjectivity or private reasoning. Here one is reminded of the ethical principles of Kant, in which the ultimate linchpin of ethical judgment is the individual reasoning mind itself.

On the other hand, the situation in the East, at least as emerged from the above discussion, tends to be one where the line separate one individual from another is fuzzier. One might want to compare this situation with the general social condition in Asia where individuals tend to live together in large family groups, sharing many things together, and where the need for private space is not emphasized. One might also imagine a large family house, where the boundaries among individual members are close to non-existent. As for the private subjectivity, there is not much emphasis on it in the philosophical

Perspective" and Charles Ess, "Lost in Translation."

68 Roger Ames and Henry Rosemont, *The Analects of Confucius: A Philosophical Translation* (New York, NY: Ballantine, 1988).

traditions of the East. Buddhism treats it as parts of the five constituent elements (*skandhas*) of the self, consisting of bodily form (*rūpa*), feeling (*vedanā*), perception (*saṃjñā*), disposition (*saṃskāra*), and consciousness (*viññāna*). The private self is thus composed of four basic elements in the Buddhist thought, and the idea of personal subjectivity is that it consists of these more basic elements. Hence one can see from the beginning that in Buddhism the personal self is broken down into these elements and there is no assertion that such a self exists as a self-subsisting entity. In more mundane terms, this could be taken to mean that in the East the emphasis is on the interrelation of one self with others, as seen in the Japanese examples mentioned in Nakada and Tamura,⁶⁹ rather than on the atomic characteristic as in the West.

Nonetheless, one should not be persuaded to have an idea that things are entirely black and white. The West has its interrelatedness of individuals as well as emphasis on the role of communities, and the East also has its way of emphasizing the separatedness of individuals. For example, the communitarian tradition, based largely on the works and thoughts of Hegel, is a clear indication that the idea that individuals are interrelated is not lost in the West. And in the East, today's globalized world has dictated that the idea of privacy is to take root and find ways of concrete realization.⁷⁰ The task for the theorist is then to search for a system of justification of privacy which does respect to these diversity of cultural traditions, but at the same time is powerful enough to command rational assent of all involved. In order to start to do this, we discuss in the next section the Buddhist view on the self and its implication for privacy.

Different Cultural Attitudes

Thailand

⁶⁹ Nakada and Tamura, "Japanese Conceptions of Privacy: An Intercultural Perspective."

⁷⁰ See Lü, Yao-Huai, "Privacy and Data Privacy Issues in Contemporary China" for an example.

Pirongrong Ramasoota has documented attitudes of the Thai people toward privacy. As with other societies, Thai society in the past did not give much significance to privacy, and in fact it was not quite possible for people to maintain a degree of privacy due to the fact that family members typically shared rooms together. Moreover, when Thais migrated to urban areas as a result of economic expansion and industrial development, many lived close together, which made it very difficult to have privacy. Furthermore, Thai state in the past took an active interest in maintaining control over its population in order to secure manpower, which was a scarce resource before the advent of modern development and technologies. Ordinary Thai citizens were tattooed on the wrist to signify their obligation to the Crown. This was also a way intrude upon the privacy of the citizens as the tattooed wrist could be seen by anyone, so the tattoo advertised openly the status of the person. Certain information could be put on the tattoo, such as the branch of the government the person had to work for, or to which noble masters the person 'belonged or had an obligation to.

The practice of registering ordinary citizens in Thailand is still being practiced today in the form of housing registration and citizen identification. The purpose of the housing registration is to specify the exact location where a citizen lives, which house number, in which district, which province and so on. Thus the authority has information on the exact number of population in each subdistrict, district, province, thus they are enabled to know the number of the population in the country, as well as their profiles. Another purpose is that the authority would then be able to link up any individual citizen to their domicile in the country. In addition to the housing registration, each citizen also has to carry a citizen identification card, which contains the name, sex, date of birth and the citizen ID number. The latter is a relatively new invention in the population registration system which made it possible for the authority to use huge population databases to manipulate information about the citizens, enabling it to group the population according to preset criteria. According to Ramasoota, these systems are tools that the Thai government use to maintain surveillance on the population and the use has affected power relations

between the government and the people in Thailand.⁷¹ This shows that, for Ramasoota, the attitude toward privacy by the Thai authorities is such that it may be an interesting idea, but not one that is actively defended in the law.⁷² Kitiyadisai also agrees with Ramasoota in that the traditional conception of what could be understood as a kind of privacy is collectivistic rather than individual.⁷³ They agree that the conception of privacy as property of individuals has no place in traditional Thai culture.

According to Kitiyadisai, the word for 'privacy' does not really exist in Thai language. What this actually means is that a new word has to be coined in order to connote the meaning of 'privacy' as understood in modern context. This is true of Asian languages, such as Chinese and Japanese, as well.⁷⁴ Thai traditional village life was such that the whole family shared a room in common, a feature, noted before by Solove in colonial America, that did not quite promote individual privacy. Furthermore, Kitiyadisai reports that in the context of Thai culture, living closely together resulted in much emphasis being given on conflict avoidance, especially avoidance of face-to-face conflicts. Such avoidance is being strictly observed in Thai culture, so much so that it is almost a taboo to have open conflicts.

Another aspect of privacy in Thai culture concerns private affairs and non-interference in other people's lives. According to Kitiyadisai, "Personal or private businesses or affairs should not be interfered with in Thai culture, e.g., quarrels within the family, the punishment of a child by his parents, and so

71 Pirongrong Ramasoota, "Information Technology and Bureaucrative Surveillance: A Case Study of the Population Information Network (PIN) in Thailand." *Information Technology for Development* 8.1(1998): 51-64.

72 Pirongrong Ramasoota Rananand, "Information Privacy in a Surveillance State: A Perspective from Thailand," in *Information Technology Ethics: Cultural Perspectives*, Soraj Hongladarom and Charles Ess, eds. (Hershey, PA: Idea Group Reference, 2007): 124-137.

73 Krisana Kitiyadisai, "Privacy Rights and Protection: Foreign Values in Modern Thai Context." *Ethics and Information Technology* 7(2005): 17-26, p. 18.

74 See Lü Yao-Huai, "Privacy and Data Privacy Issues in Contemporary China." *Ethics and Information Technology* 7(2005): 7-15; Makoto Nakada and Takanori Tamura, "Japanese Conceptions of Privacy: An Intercultural Perspective." *Ethics and Information Technology* 7(2005): 27-36.

forth. This notion is the legacy of the feudal heritage of Thai society where the master or lord of the household owned and commanded the lives and destinies of all his subordinates under his autocratic rule.”⁷⁵ This means that the master of the house had a free rein in running his house with minimum interference from outside authorities. Basically he could do what he pleased to the members of his household, a situation that was rather similar to the Roman house, where the master reigned supreme.

Ramasoota outlines a history of the concern of Thai authorities for registering and maintaining control over their population.⁷⁶ Starting from tattooing the wrists of the ordinary citizens, the authorities have sought to profile, categorize and control information related to the citizens in various ways. Thus the use of these systems reflects certain attitudes of the bureaucratic authorities toward the population in Thailand, an attitude that reaches far back into the past. During the period from the 1950’s to the 1970’s, Thai citizens were required to carry identification cards, which were launched in response to the Cold War and dictatorial rule which wanted to identify Thai citizens from foreign immigrants. The citizen identification card, together with the housing registration mentioned earlier, became then household items for all Thai citizens, something they seldom had a critical eye on.⁷⁷

The advent of information technology in the 1980’s gave rise to its use in maintaining a stronger grip on registration of the citizens. In 1983, personal identification number (PIN) was introduced to Thai citizens for the first time. From then on all Thai citizens were assigned a unique, 13-digit number that would immediately identify each of them instantly through the national database. The system then gave rise to the smart ID cards, which were introduced in the early 2000’s. The card, as discussed before, could hold much more than the personal identification number. All this reflects the desire of the political authorities to control their citizens through information.

75 Krisana Kitiyadisai, “Privacy Rights and Protection: Foreign Values in Modern Thai Context,” p. 18.

76 Pirongrong Ramasoota Rananand, “Information Privacy in a Surveillance State,” pp. 125-128.

77 Pirongrong Ramasoota Rananand, “Information Privacy in a Surveillance State,” p. 126.

Apart from the cultural attitudes toward privacy and state control by the Thai authorities, Buddhism also explains much of the behavior and the attitudes that comprise the culture as a whole. Nonetheless, the connection between Buddhism and privacy is a highly complex matter which the later chapters will discuss in detail. Here we focus only on how much of the Thai culture could be explained through Buddhism. Ramasoota says that Buddhism is “incongruent” with privacy since Buddhism,⁷⁸ according to her, focuses more on otherworldly domain where individuals are encouraged to abandon the material world. This contrasts with the demands of the modern liberal society that stresses the importance of individual right and freedom.⁷⁹ More specifically she says that the two differ in two broad ways. Firstly, Buddhism is based on interrelatedness or interdependence, whereas privacy is based on individual, atomic components of society. This is undoubtedly true, but as I shall say in detail in the later chapters, this difference or apparent incongruence between Buddhism and the usual conception of privacy does not imply that privacy could not be justified through a new look or a reinterpretation of the Buddhist thought. Secondly, Ramasoota argues that Buddhism pays scant attention to individual right and freedom, which is the lynchpin of privacy. Again this will be a subject matter for further discussion in the later chapters.

China

The situation in China is in general not too different from that in Thailand. Traditionally an agrarian society like the Thai one, Chinese society was one of very close knit families and village communities sharing a lot in common in daily living, especially living space. Thus privacy in the modern sense was quite unheard of. According to Lü Yao-Huai, all these changed in the 1980's as China was fast opening its door to the West and became more receptive toward Western beliefs, practices and ideas.⁸⁰ However, there is a large

78 Pironrong Ramasoota Rananand, “Information Privacy in a Surveillance State,” p. 124.

79 Pironrong Ramasoota Rananand, “Information Privacy in a Surveillance State,” p. 125.

80 Lü Yao-Huai, “Privacy and Data Privacy Issues in Contemporary China,” *Ethics and Information Technology* 7(2005): 7 – 15.

scale historical study on the Chinese concepts of privacy, edited by McDougall and Hansson,⁸¹ where articles are contained that argue for that the concept of privacy in some sense was extant since the very ancient period in China. However, the studies in the book focus more on the attitude toward privacy as seen in the historical texts, thus are rather limited on the gentry or the aristocrats only. For these people there existed two separate realms, that of the *private* (*si*) and the *public* (*gong*). The former was regarded as a residual category, i.e., what remained after the latter domain was already delineated. In this case the situation was not much different from the ancient Thai society or Greek or Roman ones for that matter. The master of the household had his 'private' domain inside his house where basically he could do whatever he pleased; this domain was contrasted with the public domain of the market or the government arena where the king ruled. However, in China, after the Taiping rebellion in the 1890's the situation began to change as the emerging middle class, or the capitalist class in the modern sense, began to assert themselves, thereby dismantling the age-old distinction between the gentry and the peasants. The onrush of Western ideas that flooded into China also included that of modern privacy, understood as the need for erecting an imaginary or legal barrier that is presupposed by the idea of individual right and freedom.

On top of this backdrop, Lü argues that the influx of Western, liberal ideas also had a lasting impact on how the lives of ordinary Chinese people were lived. More significantly, Lü's article focuses on the contemporary scene after the 1980's, where as *Chinese Concepts of Privacy* focuses more on historical matter. Since the opening up of China and the ever tighter integration of the country into the globalized world of economy and commerce, Chinese culture has to find for itself a place for the modern concept of privacy, which is presupposed by many beliefs and practices that are part of the modern liberal ideas. According to Lü, not long before the 1980's, the word for 'privacy' in Chinese language was *Yin-si*, which could be literally translated as 'shameful secret.'⁸² This is the kind of thing that connotes the old melodrama of a man

81 B. S. McDougall and A. Hansson, eds., *Chinese Concepts of Privacy* (Leiden: Brill, 2002).

82 Lü Yao-Huai, "Privacy and Data Privacy Issues in Contemporary China," p. 8.

having a mistress and having to hide this from the eyes of the public, obviously not something that could be a literal rendition of the modern concept of privacy. Furthermore, according to Manuel Maisog, “the traditional Chinese perspective sometimes assigned negative connotations to privacy. A lot of this can be seen from the Chinese language itself. For example, the saying ‘to walk private’ (走私) means ‘to smuggle.’ And the four-character saying ‘self private, self benefit’ (自私自利) means ‘selfish’ or ‘self-centered.’”⁸³ This clearly shows the attitude of a typical Chinese toward privacy issues; it would take some time for the new conception of modern privacy to catch on. Nonetheless, Lü says that today the concept Yin-si has expanded to include those things that a person would not like others to know, which do not have to be shameful nor a secret. Thus even though it seems that the same word is still being used, it is used in such a way that the meaning has expanded quite significantly. This indicates a change in the consciousness of the language users as to how privacy should be understood. Nonetheless, even though Lü sees such a tremendous change in how privacy is conceptualized and understood in the Chinese context, he still believes that the conception will retain its Chineseness, a unique cultural trait that perhaps makes it always different from its Western counterpart. This is to be expected given the fact that concepts and language are tools that people use in their daily lives, and since there are still very noticeable differences in Chinese and Western cultures, despite the fact of the tighter economic integration, the existing differences will still be reflected in how words such as ‘yin-si’ or ‘privacy’ is used in the respective cultural spheres.

Another important point in Lü’s paper is that he argues that for the Chinese attitude toward privacy is such that it is an instrumental value rather than an intrinsic one. Thus justifying privacy is a matter of showing positive outcomes when privacy regulations are followed rather than showing that it’s the people’s right to have their privacy protected.⁸⁴ For Lü this reflects the cultural background of the Chinese people that take the benefits of the whole to

83 Manuel E. Maisog, “Personal Information Protection in China,” available at http://www.huntonfiles.com/files/webupload/PrivacyLaw_Personal_Information_Protection_in_China.pdf [retrieved 11 September 2009], p. 3.

84 Lü Yao-Huai, “Privacy and Data Private Issues in Contemporary China,” p. 13.

be of paramount importance. Perhaps what Lü actually means is that by protecting the privacy of the individuals, a number of social goods ensue, which do benefit both the individuals themselves and their society. If privacy is good for the society (perhaps through better and smoother relations with the West and the outside world), then the value of privacy is thereby justified. This, by the way, is also the position taken in this book, but in the later chapters I will argue for this instrumental justification of privacy in detail.

Japan

According to Makoto Nakada and Takanori Tamura, the Japanese mindset regarding the issues of what is inner or outer is characterized by two words, *Seken* and *Shakai*.⁸⁵ Thus their central claim in the paper is that there are many layers of the Japanese conceptions of privacy due to complex historical, religious and cultural reasons. In other words the Japanese people live in a plurality of worlds constituted by their traditional worldview as well as the world as it appears through the need to interact with modernity. What is *Seken* resolves around traditional and indigenous thinking and way of life, whereas *Shakai* refers to the beliefs and practices coming from outside of the Japanese cultural world, especially from the West. For Nakada and Tamura, the distinction here is very important in understanding how privacy is understood and conceptualized by the Japanese mind. Presumably, as an introduced foreign concept, privacy obviously belongs to the *Shakai* world. However, it remains to be seen, and could be speculated, that Japanese culture also does have some conception and practice that could be related to privacy, at least to the way the concept is instantiated in the ancient world, as we have seen in the case of the Greek and Roman societies as well as the Chinese or Thai ones. Nonetheless, Nakada argues that another Japanese word should be added to the two, thus making a triangle of concept. According to Nakada and Tamura, "*Ikai* is the world of 'the other(s),' i.e., the hidden or forgotten meanings or values in *Seken* or *Shakai* as normal aspects of the world; *Ikai* is the aspect of the world from

⁸⁵ Makoto Nakada and Takanori Tamura, "Japanese Conceptions of Privacy: An Intercultural Perspective."

which evils, disasters, crimes, and impurity – along with freedom and the sources of energy related to art and spiritual meanings – seem to emerge. The term *Ikai* is furthermore sometimes used synonymously with *Muen*, which for Nakada and Tamura is crucial in understanding the Japanese mind more deeply.

In order to illustrate the meanings of these Japanese concepts and how they are related to that of privacy, Nakada and Tamura relate a story about a homicide that happened in 2004 in a small town outside of Tokyo. An unemployed 28-year-old man killed both of his parents and his elder sister.⁸⁶ The incident was reported in a rather lurid detail by the respected *Asahi Shimbun*, the national newspaper of Japan. The story contained details about the family as well as the detailed map and photographs of the family's house; it also included a story about the relations within this family and interviews of neighbors. To a Western or European mind this report is quite disturbing as it seems to intrude upon the privacy of the family, a tragic incident made even more so by the details of the newspaper report. However, when the authors asked their students about the report, most of his students did not see anything wrong in the report, saying that it was useful for the readers to know the background information and the truth behind the crime. Nakada and Tamura explain the situation by referring to the three concepts mentioned earlier. For a typical Japanese, the *Seken* is the normal functioning of things. This could be compared with the Greek term *cosmos* when it means the order of things, the way things normally are. When the crime happens, the typical Japanese mind would see this as a disturbance of the order, an influence coming from outside that disrupts the way things should be. The term for this disruptive force is *Ikai*, which could be compared with Greek chaos. It seems that for the Japanese *Seken* and *Ikai* are in perpetual conflict, as does the conflict between *cosmos* and *chaos* in the Western mind. Hence in fact both *Seken* and *Ikai* belong to the same cultural world. *Ikai* has its place in the indigenous Japanese mindset as does *Seken*, in the same as the hero and the villain both function in the same story. Thus the story in the *Asahi Shimbun* is an illustration of this ancient fight

⁸⁶ Makoto Nakada, "Japanese Conceptions of Privacy," p. 28.

between order and chaos, between *Seken* and *Ikai*, that must have been played over and over in the Japanese cultural world for millennia. However, when Japan entered the modern world, there is an added dimension, that of *Shakai*, which refers to modern life, mindset, which obviously includes science, technology, economic globalization and the like. For Nakada and Tamura, the *Shakai* world means that the attitude toward the news report of the murdered family should be such that the private information of the family should be kept private, and this is in fact the standard practice in the EU countries today. According to the *Shakai* world, the private life of the murdered family should not be given in too much detail, but in the traditional mindset of the Japanese, just giving the outward fact of the crime would make no sense because one would then be at a loss in understanding how such a severe disruption of social order could have happened, and to answer this requires the notions of *Seken* and *Ikai*, which imply that some intimate details about the family and the location of the crime scene should be given.

The different attitudes toward how the news report of the crime should be given in the mass media show how the Japanese and the Europeans are divergent in their views toward privacy. For the Europeans, details about the victim's private life as well as his or her house location should not be shown in the report because these are seen not to be relevant to the gist of the report itself, and more significant because that would compromise the privacy of the family members of the murdered victims. The Japanese, on the other hand, view this as a strong disruption of the ordered universe through some blind outside force, and without further information regarding the victims private life and his exact location one would not be able to piece together how such a disruption could have happened. This is a clear example of diverse cultural attitudes toward privacy, something that will be discussed more later in this chapter.

According to Nakada and Tamura, there are two axes that define the relation between the 'outer' and 'inner' or the 'public' and 'private' in Japanese culture. One is defined as a relation between the *Ohyake*, which means 'big house,' and *Watakusi*, which means 'not Ohyake,' having the connotations of

selfishness or being partial.⁸⁷ This relation stems from the pre-modern Japanese society where *Ohyaake* means the imperial court or a place where big policy decisions are made. It also connoted the idea of the collective and what is impartial. *Watakusi*, on the other hand, connoted the idea of selfish or partial interests. Hence we can understand the relation between the two concepts as one between the collective and the individual interests, something not much different from the same kind of relation in Chinese, or other Asian cultures for that matter. This relation, namely the awareness of the opposite poles between the collective and individual interests, is deeply ingrained in Japanese culture. It is hardly surprising that positive value was given more to the collective than the individual. The other relation, on the other hand, is one between the 'public' and the 'private' in the modern sense. Here the word 'privacy' is translated into Japanese, using the Katakana script that is reserved for phonetic approximation of foreign terms, as *puraibashii*, a word, with a sense not unlike the new connotation of the Chinese counterpart, Yin-si, denoting a new world where individuals' private sphere needs to be protected in the context of modern technological society.⁸⁸ Perhaps what distinguishes between the two is that, in the case of the old relation, positive value was given more to the collective (or the 'public'), whereas in the later relation between the public and the private in the modern sense, it appears that more emphasis is paid to privacy—what relates to the individual as opposed to the large society—than to the interests of the public. In short, in the modern relation, as a result of the influx of modern or Western worldview, the private lives of individuals are given more positive value since this is part and parcel of modern society. This added dimension coming from the influx of Western worldview is what is lacking in the old relation between the 'large house' and the 'selfish interest' of the old Japanese culture.

In another paper, Mizutani, Dorsey and Moor argues that one should distinguish between the descriptive and the normative senses of privacy.⁸⁹ The

87 Nakada and Tamura, "Japanese Conceptions of Privacy," p. 32.

88 Nakada and Tamura, "Japanese Conceptions of Privacy," p. 33.

89 Mazahiko Mizutani, James Dorsey and James H. Moor, "The Internet and Japanese Conception of Privacy," *Ethics and Information Technology* 6(2004): 121-128.

empirical fact that one does or does not have privacy (such as when one is being watched constantly) is in the domain of descriptive privacy, and the rightness or wrongness of such action belongs to the domain of normative privacy. One may have a level of descriptive privacy when one walks along a street as no one is not bothering her, but that does not imply that she is entitled to normative privacy because, being on a public street, many people can look at her. Mizutani and others argue that even though the descriptive senses of privacy may differ in Japan and the West, especially the US, there is a certain minimally shared ground in the domain of normative privacy. That is to say, even in such divergent cultures as the American and the Japanese, there is a level of agreement that privacy of individuals should be protected. On the contrary the two cultures differ significantly on the issue of how such protection should be justified. Here Mizutani and others is quite different from Nakada and Tamura in that the former seem to be more universalistic regarding the value of privacy. Presumably, Nakada and Tamura's example of the lurid newspaper report of the murder might be looked at by Mizutani and others with not as much approval. For Nakada and Tamura, the way the newspaper gives a large number of details of the victim's private life signifies the Japanese attitude toward privacy that stems from their tradition and culture. However, presumably for Mizutani and others, such news report might have broken a normative rule of privacy of individuals. For Mizutani and others, there are two levels of the conception of privacy when it comes to cultural differences, namely the minimal and the rich levels.⁹⁰ The minimal level is what is shared across cultures; here Mizutani and others follow Moor's definition of 'privacy' as "restricted access."⁹¹ Privacy is here defined as a situation where access to certain information is restricted to an individual or a group. In this sense only certain individuals or groups are permitted to have access to the information. On the contrary, information is public when there is no such restriction. Then Mizutani and others goes on to provide historical details showing that restriction of access to information was also present in Japanese culture, and by

90 Mizutani, Dorsey and Moor, "The Internet and Japanese Conception of Privacy," p. 124.

91 James H. Moor. "Towards a Theory of Privacy in the Information Age." *Computers and Society* 27.3(1997): 27-32.

implication in all cultures.⁹² Having given a definition of the minimal level, the rich level is then understood as the traditions, histories, worldviews of a certain culture and all together constitute both the descriptive attitude toward and the normative understanding of privacy in that culture.⁹³

Though Mizutani and others went at a rather great length to show that the Japanese concept of privacy is a viable one and stands on a par with the conception of the privacy commonly accepted in the West, Yohko Orito and Kiyoshi Murata argue instead that the typical Japanese has a difficult time understanding the concept of privacy as manifested in contemporary, globalized practice.⁹⁴ For Orito and Murata, Japanese protection of privacy is superficial, presumably because the protection does not emerge out of a thorough understanding or a cultural background steeped in the felt need to protect the privacy rights of individuals.⁹⁵ The protection, as evidenced in regulations and laws in this regard, has only been put there as a result of pressure from the globalized world. Thus for Orito and Murata the right to privacy is not a universal one; instead it is an offshoot of Western mindset and tradition that is somehow imposed on other cultures due to the influences of the global economy. They conclude: “[I]t is not possible to claim that the sense of a

92 Mizutani, Dorsey and Moor, “The Internet and Japanese Conception of Privacy,” p. 122.

93 In fact Mizutani’s conception of the minimal and the rich levels of culture bears some resemblance to my conception, derived from Michael Walzer in *Thick and Thin: Moral Arguments at Home and Abroad* (Notre Dame), that the impact of information and communication technologies on cultures could be seen at two levels, namely the thick and the thin one (See Soraj Hongladarom, “Global Culture, Local Cultures and the Internet, “ in Charles Ess and Fay Sudweeks, eds., *Culture, Technology, Communication: Towards an Intercultural Global Village* (Albany, NY: State University of New York Press, 2001), pp. 307-324). The thick corresponds to the rich level and the thin to the minimal level here.

94 Yohko Orito and Kiyoshi Murata, “Privacy Protection in Japan: Cultural Influence on the Universal Value,” available at http://bibliotecavirtual.clacso.org.ar/ar/libros/raec/ethicomp5/docs/pdf_papers/52Orito,%20Yohko.pdf (retrieved September 28, 2009). (HTML version at http://bibliotecavirtual.clacso.org.ar/ar/libros/raec/ethicomp5/docs/htm_papers/52Orito,%20Yohko.htm)

95 Orito and Murata, “Privacy Protection in Japan.”

right to privacy is a universal value.”⁹⁶ Thus we have a pair of clearly opposing viewpoints on the status of the right to privacy in Japanese culture. On the one hand, Mizutani and others believe that such a right can indeed be a universal one, and one can find a root for the right from within the indigenous source of Japanese culture. However, Orito and Murata argue that such a right is a foreign induced one and there is no such right within the traditional Japanese culture. For the traditional Japanese, the concept that most resembles that of modern ‘privacy’ has the connotation of a secret that one does not want to share because of one’s shameful attitude. Thus the traditional conception here bears a striking resemblance to the Chinese concept of ‘shameful secret,’ whose characters are used to refer to ‘privacy’ in the modern sense, as we have seen Lü argues before. Thus this is a very important issue which does not limit itself to only Japanese culture. In fact the issue affects all cultures where there is a conflict between the conception of privacy that emerges as a result of interaction with the globalized economy and the indigenous cultural tradition. This issue will be the topic of our next section.

Privacy and Universal Value

The review of research findings on privacy from Thailand, China and Japan show a richness and diversity of how privacy is conceptualized and understood by these cultures. It is perhaps only natural that the argument whether privacy is universal or not emerges out of the authors’ conviction on the issue in the first place. That is, there is a good chance that if the authors’ actually believe that privacy is a universal value that is valid across cultures, their arguments through surveying what a particular culture (be it Chinese or Japanese, or any other) would have to say on the issue would then support their argument. But perhaps this is a gratuitous way of looking at things. Nonetheless, what is clear is that there is a diversity even among scholars coming from the same culture about whether privacy is universal or not. This

⁹⁶ Orito and Murata, “Privacy Protection in Japan.”

shows that the question is a very important and complicated one.

The paper by Orito and Murata has generated a response by Göran Collste, who argues that the concept of privacy is a universal one.⁹⁷ According to Collste, “privacy is a vague concept and it is not possible to identify one Western view of privacy and—for example—the Japanese views of privacy.”⁹⁸ Here Collste’s main argument relies on the notion that individual autonomy, i.e., one’s construction of an ‘I’ functioning as a fulcrum point, is a necessary condition for privacy. Since every person in every culture is an individual, so the argument goes, the right to privacy is thus innate in all individuals, no matter what culture they happen to belong to. Collste is careful in pointing out that different cultures may have different opinions on which information should be regarded as private, but ultimately they are not in disagreement as to privacy is a value or not.⁹⁹

Let us call this type of argument that relies on the metaphysical conception of the individual ego, the ‘metaphysical argument’ for privacy. In fact we have seen this type of argument before in the previous chapter. The idea is that privacy is part and parcel of an individual person. The very fact that there is an individual person who is autonomous, capable of thinking by oneself, and so on, presupposes that there be a certain form of privacy that sets up a kind of boundary line between oneself and everything outside. The boundary then defines the individual’s private sphere. Viewed this way privacy is thus universal because obviously every culture does consist of individuals. Collste then points out that one should not confuse privacy as a universal value in this regard with the kind of information each culture deems to be ‘private.’ Hence Muslim cultures may regard the woman’s hair as private, since it proscribes rules to protect the woman’s hair to be seen in public, whereas in the West or in other Asian cultures this is not an issue. This does not show, according to Collste, that privacy is not a value for the Muslims. On the

97 Göran Collste, “Global ICT-ethics: The Case of Privacy,” *Journal of Information, Communication and Society* 6.1(2008): 76-87.

98 Göran Collste, “Global ICT-ethics,” p. 76.

99 Göran Collste, “Global ICT-ethics,” pp. 80-81.

contrary, the very opposite is the case because the woman's hair is a very private issue and only the husband and the immediately family members of the woman can see her hair. Westerners are typically reluctant to share personal information such as one's income, family issues and so on to a stranger or an acquaintance, whereas in China this is quite common place. This also does not show that either culture does not have the concept of privacy.

However, Collste's argument misses the point when it argues that privacy is universal because it is presupposed by the individual ego. For Collste's argument to work, the individual ego must be metaphysically there as a self subsisting entity. But as we have seen from the second chapter this is very much a contested issue. For the argument proposed by Collste to work, the individual ego must be there as a distinct ontological entity, and many arguments have shown that this is not the case, as the individual ego appears to be a construction, albeit a very persistent one.

It has to be noted that, even though privacy is not a universal value, this does not mean that it is a culture specific value which is not shared by other cultures. Here the model proposed by Mizutani and others is most relevant. On the one hand, cultures share certain minimal level of beliefs and practices. Collste is indeed right when he claims that Japanese culture does value the face that certain information should be kept confidential as much as the West does. However, when it comes to the question what kind of information should be kept secret and on the inside, there can well be divergences in practices. The extreme example of the Roman latrine alluded to earlier in the chapter shows that the Romans had a very different understanding of what is private than we do. But that does not mean that the Romans did not have the concept of privacy at all, for even Romans had to maintain some space around an individual so as to demarcate him or her as an individual person. Hence beyond the minimal level there is what Mizutani and others call the 'rich' level where there are the traditions and stories behind certain concepts. There being the distinction between these two levels does not imply that privacy is totally a culture specific concept. Nor does it imply that relativism in value theory is a tenable position.

Collste tries to argue that privacy is a universal concept by arguing at

the metalevel, claiming that moral universalism is a tenable position. Since moral universalism is tenable, so the argument goes, privacy is a universal concept because privacy is justified through moral universalism (such as privacy is presupposed for an individual). Here one needs to be very careful in not conflating issues that look very similar but definitely are not the same. It is an empirical fact that different cultures and different historical periods had different understandings of what is private. But the moral relativist regarding privacy would go a step further and claim that privacy can only be justified through reliance on the actual belief of certain culture and there is no possible of justifying the moral value of privacy across cultures. Basing his argument on the metaphysical underpinning of the autonomous status of an individual person, Collste then argues that privacy, since it is presupposed by such underpinning, is thus universal. At one level, there is no question of justifying privacy, since the emphasis is on the descriptive task of saying what the attitudes of certain cultures are regarding privacy. But Collste then makes a universalist moral argument, claiming in effect that privacy is justified because it is presupposed by individual autonomy, as we have seen. According to the moral relativist, on the other hand, what is at issue here, supposing that the relativist accepts the cogency of the argument from individual autonomy, is not so much on critiquing the argumentative move from autonomy to justification of privacy, as on critiqueing the very idea of individual autonomy itself. For the relativist, even the concept of individual autonomy is culture specific, and thus one cannot claim it to be universal.

In fact even in the West there are divergences as to how privacy should be understood and justified. De Boni and Prigmore point out that the usual conception of privacy appearing in legislation is Anglo-Saxon and empiricist in its philosophical orientation, and that other philosophical traditions all have a claim to truth, and that one viewpoint should not have precedence over others in this regard.¹⁰⁰ Taken literally, this is a straightforward

¹⁰⁰Marco De Boni and Martyn Prigmore, "Cultural Aspects of Internet Privacy," available at http://www-users.cs.york.ac.uk/~mdeboni/papers/Cultural_Aspects_of_Internet_Privacy.pdf (retrieved September 29, 2009).

relativistic position, but perhaps what De Boni and Prigmore are getting at is that the usual conception of privacy that is prevalent in the law and in academic literature is a product of one culture and one philosophical tradition only; hence the implication is that, since other philosophical traditions at least have an equal claim to validity, privacy according to these other traditions should be given consideration too. In the end, the result of these considerations of privacy in various cultures might turn out to be practically and largely the same, but it may not. In the case that it may not, De Boni and Prigmore would presumably argue that the divergent conceptions of privacy should live together side by side, or they might go one step further and search for an underlying common ground.

In fact the presupposition of De Boni and Prigmore is too broad. Dan Burk shows that there is a divergence of viewpoints on how privacy should be conceptualized and justified between the US and the European Union, where the former prefers a consequentialist one of justifying privacy through its utilities and other desirable goals, and the EU pays more attention to the right of people in having their privacy protected.¹⁰¹ Hence the EU prefers the deontological or right-based theory to the consequentialist one. This philosophical difference led to a number of concrete divergences in laws and regulations on privacy in the two continents. What Burk has shown, in effect, is that we cannot talk about the West as a monolithic entity. Both the two theories, the consequentialist and the deontological theories, are both well supported by numerous works in ethics and philosophy, and neither can be singled out to represent the Western philosophical position regarding privacy as a whole. This divergence may support De Boni and Prigmore's relativistic stance. Since there are divergences, they should be recognized and more importantly the dominant conception should be recognized as belonging to just one position among others only. But the fact that there are many competing ethical theories does not by itself imply that any theory is as good as any other. The fact that the dominant conception (which could well be either the US or the EU position) belongs to

¹⁰¹Dan Burk, "Privacy in the US and the EU," in Soraj Hongladarom and Charles Ess, eds., *Information Technology Ethics: Cultural Perspectives* (Hershey, PA: IGI Global, 2008)

one cultural tradition does not necessarily imply that all other conceptions belonging to other cultural traditions are valid. Otherwise no philosophical enterprise of trying to construct arguments to convince others would be pointless.

In any case, this is a clearly philosophical enterprise. Given that the outcomes of the situation where difference cultures entertain significantly divergent conceptions of privacy would be less palatable than otherwise, it would be desirable to search for a common goal that would tie up all these divergent conceptions together. Fortunately, we have seen from the scholarly works that discuss privacy according to the various Asian cultures that such a common notion of privacy could be found, even if the cultural milieu wherein such a notion exist are totally different. But these works discussing the Asian conceptions did not go as far as stating explicitly which kind of supposedly universal conception of privacy should be preferred, namely those belonging to the deontological or the consequentialist camp, or more concretely the US or the EU way of justifying and regulating privacy. If it is the case that the existence of different ethical theories does not lead to ethical relativism, then we do have reasons to prefer one theory over the other. Thus there should be, and in fact there are, arguments that should be able to convince sufficiently reasonable people to see the advantages of one theory over others. In the same vein, the fact that there are cultural differences in how privacy should be understood and justified does not imply relativism either, though one can obviously argue for one position, or the position of one culture, over the others.

So there seem to be a dilemma. Taking the cue from Burk, if we accept that the differences between the positions of the US and the EU are irreconcilable, then we seem to get started on the very slippery slope toward relativism. On the other hand, we certainly do not want to impose the viewpoint of one culture over all others, like the European colonial rules did toward their subjects in the past. This is a very difficult issue. However, the issue is further complicated by the fact that in the case of the US and the EU the differences work on two levels at the same time, namely the first-order level of which rules and regulations regarding privacy should prevail, and the second-

order one of justifying those rules and regulations through philosophical theory. In order to unpack all these tangles, let us focus ourselves on one particular example of privacy protection, that of a regulation of protection of personal data.

It is rather well known that the European Union has a strong law against violation of personal data in the world. This stems from the Europeans' belief in fundamental human right, which cannot be violated and which is the duty of governments to protect. The US, on the other hand, tends to view privacy more in utilitarian terms. Especially after the passing of the Patriot Act as a result of the September 11, 2001 attack, US authorities seek to enhance security, even though in doing so privacy could be compromised.¹⁰² Movius and Krup argue that laws and regulations in each country are influenced by the countries' particular traditions, histories, values and so on; thus divergences are to be expected.

Nonetheless, in discussing the divergencies in the rules and regulations about privacy in various countries, we need to see how much different these norms are from one another as well as how similar they really are. In any comparison between two things, there will always be both differences and similarities, and when there are differences one can always see how much the two things are different and in what aspects. Thus, in saying that privacy norms in two countries, for example, are different, it is possible that the different aspects are emphasized, neglecting for the time being the similar ones. Hence, in saying that the privacy norms are different in the US and the EU, perhaps those who say this overlook the obvious similarities, such as, for example, privacy should be protected to a certain extent. The point of this is that, in philosophical discussion of universalism versus particularism, too often the emphasis is put on the dichotomous relation between the two. If common traits can be found in the diverse cultures, then this might give support to universalism. On the other hand, if no common trait can be found, then particularism or relativism might be justified. Of course we should not confuse

¹⁰²Lauren B. Movius and Nathalie Krup, "U. S. and EU Privacy Policy: Comparison of Regulatory Approaches" *International Journal of Communication* 3(2009): 169-187, p. 178.

between the empirical description of cultures and the normative assessment of what should be the right way of making normative judgements. But quite often we see that arguments for either universalism or particularism rely on these empirical descriptions.

Thus although the privacy norms between the US and the EU are different, one cannot deny that there are consideration amount of similarities. This point alone shows that arguments purporting to derive the conclusion that privacy norms are relativistic from the mere fact of cultural differences are untenable, because there are always both differences and similarities in the cultures. Moreover, this also shows that differences or similarities between cultures are perhaps a matter of choice—it depends on whether one chooses to look at either differences or similarities. But if this is the case, then the whole debate between moral universalism and moral particularism tends to break down, because the differences and similarities that give rise to this normative debate are a matter of where to look rather than of objectively existing in themselves.¹⁰³

In order to see this more clearly, let us have a closer look on the argument. The differences between the US and the EU on privacy issue are focused more on how privacy should be justified rather than on what actually constitutes privacy. Thus, both Europeans and Americans obviously agree that peeking into someone's house is a violation of the houseowner's privacy. The difference between the two, presumably, is that the American typically refers more to consequentialist reasoning whereas her European counterpart tends to resort more to individual rights. On the one hand, one can push for a relativistic argument saying that there can be no absolutely correct judgment as to whether

¹⁰³The issue here is quite similar to the debate on "Asian bioethics" in bioethics literature. Some bioethicists have proposed that there be Asian bioethics which is distinct from Western one, arguing that there are many differences in normative judgments and ways of justification between East and West. However, this position has been criticized as relativistic; these scholars point out, on the contrary, that there are significant common elements in bioethical judgment systems in the East and West. For more detail see Soraj Hongladarom, "Universalism and Particularism in the Asian Bioethics Debate," *Asian Bioethics Review*, Inaugural Edition (2008): 1-14.

the right-based or the consequentialist theory is the one true theory, basing the argument on the fact that there is a disagreement on this. On the other hand, one can also use the same fact to conclude that moral judgments must converge toward one true position, since both the Americans and the Europeans agree on what counts as privacy. The issue seems to be based on where one looks and where one finds the similarities or the differences.

One can certainly extrapolate this argument to cover the case of differences between the West and the East, for example. One of the main differences, as we have seen, is that the West tends to be more individualistic whereas the East more community based. This is a stereotype of course, but at least it suffices to make the point. We have seen that people in the Eastern cultures do not typically regard matters such as one's personal income or one's family background and history as being private. Westerners, on the other hand, would tend to view these matters as belonging to their personal, private, domain which is not easily divulged to strangers. Thus an Easterner might be less reluctant to tell this kind of information to strangers than a Westerner. This is a first-order level of the issue, where the difference lies at how privacy is perceived. If one focuses on this, then one might have a basis for a kind of relativistic argument. However, if one focuses instead on the commonality, such as on the shared understanding of the private as opposed to the public (even though what counts as either might be different, then one has a basis for a more universalistic argument. Whether we should view privacy, or in fact any issues in normative judgment of this kind, depends much on where we choose to look.

So does this mean that privacy is a universal value? There is no simple answer to this question if what I have argued so far is tenable. One has to supply further information such as at what level the privacy mentioned in the question is actually located. At one level, the privacy may be clearly divergent, but at another, more abstract level, the divergent cultural judgments can certainly converge.

Chapter Three

A Buddhist Theory of Privacy

We have seen in the previous chapters that privacy has become a key issue in today's information society. It is well known that the power of information technology is such that information about an individual or indeed the entire population can now be easily obtained and manipulated. This can bring about tremendous convenience and benefit, such as when one puts an ATM card into a machine and gets out money, or when one does business with public authorities and can avoid the hassles involved in seemingly endless amount of paper and filings. However, it is also well known that the potential for misuse of the information is a real one. In Thailand there has been much discussion about the government's plan to issue a digital national identification card to each citizen. This idea is not new in Thailand at all, and each citizen has been accustomed to having a national ID card for a long time, as we have already seen. What is new, however, is the digital nature of the new type of card, called 'smart cards,' which will be implanted with a microchip and supposedly would contain much more information about the card holder than before. There were talks about putting such information as health records (so that the holder does not have to bring with him or her all their health information and medical history when seeing a doctor anywhere in the country), tax ID number (for convenience when contacting Revenue Department), and other forms of information in one card so that the Thai citizens do not have to carry too many cards in their wallets. It is clear that there is the tremendous potential for the authorities to use this huge database in ways that may not be in accordance with the rights and privacy of the population.

This situation is exacerbated by the fact that Thailand still does not have a specific law protecting personal information. Thus in principle the

government can decide to do whatever they want with the information contained in the smart cards. Examples of such misuse are discrimination of certain groups of population, such as minority ethnic groups, or perhaps those who are more liable to get certain diseases which would put a heavy burden on the public health service system. It is conceivable that the health records, should they be contained in the smart cards, might lead to a situation where a citizen are denied their rights, or are discriminated against. This can happen when the health records in their cards show that they are more likely to contract certain diseases than the general population and thus may have to pay more for their insurance, and so on.

Another serious potential misuse is to use the information and communication technologies for surveillance purposes. The unrest situation in southern Thailand has led some politicians to voice their opinions that close circuits cameras should be installed in key places so that the culprit could be identified. In cyberspace itself, there have been talks of recruiting a number of volunteers who prowl cyberspace searching for websites or email messages containing unlawful content. It is only a short distance from these good intentions to turn into actions that could destroy civil liberty and individual rights of the people. All this was not even conceivable a few decades ago, but with the proliferation of information and communication technologies, these actions are not only possible, but are being performed in certain places.

The threat of these misuses of the information underscores the need for a sustained reflection on the nature of privacy and its justification. What in fact is privacy? What is being guarded when one wants the government to curb their power in gaining information? Another related set of questions is: What justifies the need that privacy of individuals be protected? What kind of principle lies behind the justification attempt? It is the purpose of this paper to begin to investigate these sets of questions through the Buddhist perspective, especially that of Mahayana Buddhism. The reason why I believe the Buddhist perspective is important in this area is that Buddhism has a very interesting thing to say about the self and the individual, on whose conception the whole idea of privacy depends. Furthermore, Buddhist ethics also has quite a lot to say

in the area of information ethics, especially on privacy too.

Here is what I would like to accomplish: Nagasena and Nagarjuna, two Buddhist saints whose writings form the very basis of both the Theravada and Mahayana Buddhism, have a very interesting conception of the self (or lack thereof—more about this later), which can be applied to contemporary discussion on privacy in information ethics. According to Nagarjuna, the self as an inherently existing entity does not, strictly speaking, exist, but as an empirical entity it certainly does. The conception of privacy is predicated upon the conception of the self, and a critique of privacy has to begin with conception of the self. The idea for the paper is that if one considers Nagarjuna's idea on the self, then privacy is a contested concept. It does not exist *per se*. On the contrary, the conception of privacy exists only in accordance with its value. This seems to point toward a more pragmatic conception of privacy. Privacy talks are useful ones, but that does not mean, nor is the talk presupposed by, the putative fact that privacy is already there in objectivity. There are a number of advantages to this conception as opposed to the usual, realistic ones.

So here is the outline. I will begin in the next section with a brief survey of the existing literature on the analysis of the concept of privacy and its justification, both from the West and the East. Then in Section III I'll discuss the Buddhist conception in more detail. Section IV will present the key role of compassion in Buddhist ethics and its particular relevance to the discussion on privacy. The basic question is what kind of an analysis of the meaning of 'privacy' and what kind of justification could be offered when the premise is that of the Buddhist idea on the self. This leads to some very interesting conclusions.

The Buddhist View of the Self and Privacy

Ess' attempt at bringing in the perspectives of the East into the contemporary discussion and debate in information ethics is highly commendable. However, as is the case with pioneering attempts, more details

need to be put in so that the account is more complete. It is the argument of this paper that Buddhism itself does not reject privacy; on the other hand, one could rely on its teachings to justify its continued use and its enforcement, even in Asian and especially in Buddhist polities. One should not be persuaded by the simple argument that, since Buddhism rejects the individual self (more on this difficult topic later), and since the individual self is the linchpin of privacy, then Buddhism rejects privacy. This is so because one needs to distinguish between the absolute and conventional levels of assertion. Conventionally speaking, there is privacy. But this does not mean that privacy does not exist objectively. From the absolute point of view, there is no distinction that can be made between subject and object, for such a distinction presupposes that there be an inherently existing self, whose very existence is denied. Thus the proposal is that privacy is grounded on the conventional idea of the self and individual, and the justification of privacy cannot be conceived separately from the democratic ideal. Privacy is necessary for democracy. Loss of privacy typically leads to abuse of power; privacy, hence, is more an instrumental value rather than an intrinsic one (and here I find myself in broad agreement with at least the contributors to the *Ess* special issue mentioned earlier). But this is valid only when one accepts that the distinction between values being intrinsic and instrumental is a valid one. Yet, I would venture to say that the distinction between intrinsic or instrumental values is questionable in the first place, for the reasons that will be given below. The upshot is that one should not be worried about values being intrinsic or instrumental, because the distinction appears to rest on a rather insecure foundation, or so I would argue.

The argument in the previous paragraph naturally needs quite a lot of explication. So let us flesh this out step by step. First of all let us look at the Buddhist analysis of the self, and then the different levels of perception and analysis as conventional and ultimate. In *The Questions of Milinda*, one of the best known texts in all of Buddhism, Ven. Nagasena, in reply to questioning by the Greek King Milinda, has the following to say:

The king said: 'Is there, Nāgasena, such a thing as the soul?'

'What is this, O king, the soul?'

'The living principle within which sees forms through the eye, hears sounds through the ear, experiences tastes through the tongue, smells odours through the nose, feels touch through the body, and discerns things (conditions, "dhammā") through the mind—just as we, sitting here in the palace, can look out of any window out of which we wish to look, the east window or the west, or the north or the south.'

The Elder replied: 'I will tell you about the five doors, great king. Listen, and give heed attentively. If the living principle within sees forms through the eye in the manner that you mention, choosing its window as it likes, can it not then see forms not only through the eye, but also through each of the other five organs of sense? And in like manner can it not then as well hear sounds, and experience taste, and smell odours, and feel touch, and discern conditions through each of the other five organs of sense, besides the one you have in each case specified?'

'No, Sir.'

'Then these powers are not united one to another indiscriminately, the latter sense to the former organ, and so on. Now we, as we are seated here in the palace, with these windows all thrown open, and in full daylight, if we only stretch forth our heads, see all kinds of objects plainly. Can the living principle do the same when the doors of the eyes are thrown open? When the doors of the ear are thrown open, can it do so? Can it then not only hear sounds, but see sights, experience tastes, smell odours, feel touch, and discern conditions? And so with each of its windows?'

‘No, Sir.’

...

‘Then, great king, these powers are not united one to another indiscriminately.’

‘I am not capable of discussing with such a reasoner. Be pleased, Sir, to explain to me how the matter stands.’

Then the Elder convinced Milinda the king with discourse drawn from the Abhidhamma, saying: ‘It is by reason, O king, of the eye and of forms that sight arises, and those other conditions—contact, sensation, idea, thought, abstraction, sense of vitality, and attention—arise each simultaneously with its predecessor. And a similar succession of cause and effect arises when each of the other five organs of sense is brought into play. And so herein there is no such thing as soul.’¹⁰⁴

Nagasena is refuting the King’s belief that there exists the “living principle” which is supposed to be responsible for our understanding of the sense data coming to us and for our self consciousness as a separate entity as opposed to other individuals. It is this principle, so the King appears to believe, that is one who sees, hears, tastes, remembers, feels, and so on. This is perhaps comparable to the Western individual self that we discussed earlier. At least the notion that the living principle here is one who does the seeing, hearing, tasting, thinking, feeling, makes it a very strong contender for the Western individual, private self. Nagasena, however, argues that such a living principle does not in fact exist, because all it does is seeing, hearing, thinking, etc, and these actions are always performed in relation with the relevant faculties. If there were the living

¹⁰⁴Nagasena, *Questions of Milinda* Book II. Chapter 6, available at http://www.sacred-texts.com/bud/sbe35/sbe3506.htm#page_86, retrieved Feb. 20, 2006.

principle, then it would presumably be able to see through the ear or think through the nose, since the eyes, the nose, etc. are the doors through which the living principle (or the soul) comes to contact with the outside world. But since the seeing function of the soul is always connected to the eye, an essential part of the living principle has to rely on this bodily part. Seeing is part of a chain of causes and effects that arise from light reflecting from a surface, travels to the eye, falls on the retina, gets changed to electrochemical signals and transmitted to the brain, and so on. Nowhere is this 'living principle' found. And this is the case also for the other faculties. As for the thinking faculty, one might think 'This is me' and gets a notion that the individual self actually exists, but when analyzed this way, the thinking here is just one episode in the series of thinkings and feelings that occur in rapid succession one after another. Nowhere in these episodes is the living principle or the soul found either. Hence it is concluded that there is no soul, and thus no inherently existing self. And this argument against the inherent existence of the self is accepted by all schools and traditions of Buddhism.

One should bear in mind, nonetheless, that this analysis of the self does not imply that what is commonly understood as the self does not exist at all. To do so would be a blatant denial of empirical reality. The self in the conventional reality does exist, and it is only after analysis that the conventional self is shown to be a mere illusion in ultimate term. Let us look at the following text from the *Mūlamadhyamakakārika* (*The Fundamental Verses of the Middle Way* - MMK) by Nagarjuna:

The Buddha's teaching of the Dharma
Is based on two truths:
A truth of worldly convention
And an ultimate truth

Those who do not understand
The distinction drawn between these two truths
Do not understand
The Buddha's profound truth.

Without a foundation in the conventional truth,
The significance of the ultimate cannot be taught.
Without understanding the significance of the ultimate,
Liberation is not achieved.¹⁰⁵

Understanding the difference and distinction between the two truths is crucial in the whole of Buddhism. What Nagarjuna is saying is that the Buddha's teaching is based on two levels. Firstly, there is the level of conventional truth. It is the basic teaching that language as being used in everyday life, together with its system of meaning and its way of dividing up the world to correspond to the meaning, is conventional in the sense that one cannot grasp reality as it really is through language alone. In this Nagarjuna is on roughly the same wavelength as does Immanuel Kant, who famously argues that ultimate reality consists in thing-in-itself which cannot be known save through the system of categories that are essential to the understanding. It is only when the conventional reality, which is necessarily based on language and concept, is understood in its very nature to be nothing more than an illusion, something that is projected by the mind out of the more basic, ultimate reality, that the distinction between the conventional and the ultimate level of understanding is grasped. Nagarjuna is clear in pointing out that the two levels of truth here do not imply that there are two separate realities. On the contrary, there is only one reality, the one with which we are all accustomed. But when this familiar empirical reality is analyzed and found to be nothing it appears to be, it is understood to be merely

¹⁰⁵Nagarjuna, *The Fundamental Verses of the Middle Way: Nāgārjuna's Mūlamadhyamakakārikā*, Jay Garfield trans. (New York: Oxford University Press, 1995), Chapter XXIV, Verses 8-10.

conventional.

The case of the self, or the individual 'I' is no exception. The referent of the word 'I' in statements such as

(1) I weigh 76 kilograms.

is nothing but my own body. I may weigh 76 kgs. at the time of writing this article, but just a few years ago I weighed less and there is no guarantee that I'll weigh the same in the future. But the 'I' may also refer to mental states, such as in

(2) I am trying to understand what Nagarjuna means by the two truths.

In this case the 'I' refers to my thinking at the moment, which naturally changes quite rapidly. In both cases, the 'I' in (1) and (2) refer to the empirical or conventional I, whose existence Buddhism has no qualm in recognizing and accepting. It is only when there is an inference from a collection of empirical statements such as (1) and (2) to an affirmation that there exists an overarching I that somehow binds all these empirical episodes together that Buddhism disagrees, since it is this overarching I that is the object of analysis and is found to be non-existent. At the conventional level, then, there are many episodes of empirical I's such as in (1) and (2), but at the ultimate level, one cannot find the overarching I or the 'living principle' that has been refuted by Nagasena in the passage that we have already seen.

The implication for the analysis and justification of privacy is that: On the one hand, privacy, being a concept that is used in everyday life and is part and parcel of normal understanding of the (social, cultural, legal) world, is

not denied in Buddhism at all. Conventional reality is as true and as real as does the ultimate one. In fact they are one and the same. As the conventional, individual-based self does exist, so too is his or her privacy, which is a normative notion purported to safeguard his or her personal information from the prying eyes of other individuals or the political authority. As Buddhism finds itself in the early twenty-first century where there are widespread potentials to violate individuals' privacy, Buddhism has to find a way to accommodate itself in the new environment, and to provide answers to the normative questions that naturally emerge. Hence, in Buddhist cultures at least, one stands in need of answers from the Buddhist tradition that could provide effective guidelines on these matters.

On the other hand, privacy is justified in Buddhism through its being a necessary element in realization of the democratic ideals that require that individuals are respected and are accorded with certain number of rights that would allow them to function effectively in the task assigned to citizens in a democratic polity such as deliberation and participation in public policy process. In such a scenario, violation of individual privacy would mean that the violator gains an unfair power over the individual, thus the basic underlying principle of democracy would be undermined, the principle that individuals are equal in power in need some space within which they can live, think and communicate freely. For example, a society that routinely checks their citizen's email communication would not be democratic in this sense because email communication is private and the information gained from such snooping might be used against the senders and receivers in an unjust manner.

I think this is a strong enough justification, and one does not seem to need arguments to the effect that privacy is ingrained in the individual self such that it is 'inalienable' from the individual, in the same way some philosophers argue that rights are inalienable. If one subscribes to the Doctrine of Two Truths, and realize that the individual self exists firmly on the conventional side, then one realizes that the self, as well as the rights which are but corollary to the self, are merely conventional, that is, do not exist tout court on their own right. When the self does not exist in the ultimate sense, so do the rights, which

belong to the self. Talks of rights being ‘inalienable’ seem to be merely a way of talking so that the justification looks strong,¹⁰⁶ but in fact there is really no need, and if the Doctrines of Two Truths and of Non-Self are accepted, such a justification would be incoherent. This is so because, as the self may exist at the conventional level, it does not at the ultimate level. At this ultimate level, the walls separating an individual self from other selves break down, and it makes no sense talking about this or that self anymore. At the ultimate level, when the usual empirical self is analyzed and found to be nothing but juxtaposing episodes of mental states, there is not much sense in saying that these states do belong to one individual (what is there that remains the same such that it could justify there being one individual?), and when that is the case, there is not much sense in saying that there is a difference between one individual and others either. The upshot is that, from the perspective of a Buddha, privacy just makes no sense whatsoever. Since a Buddha is omniscient, he (or she!) can actually read the thoughts and minds of anybody, but that is of course no cause for concern, for a Buddha is full of love and compassion and there is no possibility that any harm would arise from that.

So how about the attempts by Moor and Moore, both of whom would like to base privacy on empirical facts of the matter which are shared by all cultures? Both Moor and Moore want to find a firm foundation for privacy in such a way that it does not vary too much from one culture to another. For Moor, privacy is an expression of the universal value of security, which is shared by all cultures. The Buddhist, I believe, would have nothing against this. She might point out, though, that the inference of privacy as a value from these core values should not be taken to mean that the individual self actually does exist inherently. So long as one bases one’s argument on the conventional side of reality, keeping in mind that the individual self that underpins the notion of privacy is nothing but a construct for the purpose of living harmoniously or in accordance with the democratic ideals, things would be fine. It is only when there is a reification of the self that problems seem to arise. One big problem is

106 See Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1984), especially Chapter 5.

that suffering (*duḥkha*) arises from this separation of one self from other selves, and so long as there is suffering, one does not attain the final Liberation (*nirvāṇa*) that is the goal of Buddhism.

The Importance of Compassion

But one might then ask: What is the benefit of trying to eliminate suffering? And why should one strive to attain Liberation when the subject matter at this moment is justification of privacy, which seems a very long way from *nirvāṇa*? The answer is that realizing the importance of Liberation and the way toward it is an important Buddhist contribution to the current debates on the nature of privacy in information ethics. The key here is compassion. Realizing that there are in fact no walls that separate one individual from all others is a crucial step toward realizing the universal interdependence of all individuals and indeed all things. And compassion naturally arises from this realization, when one realizes that other beings are no different from oneself. All want to get rid of suffering, and all do want happiness. The benefit of this realization for information ethics is that compassion is the key which determines the value of an action. In my earlier paper on electronic surveillance in the workplace,¹⁰⁷ I emphasized the role of compassion in using surveillance technologies in the workplace. The idea is that if the employers and the employees are compassionate toward each other, there is really no need for surveillance devices. The implication for information ethics is that ethical issues such as surveillance in public places, or violation of privacy in general, arise because those involved lack compassion. The employers, believing that their employees might spend time idly or nonproductively, install surveillance devices; this shows a lack of compassion and trust toward the employees. On the other hand, some employees may not use their working time in a fairly productive manner, which gives rise to the need for installing surveillance

107 Soraj Hongladarom, "Electronic Surveillance in the Workplace: A Buddhist Perspective," in John Weckert, ed., *Electronic Monitoring in the Workplace: Controversies and Solutions* (Hershey, PA: Idea Group): 208 - 225.

devices in the first place. All these show that both parties lack compassion toward the other. The key is to develop a set of virtues that would prevent one from doing bad things rather than subscribing to universal rules. In that paper and this one, I would venture to say that virtue ethics is more in accord with Buddhism than the more mainstream liberal ethics of Kant or Mill.

The upshot is that: Instead of relying on the Enlightenment project of founding ethical judgments on rational capability of human beings or on maximizing 'utilities', whatever that means, I believe ethical deliberation is better served by recognizing that value judgments are more like tools that purport to get us what we need or what we believe to be desirable. Purists may say that this line of thinking robs ethics of its supposedly universal and objective foundation, but if we, following pragmatists like Richard Rorty, realize that these talks about ethical objectivity are but devices to give ethical judgments a firm foundation so that it have some force, then we are, I believe, on the right track. Purists might also add that, basing ethical judgments on what we actually desire would render ethical values 'merely' instrumental, hinting that the values may not be objective and that judgments may be relativistic. If privacy is considered to be an instrumental value only, then there might be circumstances in which strict observance of personal privacy is not justified, and hence information ethics would be relativistic. But we do not need to follow this line of thought. The Buddhist views on the two truths and the non-self teach us that this distinction between values being instrumental and intrinsic is only a construction, something imputed by the mind on the raw, unconceptualized reality. Once it is realized that the distinction between values being instrumental and intrinsic relies on the values being, mistakenly, considered to exist in and of themselves, then things should be all right. This is so because, when values are seen to be mere tools which can change more to the circumstances, then they can be considered instrumental, and when they are fixed, for example when people view them as something that should be application across a broad range of cultures, then they are said to be intrinsic. In any case, values are only tools, and ethical deliberation, based on the Buddhist teachings, should reflect this.

Privacy, the Individual and Genetic Information: A Buddhist Perspective

Bioinformatics is a new field of study in which the power of computer technology is harnessed to process biological information; thus the field is an interesting one where the two major technological trends of the early twenty-first century, namely biotechnology and information technology, are fused together.¹⁰⁸ The application of computers and information technology in biological science has been necessary because biological information is exploding at an exponential rate, and there are many applications that the utilization of computer technology could lead to breakthroughs. One clear area of the application is of course the use of computers in the aiding of the sequencing of the human genome. This large scale processing of data would not have been even conceivable had it not been for the raw computing power made available by computers.¹⁰⁹

Applications of these attempts at sequencing the genetic structure of organisms are rich and varied. Chief among them, of course, is the potential of using the information available in medicine. There are only a handful of diseases directly caused by genetic factors; however, scientists are searching for more uses for the genes and the newly developed human genomic database which could be helpful in identifying susceptibilities for more diseases and lay a ground for development of drugs targeted specifically on the molecular bases or the genomic structure of the diseases themselves.

A central concern among these new developments around the use of biological information and its manipulation by computers is on the individual and her relations to society around her. Bioinformatics has raised several ethical

108 See Susantha Goonatilake, *Merged Evolution: Long-Term Implications of Biotechnology and Information Technology* (Amsterdam: Overseas Publishers Association, 1999).

109 National Center for Genetic Engineering and Biotechnology (BIOTEC), *Bioinformatics and Computational Biology in Thailand: Outlook of Research and Infrastructure*, 2001.
http://home.biotec.or.th/newscenter/Uploads/WE_pic/rad82B7B.pdf [Accessed 19 January 2008].

questions, and the discipline is a very interesting case that points to a possibility of an eventual merger of bioethics and computer/information ethics.¹¹⁰ This merger is clearly visible in the case of privacy and data protection of individuals or groups of individuals. However, when the question becomes that of medical treatment using information gained through the human genome processing, the possible merger then becomes more of medical ethics and bioethics. Since genetic data are obtained from an individual, or a group of individuals, there is the question of who owns the information in question.¹¹¹ Another issue concerns pharmacogenetics—the development and use of tailor-made drugs geared specifically on certain type of individuals according to their genetic predispositions, which has raised concerns about discrimination and others. Another, no less important issue, is centered around the information pertaining to an individual. Privacy is rightly a serious issue in both information ethics and in bioethics. Even though the attempt is still in the beginning stage, Lin, Owen and Altman reported that it is possible to identify an individual through only a relatively small number of changes in the entire genomic structure of a human being.¹¹² Furthermore, other studies also point out that it is at least conceivable that an individual could be identified through her genetic data, if other factors are also available.¹¹³ However, it is currently not actually possible to pinpoint an individual just from her genomic sequence, but it appears that things are moving toward that direction.

110 See, for example, Soraj Hongladarom, "Ethics of Bioinformatics: A Convergence between Bioethics and Computer Ethics," *Asian Biotechnology and Development Review* 9.1(2006): 37-44.

111 G. Palsson and P. Rabinow, "The Icelandic Genome Debate," *Trends in Biotechnol* 19.5(2001): 166-171, p. 167.

112 Z. Lin, A. B. Owen and R. B. Altman. "Genomic Research and Human Subject Privacy," *Science* 305(2004): 183-184.

113 For example, it is possible to identify a person through matching her DNA with the sequence of her relatives' DNA (A. L. McGuire, T. Caulfield and M. K. Cho, "Research Ethics and the Challenge of Whole-Genome Sequencing," *Nature* 9(2008): 152-155, p. 154. See also F. Bieber, C. Brenner and D. Lazer, "Finding Criminals through DNA of their Relatives." *Science* 312(2006): 1315-1316). Furthermore, A. L. McGuire and R. A. Gibbs claims that "coded or 'anonymized' sequenced DNA may be more readily linked to an individual as genetic databases proliferate" (A. L. McGuire and R. A. Gibbs, "No Longer De-Identified," *Science* 312(2006): 370-371).

This movement toward ability in identifying individuals through her genetic information raises privacy concern in many ways. Firstly, genetic information could be considered as part of the identity of the individual herself. This is an important topic which will be developed in more detail in this paper. Secondly, there is a concern whether the privacy of an individual is compromised when, for example, the individual shares her personal information in a database, or when some information about herself or communicated by her is appropriated without her consent or knowledge. The convergence of biotechnology and computer technology has resulted in a parallel convergence of the two main areas of applied ethics, namely bioethics and computer ethics. In bioethics, the concern is on the individual's biological data, and as computers have taken a more visible role in processing biological information, we are now seeing a convergence in information ethics and bioethics, as regards to the protection of the individual's biological information. It is a central concern of this paper to address this issue of privacy in the bioinformatic era based on a perspective from a religious and cultural tradition, that of Buddhism.

Much work, in fact, has been done on the topic of privacy in information ethics through cultural perspectives.¹¹⁴ What I intend to do in this paper, however, is to present a group of questions that need to be addressed in order for one even to get off the ground in tackling the conceptual and normative questions surrounding privacy in bioinformatics. One of the most basic questions concern the status of the individual herself. Bioinformatics has raised a very important metaphysical issue concerning the status of the individual. As it appears that the individual person is being reduced to a

¹¹⁴ See, for example, Charles Ess, "'Lost in Translation?': Intercultural Dialogues on Privacy and Information Ethics (Introduction to Special Issue on Privacy and Data Privacy Protection in Asia)," *Ethics and Information Technology*; Rafael Capurro, "Privacy: An Intercultural Perspective," *Ethics and Information Technology* 7(2005): 37-47; Soraj Hongladarom, "Analysis and Justification of Privacy from a Buddhist Perspective," in Soraj Hongladarom and Charles Ess, eds., *Information Technology Ethics: Cultural Perspectives* (Hershey, PA: Idea Group, 2007): 108-122.; Jim Moor, "Toward a Theory of Privacy in the Information Age"; A. D. Moore, "Privacy: Its Meaning and Value"; and Krisana Kitiyadisai, "Privacy Rights and Protection: Foreign Values in Modern Thai Context."

collection of bits of genetic information that could be stored and manipulated as any other type of data,¹¹⁵ there is the question of what constitutes an individual person. Is it the case that the individual is constituted by the set of genetic and other type of information that uniquely identifies him or her?

In any case, it needs to be made clear at the outset that I am not making a claim that there is a unique correspondence between genetic structure and personal identity in this paper. What I am claiming is only that it might be possible, given the state and the direction of knowledge of genetic knowledge in the future, that the integrity of personal data, such as what is termed 'sensitive personal information' by the UK Data Protection Act,¹¹⁶ could be undermined. In any case, the current state of scientific knowledge today is such that it is not possible to differentiate between using one's 'real' genetic make up to identify one's own identity as an individual, as opposed to using the 'junk' DNA that somehow succeeds in identifying an individual or a group of them in a *post hoc* manner. In such a case, the identification of an individual (or groups of individual sharing common characteristics) through her genetic makeup may be due to the fact that some characteristics are found that do not belong to the individual's genetic makeup. Some 'junk' DNA's are used instead that bear no relation to the individual's genetic structure. In cases like this, the argument that relies on the essential feature that an individual allegedly possesses in virtue of her genetic structure may not be a tenable one. If indeed the status of biological knowledge is such that it becomes actually possible to identify individuals or groups of them through genetic makeup alone, then the argument presented in the paper would be clearly viable. However, the argument presented here does not only rely on such essential linking between genetic makeup and identity. The most that the argument in the paper relies on

115 See, for example, S. Dougherty, "On Genetic Programs and Feedback Networks," *Configurations* 12(2004): 263–285; E. Thacker, "Bioinformatics and Bio-Logics," *Postmodern Culture* 13.2(2003), available at <http://muse.jhu.edu/journals/pmc/toc/pmc13.2.html> [Accessed 21 July 2006]; J. C. Wilson, "(Re)writing the Genetic Body-Text: Disability, Textuality and the Human Genome Project," *Cultural Critique* 50(2002): 23–39.

116 See the Data Protection Act, 1988, http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1 [Accessed 17 January 2008].

is that there *could* be such a link between genetic makeup and identity, something corroborated by a number of studies mentioned earlier. And if that is the case, then what should be done to prevent that and to preserve the rights of individuals or their groups.

It is conceded, then, that it may not be possible, given the status of genetic knowledge available today, uniquely to identify an individual through her genomic sequences alone. However, the argument forwarded in this paper does not depend on such necessary connection. It merely suffices to note that there is *some* possible linking between genetic makeup and identity, and that possible linking is enough for a consideration of the potential threat to privacy and how to prevent that from happening should the biological knowledge advance well enough to enable scientists in the future to uniquely identify individuals.¹¹⁷ After all the objectives of scientists working in bioinformatics include that of being able to identify how a point mutation in the sequence leads to perceptible changes in the phenotype, some changes in the protein structure that is coded in the altered gene. Of course this is far too crude a mechanism to uniquely identify an individual, for a very large number of individuals may be already sharing a particular genotype, but again the question is what would have to be done *if* this scenario became a reality. What would need to be done if, for example, it became possible to identify individuals uniquely through their genetic makeup alone? If it were possible to pinpoint a structure in the human genome to such an extent that a group of population is stigmatized or marginalized (suppose an undesirable trait or genomic sequence is found in the group that leads them to be stigmatized), then what would have to be done to prevent this from happening?¹¹⁸

117 Genetic information may not be the only kind of information that uniquely identifies an individual. Other, more mundane kind, such as name or citizen identification number, may also be used. However, if it is scientifically possible to identify groups of population through their common genetic makeup, then this would be a strong case for genetic information as belonging to the set of information sensitive to individuals.

118 Segregating groups of population through their genetic makeup is usually done *after* the segregation has already been done. That is, genetic information alone is not sufficient for the segregation practices that occurred in history. The state of biological knowledge today alone is not such that segregation could be done through genetic information alone. Hence it is not

Considering that privacy usually implies protection of information *about* a person or an individual from prying eyes of the public or the authority, there is naturally a question concerning what kind of information and how much information should be allowed to be included in the proposed database. Furthermore, some genetic information may be clearly sensitive, such as the gene that has been found to be responsible for schizophrenia.¹¹⁹ If the responsible gene is found in a database of certain individuals, then given the stigma accorded to those who are prone to the disease at least in some cultures, this should be enough to conclude that genetic information is part of the sensitive data that should be protected. Hence the attempt to protect privacy should also include genetic data. As genetic information is part of the whole set of information that makes up an individual, the question of the individual's privacy and its constitution through information is thus related to the metaphysical question concerning the status of the individual, which needs to be adequately addressed, and which is a subject matter of the rest of this paper. Moreover, I will address this topic through a perspective of Buddhism, which has a very interesting and potentially useful theory concerning the individual and her ontological status.¹²⁰ Basically, I shall point out that, according to the

the case that today genetic information can be used alone. If anything, genetic information serves to enhance the image that the segregation and discriminatory practices are performed in a 'scientific' way. But if this is indeed the case, then this speaks strongly against the use of genetic information itself as an accomplice in discrimination.

119 "Gene Link to Schizophrenia Found," <http://news.bbc.co.uk/2/hi/health/6084950.stm> [Accessed 17 January 2008].

120 It may be questioned whether the argument offered here, which is based on the Buddhist teaching, is too abstract to do any work for the ethics of bioinformatics. After all, disputing the metaphysical presence of self is an abstruse philosophical conception, which may seem to be rather remote from the bioinformatics laboratory. Nevertheless, the issue of privacy is paramount here, and when one goes down to the level of bioinformatic research, one still has to rely on one or another conception of privacy. Having a notion of individual self, as I think will be made clear in the course of the paper, is a construction that could be construed as a step removed from the actual reality, including what is happening in the laboratory. In addition, the Buddhist conception can be closer to reality in that there is no such construction.

Buddhist theory of Non-Self,¹²¹ the individual is more accurately understood to be a construct, and not something existing in and of itself. And there is an important sense in which the individual is constructed out of the whole set of information that uniquely identifies her.

Genetic Information and Privacy Concerns

How much genetic information should be allowed in the bioinformatic database in order that privacy of the individual is respected? In other words, in the attempt to gain the advantages that come with retrieving and storing genetic information of individuals in a computer generated database while maintaining the principle of privacy rights, how much information pertaining to a specific individual, to a family group, or to a group of individuals in a community, should be allowed? On the one hand, there seems to be a motivation behind an idea that all available information should be allowed, in order to make full use of the advantages, such as the potentials in biomedicine or biotechnology that would presumably benefit humankind as a whole. In fact, however, the question *how much* information should be allowed is not directly relevant at this point. What is relevant should instead be the question whether there are any mechanisms in place which allow only authorized personnel to have an access to the information.¹²² This would ensure that the information is going to be used in a responsible and transparent manner.

However, if full allowance to utilize the population's genetic information in the data bank were to be made, then there might be a concern that such full allowance might lead to unscrupulous use of information, and the authority might find it tempting to use the information to their own political

121 Buddhist scholars will recognize that this is the *anātmā* theory, and usually in literature on Buddhist studies such references to Sanskrit terms will often be made. However, I opted not to mention any Sanskrit terms in this paper, since this is not strictly speaking a Buddhist studies paper.

122 Jim Moor, "Toward a Theory of Privacy in the Information Age," note 3.

advantages, such as in genetic profiling and other discriminatory practices, or to seek political gains. If there were indeed a set of genetic information that constitutes the identity of the individual, something akin to the sensitive personal data stipulated in the UK law on data protection,¹²³ then such information should be handled with much care and sensitivity. Moreover, in case of groups of individuals, the issue is also a parallel one, for a particular group might have its own identity, i.e., some set of information that defines the group as a unique one. For such a group, then, the core information would be that which is shared by its members and whose possession entitles an individual to belong to the group. In certain socio-cultural cases, the core information that defines a group, if such is scientifically possible to be found, could well be much more important and politically sensitive than that of an individual alone. And it is here that bioinformatics, as an attempt to deal computationally with genetic information of groups of individuals, comes to the fore as a potentially politically explosive enterprise.

Thailand SNP Research Project

As an illustration of how bioinformatics and genetic research is being done in a developing country, the Thailand SNP project is a good example. Starting in 2003, a team of researchers from the Ramathibodi Hospital, Mahidol University, initiated the “Thailand SNP Discovery Project” (<http://thaisnp.biotec.or.th:8080/thaisnp>). The aim was to search for single nucleotide polymorphisms (SNP) in 64 selected general members of the Thai population (the number was then reduced to 32), in order to form a database on

123 It may perhaps be the case that the stage of scientific development today may not be able to identify with absolute certainty a set of genetic information that uniquely identifies an individual or a group of them. That is, it may not be possible today to identify a core set of genetic information that uniquely identifies an individual beyond sociological or legal one such as the citizen ID number. Nonetheless, it appears that current genetic research is driving toward realizing this possibility, and if this is so, then there is the case for including the genetic information that could identify individuals in the set of the sensitive personal data that should be protected.

which other spin-off projects can be based, such as ones on pharmacogenetics, anthropological studies, genetic susceptibility to certain diseases, and so on.

According to the words of the Term of Reference of the Project:

The aim of the project is to identify intragenic SNPs, which are frequent (allele frequency of more than 5%) in Thai populations. An SNP database will be completed of all genes identified in the whole human genome and their regulatory regions with allele frequency and LD block patterns in Thai and other (French, Japanese and African) populations. This database will also contain other information including genomic sequences, genomic structure, primer sequences, functional genomics etc., and it will be used for the following:

- Identification of disease associated genes for both the candidate gene approach and systematic genome screening.
- Pharmacogenomics
- The information obtained from this database will also be used for the Asian SNP consortium as a contribution from Thailand.
- Anthropology.¹²⁴

The database of the Thai population would be part of an international effort in creating like databases among the world's population, which could spawn many further research works, both for clinical applications and for basic science, as well as further international collaborations.

¹²⁴ National Center for Genetic Engineering and Biotechnology (BIOTEC), *Bioinformatics and Computational Biology in Thailand: Outlook of Research and Infrastructure*, note 2.

In order to collect the blood samples for analysis, 32 'normal and healthy' Thai people were selected from around 6,000 volunteers. The selected underwent interviews of family history, health records, provided blood samples, and the DNA from the blood samples were analyzed in a bioinformatics lab which was set up for the first time in Thailand as a part of this Project. It was hoped that some correlation might be found between the genetic structure available in the database and susceptibility to certain diseases, such as Thalassemia, which Thai people suffer more than the global population on average.

Essentially, the role of a SNP is to function as a marker for genetic disposition of a certain individual or groups thereof. A spin-off project of the Thailand SNP Project, as mentioned, is to find out whether there is a correlation between susceptibility to malaria and Thai people's genetic structure. According to the team,

This project aims to search for genes involved in genetic susceptibility to clinical malaria through genome screening linkage analysis. The study is based on a population from Suanpung village, Ratchaburi province, located near the Thai-Myanmar border. Its size is around 6,000, with 2,800 individuals having been followed up by the Faculty of Tropical Medicine, Mahidol University since 1994 for parameters related to clinical malaria and other confounding factors. Family structures were established. The familial cases in the population studied have allowed us to perform a genome screening linkage analysis.¹²⁵

It is clear that ethical considerations could be involved in these endeavors. The team needs to be sensitive to the genetic profiling of the population that they studied, and to take care that no practices such as

¹²⁵ <http://thaisnp.biotech.or.th/project/> [Accessed 19 January 2008].

discrimination take place. In fact the research team has made sure that participants in their projects understood and signed their consent forms. However, there is another dimension regarding the amount of information that could be taken and stored without violating the principle of privacy. In the case of the malaria project, only the information pertaining to the individual's susceptibility to the diseases is relevant, and it would seem unethical to use the information in some other ways. However, since the individuals who participated in the project donated their tissue samples, which naturally contain information about herself or himself, there is no natural barrier against the use of such information in some other ways. This perhaps explained why there are so many spin-off projects from the original SNP Discovery Project and this demonstrates the tremendous power of genetic information and computational biology. Ethical guidelines need to be in place in this matter, and they should be unambiguously enforced.¹²⁶

Now the question is: To what extent is the privacy of the individual threatened when she participates such a project like this one and has donated her tissue sample? Is only the information specifically related to genetic susceptibility to malaria relevant? It does not seem so, because there are many other diseases, and the genetic informational structure of the individual could point to other developments, such as a potential in developing tailor-made drugs, and so on. In most cases there is a delinking of the individual's social identity (her name, for example) and the genetic information belonging uniquely to her. And in case of a group, which for our purpose here includes both ethnic groups and the smaller family groups, the structure of the argument is similar.¹²⁷ There should also be a delinking of the identity of a group and the

126 For an example of such guidelines and recommendations, see A. L. McGuire, T. Caulfield and M. K. Cho, "Research Ethics and the Challenge of Whole-Genome Sequencing," note 6.

127 What makes genetics a sensitive issue is that it makes possible a powerful tool with which one could identify information, not only pertaining to an individual, but to her family. Profiling of individuals could go hand in hand with profiling of families, and the issues that make genetic profiling so controversial can be vastly augmented with profiling of family groups. It is true that this present study focuses on the individual self; however, family groups are no less important, and the structure of the argument offered here is tenable at both levels. Criticizing the individual self does not imply that the family is not important.

genetic information that identifies that particular group. For example, it is agreed nowadays that racial discrimination is ethically objectionable. However, genetic database might facilitate such discrimination through a system that links an ethnic or family group with certain genetic structure that belongs to individuals in the group. The linking, furthermore, may in fact be either *a priori* or *post hoc*. As it has not been scientifically proven beyond doubt that there is a clear link between genetic structure of an ethnic group of individuals and their expressed phenotypes such as susceptibility to certain diseases, the linking of genetic structure of the group with certain observable features can be *a priori*, meaning that it is assumed beforehand that there must be such a linking in the first place. Or else there could be an attempt, once a group is identified with certain susceptibilities with may or may not be genetic in nature, to link genetic structure of the group, thus branding them with some kind of stigma. In either case it is clear that the practice is unethical.

It would be very tempting to claim that genetic information does somehow function as a 'core set' of information that uniquely identifies an individual or a group of individuals. In the future that may indeed be possible. However, as previously mentioned, the current state of scientific knowledge and technical expertise has not reached the stage where such a clear link could be claimed. However, as the *a priori* and *post hoc* attempts to link genetic

Indeed genetics does involve the family very significantly. Criticizing the individual would adversely affect the family only if one assumed that the family consisted of individual members, whose identities were somehow assured metaphysically. But there is no justification for such an assumption. The fact that the individual self is a construction does not imply that the family itself is a construction. Since the self is constructed out of many different episodes, the family could in the same way be composed out of these individuals too. The individual members of a family would still be there; this is an empirical fact, and hence the families composed of these individual members would be there too. If there is a need to protect privacy rights of individuals, there is also indeed the same type of need for the right of privacy for families. However, it is a different issue whether the family could be regarded as a distinct entity with the same attribution of rights as does an individual. This issue of whether there is such a thing as 'community right' or 'family right' is beyond the scope of this present paper. But the point here is that pragmatically construing the notion of privacy based on critiquing the notion of the individual self does not imply that the family is not crucial in a deliberation on privacy in bioinformatics research.

information with certain observable features show, genetics seems to play a role after all. Although it may not be scientifically possible now to claim with any accuracy that genes are responsible for identity of an individual in all possible cases, things are going in that direction. Research in pharmacogenetics, which depends largely on results obtained through bioinformatics, is based on the assumption that individuals differ because of their genetic structure; hence drugs can then be developed to suit to these individual differences. It is also conceivable that ethnic groups could fare the same way. Thus, even though genetic information alone is not yet available scientifically to identify individuals or ethnic groups, it can indeed be incorporated in possible discriminatory practices or breaches of privacy. In what follows I shall address this ethical concern through the perspective of the Buddhist analysis of the individual.

Buddhism and the Individual

The main question that makes up the issue that concerns us here is the metaphysical status of the individual. If there is a set of 'sensitive personal data' belonging to an individual person that should be respected and protected, then there is the philosophical question of how those data are related to the very being of the individual herself. To what extent do these sensitive personal data belong to the core of the individual such that the data constitute the identity and perhaps the very essence of the individual? As genetic information pertains presumably not only the sociological or legal identification of an individual, but her body itself (including all kinds of relevant bodily properties, such as dispositions for certain diseases and so on), genetic information thus becomes very important and naturally it should be part and parcel of the sensitive personal data.¹²⁸ In any case, there seems to be a distinction, at the philosophical level, between the properties making up an individual which are either essential or non-essential. The main question is whether there is any set

128 E. W. Clayton, "Ethical, Legal, and Social Implications of Genomic Medicine," *New England Journal of Medicine* 349(2003): 562-569.

of information making up an individual that is indispensable at all.

However, the distinction has become suspect in recent days. Many philosophers have become disenchanted with the idea of essentialism and proposed arguments that such a distinction is not based on objective facts at all, but instead on our own convenience in distinguishing things for our own purposes.¹²⁹ Hence the distinction between what is essential and what is not depends more on whether we regard something as very important and indispensable (to our own context-bound agenda) or not. In this case, genetic structure that determines the identity of an individual thus is regarded more like something that serves the purpose of sorting individuals out based on genetic criteria, and not as a property that exists in perpetuity. The sorting is performed in a pragmatic and piecemeal fashion rather than in any sort of way that reflects objective reality.

This view is in accordance with that of Buddhism. A basic idea of Buddhism is that things in objective reality are “empty of their inherent existence.” What this means is that there is no essence to anything. What a thing is, what separates it from other things, is just a result of human being’s convenient designation through concepts and language. According to the Buddhists, there is just no real distinction between essential and non-essential properties. This has a profound implication on what we should take privacy to mean and on any system of justification of privacy. For one thing, it puts genetic information on a par with the other types of sensitive personal information, such as one’s names, credit histories and so forth.

There being no essential property beyond convenient designation points to an interesting conclusion that justification of privacy is based, not on the traditional mode of metaphysics of the individual, in which an individual is an atomic autonomous unit to be accorded with a group of rights, including the

129 See, for example, Ludwig Wittgenstein, *Philosophical Investigations*, (Oxford: Blackwell, 2001); John Dewey, *Reconstruction in Philosophy* (New York: The New American Library, 1950); Martin Heidegger, *Introduction to Metaphysics*, (New Haven, CT: Yale University Press, 2000); and Richard Rorty, *Philosophy and the Mirror of Nature*, (Princeton, NJ: Princeton University Press, 1980).

right to privacy, but on a 'convenient designation' based on the realization that a society that respects privacy of the individuals is somehow a 'better' place to live than the one that is not.¹³⁰ Even though one cannot objectively distinguish the information that constitutes an individual essentially and the information that does not, there is enough, pragmatically speaking, to so distinguish, and once that information that is enough for singling out an individual and one that has the potential to engender harm to the individual is identified, that information should be protected as a way to protect the individual's privacy.

According to Buddhism, what is understood to be the self is a result of causes and effects and the conception of self arises out of a kind of grasping onto these disparate and juxtaposed episodes of causes and effects, resulting in an illusion that the self actually exists while in fact it does not. This point, known as the Doctrine of Non-Self, is unique to Buddhism among all the religions in the world. A passage from the *Guide to the Bodhisattva's Way of Life*, one of the most celebrated texts in the Buddhist world, has it as follows:

First, with your own intellect, peel off this sheath of skin, and with the knife of wisdom loosen the flesh from the skeleton.

Breaking the bones, look inside at the marrow and examine for yourself, "Where is the essence here?"¹³¹

The idea here is that the essence of a person, or his or her individual self, is nowhere to be found. According to the passage, it is clear that the self, if it existed, would not be something that can be directly perceived. In this case the self is clearly not identical with the body, but it is not identical with the mind

130 Soraj Hongladarom, "Electronic Surveillance in the Workplace: A Buddhist Perspective," in John Weckert, ed., *Electronic Monitoring in the Workplace: Controversies and Solutions*, (Hershey, PA: Idea Group): 208 - 225.

131 Santideva. 1997. *A Guide to the Bodhisattva Way of Life*. Translated by Vesna A. Wallace and B. Alan Wallace. Ithaca, NY: Snow Lion: V: 62-63.

either, for it is very difficult to pinpoint what exactly in the mind, which consists in series of mental episodes one occurring after another, that corresponds exactly with the self.

Furthermore, in the *Fundamental Wisdom of the Middle Way*, another well-known text, there is a passage describing how what is understood to be the self is analyzed:

If the self were the aggregates,
It would have arising and ceasing (as properties).
If it were different from the aggregates,
It would not have the characteristics of the aggregates.¹³²

Briefly, what this verse means is that, if the self were the same as the aggregates that all together constitute what is normally taken to be the self (one might understand the aggregates roughly to be the body and the mental episodes that make up a conception of a self), then the self would be subject to arising and ceasing.

However, this cannot be the case because one's own self does not just arise and cease very rapidly, unlike what is in fact taking place in our bodies. When one understands the body to be one's own self, when one is pointing toward it, for example, what is being pointed to is then analyzed, and then a series of questions can be asked. Is what is being pointed to, which is understood to be the self, identical with the body? The answer is no because the body changes and replenishes itself in a relatively short period of time, whereas the self is taken to be constant. Then there is the question whether the self is identical with the mind, and the answer is again no because our mental episodes change even more rapidly than our own bodies. We think one thing at

132 Nagarjuna. *The Fundamental Wisdom of the Middle Way: Nagarjuna's*

Mulamadhyamakakrika. Translated by Jay Garfield, (New York: Oxford University Press, 1995) Chapter XVIII Verse 1.

a moment and then another thing at another moment, and, according to Nagarjuna at least, the mind usually takes upon itself the characteristics of the things it thinks about. However, if one were to think that the self were different from the aggregates, one would also be laid in another dilemma because what is normally taken to be the self, what it actually is, is always in terms of body and mind, in other words in terms of the aggregates. Hence to understand the self to be separate from the aggregates is unacceptable either. Nagarjuna's conclusion is that the self does not actually exist; it only appears to exist due to our own grasping on to things. In any case, the Buddhist's conclusion is that what is understood to be the self is only a result of an illusion, not unlike the illusion one has when one sees a reflection on hot sand to be a pool of water. In the contemporary way of putting things, the self is a construct that does not exist on its own in objective reality; it only seems to exist as a result of conceptual manipulation of reality.

Buddhism and Bioinformatics

Now, what relevance does this teaching have on the attempt to analyze and justify privacy and data protection in bioinformatics? The idea of privacy is commonly based on the notion that there is a self and that the self is constituted through a system of information about it which needs to be protected from prying eyes. However, if Buddhism teaches that the self does not inherently exist, then there seems to be a problem of how Buddhism could have a theory of privacy.¹³³ Nonetheless, the idea that the self does not

¹³³ The standard texts on Buddhism and bioethics, such as those by Damien Keown (Damien Keown, *Buddhism and Bioethics*. (Houndmills: Palgrave, 2001) and Peter Harvey (Peter Harvey, *An Introduction to Buddhist Ethics : Foundations, Values and Issues*, (Cambridge University Press, 2000.)) have yet to discuss the ethical issues raised by genomic sequencing and data banking in any detail. Somparn Promta discusses the attitude of Buddhism in human genetic research in Somparn Promta, "Buddhism and Human Genetic Research," *Polylog: Forum for Intercultural Philosophy* 6(2005) available at <http://them.polylog.org/6/fps-en.htm> [Accessed 23 January 2008] in which he recommends scientists to be "extremely cautious" in their research. However, Promta does not specifically

inherently exist does not imply that it does not exist at all. We can certainly refer to our own selves, only that in deeper analysis we find that such a self is merely a result of causes and effects and does not exist on its own. Nonetheless, that does not preclude there being such a self as a referent to normal use of language and normal understanding.

If this is the case, then for Buddhism there needs to be a system where the concept of privacy is analyzed and justified.¹³⁴ The idea is that there is a theory of privacy in Buddhism which is a pragmatic one. Privacy is justified through its role in furthering and fulfilling certain sets of goals that human communities find important. One of these goals, for example, is that individuals in a society should be protected as regards to the set of information which they find dear to themselves and which they do not want to divulge to the public. This is a matter of respect for individuals. The same also applies to groups sharing more or less the same genetic traits; they need to be respected too. The question then is how such respect is justified, and in Buddhism this is justified through the fact that the respect in question plays a large role in enabling certain kinds of things that communities find enriching and satisfactory. Guaranteeing the privacy right of the individual seems to be necessary for a kind of society that respects individual integrity, where the authority is not given absolute power to do anything they please. And since these are now considered to be desired goals, and since it is a fact of the matter that privacy is necessary for furthering these goals, privacy is then justified according to Buddhism.

In other words, Buddhism teaches that the individual self is a construct, which does not mean that the self does not exist at all. Since it is a construct it is so constructed out of certain type of material, and here the role of information in constituting an individual is very important. Individual selves are constructed out of information, and if this is the case, then the attempts in

discuss privacy either. For a discussion of the Buddhist perspective on privacy, see Soraj Hongladarom, "Analysis and Justification of Privacy from a Buddhist Perspective," note 6.
134 Soraj Hongladarom, "Analysis and Justification of Privacy from a Buddhist Perspective," note 6.

bioinformatics to manipulate genetic information of an individual or groups of them would risk endangering their very selves and identities. Even though the individual self does not, strictly speaking, exist, there does clearly exist the information pertaining to an individual. Since some kind of information could be regarded as the core for a particular individual, or as a kind of information that is sensitive to her, this information then would need to be protected, hence the need for privacy in bioinformatics according to Buddhism. The problem, then, is, for Buddhist societies at least, how to protect the privacy of personal information while not necessarily compromising the need for scientific progress and development.

Information and Personal Data as Part of the (Conventional) Self

This need to find a balance between scientific progress and ethical, regulative requirements is as old as bioethics itself. In the case of privacy, there is an obvious need to formulate clear guidelines and regulations on this issue, and it has been my purpose here to point that Buddhism also has a role to play. As the 'core' set of information is not, objectively speaking, out there (since the individual is herself a construct), it exists nonetheless in the practical fashion out of the need to protect privacy. There seems to be a need to distinguish between what kind of information should or should not be allowed. And since it is ultimately the goals shared by members of a society that provide the final say, any such attempt should refer to these goals. More specifically, the Buddhist viewpoint is such that the individuals in question, whose genetic information is to be obtained and stored in a computerized database, should have a clear role to play in any kind of decision making on how such information is to be manipulated.

This point underscores the need for more democratization in decision making in bioinformatics. This is more than allowing the research participants the ability to recall their own genetic information from the database

as stipulated in some informed consent forms.¹³⁵ Often this is not possible unless the scientists maintain a system that could link up bits of genetic information to their owner. In many cases decisions in scientific enterprises such as a research project involving bioinformatics are made by the investigators without even bothering to consult the individuals whose tissue samples were taken for information, and this seems to be especially the case in developing countries. It is true that there is a requirement for these individuals to read and sign informed consent forms, whose idea is based on the notion of fully functioning, autonomous individual. This idea, however, is being criticized by many, especially those coming from cultures which do not have such a tradition in the first place.¹³⁶ According to the Buddhist perspective, although the individual self cannot be objectively found to be essentially there, this does not preclude the fact that such a self does indeed exist. There is an important distinction in Buddhist teaching between the 'ultimate truth' and 'conventional truth'; the former is the kind of truth at the level of immediate perception of reality without the distorting medium of conceptualization; the latter, on the other hand, is the kind of truth which is familiar and based on linguistic categories. For Nagarjuna, the two truths point to one and the same basic reality, and it is a mistake to take one to be more prior or more basic than the other.¹³⁷ What this implies in our case here is that there is indeed a self, conventionally speaking, and as a consequence such a self needs to be treated with respect. This is in accordance with another part of teaching of Buddhism, one that it shares with other religious traditions, on the dignity of the individual

135 A. L. McGuire, T. Caulfield and M. K. Cho, "Research Ethics and the Challenge of Whole-Genome Sequencing," note 6.

136 See, for example, R. Klitzman, "Complications of Culture in Obtaining Informed Consent. *American Journal of Bioethics* 6.1(2006): 2-21; C. C. Macpherson, "Research Ethics Committees: A Regional Approach," *Theoretical Medicine and Bioethics* 20(1999): 161-179; L. London, "Ethical Oversight of Public Health Research: Can Rules and IRBs Make a Difference in Developing Countries," *American Journal of Public Health* 92.7(2002): 1079-1084; Turner, Leigh, "From the Local to the Global: Bioethics and the Concept of Culture," *Journal of Medicine and Philosophy* 30.3(2005): 305-320; and P. Walter, "The Doctrine of Informed Consent: A Tale of Two Cultures and Two Legal Traditions," *Issues in Law and Medicine* 14.4(1999): 357-375.

137 Nagarjuna, *Fundamental Wisdom of the Middle Way*, note 10, XXIV: 8.

person. Since the information being manipulated in the bioinformatic database is part of the individual whose tissue samples have been taken in the first place, it can be regarded that the information in the database consists of none other than the parts of the conventional *selves* of these individuals, i.e., something pertaining to the being of the individual herself. But if this is so, then the principle of respecting the individual self implies that this information needs to be respected. The individual should have some roles to play in saying how the information thus obtained should be processed and manipulated.

This implies that decision making regarding how genetic information is to be used should be more democratized as previously mentioned. There should be a mechanism, beyond the traditional informed consent form, by which the individuals from whom the information has been taken are respected. The implication for privacy is also clear. And as there is no hard and fast distinction between the 'essential' and the 'non-essential' set of information (because such a distinction would entail that the individual is an inherently existing substance), the distinction is then based on pragmatic terms and the principle of democratization described above implies that it should be the individuals themselves who by and large decide what is to be the core or the non-core set of their own information.

A Pragmatic Justification of Privacy

The Buddhist view mentioned above points to a way of justifying privacy which is *pragmatic*. A pragmatic justification is one that relies, not on something's being metaphysically the case, but on whether what is to be justified brings about certain desired results. Thus a pragmatic justification of privacy would point toward a set of desired results of privacy regulations, guidelines and their enforcement, such as the maintenance of democratic ideals, prevention of abuse by the political authorities, assertion of individuals' rights to be free from intrusive intervention, and so on. So long as these activities are desirable, and so long as protection of privacy is necessary in bring them about,

then privacy is justified pragmatically. This is in contrast to the way privacy is justified in much of the philosophical literature, which relies on the a priori existence of the rights of individual, which somehow already include that of privacy. We have seen in Chapter Two how privacy is justified in the literature, and in this chapter we have seen how Buddhism could provide a number of invaluable insights into how privacy should be understood and justified.

The key issue here concerns the metaphysical status of the individual. As much as the Kantian theory tries to dissociate itself from metaphysics, it relies completely on metaphysics when it argues that the rights of individuals do exist and should be respected. According to the Kantian theory, the right of an individual is justified through the status of the individual as, in Kant's term, an end in itself. Thus for Kant a society of individuals constitute the 'kingdom of ends' where the inhabitants are accorded dignity and respect due to their possession of rational capability. The picture is a familiar one. However, this kind of picture presupposes that the individual in question is a subsisting metaphysical entity, one whose existence is not in doubt and is atomic in that it is not composed of anything else. The rational being, the member of the kingdom of ends, cannot be one which merely emerges from a conglomeration of disparate elements, such as memories, perceptions, thoughts, feelings, desires, and so on, the reason being that if the individual were so constituted then it would lack strong agency with which the individual consciously initiates action and decision making. It would seem that an individual which is constituted merely through these disparate mental and physical events would not be able to perform agency and thus such an individual would not qualify for the kingdom of ends. Moreover, such an entity would not even be eligible for being an 'individual' in the first place.

Nonetheless, the Buddhist analysis provided so far has punctured this picture. The rationality, so prized by the Kantians, turns out to be no more than another set of episodes of mental events that constitute an individual as ordinarily understood and perceived. The agency does not need to presuppose an enduring self either. For one could have all the agency one needs even though one is constituted out of these various elements, since what one decides

always function in relations to these mental and physical events and episodes. This does not imply that for Buddhism free will is impossible, but the point that Buddhism is pushing for is that one can have free will even without an enduring self, for what is understood to be free will turns out to be nothing more than just one more episode and does not have any privilege over others.

If this is correct, then privacy is more effectively justified through the result it promises to bring about rather than through a metaphysics of the self. This is the core of my pragmatic justification of privacy.

Conclusion and Recommendations

The Buddhist teaching on the identitylessness of the individual points to the fact that, although the individual does not possess her own individual essence or substance, she is still entitled to privacy rights regarding her genetic information in the bioinformatic database because part of her being is constituted by the very information that is stored there. Moreover, the Buddhist viewpoint is such that this conclusion is strengthened; the reason is that even though there is no objective, substantial essence to the individual, her empirical, conventional self is still there and there being no objective, substantial self means that she can be constituted by a set of information. When there is no essence to be found, she can lay claim to the information in the database more forcefully because it is ultimately speaking *convention* that determines the extent of her identity. Moreover, since values and norms are judged in Buddhism more in reference to pragmatic goals rather than to objective, transcendent rules, there is a clear way to show that the information is part of her own being. A consequence is, therefore, that her privacy should be protected accordingly.

Thus, I would like to conclude with a set of recommendations from the Buddhist perspective. First of all, privacy rights of individuals whose bodily material has been sampled and information extracted and computationally processed should be respected. There should be a guideline to the effect that

attempts toward possible discrimination or stigmatization should be prohibited. This is particularly sensitive in the case where it becomes possible to identify, not only individuals, but groups of them, either in the *a priori* or *post hoc* manner. In addition, if the identification of an individual through her genetic information becomes scientifically feasible, this would strongly emphasize the need for adequate protection of the individual's privacy rights. Secondly, individual participants should be able to recall their material from the database, unless it can be proven that the information is completely anonymized with no possibility of identifying individuals. Thirdly, the ability to recall is actually part of the call for more democratization of decision making in which the lay participants, those who actually donate their tissue samples for the advancement of science and also other stake holders as well, should have a say in how the direction of scientific research should be heading. And lastly, as compassion is the heart of Buddhist teaching, compassion, that is the desire to achieve happiness for all others and not merely for oneself, should always be the motivation of the scientific and technological enterprises no matter in which area.

Chapter Four

Privacy, Contingency, Identity, and the Group

Privacy has become a primary concern in many circles nowadays. The increasingly pervasive use of electronic and information technologies has resulted in more sophisticated tools that are used for surveillance and data mining, which threaten privacy rights of citizens. Furthermore, privacy has become a concern not only in the West, but also in Asia, where there has been significant economic growth in recent decades. This concern has led many scholars to ponder on how the concept of privacy and its implementation could be justified, especially in the context of the East where privacy is generally perceived to be a part of the modern West where Asia has had no exact counterpart, a situation that prompted many papers on how privacy could be justified in Asian contexts.¹³⁸ What I would like to accomplish in this paper is related to those attempts; however, the paper is not intended as another contribution to how privacy is to be justified or even criticized from the Asian perspective. It is instead an attempt to map out the conceptual terrain of privacy without relying too heavily on the literature of the traditions of Asia, which in fact has been my concern elsewhere.¹³⁹ That is to say, I intend what follows in the paper to be generally applicable in most cultural contexts. This should not be taken to be an argument for the supremacy of one culture over others; rather my concern is to find out a common ground that should be acceptable for all cultures, without privileging one over another.

The overall aim of this chapter is, then, to present a philosophical

138 See, for example, Charles Ess, "'Lost in translation'?: Intercultural Dialogues on Privacy and Information Ethics," Lü Yao-Huai, "Privacy and Data Privacy Issues in Contemporary China," Krisana Kitiyadisai, "Privacy Rights and Protection: Foreign Values in Modern Thai Context," Pirongrong Ramasoota Rananand, "Information Privacy in a Surveillance State: A Perspective from Thailand," Soraj Hongladarom, "Analysis and Justification of Privacy from a Buddhist Perspective."

139 Soraj Hongladarom, "Analysis and Justification of Privacy from a Buddhist Perspective."

analysis and justification of privacy that differs from what is available in most literature on the topic. The topic is of direct relevance to technoethics, conceived of as an investigation of the ethical implications of science and technology, because these advances have resulted in actual and potential violation of privacy of either individuals or groups of them. It is well known that current technologies, such as genetic databanking, smart ID cards, and others have made it possible to collect, store, and systematize a vast amount of information related to particular individuals. In Thailand, for example, the previous government introduced what is called 'smart ID cards.'¹⁴⁰ Basically these are supposed to function as identification cards for each and every Thai citizen, which has been around in Thailand for decades. However, in recent years the government ordered that a new type of card be issued with a microchip, which is capable of storing a very large amount of information. The rationale was that this new type of card would facilitate interaction with public agencies, as important information that is required for an individual to contact the government would be stored in the microchip, eliminating the need to carry a number of paper documents. However, since the card identifies an individual citizen, it is conceivable that deeper level of individual information might be stored in the card, enhancing the possibility that the government or the authorities might use the resulting huge database in profiling or perhaps discriminating one group against others in one way or another, and so on, thus undermining the privacy of the individuals. Many research works have in fact been done on the Thai smart ID cards, and its potential for misuse.¹⁴¹

The idea to be presented here is that there is an area within and surrounding an individual and indeed group of individuals that should be protected, and that the boundary demarcating the area is an imaginative line,

140 Thailand introduces national ID with biometric technology, retrieved May 9, 2007 from <http://www.secureidnews.com/weblog/2005/04/15/thailand-introduces-national-id-with-biometric-technology/>

141 Rananand also discusses the situation in Thailand as a surveillance state and how this affects the right to privacy in "Information Privacy in a Surveillance State," and Kitiyadisai gives a detail about the policy concerning the smart ID card in Thailand in "'Privacy Rights and Protection."

much like the longitudes and latitudes are. In the paper, I show that the idea of privacy is strongly related to the philosophical concepts of identity, either that of an individual or to a group.¹⁴² Privacy is connected to identity because it does not seem at first sight to make much sense in saying that there is a privacy to an individual while the identity of that individual changes through time. In other words, privacy seems to presuppose a rather strict identity of an individual. Without such a strict identity, it would be hard, or so it seems, to identify whose privacy should be protected.

However, I don't believe that privacy does in fact rely on such a strict identity of the individual. If it is the case that an individual is constituted by a set of information that together describes his or her identity vis-à-vis other individuals, then there does not have to be a 'core set' of information such that the core uniquely identifies the individual at all times. That is, the individual does not seem to be constituted through something that works as an 'essence' in that without it the individual would cease to be an individual in the familiar Aristotelian sense. There is a way to justify privacy even without strict identity of the individual whose privacy is to be protected. According to the view to be developed, information about an individual, even genetic information, does not on its own succeed in becoming such a core set. Privacy needs to be defended and justified, not through reliance on the metaphysics of the isolated, self-subsisting individual, but through the individual's relations to her socio-cultural environment and to other individuals. Privacy is needed when there should be a check against the authorities (such as against the Thai government issuing smart ID cards) so that the authorities are prevented from potentially misusing their power. This prevention is crucial for a functional democracy.

142 A possible corollary to the argument presented here is that I am in favor of emphasizing the right to privacy and its irreducibility to other rights. In fact there have been many debates on whether there is such a thing as the right to privacy. See, for example, Judith Jarvis Thompson, "The Right to Privacy," *Philosophy & Public Affairs* 4.4(1975): 295-314.; Thomas Scanlon, "Thomson on Privacy," *Philosophy & Public Affairs* 4.4(1975): 315-322; Rachels, "Why Privacy is Important," *Philosophy & Public Affairs* 4.4(1975): 323-333; Reiman, "Privacy, Intimacy and Personhood," *Philosophy & Public Affairs* 6.1(1976): 26-44. However, there is not much literature on group privacy at all at the moment.

Since the power of the government is based on consent of the people, not having such a means to limit the power of the government over personal information of the population would mean that the government has too much power, especially power to manipulate groups of population. Such excessive power would be detrimental to democracy. In what follows I will argue that there is a way to justify privacy rights which does not rely on the metaphysics of the inherently existing individual self.

Contingency and Privacy

Another factor affecting the standard justification concerns the metaphysical assumption that it tends to make regarding who exactly is the autonomous moral agent. Does it have to be a metaphysically self-subsisting individual subject? Here the standard justification argument seems to presuppose that the autonomous moral agent does have to be a self subsisting metaphysical entity. This is so because, in order to argue for the privacy of somebody, there has to be some entity whose privacy is to be justified and protected. Furthermore, the entity in question would presumably need to be a self subsisting one because if not, then the entity would continually be in flux and it would be difficult to pinpoint exactly whose privacy is to be justified. It seems to be without saying that justifying privacy presupposes the existence of the one whose privacy is to be justified. After all, defending privacy naturally presupposes that the privacy has to be that of an individual. Justifying privacy would mean that one is attempting to draw a line demarcating a boundary that belongs exclusively to a person and it would be wrong for the authority or anybody else to enter that boundary without the person's permission. What is more is that the person here is a metaphysically self subsisting person. What this means is that the person or the individual has to be something that exists objectively; there is something that inheres in the person such that it defines who that person is and nobody else without having to enter into any relation with anything outside. So it would naturally appear that, according to the

standard argument for privacy, the existence of a self subsisting person is presupposed. This standard justificatory picture is much in accordance with common sense. After all, when one is justifying or defending privacy, one naturally presupposes that there has to be a person whose privacy is to be justified and that the person has to be metaphysically objective. Otherwise it would be difficult to find a conceptual link between the metaphysically objective person here and her status as an autonomous moral agent. Being an autonomous moral agent would seem to presuppose that there is something deep down inside functioning as the holder of the qualities of being autonomous, being moral and being an agent.

Defending a conception of privacy that is closely related to that of personhood, Jeffrey Reiman writes: "Privacy is a social ritual by means of which an individual's moral title to his existence is conferred."¹⁴³ An individual is recognized as one who deserves to be treated morally, i.e., as one who is morally entitled to existence, when his or her privacy is respected. Respecting someone's privacy, according to Reiman, is to recognize that he or she exists as a human being who deserves to be treated as an end and never as a means, to use Kant's terms. Furthermore, Reiman adds that privacy is necessary for the creation of the individual self;¹⁴⁴ for without privacy, there is no way, according to Reiman, for an individual to be recognized as such, since there would be no way for her to recognize that the body to which she is attached is her own, to which she has exclusive rights (including that of privacy). That recognition is the process by which the sense of self of the individual is created, and it is in this sense that Reiman makes his startling claim. Reiman further states:

"[P]rivacy is a condition of the original and continuing creation of 'selves' or 'persons.'"¹⁴⁵ That is, so long as someone's privacy is respected, to that extent her selfhood and personhood is thereby respected and recognized. Privacy, for Reiman, is a *sine qua non* for the selfhood or personhood of someone; in other words, privacy necessarily belongs to someone in virtue of her being 'someone' or 'a person' in the first place.

143 Jeffrey H. Reiman, "Privacy, Intimacy and Personhood," p. 39.

144 Jeffrey H. Reiman, "Privacy, Intimacy and Personhood," p. 39.

145 Jeffrey H. Reiman, "Privacy, Intimacy and Personhood," p. 40.

If one were to search for strong arguments attempting to link privacy with selfhood or personhood, Reiman's must be among the first ones in the list. It would be tempting, then, to test Reiman's argument here in the scenario raised above where the individuals do not seem to have any privacy, or do not object to their putative privacy rights taken away at all. The question then would be: Are these individuals in this situation recognizable as selves or persons at all? According to Reiman the answer would have to be no, because in his argument privacy is the *sine qua non* for the very existence of a self or a person, as we have seen. But this seems counterintuitive. In this hypothetical situation, the individuals there are still very much the very same kinds of individuals that we know. They go about their businesses and they are certainly capable of rational thinking and so on. The hypothesis we already have seen at the start is that this is a place just like our own, except only that the people there totally do not mind the possibility of being in the public's eyes all the time. For Reiman, these people would immediately cease to be persons, but that is clearly too strong. The point is that if the scenario of people who willingly forego their privacy is a plausible one, then one would be hard pressed to come up with a tenable conception of privacy which is metaphysical and non-relational. Attempts to tie up privacy with conception of selfhood or personhood, like the one proposed by Reiman, seems to fail in the case where the selves or persons do not mind their lack of privacy at all.¹⁴⁶ So it seems that one needs another way to justify privacy, one that does not presuppose the metaphysical

¹⁴⁶ Reiman might counter this argument saying that in the lack-of-privacy scenario, the individuals there still possess their privacy right, even though they choose not to exercise them. But then the difference between his and my conception in this case would be then that according to Reiman, the privacy right is kept inside, unexpressed whereas in mine there is no privacy in the first place. Assuming that there is no condition coming up that forces people to exercise their dormant privacy rights, then there is no difference between his and my conceptions at all. The individuals there would go about their lives and their lack of privacy, and everything would remain the same no matter they actually have some privacy rights hidden inside their own selves or not. But if the condition requiring people to enforce privacy rights comes to the fore, such as when the authority is abusing their power, then according to my conception the people can well devise 'privacy rights' as a means to counter the authority. This devising does not seem to require that the concept is already there inside their selves.

assumption of the enduring or objectively existing individual self.

Since privacy is relational, one justifies it more effectively, I believe, if one looks at it as a political or sociological or pragmatic concept. Privacy is justified because it brings about something desirable.¹⁴⁷ In fact when Reiman argues that the selves are constituted through privacy, he appears to be on a right track because that would mean that the self is a creation or a construction and not something that is ontologically prior to anything. The point is that, if the self is a construction, something that emerges out of transactions one has with one's environment and one's peer, then the conception of privacy that depends on the objectively existing self would need to be modified. Considered this way, privacy then is a hypothetical line that one draws around oneself to demarcate the line where one does not wish others to enter without one's own consent. And the line here is very fuzzy and very much dependent on varying contexts. It is a hypothetical line in the same way that the longitudes and latitudes are. One never finds these lines on the ground, but always in a map as a useful heuristic device to locate one's position.

Let us go back to the no-privacy world mentioned above, the world works because the authority is trusted completely and the individuals there do not mind having no privacy. However, if the situation changes and the authority becomes less trustworthy, and the individuals happen to feel that they need some privacy to themselves, then in this situation the conception of privacy emerges. People there might conceivably devise the concept as well as means to realize it in practice. If this can indeed be the case, then the concept of privacy is not one that is metaphysically attached to the persons or individuals from the beginning, as is a social and legal conception that emerges due to certain kinds of situation. What this implies is that privacy is a contingent concept. A well known example of contingent concepts and rules derived from them is the rule on driving. In Thailand people drive on the left side of the road,

¹⁴⁷ Here Priscilla Regan is absolutely right when she said that the concept of privacy is relational and is necessary for democracy. Democracy is certainly one of the desired goals brought about by recognizing and enforcing the right to privacy. This is one of the best justifications for privacy. See Priscilla Regan, "Privacy as a Common Good in a Digital World," *Information, Communication and Society* 5.3(2002): 382-405, p. 399.

which is the same in Britain, Australia, Japan and some other countries. However, the majority of countries in the world drive on the right side. There is no absolute rule specifying which side of the road is the 'right' or 'wrong' one. People just devise the rules out of their convenience or habits or whatever. Accordingly, privacy is a concept that emerges out of certain kinds of situation and it does not have to be there at the beginning where there is no need for it.

Privacy and Personal Identity

Moreover, there have been many research works analyzing and criticizing the metaphysical idea of the individual subject, much of it being based on the Buddhist teaching.¹⁴⁸ A common thread in these arguments is that the idea is a metaphysical one, meaning that it is not there when it is searched for through empirical means. The very idea of the individual subject, according to these research works, is not there to be found when searched for empirically, because one always finds what are supposed to be instances of the subject, but not the subject herself. What constitute a human being are the body and the mind, the physical and the mental. One does not have to follow Descartes' influential view that the two are radically separated, a view that is currently

148 See, for example, Rupert Gethin, *The Foundations of Buddhism*, Oxford University Press, 1998; The Dalai Lama, *The Buddha Nature: Death and Eternal Soul in Buddhism*, Woodside, CA: Bluestar Communications, 1997; Steven Collins, *Selfless Persons*, Cambridge University Press, 1982; Derek Parfit, *Reasons and Persons*, Oxford University Press, 1986; Soraj Hongladarom, "Analysis and Justification of Privacy from a Buddhist Perspective," Varela and Poerksen, "'Truth Is What Works': Francisco J. Varela on Cognitive Science, Buddhism, the Inseparability of Subject and Object, and the Exaggerations of Constructivism—a Conversation," *The Journal of Aesthetic Education*, 40.(2006): 35-53. There is an obvious similarity between the Buddhist analysis of the self and the postmodernist one. According to the familiar postmodern stance, the self is 'deconstructed' in that it is analyzed and found to be composed of various disparate elements, much like what the Buddhists say. However, a difference between Buddhism and postmodernism lies in the motivation. According to Buddhism, the purpose of realizing that the self is a construct is to let go of attachment to it so that the practitioner realizes her primordial oneness with reality; hence there is clearly the soteriological goal in Buddhism that is lacking in postmodernism

under attack from many fronts. Nonetheless, one could focus each of the two in turn for the sake of simplicity. It is well known that most cells in the body do change and are replaced by newer cells after a period of time. There may perhaps be some cells in the brain that do not change, but then one would not bet on them to be the seat of the individual subject or the person. On the other hand, when one focuses on the mental episodes, one also finds them to be changing very rapidly. One's personality changes over time; one's psychological makeup does not remain constant. At least if one were to point out which episode or which event constituting one's psychological makeup is to be the individual subject, then one would be hard pressed to find one. This is so because any candidate episode would have to stay frozen and locked up in order for it to function as the core identity of the subject herself. But an episode is by definition a kind of event, which if frozen in time will cease to be an event altogether. However, if the core is to be something physical, then we go back to the point made earlier about the physical body.

The fact that the core identity of the individual subject cannot be found empirically does not imply that there are no individual human beings whose privacy is to be protected. What I am driving at is not that there are no human beings, which is absurd, but that there is no substantive core that functions as the 'seat of identity,' so to speak. Again this does not mean that humans have no identities, which is also absurd. Having no substantive core means only that the identity of a particular human being is a relational concept and is constructed out of the human being's interaction with her society and her other contextual environments.

The relevance of this argument to the analysis of privacy is that there is a way to justify privacy without relying on the idea of there being a metaphysical concept of the person. One can rely only on what is obtainable through empirical means. This way of providing justification is as strong as it can be, because for one thing it is based on publicly observable entities and not on metaphysical construction.¹⁴⁹ The normative force of the argument related to

¹⁴⁹ This conception is not a relativist one because relativism presupposes that objective evaluation of different normative principles is not possible because the different normative

privacy would then be derived from shared meanings and understandings rather than from abstract rationalization. Since identity of the person is constructed through her interaction with the world, her privacy would presumably be constructed out of such interaction also. And in more concrete terms this would mean that the social world finds privacy to be important and devise ways and means to enforce it. Since privacy is an imaginative line as we have just seen, it is then constructed out of shared meanings and understandings that members of the social group have together.

A common objection to the idea of basing privacy on the conception that presupposes the person to be empirically constructed is that such a conception of person would be too weak. A conception of the person that is empirically based would, so the objection goes, not be appropriate to be a foundation for the autonomous moral agent that seems to be required for a viable conception of privacy. To put the point simply, if the person is always changing and something that is constructed, then whose privacy is one trying to justify? If the person is continuously changing without any substantial identity, then who will be the autonomous moral agent? And without the agent where will the concept of privacy come from? But if the autonomous moral agent is not sufficient for privacy as we have seen, then the argument here loses much of its force. In fact the force of the objection is that, without the autonomous moral agent, there would be no privacy, which implies that the autonomous moral agent is necessary for privacy. But if the proposed conception of the person which is based on empirical observation rather than metaphysical assumption is tenable, then, on the assumption that the autonomous moral agent needs to

principles define their own source and justification of normativity. However, this undermines the very normative force that the principles are supposed to provide a ground for. Basing the justification of privacy on publicly observable entities does not entail that any system of justification is as good as any other, since that would defeat the purpose of having a justification in the first place. However, demanding that there be a metaphysically constructed basis for justification seems too strong. It is too strong because it tends to imply that there must be only one correct system of justification for all contexts. But certainly justifying privacy depends on contexts, for it is possible for there being a society where privacy is not a concern at all, and the demand for protection of privacy arises as a response to the authority's gaining too much power and using it in unjust ways.

be a metaphysically substantial person, which seems to be accepted by those who favors this line of argument, the autonomous moral agent is not even necessary for privacy either.

That the autonomous moral agent is neither sufficient nor necessary for privacy should come as no surprise, for the agent here is commonly taken to be the substantially existing person whose identity is based on the metaphysical assumption that grounds her identity even though no empirical correlate has been found. And this should by no means be understood to mean that the justification of privacy proposed here assumes that privacy is not a moral concept. The conclusion that the autonomous moral agent is neither sufficient nor necessary does not imply that privacy is not a moral concept because the individuals in society can well construct a concept such as privacy as a tool for regulating their lives and defining the relations between themselves and the political authorities without thereby depending on metaphysical assumptions.¹⁵⁰

This conception has another advantage to the standard one in that it fits better with the emerging scenario where non-humans are becoming more like humans and therefore deserve moral respect.¹⁵¹ As far as I know, no robot or

¹⁵⁰ In addition, that the autonomous moral agent is neither sufficient nor necessary for privacy should not be understood to imply that people are not autonomous moral agents in the sense that they are capable for making moral judgments and decisions on their own. Nothing in my argument leads to that absurd conclusion. The individuals in the no-privacy world, as we have seen, are as moral and as autonomous as any in our world; only that they do not seem to take privacy seriously and are happy leading their lives totally in public view. To them there is nothing wrong with that. This does not mean that they are not moral agents.

¹⁵¹ Recently there has been an interest in how robots should be accorded with moral respect and moral rights in some form. This is known as 'roboethics.' For example, Luciano Floridi and John Sanders argue for a concept of moral agents and patients could be applied to non-humans even though they are not capable of feeling or free will, such as early stage robots and animals See Floridi and Sanders, "On the Morality of Artificial Agents," retrieved May 13, 2007 from http://www.roboethics.org/site/modules/mydownloads/download/Floridi_contribution.pdf. Another interesting source is "Robots may one day ask for citizenship," Retrieved May 13, 2007 from

animal has been accorded the right to privacy yet. One might conceivably feel that she can watch and monitor an animal or a robot and to mine any information from it (him?) without infringing upon its (his?) privacy. As animals are certainly sentient beings, and, as Peter Singer suggests,¹⁵² they do deserve at least some respect, to extract any information from them without regard to their kind of dignity that renders them worthy of respect would be unethical, and clearly that would be tantamount to violating their privacy. Furthermore, as robots mature enough and are beginning to think and be conscious (just like animals), then the question about robot privacy presents itself. One way to think about this is, of course, to think that animals and robots are starting to attain the status of 'autonomous moral agents;' that is indeed the case if being an autonomous moral agent does not imply that they somehow instantiate the abstract model of rationality that have informed humans being long before. Instead of assuming that the autonomous moral agent is a metaphysically substantive entity, we might consider robots more simply as ones who are starting to become like us humans. That is, they are becoming capable of talking, understanding, planning, desiring, dreaming, and so on, characteristics that have defined humans. In this case they deserve privacy. At any rate, it is simpler just to view robots as becoming more like humans than to assume that they are starting to instantiate the abstract model of rationality and moral agency, assumption that incurs the added burden of explaining the identity and the justification for the existence of the said model. Equally, it is even simpler to view animals as sharing many characteristics that belong to humans, such as the capability to feel pain and pleasure, the ability to have an inner life, etc., than to view them as somehow instantiating the abstract model too.

Group Privacy

<http://media.www.guilfordian.com/media/storage/paper281/news/2007/03/23/World/Robots.May.One.Day.Ask.For.Citizenship-2788091.shtml>.

152 Peter Singer, *In Defence of Animals* (New York: Blackwell, 1985); *Animal Liberation*. 2nd Ed. (New York: Avon Books, 1990); *Practical Ethics*. 2nd Ed. (New York: Cambridge University Press, 1993); *Ethics* (New York: Oxford, 1994).

So how does the proposed conception play out in real life? Here is another distinct advantage of the proposed conception over the mainstream one. In emphasizing the role of the individual, the mainstream conception appears to neglect the importance of families and social groups, whose privacy needs to be protected also.¹⁵³ Privacy of families is violated when the authority or somebody intrudes upon family life with no justified reason. What is happening inside a family seems to be a private matter to the family itself; intrusion is justified only in case where it is suspected that there are physical or verbal abuses going on within the family, in which case the rights of individual family members to bodily integrity trumps over the family's right to privacy. Here the proposed conception fares better because it is not tied up with justifying privacy through the individual. According to the standard picture, families or other social groups seem to be little more than collections of individuals, and it is individuals who are the atomic units whose rights and privileges should be the main prerogative. Families are but appendages of the individual. But that seems counterintuitive. As philosophers such as Hegel and Charles Taylor have shown, individuals are nothing without their roles and positions within the family or larger social groups.¹⁵⁴ Hegel argued that ontologically the individual derives her individuality and ontological being through her relation with other individuals. So the picture is a reverse from the standard one. It is the social group that is more primary, and the individuals are

153 There are only a few references in the literature on privacy that pay attention to group privacy. Olinger, Britz and Olivier (Olinger et al., 2007) discussed the African concept of ubuntu, which puts the interests of the group before those of the individuals (See Hanno N. Olinger, Johannes J. Britz and Martin S. Olivier, "Western Privacy and/or Ubuntu?: Some Critical Comments on the Influences in the Forthcoming Data Privacy Bill in South Africa," *International Information and Library Review* 39(2007): 31-43. Patton, in "Protecting Privacy in Public? Surveillance Technologies and the Value of Public Places," *Ethics and Information Technology* 2(2000): 181-187, recognizes the value of group privacy and sees that sociality plays a complimentary role in the analysis and justification of privacy.

154 G. W. F. Hegel, *Phenomenology of Spirit*, A. V. Miller transl (Oxford University Press, 1977); Charles Taylor, Hegel (Cambridge University Press, 1975); Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, MA: Harvard University Press, 1989).

derived from them. This issue, of course, comprises a standard debate between liberalism and communitarianism in social and political philosophy.¹⁵⁵

Without being tied up with the individual who is supposed to be the linchpin of a justification of privacy, the proposed conception here makes it easier conceptually to deal with privacy of social units. Without assuming anything metaphysical that exists beforehand, the proposed conception would justify privacy of social unit through their needs to protect their boundaries vis-à-vis possible encroachment by the state or other authorities, and the social groups can justify their privacy by referring to the desired goal if privacy right is upheld. For example, there might be a conception of privacy of an ethnic group such that the group is entitled to keep certain set of information private to their own group. The issue has become more significant recently due to the increased sophistication in manipulation of genetic data obtained from a population. This information may be something that is dear to them and something that they don't want to share with outsiders. If there is no compelling justification for making this information public (such as when the publicizing of the information is necessary in an emergency), then the authority has no right to encroach and to pry upon the information. Since the conception of privacy arises out of needs and contexts, there is no metaphysical baggage to unload.

An obvious objection of the concept of group privacy concerns the ontological status of groups. What this actually means is that any view that concerns groups of individuals, treating them just like an entity (such as when the group holds some sort of privacy right together), have to clarify how the group is supposed to be defined and demarcated such that one group is differentiated from another. However, if the individual herself could be regarded as an abstraction or a construction, then there is no problem in regarding groups to be the same too. That individuals are abstractions can be

155 D. Bell, *Communitarianism and Its Critics* (Oxford: Clarendon Press, 1993); D. Bell, *East Meets West: Human Rights and Democracy in East Asia* (Princeton: Princeton University Press, 2000); Charles Taylor, *Sources of the Self: The Making of the Modern Identity*; Sandel, *Liberalism and the Limits of Justice*. 2nd Ed. (Cambridge: Cambridge University Press.

seen from the fact that an individual is composed of various parts, such as bodily parts, cells, memories, emotional traits, and so on. In fact this is the standard Buddhist view of reality in that individual selves do not exist independently of any relation, but they do indeed exist through the relations that the individual maintains with various entities, forming a complex web of relations where an individual is a node. Thus, a group of individuals, for example a family or an ethnic group, is held together by some special relation among members of the group such that others do not share in it. A family is differentiated from another by the simple fact that the individuals are not the same; they do not share the same backgrounds, the same stories, the same personalities, and so on. Likewise, an ethnic group is also defined through their shared meanings and traditions, not to mention in some cases their shared genetic heritage.

In the latter case of groups sharing the same genetic heritage, there is an added dimension related to their privacy in that their genetic makeup may happen to be of some potential benefits for pharmaceutical or other scientific purposes. There is not enough space in this paper to deal in any detail on this very important topic, which itself is a subject of a vast number of books and articles. What I would like to maintain here is merely that the concept of group privacy may be advantageous to protect these ethnic groups from potential discrimination or intrusions in their collective lives. In the same way as we need to protect the privacy of an individual, we also need to protect privacy of a group in the case where the group shares some genetic heritage or some other type of information together. A family (or a married couple) often has some kinds of 'secrets' that they only share among themselves and not to the outside world. This is a clear case of privacy. Obtaining this information from the group without their consent would undoubtedly constitute intrusion of privacy. As the privacy of an individual needs to be protected against the potential abuse by the authority, so too needs the privacy of a group.

Conclusion and Future Directions

Some future directions resulting from this investigation can be clearly drawn up. Firstly, the study of how privacy is conceptualized and justified would need to pay more attention to the Buddhist teaching, especially on how the individual is constructed and how this bears a relation to attempts to justify privacy. Secondly, as the notion of group privacy seems to gain momentum as a useful tool to investigate how traits and information belonging to groups of individuals should be protected. The usual conception of privacy as belonging to the individual does not seem to be as effective in providing this solution.

My view so far is that there is a way to justify privacy without relying on the metaphysical assumption of an independently existing self or person. In fact I believe that the proposal offered here, that privacy is a contingent matter, is more convenient in helping us understand the complex issues surrounding deliberating thoughtfully about privacy in many dimensions. Thus the new conception appears to be better suited to deal with problems arising from current technologies of manipulation of personal information. For instance, in safeguarding group privacy, the proposed conception does a more effective job in providing a conceptual framework in which a better foundation and justification of the notion of group privacy can be offered. It is the very contingency of privacy that makes it malleable enough to serve our purposes. What is certain in any case is that we in the 21st century do not live in the world where privacy does not matter any longer; hence there is a need to protect privacy against all prying eyes. Thai citizens, to take a specific example, need to find a way to guard against the manipulation of their personal data through the smart ID card policy. What this paper has accomplished, I hope, is to lay out some foundational issues on privacy so that we know which direction we should be heading as we lay out conceptual maps that will possibly translate to rules and regulations later on. Moreover, the privacy of the group also needs to be recognized, as modern genomics has advanced and is now coupled with information and computational science, the potential for misuse and injustice increases considerably. Hence, a clear

direction in the future is a policy matter of providing a better safeguard for protecting not only individual privacy, but group privacy too.

Chapter Five

The Path for Privacy

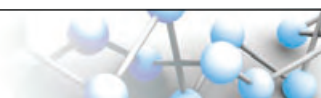
We have seen that privacy is not something that can be based on an atomic conception of the individual person, for there can be no such metaphysical basis. We have also seen that Buddhism provides a number of useful insights into how this can actually be done. One can have a way of justifying privacy as well as a complete conception of the concept without relying on the metaphysical belief in the individual subject. The mainstream view that such a metaphysical conception is needed as a foundation for right and autonomy is found to be untenable ultimately because it is possible for us to have a system of right and autonomy which is based on a pragmatic consideration, such as the notion that right and autonomy of conventionally individual subject are necessary in order to achieve certain desired goals such as a fully democratic polity. As right and autonomy are safeguards against abuse of power, and as privacy functions prominently in such a system, privacy then is crucial as an integral part of any attempt to curb abuse of power by the authorities. Buddhism, with its elaborate view on the nature of the individual and how reality is constituted, provides a fertile ground for this alternative conception of privacy and how it is justified.

One might object, however, why an elaborate system of justification of privacy is needed. Why, one might ask, do we need to bother with Buddhism and the critique of the metaphysical status of the individual in discussing privacy? The answer is that one can certainly justify privacy on pragmatic or instrumental grounds; in fact this is the point of my own argument presented thus far. One can certainly argue that privacy right is needed as a bulwark against unjust use of power by the authorities, or by the all powerful business corporations, saying that it is our desired goal to have certain amount of autonomy and space within which we can operate freely without being subject to constant scrutiny by others. The whole idea hinges on the *desirability* of

having such a space. However, when one is pressed, as is quite often the case, to come up with an answer as to why the pragmatic conception is superior to the usual conception of relying on the metaphysical view of the individual person, one is then forced to come up with a philosophical system of one's own as an alternative, and I believe a better one, to the usual conception. Thus when one is asked why bother with the Buddhist or the pragmatic approach, which sounds philosophical and which does not seem to relate directly on the day to day issue of privacy protection, one says that if there is no need to come with such elaborate justificatory or philosophical argumentation, then one does not have to do that at all. Nonetheless, philosophy comes up to the fore when there is a need for it, and here the need does come when the usual system of how privacy is justified appears to be rather inflexible in dealing with intercultural issues that we have seen in Chapter Two. One problem is that the usual way of justifying privacy, one that relies on the atomic, self subsisting individual, is found only in the West and does not ring a bell when privacy issues are transplanted in the non-Western cultures. If there is a way of justifying privacy that does all the work but is more resonant with the traditions of the non-Western culture, then it seems that is a reason for preferring the conception proposed here.

Furthermore, I have tried to argue that the pragmatic conception proposed here can well stand on its own and does not actually depend on the fact that it belongs to the East or other non-Western cultures. That is, the pragmatic conception has its own merits which even the West should adopt. One of the merits is that the pragmatic conception does a better job when there are differences in how privacy is conceptualized and how this is spelled out in actual practices, such as in formulation of actual regulations. The difference within the West between the US and the EU regarding how privacy issues should be justified is a clear case in point. Both the US and the EU belong to the Western culture, but there are significant differences between the two, as we have seen in Chapter Two. As the mainstream conception is more rigid, it is less amenable to reconciling the differences between the two than the proposed, pragmatic conception. Furthermore, relying on the belief in intrinsic individual

rights appear to chime more with the EU's position than that of the US. Nonetheless, the proposed conception is not the same as the consequentialism preferred by the US either, because consequentialism still presupposes the existence of individual persons as a metaphysical entity, something which our conception here rejects.



PRIVACY, THE INDIVIDUAL AND GENETIC INFORMATION: A BUDDHIST PERSPECTIVE

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Keywords

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ABSTRACT

Bioinformatics is a new field of study whose ethical implications involve a combination of bioethics, computer ethics and information ethics. This paper is an attempt to view some of these implications from the perspective of Buddhism. Privacy is a central concern in both computer/information ethics and bioethics, and with information technology being increasingly utilized to process biological and genetic data, the issue has become even more pronounced. Traditionally, privacy presupposes the individual self but as Buddhism does away with the ultimate conception of an individual self, it has to find a way to analyse and justify privacy that does not presuppose such a self. It does this through a pragmatic conception that does not depend on a positing of the substantial self, which is then found to be unnecessary for an effective protection of privacy. As it may be possible one day to link genetic data to individuals, the Buddhist conception perhaps offers a more flexible approach, as what is considered to be integral to an individual person is not fixed in objectivity but depends on convention.

INTRODUCTION

Bioinformatics is a new field of study in which the power of computer technology is harnessed to process biological information; thus the field is an interesting one, where the two major technological trends of the early 21st century, namely biotechnology and information technology, are fused together.¹ The application of computers and information technology in biological science has been necessary because biological information is expanding at an exponential rate, and there are many applications where the utilization of computer technology could lead to breakthroughs. One clear area of these application is, of course, the use of computers in aiding the sequencing of

the human genome. This large-scale processing of data would not have been even conceivable had it not been for the raw computing power made available by computers.²

Applications of these attempts at sequencing the genetic structure of organisms are rich and varied. Chief among them, of course, is the potential for using the available information in medicine. There are only a handful of diseases directly caused by genetic factors; however, scientists are searching for more uses for the genes and the newly developed human genomic database which could be helpful in identifying susceptibilities to more diseases and laying the foundations for the

¹ See Susantha Goonatilake. 1999. *Merged Evolution: Long-Term Implications of Biotechnology and Information Technology*. Amsterdam: Overseas Publishers Association.

² National Center for Genetic Engineering and Biotechnology (BIOTEC). 2001. *Bioinformatics and Computational Biology in Thailand: Outlook of Research and Infrastructure*. http://home.biotec.or.th/newscenter/Uploads/WE_pic/rad82B7B.pdf [Accessed 19 Jan 2008].

development of drugs targeted specifically at the molecular bases or genomic structure of the diseases themselves.

Among these new developments, a central concern about the use of biological information and its manipulation by computers focuses on the individual and her relations to the society around her. Bioinformatics has raised several ethical questions, and the discipline is a very interesting case that points to the possibility of an eventual merger of bioethics with computer/information ethics.³ This merger is clearly visible in the case of the privacy and data protection of individuals or groups of individuals. However, when the question becomes that of medical treatment using information gained through the human genome processing, the possible merger then becomes more one of medical ethics with bioethics. Since genetic data are obtained from an individual or a group of individuals, there is the question of who owns the information in question.⁴ Another issue concerns pharmacogenetics – the development and use of tailor-made drugs geared specifically to certain types of individuals according to their genetic predispositions – which has raised concerns about discrimination, among others. Another, no less important, issue is centred around the information pertaining to an individual. Privacy is, rightly, a serious issue in both information ethics and in bioethics. Even though the attempt is still in the beginning stage, Lin, Owen and Altman report that it is possible to identify an individual through only a relatively small number of changes in the entire genomic structure of a human being.⁵ Furthermore, other studies point out that it is at least conceivable that an individual could be identified through her genetic data, if other factors are also available.⁶ However, it is currently not actually possible to pinpoint an individual just from her genomic sequence, but it appears that things are moving in that direction.

This movement toward the ability to identify an individual through her genetic information raises many concerns about privacy. Firstly, genetic information could be considered as part of the identity of the individual herself. This is an important topic, which will be developed in more detail in this paper. Secondly, there is a concern whether the privacy of an individual is compromised when, for example, the individual shares her personal information in a database, or when some information about herself or communicated by her is appropriated without her consent or knowledge. The convergence of biotechnology and computer technology has resulted in a parallel convergence of the two main areas of applied ethics, namely bioethics and computer ethics. In bioethics, the concern is with the individual's biological data and, as computers have taken a more visible role in processing biological information, we are now seeing a convergence in information ethics and bioethics, as regards the protection of the individual's biological information. It is a central concern of this paper to address this issue of privacy in the bioinformatic era, based on a perspective from a religious and cultural tradition, that of Buddhism.

Much work, in fact, has been done on the topic of privacy in information ethics through cultural perspectives.⁷ What I intend to do in this paper, however, is to present a group of questions that need to be addressed in order for one even to get off the ground in tackling the conceptual and normative questions surrounding privacy in bioinformatics. One of the most basic questions concerns the status of the individual herself. Bioinformatics has raised a very important metaphysical issue concerning the status of the individual. As it appears that the individual person is being reduced to a collection of bits of genetic information that could be stored and manipulated like any other data,⁸ there is the question of what constitutes an individual person. Is it the case that the

³ See, for example, S. Hongladarom. Ethics of Bioinformatics: A Convergence between Bioethics and Computer Ethics. *Asian Biotech and Dev Rev* 2006; 9.1: 37–44.

⁴ G. Palsson & P. Rabinow. The Icelandic Genome Debate. *Trends in Biotechnol* 2001; 19.5: 166–171, p. 167.

⁵ Z. Lin, A. B. Owen & R. B. Altman. Genomic Research and Human Subject Privacy. *Science* 2004; 305: 183–184.

⁶ For example, it is possible to identify a person by matching her DNA with the sequence of her relatives' DNA (A. L. McGuire, T. Caulfield & M. K. Cho. Research Ethics and the Challenge of Whole-Genome Sequencing. *Nature* 2008; 9: 152–155: 154. See also F. Bieber, C. Brenner & D. Lazer. Finding Criminals through DNA of their Relatives. *Science* 2006; 312: 1315–1316). Furthermore, A. L. McGuire and R. A. Gibbs claim that 'coded or "anonymized" sequenced DNA may be more readily linked to an individual as genetic databases proliferate' (A. L. McGuire & R. A. Gibbs. No Longer De-Identified. *Science* 2006; 312: 370–371).

⁷ See, for example, C. Ess. 'Lost in Translation': Intercultural Dialogues on Privacy and Information Ethics (Introduction to Special Issue on Privacy and Data Privacy Protection in Asia). *Ethics Inf Technol* 2005; 7: 1–6; R. Capurro. Privacy: An Intercultural Perspective. *Ethics Inf Technol* 2005; 7: 37–47; S. Hongladarom. 2007. Analysis and Justification of Privacy from a Buddhist Perspective, forthcoming from *Information Technology Ethics: Cultural Perspectives*. S. Hongladarom & C. Ess, eds. Hershey, PA: Idea Group: 108–122; J. Moor. 2002. Toward a Theory of Privacy in the Information Age. In *Cyberethics: Social & Moral Issues in the Computer Age*. R. M. Baird, R. Ramsower & S. E. Rosenbaum, eds. Amherst, NY: Prometheus Books: 200–212; A. D. Moore. Privacy: Its Meaning and Value. *Am Philos Q* 2003; 40(3): 215–227; and K. Kitiyadisai. Privacy Rights and Protection: Foreign Values in Modern Thai Context. *Ethics Inf Technol* 2005; 7: 17–26.

⁸ See, for example, S. Dougherty. On Genetic Programs and Feedback Networks. *Configurations* 2004; 12: 263–285; E. Thacker. Bioinformatics and Bio-Logics. *Postmodern Culture* 2003; 13.2. Available at: <http://muse.jhu.edu/journals/pmc/toc/pmc13.2.html> [Accessed 21 July 2006];

individual is constituted by the set of genetic and other type of information that uniquely identifies him or her?

In any case, it needs to be made clear at the outset that I am not suggesting a unique correspondence between genetic structure and personal identity in this paper. What I am claiming is only that it might be possible, given the state and the direction of genetic knowledge, that the integrity of personal data, such as what is termed 'sensitive personal information' by the UK Data Protection Act,⁹ could be undermined. In any case, the current state of scientific knowledge today is such that it is not possible to differentiate between using one's 'real' genetic make-up to identify one's own identity as an individual and using the 'junk' DNA that somehow succeeds in identifying an individual or a group of them in a *post hoc* manner. In the latter case, the identification of an individual through her genetic makeup may be based on characteristics that do not belong to that individual's genetic make-up. This can apply equally to groups of individuals sharing common characteristics. Some 'junk' DNAs are used instead that bear no relation to the individual's genetic structure. In cases like this, the argument that relies on the essential feature that an individual allegedly possesses in virtue of her genetic structure may not be a tenable one. If, indeed the status of biological knowledge is such that it becomes actually possible to identify individuals or groups of them through genetic make-up alone, then the argument presented in the paper would be clearly viable. However, the argument presented here does not only rely on such essential linking between genetic make-up and identity. The most that the argument in the paper relies on is that there *could* be such a link between genetic make-up and identity, something corroborated by a number of studies mentioned earlier. And if that is the case, then what should be done to prevent that and to preserve the rights of individuals or their groups?

It is conceded, then, that it may not be possible, given the status of genetic knowledge available today, uniquely to identify an individual through her genomic sequences alone. However, the argument put forward in this paper does not depend on such necessary connection. It merely suffices to note that there is *some* possible link between genetic make-up and identity, and that this possible link is enough for a consideration of the potential threat to

privacy and how to prevent that from happening should biological knowledge advance well enough to enable scientists in the future uniquely to identify individuals.¹⁰ After all, the objectives of scientists working in bioinformatics include that of being able to identify how a point mutation in the sequence leads to perceptible changes in the phenotype, some changes in the protein structure that is coded in the altered gene. Of course this is far too crude a mechanism to identify an individual uniquely, for a very large number of individuals may already be sharing a particular genotype; but again the question is, what would have to be done *if* this scenario became a reality? What would need to be done if, for example, it became possible to identify individuals uniquely through their genetic makeup alone? If it were possible to pinpoint a structure in the human genome so specifically that a group of people is stigmatized or marginalized (suppose an undesirable trait or genomic sequence is found in the group that leads them to be stigmatized), then what would have to be done to prevent this from happening?¹¹

Considering that privacy usually implies protection of information *about* a person or an individual from prying eyes of the public or the authorities, there is naturally a question concerning what kind of information and how much information should be allowed to be included in the proposed database. Furthermore, some genetic information may clearly be sensitive, such as the gene that has been found to be responsible for schizophrenia.¹² If the responsible gene is found in a database of certain individuals, then given the stigma accorded to those who are prone to the disease, at least in some cultures, this should be enough to conclude that genetic information is part of the sensitive data that should be protected. Hence the attempt to protect privacy should also include the

¹⁰ Genetic information may not be the only kind of information that uniquely identifies an individual. Other, more mundane kinds, such as name or citizen identification number, may also be used. If it is scientifically possible, however, to identify groups of people through their common genetic make-up, this would be a strong case for genetic information to belong to the type of information regarded as sensitive to individuals.

¹¹ Segregating groups of population by their genetic make-up is usually done *after* the segregation has already been done. That is, genetic information alone is not sufficient for the segregation practices that occurred in history. The state of biological knowledge today is not such that segregation could be done through genetic information alone. Hence it is not the case today that genetic information can be used alone. If anything, genetic information serves to enhance the image that segregation and discriminatory practices are performed in a 'scientific' way. But if this is indeed the case, then this speaks strongly against the use of genetic information itself as an accomplice in discrimination.

¹² 'Gene Link to Schizophrenia Found.' Available at: <http://news.bbc.co.uk/2/hi/health/6084950.stm> [Accessed 17 Jan 2008].

J. C. Wilson. (Re)writing the Genetic Body-Text: Disability, Textuality and the Human Genome Project. *Cultural Critique* 2002; 50: 23–39.

⁹ See the Data Protection Act, 1988. Available at: http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1 [Accessed 17 Jan 2008].

protection of genetic data. As genetic information is part of the whole set of information that makes up an individual, the question of the individual's privacy and its constitution through information is thus related to the metaphysical question concerning the status of the individual, which needs to be adequately addressed, and which is the subject matter of the rest of this paper. Moreover, I will address this topic from the perspective of Buddhism, which has a very interesting and potentially useful theory concerning the individual and her ontological status.¹³ Basically, I shall point out that, according to the Buddhist theory of Non-Self,¹⁴ the individual is more accurately understood to be a construct and not something existing in and of itself. And there is an important sense in which the individual is constructed out of the whole set of information that uniquely identifies her.

GENETIC INFORMATION AND PRIVACY CONCERNS

How much genetic information should be allowed in the bioinformatic database in order that privacy of the individual is respected? In other words, in the attempt to gain the advantages that come with retrieving and storing genetic information about individuals in a computer-generated database while maintaining the principle of privacy rights, how much information pertaining to a specific individual, to a family group, or to a group of individuals in a community, should be allowed? On the one hand, there seems to be a motivation behind an idea that all available information should be allowed, in order to make full use of the advantages, such as the potentials in biomedicine or biotechnology that would presumably benefit humankind as a whole. In fact, however, the question of *how much* information should be allowed is not directly relevant at this point. What is relevant should

¹³ It may be questioned whether the argument offered here, which is based on Buddhist teaching, is too abstract to be useful to the ethics of bioinformatics. After all, disputing the metaphysical presence of self is an abstruse philosophical conception, which may seem to be rather remote from the bioinformatics laboratory. Nevertheless, the issue of privacy is paramount here, and when one goes down to the level of bioinformatic research, one still has to rely on one or another conception of privacy. Having a notion of individual self, as I think will be made clear in the course of the paper, is a construction that could be construed as a step removed from the actual reality, including what is happening in the laboratory. In addition, the Buddhist conception can be closer to reality in that it supports no such construction.

¹⁴ Buddhist scholars will recognize that this is the *anaatman* theory, and usually such references to Sanskrit terms are often made in literature on Buddhist studies. However, I opted not to mention any Sanskrit terms in this paper, since this is not strictly speaking a Buddhist studies paper.

instead be the question of whether there are any mechanisms in place that allow only authorized personnel to have an access to the information.¹⁵ This would ensure that the information is going to be used in a responsible and transparent manner.

If full permission to utilize the population's genetic information in the data bank were to be given, however, then there might be a concern that such full permission could lead to unscrupulous use of the information, and that the authorities might find it tempting to use the information to their own political advantage, such as in genetic profiling and other discriminatory practices, or to seek political gain. If there were indeed a set of genetic information that constitutes the identity of the individual, something akin to the sensitive personal data stipulated in the UK law on data protection,¹⁶ then such information should be handled with great care and sensitivity. In case of groups of individuals, the issue is a parallel one, for a particular group might have its own identity, i.e. some set of information that defines the group as unique. For such a group, then, the core information would be that which is shared by its members and possession of which entitles an individual to belong to that group. In certain socio-cultural cases, the core information that defines a group, if it is scientifically possible to find it, could well be much more important and politically sensitive than that of a single individual. And it is here that bioinformatics, as an attempt to deal computationally with genetic information about groups of individuals, comes to the fore as a potentially politically explosive enterprise.

THAILAND SNP RESEARCH PROJECT

As an illustration of how bioinformatics and genetic research is being done in a developing country, the Thailand SNP project is a good example. Starting in 2003, a team of researchers from the Ramathibodi Hospital, Mahidol University, initiated the 'Thailand SNP Discovery Project' (<http://thaisnp.biotec.or.th:8080/thaisnp>).

¹⁵ Moor, *op. cit.* note 3.

¹⁶ It may be the case that the stage of scientific development today may not be able to identify with absolute certainty a set of genetic information that uniquely identifies an individual or a group of them. That is, it may not be possible today to identify a core set of genetic information that uniquely identifies an individual beyond sociological or legal information such as the citizen ID number. Nonetheless, it appears that current genetic research is moving toward realizing this possibility and, if this is so, then there is a case for including genetic information that could identify individuals in the set of sensitive personal data that should be protected.

The aim was to search for single nucleotide polymorphisms (SNP) in 64 selected members of the general Thai population (the number was then reduced to 32), in order to form a database on which other spin-off projects could be based, such as those on pharmacogenetics, anthropological studies, genetic susceptibility to certain diseases, and so on. According to the words of the Term of Reference of the Project:

The aim of the project is to identify intragenic SNPs, which are frequent (allele frequency of more than 5%) in Thai populations. An SNP database will be completed of all genes identified in the whole human genome and their regulatory regions with allele frequency and LD block patterns in Thai and other (French, Japanese and African) populations. This database will also contain other information including genomic sequences, genomic structure, primer sequences, functional genomics etc., and it will be used for the following:

- Identification of disease associated genes for both the candidate gene approach and systematic genome screening.
- Pharmacogenomics
- The information obtained from this database will also be used for the Asian SNP consortium as a contribution from Thailand.
- Anthropology.¹⁷

The database of the Thai population would be part of an international effort in creating similar databases among the world's population, which could spawn many further research works, both for clinical applications and for basic science, as well as further international collaborations.

In order to collect the blood samples for analysis, 32 'normal and healthy' Thai people were selected from around 6,000 volunteers. The selected people underwent interviews about family history and provided health records and blood samples. The DNA from the blood samples was analysed in a bioinformatics lab, which was set up for the first time in Thailand as a part of this Project. It was hoped that some correlation might be found between the genetic structure available in the database and susceptibility to certain diseases, such as Thalassemia, from which Thai people suffer more than the global population on average.

Essentially, the role of a SNP is to function as a marker for genetic disposition of a certain individual or groups thereof. A spin-off project of the Thailand SNP Project,

as mentioned, is to find out whether there is a correlation between susceptibility to malaria and Thai people's genetic structure. According to the team,

This project aims to search for genes involved in genetic susceptibility to clinical malaria through genome screening linkage analysis. The study is based on a population from Suanpung village, Ratchaburi province, located near the Thai-Myanmar border. Its size is around 6,000, with 2,800 individuals having been followed up by the Faculty of Tropical Medicine, Mahidol University since 1994 for parameters related to clinical malaria and other confounding factors. Family structures were established. The familial cases in the population studied have allowed us to perform a genome screening linkage analysis.¹⁸

It is clear that ethical considerations could be involved in these endeavours. The team needs to be sensitive to the genetic profiling of the population that they studied, and to take care that no discrimination takes place. In fact the research team made sure that participants in their projects understood and signed their consent forms. However, there is another dimension regarding the amount of information that could be taken and stored without violating the principle of privacy. In the case of the malaria project, only the information pertaining to the individual's susceptibility to the diseases is relevant, and it would seem unethical to use the information in other ways. However, since the individuals who participated in the project donated their tissue samples, which naturally contain information about themselves, there is no natural barrier against the use of such information in other ways. This perhaps explains why there are so many spin-off projects from the original SNP Discovery Project; and this demonstrates the tremendous power of genetic information and computational biology. Ethical guidelines need to be in place in this matter, and they should be unambiguously enforced.¹⁹

Now the question is: To what extent is the privacy of the individual threatened when she participates in a project like this one and has donated her tissue sample? Is only the information specifically related to genetic susceptibility to malaria relevant? It does not seem so, because there are many other diseases, and the genetic informational structure of the individual could point to other developments, such as the potential for developing tailor-made drugs and so on. In most cases there is a delinking of the individual's social identity (her name, for

¹⁷ National Center for Genetic Engineering and Biotechnology (BIOTEC), *op. cit.* note 2.

¹⁸ <http://thaisnp.biotec.or.th/project/> [Accessed 19 Jan 2008].

¹⁹ For an example of such guidelines and recommendations, see McGuire, Caulfield & Cho, *op. cit.* note 6.

example) and the genetic information belonging uniquely to her. And in case of a group, which for our purpose here includes both ethnic groups and smaller family groups, the structure of the argument is similar.²⁰ There should also be a delinking of the identity of a group and the genetic information that identifies that particular group. For example, it is agreed nowadays that racial discrimination is ethically objectionable. A genetic database, however, might facilitate such discrimination through a system that links an ethnic or family group with a certain genetic structure belonging to individuals in the group. The linking, furthermore, may be either *a priori* or *post hoc*. As it has not been scientifically proved beyond doubt that there is a clear link between the genetic structure of an ethnic group of individuals and their expressed phenotypes, such as susceptibility to certain diseases, the linking of the genetic structure of the group with certain observable features can be *a priori*, meaning that it is assumed beforehand that there must be such a linking in the first place. Or else there could be an attempt, once a group is identified with certain susceptibilities that may or may not be genetic in nature, to link these to the genetic structure of the group, thus branding the group with some kind of stigma. In either case it is clear that the practice is unethical.

It would be very tempting to claim that genetic information does somehow function as a 'core set' of

information that uniquely identifies an individual or a group of individuals. In the future that may indeed be possible. As previously mentioned, however, the current state of scientific knowledge and technical expertise has not reached the stage where such a clear link could be claimed. But as the *a priori* and *post hoc* attempts to link genetic information with certain observable features show, genetics seems to play a role after all. Although it may not be scientifically possible now to claim with any accuracy that genes are responsible for the identity of an individual in all possible cases, things are going in that direction. Research in pharmacogenetics, which depends largely on results obtained through bioinformatics, is based on the assumption that individuals differ because of their genetic structure; hence drugs can be developed to suit these individual differences. It is also conceivable that ethnic groups could be treated in the same way. Thus, even though genetic information alone is not yet able scientifically to identify individuals or ethnic groups, it can be incorporated in possible discriminatory practices or breaches of privacy. In what follows I shall address this ethical concern from the perspective of the Buddhist analysis of the individual.

BUDDHISM AND THE INDIVIDUAL

The main question that concerns us here is the metaphysical status of the individual. If there is a set of 'sensitive personal data' belonging to an individual person that should be respected and protected, then there is the philosophical question of how those data are related to the very being of the individual herself. To what extent do these sensitive personal data belong to the core of the individual so that the data constitute the identity and perhaps the very essence of the individual? As genetic information pertains, presumably, not only to the sociological or legal identification of an individual but also to her body itself (including all kinds of relevant bodily properties, such as dispositions to certain diseases and so on), genetic information thus becomes very important and naturally should be part and parcel of the sensitive personal data.²¹ In any case, there seems to be a distinction, at the philosophical level, between the properties making up an individual that are essential and those that are non-essential. The main question is whether there is any set of information making up an individual that is indispensable.

²⁰ What makes genetics a sensitive issue is that it makes possible a powerful tool with which one could identify information pertaining not only to an individual but also to her family. Profiling individuals could go hand-in-hand with profiling families, and the issues that make genetic profiling so controversial can be vastly augmented with profiling of family groups. It is true that this present study focuses on the individual self; however, family groups are no less important, and the structure of the argument offered here is tenable at both levels. Criticizing the individual self does not imply that the family is not important. Indeed, genetics does involve the family, very significantly. Criticizing the individual would adversely affect the family only if one assumed that the family consisted of individual members, whose identities were somehow assured metaphysically. But there is no justification for such an assumption. The fact that the individual self is a construction does not imply that the family itself is a construction. Since the self is constructed out of many different episodes, the family could in the same way be composed out of these individuals. The individual members of a family would still be there; this is an empirical fact, and hence the families composed of these individual members would be there too. If there is a need to protect the privacy rights of individuals, there is also the same type of need for the right of privacy for families. However, it is a different issue whether the family could be regarded as a distinct entity with the same attribution of rights as an individual. This issue of whether there is such a thing as 'community right' or 'family right' is beyond the scope of this paper. The point here is that pragmatically construing the notion of privacy based on critiquing the notion of the individual self does not imply that the family is not crucial in a deliberation on privacy in bioinformatics research.

²¹ E. W. Clayton. Ethical, Legal, and Social Implications of Genomic Medicine. *New Engl J Med* 2003; 349: 562–569.

The distinction, however, has become suspect in recent days. Many philosophers have become disenchanted with the idea of essentialism and proposed arguments that such a distinction is not based on objective facts at all but, instead, on our own convenience in distinguishing things for our own purposes.²² Hence the distinction between what is essential and what is not depends more on whether we regard something as very important and indispensable (to our own context-bound agenda) or not. In this case, the genetic structure that determines the identity of an individual is regarded more as something that serves the purpose of sorting out individuals based on genetic criteria, rather than as a property that exists in perpetuity. The sorting is performed in a pragmatic and piecemeal fashion rather than in any way that reflects objective reality.

This view is in accordance with that of Buddhism. A basic idea of Buddhism is that things in objective reality are 'empty of their inherent existence'. What this means is that there is no essence to anything. What a thing is, what separates it from other things, is just a result of human beings' convenient designation through concepts and language. According to the Buddhists, there is no real distinction between essential and non-essential properties. This has profound implications for what we should take privacy to mean and for any system of justification of privacy. For one thing, it puts genetic information on a par with the other types of sensitive personal information, such as one's names, credit histories and so forth.

There being no essential property beyond convenient designation points to an interesting conclusion: that justification of privacy is based not on the traditional mode of metaphysics of the individual, in which an individual is an atomic autonomous unit to be accorded with a group of rights, including the right to privacy, but on a 'convenient designation' based on the realization that a society that respects privacy of the individuals is somehow a 'better' place to live than the one that is not.²³ Even though one cannot objectively distinguish the information that constitutes an individual essentially from the information that does not, there is enough, pragmatically speaking, so to distinguish, and once the information that

is enough for singling out an individual and that has the potential to engender harm to the individual is identified, that information should be protected as a way to protect the individual's privacy.

According to Buddhism, what is understood as the self is a result of causes and effects and the conception of self arises out of a kind of grasping onto these disparate and juxtaposed episodes of causes and effects, resulting in an illusion that the self actually exists when in fact it does not. This point, known as the Doctrine of Non-Self, is unique to Buddhism among all the religions in the world. A passage from the *Guide to the Bodhisattva's Way of Life*, one of the most celebrated texts in the Buddhist world, puts it as follows:

First, with your own intellect, peel off this sheath of skin, and with the knife of wisdom loosen the flesh from the skeleton.

Breaking the bones, look inside at the marrow and examine for yourself, 'Where is the essence here?'²⁴

The idea here is that the essence of a person, or his or her individual self, is nowhere to be found. According to this passage, it is clear that the self, if it existed, would not be something that can be directly perceived. In this case the self is clearly not identical with the body, but it is not identical with the mind either, for it is very difficult to pinpoint what exactly in the mind, which consists of a series of mental episodes, corresponds with the self.

Furthermore, in the *Fundamental Wisdom of the Middle Way*, another well-known text, there is a passage describing how what is understood to be the self is analysed:

If the self were the aggregates,
It would have arising and ceasing (as properties).
If it were different from the aggregates,
It would not have the characteristics of the aggregates.²⁵

Briefly, what this verse means is that, if the self were the same as the aggregates that together constitute what is normally taken to be the self (one might understand the aggregates roughly to be the body together with the mental episodes that make up a conception of a self), then the self would be subject to arising and ceasing.

This cannot be the case, however, because one's own self does not just arise and cease very rapidly, unlike what

²² See, for example, L. Wittgenstein. 2001. *Philosophical Investigations*. Oxford: Blackwell; J. Dewey. 1950. *Reconstruction in Philosophy*. New York: The New American Library; M. Heidegger. 2000. *Introduction to Metaphysics*. New Haven, CT: Yale University Press; and R. Rorty. 1980. *Philosophy and the Mirror of Nature*. Princeton, NJ: Princeton University Press.

²³ S. Hongladarom. 2005. Electronic Surveillance in the Workplace: A Buddhist Perspective. In *Electronic Monitoring in the Workplace: Controversies and Solutions*. J. Weckert, ed. Hershey, PA: Idea Group: 208–225.

²⁴ Santideva. 1997. *A Guide to the Bodhisattva Way of Life*. Translated by Vesna A. Wallace and B. Alan Wallace. Ithaca, NY: Snow Lion: V: 62–63.

²⁵ Nagarjuna. 1995. *The Fundamental Wisdom of the Middle Way: Nagarjuna's Mulamadhyamakakrika*. Translated by Jay Garfield. New York: Oxford University Press: XVIII: 1.

is taking place in our bodies. When one understands the body to be one's own self, when one is pointing toward it, for example, what is being pointed to is then analysed, and then a series of questions can be asked. Is what is being pointed to, which is understood to be the self, identical with the body? The answer is no, because the body changes and replenishes itself in a relatively short period of time, whereas the self is taken to be constant. Then there is the question of whether the self is identical with the mind; and the answer is again no, because our mental episodes change even more rapidly than our own bodies. We think one thing at a moment and then another thing at another moment, and, according to Nagarjuna at least, the mind usually takes upon itself the characteristics of the things it thinks about. However, if one were to think that the self were different from the aggregates, one would be faced with another dilemma, because what is normally taken to be the self, what it actually is, is always in terms of body and mind, in other words in terms of the aggregates. Hence to understand the self as separate from the aggregates is unacceptable too. Nagarjuna's conclusion is that the self does not actually exist; it only appears to exist due to our own grasping on to things. In any case, the Buddhists' conclusion is that what is understood to be the self is only a result of an illusion, not unlike the illusion one has when one sees a reflection on hot sand as a pool of water. In the contemporary way of expressing things, the self is a construct that does not exist on its own in objective reality; it only seems to exist as a result of conceptual manipulation of reality.

BUDDHISM AND BIOINFORMATICS

Now, what relevance does this teaching have to the attempt to analyse and justify privacy and data protection in bioinformatics? The idea of privacy is commonly based on the notion that there is a self and that the self is constituted through a system of information about it which needs to be protected from prying eyes. If Buddhism teaches that the self does not inherently exist, however, then there seems to be a problem of how Buddhism could have a theory of privacy.²⁶ Nonetheless, the

idea that the self does not inherently exist does not imply that it does not exist at all. We can certainly refer to our own selves; it is only that in deeper analysis we find that such a self is merely a result of causes and effects and does not exist on its own. Nonetheless, that does not preclude there being such a thing as a self as a referent in the normal use of language and normal understanding.

If this is the case, then for Buddhism there needs to be a system where the concept of privacy is analysed and justified.²⁷ The idea is that the theory of privacy in Buddhism is a pragmatic one. Privacy is justified through its role in furthering and fulfilling certain sets of goals that human communities find important. One of these goals, for example, is that individuals in a society should be protected as regards to the set of information which they find dear to themselves and which they do not want to divulge to the public. This is a matter of respect for individuals. The same also applies to groups sharing more or less the same genetic traits; they need to be respected too. The question, then, is how such respect is justified; and in Buddhism it is justified through the fact that the respect in question plays a large role in enabling certain kinds of things that communities find enriching and satisfactory. Guaranteeing the privacy right of the individual seems to be necessary for a kind of society that respects individual integrity, where the authorities are not given absolute power to do anything they please. And since this is now considered to be a desirable goal, and since it is a fact of the matter that privacy is necessary for furthering this goal, privacy is then justified according to Buddhism.

In other words, Buddhism teaches that the individual self is a construct – which does not mean that the self does not exist at all. Since it is a construct, it is constructed out of a certain type of material, and here the role of information in constituting an individual is very important. Individual selves are constructed out of information, and if this is the case, then the attempts in bioinformatics to manipulate the genetic information about an individual or groups of them would risk endangering their very selves and identities. Even though the individual self does not, strictly speaking, exist, the information pertaining to an individual clearly does exist. Since some kind of information could be regarded as the core of a particular individual, or as a kind of information that is sensitive to her, this information would need to be protected, hence the need for privacy in bioinformatics according to

²⁶ The standard texts on Buddhism and bioethics, such as those by Damien Keown (D. Keown. 2001. *Buddhism and Bioethics*. Houndmills: Palgrave) and Peter Harvey (P. Harvey. 2000. *An Introduction to Buddhist Ethics: Foundations, Values and Issues*. Cambridge University Press), have yet to discuss the ethical issues raised by genomic sequencing and data banking in any detail. Somparn Promta discusses the attitude of Buddhism in human genetic research in S. Promta. 2005. Buddhism and Human Genetic Research. *Polylog: Forum for Intercultural Philosophy* 6. Available at: <http://them.polylog.org/6/fps-en.htm>

[Accessed 23 Jan 2008] in which he recommends scientists to be 'extremely cautious' in their research. However, Promta does not specifically discuss privacy either. For a discussion of the Buddhist perspective on privacy, see Hongladarom, *op. cit.* note 6.

²⁷ Hongladarom, *op. cit.* note 6.

Buddhism. The problem, then, for Buddhist societies at least, is how to protect the privacy of personal information while not necessarily compromising the need for scientific progress and development.

INFORMATION AND PERSONAL DATA AS PART OF THE (CONVENTIONAL) SELF

This need to find a balance between scientific progress and ethical, regulative requirements is as old as bioethics itself. In the case of privacy, there is an obvious need to formulate clear guidelines and regulations on this issue, and it has been my purpose here to point out that Buddhism also has a role to play. As the 'core' set of information is not, objectively speaking, out there (since the individual is herself a construct), it exists nonetheless, in a practical fashion, from the need to protect privacy. There seems to be a need to distinguish between what kind of information should or should not be allowed. And since it is ultimately the goals shared by members of a society that provide the final say, any such attempt should refer to these goals. More specifically, the Buddhist viewpoint is such that the individuals in question, whose genetic information is to be obtained and stored in a computerized database, should have a clear role to play in any kind of decision-making on how such information is to be manipulated.

This point underscores the need for more democratization in decision-making in bioinformatics. This is more than allowing the research participants the ability to recall their own genetic information from the database as stipulated in some informed consent forms.²⁸ Often this is not possible unless the scientists maintain a system that could link up bits of genetic information to their owner. In many cases decisions in scientific enterprises, such as a research project involving bioinformatics, are made by the investigators without even bothering to consult the individuals whose tissue samples were taken for information; and this seems to be especially the case in developing countries. It is true that there is a requirement for these individuals to read and sign informed consent forms, whose idea is based on the notion of a fully functioning, autonomous individual. This idea, however, is being criticized by many, especially those coming from cultures which do not have such a tradition in the first place.²⁹

²⁸ McGuire, Caulfield & Cho, *op. cit.* note 6.

²⁹ See, for example, R. Klitzman. Complications of Culture in Obtaining Informed Consent. *Am J Bioeth* 2006; 6.1: 2–21; C. C. Macpherson. Research Ethics Committees: A Regional Approach. *Theor Med Bioeth*

According to the Buddhist perspective, although the individual self cannot be objectively found to be essentially there, this does not preclude the fact that such a self does indeed exist. There is an important distinction in Buddhist teaching between the 'ultimate truth' and 'conventional truth'; the former is the kind of truth at the level of immediate perception of reality without the distorting medium of conceptualization; the latter, on the other hand, is the kind of truth which is familiar and based on linguistic categories. For Nagarjuna, the two truths point to one and the same basic reality; and it is a mistake to take one to be more prior or more basic than the other.³⁰ What this implies here is that there is indeed a self, conventionally speaking, and as a consequence such a self needs to be treated with respect. This is in accordance with another part of the teaching of Buddhism, one that it shares with other religious traditions, on the dignity of the individual person. Since the information being manipulated in the bioinformatic database is part of the individual whose tissue samples have been taken in the first place, it can be regarded that the information in the database consists of none other than the parts of the conventional *selves* of these individuals, i.e. something pertaining to the being of the individual herself. But if this is so, then the principle of respecting the individual self implies that this information needs to be respected. The individual should have some roles to play in saying how the information thus obtained should be processed and manipulated.

This implies that decision-making regarding how genetic information is to be used should be more democratized, as previously mentioned. There should be a mechanism, beyond the traditional informed consent form, by which the individuals from whom the information has been taken are respected. The implication for privacy is also clear. And as there is no hard-and-fast distinction between the 'essential' and the 'non-essential' set of information (because such a distinction would entail that the individual is an inherently existing substance), the distinction is then based on pragmatic terms and the principle of democratization described above implies that it should be the individuals themselves who, by and large, decide what is to be the core or the non-core set of their own information.

1999; 20: 161–179; L. London. Ethical Oversight of Public Health Research: Can Rules and IRBs Make a Difference in Developing Countries. *Am J Public Health* 2002; 92.7: 1079–1084; L. Turner. From the Local to the Global: Bioethics and the Concept of Culture. *J Med Philos* 2005; 30.3: 305–320; and P. Walter. The Doctrine of Informed Consent: A Tale of Two Cultures and Two Legal Traditions. *Issues Law Med* 1999; 14.4: 357–375.

³⁰ Nagarjuna, *op. cit.* note 10, XXIV: 8.

CONCLUSION AND RECOMMENDATIONS

The Buddhist teaching on the identitylessness of the individual points to the fact that, although the individual does not possess her own individual essence or substance, she is still entitled to privacy rights regarding her genetic information in the bioinformatic database, because part of her being is constituted by the very information that is stored there. Moreover, the Buddhist viewpoint is such that this conclusion is strengthened; the reason is that even though there is no objective, substantial essence to the individual, her empirical, conventional self is still there and there being no objective, substantial self means that she can be constituted by a set of information. When there is no essence to be found, she can lay claim to the information in the database more forcefully because it is ultimately speaking *convention* that determines the extent of her identity. Moreover, since values and norms are judged in Buddhism more in reference to pragmatic goals than to objective, transcendent rules, there is a clear way to show that the information is part of her own being. A consequence is, therefore, that her privacy should be protected accordingly.

Thus, I would like to conclude with a set of recommendations from the Buddhist perspective. First of all, the privacy rights of individuals, whose bodily material has been sampled and has had information extracted and computationally processed, should be respected. There should be a guideline to the effect that attempts toward possible discrimination or stigmatization should be prohibited. This is particularly sensitive in the case where it becomes possible to identify, not only individuals, but

also groups of them, either in the *a priori* or *post hoc* manner. In addition, if the identification of an individual through her genetic information becomes scientifically feasible, this would strongly emphasize the need for adequate protection of the individual's privacy rights. Secondly, individual participants should be able to recall their material from the database, unless it can be proved that the information is completely anonymized with no possibility of identifying individuals. Thirdly, the ability to recall is actually part of the call for more democratization of decision-making in which the lay participants, those who actually donate their tissue samples for the advancement of science, and other stake holders as well, should have a say in how the direction of scientific research should be heading. And lastly, as compassion is at the heart of Buddhist teaching, compassion, that is the desire to achieve happiness for all others and not merely for oneself, should always be the motivation of the scientific and technological enterprises, no matter in which area.

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Handbook of Research on Technoethics

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Chapter XXXII

Privacy, Contingency, Identity, and the Group

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ABSTRACT

The chapter argues that there is a way to justify privacy without relying on the metaphysical assumption of an independently existing self or person, which is normally taken to underlie personal identity. The topic of privacy is an important one in technoethics because advances in science and technology today have resulted in threats to privacy. I propose furthermore that privacy is a contingent matter, and that this conception is more convenient in helping us understand the complex issues surrounding deliberating thoughtfully about privacy in many dimensions. It is the very contingency of privacy that makes it malleable enough to serve our purposes. Basically, the argument is that it is possible for there to be a society where individuals there do not have any privacy at all, but they are still autonomous moral agents. This argument has some close affinities with the Buddhist perspective, though in this chapter I do not intend to presuppose it. Then I discuss the issue of group privacy. This is a rather neglected issue in the literature, but group privacy has become more important now that contemporary genomics and bioinformatics have the power to manipulate large amount of population data, which could lead to discrimination. The proposed conception of privacy is more suitable for justifying group privacy than the one that presupposes the inherently existing individual.

INTRODUCTION

Privacy has become a primary concern in many circles nowadays. The increasingly pervasive use of electronic and information technologies has resulted in more sophisticated tools that are used

for surveillance and data mining, which threaten privacy rights of citizens. Furthermore, privacy has become a concern not only in the West, but also in Asia, where there has been significant economic growth in recent decades. This concern has led many scholars to ponder on how the concept of

privacy and its implementation could be justified, especially in the context of the East where privacy is generally perceived to be a part of the modern West where Asia has had no exact counterpart, a situation that prompted many papers on how privacy could be justified in Asian contexts (E.g., Ess, 2005; Lü, 2005; Kitiyadisai, 2005; Rananand, 2007; Nakada and Tamura, 2005; Hongladarom, 2007). What I would like to accomplish in this chapter is related to those attempts; however, the chapter is not intended as another contribution to how privacy is to be justified or even criticized from the Asian perspective. It is instead an attempt to map out the conceptual terrain of privacy without relying too heavily on the literature of the traditions of Asia, which in fact has been my concern elsewhere (Hongladarom, 2007). That is to say, I intend what follows in the chapter to be generally applicable in most cultural contexts. This should not be taken to be an argument for the supremacy of one culture over others; rather my concern is to find out a common ground that should be acceptable for all cultures, without privileging one over another.

The overall aim of this chapter is, then, to present a philosophical analysis and justification of privacy that differs from what is available in most literature on the topic. The topic is of direct relevance to technoethics, conceived of as an investigation of the ethical implications of science and technology, because these advances have resulted in actual and potential violation of privacy of either individuals or groups of them. It is well known that current technologies, such as genetic databanking, smart ID cards, and others have made it possible to collect, store, and systematize a vast amount of information related to particular individuals. In Thailand, for example, the previous government introduced what is called 'smart ID cards' (Thailand introduces national ID with biometric technology, 2007). Basically these are supposed to function as identification cards for each and every Thai citizen, which has been around in Thailand for decades. However,

in recent years the government ordered that a new type of card be issued with a microchip, which is capable of storing a very large amount of information. The rationale was that this new type of card would facilitate interaction with public agencies, as important information that is required for an individual to contact the government would be stored in the microchip, eliminating the need to carry a number of paper documents. However, since the card identifies an individual citizen, it is conceivable that deeper level of individual information might be stored in the card, enhancing the possibility that the government or the authorities might use the resulting huge database in profiling or perhaps discriminating one group against others in one way or another, and so on, thus undermining the privacy of the individuals. Many research works have in fact been done on the Thai smart ID cards, and its potential for misuse.¹

The idea to be presented here is that there is an area within and surrounding an individual and indeed group of individuals that should be protected, and that the boundary demarcating the area is an imaginative line, much like the longitudes and latitudes are. In the chapter, I show that the idea of privacy is strongly related to the philosophical concepts of identity, either that of an individual or to a group.² Privacy is connected to identity because it does not seem *at first sight* to make much sense in saying that there is a privacy to an individual while the identity of that individual changes through time. In other words, privacy *seems* to presuppose a rather strict identity of an individual. Without such a strict identity, it would be hard, or so it seems, to identify whose privacy should be protected.

However, I don't believe that privacy does in fact rely on such a strict identity of the individual. If it is the case that an individual is constituted by a set of information that together describes his or her identity vis-à-vis other individuals, then there does not have to be a 'core set' of information such that the core uniquely identifies the individual at all times. That is, the individual does not seem

to be constituted through something that works as an 'essence' in that without it the individual would cease to be an individual in the familiar Aristotelian sense. There is a way to justify privacy even without strict identity of the individual whose privacy is to be protected. According to the view to be developed, information about an individual, even genetic information, does not on its own succeed in becoming such a core set. Privacy needs to be defended and justified, not through reliance on the metaphysics of the isolated, self-subsisting individual, but through the individual's relations to her socio-cultural environment and to other individuals. Privacy is needed when there should be a check against the authorities (such as against the Thai government issuing smart ID cards) so that the authorities are prevented from potentially misusing their power. This prevention is crucial for a functional democracy. Since the power of the government is based on consent of the people, not having such a means to limit the power of the government over personal information of the population would mean that the government has too much power, especially power to manipulate groups of population. Such excessive power would be detrimental to democracy. In what follows I will argue that there is a way to justify privacy rights which does not rely on the metaphysics of the inherently existing individual self.

JUSTIFICATIONS OF PRIVACY

Among the vast literature on justification of privacy, perhaps the ones arguing that privacy is justified because individuals do have a right to their autonomy are the most prevalent. And among the numerous definitions of privacy, a common thread that binds them together seems to be that privacy is something that is cherished by the individual in question, something that she does not want to be exposed to the public.³ That could be the fact that she does not want other people to peer into her house, or data about herself, her

'personal' information (Parent, 1983). What justifies this right to privacy is that, as an individual citizen, she is entitled to some form of protection against unwanted intrusion, which is considered to be a breach to her autonomy. In a hypothetical polity where the state has unlimited power to take any information concerning its citizens as much as they like, and to have a surveillance scheme, Big Brother style, that provides every detail of the lives of the individuals, in that case it would be correct to say that the individuals do not have any privacy. What is missing is that the individuals do not have a means to operate without the seeing eyes of Big Brother. They do not have a leeway, so to speak, within which they can function on their own without always being aware that their action is constantly being watched. So we might call what is missing here 'personal space' where the individual would feel to be free to do their things as they please, so long, of course, that these do not infringe on the rights and liberties of others. Talking about the potential loss of privacy by employees due to increased use of surveillance technologies by the employers, Miriam Schulman quotes Michael J. Meyer as follows: "Employees are autonomous moral agents. Among other things, that means they have independent moral status defined by some set of rights, not the least of which is the right not to be used by others as a means to increase overall welfare or profits" (Schulman, 2000, p. 157). Meyer then continues: "As thinking actors, human beings are more than cogs in an organization--things to be pushed around so as to maximize profits. They are entitled to respect, which requires some attention to privacy. If a boss were to monitor every conversation or move, most of us would think of such an environment as more like a prison than a humane workplace" (Schulman, 2000, p. 157). The key phrase here is 'autonomous moral agents,' and in fact we could extrapolate Meyer's statement to include privacy for individuals in general. The linchpin of a standard justification for privacy is, then, that

individuals are autonomous moral agents, which imply that they are entitled to some personal and private space where they feel comfortable and where they do not have to behave as if they are being watched all the time.

So the standard justification of privacy is that since individuals are autonomous moral agents, they are entitled to some degree of privacy. This argument hinges, of course, on a conceptual link between the two. How is it possible that someone's being an autonomous moral agent entitles her at least some degree of privacy? Presumably the answer is that, as an autonomous moral agent, one should be accorded some degree of personal space, since if not, then one would not get the respect that one deserves in virtue of one's being a human being. When we consider the hypothetical state where nobody has any privacy as mentioned above, the standard argument would have it that in such a scenario the individuals are not paid respect to, since the authority (or the employer) has the power to gather all kinds of information pertaining to them. This presupposes that gathering information and constantly monitoring and watching the individuals all the time are not instances of respect. Thus we can sum up the standard argument as follows. As individual humans are autonomous moral agents, which imply that they are capable of making decisions by themselves and that they deserve a degree of respect, their private lives should not be intruded because such intrusion would mean that the intruder does not respect the individuals in virtue of their humanity.

However, this argument depends on some other crucial factors. What if the individuals in question willingly give up their privacy and allow the authority to watch their every move? In fact we are already seeing something like this happening with people putting web cameras in their bedrooms and turn them on all the time for all the world to see. Would we say that those who do this do not have privacy? But is their right to privacy being violated? It seems clear that simply the fact that somebody's private life is being

exposed for the whole world is not sufficient for her privacy right to be violated. In this case it seems that nobody is violating her right, since she willingly does all this by herself. Another factor is that the authority who has the power to intrude on people's private lives must act in such a way that harms those people through their intrusion; otherwise the authority's action might not be considered as a violation of privacy. The idea is this: Let us go back to the hypothetical scenario mentioned earlier. Nobody has any privacy; the authority has the all seeing power to know every small detail of their people's lives; nothing is hidden. Nonetheless, if the authority happens to be a wholly benevolent one and will not use the information in any harmful way, and if, in addition, the people are aware that the authority is watching them, but they don't mind since they trust the authority completely, then would we also say that their privacy rights are threatened? According to Meyer, privacy appears to be an inherent property of an autonomous agent, but these scenarios seem to complicate the picture. Privacy may still be an inherent property in the case where people willingly put up webcams in their bedrooms and even their bathrooms, and in the case where the people trust the all seeing authority completely, but even so their inherent property here is not expressed. Even if the property is there, it lies dormant, so to speak, since the people willingly forego it. However, if this is really the case, then what is the difference between someone's having the inherent characteristic of privacy but it lies dormant and someone's not having the right to privacy at all?

The difference, of course, lies in the fact that in the first case someone could decide at any time to enforce her privacy right, which happens when, for example, somebody shuts down her webcam, whereas in the second case that is not possible. But if this is so, then the justification of privacy is not simply a matter of someone's being an autonomous moral agent who deserves respect, his or her relation with those around her

also play a crucial role. If she trusts the all seeing authority completely, or if she does not think her private life should be kept to herself alone and welcomes the world to see all of her, then the trusting and the willingness to let others enter one's private domain become important. These are all relational concepts; one trusts *another* person, and one willingly lets *others* enter one's private life. After all, protecting privacy means that one is protecting someone's private domain from encroachments by others. If one lives alone, like Robinson Crusoe, then there is no need to even start talking about privacy.⁴

Another point is that it seems that one can even remain an autonomous moral agent without one's having privacy. In the scenarios described above, the one who trusts the authority completely, who lives in an environment where the authority is fully trustworthy, and who willingly foregoes privacy can still be an autonomous moral agent, since all her decisions are made through her free will in her rational capacity. An autonomous moral agent that willingly puts up webcams around her house is still so. But if this is the case, then the standard justification of privacy is in need of qualification. Being an autonomous moral agent alone is not sufficient, one also needs to relate with others and live in a certain kind of environment (such as one where it is not possible to trust the authority completely), in order for the right to privacy to actually have a force. Nevertheless, an objection to this line of argument is that in these scenarios the individuals always have their privacy rights all along, but as we have seen there does not seem to be much of a difference between having the right to privacy and keeping it dormant (perhaps always so) and not having it at all. This, let me emphasize, is tenable only in a very special case where the authority can be trusted completely and where the individuals are willing to let others view their lives, and this could be extended to include the individuals' information about themselves, their communication and others (Regan 1995).

CONTINGENCY AND PRIVACY

Another factor affecting the standard justification concerns the metaphysical assumption that it tends to make regarding who exactly is the autonomous moral agent. Does it have to be a metaphysically self-subsisting individual subject? Here the standard justification argument seems to presuppose that the autonomous moral agent does have to be a self subsisting metaphysical entity. This is so because, in order to argue for the privacy of somebody, there has to be some entity whose privacy is to be justified and protected. Furthermore, the entity in question would presumably need to be a self subsisting one because if not, then the entity would continually be in flux and it would be difficult to pinpoint exactly whose privacy is to be justified. It seems to be without saying that justifying privacy presupposes the existence of the one whose privacy is to be justified. After all, defending privacy naturally presupposes that the privacy has to be that of an individual. Justifying privacy would mean that one is attempting to draw a line demarcating a boundary that belongs exclusively to a person and it would be wrong for the authority or anybody else to enter that boundary without the person's permission. What is more is that the person here is a metaphysically self subsisting person. What this means is that the person or the individual has to be something that exists objectively; there is something that inheres in the person such that it defines who that person is and nobody else without having to enter into any relation with anything outside. So it would naturally appear that, according to the standard argument for privacy, the existence of a self subsisting person is presupposed. This standard justificatory picture is much in accordance with common sense. After all, when one is justifying or defending privacy, one naturally presupposes that there has to be a person whose privacy is to be justified and that the person has to be metaphysically objective. Otherwise it would be difficult to find a conceptual link between the metaphysi-

cally objective person here and her status as an autonomous moral agent. Being an autonomous moral agent would seem to presuppose that there is something deep down inside functioning as the holder of the qualities of being autonomous, being moral and being an agent.

Defending a conception of privacy that is closely related to that of personhood, Jeffrey Reiman writes: "Privacy is a social ritual by means of which an individual's moral title to his existence is conferred" (Reiman, 1976, p. 39). An individual is recognized as one who deserves to be treated morally, i.e., as one who is morally entitled to existence, when his or her privacy is respected. Respecting someone's privacy, according to Reiman, is to recognize that he or she exists as a human being who deserves to be treated as an end and never as a means, to use Kant's terms. Furthermore, Reiman adds that privacy is necessary for the creation of the individual self (Reiman, 1976, p. 39); for without privacy, there is no way, according to Reiman, for an individual to be recognized as such, since there would be no way for her to recognize that the body to which she is attached is her own, to which she has exclusive rights (including that of privacy). That recognition is the process by which the sense of self of the individual is created, and it is in this sense that Reiman makes his startling claim. Reiman further states: "[P]rivacy is a condition of the original and continuing creation of 'selves' or 'persons'" (Reiman, 1976, p. 40). That is, so long as someone's privacy is respected, to that extent her selfhood and personhood is thereby respected and recognized. Privacy, for Reiman, is a *sine qua non* for the selfhood or personhood of someone; in other words, privacy necessarily belongs to someone in virtue of her being 'someone' or 'a person' in the first place.

If one were to search for strong arguments attempting to link privacy with selfhood or personhood, Reiman's must be among the first ones in the list. It would be tempting, then, to test Reiman's argument here in the scenario raised

above where the individuals do not seem to have any privacy, or do not object to their putative privacy rights taken away at all. The question then would be: Are these individuals in this situation recognizable as selves or persons at all? According to Reiman the answer would have to be no, because in his argument privacy is the *sine qua non* for the very existence of a self or a person, as we have seen. But this seems counterintuitive. In this hypothetical situation, the individuals there are still very much the very same kinds of individuals that we know. They go about their businesses and they are certainly capable of rational thinking and so on. The hypothesis we already have seen at the start is that this is a place just like our own, except only that the people there totally do not mind the possibility of being in the public's eyes all the time. For Reiman, these people would immediately cease to be persons, but that is clearly too strong. The point is that if the scenario of people who willingly forego their privacy is a plausible one, then one would be hard pressed to come up with a tenable conception of privacy which is metaphysical and non-relational. Attempts to tie up privacy with conception of selfhood or personhood, like the one proposed by Reiman, seems to fail in the case where the selves or persons do not mind their lack of privacy at all.⁵ So it seems that one needs another way to justify privacy, one that does not presuppose the metaphysical assumption of the enduring or objectively existing individual self.

Since privacy is relational, one justifies it more effectively, I believe, if one looks at it as a political or sociological or pragmatic concept. Privacy is justified because it brings about something desirable.⁶ In fact when Reiman argues that the selves are constituted through privacy, he appears to be on a right track because that would mean that the self is a creation or a construction and not something that is ontologically prior to anything. The point is that, if the self is a construction, something that emerges out of transactions one has with one's environment and one's peer, then the conception

of privacy that depends on the objectively existing self would need to be modified. Considered this way, privacy then is a hypothetical line that one draws around oneself to demarcate the line where one does not wish others to enter without one's own consent. And the line here is very fuzzy and very much dependent on varying contexts. It is a hypothetical line in the same way that the longitudes and latitudes are. One never finds these lines on the ground, but always in a map as a useful heuristic device to locate one's position.

Let us go back to the no-privacy world mentioned above, the world works because the authority is trusted completely and the individuals there do not mind having no privacy. However, if the situation changes and the authority becomes less trustworthy, and the individuals happen to feel that they need some privacy to themselves, then in this situation the conception of privacy emerges. People there might conceivably devise the concept as well as means to realize it in practice. If this can indeed be the case, then the concept of privacy is not one that is metaphysically attached to the persons or individuals from the beginning, as is a social and legal conception that emerges due to certain kinds of situation. What this implies is that privacy is a contingent concept. A well known example of contingent concepts and rules derived from them is the rule on driving. In Thailand people drive on the left side of the road, which is the same in Britain, Australia, Japan and some other countries. However, the majority of countries in the world drive on the right side. There is no absolute rule specifying which side of the road is the 'right' or 'wrong' one. People just devise the rules out of their convenience or habits or whatever. Accordingly, privacy is a concept that emerges out of certain kinds of situation and it does not have to be there at the beginning where there is no need for it.

PRIVACY AND PERSONAL IDENTITY

Moreover, there have been many research works analyzing and criticizing the metaphysical idea of the individual subject, much of it being based on the Buddhist teaching (See, e.g., Gethin, 1998; The Dalai Lama, 1997; Collins, 1982; Parfit, 1986; Hongladarom, 2007; Varela and Poerksen, 2006).⁷ A common thread in these arguments is that the idea is a metaphysical one, meaning that it is not there when it is searched for through empirical means. The very idea of the individual subject, according to these research works, is not there to be found when searched for empirically, because one always finds what are supposed to be instances of the subject, but not the subject herself. What constitute a human being are the body and the mind, the physical and the mental. One does not have to follow Descartes' influential view that the two are radically separated, a view that is currently under attack from many fronts. Nonetheless, one could focus each of the two in turn for the sake of simplicity. It is well known that most cells in the body do change and are replaced by newer cells after a period of time. There may perhaps be some cells in the brain that do not change, but then one would not bet on them to be the seat of the individual subject or the person. On the other hand, when one focuses on the mental episodes, one also finds them to be changing very rapidly. One's personality changes over time; one's psychological makeup does not remain constant. At least if one were to point out which episode or which event constituting one's psychological makeup is to be the individual subject, then one would be hard pressed to find one. This is so because any candidate episode would have to stay frozen and locked up in order for it to function as the core identity of the subject herself. But an episode is by definition a kind of event, which if frozen in time will cease to be an event altogether. However, if the core is to be something physical,

then we go back to the point made earlier about the physical body.

The fact that the core identity of the individual subject cannot be found empirically does not imply that there are no individual human beings whose privacy is to be protected. What I am driving at is not that there are no human beings, which is absurd, but that there is no substantive core that functions as the 'seat of identity,' so to speak. Again this does not mean that humans have no identities, which is also absurd. Having no substantive core means only that the identity of a particular human being is a relational concept and is constructed out of the human being's interaction with her society and her other contextual environments.

The relevance of this argument to the analysis of privacy is that there is a way to justify privacy without relying on the idea of there being a metaphysical concept of the person. One can rely only on what is obtainable through empirical means. This way of providing justification is as strong as it can be, because for one thing it is based on publicly observable entities and not on metaphysical construction.⁸ The normative force of the argument related to privacy would then be derived from shared meanings and understandings rather than from abstract rationalization. Since identity of the person is constructed through her interaction with the world, her privacy would presumably be constructed out of such interaction also. And in more concrete terms this would mean that the social world finds privacy to be important and devise ways and means to enforce it. Since privacy is an imaginative line as we have just seen, it is then constructed out of shared meanings and understandings that members of the social group have together.

A common objection to the idea of basing privacy on the conception that presupposes the person to be empirically constructed is that such a conception of person would be too weak. A conception of the person that is empirically based would, so the objection goes, not be ap-

propriate to be a foundation for the autonomous moral agent that seems to be required for a viable conception of privacy. To put the point simply, if the person is always changing and something that is constructed, then *whose* privacy is one trying to justify? If the person is continuously changing without any substantial identity, then who will be the autonomous moral agent? And without the agent where will the concept of privacy come from? But if the autonomous moral agent is not sufficient for privacy as we have seen, then the argument here loses much of its force. In fact the force of the objection is that, without the autonomous moral agent, there would be no privacy, which implies that the autonomous moral agent is necessary for privacy. But if the proposed conception of the person which is based on empirical observation rather than metaphysical assumption is tenable, then, on the assumption that the autonomous moral agent needs to be a metaphysically substantial person, which seems to be accepted by those who favors this line of argument, the autonomous moral agent is not even necessary for privacy either.

That the autonomous moral agent is neither sufficient nor necessary for privacy should come as no surprise, for the agent here is commonly taken to be the substantially existing person whose identity is based on the metaphysical assumption that grounds her identity even though no empirical correlate has been found. And this should by no means be understood to mean that the justification of privacy proposed here assumes that privacy is not a moral concept. The conclusion that the autonomous moral agent is neither sufficient nor necessary does not imply that privacy is not a moral concept because the individuals in society can well construct a concept such as privacy as a tool for regulating their lives and defining the relations between themselves and the political authorities without thereby depending on metaphysical assumptions.⁹

This conception has another advantage to the standard one in that it fits better with the emerg-

ing scenario where non-humans are becoming more like humans and therefore deserve moral respect.¹⁰ As far as I know, no robot or animal has been accorded the right to privacy yet. One might conceivably feel that she can watch and monitor an animal or a robot and to mine any information from it (him?) without infringing upon its (his?) privacy. As animals are certainly sentient beings, and, as Peter Singer suggests (Singer, 1985; 1990; 1993; 1994), they do deserve at least some respect, to extract any information from them without regard to their kind of dignity that renders them worthy of respect would be unethical, and clearly that would be tantamount to violating their privacy. Furthermore, as robots mature enough and are beginning to think and be conscious (just like animals), then the question about robot privacy presents itself. One way to think about this is, of course, to think that animals and robots are starting to attain the status of ‘autonomous moral agents;’ that is indeed the case if being an autonomous moral agent does not imply that they somehow instantiate the abstract model of rationality that have informed humans being long before. Instead of assuming that the autonomous moral agent is a metaphysically substantive entity, we might consider robots more simply as ones who are starting to become like us humans. That is, they are becoming capable of talking, understanding, planning, desiring, dreaming, and so on, characteristics that have defined humans. In this case they deserve privacy. At any rate, it is simpler just to view robots as becoming more like humans than to assume that they are starting to instantiate the abstract model of rationality and moral agency, assumption that incurs the added burden of explaining the identity and the justification for the existence of the said model. Equally, it is even simpler to view animals as sharing many characteristics that belong to humans, such as the capability to feel pain and pleasure, the ability to have an inner life, etc., than to view them as somehow instantiating the abstract model too.

GROUP PRIVACY

So how does the proposed conception play out in real life? Here is another distinct advantage of the proposed conception over the mainstream one. In emphasizing the role of the individual, the mainstream conception appears to neglect the importance of families and social groups, whose privacy needs to be protected also.¹¹ Privacy of families is violated when the authority or somebody intrudes upon family life with no justified reason. What is happening inside a family seems to be a private matter to the family itself; intrusion is justified only in case where it is suspected that there are physical or verbal abuses going on within the family, in which case the rights of individual family members to bodily integrity trumps over the family’s right to privacy. Here the proposed conception fares better because it is not tied up with justifying privacy through the individual. According to the standard picture, families or other social groups seem to be little more than collections of individuals, and it is individuals who are the atomic units whose rights and privileges should be the main prerogative. Families are but appendages of the individual. But that seems counterintuitive. As philosophers such as Hegel and Charles Taylor have shown, individuals are nothing without their roles and positions within the family or larger social groups (Hegel, 1977; Taylor, 1975; Taylor, 1989). Hegel argued that ontologically the individual derives her individuality and ontological being through her relation with other individuals. So the picture is a reverse from the standard one. It is the social group that is more primary, and the individuals are derived from them. This issue, of course, comprises a standard debate between liberalism and communitarianism in social and political philosophy (See, e.g., Bell, 1993; Bell, 2000; Taylor, 1989; Sandel, 1998).

Without being tied up with the individual who is supposed to be the linchpin of a justification of privacy, the proposed conception here makes it easier conceptually to deal with privacy of social

units. Without assuming anything metaphysical that exists beforehand, the proposed conception would justify privacy of social unit through their needs to protect their boundaries vis-à-vis possible encroachment by the state or other authorities, and the social groups can justify their privacy by referring to the desired goal if privacy right is upheld. For example, there might be a conception of privacy of an ethnic group such that the group is entitled to keep certain set of information private to their own group. The issue has become more significant recently due to the increased sophistication in manipulation of genetic data obtained from a population. This information may be something that is dear to them and something that they don't want to share with outsiders. If there is no compelling justification for making this information public (such as when the publicizing of the information is necessary in an emergency), then the authority has no right to encroach and to pry upon the information. Since the conception of privacy arises out of needs and contexts, there is no metaphysical baggage to unload.

An obvious objection of the concept of group privacy concerns the ontological status of groups. What this actually means is that any view that concerns groups of individuals, treating them just like an entity (such as when the group holds some sort of privacy right together), have to clarify how the group is supposed to be defined and demarcated such that one group is differentiated from another. However, if the individual herself could be regarded as an abstraction or a construction, then there is no problem in regarding groups to be the same too. That individuals are abstractions can be seen from the fact that an individual is composed of various parts, such as bodily parts, cells, memories, emotional traits, and so on. In fact this is the standard Buddhist view of reality in that individual selves do not exist independently of any relation, but they do indeed exist through the relations that the individual maintains with various entities, forming a complex web of relations where an individual is

a node. Thus, a group of individuals, for example a family or an ethnic group, is held together by some special relation among members of the group such that others do not share in it. A family is differentiated from another by the simple fact that the individuals are not the same; they do not share the same backgrounds, the same stories, the same personalities, and so on. Likewise, an ethnic group is also defined through their shared meanings and traditions, not to mention in some cases their shared genetic heritage.

In the latter case of groups sharing the same genetic heritage, there is an added dimension related to their privacy in that their genetic makeup may happen to be of some potential benefits for pharmaceutical or other scientific purposes. There is not enough space in this chapter to deal in any detail on this very important topic, which itself is a subject of a vast number of books and articles. What I would like to maintain here is merely that the concept of group privacy may be advantageous to protect these ethnic groups from potential discrimination or intrusions in their collective lives. In the same way as we need to protect the privacy of an individual, we also need to protect privacy of a group in the case where the group shares some genetic heritage or some other type of information together. A family (or a married couple) often has some kinds of 'secrets' that they only share among themselves and not to the outside world. This is a clear case of privacy. Obtaining this information from the group without their consent would undoubtedly constitute intrusion of privacy. As the privacy of an individual needs to be protected against the potential abuse by the authority, so too needs the privacy of a group.

CONCLUSION AND FUTURE DIRECTIONS

Some future directions resulting from this investigation can be clearly drawn up. Firstly, the study

of how privacy is conceptualized and justified would need to pay more attention to the Buddhist teaching, especially on how the individual is constructed and how this bears a relation to attempts to justify privacy. Secondly, as the notion of group privacy seems to gain momentum as a useful tool to investigate how traits and information belonging to groups of individuals should be protected. The usual conception of privacy as belonging to the individual does not seem to be as effective in providing this solution.

My view so far is that there is a way to justify privacy without relying on the metaphysical assumption of an independently existing self or person. In fact I believe that the proposal offered here, that privacy is a contingent matter, is more convenient in helping us understand the complex issues surrounding deliberating thoughtfully about privacy in many dimensions. Thus the new conception appears to be better suited to deal with problems arising from current technologies of manipulation of personal information. For instance, in safeguarding group privacy, the proposed conception does a more effective job in providing a conceptual framework in which a better foundation and justification of the notion of group privacy can be offered. It is the very contingency of privacy that makes it malleable enough to serve our purposes. What is certain in any case is that we in the 21st century do not live in the world where privacy does not matter any longer; hence there is a need to protect privacy against all prying eyes. Thai citizens, to take a specific example, need to find a way to guard against the manipulation of their personal data through the smart ID card policy. What this chapter has accomplished, I hope, is to lay out some foundational issues on privacy so that we know which direction we should be heading as we lay out conceptual maps that will possibly translate to rules and regulations later on. Moreover, the privacy of the group also needs to be recognized, as modern genomics has advanced and is now coupled with information and computational

science, the potential for misuse and injustice increases considerably. Hence, a clear direction in the future is a policy matter of providing a better safeguard for protecting not only individual privacy, but group privacy too.¹²

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KEY TERMS

Autonomy: The quality of being able to 'make law for oneself,' thus implying that one has certain rights and liberty such that the state or other authorities cannot take away. In the context of this chapter autonomy usually is used to refer to the quality of an individual in so far as he or she is a rational being capable of rational judgment. An 'autonomous moral agent' is thus a being (not necessarily a human one) who is capable of judging what is right or wrong to act without having to rely on others to tell them.

Buddhism: A world religion founded by Siddhartha Gautama more than 2,500 years ago in northern India. Gautama achieved the ultimate realization into the nature of reality and thus became the 'Buddha,' literally 'one who is awakened.' The goal of Buddhism is to achieve Enlightenment, or *nirvana*, a state of total bliss unspoiled by suffering. Buddhism teaches that the individual self is a construct and is not there ultimately in reality.

Child Pornography: Sexually explicit material of children.

Communitarianism: By contrast, communitarianism argues that there is something fundamentally wrong in liberalism because liberalism accords the individual a primacy in devising a political system. What is wrong in that conception is that liberalism presupposes that the individual can exist freely on her own as if existing in a vacuum having no essential relation to her communities or surroundings. As communities are in the real world, the norms and expectations of the particular community in fact informs the decisions by the individual.

Community Standards: Protocols or norms applied by a collective body to evaluate a given issue.

Contingency: What is 'contingent' is contrasted to what is 'necessary'. The latter has to happen as a matter of natural law or some other law of such kind, whereas the former does not have to do so. In the chapter, it is argued that one's identity is a contingent matter because it is liable to change and grow and the necessary core of one's identity cannot be found.

Cyber Porn: Sexually explicit material available in the online environment as images and text or in audio-visual formats.

Ethics: The notion of right or wrong that can influence conduct of people.

Identity: This is another difficult philosophical term. An individual's identity is whatever that all together make up that particular individual to be the person he or she is. Thus recently technology has made it possible for one's identity to be stolen, i.e., information pertaining to a particular individual taken away such that the perpetrator assumes the identity of the individual and engages in business dealings in the latter's name, at the latter's expenses. This is the reason why privacy has become so important in today's world.

Liberalism: This is a standard philosophical term which is difficult to pin down what it means

exactly. Basically liberalism is a term in political philosophy referring to a system of political theory wherein the individual is emphasized as autonomous moral agent and thus is free to enter into political agreements or contracts. According to John Rawls, “[e]ach person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system for all” (Rawls, 1971: 302).

Pornography: Sexually explicit material.

Privacy: According to the Merriam-Webster online dictionary, privacy is defined as “the quality or state of being apart from company or observation.” One feels that privacy is needed when one feels that there is something about oneself that needs to be kept away from the eyes of others. The chapter develops the notion of ‘group privacy,’ which is the privacy belonging to a group of individuals, such as ethnic groups or close communities or the family, rather than to particular individuals.

Pseudo-Photograph: This as an image, whether made by computer graphics or otherwise, which appears to be a photograph.

Virtuality: The existence of presence in the online platform which may be defined by the lack of materiality.

ENDNOTES

- ¹ Rananand also discusses the situation in Thailand as a surveillance state and how this affects the right to privacy in Rananand, (2007), and Kitiyadisai gives a detail about the policy concerning the smart ID card in Thailand in Kitiyadisai, (2005).
- ² A possible corollary to the argument presented here is that I am in favor of emphasizing the right to privacy and its irreducibility to other rights. In fact there have been many

debates on whether there is such a thing as the right to privacy. See, for example, Thompson, 1975; Scanlon, 1975; Rachels, 1975; Reiman, 1976. However, there is not much literature on group privacy at all at the moment.

- ³ Providing definitions of privacy appears to be a thriving academic industry. In a well known article, Fried writes: “It is my thesis that privacy is not just one possible means among others to insure some other value, but that it is necessarily related to ends and relations of the most fundamental sort: respect, love, friendship and trust. Privacy is not merely a good technique for furthering these fundamental relations; rather without privacy they are simply inconceivable” (Fried, 1968, p. 477). In roughly the same vein, Parent states: “Privacy is the condition of not having undocumented personal knowledge about one possessed by others. A person’s privacy is diminished exactly to the degree that others possess this kind of knowledge about him,” (Parent, 1983, p. 269) where personal information “consists of facts which most persons in a given society choose not to reveal about themselves (except to close friends, family, . . .) or of facts about which a particular individual is acutely sensitive and which he therefore does not choose to reveal about himself, even though most people don’t care if these same facts are widely known about themselves” (Parent, 1983, p. 270).

- ⁴ In the same spirit, Priscilla Regan also argues for the concept of privacy being relational, adding that the concept would be more useful if considered as relational rather than singular (Regan, 1995).

- ⁵ Reiman might counter this argument saying that in the lack-of-privacy scenario, the individuals there still possess their privacy right, even though they choose not to exercise them. But then the difference between his

and my conception in this case would be then that according to Reiman, the privacy right is kept inside, unexpressed whereas in mine there is no privacy in the first place. Assuming that there is no condition coming up that forces people to exercise their dormant privacy rights, then there is no difference between his and my conceptions at all. The individuals there would go about their lives and their lack of privacy, and everything would remain the same no matter they actually have some privacy rights hidden inside their own selves or not. But if the condition requiring people to enforce privacy rights comes to the fore, such as when the authority is abusing their power, then according to my conception the people can well devise 'privacy rights' as a means to counter the authority. This devising does not seem to require that the concept is already there inside their selves.

⁶ Here Priscilla Regan is absolutely right when she said that the concept of privacy is relational and is necessary for democracy. Democracy is certainly one of the desired goals brought about by recognizing and enforcing the right to privacy. This is one of the best justifications for privacy (Regan, 2002, p. 399).

⁷ There is an obvious similarity between the Buddhist analysis of the self and the postmodernist one. According to the familiar postmodern stance, the self is 'deconstructed' in that it is analyzed and found to be composed of various disparate elements, much like what the Buddhists say. However, a difference between Buddhism and postmodernism lies in the motivation. According to Buddhism, the purpose of realizing that the self is a construct is to let go of attachment to it so that the practitioner realizes her primordial oneness with reality; hence there is clearly the soteriological goal

in Buddhism that is lacking in postmodernism.

⁸ This conception is not a relativist one because relativism presupposes that objective evaluation of different normative principles is not possible because the different normative principles define their own source and justification of normativity. However, this undermines the very normative force that the principles are supposed to provide a ground for. Basing the justification of privacy on publicly observable entities does not entail that any system of justification is as good as any other, since that would defeat the purpose of having a justification in the first place. However, demanding that there be a metaphysically constructed basis for justification seems too strong. It is too strong because it tends to imply that there must be only one correct system of justification for all contexts. But certainly justifying privacy depends on contexts, for it is possible for there being a society where privacy is not a concern at all, and the demand for protection of privacy arises as a response to the authority's gaining too much power and using it in unjust ways.

⁹ In addition, that the autonomous moral agent is neither sufficient nor necessary for privacy should not be understood to imply that people are not autonomous moral agents in the sense that they are capable for making moral judgments and decisions on their own. Nothing in my argument leads to that absurd conclusion. The individuals in the no-privacy world, as we have seen, are as moral and as autonomous as any in our world; only that they do not seem to take privacy seriously and are happy leading their lives totally in public view. To them there is nothing wrong with that. This does not mean that they are not moral agents.

¹⁰ Recently there has been an interest in how robots should be accorded with moral re-

spect and moral rights in some form. This is known as ‘roboethics.’ For example, Luciano Floridi and John Sanders (2007) argue for a concept of moral agents and patients could be applied to non-humans even though they are not capable of feeling or free will, such as early stage robots and animals. Another interesting source is “Robots may one day ask for citizenship” (2007).

- ¹¹ There are only a few references in the literature on privacy that pay attention to group privacy. Olinger, Britz and Olivier (Olinger et al., 2007) discussed the African concept of *ubuntu*, which puts the interests

of the group before those of the individuals. Patton (2000) recognizes the value of group privacy and sees that sociality plays a complimentary role in the analysis and justification of privacy.

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Nanotechnology, Development and Buddhist Values

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Abstract Nanotechnology has been proclaimed as a new technology that could bridge the gap between the rich and the poor countries. Indeed many countries in Asia are fast developing their nanotechnological capabilities. However, one needs to take into consideration the role that culture and values play in adoption of nanotechnological policies, keeping in mind that technology and culture are deeply dependent on each other. I offer a criticism of the dependency theory in economic development, which says that there is an unbridgeable divide that the poorer countries cannot cross. As with other powerful technologies, nanotechnology can create as many problems as solutions. I concentrate how insights from the Buddhist tradition, prevalent in Thailand, could illuminate how nanotechnology could be introduced into the lifeworld of a people.

Keywords Nanotechnology · Development · Developing countries · Buddhism · Values

Introduction

Nanotechnology has become one of the most discussed and promising technologies that have emerged recently.

As is probably well known, the term ‘nanotechnology’ is a catch all word that includes all kinds of technologies that operate on the ‘nanoscale;’ that is, any scientific and technological research and development aiming at gaining knowledge and technical control at the level of 100 nanometers or less. Thus, nanotechnology works at the level of atoms and molecules themselves, which are the basic building blocks of all the material we find in our lives, including also our own bodies. Simply put, nanotechnology works at manipulating atoms and molecules in order to find technical solution to our goals and needs.

It is this working at the building block of material structure at the very fundamental level that makes nanotechnology promising and powerful. Applications of nanotechnology range widely, from health and cosmetic products, devices that operate inside the human body at the cellular level, to devices or material that could transform waste products to something very useful, to name but a few. (One can see this very wide variety of applications of the technology at <http://www.nanoshop.com/>.) Hence it is not surprising that not only the developed countries are rushing toward more research and development in this broad field, but many developing countries, afraid of losing out yet again on the technological race, are also rushing full speed ahead. Since this is a new field with many unexplored areas, it is believed that catching up is still possible. This would give the developing countries the leverage and advantage it needs for the global scientific and technological race. In addition development of the technology is also key to providing needed solutions that could help alleviate the problems of the poor [11].

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This paper will reflect on how nanotechnology is being adopted and promoted by developing countries, especially Thailand. Apart from the promising features of nanotechnology mentioned earlier, the technology has also been proclaimed as a new tool that could bridge the gap between the rich and the poor countries [11, 33]. Areas such as drug development, agricultural production enhancement, elimination of environmental pollution, and energy management, to name but a few, are those where nanotechnology is promising to deliver solutions that could raise the standard and the quality of living in the developing world significantly.

As many countries in Asia, such as China, India, Thailand, the Philippines, and more, are fast developing their nanotechnological capabilities, an opportunity opens itself for a reflection of how the new technology fares in the cultural milieu of these countries. Such reflection is necessary if we are to understand fully how science and technology policy regarding nanotechnology could be effectively developed and implemented. According to Peter Singer et al. [35], examples of nanotechnological activities in the developing world include those in India where the emphasis is on product development and marketing, and in China, where the national infrastructure of funding for innovative nanotechnological research is very strong. Singer et al. believe that nanotechnology could be good news for the developing world, but the good news will not materialize on its own. On the contrary, Singer et al. are proposing a global agenda whereby nanotechnology is highlighted as a kind of technology that could provide concrete changes for the better in the developing world.

However, in order that the visions of Singer and others' can be realized, one needs to take into consideration the role that culture and values are playing in the formulation and implementation of nanotechnological policies. As with other powerful technologies, nanotechnology can create as many problems as solutions. The typical fear of the technology, that nanotechnology will someday produce such things as 'nanobots' or 'nanogoo', which will take over the world and destroy human beings, needs to be seriously addressed and not merely dismissed as a fantasy, because recent history has shown that public attitude and reaction toward new technologies could assert very strong influences on the direction and use of the technologies themselves. Another reason is that the possible toxicity of the newly synthesized nanotechno-

logical products are not well understood at this moment even though the study of toxicity of nanotechnological products is a growing field (See, e.g., [18, 20]). In the rush to cash in on the promises of nanotechnology, authorities and businesses in the developing world appear to focus more on the technological advances and competitiveness rather than on safety issues as well as thorough understanding of the multifarious ethical and social implications of the technology.

In dealing with these ethical and socio-cultural issues, I will concentrate on the Thai case, looking specifically at the Buddhist tradition to find out what the religion might have to say concerning introduction of nanotechnology into the fabric of Thai culture. This finding could well be relevant to the other traditions in Asia and other non-western regions too.

Nanotechnology and Developing Countries

So far there have been only a few studies of nanotechnology and its possible impacts on the developing countries, and among these few there are divergent viewpoints as to how nanotechnology could and should be adopted by the developing countries [25]. Apart from Singer et al., Salamanca-Buentello et al. [33] and Foladori and Invernizzi [11] also paint a rather optimistic picture. Saladin El Naschie argues fervently for the developing country to have its own nanotechnology base [32]. Joachim Schummer [34], on the other hand, appears rather the opposite, as he believes that it would be very difficult for developing countries to catch up on the West through relying on nanotechnology. Also Maclurcan [26] argues that the low level participation of developing countries in global forums on nanotechnology point to the possible conclusion that, as with the earlier technologies, nanotechnology could create its own 'nano-divide' between the developed and developing world. Schummer in particular relies on the dependency theory of economic development, which argues that economic gains and development in one country or one region are always offset by losses and underdeveloped conditions in another region ([34]: 295). Thus, according to Schummer, it is 'simplistic' to assume that nanotechnology alone would enable the developing countries to leapfrog decades of lagging behind and eventually to catch up with the West. As the dependency theory shows, economic development in one area is always

shadowed by underdevelopment in another; hence he seems to assume that, if nanotechnology enables the West to move ahead, then it will leave the other global regions behind, thereby widening the existing gap even further. However, Schummer tries not to be entirely pessimistic, as he mentions several areas in which the developing countries could rely on nanotechnology, such as in product development for the needs of the people in the developing world [34]. In this case, he says that the situation is rather complex, and product designers should consider the context in which the product is going to be introduced in the beginning, and he mentions almost in passing the role of collaboration between the developed and the developing countries on this matter ([34]: 302).

However, the dependency theory has been challenged as being overly deterministic. In addition, Schummer's analysis seems to be contradicted by the empirical fact that many developing countries such as China and India are fast developing their nanotechnological capabilities to serve the needs of their people [35]. It may now be premature to say that China and India will eventually achieve parity with the West in nanotechnology, but it would not be too far fetched to say that the capabilities that are being developed are increasing rapidly. Hence at least it should be safe to say that in terms of nanotechnology China and also India could narrow the gap with the developed West rather rapidly in the near future. But if this can really be the case, then Schummer's argument that the developing countries will forever be dependent and in a disadvantaged position seems untenable.

Nonetheless, perhaps a more potent argument against the dependency theory, which can only be given in a sketch here, is that the theory relies on the philosophical theory of technological determinism for its support. Technological determinism holds that the march or the progress of technology in society is inevitable, and it will invariably transform society as a result. Moreover, such social transformation is only a one-way street. Classical theorists of this persuasion, such as Jacques Ellul [5] and Martin Heidegger [15], believe that technology is an all powerful agent, which, once released onto the social environment, will produce only one possible effect. This is because technology has its own internal logic and its own contextual apparatus that need to be in place in order for the technology to function. Hence, when technology has been developed and adopted into society, it will

inevitably change the society and its socio-cultural milieu because of its power and its internal dynamism that stops at nothing that might hinder its path. In this case, technology is a determining factor in social change and it determines the direction of the change.

The dependency theory relies on technological determinism in the former's presupposition that the West's superior position in scientific and technological achievement puts it in a very advantageous position, so much so that, if left unchecked, its power will always continue to dominate. This is the same logic that underlies technological determinism. The West's technological superiority gives it the dynamism and the internal logical thrust of technology that successfully blocks any attempt by the 'outsiders' (i.e., the developing South) to get in. According to technological determinism, the power belongs to the West, and this does not mean merely physical power, but also includes softer power such as epistemological and cultural one that enables the West to engage in colonization of consciousness [17].

Technological determinism has successfully been criticized in various ways, and there is also not enough space in this paper to account for all of them. Nonetheless, one can gain a glimpse of how technological determinism can be combated through a look at how new technologies are being developed, which show that the technologies themselves are products or are functions of the prevailing social, cultural or economic conditions rather than the other way around. It has been argued, for example, that the Internet can be and has in fact been co-opted into many socio-cultural contexts [24]. That is, the Internet has become a rather transparent tool by which members of a culture go about their daily businesses of pursuing their goals and desires. By doing so they maintain a degree of cultural identity, and the Internet, which technological determinists have envisioned to be the all homogenizing technology due to its vast power in manipulating information, instead appears more as a tool by which members preserve their cultural identities (See also [21, 23]). According to Ess and Sudweeks, many scholarly works have shown that, instead of the Internet and computer-mediated communication obliterating cultural differences, it is actually the other way round ([6]; see also [7–9]: 83).

Perhaps a good example can be provided that refers to the increasingly widespread use of information and communication technologies, especially the Internet, to

enable religious practices in various forms and guises to flourish (See, e.g., [19]).¹ Websites are being created to help practitioners of religions, such as Buddhism in the Thai case, relate to one another, sharing tips and insights of how best to do specific forms of meditation, to discuss about the finer points of the teachings, and so on. If technological determinism were the case, this situation would not have been possible as the theory would predict that religion would die out as a result of the march of technology (because the aims of religion, such as the emphasis on other-worldliness, are regarded as being fundamentally opposed to that of technology). However, religions appear to be alive and well even in this day and age where the technology is close to being ubiquitous. So, instead of technology being an all powerful force, changing the world according to its own logic, it appears that technology itself has been subsumed and co-opted into the ‘life-world’ of the social and cultural entity itself.

Nonetheless, proponents of technological determinism might point out that these arguments do not strike at the heart of the issue, which is about how the social lifeworld is transformed through technology. For the proponents it is not sufficient to point out that technology and culture are influencing each other, since that is evidence that technology is determining culture, making the example a case for technological determinism rather than against it. When technology and culture interact, the latter always undergoes change. The fact the culture is changed shows that culture always follow the dynamic logic of technology. Although culture may find a way to accommodate technology in one way or another, the sheer fact that culture itself is changed as a result of its interaction with technology seems to illustrate the validity of technology determinism, or so the proponents believe.

However, what is suspect in this picture is that the proponents seem to assume that culture is a frozen entity which may not change at all. Since interaction with technology is a way human culture responds to the challenges posed by the external environment, technology is clearly a way human beings cope with the problems that threaten their abilities to pursue their goals. Since these problems are always varied,

the ways to cope with them are also varied, giving rise to dynamic technological inventions for example. Thus, the interaction between culture and technology shows that culture is living and adaptable; thus the assumption of the proponents to fix culture forever is actually impracticable. As technology can be molded according to the wishes and goals of a culture, then this would be sufficient to show that technological determinism does not seem to be tenable.

If technological determinism is suspect, then the dependency theory of economic development is suspect too. In fact it is possible to develop the kind of science and technology—a kind of ‘indigenous’ science and technology in the sense that, even though they inevitably follow the universal knowledge paradigm and methodologies, are directly designed to respond to the needs and goals of the local communities [22]. A key element in the argument is the idea that technology can be molded in such a way that it is subservient to the goals and values of the community rather than the other round. And if this can be the case, then a challenge can be made against the dependency theory and its use by Schummer to argue that the developing world somehow is forever dependent on the West.

Thus it is possible to look at an alternative perspective where technology, and nanotechnology in particular, could be so adapted to the lifeworld of the community. In order for this to be possible, the roles of culture and value system need to be investigated, especially when the question is how nanotechnology could be adapted and developed to serve the needs of the communities and cultures of the developing world. In what follows I shall provide a sketch to show how this is in fact possible.

Adapting Technology to the Lifeworld

A good example of how a product of modern technology is fully adapted into the lifeworld of the community is how ubiquitous the television is in today’s world, even in a very remote part of it. Apart from some very remote tribes who have no access to electricity, almost all people in today’s world are watching television, or have access to it. It is rather surprising how recent it was when the television was introduced and made ubiquitous as it is now. What is interesting is to see how it has been co-opted into the world of the people everywhere; how, that is, it has become

¹ An issue of the *Journal of Computer-Mediated Communication* is devoted to the topic of religions on the Internet. See <http://jcmc.indiana.edu/vol12/issue3/> especially articles by Campbell [4], Helland [16], Fukamizu [12] and others.

immersed within the different cultures that make up the world so much that its ‘foreignness’ is in most cases forgotten and its presence taken for granted, in much the same way as products of an earlier technology, such as musical instruments, found their way to be an integral part of the community’s culture.

To see how this makes some sense, let us focus first on the musical instruments. Music is part of every human culture. It could be said that music is hard wired to the neurophysiology of human beings and it is totally impossible to find a human culture without it (E.g., [27, 29]). In order for music to be expressible, some instruments are needed, and making them requires some kind of technology. This technology almost always is an indigenous one. Culture consists in humans who are hard wired to produce music; thus it naturally finds a way to use some kind of technical means to design and produce musical instruments with which to play the music. Since music is part of culture, the technology that is there is the production of the musical instrument is thus an integral part of culture.

The logic of the dependency theory, derived from the Marxist one, is that technology produces its own internal dynamic in such a way that understanding it requires taking in the contexts in which the technology is embedded. In this sense the theory is correct, but it fails when it tries to argue that such embeddedness is a function of the internal dynamism of technology itself. To illustrate, the dependency theory would have it that a technology, such as the mobile phone, tends to produce a kind of dependence, a divide, between the developers and the designers in the developed world on the one hand, and the consumers and users in the developing world on the other. Since developing the technology is a capital and knowledge intensive task, catching up is impossible because the technology is embedded in the socio-economic contexts that enable the more advanced economies to have tremendous advantages as well as various dimensions of power. However, what the dependency theory perhaps fails to notice is that the technology itself could be pried away from its original context and implanted within a new one. In this case the technology does not have to be always coupled with the more advanced economies of the West. Surely technology needs to be considered within socio-cultural contexts, but such context could conceivably be created for a new environment in which the technology has not been found before. In moving from one context to another, technology tends to change, unless the contexts

in question are commensurable with one another. The mobile phone or the television may function in one way in Europe, but it could function in another way, having been embedded in another cultural context where it is imbued with another set of values and where it finds a new location within that culture. This can be seen in the Thai context where the mobile phone is not only a tool for communication, but also a status symbol, a sign that one has become fully modernized, and where the television has become a means by which Thai culture perpetuates itself. This, however, only affirms that technology, apart from being embedded in only the culture where it originates, could in fact be moved across cultural boundaries. Thus the presupposition of the dependency theory, that technology is tied up with one particular culture only, seems untenable, as the numerous research being done in the field of social constructivism of technology (SCOT) show (e.g., [3, 30]).

However, this should not be taken to imply that technology could be taken from one milieu and planted in another without effecting any changes in the receiving milieu at all. This is not the case because technology is not some kind of a separate entity that can be taken from one place to another. It is a very complex set of practices, coming with its own accompanying systems of other practices and belief systems without which the technology would not function at all. Hence technological determinism does have a point here. Nonetheless, my own argument against technological determinism rests on its strong contention that technology, once adopted into another culture, tends to change that culture without itself being changed. I believe the argument above should suffice in at least casting doubt about this view ([10]: 113).

The argument above is sketchy at best; it would require a whole book to argue fully for this kind of position. However, my point is only that, if the argument above is only a plausible one, then a case can be made against an uncritical adoption of the dependency theory. If that is so, then an upshot of that theory, i.e., the idea that it is in principle impossible for the rest of the world to catch up with the West on technology, has been challenged also.

Two Types of Values

Reflecting on the role of values in nanotechnology in Asia, one thinks about what is really unique about

nanotechnology such that there could be a unique set of values pertaining only to it. The question is important because otherwise nanotechnology would then be indistinguishable from other forms of technology and the set of values accompanying them would be the same. But if that is the case, then there would be no point in discussing the impacts of one technology as opposed to another. A consequence would be that there would be no point in distinguishing talks about the possible ethical implications of, say, the technology of gasoline-powered internal combustion engine and the new hybrid engine that uses hydrogen as a source of power. If the values associated with the gasoline-powered internal combustion engine are the same as all other technologies, then there would be no point in discussing the role of values in the newer technology too. But then it seems rather strongly that nanotechnology is a very different kind of thing from the older mechanical technology; in fact it is fundamentally different. This implies that talks about the ethical impacts of nanotechnology should at least be independent in some way from talks about the ethical impacts of the older technologies.

At any rate, there seem to be two sets of values pertaining to nanotechnology. The first set is associated with the development and utilization of nanotechnology in the context of the developing world such as Thailand. In this sense the values are those considered in conjunction with formulation of appropriate policies. On the other hand, another set of values, which is no less important, concerns the technology itself. In other words, the first set of values is related to policies and social and political agenda concerning adoption and orientation of the technology within national or political contexts. The second set of values, on the other hand, concern more about the ethics of the technology itself, i.e., a set of deliberations and conceptual, normative investigations as to the nature and impact of the technology at the more individual level, such as how a product developed through nanotechnology is safe enough for an individual. Here the talks about nanobots or nanogoo wreaking havoc on the human body are related more to the second set of values I am talking about here.

As an illustration, the first set of values pertains to policy making and deliberation on how nanotechnology could contribute to national development. The second set, on the other hand, pertains more directly

to ‘nanoethics’ as is commonly understood. However, deliberations about how nanotechnology should be developed to serve the needs and goals of a people also belong to the ethical realm, so instead of thinking of nanoethics belonging only to the second set, nanoethics should be considered as consisting of two broad categories, the first one concerning more the social and the second more on the individual.

Clearly the two sets are intimately connected, but since their spheres of application are different, carefully distinguishing between them is useful when we deliberate on the role of values in promoting and in utilizing the technology in the developing world context. The previous discussion regarding the proposal by Singer and others, as well as the critique by Schummer, pertain more to the first set of values. Here the question is how nanotechnology could be best utilized for developing countries and what the optimal policies and agenda should be. The second set, on the other hand, deals more on the ethics of nanotechnology itself. If it is the case that any technology comes with a set of values, then what are these values in the case of nanotechnology? If the Internet and the other information and communication technologies come with a certain kind of values which are quite familiar, then what about the values related to nanotechnology?

Let us discuss the second set of values first. Since so far there is not even one commonly accepted definition of nanotechnology ([1]: 5–8), finding a set of values unique to it appears close to impossible. Nevertheless, it can safely be said that nanotechnology deals with *very small* things, and by doing so nanotechnology is manipulating the very basic building blocks of the material object itself. That is a very powerful thing to do, and is something that the internal combustion engine cannot do. By being able to manipulate very small things, nanotechnology has the potential to alter the very composition of material things themselves—that is, the very structure and very stuff of what we are physically. What is emerging from this possibility is, then, that the material reality itself is much more fluid than previously thought. One kind of solid matter may be changed to another, very different kind through the technology. Admittedly this is something that has been done for a long time by chemistry. But nanotechnology is different from standard chemistry in that it is not merely the chemical reaction between different kinds of matter that is at issue, but the very manipulation of atoms and molecules themselves. In the latter case the

role of the human beings who do the manipulation is much more pronounced. Moreover it is conceivable that robots could be constructed that are able to undertake the process of manipulation at the nanolevel. The power to synthesize new material which could have properties beyond imagination at the moment is staggering.

In this scenario, values become very important. It goes without saying that power always needs to be accompanied by responsibility, and this is no less true with nanotechnology. With the ability to make the material reality very fluid, very easy to be modified (at least in theory), obviously the first value that should be considered is whether this molding of material reality poses any risks or harms to the human bodies or the environment as a whole. Another thing is that by manipulating the molecular composition of the human body, nanotechnology is poised to change the very constitution of the body itself. This poses serious values and conceptual questions as to what exactly is the human body and human nature, as well as where the boundary should be between the human body and the part of material reality that traditionally is not part of it.

Naturally these questions give rise to many ethical considerations. However, some scholars, such as Allhoff [2], have argued that nanoethics is not an independent field, as the problems that it discusses could be subsumed by the more traditional form of applied ethics. I disagree with Allhoff in various ways.² Nevertheless, in what follows I shall focus on the first set of values, those associated with introduction, promotion and utilization of nanotechnology to serve the goals of the developing countries at large.

Prominent within this set of values is what underpins the problem discussed earlier between the dependency theory adopted by Schummer and the more optimistic tone found Singer et al. It is obvious that the developing

country would be more receptive toward the ideas presupposed by Singer et al., but Schummer's account cannot be dismissed out of hand. It remains, thus, to be shown how Singer's vision could be realized, a task which, I argue, needs to take culture and traditions of a particular locale into consideration.

The Role of Values: The Thai Case and Buddhism

The idea now is to consider what is needed when nanotechnology is to be fully integrated as part of a culture where nanotechnology is alien at first, and here I focus on the Thai case, but this should be applicable to other cultures too. The argument against the dependency theory sketched above shows that technology, and nanotechnology in particular, is malleable and could be adopted and co-opted into the lifeworld of a culture.

So in what way could nanotechnology be so adopted? Here it could be regarded that nanotechnology is an extension of the earlier forms of technology that are already in existence. Hence nanotechnology could then be domesticated in generally the same way as these earlier technologies, and any addition that is peculiar to nanotechnology is related to the values that are unique to the technology itself. Hongladarom [22] has proposed a way in which science and technology could be domesticated or integrated into the lifeworld of a community. What is needed, in short, is that the goals, agenda and contexts of science and technology should essentially belong to the local culture. In other words, the science and technology in question need to 'take root' and 'grow' out of the soil of the culture itself. Science and technology would need to cease to become an alien feature and have a role to play in the culture's system of meaning making, meaning giving and values. Here Heidegger's vocabulary of being 'ready-to-hand' and 'present-at-hand' may be useful [14]. (This is ironic, because Heidegger is widely known for his scathing criticisms of modern technology.) For Heidegger, the 'ready-to-hand' is something that we use without thinking about it. For example, our hands are always ready for us and we hardly notice that the hands are there for us and available for us 24 h a day, 7 days a week (unless, of course, one happens to lose the use of one's hand). In this sense the hands are 'ready-to-hand'. On the other hand, if we happen to be conscious of the existence of some tool in such a way that we are aware of it as

² Here I disagree with Allhoff's argument that nanoethics does not belong to its own field. Surely enough nanoethics does belong to the field of applied ethics, as are fields such as bioethics and computer ethics, which are more established. As cases can be made regarding bioethics as a distinct field within applied ethics, so too can nanoethics. It is indeed that case that many works in bioethics draw heavily from ethics and other disciplines. However, that does not make bioethics lose its status as a distinct subfield. The same argument, I believe, can be made with nanoethics (see [2]). As problems in bioethics arise from the use of technologies pertaining to biology and human life, problems in nanoethics similarly arise from the use of technologies pertaining to *very small* things that could have strong impact on human life and society too.

existing apart from ourselves, then the tool is ‘present-at-hand’. Hence, in the sense I am proposing, the science and technology that should be taking root and grow in the environment of a local culture should find a way to becoming ‘ready-to-hand’ to the members of that culture.

Since nanotechnology is in fact a loose conglomeration of different technologies, it is difficult to generalize a theory of how nanotechnology could be so integrated in a culture, such as an Asian or a Thai one. Nonetheless, some general picture could emerge. Since nanotechnology appears to be an extension of earlier forms of technology as previously mentioned, the values that accompany these earlier forms could then be broadly adapted for the case of nanotechnology too, bearing in mind that the technology contains much that is unique.

Although the dependency theory has some flaws as previously discussed, it does have some merits. The theory offers us a way to look at the system of values associated with the mainstream thinking regarding economic development, which is based largely on the individualism and liberalism. The idea is a familiar one. Development depends on individual desires for profit and the state should ideally give a free hand to the individuals to pursue their goals. However, according to the dependency theory, such a system of values tends to produce a divide between the haves and the have-nots, and in this case the former are the more advanced economies of the West and the latter those of the rest of the world. Since the West has gained a tremendous advantage in terms of scientific and technological advances, it is impossible, according to the theory, for the rest of the world to catch up as we have already seen. Nonetheless, what is useful in our case here is that the dependency theory offers us a critical look toward individualism and liberalism. In analyzing the economic relation between the West and the rest of the world, the dependency theory can provide us with a set of tools by which the role of global justice and the rights of the people in the developing world to enjoy the fruits of science and technology can be highlighted. In emphasizing global inequality and the exploitation by the West of the rest of the world, dependency theory does a rather good job at making the case for the global poor. However, since it is not possible within the theory to find a way in which such a global divide can be successfully closed, and since the theory does not leave room for

the possibility that a technology can be embedded again in its new socio-cultural context, the theory suffers the flaw that I discussed earlier in the essay.

So the way to go is to begin from the implicit critique of Western individualism and liberalism in the dependency theory and search for the values endemic to the local culture in which nanotechnology is going to be implanted and allowed to grow. What is wrong with Western liberalism is that it presupposes a metaphysics of the self in which the self is objectively subsisting, inherently existing as an individual substance, and is essentially an autonomous domain of subjectivity. This notion, which underpins the notion in modern Western liberalism of the substantive existence of the atomic individual, is challenged in Buddhism. This is a hugely complex matter and I can’t even begin to provide a sketch of the Buddhist theory here. Nonetheless, it should suffice here to say that according to Buddhism the notion as accepted in modern Western liberalism is ultimately rejected. The self according to Buddhism is only a construction, and is constructed out of disparate elements consisting of physical components and mental episodes. This is not to say that the self does not exist at all; that would be a clear contradiction of empirical evidence. But what the Buddhists are saying is that the self that we all perceive and that appear self evident to us, is ultimately speaking nothing but a construction projected by the mind out of these myriads elements. This is known as the Doctrine of Emptiness and it is the central philosophical tenet found in all schools of Buddhism [13, 28].

Another key doctrine in Buddhism that is a counterpart of Emptiness is the emphasis given on compassion as the key motivating factor for ethical action. In the Buddhist context, compassion is the feeling of others’ pain and suffering through one’s projection onto others. One has compassion when one feels the same as those who are suffering and cannot stand still but feel strongly that one has to do something to alleviate that suffering and pain. Compassion and emptiness are deeply interconnected with each other, for one has a strong sense of compassion when one realizes that everything, every being, is interconnected and interdependent upon one another. There is no wall, so to speak, separating one’s ‘self’ and that of others (for that sense of the ‘self’ is indeed an illusion as we have seen). With no separation between self and other, others’ feelings

become one's own and one sees oneself in others and sees others in oneself. Compassion is always accompanied by the intense desire to help and to take action, whatever is required to remove the sufferings of others, since it is natural for all beings to desire happiness and to avoid suffering.³

Translated into more practical terms, this would mean that a policy based on Buddhism would pay particular attention to the role of compassion, commiseration and on taking concrete action to help others. In the next section I will spell out how nanotechnology could be nurtured and grown in such an environment.

Growing Nanotechnology in a Buddhist Environment

Nanotechnology originated in the West where the predominant intellectual belief system is that of individualism presupposed by the belief in the inherent self. It is this belief in the inherent self that gave rise to the mainstream economic thinking of the self as 'the Subject' and the acquirer and consumer of goods and services, and of a social system composed of individual selves coming together, sharing and coordinating their interests. If anything, it is believed that the self ultimately exists. Thus, if nanotechnology is going to be implanted and embedded within the Buddhist environment where the underlying intellectual system is a different one of the self being regarded as a construction, where at the ultimate level of analysis the self does not exist substantially at all, this important system of value needs to be taken into account. It is conceivable that nanotechnology could be embedded in a different cultural context and a different set of motivations from those in its original home. It is rather difficult to pin down what these motivations are, but at least they involve the basic Buddhist tenet of the Non-Self and compassion alluded to above. When translated to actual policies, the tenet points to a kind of policy that gives less emphasis on the profit motive or an individualistic one, and more to the relational character of social beings.

Practically speaking, this could mean an emphasis on the role of the state or state funded agencies to

play a more active part in research and development in the area. The motive is geared toward public goods rather than private gains. In any case, introduction of nanotechnology as well as its research and development should be accompanied by a sense of compassion, that is, a genuine caring attitude toward the benefits of all rather than selfish or merely parochial ones. This will be a very Buddhist attitude toward introduction and development of nanotechnology.

However, the emphasis on public goods here does not have to be the only viable option. In fact private organizations could function rather well for the welfare of the public too. Here the existing model of the open source movement in software development is a good example. In the open source movement the motive behind activities is not a gain for the self, but the good of the society as a whole, or at least not directly. This is because in contributing to the open source movement the contributor derives no profit from her task, but instead the reward is that of personal satisfaction that arises from contributing to the benefit of whole. Obviously this is a very lofty ideal and it remains to be seen whether and if so how this model could actually be transferred to nanotechnology, since software development does not seem to require very intensive investment as does nanotechnology. Nonetheless, it is clear that the open source model is much in accordance with the Buddhist ideal and in order to find a set of values that could help nurture nanotechnology and even to make it prosper in a cultural climate as permeated by Buddhism as the Thai one, the open source model seems to be one which is worthy of careful study.

This proposal, by the way, does not imply that the profit motive has no role to play at all. Much of the use of nanotechnology nowadays is focused on development of new material for consumer products aimed for the market. Thus to push for the open source model of nanotechnological development at all costs would be too idealistic and would hardly materialize in practice. It is possible for there to be firms that employ nanotechnology in producing new materials for the consumers and the market, but the Buddhist attitude would be to say that the primary motivation behind such introduction of the products should not be exclusively for the personal gain of the owners or the shareholders of the firms themselves, but primarily for the benefits of all who will find a use for the products. Buddhism is not necessarily tied up

³ Literature on Buddhism is tremendously vast. What I offered in this paragraph is only a very basic introduction. However, Harvey [13] is a very good introduction.

with anti-consumerism, but it is against the kind of attitude that seeks personal gains to the detriment of any benefits of others.

Here the two set of values mentioned above do converge. The first set of values pertain to how nanotechnology could be implanted, nurtured and grown within the local intellectual and cultural climate in which it is *prima facie* a foreign practice. Here an answer is that such values need to pay attention to the role of other-regarding attitude rather than primarily seeking personal benefits. This would be in accordance with the Buddhist teaching. Introducing nanotechnology under this attitude would also lessen the negative feelings that people might have against the technology. As the example of some previous technologies have shown, such as biotechnology and its controversies surrounding genetically modified organisms, public attitudes are very important in deciding whether a form of technology has a really workable future, a future in which the general public themselves will be affected. This is important because in its short history, the technology of genetically modified food has encountered strong opposition from the public, so much so that the direction of the technology itself has changed significantly. When the technology was first introduced, it was aimed at increasing crop yields and inserting vitamins or nutrients in crops that otherwise lack them. However, public backlash against the technology, which stemmed in part from the connection of the technology with big multinational corporations, has now resulted in development of the technology in favor of the environment, thus in effect realigning biotechnology so that it serves the interests of the environment rather than the multinational corporations [31]. Hence, in order to avoid the pitfalls that befell genetically modified food, introduction of nanotechnology into the developing world needs to pay close attention to the value systems of a particular region in which it is going to be applied. This pertains not only to those who might want to bring in the technology from the West, but also, and perhaps more poignantly, to those within the developing countries themselves who might want to bring their countries 'up to date', so to speak, through research and development of nanotechnology.

Furthermore, this set of values is also intimately connected with the second one, which concerns more about the ethical implications of the technology itself.

Since both concern ethical deliberations surrounding nanotechnology, the emerging discipline of nanoethics should encompass both.

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Floridi and Spinoza on global information ethics

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Abstract. Floridi's ontocentric ethics is compared with Spinoza's ethical and metaphysical system as found in the *Ethics*. Floridi's is a naturalistic ethics where he argues that an action is right or wrong primarily because the action does decrease the 'entropy' of the infosphere or not. An action that decreases the amount entropy of the infosphere is a good one, and one that increases it is a bad one. For Floridi, 'entropy' refers to destruction or loss of diversity of the infosphere, or the total reality consisting of informational objects. The similarity with Spinoza is that both philosophers refer to basic reality as a foundation for normative judgments. Hence they are both ethical naturalists. An interpretation of both Floridi and Spinoza is offered that might begin to solve the basic problems for any naturalistic ethics. The problems are how a value theory that is based on metaphysics could maintain normative force and how normative force could be justified when there appear to be widely differing metaphysical systems according to the many cultural traditions. I argue that in Spinoza's and presumably in Floridi's system, there is no separation between the normative and the natural from the beginning. Normative terms derive their validity from their role in referring to action that leads to a richer and fuller reality. As for the second problem, Spinoza's God is such that He cannot be fully described by mere finite intellect. What this translates to the contemporary situation of information ethics is that there are always bound to be many different ways of conceptualizing one and the same reality, and it is the people's needs, goals and desires that often dictate how the conceptualizing is done. However, when different groups of people interact, these systems become calibrated with one another. This is possible because they already belong to the same reality.

Key words: Floridi, global information ethics, God, metaphysics, naturalism, nature, relativism, Spinoza, universalism

Introduction

In "Global Information Ethics: The Importance of Being Environmentally Earnest,"¹ Luciano argues that the current global situation – where globalization has pervaded almost all aspects of life and where there is a diversity of moral viewpoints, each making competing claims against one another – calls for an "information ethics." Basically, information ethics solves the problem of diverse moral viewpoints by positing an underlying reality which is presupposed and shared by all parties whose viewpoints are diverse. The only necessary condition, according to Floridi, is that these parties inhabit the 'same world' in the sense that they are able to share at least some information together. This underlying reality, then, is

a background upon which successful calibration of diverse ethical viewpoints could be achieved.

In this paper I would like to reflect further on Floridi's argument. First of all, I would like to point out certain affinities between Floridi's ethics and that of Spinoza, something that Floridi himself acknowledges.² Basically both systems could be categorized as ethical naturalism. I shall point out these affinities in the course of the paper. Furthermore, I shall also point out some differences between the two philosophers.

This paper, moreover, aims at shedding light on the nature of ontocentrism as a theory of global information ethics. I propose that Spinoza's conception of ethical naturalism and his reliance on the conception of God as being one and the same with

¹ Luciano (2007, pp. 1–11).

² Luciano, Global information ethics: the importance of being environmentally earnest, n. 10.

Nature could provide further details to Floridi's sketchy conception. Basically put, Spinoza's God comes to rescue when God is the one reality that pervades everything and is beyond human conceptualization. This is shown when Spinoza speaks of God, for example, having an infinite number of attributes. Hence God cannot be fully described. It is this situation that gives rise to the cultural differences that the typical relativists argue to be the sole source for normative judgments. Spinoza's God, however, overcomes relativism through His inclusion of everything. In the system of thoroughgoing naturalism, differences in ethical judgments are to be expected, as humans do not have the perfect vision of God. So long as the judgments lead to joy or happiness, they are all acceptable.

Floridi's ontocentric ethics

Let us look at a key passage in Floridi's paper:

... [B]iocentric ethics argues that the nature and well-being of the patient of any action constitute (at least partly) its moral standing and that the latter makes important claims on the interacting agent, claims that in principle ought to contribute to guiding the agent's ethical decisions and constraining the agent's moral behaviour. The "receiver" of the action is placed at the core of the ethical discourse, as a centre of moral concern, while the "transmitter" of any moral action is moved to its periphery.

Now substitute "existence" for "life" and it should become clear what IE [*information ethics*] amounts to. IE is an ecological ethics that replaces *biocentrism* with *ontocentrism*. It suggests that there is something even more elemental than life, namely being – that is, the existence and flourishing of all entities and their global environment – and something more fundamental than suffering, namely entropy. The latter is most emphatically not the physicists' concept of thermodynamic entropy. Entropy here refers to any kind of destruction or corruption of entities understood as informational objects (not as semantic information, take note), that is, any form of impoverishment of being, including nothingness, to phrase it more metaphysically.³

The idea is that ethical norms are governed by the care not to cause harm or danger, not only toward

living beings and their being able to live well, but also to all entities. Since all beings are part of the global environment and since they are, according to Floridi, constituted through information – that is to say, their being whatever entities they are consist in certain amount of information – one is enjoined not to cause harm or danger to these beings as that would reduce the amount of information there is in the world. "Let all things flourish" could be a motto of Floridi's ethics.

It is quite clear to see how Floridi's conception here could form a basis for an environmental ethics, for example. Everything has its own value and deserves a certain level of respect. Not only humans and animals, but also plants, rocks, trees, forests, streams, and so on. They do have values simply because they are 'there.' One might balk at such an argument, claiming that it commits the naturalistic fallacy. After all, one could not validly deduce a statement of value from that of fact, or so the standard argument against naturalistic fallacy goes. However, Floridi does not give a detailed argument to this effect. In another paper he states that there are four principles of "universal information ethics," namely (1) "information entropy ought not to be caused in the infosphere;" (2) "information entropy ought to be prevented in the infosphere;" (3) "information entropy ought to be removed from the infosphere;" and (4) "information ought to be promoted by extending, improving, enriching and opening the infosphere, that is by ensuring information quantity, quality, variety, security, ownership, privacy, pluralism and access."⁴ "Infosphere" here means the whole environment in which information plays a key, constitutive role; that is, the sum total of all information there is in a given environment. So Floridi further says:

What is the best strategy to construct an information society that is ethically sound? This is the question I wish to discuss in this paper. Let me anticipate my conclusion. The task is to formulate an information ethics that can treat the world of data, information, knowledge and communication as a new environment, the *infosphere*. This information ethics must be able to address and solve the ethical challenges arising in the new environment on the basis of the fundamental principles of respect for information, its conservation and

³ Luciano, Global information ethics: the importance of being environmentally earnest, pp. 11–12.

⁴ Luciano (2001, pp. 1–7). Floridi has also written a piece on a proposal new model of telepresence in terms of information and levels of abstractions from reality and its consequences for privacy concerns; see Luciano (December 2005, pp. 656–667).

valorisation. It must be an ecological ethics for the information environment.⁵

Taking life as having intrinsic value, biocentric ethics argues that wantonly taking lives is unethical because it endangers life itself, and in the same manner, Floridi argues that wantonly reducing the amount of information in the world is unethical because it endangers information itself as something possessing intrinsic value. The key premise is “One should not reduce or eliminate something that possesses intrinsic value.” Here Floridi’s harks back to the ancient tradition that accords nature and the environment with value and as such they deserve reverence and they come to have an inviolable status. The opposite ethical stance is utilitarianism, according to which everything is expendable, so long as it serves to further some more ultimate goals. Taking a cue from ecology and environmental ethics, Floridi and Sanders in their paper argue that an action that harms the infosphere, that is, causes the infosphere to become diminished or impoverished, is a negative one, in the same way that an action that causes impoverishment of the biosphere is a negative one. As quantity and quality of information ought to be promoted by, among others, “enriching” the infosphere, any act that impoverishes it thus is one that cannot be ethically performed, all things being equal: “[A] process or action may be morally good or bad irrespective of its consequences, motives, universality, or virtuous nature, but because it affects the infosphere positively or negatively.”⁶

In another passage, Floridi spells out still more clearly the nature of his brand of ethics:

Capturing what is a pre-theoretical but very common intuition, non-standard ethics hold the broad view that any form of life has some essential properties or moral interests that deserve and demand to be respected, even if not absolutely but minimally, i.e. in a possibly overridable sense. They argue that the nature and well-being of the patient constitute its moral standing and that the latter makes important claims on the interacting agent and in principle ought to contribute to the guidance of the agent’s ethical decisions and the constraint of the agent’s moral behaviour.⁷

These passages make clear that the key element in Floridi’s ethics is his ontocentrism, the idea that not only human beings or animals deserve moral respect,

but so do inanimate objects, so long as their nature and their well-being are concerned. The agent’s moral behavior should be guided by the fact that his action creates a negative or positive impact on the environment. As we have already seen, it is not only life forms that deserve respect and carry moral interests, but also things in the environment.

Surprisingly, Floridi’s argument as to why it is the case that the amount of information there is, or what he calls the infosphere, should be accorded intrinsic ethical value is Kantian in spirit. According to the familiar picture, Kant said that human beings should be treated as ends and never as means. What this means is that human beings should be accorded the ultimate ethical value; any act that harms human beings and causes them to lose dignity *qua* human beings are unethical because, as autonomous and rational beings, humans deserve respect and moral worth. Floridi would like to expand this picture so that what deserves respect and possesses moral worth includes not only animals, but everything there is, namely the infosphere itself, according to his ontology:

At this point, two arguments support the attribution of an intrinsic moral value to information objects. The first, positive argument consists in showing that an information-object-oriented approach can successfully deal with the problem left unsolved by Kant. The second, negative argument consists in dismantling not only the Kantian position but also any other position that adopts some other LoA [*level of abstraction*] higher than the Kantian-anthropocentric one but still lower than LoA¹ [*level of abstraction provided by an information analysis*], like a biocentric LoA.⁸

The “problem left unsolved by Kant” occurs when the level of abstraction of the locus of moral worth is raised from the rational being in Kant’s case to something more general, where Kant’s ethical system appears to be unsatisfactory. According to Kant, only rational beings have moral worth, but when the rational beings are abstracted and the result becomes something more general, such as a “brainless entity” and some other thing of that kind, Kant’s position is unsatisfactory for Floridi because it cannot account for the moral worth of such entities. When, for example, a human being is considered at increasingly levels of abstraction, Kant’s theory would be unsatisfactory because it is limited only to a being’s status as rational, autonomous being in order to qualify for moral worth, but in Floridi’s system an entity still retains its moral worth no matter at how high a level of abstraction it is considered. Nonetheless, in agreeing

⁵ Floridi, *Information ethics: an environmental approach to the digital divide*, pp. 1–2; see <http://www.blesok.com.mk/tekst.asp?lang=eng&tekst=374>.

⁶ Luciano and Sanders (2002, pp. 1–9).

⁷ Luciano and Sanders (2002, 1–9, pp. 7–8).

⁸ Luciano (2002, 287–304, p. 291).

with Kant that moral worth is an intrinsic property of some thing (humans included), Floridi's position is much closer to that of Kant than he perhaps admits.

The two arguments that Floridi alludes to are, firstly, one purporting to show that his own position fares better than the Kantian one, and this has already been shown in the paragraph above. The second argument aims at showing that one cannot stop at one level of abstraction and not higher ones; once one moves up a level of abstraction, then one cannot stop, on pain of contradiction, until one reaches the highest level, which in this case is that of an informational entity. Hence, for Floridi, all things deserve respect and possess moral worth.

So the basis for normativity for Floridi is a thoroughgoing naturalism where the integrity of the infosphere itself is the foundation for all action to be either positive or negative in terms of ethical value. If an action causes the infosphere to become impoverished, perhaps by enforcing restriction on the principle of universal access to information, for example, then such action is wrong, but if it enriches the infosphere, then the action is right (See Rule 4 on page 4). One might suspect that if Floridi's account is correct, then the world today must be a much better place than it was only a few decades ago, because much more information has been produced at a phenomenal rate, thus greatly increasing the size of the infosphere.⁹ Or if the amount of matter happens to increase dramatically – perhaps some benevolent god would want to change the world by dumping a large amount of new matter onto the universe, then the world must be a better place ethically, because the infosphere is increasing.

Such conclusions, however, are not obviously true: indeed, some would argue that in many ways, they are exactly wrong, suggesting (via *modus tollens*) that there is something amiss with Floridi's ontocentrism in the first place. I will argue, however, that Floridi would find a lot of support from Spinoza's philosophy, as Spinoza offers a number of insights and approaches that would fill up many of the lacunae that seem to be there in Floridi's own position.

As a first example of this, let us consider Floridi's answer to the problem of ethical relativism and universalism, or in other words the problem of global information ethics is that since all cultures share the same infosphere, they all share a basic system of universal value already, and this shared reality is the foundation from which agreements or disagreements regarding first-order normative judgments arises. For Floridi, this is the only way agreements or disagreements are possible, because

even disagreements depend crucially on the ability to understand each other. The naturalism in Floridi would imply that any disagreements cannot go too far, for in the end they have to fall back on the basic reality.

However, one might argue against Floridi that disagreeing parties belonging to different ethical traditions might all agree that they inhabit the same world and that the world is described in the physical vocabulary that is agreed by both, but the point of the disagreement is not how the physical world is described, but whether an action is right or wrong, something that putatively lies beyond the scope of physical description. Hence, Floridi's conception appears to be too weak to be able to do the job of reconciling and adjudicating between these two different parties. For example, the EU and the US have been debating for some time about privacy and intellectual property, where the EU favors the deontological position and the US a more consequentialist one.¹⁰ Now both the EU and the US can readily agree that they inhabit the same world, etc., but the point of their disagreement is precisely, according to Burk, on how such issues as privacy and intellectual property rights are to be understood – whether privacy and intellectual property rights are to be understood as a means toward greater benefit or as something that is intrinsically and inherently part of the personality of the author or the individual. Now we can have all the physical description we want, but the disagreements appear to remain. It would seem that the extent of the infosphere is not affected whether one takes up the EU or the US position. But according to Floridi that would mean that there is no way to adjudicate between the two positions at all. This important point will be discussed more fully toward the end of the Section of the Problem of the Lion. In the next section I will show how an understanding of Spinoza's ethics could solve this problem.

Spinoza's naturalistic ethics

Floridi himself acknowledges that his ethics is similar to that of Spinoza.¹¹ However, to my knowledge

¹⁰ Burk (2007, pp. 94–107).

¹¹ Luciano, Global information ethics: the importance of being environmentally earnest, n. 10. The notion of *ontic trust*, discussed in Floridi, Global information ethics, especially pp. 14–17, is also particularly relevant here. For Floridi, an ontic trust comes into being when the current generation of individuals are entrusted with the task of taking care of the environment and all future generations by the past and present individuals. Since the ontic trust refers to all things, this compares with Spinoza's view of Substance.

⁹ See "How Much Information," available at <http://www2.sims.berkeley.edu/research/projects/how-much-info-2003/>.

there has not been a study on how to understand this similarity in detail. The basic point shared by both Floridi and Spinoza appears to be their naturalism. For Spinoza, the predicates 'good' or 'bad' describe what obtains in reality. In his system where the only one substance is all there is, and is identical to God, what is good is actually what is in accordance with the one substance, and what is bad is contrary to it. More precisely, the "good" in Spinoza is what brings one closer to the model of perfection of the thing whose goodness is being described. Thus we call a pen to be a good one when it does its function well, such as enables one to write smoothly. For Spinoza there is a close tie between perfection and goodness. And in fact both are technical terms in his system. For Spinoza, "... each one called perfect what he saw agreed with the universal idea he had formed of this kind of thing, and imperfect, what he saw agreed less with the model he had conceived" (Spinoza 1985, p. 544).¹² And since Spinoza says in Part IV of his *Ethics* that 'good' refers to "what we know certainly is a means by which we may approach nearer and nearer to the model of human nature," and 'bad' (or 'evil' in Curley's translation) as "what we certainly knows prevents us from becoming like that model" (Spinoza 1985, p. 545), the line between perfection and goodness on the one hand and imperfection and badness on the other is clear. The model of human nature specifies what is good and bad, and what is perfect is also good because it accords with the model, and vice versa for the imperfect and the bad.

However, before we proceed any further, it might be advantageous to make clear at this point what ethical naturalism actually is and whether, in fact, both Floridi's and Spinoza's ethical system could actually be regarded as naturalist. A definition of ethical naturalism is that the moral predicates, such as 'good' and 'bad' do describe what obtains in *fact*, i.e., in reality itself. That is to say, being good or bad would on this account be on a par with being tall or short. Goodness and badness describe natural properties in the world. If we look closely at the ancient conceptions of ethics, such as Aristotle's and much of the ethical theories of the East (such as the Confucianist and the Buddhist), we find that these conceptions are more or less naturalist. For Aristotle, the goal of human endeavor is to achieve what he calls in Greek *eudaimonia*. This is a rather difficult concept to translate directly into English, but most standard translations have it as 'happiness' or 'flourishing.' The idea is that one is 'blessed with good life' when one fulfills one's natural condition such that one flows, so to speak, with the order of things and when

one, in other words, knows precisely what is to be done in varying circumstances and fulfills one's potential as a human being. Hence the naturalistic tendency in Aristotelian ethics can be seen in that one's moral character would be expressed through one's empirical or natural condition, or at least this condition functions as a necessary condition for one's being able to achieve moral value. For instance, one who knows well how to act and to behave in certain circumstances and to function properly would be one who is *good*. Here one finds the familiar sense of the Greek sense of virtue (*arētē*) as excellence, where the virtues jointly define what it is for a thing to be good or excellent *qua* the thing it is. In behaving in accordance with what it is to be a human being, one does good acts. The naturalistic tendency occurs when there is a conceptual link between the 'what it is to be such and such a thing' and 'goodness' or 'badness' as the case may be.

For Aristotle, then, ethics, as a naturalistic ethics, is further based on a given metaphysics. Indeed, I would venture to say that all pre-modern conceptions of ethics are based on some kind of metaphysics. For Aristotle and the Greeks, as well as the Eastern philosophico-religious traditions, ethics and metaphysics are intimately linked, and it is only the moderns such as Hume, Mill, Moore and others who severed the link in their attempts to rid value theory of metaphysics altogether.

The standard criticism leveled by modern philosophers against the naturalist tendency found in Aristotle is that it is illogical to argue that statements of value follow from those of facts. Hence Hume's famous dictum: One cannot imply 'ought' from 'is.' G. E. Moore then made the well known 'naturalistic fallacy,' a kind of fallacy that occurs when one argues in such a way. Viewed through the lens of formal logic, this appears to be true. From statements describing what is or is not the case in the world, one would seem indeed to be committing the fallacy if one were to argue from them that one should or should not do something. After all, describing what reality is like and telling someone to do or not to do certain tasks are very different speech acts, and one would be hard pressed to convince others of the necessary, logical link between the two. Hence Kant has his famous dictum that it is the 'good will' that trumps over anything else in ethics when the question is whether an act is moral or not. An act may incur a lot of pleasure and good feelings in a very large number of people, but that is inconsequential to the question whether that act is moral or not. In the same way, Kant might say, *pace* Aristotle, that one can be blessed by the gods (*eudaimōn*) in every way possible, yet one might not be acting morally. Being moral is a

¹² Spinoza ([1677] 1985, 408–617, p. 544).

matter of the will, which is inside, not of any outside circumstances.

Thus, one brand of naturalism in ethics argues that one could derive 'ought' from 'is' in one way or another, and it is not fallacious to do so. Many philosophers, when confronted with Spinoza's ethics, thought that Spinoza might not be doing ethics at all, but simply proposing a metaphysical system. William Frankena, for example, questioned whether Spinoza was doing a kind of 'prescriptive ethics' at all.¹³ On the other hand, Paul Eisenberg, in agreement with Edwin Curley, thought that Spinoza was not an ethical naturalist, for many key passages in the *Ethics* could be interpreted in such a way that terms such as 'good' or 'model of human being' do carry normative meanings.¹⁴ However, there is not enough space in this paper to go into any details of interpretation of Spinoza's text. Here it suffices to note that the key passages in the *Ethics* do point toward an apparent naturalistic interpretation. However, I disagree with Eisenberg and Curley in that I think Spinoza is indeed a naturalist, if that is taken to mean that it is permissible to deduce statements of value from those of facts, but obviously not in the sense that Frankena takes him to be naturalist.

Now let us look at the key passage in the *Ethics*. Spinoza discusses ethics in Part IV of his monumental work:

As far as good and evil is concerned, they also indicate nothing positive in things, considered in themselves, nor are they anything other than modes of thinking, or notions we form because we compare things to one another. For one and the same thing can, at the same time, be good, and bad, and also indifferent. For example, Music is good for one who is Melancholy, bad for one who is mourning, and neither good nor bad to one who is deaf.

But though this is so, still we must retain these words. For because we desire to form an idea of man, as a model of human nature which we may look to, it will be useful to us to retain these same words with the meaning I have indicated. In what follows, therefore, I shall understand by good what we know certainly is a means by which we may approach nearer and nearer to the model of human nature that we set before ourselves. By evil, what we certainly know prevents us from becoming like that model. Next, we shall say that men are more

perfect or imperfect, insofar as they approach more or less near to this model.¹⁵

What does it mean for Spinoza to claim that both good nor evil "indicate nothing positive in things"? I think what he has in mind is that predicates like 'good,' 'evil' or 'bad' do not describe properties as they exist in themselves in nature, and here is perhaps one sense where Spinoza may find sympathy from non-naturalists and non-cognitivists. Things are bad and good in so far as they related to human beings, and in themselves, in their natural states, things are neither good nor bad. An eruption of a volcano may be very bad if it destroys a city nearby, but in itself it is just a natural phenomenon. Someone who embezzles money indeed act wrongly, but the mere act of putting some pieces of paper into one's pocket is neither good nor bad. Spinoza also expands the scope of application of 'good' and 'evil' or 'bad' to include those that are not action, such as music. Here music is good for someone and is bad for another, and is neither good nor bad for yet another. The goodness and badness of music, then, is entirely due to its effect on us.

However, the apparent naturalistic sense of Spinoza is evident in his music example also. Music is good for someone because, presumably, it brings about something desirable in his bodily constitution, as Spinoza says that it is good for one who is melancholy. So what is good is what creates some change toward what is desirable. And are we to say that this would mean that Spinoza is in fact arguing that goodness is a natural property? In any case, it is clear that music cannot be good or bad in itself, since for the deaf it is neither. So the parallel in Spinoza and Aristotle is that what is good is so because it contributes toward the realization of some desired goal. In both Spinoza and Aristotle, there is the exemplar, the ideal of what it is to be a full human being, and an action is good just in case it contributes to realization of the ideal.¹⁶

Floridi does argue along the same line, as we have seen. An action would be considered a good one in Floridi's theory just in case it contributes in some way toward the preservation and flourishing of the infosphere itself. Here goodness does possess at least some feature of a natural property, since it refers to a kind of property instantiation of which would bring

¹⁵ Spinoza, *Ethics*, p. 545.

¹⁶ In "Spinoza's Normative Ethics," Michael LeBuffe states that the model of human nature in Spinoza here is a model of a free man. This ideal, according to LeBuffe, is useful for diagnosing the condition of an ordinary human being and serves as a standard by which his or her action is judged. See LeBuffe (2007, 371–392, p. 389).

¹³ Quoted in Eisenberg (1977, 107–133, p. 109).

¹⁴ Eisenberg, Is Spinoza an ethical naturalist?, pp. 113–115.

about something that is desired or is valuable. It describes a property whose instantiation contributes to the realization of the ideal. This seems to be at work when Floridi says that “the ‘receiver’ of the action is placed at the core of the ethical discourse.”¹⁷ Hence it is not only the agent’s deliberation or subjective activity that is necessary for ethical values, but the status of the ‘receiver’ or one who will be effected by the decision and the action of the agent also. When Floridi expands this conception of biocentric ethics to the ontocentric one, the idea, then, is that the whole of ontology needs to be considered. A ‘good’ action, then, is one that contributes to the richness and fullness of the ontosphere or the infosphere, while a ‘bad’ action does the opposite. Since for the infosphere to become richer or poorer is a natural phenomenon, goodness and badness for Floridi are then natural properties in this sense. In other words, realization of the ideal is a natural phenomenon; here one talks about how the abstract ideal becomes reality. Thus goodness, in virtue of its being a property of any action that is efficacious toward realizing or concretizing the ideal, is in fact a natural property.

Now the objection against ethical naturalism of this kind is quite familiar. Kant says at the beginning of his *Foundation for the Metaphysics of Morals* that of all things there are in the world, only *good will* alone is capable of being good in itself.¹⁸ This idea points to a very basic intuition that we have in doing ethics. Since Floridi argues that the infosphere should be enhanced and not made impoverished, it seems that the infosphere is a good, in the sense that the healthy environment is a good in environmental ethics. However, suppose God, or Nature in Spinoza, or the infosphere in Floridi, is not good in itself, or is only good because of some other thing, then what would happen? Suppose the infosphere happens to be an oppressive one, out of which one wants to escape? Suppose it is a Big Brother that destroys our privacy, keeping nothing to ourselves? There would then be no private information, as all information flows and collects into the infosphere. What we are now getting here is an attempt toward a justification of Floridi’s four rules mentioned earlier in the essay. As Spinoza justifies his normative judgments through his own system of metaphysics, so, it seems that Floridi would be in need of a justification in a parallel way. As Substance is inherently good in Spinoza, so too is the infosphere.

The questions listed in the above paragraph are only possible because it is presupposed, as is indeed the case with Kant, that we human beings and our natural environment are separate. Once human beings regard themselves as totally distinct from the external reality, then the question then arises what kind of ultimate good it is supposed to be there in the external reality. Kant’s good will is only what is happening inside someone’s mind. Someone might say: “I have a good will and this will is good in virtue of nothing whatsoever, and all things in the world are only good because of it.” The picture is reminiscent of Descartes, when he wanted to base all knowledge on the subjectivity of the individual. What Descartes wanted to do for epistemology, Kant was doing the same for ethics.

What is noticeable in both Descartes and Kant is that although they avowedly claim that metaphysics (in the sense of a basic, bedrock reality that is ‘out there’) has no role to play in either epistemology or ethics, their conceptions do in fact depend on a kind of metaphysics anyway. Descartes takes it for granted that his thinking self could exist alone without any connection on the environment, something that the ancients would find very strange. Kant’s view on good will would also seem a bit strange to them. They might ask what the good will is good for. If it is to be good at all, it has to lead to some desirable thing, or more precisely it needs to enable things to become better integrated with reality.

Here, then, is the basic difference between naturalists like Spinoza and Floridi and non-naturalists like Kant. For Kant, the good will is the cornerstone of his whole system. In the end it is an individual decision, his or her own conscience, that decides whether an action is right or wrong. Naturalists like Spinoza and Floridi would think, on the contrary, that individual decision needs to be in tune with larger reality in order for it to make sense at all.

Let us come back again to Spinoza’s definition of ‘good’ in Part IV of the *Ethics*: “I shall understand by good what we know certainly is a means by which we may approach nearer and nearer to the model of human nature that we set before ourselves.” Eisenberg has argued that Spinoza should not be considered as an ethical naturalist, if by ‘naturalist’ one means someone who views ethical predicates to be only ones describing natural properties.¹⁹ For Eisenberg, the very use of the phrase “model of human nature” in itself implies an ethical value and meaning which shows that he is not a naturalist in the blatant sense. According to Eisenberg, an ethical naturalist would be one who has no idea how to *commend* human

¹⁷ Luciano, *Global information ethics: the importance of being environmentally earnest*, pp. 11–12.

¹⁸ Kant (2002, p. 9).

¹⁹ Eisenberg, *Is Spinoza an ethical naturalist?*

behavior. However, since Spinoza's use of the phrase "model of human nature" shows, according to Eisenberg, that Spinoza already has in mind the status of the model (Latin, *exemplar*) such that there is something more in the model than mere description of human nature. That is to say, there is an element in Spinoza's use of this phrase that makes it possible to commend or to blame behaviors, and that would make Spinoza not a blatant naturalist.

It should be noted that Eisenberg's and my use of 'ethical naturalism' are not exactly the same. For Eisenberg one is a naturalist when the language one uses does not lend itself in any way toward moral judgment. If Spinoza were an ethical naturalist in Eisenberg's sense, then he would presumably be using terms such as 'model' and 'perfection' and others in such a way as strictly to describe reality and no way of providing any moral sanctions. But perhaps that might be too strong a conception. One, I submit, might indeed hold that moral terms like 'good' and 'bad' do describe natural properties, or putative properties that eventually lead to consequences that can be empirically discerned, while still maintaining the sense of moral sanction or judgment that seems to be required by Eisenberg. In short, one may hold that moral terms describe natural properties, but still very much retain the sense of moral terms which is used for commending or criticizing behaviors. When one says to another that what the latter has done is good, one is indeed, according to the naturalist, describing a natural property, but there is another, no less important, sense. One is also *commending* the latter's action.²⁰ The speech acts are different. When one says "What you have done is good," what she is saying is not only that goodness does apply to what the latter has done, but she is also praising what the other has done, with an aim perhaps to show her appreciation or to encourage the latter to continue doing the same type of action. There being different speech acts here seems to show that at least one can hold that moral terms do describe natural properties while at the same time retain their sanctioning and criticizing sense. Spinoza would agree that to say of a certain action by someone that it is good and to commend the person who has done it is, for all intent and purposes, one and the same.

So how does this discussion help us understand the question raised earlier about the infosphere destroying individual privacy and is thus nothing good in itself? The question is only a dramatization aimed at showing a possible pitfall of a naturalism that bases the source of goodness in ontology, a standard argument against naturalism. When asked about

what is good about God being everything there is, and what would be left of the individual person when God includes everything and that everything is identical with God – Spinoza would, I believe, reply that one should think in terms of individual beings being totally separated from Substance. So he says: "It is impossible that a man should not be a part of Nature, and that he should be able to undergo no changes except those which can be understood through his own nature alone, and of which he is the adequate cause," says Spinoza in Proposition 4, Part IV of the *Ethics*.²¹ There is no separation between man and nature; everything is part of one and same reality. And if one were to ask for an argument in support of this, Spinoza or the naturalist could turn the table and ask the anti-naturalists for an argument in support of their thesis for the radical separation of man and nature that is presupposed in both Descartes and Kant. And in fact Spinoza's whole system in the *Ethics* was designed to support this particular Proposition and indeed other Propositions in the system.

We are now also in a better position to discuss the other problem mentioned earlier. Would merely increasing the size of the infosphere thereby a good act according to Floridi? There does not seem to be this discussion in his articles, but I would suggest that adopting Spinoza's insights might help him here. For one thing Floridi could accept that sheer size of the infosphere is a good thing in itself. But that seems counterintuitive. For Spinoza, on the other hand, 'good' is defined in reference to the exemplar or the model of human nature, and not to Substance as a whole. It is likely that the exemplar of human nature does not include merely increasing the size of the universe for fun; thus Floridi could modify in system accordingly.

The rather lengthy discussion of history of Western philosophy above serves to show certain parallelisms with Floridi's ontocentric ethics. First of all, Floridi's is an adaptation of the ancient view (and here Spinoza's ethics is in accord with the ancients, broadly speaking and especially in contrast with Kant) on ethics. Nature is given the supreme importance. In fact we can call it 'Nature' or 'Substance, or 'God, and in Spinoza of course these are only labels we put on the ultimate reality. According to Floridi it is the infosphere. For Spinoza a good act is one that is conducive to the flourishing of Substance. Viewed in this way, such acts as deceiving and telling a lie would not on the whole be so conducive because it tends to lead to consequences that are very often destructive. This is a straightforward teleological

²⁰ See also LeBuffe, Spinoza's normative ethics, p. 389.

²¹ Spinoza, *Ethics*, p. 548.

ethics. Modern critics have argued that teleological ethics is untenable because it tends to presuppose certain brands of metaphysical system which cannot be accepted by the modern sensibility. However, Floridi is, in my view, to be commended for bringing back teleology and making it more palatable for our contemporary age through his systems of information ontology, ontic trust and the infosphere.

Thus, applying Spinoza in this way to Floridi's conception of an information ontology, we can see that the answer is that the infosphere does not suck up all information, destroying privacy. All information is already there in the infosphere from the beginning. Protection of privacy is needed in a circumstance where there is a possible encroachment of personal information in such a way that threatens the rights and dignity of the individual. And here we are descending from the level of abstraction toward the greater specificity of everyday reality. Even if we believe that ontology is constituted by information, since reality can be described in more and more details and at deeper levels of abstraction, thus necessitating the need for more information,²² the need to protect privacy would not be affected because there being the infosphere as basic reality does not mean that all information should be in the hands of the political authority. The question about infosphere and privacy is designed to illustrate a challenge of the anti-naturalist who emphasizes the putative possibility of the individual against the ontology, but the two need not be in conflict with each other. And in case there is conflict, that would show that there is something bad or evil going on ("Insofar as a thing agrees with our nature, it is necessarily good" Proposition 31, Part IV²³), something that is contrary to the way things are.

In sum, then, Floridi and Spinoza share a naturalism in ethics in that they both allow a deduction of statements of values from those of facts. Such deduction, however, does not imply that statements of values be reduced to mere description of reality with no prescriptive or normative force. On the contrary, the normative is already included in the ontology and it does not make much sense to

separate the normative from the descriptive, as God or Nature in Spinoza is a whole system in which the normative arises from the relation between human beings and the system itself in so far as it promotes the ideal *exemplar* of human beings.

Here, then, is one of the main differences between Floridi and Spinoza. In Floridi, acts that promote the well-being of human beings are not given much attention. Acts are good more in so far as they promote the well-being of the infosphere and not because they promote only human flourishings. In this way, Spinoza still takes a rather anthropocentric standpoint, even though according to his system there is only one Substance so presumably the interest of human beings should be on the same level of those of the rest of reality. This may of course appear to be in conflict with what we have seen so far, which is that human beings are inseparably a part of nature. In order to understand this point let us recall Spinoza's key definition of the term 'good' in Part IV of the *Ethics*: "I shall understand by good what we know certainly is a means by which we may approach nearer and nearer to the model of human nature that we set before ourselves." The key phrase here is 'the model of human nature.' As an action approaches the model, then it is a good one. It is quite apparent that what is good is judged against this anthropocentric standard. There is the model of the perfect human being which for Spinoza obtains objectively and is entirely accessible through cognition. The model provides a benchmark against which any action could be evaluated. But still it is a model of *human* nature. Hence Spinoza is following a long line of tradition in seeing that ethics is centered upon human beings. Floridi, on the other hand, sees ethics in a much broader term. As his conception of the infosphere shows, the benchmark of what is to be evaluated as a good does not include only a model of human nature, but all nature taken as one single unity. An upshot of this difference is that Floridi's system appears to be more straightforward in providing a justification for the moral worth of all other parts of nature besides humans.²⁴

Spinoza and Floridi on the problem of the lion

It would be interesting to learn what Spinoza would say regarding the problem posed by ethical

²² Floridi provides a very useful exposition of his information ontology in Floridi, *Against digital ontology*, forthcoming from *Synthese* and available online as a preprint at <http://www.philosophyofinformation.net/preprints/ado.pdf> (retrieved April 2, 2008). He says: "the ultimate nature of reality is informational, that is, it makes sense to adopt LoAs that commit our theories to a view of reality as mind independent and constituted by structural objects that are neither substantial nor material" (Floridi, *Against digital ontology*, p. 35).

²³ Spinoza, *Ethics*, p. 560.

²⁴ This, however, does not mean that Spinoza's system is inferior, for an exemplar of a good human being could well include the awareness that the whole environment needs to be protected. So it is possible that both Floridi's and Spinoza's would be equally effective.

relativism, or what Floridi terms the problem of the lion. And more specifically, how would Spinoza's and Floridi's systems answer the challenge posed by Dan Burk mentioned earlier about the differences in information ethics between the European Union and the United States? Since Spinoza models his entire system on a deductive, or geometrical system, one would think that he could not allow there being more than system apart from his own. As geometry and mathematics are universally true, so is his system.

The diversity of cultural traditions and ethical judgments indeed post a serious challenge to any ethical system that is based on metaphysics. For different groups of people do have different ways to conceptualize the underlying reality, to such an extent that it might make sense to talk about their being different realities. The Greeks might have one ethical system, but the Chinese do have another system, so do other cultures in the world. As Floridi points out at the beginning of his paper, globalization is pervading all corners of the globe now, so how should all these differing ethical systems be reconciled?

For liberals like Kant and Mill, the solution is straightforward. Get rid of all the metaphysics and you will be left with the empirical realities and the individual person. As ethics cannot be based on empirical realities, because these too vary according to so many factors such as geography, history and so on, the only recourse left is the individual person herself. So no matter whether one is a Greek, a Chinese, an Indian, or any other, one is still an individual, with one's own subjectivity that she could set apart from whatever falls under the objective part of her thinking. In the same way, Mill seems to equate personal pleasure with the good or the utility which should always be maximized in the largest number of people. As everyone is an individual, he or she would want to enjoy pleasure, hence this becomes a universal in Mill's theory. What Mill shares with Kant, then, is the belief that the most basic underpinning of ethical theory is the individual.

For the liberals, it would be irrelevant to see the differences among the individuals. Of course, everyone is different, so an imagined liberal would say, but that is not exactly the point. The point is that they are all individual beings, who are capable of their own particular versions of life histories, subjectivities, thoughts, desires, visions, and so on. When these are calibrated together, one gets the familiar picture of the liberal social and value theory such as John Rawls'. However, the basic difference between these liberal theories and that of Spinoza, and I would say, Floridi, is that instead of basing the underpinning of value on the individual – the whole ontic substance, the whole of reality itself, undergirds that value. So

the Spinozistic theory would, presumably, counter the charge of varying metaphysics by saying that all these varying metaphysical systems, whether they be Greek, Chinese, Indian, Mayan or whatever, do share in the more basic, larger reality within which they all live from the beginning.

This may look like a simple picture, and the liberals would be quick to point out that the empirical reality of the earth on which all humans live is one thing, but the conceptions different cultures have of this one reality do differ very widely. And it is the latter that figures in forming some normative judgments that do vary across cultures. The Spinozistic philosopher could well accept that, but she might want to counter that these differing conceptions, instead of necessarily being in conflict with one another, indeed do complement each other and all contribute toward the more colorful and much richer picture of the one reality than the liberals do. After all, Kant and Mill both try to reduce ethics to just a handful of rules. Either follow the categorical imperative, or follow the utilitarian maxim (which are, when looked at this way, quite the same). These rules should be applicable everywhere, or so the liberals think, but then the rich tapestry of different cultures that all together contribute to the colorful picture of the whole world would be lost.

I am not, of course, appealing to colors in my defense of the Spinozistic theory. What Spinoza would say in this situation is to point out that in his large system, all different ethical systems would have their roles to play, and as they are functioning ethical systems in real cultures, they just cannot be a bunch of ad hoc arbitrary rules. On the contrary they need to be rational, and since Spinoza's is nothing but a rational system, then these differing systems would be part of the bigger system: this means, in other words, that they are part of God *or* Nature, from the beginning.

When this is translated to a more mundane language, what emerges is a way of thinking about information ethics that, on the one hand, pays respect to the different cultural traditions of the world, and, on the other, recognizes that these different systems do belong to a larger system, a larger reality in which they are parts, such that when needs be, these smaller systems could be adapted and merged together in order for them to serve our goals better. Since they are already parts of the basic reality, they can be changed, expanded and contracted without creating an impact to reality at all.

In his 2007 paper, Floridi mentions the Problem of the Lion. This is a problem that occurs when we human beings cannot communicate with the lion, an echo of Wittgenstein's dictum in the *Tractatus* that if lions could speak, we would not be able to

understand them. This is what happens when two groups of symbol makers and interpreters just cannot begin to understand each other in any way. However, as Donald Davidson has famously argued,²⁵ this is actually an incoherent picture. If the lion could speak, there has to be a way to connect its symbols with its meaning, and since that connection has to be systematic (otherwise we would not be saying that the lion has a *language* at all), then we will be able to translate its language into our own. So there cannot be the Problem of the Lion. What results is that all cultures, understood as all groups of symbol makers and interpreters and language users, can be calibrated since they belong to the same basic reality, or Spinoza's God *or* Nature.

Hence, the EU and the US do have their different ways of explaining and justifying their ethical systems, which stem from their different traditions and histories. The EU typically regards author's rights in a more deontological way; the rights do belong to the author in virtue of her being author or creator of the work. The US, on the other hand, views the matter in a more utilitarian or consequentialist way. It is beneficial to have a legal system that respects author's rights because that encourages more creative works. It would be pointless to crash these two viewpoints together to try to find out who is right. Instead, Spinoza would recommend that these viewpoints do have their own peculiar histories, and they have worked well in their respective domains. When globalization is in full force and there arises a question as to the model of intellectual property rights that the whole world should adopt, the solution is to be found in a typically Spinozistic way, rational deliberation: "Insofar as men are torn by affects which are passions, they can be contrary to one another," and "Only insofar as men live according to the guidance of reason, must they always agree in nature" (Proposition 34, 35, Part IV²⁶). So whenever there is conflict among people, that conflict must be due to some lack of the guidance of reason. Hence, there has to be a way to rationally adjudicate between the two positions through mutual dialogues, trust and understanding.²⁷

The difference between the US and the EU might not be strong enough to illustrate the point I am making, as they actually belong to the Western tradition together. For a more dramatic illustration, let us look at the different conceptions of privacy in the Western and Chinese traditions.²⁸ Charles Ess and

Lü Yao-huai have documented the difference in the Western and the Chinese conceptions, noting that justification of privacy started with one that regards privacy as an intrinsic good, and then the justification became more consequentialist one, as many arguments were put forward claiming that privacy was needed for the full functioning of democracy and electronic commerce.²⁹ Ess, quoting Lü, also noted that the term 'privacy' is written in two different ways in Chinese. The older, more traditional way, written in one particular set of Chinese characters, means more precisely "shameful secret" and it is only recently that a neologism emerged that means more like the modern concept of privacy in the data-sphere.³⁰ Ess also noted that the justification for the Chinese conception of modern privacy (not exactly the same as shameful secret) is also business-oriented.³¹ While it is quite clear that, traditionally, the Chinese, influenced by Confucianism, did not have the exact counterpart of the Western concept of privacy, but due to globalization and the opening up of Chinese culture to the world, there is a change in Chinese language and culture such that the Western concept has found its way into it. Nonetheless, one is quite sure that the term 'Yinsi' that is Chinese for 'privacy' would not have the exact meaning and exactly the same uses as 'privacy' in the West. So there are differences, and they belong to one and the same unity. This could well be a Spinozistic picture. What happened was that the Chinese opened themselves up to the world, and found that the Western concept of 'privacy' was useful in its dealings with the outside world. This caused a new word to be introduced to the traditional Chinese vocabulary. This does not mean that their old ethical system, one that perhaps did not put as much value on privacy as did the modern West, is replaced by that of the West, nor does this imply that there is only one universal ethical system that every culture should adopt. What this means is only that when cultures interact with one another, some content and presuppositions of the cultures are bound to change to fit the everyday efficacy of the functioning together.

So how is this discussion of the cultural conceptions of privacy related to Floridi's ontocentric

²⁵ Davidson (2001).

²⁶ Spinoza, *Ethics*, p. 562f.

²⁷ See also Hampshire (2005, pp. 196–199).

²⁸ For an attempt to justify privacy from a Buddhist perspective, see Hongladarom (2007).

²⁹ Ess (2007, 71–87, p. 81). See also Lü (2005, pp. 7–15).

³⁰ Ess, Information ethics: Local approaches, global potentials? or: Divergence, convergence, and ethical pluralism as maintaining distinctive cultural identities and (quasi?)-universal ethics, p. 81.

³¹ Ess, Information ethics: Local approaches, global potentials? or: Divergence, convergence, and ethical pluralism as maintaining distinctive cultural identities and (quasi?)-universal ethics, p. 82.

ethics? For one thing, both examples about the US and EU and about the Chinese conception of privacy do not seem to show that the Problem of the Lion is at work here. The US and the EU do understand each other to a large extent, and those of us who are non-Chinese appear, I believe, to understand what the Chinese are up to regarding informational privacy relatively well. We are after all human beings, and the problem is not as unsurmountable as the hypothetical one on communicating with the lion. But if this is the case, then for Floridi all cultures do share a system of normative judgment up to a certain level. We might call it, following Floridi, a level of abstraction. Up to a certain level, things are the same for the Europeans, Americans and Chinese. But when one digs deeper then one finds cultural differences. These differences, however, do not imply that Floridi's ethics is relativist, because the injunction to enrich the infosphere would be tenable anywhere there are human beings who interact with the infosphere.

Now that we have entered a deeper level of abstraction, then there is the problem of how we are to prioritize differing value systems. For example, how are we to prioritize the American or the European model of informational privacy? There is no clear cut or simple answer at this point. According to Floridi's system, so long as the US and the EU models are absolutely equal in preserving the integrity of the infosphere, then there would be no means by which one could adjudicate between the two. However, that does not mean that there is no way at all to choose between the two. As a thoroughgoing naturalistic ethics, Floridi's would presumably lead us to solve this problem empirically, and this requires that we have objective indicators of richness of the infosphere which is agreed to by all, and which could eventually show up which one among the two should be the preferred one, since it accords better with the preservation and richness of the infosphere itself. Nonetheless, in the case (perhaps a hypothetical one) in which no winner emerges after a practicable period, people could then come to the table and discuss this over. This is possible in Floridi's system as all human beings do share the same ontology. One thing is clear, though; any disagreements that both parties feel that they need to be resolved often are those practical ones such as the actual content of rules and regulations that affect both sides. Agreements as to what justify those rules and regulations, however, are much harder to come by. There is of course not enough space in this present paper to discuss all the implications of Floridi's ethics fully, but at least I believe we have had a glimpse of a picture of what his ethics is like and how it is comparable to Spinoza's.

Conclusion

Spinoza says that action that leads to Joy is a good one and action leading to Suffering a bad one (Proposition 8, Part IV³²). He officially defines 'Joy' in the Part III of the *Ethics* as "a man's passage from a lesser to a greater perfection," and 'Suffering' in a diametrically opposite way.³³ So whatever leads to more perfection is good and what leads to more imperfection is bad. This corresponds to Floridi's idea of the good being what increases the quantity and richness of the infosphere. Hence, when one is confronted with two ethical systems from two cultures, one way to test them would be to see how much Joy or Suffering each incurs. This sounds like utilitarianism, but actually it is not, for in utilitarianism the emphasis would be on the pleasure of a quantifiable number of people and the pleasure itself has to be quantifiable too. Joy (Latin, *laetitia*) in Spinoza, on the other hand, is an ethical concept from the beginning, and it is also at the same time metaphysical. Presumably the deontological conception of the Europeans and the consequentialist position of the Americans do work well in their respective environments. In that case both do maintain and increase the integrity and the 'perfection' of their own environments, hence both are *good* in Spinoza's conception, as well as Floridi's. Joy or happiness is inextricably bound up with perfection of nature. The individual cannot extricate herself from her own specific and fine-grained details of her social and physical environment.

In the case of the Chinese conception of privacy, things are a bit more complicated. The Chinese do have their own metaphysics which holds that the individual is more understood as a web of relations rather than an atomic, self-subsisting entity commonly accepted in the West. In my explication of Spinoza and Floridi, am I implying that their ways of doing ethics and metaphysics should trump over the other ways, including the Chinese? Am I saying that a set of ideas originating from an obscure Jewish lens polisher in Amsterdam somehow superior to those in Chinese culture? Nothing is further from the truth. Actually we do not even have to mention Spinoza's name because the one Substance can be called in many ways, and Spinoza himself sometimes calls it 'God,' 'Substance' or 'Nature,' while Floridi calls it 'the infosphere.' Thus, the whole system does not have to bear Spinoza's name, and can be understood in many languages. So the system here could be Indian, or European, or Greek, or any other, as long

³² Spinoza, *Ethics*, p. 550.

³³ Spinoza, *Ethics*, p. 531.

as it is maintained that, beyond the different languages and ways of conceptualizing, there is one Reality to which everything absolutely belongs.

If we keep this in mind, then we should begin to understand the Chinese problem. (For the Lion Problem, it is not possible at all, since we cannot talk with the lion, as we have seen.) Since individual things in the world are all parts of the one Substance, and since strictly speaking there is only one thing, namely the Substance, or God – individual things are only modes of God's thought. Or, to put it plainly, individual things are only created and are necessarily limited, and since all there is only one, the individual things are, strictly speaking, modifications of the one Substance itself. This is a very important vision, and it is a vision that played an important part in many religious traditions of the East as well. There is not enough space in this paper to delve into any detail comparing Spinoza with the Eastern religious traditions, and the mystical vision of there being only one thing. But in any case, if what Spinoza is saying makes sense, what is Chinese or Western are only modifications of the one Substance. So the system in which the individuals are regarded as webs of relations is part of one particular culture and has clear roles to play in that culture, and the system that regards the individual more atomically also has its own place in history: but when we focus ourselves on the vision of the one Substance, then these differences fade away. This is definitely not to say that the differences are not important; far from it, both are inalienable parts of the one Substance. And if there is no need to calibrate the two systems in one umbrella system (in fact in many cases it has seemed that the Chinese conception of the individual has more advantages), then the two could be left as is, each enriching the one Substance.

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