

Global Privacy in Flux: Illuminating Privacy across Cultures in China and the U.S.

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Globally, privacy is under threat. To many in academia, there is little hope in preserving active domains of seclusion, secrecy or anonymity within an increasingly risk-averse, surveillance-networked, global society. Further, scholars within the field of surveillance studies have suggested that too much of a focus on the definitionally elusive concept "privacy" may, in fact, severely handicap otherwise beneficial policy initiatives. Lyon (2007), for example, argues that privacy varies widely across time and individual cultures, and carries additional entailments such as possessive individualism that limit its effectiveness.

Although privacy in American discourse over the past several decades *has* accrued a formidably complex semantic field, this paper argues that a privacy concept, sufficiently abstract to abide universal pluralism, can serve global communication interests. By exploring the interrelationships between the English word "privacy," its standard Mandarin Chinese translation, "*yinsi*," and portions of their respective semantic fields, this paper demonstrates a potential role for privacy in discourses of resistance. Over the past 10 years, as the diffusion of information, communication, and surveillance technologies has accelerated in China, "*yinsi*" has become more salient. Ironically, according to Privacy International's *2007 International Privacy Ranking*, China now has better statutory legal protection for individual privacy than the United States. Challenging the proposition that cross-cultural variations in meaning render the concept impotent, the work leverages Irwin Altman's abstract definition of privacy as a dynamic negotiation afforded by the availability of "boundary resources."

Simple equation of "privacy" with "*yinsi*" restricts potential dialog between China and English-speaking cultures such as the U.S. The paper explores interactions between the broader semantic fields of these two words via three examples: 1) the notion of "reasonable expectation of privacy"; 2) the public-private divide; and 3) the meaning and role of anonymity. The paper argues 1) that contemporary and historical experience of the Chinese people have innovative normative, technological, and perhaps even legal "boundary resources" to offer global discourses of resistance; and 2) that abstract,

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dynamic, dialogic approaches to theorizing privacy and its benefits can help to bridge cultural differences. Against apparent odds, such discourse can strengthen privacy interests in the 21st century.

Introduction

The English language concept of "privacy" has been a key rallying point for academics and activists who resist global surveillance regimes. Despite its importance, however, there appears to be a growing chorus of criticisms of the concept's problematic entailments and seemingly insoluble ambiguity. In his book, *Surveillance Studies: An Overview*, Lyon (2007) writes:

Conventionally, in the West, privacy has often been seen as the concept around which resistance to intensive or extreme surveillance may be mobilized . . . privacy helpfully alerts us to dimensions of human existence that should rightly be treated with caution and respect, in tandem with principles such as "fair information practices," offers some vital guidelines as to how surveillance should be regulated. But privacy is also hard to define and varies tremendously from culture to culture and from era to era. It is also associated with possessive individualism, with property and with a dubious notion of persons as autonomous agents. (Lyon, 2007, p. 7)

While Lyon may be correct, it is premature to dismiss both the local activist potential for the word "privacy" and its global discursive utility. In the interest of regaining some core clarity and analytical utility for the word, while at the same time helping to contribute to language that may be used in what is now a global struggle over real and potential excesses of state surveillance regimes, I explore the dynamic interrelationship between American and Chinese cultural and legal approaches to the negotiation of "privacy." "Privacy," as I will use it in the paper (with quotes), is meant to be a protean term that stands in for the highly complex semantic/discursive networks that surround inter-cultural dialog centered on this English word.

Cross-cultural dialog has become an increasingly salient topic within the burgeoning field of information ethics, where it is often called for to support "Kantian universality," a form of ethical pluralism that avoids the common pitfalls of cultural relativism. Instead of acting as barriers to communication, cultural differences can facilitate understanding:

Universality is, in Kantian terms, a regulative idea that can only be perceived and partially achieved within the plural conditions of human reason, i.e., through a patient intercultural dialogue on the maxims that may guide our actions. The concept of humanity and consequently the concept of human rights need permanent interpretation on the basis of an intercultural ethical dialogue. (Capurro, 2006, p. 183)

This pluralism does not conceptualize connection in the form of a sheer identity that trumps difference: rather, its complementarity understands relationship as a coherency between two irreducibly different entities, where this coherency (or, in other terms we

will see, resonance or harmony) emphasizes a positive engagement between these two as one side enhances and expands on the characteristics of the other. (Ess, 2006, p. 217)

By reflecting on the meaning of privacy in terms of its dynamic (not static) translation into Chinese language and culture, we can begin to gain broader insight into both its contingency and the deeper truths that might govern its dynamics. As I challenge the common proposition that the Chinese word for privacy is *yinsi*, or that the Chinese didn't have a concept of privacy until their exposure to Western culture, I am not trying to make a counterargument that the word for privacy *actually is some other word or group of words*. Instead, I want to explore the broader lexical and semantic galaxy that goes beyond *yinsi* to help illuminate "privacy's" role in the basic negotiation of informational boundaries worldwide. The goal of such a global definition would be to facilitate languages of resistance that work effectively across and between nation states.

Methodology

Juxtaposing the Chinese and Western concepts of privacy can help the scholar to ask uncommon questions about each and maybe even lead us to understand more central, transcultural aspects of privacy. Ferdinand Braudel (1980) was one of the first sociologists to point out the benefits of this kind of analysis in understanding what otherwise may appear to be very familiar contexts:

Live in London for a year and you will not get to know much about England. But through comparison, in the light of your surprise, you will suddenly come to understand some of the more profound and individual characteristics of France, which you did not previously understand because you knew them too well. (p. 37)

As Dogan and Pelassy (1990) note in their highly influential work, *How to Compare Nations*, "the perception of contrasts makes researchers sensitive to the relativity of knowledge and consequently helps liberate them from cultural shells" (p. 9). A binary comparison, they add, "permits a kind of detailed confrontation that is almost impossible when the analysis encompasses too many cases" and "makes possible a study in depth" (p. 127). In his address to the American Sociological Society, President Melvin Kohn (1987) stated that cross-national comparisons were "potentially invaluable" and "grossly underutilized" (p. 713).

In more general terms, Marshall McLuhan (1964) argued that direct juxtaposition of otherwise unrelated elements can lead scholars to unexpected insights and analytical clarity of their objects of study that may otherwise be elusive:

"Interface" refers to the interaction of substances in a kind of mutual irritation. In art and poetry this is precisely the technique of "symbolism" (Greek "symballein" — to throw together) with its paratactic procedure of juxtaposing without connectives. It is the natural form of conversation or dialogue rather than of written discourse. In writing, the tendency is to isolate an aspect of some matter and direct steady attention upon that

aspect. In dialogue, there is an equally natural interplay of multiple aspects of any matter. The interplay of aspects can generate insight or discovery.

Data sources

The data on which I draw is largely archival, from the following areas: official U.S. and Chinese government publications and statements, public opinion polls, sinological academic journals, language dictionaries, U.S. academic legal and philosophical discourse on privacy and surveillance, and mass media accounts.

Research Schematic

The paper explores the dynamic relation between Chinese and U.S. concepts of “privacy” via multiple points of juxtaposition: privacy translated into Chinese as “*yinsi*,” the notion of “reasonable expectation” of privacy, the public-private dialectic, and finally the notion of anonymity. These nodes are not entirely distinct from each other and have important interactions.

The diagram to the right is intended to provide a quick, visual orientation to a linguistic juxtaposition of English and Chinese privacy. This can be understood as a kind of semantic field surrounding the word “privacy.” These are words that come to mind, that tend to become part of conversations in which privacy is discussed and negotiated. Words from each rectangle that have similar row-column cell positions reflect their equivalence in typical dictionary translations. For, example, privacy and *yinsi* both occupy the center positions of their respective rectangles; *gong* and public both occupy the middle of a top row. Within a rectangle, words along the central vertical axis are considered to be more closely related than those with significant horizontal separation. Maximum vertical separation suggests that the terms commonly appear in opposition.

It is important to note that this map does not purport to represent the “comprehensive” semantic field surrounding the words for “privacy” in either language. I argue only that these words appear to play an important role in the privacy discourse of both countries, not that they are the only important words. Given today’s U.S. political climate, the word “security” is quite frequently seen and heard in discourse on privacy, but perhaps not nearly as frequently in China. Other words, like “secrecy” or “trust” could also have appeared, but they are not the subject of

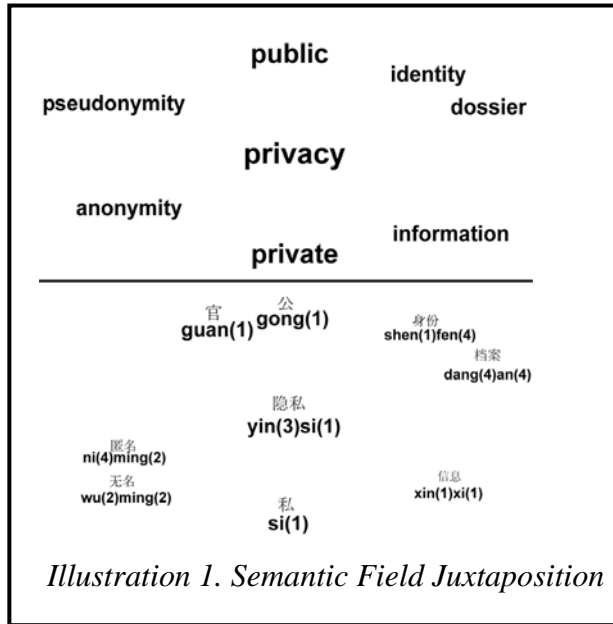


Illustration 1. Semantic Field Juxtaposition

the present exploration. This is a selective representation. It is intended to help orient the reader to the exposition that follows, and to illustrate how such maps can help us to better understand the social dynamics of meaning.

The first juxtaposition, the linguistic equation of privacy with *yinsi*, is a critical space to start. Translation is highly complex process rife with unfounded assumptions and embroiled in power politics (Liu, 1995). Social systems constitute themselves in language, thus making words the basis of the reality we experience (Austin, 1962; Berger & Luckmann, 1966; Rorty, 1989; Searle, 1995).

The remaining three nodes reflect areas that have their own powerful tensions and ambiguities within Western discourse that cry out for a more informed universal pluralism. The notion of "reasonable expectation" of privacy is a key term in the legal justification of privacy interests in the U.S. and has a common sense interpretation that translates easily across modern languages. The notion of public and private space has been debated for at least as long in China as it has in the West, where scholars seem increasingly dismayed at the possibilities for conceptual coherence. Finally, anonymity in both language and practice has a complex relationship to the public-private dynamic and to the privacy concept itself that is not always clear.

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Privacy = Yinsi ?

It is surely telling that the characters that make up *yinsi*, the Chinese word for "privacy", carry the connotations of illicit secrets and selfish, conspiratorial behavior. ("The long march to privacy," 2006, p. 45)

. . . analytical categories cannot operate fruitfully in a transhistorical, transdiscursive mode. But neither do I think that cultural relativism provides a viable solution in this fast shrinking world of ours, in which geopolitical boundaries are constantly being redrawn and crossed, and in which the need for translation and interaction is literally thrust on people who had little contact before. It seems to me, that to eschew transhistorical/transdiscursive approach on the one hand and cultural relativism on the other, one must turn to the occurrences of historical contact, interaction, translation, and the travel of words and ideas between languages. (Liu, 1995, p. 19)

It is certainly true that in terms of the broadest possible mapping of Chinese and Western inter-discursive structure, we can say that the translation for privacy is *yinsi*. This is the translation you will find in any major Chinese-English dictionary. Young Chinese use the term to refer explicitly to what most Western academics would agree are a kind of privacy rights, and it is the word one sees used in the growing number of privacy-related court cases and mass media stories.

privacy

隐私
yin(3)si(1)

Compound words and neologisms in Chinese history

There is an important distinction within the Chinese language between individual character words and compound words. It is generally accepted that early forms of the Chinese language (up to the Qin dynasty, 221 BC- 206 BC) consisted primarily of monosyllabic words represented by individual Chinese characters (Tai & Chan, 1999). Compound words began to appear during the Han dynasty (206 BC-220 AD) but have increased substantially in modern times, from roughly 20% percent of the written lexicon before the Qin dynasty to more than 80% today (Shi, 2002). The pre-modern Chinese written language, today known as classical Chinese, retained a strong monosyllabic character throughout its use well into the 19th century. Only a tiny percentage of the population, scholars and government officials, could understand classical Chinese, or manage the often ambiguous, highly contextual meanings which clustered around each individual character (Rosemont, 1974). Spoken language tended more toward compound words in which the meaning of single characters were joined or blended to produce different, usually more specific connotations. The Chinese *baihua* movement led by literary celebrity Lu Xun, began to adopt more common language in written form, making it at once more colloquial and understandable to the average Chinese. With its marked increase in the size of its vocabulary, *baihua* was more able to mediate the rapid pace of intellectual and cultural development that was occurring at the time. Early 20th century Chinese thinkers began to incorporate a large number of compound neologisms, many imported from the Japanese, to translate Western concepts, such as the use of the compound *quanli* for "rights." It appears that the word *yinsi* is a recent neologism whose use has been heavily influenced by exposure to both Western legal scholarship and popular culture in the mid- to late- '80s (Zhu, 1997; McDougall, 2004). As is discussed in detail below, "privacy rights" (*yinsiquan*) have growing cultural salience and legal force today.

It would be a mistake, however, to make the apparently logical inference that the Chinese simply imported the concept of "privacy" whole cloth. As with many other neologisms in Chinese discourse, they represent more recombinations and extensions of existing concepts and "are in many cases limited to catalyzing change or encouraging trends already underway" (Angle, 1999, pp. 623-624).

The transcription of the Chinese word for privacy into its official phonetic transliteration, pinyin, has been a cause of some misunderstanding. Although pinyin is a perfectly adequate alphabet to reflect Mandarin phonetics, Chinese is a tonal language. Western journals and publications have often used pinyin transliterations without any additional tonal information. This can lead to confusion when two compound words with the same sounds but different tonal patterns are close in meaning, as is the case with *yinsi*. The proper pinyin transliteration for *yinsi* (privacy) is more accurately written as *yin3si1*, reflecting the fact that the first word of the compound is pronounced using the third, dipping tone, and the second word is pronounced with the first, steady tone. *Yin1si1* (two steady tones), on the other hand, means "shameful secret." For simplicity, I will refer to *yin3si1* in this paper as *yinsi* and will not refer to this other, often conflated word again.

Yinsi (隱私) is a compound word, consisting of two characters that have independent meanings. *Yin* (隱), by itself, may mean secret, hidden or concealed. *Si* (私), by itself, can mean personal, private or

selfish.¹ To understand more about the longer, more traditional Chinese concepts that inform the modern term *yinsi*, we must look more into the second word in this compound, *si*, and its meaning in Chinese political and social thought over the last several centuries. We will address this in detail, below, as part of a discussion on the public-private divide.

The equation of privacy and *yinsi* reflects a particular social, political, cultural moment in the interaction between China and the U.S. that is inseparable from relations of power and the contingencies of history (Liu, 1995; Venuti, 1998). To say that the Chinese have no equivalent concept for privacy is first to assume that there is a clear concept of privacy in the West. This, of course, is a highly problematic assumption.

In America, the meaning of "privacy" and its relative importance compared to other values such as security and accountability has fluctuated over time. Best et al. (2006) identify three major developments that may have had an effect on contemporary public sentiment toward privacy: 1) the emergence of the Internet; 2) the commencement of the war on terror; and 3) the development of a wide array of new surveillance technologies. Knoke (2004) agrees that the war on terror has had an important affect on public sentiment toward privacy, calling the September 11th attacks a "focusing event,"

a rare, sudden and harmful event with high media visibility that draws intense attention to a sociopolitical problem and may subsequently induce public policy changes. . . . If a focusing event so drastically disrupts conventional beliefs and routine practices that it alters fundamental social cognitions about causal relations and perceived risks, it may trigger major structural transformations of a policy domain. (p. 84)

Clearly, the salience of September 11th is much greater for Americans than it is for the Chinese, but the populations are both simultaneously experiencing the rise of networked electronic communication and technologies of surveillance. The lives of both Chinese and Americans are becoming increasingly intertwined on an Internet populated by global institutions like Google and Yahoo. The current moment almost demands a cross-cultural understanding of privacy, even if concise definitions are elusive and ultimately impossible.

There is considerable disagreement within American legal and philosophical discourse as to how to define privacy. Posner (1978), for example, notes that the concept of privacy is "elusive and ill defined" (p. 393). Scholars continue to struggle over whether privacy is best thought of as some instrumental term invoked to protect more core values, or if there is something intrinsic in the concept itself that needs to be respected (Fried, 1968; Posner, 1978; DeCew, 1997; Etzioni, 1999). Arguments claiming the intrinsic nature of privacy must tread a fine line. There are other important concepts under the rubric of human rights, such as liberty, security and justice, which privacy cannot simply trump. Baker (2004), for example, argues convincingly that free speech should trump "privacy rights" in many cases (although not for corporate entities). Allen (2003) has made a convincing case that privacy can conflict with accountability in ways that may raise the likelihood of certain social injustices. Etzioni (1999) has shown

1 See English-Chinese dictionary available at <http://www.mandarintools.com/worddict.html>

how strong privacy rights for individuals could have dramatically negative effects on public health. Several government officials and academics make the case that privacy can compromise security and thus should have even less sway in the 21st century than it did in the simpler past (Posner, 2006; Singel, 2007b). Many argue that the privacy value always puts individual over group interests. As Rule (2007) notes, “[d]esires for privacy often map efforts to assert one’s [sic] own interests or individuality in the face of countervailing claims” (p. 10).

Altman on privacy

Social psychologist Irwin Altman (1981) presents a comprehensive, but highly abstract model of privacy as an “interpersonal-boundary process.” Individuals and groups negotiate a dialectic tension between a need for openness and “closedness” to the outside world, as conditions and circumstances change:

. . . privacy is not solely a “keep-out” or “let-in” process; it involves a synthesis of being in contact with others and being out of contact with others. The desire for social interaction or non-interaction changes over time and with different circumstances. The idea of privacy as a dialectic process, therefore, means that there is a balancing of opposing forces—to be open and accessible to others and to be shut off or closed to others—and that the net strength of these competing forces changes over time. (p. 23)

Altman’s boundary negotiation model consists of eight distinct “privacy situations” accounting for management of both inputs and outputs and the difference between desired and achieved privacy. Cases 1-4 deal with the control of input from others, while cases 5-8 deal with the control of output to others. Half of all cases involve situations in which the individual managing their interpersonal boundaries has achieved a desired level of privacy while half represent some type of imbalance, either too little privacy or too much privacy.

Key to Altman’s boundary negotiation theory are the resources — what he calls “privacy mechanisms” — individuals and groups have available to them in the management of boundaries. Altman makes four primary distinctions here: 1) verbal, 2) non-verbal, 3) environmental, and 4) culturally-based privacy mechanisms. Verbal mechanisms would include specific requests to be left alone or, when a couple or small group desires privacy from surrounding “others,” the use of a foreign language. Non-verbal mechanisms include various forms of body language and facial expressions. “Gaze aversion,” for example, can be a signal to others that one is not interested in interaction, and thus can be used for limiting contact. Environmental mechanisms include the use of clothing and adornment, the management of personal space, and finally, the use of more general environmental features such as territories, areas and objects. Finally, culturally-based privacy mechanisms refer to the distinct norms and customs of particular societies and cultures.

Going forward, I am less concerned with Altman’s attempt to categorize privacy mechanisms than his more general abstract notion that privacy is a dialectic negotiation afforded by resources. Instead of using his term “privacy mechanism,” however, I will use the term “boundary resource.” As we shall see,

numerous subcategories of these “boundary resources” may be identified, including legal, technological, normative and linguistic resources. By leaving the categorization scheme open and recursive, however, we can avoid blind spots that might emerge from too strict a taxonomy, while facilitating research across cultural and discursive systems. Boundary resources are key to the negotiation of privacy within any social system. Their distribution is dependent on state policies, law and individual cultural and technological innovations, but they may transfer effectively between even highly dissimilar nation states such as China and the U.S.

Altman's theory of privacy as boundary negotiation has been highly influential within the social sciences (Margulis, 2003). The dialectic approach to privacy appears to avoid some of the pitfalls of arguing over instrumentality vs. basic right. Rather than attempt to define privacy in more explicit or static terms, we can focus our attention on the distribution and availability of boundary resources. A focus on boundary resources (legal, normative, technological, linguistic) may also allow policy makers and cultural innovators opportunities to make incremental changes to the privacy environment without whole cloth reconfiguration of communication practices that broader reconceptualizations might entail.

The theory's high level of abstraction and focus on the role of one's physical environment rather than mediated communication, however, has made it difficult to apply to 21st century situations without further conceptual development. Scholars have offered a wide range of classificatory schema for boundaries in the hopes of adding empirical analytical power (Derlega & Chaikin, 1977; Petronio, 2002; Palen & Dourish, 2003), but they have yet to converge, in part because of the complex and dynamic nature of the privacy concept itself. Rather than follow this path, I wish to narrow Altman's general definition of privacy to more specific circumstances of “information privacy.” With this added semantic constraint, I consider openness and closedness to the outside world in terms of the creation and flow of personal information, a phenomenon that can be observed in all cultures of the world.

Privacy vs. information privacy

With the new reality of ubiquitous network communication technology, the emphasis of privacy concerns appears to be squarely upon information privacy. Yet how do we distinguish between privacy and information privacy? Are they distinct or is one reducible to the other? This is ultimately a philosophical question that I do not intend to solve in this article, but it is also a practical one. Allen (1996) advises theorists to tread carefully:

Is physical privacy reducible to informational privacy? The Fourth Amendment restricts access to people, households and other private areas, while also restricting access to information of the sort that might be contained in a person's papers, effects, and conversations. Since physical contact can yield new information, one might take the view that concerns about restricting physical access ultimately boil down to concerns about information learned through sensory exposure. . . .

From the point of view of the person whose privacy is at issue, uncovering information about a person and uncovering the person can be invasions of different dimensions. For

example, although both invasions are offensive, it is probably less assaultive to have one's sexual orientation revealed as a result of unauthorized access to one's bedroom during a sex act (a physical invasion). (p. 148)

I believe it is fair to say that privacy has much broader connotations that are lost under the rubric of information privacy, but what we lose in richness we may gain in analytical clarity. I offer a working definition of information privacy (which can in many cases stand in for the more elusive "privacy") in the following way: a state of successfully shielding the observation or creation of any piece of extant data (a record, a sentence, an image, a sound recording) that is linked to a unique individual; a negotiation to reach this state that is afforded by boundary resources (Altman's privacy mechanisms).

By focusing on the term information privacy, I do not want to dismiss more direct, physical aspects of its parent concept. Nevertheless, information privacy can be understood to apply to a wide range of situations in which the common denominator is personal information, regardless of its form or medium. Further, information privacy is resonant with Altman's dialectic negotiation model. As individuals, we expect to exercise some control over the extant information that is associated with us, for example, by choosing when to speak and when to hold our tongues, when to write a letter to the editor and when to make a notation in our locked diary, or when to simply forget. To lose control over this process is to lose control over the construction of our own identities (Gavison, 1980; Cohen, 2003).

Information privacy is about information that is associated with individual people. How we determine this, how we classify a piece of information as being "personally identifiable" turns out to be a highly complex question with no simple answer. Whether a particular piece of information is personally identifiable depends a great deal on the resources of the observing party, not to mention the specific content and context of a message. How the information is created and how it is associated with its subjects is a key question in need of more research. Technologies of identification, which afford the production of personally identifiable information (PII), are developing at a rapid pace.

In Western literature on privacy, it is common to break the concept down into subcategories which include *information privacy*, *bodily privacy*, *communications privacy*, *territorial privacy* and *decisional privacy*. Below, I address all but one of these concepts in terms of information privacy, as these added distinctions aid in the analysis of boundary resources. I believe decisional privacy is far more difficult to subsume under an abstract definition of information privacy than these other categories and thus will not deal with it here.

Bodily privacy

According to Privacy International (2006), bodily privacy "concerns the protection of people's physical selves against invasive procedures such as genetic tests, drug testing and cavity searches" (n.p.). This concept appears limited to moments of actual physical intrusion, such as seizure of blood, other bodily fluids, or tissue. We could also easily include less invasive yet nonetheless problematic bodily violations such as those committed by a peeping tom or perhaps back scatter X-ray. If we consider the

emerging notion of the "data double," a counterpart to our physical body now asserting an independent ontological significance, we can understand how information privacy can be associated with the privacy of the individual body (van der Ploeg, 2002). Although someone's data double can never be anything more than a caricature of their real self, its growing resolution and importance increasingly impacts their life.

Communication privacy

Communication privacy "covers the security and privacy of mail, telephones, e-mail and other forms of communication" (PHR, 2006). Information privacy can be said to subsume communication privacy, but the distinction is important when considering U.S. law. U.S. legal discourse makes a bright line distinction between legal protections of communication that are "in transmission" and those that are in storage (Kerr, 2005). The notion of wiretapping refers to the interception of communications as they are taking place. Stored communication, such as an e-mail sitting in the inbox of a third party e-mail provider such as Google, is the subject of far weaker statutory protections.

Territorial privacy

According to Privacy International, territorial privacy "concerns the setting of limits on intrusion into the domestic and other environments such as the workplace or public space. This includes searches, video surveillance and ID checks." The relation between information and territorial privacy is particularly important for understanding more abstract notions of privacy as a negotiation of information boundaries. In the United States, much of the information privacy that individuals have enjoyed has been anchored by a constitutional (Fourth Amendment) right to private property free from unwarranted state intrusions. The rise of electronic communications began to destabilize this strong association between territorial and informational privacy, such that it remains a key aspect of the current crisis. Although there have been some calls to propertize personal information as a way to limit the unchecked spread of PII, they have been strongly criticized and may ultimately do more harm to privacy interests than good (Samuelson, 2000; Litman, 2000; Solove, 2001).

Although there appears to be some agreement over the use of these distinct privacy categories, there remains a great deal of confusion over how "privacy" can be effectively invoked within legal and technological contexts. Struggles over what a "reasonable expectation" of privacy is, the public-private divide and the meaning and practical utility of "anonymity," represent three areas of particular discursive tension. Below, I examine each of these areas in turn.

Reasonable Expectation of Privacy

All visitors should be aware that they have no reasonable expectation of privacy in public or private locations (U.S. State Department Travel Advisory on China, March 2008).

If "reasonable expectation" is interpreted in a strictly legal sense, the U.S. State department might be considered correct in its above assertion. It is important to understand, however, the notion of

"reasonable expectation" in legal discourse and how this has weakened constitutional protection of the privacy of American citizens over the past several decades.

What does it mean to have a reasonable expectation of privacy in the United States? This is both an explicit legal term and a common word that most citizens are likely to have a sense of. As a greater proportion of social exchanges began to occur via electronic mediation (beginning with the telephone), physical walls no longer provided the kinds of resources for negotiation of privacy boundaries that they once did. The problem can be traced back to 1928, with the Supreme Court decision *Olmstead vs. United States*, which found that the Fourth Amendment did not apply to wiretapping a person's home phone. In the majority opinion, Chief Justice Taft wrote:

This Court has frequently said that the Fourth and Fifth Amendments should be construed liberally; but it is submitted that by no liberality of construction can a conversation passing over a telephone wire become a "house," no more can it become a "person," a "paper," or an "effect."

Although Congress subsequently filled in the void with the 1934 Communications Act, expressly forbidding wiretapping without court order, such activity was considered outside the purview of the Fourth Amendment until *Olmstead* was reversed in 1967 with the Supreme Court Decision *Katz vs. United States*. In the majority decision, Justice Stewart asserted that the Fourth Amendment "protects people not places" and introduced the notion of a "reasonable expectation of privacy," which has been the guiding frame for legal interpretations of the Fourth Amendment ever since. In a nutshell, the reasonableness clause says that American citizens are protected whenever things they say or do would be expected by a "reasonable" person to be neither seen nor heard by someone else.

Although the reasonableness criterion seemed to rescue the Fourth Amendment from its apparent limits to physical, Cartesian space, legal scholars have criticized its vagueness and the tendency for what is reasonable to change over time. One of the first problems to arise from the reasonableness clause was in the way it balanced individual citizen vs. state interest. According to Benner (1989), "[i]f the government's need to intrude outweighed the citizen's privacy interest infringed by the intrusion, then the intrusion was 'reasonable' and did not violate the Fourth Amendment." In the post-9/11 environment, it is easy to see how state interest may be interpreted such that a wide variety of previously unreasonable searches become reasonable. A second factor that tends to dilute the protection inherent in the reasonableness clause is the continuing evolution of technological surveillance capacity. As Gandy (1993) notes:

As the technological means to gain or facilitate access to personal information about individuals continue to develop and to become all the more broadly available as the cost, complexity, and skill requirements necessary to use them are all diminished, it will soon be the case that no expectation of privacy at all could be reasonable. (p. 203)

Indeed, as use of the Internet for private communications continues to grow, legal scholars have questioned whether the reasonableness clause can apply at all. The Supreme Court has repeatedly ruled

that citizens do not have a reasonable expectation to privacy when their communications are stored by a third party. For example, in the 1976 Supreme Court Case *United States vs. Miller*, the court ruled:

[T]he Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed. (*Miller*, 425 U.S. at 443.)

The problem with reasonable expectation in the U.S. has been that what is reasonable changes with the winds of culture and politics and allows for no definitive boundaries. Clearly our "reasonable expectation" of privacy today is much less than it was in 2000. Even before 2000, changes in the way public space was subject to routine surveillance might have been, but were not, curtailed by a strong expectation of privacy in public. Today, there are no significant laws protecting American citizens from routine surveillance in public by either public or private entities. As we will see in China, the public appears to have a stronger privacy consciousness within this context, a fact which is also reflected in major municipal laws which restrict the deployment and use of such systems.

The reasonable expectation of privacy for Americans online is in considerable flux today. In the summer of 2007, the U.S. Ninth Circuit Court of Appeals ruled that Americans do not have a reasonable expectation of privacy in the IP addresses of Web sites they visit (Singel, 2007a). Although there has been some confusion on the matter, the July 2007 of the U.S. Sixth Circuit Court of Appeals ruling in the case *Warshak vs. U.S.* holds that Internet users do have a reasonable expectation of privacy in the content of their e-mail, whether it is stored on their home computer or at a third party ISP. The U.S. Justice department, which argues that e-mail is the equivalent of a postcard, could still appeal the decision.

Reasonable expectation of privacy in China

The force of law in a particular nation state depends on its political context and history. While Chinese modern society has typically had little respect for law, the political system has been undergoing great change in recent years. China's legal system is in the midst of transition from what the state calls "too much emphasis on the rule of person and insufficient emphasis on the rule of law" to a system modeled after Western democracies, "from supremacy of the power to supremacy of the law" ("Human rights achievements in China," 2000, n.p.). China's legal system has continued to gather strength (Peerenboom, 2002), a trend which began to accelerate as the country approached the Olympics (Harris, 2007). This expansion of law serves more to constrain the activities of businesses and lower level government institutions than party elite. Although law plays much more of a role in society than it did a decade or more ago, legal code is often unclear and contradictory, and often fails to act as a constraint on the activities of law enforcement.

Even though China (like the U.S.) does not have explicit constitutional protection for "privacy," its statutory system comprises a growing array of legal protections, anchored by the declaration of an explicit

"right to privacy" in the 2002 draft of the Chinese Civil Code.² Statutory protection was judged strong enough by analysts for *Privacy International's* "2007 International Privacy Ranking" to rank higher than that of the American legal system. Although this appears on its face to be an absurd assertion, the claim holds up under initial scrutiny, at least if we focus solely on the letter of law.

The formal definition for "right to privacy" introduced into the 2002 draft civil code (similar to Restatements in U.S. law) defines the right to privacy in the following way:

- 1) the subject of the right to privacy can only be a natural person;
 - 2) the objects of the right are private activities and personal information;
 - 3) the scope of the protection of the right is limited by public interest
- (Cao, 2005, p. 651).

It should be noted, firsthand, that the promulgation of this new specific right to privacy is not simply a product of changing domestic public sentiments and their effect on policy makers, but likely results from a range of both domestic and international pressures. According to McDougall (2004), the context of the law's passage "suggests that the code was developed as part of an international legal framework dominated by the free market ideologies of the World Trade Organization and the government of the United States" (p. 6).

Note, also, that the third line of the definition maintains the supremacy of the "public interest" over privacy in Chinese law. Although it would be easy to suggest that the public interest clause essentially renders impotent the right as otherwise defined, issues of "security" clearly play a similar role

² Some examples, excerpted from *Privacy and Human Rights 2003*, published by Privacy International and retrieved July 1, 2008 at <http://www.privacyinternational.org/survey/phr2003/countries/china.htm>:

The Law on the Protection of Minors (1991) provides that "no organization or individual may disclose the personal secrets of minors" and "with regard to cases involving crimes committed by minors, the names, home addresses and photos of such minors as well as other information which can be used to deduce who they are, may not be disclosed, before the judgment, in news reports, films, television programs and in any other openly circulated publications. [904] The Law on the Protection of Rights and Interests of Women (1992) provides that "women's right of reputation and personal dignity shall be protected by law. Damage to women's right of reputation and personal dignity by such means as insult, libel or giving publicity to private affairs shall be prohibited." [905] The Law on Lawyers (1996) requires lawyers to protect the personal secrets of their clients; [906] the Law on Statistics (1983) provides that data collected from investigations shall not be disclosed without the consent of data subjects; [907] and, the Provisional Regulations Relating to Bank Management (1986) provide that all information concerning the savings of clients shall not be disclosed. [908]

Other laws are referenced in the text of this paper.

in the U.S.. Further, public concern over private, corporate abuses of personal information appears to have drawn a sympathetic ear from the Chinese government. There is growing talk of a new national law to regulate such practices. Before rejecting Privacy International's findings too quickly, it's worth reminding ourselves that U.S. policy makers are unlikely to support generalized privacy laws that would be deemed too restrictive of business practices. As we will see below, it is clear from recent citizen actions in public and via China's courts that the "right of privacy" is gaining real force.

Gauging Public Sentiment

Another key aspect of the legal notion of reasonable expectation is the relative salience and strength of privacy within the public at large. Public sentiment can be measured using different kinds of proxies, from formal public opinion polls, to activity in the court system, to public protests and demonstrations. Public opinion polls are conducted regularly in both China and the U.S., but we must be cautious not to assume that poll data in either country can give us some truly objective notion of what the public thinks. The results of polls are highly dependent on the questions that are asked, and, in the U.S., the decisions on what questions to ask are often made by private corporations with particular agendas.

Businesses that depend on unfettered access to personal and transaction-generated information will be especially concerned to represent the public as unconcerned about, or supportive of, businesses having that access (Gandy, 1993). They will use estimates of public opinion to help convince policy makers of the wisdom of supporting the policy opinions that they prefer (Herbst, 1993). As a result, skillful public relations often explain the disparity between what the public actually believes and the character of their beliefs as they are represented in the press (King & Schudson, 1995) (Gandy, 2003, p. 287).

To speak of public sentiment in China is itself a complex matter. There are vast differences of experience and world view between China's urban, largely coastal residence and the rural peasants. Most polls do not reflect the views of this much larger economic class. Public opinion research is quite new in China and there remain questions about the validity of the data. Urban polls rarely account for migrant workers, a sizable population of the big cities. Guo Liang of the Chinese Academy of Sciences, for example, notes that a traditional Chinese cultural bias to tend toward the mean (Confucianism) is likely to decrease the utility of questions based on Leichert scales. Still, methods have been improving and Chinese citizens are increasingly willing to speak their mind (Tang, 2005).

Further, mass media outlets including newspapers and Web sites in China have conducted and published public opinion polls that appear to constrain certain policy positions of the state. There are certainly boundaries which such polls may not cross, but the range of tolerable questions has been expanding by fits and starts. Though perhaps gaining strength in recent years, public opinion has always had to be reconciled with state policy initiatives.

It is difficult to imagine that any regime, democratically elected or not, can sustain itself for very long without taking public opinion into consideration. The Chinese rulers, long before the invention of modern elections, compared public opinion to the river and the

state to the boat — a boat that, if misguided, could easily be overturned (*shui neng zai zou, yi neng fu zou*). (Tang, 2005, p. 198)

It seems unlikely that PR firms in China have developed to the level of sophistication they have in the U.S. to influence the production and distribution of poll data within policy discussions, but of course there remain other concerns about just how much we can trust the data. Nevertheless, we will see below that published public opinion and public demonstrations seem to have successfully challenged state plans and policy initiatives.

American public sentiment

The public expectations of privacy in America today are also in flux. It is commonly stated in contemporary discourse that Americans value privacy less than they did before September 11th, that privacy has become an antiquated value in a world where instability seems to lurk around every corner. Although there is certainly some truth to this assumption, the available data shows a much more complex picture. While it is clear that privacy took a back seat for many Americans during the immediate aftermath of the attacks, most polls have shown that concern for personal privacy from government institutions has mostly been on the upswing since sometime in 2002 (Best et al., 2006). Still, a recent national poll conducted by Rasmussen Reports shows that Americans, by a narrow margin (51%), value their security more highly than they do their privacy ("51% Say Security," 2008).

Another common assumption is that America's Facebook and MySpace-happy youth do not value their privacy in quite the same way that their parents did. There is certainly an element of truth to this. A Zogby poll conducted in early 2007 found that only 35.6% of 18 to 24-year-olds considered the posting of their picture in a swimsuit online to be an invasion of privacy, compared to 65.5% for those 25 and older ("Poll exposes," 2007). Younger Americans are more concerned, however, about their privacy in relation to government institutions than older citizens (Berton, 2006).

China public sentiment

Public opinion polling on privacy related topics is limited in China compared to the U.S., but has recently been on the upswing. As we will see, we can also get a reading of public sentiment from activity in the courts and direct demonstrations of public will.

A survey conducted in 1997 of residents of five major Chinese cities showed strong privacy awareness for personal feelings, marital relations, diaries and other personal documents, with 73.6% agreeing to the statement, "Do not read a colleague's files and documents without his or her permission," and 71% agreeing to the statement, "Parents should not read their child's diary." Survey results indicated that privacy was more valued among better educated, higher-paid, younger, and female respondents (McDougall, 2002, p. 167).

Chinese citizens share an aversion to spam with their American counterparts. China, once the source of much of the world's spam, has dramatically reduced this problem with concerted government

and industry intervention. A law regulating the sending of spam drafted by the Internet Society of China (ISC) went into effect in March of 2006 (Wu, 2006). Spam was the subject of a recent major Chinese Central television investigation, timed to be shown on World Consumer Rights Day, March 15. In March 2008, China's largest cellular telephone operator, China Mobile, was forced to publicly apologize after internal security lapses allowed seven advertising firms to send more than 200 million spam messages via China Mobile and the second largest provider, China Unicom. The first civil suit in China over SMS was recently filed in the Beijing Xicheng District Court (Jiang, 2008). Much of the talk of a general privacy law, promised for 2008 but which appears to be delayed at least a year, has to do with the unrestricted exchange of the personal information for which spam is but one problematic manifestation.

Surveys conducted over the past few years by a leading national newspaper the *China Youth Daily* (CYD) show significant and growing interest in the personal privacy. A survey conducted in May of 2006 found that 91.8% were "worried that their private information can be too easily divulged and misused," while 74% called for tougher laws to protect privacy. A survey in January 2007 showed that the China's online population overwhelmingly (83.5%) disapproved of a plan to require real name registration for all bloggers and BBS users.³

Increasingly, emerging public sentiments about privacy are bubbling up into the court system. Below are a few examples.

In early 2004, two recent graduates of Shanghai's Fuxing High School, male student Wei Gang and his (unnamed) girlfriend, sued their alma mater for invasion of privacy. The school, which had set up CCTV cameras in the classrooms, filmed and rebroadcast, school-wide, a passionate kiss between the two young students. Wei and his girlfriend asked the high school to publicly apologize, both in the *China Youth Daily* and on school campus. In addition, they demanded 10,000 yuan (USD\$1,205) for mental anguish, claiming they had been ridiculed at school so much that their performance on college entrance examinations suffered and the girlfriend even contemplated suicide. The Shanghai Hongkou District People's Court decided in favor of the school, agreeing that it had the right to monitor its students and that their presence in a public space negated any privacy claims ("Court rejects," 2004). Though they lost their court action, the students gained considerable public sympathy (York, 2005).

In early 2007, Guo Li, a lawyer from Hangzhou, sued Internet search engine Baidu.com for publicly exposing a copy of his e-mail online. The case was heard in Hangzhou Xiaoshan District People's Court in December 2007. Guo was suing Baidu and Hi China for 1,000,000 RMB because of its claimed failure to adequately respond to requests that the exposed e-mails be deleted ("Baidu accused," 2007). In the spring of 2008, the Hangzhou Court decided in favor of the defendants, arguing that not enough evidence had been provided to suggest that they did not respond to Guo's requests in a timely manner (Qu, 2008).

In the fall of 2007, Beijing University student Lu Feng decided to take Microsoft to court over its decision to implement Windows Genuine Advantage in copies of Windows XP distributed in China. Lu

³ This is covered in more detail later in the paper.

argued that WGA tool is akin to spyware, and that both his “right to privacy” and the property right in his PC were being violated. Lu’s suit echoed a similar claim ongoing in the United States District Court of Seattle, Brian Johnson vs. Microsoft. The First Intermediate People’s Court of Beijing accepted this case for review, though this is not to be taken as a judgment of its technical merits (Fisher, 2007).

Earlier this year, a young couple in Shanghai decided to sue a metro station after a video of the two kissing in the station was posted online at video sites including YouTube.⁴ The couple claimed that their privacy rights had been violated, an argument that was supported by Chinese legal scholars quoted in mass media. Employees of the metro company involved in the video distribution were fired from their jobs and the company has been negotiating with the couple over financial compensation (“Kissing couple,” 2008; “Shanghai subway,” 2008).

Do the Chinese have a “reasonable expectation” of privacy as they go about their daily lives? Is this expectation protected by law? Although the context may vary, Chinese expectations appear comparable to other modern societies. To understand how the expectation of privacy in China relates to that in the U.S., we focus now on the notion of public-private divide.

Public-Private Divide

The public-private dichotomy has been applied in radically different ways in Western discourse, with each pole mapped to different theoretical entities within the social system. Habermas’s (1989) theory of civil society, for example, views the public sphere as a domain separate from that of the state. The public-private dichotomy may also reflect a contrast between government-owned institutions and private institutions such as corporations (Weintraub & Kumar, 1997).

Despite these differences in application, it has been generally believed that the boundaries were easily discernible, often physically tangible, and could “demarcate a dichotomy of realms” (Nissenbaum, 1998). The walls of a house or an apartment, for example, physically traced a boundary between the private space of the home and the outside world. An open park was a public space, bounded by surrounding streets. The skin and clothes of an individual traced a clear boundary between an individual and the outside world. The categories of territorial privacy and bodily privacy mapped well onto the public-private divide and, especially within American society, appeared to reinforce each other.

Although much discourse on privacy in the West deals with the notion of a public-private divide, it has been marked by frustration over the increasing fuzziness of the concepts in the world of electronic networked communication and high tech surveillance (Marx, 2001). Passerin d’Entreves & Vogel (2000) note that the two concepts comprise “a family of distinctions that are constantly shifting under the twin



⁴ Available at <http://www.youtube.com/watch?v=NvVZI7emdE4>

pressures of social change and political contestation" (p. 1). Electronic, networked media, with their nodes increasingly saturating global space, are constrained more by logical and less by physical boundaries. This loss of the role of physical boundaries in affording boundary negotiation renders a number of well rehearsed strategies for privacy maintenance obsolete.

With information technology, our ability to rely on these same physical, psychological and social mechanisms for regulating privacy is changed and often reduced. In virtual settings created by information technologies, audiences are no longer circumscribed by physical space; they can be large, unknown and distant. Additionally, the recordability and subsequent persistence of information, especially that which was once ephemeral, means that audiences can exist not only in the present, but in the future as well. (Palen & Dourish, 2003, p. 2)

There has been a dramatic reduction in the distribution of social resources for personal boundary negotiation as a result of these changes to the primary media of communication. As human interaction continues to shift to electronic networks, traditional schema for boundary negotiation often lose their utility (Meyrowitz, 1985; Shapiro, 1998; Nissenbaum, 1998, 2004).

Public and private in Chinese discourse (gong-si)

In Chinese discourse, the binary relation *gong-si* (公 - 私) roughly mirrors the Western binary notion of public-private, occupies more than 2,000 years of history, and has its own attendant ambiguities (Rowe, 1990). Evidence that the two words, *gong* and *si*, emerged largely as paired opposites can be found in the third century BC Chinese dictionary *Er ya*, which defines *gong* as simply "not *si*" (*wusi*), while the first century *shuowen* defines *gong* as "turning ones back on the private" (Rowe, 1990, p. 316).

Gong, by itself, can mean "just," "honorable," "public," or "common." Some important compound words in which *gong* appears include *gongan* (公安), public security; *gongdao* (公道), justice; *gongguan* (公關), public relations; and *gongmin* (公民), citizen. *Si*, by itself, can mean personal, private or selfish. Compound words that *si* appears in include *siren* (私人), individual/private; *siyou* (私有), privately owned; and *sili* (私利), personal gain.

Although much of China's neo-Confucian scholarship has considered *si* to be synonymous with selfish interests, there have been important exceptions, especially during the late Ming and Qing dynasties (Angle, 2002). Perhaps most notably, the writings of leading scholar/journalist of the late 19th and early



20th century, Liang Qichao, argued that the public welfare *gong de* (公德) was dependent upon a bounded private domain *si de* (私德) where thought could be cultivated.

Just how the *gong-si* dialectic is applied to real-world events and issues is as varied in Chinese culture as it is in the West. It is generally agreed in academic circles that attention to and salience of *gong* has been far greater than *si* for much of the country's history (Wakeman, 1998; Angle, 1999; McDougal, 2002). In the past, *si* might have been used to apply to an emperor, the official head of state, where the relationship between *gong* and *si* was between the selfish interests of the ruler and the true interests of his collective subjects (Zarrow, 2002). Another way of mapping *si* is to the family or even an individual scholar's walled study (Furth, 2002), against the open sphere of the collective *gong* public.

Gong and *si* are protean terms. In traditional and early modern Chinese thought, *si* could represent both individual and collective interests (usually the family, but also clans) when considered in opposition to state interests. Madsen (2007), quoting eminent Chinese sociologist Fei Xiaotong, reminds us that the distinction between public and private in Confucian thought is "completely relative":

Sacrificing one's family for oneself, sacrificing one's clan for one's family — this formula is an actual fact. Under such a formula what would someone say if you called him *si* [acting in his private interest]? He would not be able to see it that way, because when he sacrificed his clan, he might have done it for his family, and the way he looks at it, his family is *gong* [the public interest]. When he sacrificed the nation for the benefit of his small group in the struggle for power, he was also doing it for the public interest [gong], the public interest of his small group. . . . Gong and *si* are relative terms; anything within the circle in which one is standing can be called *gong* (p. 5).

Scholars in general appeared to value their solitude as a place for reflection and creativity. Focusing on the words of a 17th century poet, Furth (2002) shows how private, secluded spaces were valued by the intellectual elite.

. . . the solitary recluse, as Cao Heng's poem says, can be indifferent to the gaze of others; in the eyes of the world he can appear shameless. He is freed to look at himself, turning inward to an interior landscape that, turning the world inside out, reveals a universe of his own creation (p. 53).

Gong, si, guan

This protean nature of Chinese single character words gives them an inherent semantic flexibility across time, space and context that appears to exceed that of the public-private dialectic. An important strand of Chinese discourse includes *gong* and *si* as part of a tripartite distinction with *guan* (官), the official or state sphere (Rankin, 1993; Wakeman, 1998). In this model, *gong* exists at a medium point between *si* of the private home and individual and *guan* as the agent of the institutional state. Strand (1989) offers a compelling portrait of what this tripartite distinction meant during the early 20th century:

In China, the dependence of gentry and merchant opinion on official power (*guan*) was loosened during the late Qing and then broken under the Republic. Urban elites never gathered the strength and the will to support a fully autonomous public sphere. But the trembling of the state in the 1920s, the weak legitimacy of private interests (*si*), and the positive moral and political evaluation of *gong* as a zone of discussion and concern encouraged newspaper editors, new and old civic leaders, and ordinary citizens to improvise tactics and strategies for expressing political views in public. Thus constituted, city politics took on a life and a logic of its own as opportunities to engage in political discussion and action expanded. (p. 168)

Rowe (1990) has argued that the *gong/guan* distinction has persisted into modern times, and that “[d]espite the incontestable growth of central state power which culminated in the party state of the People’s Republic,” widespread continuing cultural and formal legal salience of this tripartite approach “seem to suggest a survival of an articulated intermediary ground between state and society more pronounced than that in the contemporary West” (p. 326).

Rowe argues further that the Chinese *gong-si* dialectic is more abstract and less implicated with spatial entailments than is the public-private divide of Western discourse, epitomized, perhaps, by the close association between public deliberation and open public squares.

Gong, then, can be understood as the truly collective interest that may or may not be in sync with official state interests. *Gong*, seen in this light, is none other than *si* in the aggregate, a philosophical approach with roots in early Confucian thought. Mencius, for example, describes the interdependence of private desires with the collective good.

According to Zarrow (2002), “*si*, though highly suspect, was to be understood as valuable in particular contexts” (p. 122). Although not necessarily a mainstream view within Chinese historical discourse, one could make an argument (citing notable scholars in a chain back to Confucius and Mencius) for *si*, not simply as an instrumental value, but an intrinsic part of a healthy, viable social system.

The rise and fall of si

In Chinese studies there is a common term, *fang-shou*, which refers to cycles of tightening and loosening of discursive rights and freedoms. One might think of the relative salience of *si* and its relation to *gong* as rising and falling across time in a similar fashion (perhaps parallel to) *fang-shou*. Although it is relatively easy to develop such a graph for the salience of *si* on its own, its relation with *gong* over the same period is more complicated — in part because of the addition of *guan* in this tripartite distinction, but also because of the way the uses and “meaning” of *gong* have changed over the long stretch of Chinese history. One could plot a relationship between *gong* and *guan* over time as well that would help to contrast periods where people felt the government to be acting in their interests (the communist revolution and its immediate aftermath) to those when corrupt officials actively disdained the true needs of their people, but

again always keeping in mind that the meaning of each of these words, especially *gong*, has had significant temporal and demographic variance.

As McDougall (2002) reminds us, "the meanings and values associated with *si* have not been uniform in Chinese history" (p. 10). Zarrow (2002) has argued that *si* rose to prominence in late Imperial China through the early Republican period, but began to reverse shortly after the 1949 communist revolution, reaching a nadir during the Cultural Revolution and the ensuing decade. Public expectations of "privacy" were likely at a low point in China during the years of the Cultural Revolution and its aftermath in the 1970s. In urban areas, residential space was so scarce that parents, children and relatives would often sleep in the same room. At the same time, communist ideology labeled any discussion of individual interests as "spiritual pollution": the collective, *gong*, was the only reality. The complete lives (psychological, medical, intellectual, social, sexual) of virtually all citizens were kept in duplicate dossiers (*dangan*), one with the local public security bureau and the other with the persons "work unit" (*danwei*) and were updated and consulted regularly by agents of the state when making decisions (Lu & Perry, 1997).

When Deng Xiaoping's modern economic reforms began to gather momentum in the mid '80s, public expectations of privacy began to grow with them, both at home and out in public. Ideologically, private interests were no longer vilified. Deng's oft quoted comment, "it does not matter whether a cat is black or white, as long as it catches mice," gave new legitimacy to private venture and the pursuit of individual profit, because it would mean greater wealth for the country at large. With modernization came steady growth in the size of available residential space (Lu, 2005):

This expansion of physical personal living space has created the objective condition for the protection of personal privacy. According to the Blue Book of Real Estate, from 1978 to 2003, per capita housing space in Chinese cities and towns has grown from 3.6 square meters to 11.4 square meters. Compared with Western countries, per capita housing space in China is still not extensive, but it has made a great improvement over the conditions of 20 years ago. Society leaves a bigger physical space for the personal, which naturally makes it possible to extend the scope of what is included under the concept of "privacy" – even if this does not necessarily result in strengthening of idea of privacy (Lu, 2005, pp. 8-9).

Children (also in decreasing family sizes due to the one child policy) began to get their own rooms and soon were scolding parents for entering them without knocking, or sneaking a look at their diary, in replays of common scenes in the U.S. and other Western countries. Modernization freed the average Chinese worker from cradle to grave dependence on their work unit. With worker mobility came the decreasing significance of the *dangan*; employers tended to know much less about their employees than before (Lu & Perry, 1997).

In this society, people no longer regard individual interests, individual freedom, and individual rights as taboo topics of discussion. In contrast with the not-so-distant past, individual independence and subjectivity have obviously been promoted in their

importance and value in social life. Increasing diversity in contemporary Chinese society also makes for greater variety in Chinese ideas of privacy. More and more Chinese citizens begin to give importance to privacy and express concern over protecting emerging rights to privacy. (Lu, 2005, pp. 7-8)

Increasing salience of *si* can be understood of an expansion of those conditions and situations that modern urban Chinese would include under the rubric of “reasonable expectation of privacy.”

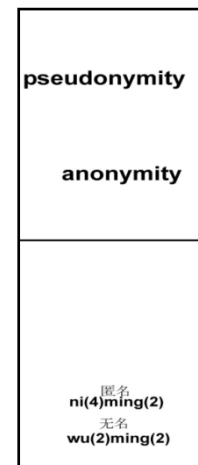
Chinese “privacy in public”

Chinese valuation of territorial privacy and its conceptualization of the public-private dialectic appear to be complex enough to include some notion of “privacy in public.” Political advisors to Beijing’s municipal government are quoted in the Jan. 30, 2007 *People’s Daily*, voicing concerns over the use of surveillance cameras in public areas. The article points to the ease with which digital images can be manipulated and cites privacy concerns. Beijing established a city wide regulation on the use of cameras that went into effect on April 1. The regulation requires secure storage for pictures and videos captured by the cameras, and dictates that they be installed only in conspicuous public places. A similar law was recently passed in the city of Chongqing.

There are no comparable laws in U.S. metro areas such as New York and Chicago where there has been a similar expansion of camera surveillance in public places. It would appear that as of today, the notion of privacy in public, at least when it applies to physical, public places, has gained more traction within the Chinese than the American public.

Anonymity

Perhaps the first thing we might notice from the juxtaposition diagram to the right is that it seems slightly out of phase. The word pseudonymity appears in the top region of the top rectangle without any Chinese term in a corresponding position. Where one word, anonymity, appears in the top rectangle, two Chinese words, *wuming* (無名) and *niming* (匿名), appear in a roughly parallel position (with *niming* perhaps a closer match to anonymity) in the bottom rectangle. Although the Chinese word, *hao2*, could be considered a rough equivalent to pseudonym, it does not appear to be used in privacy discourse in comparative frequency to “pseudonym” in U.S. discourse, and so does not appear in the visualization.⁵ Another important term that is used in Western discourse that I do not address in detail is “personally identifiable information” (PII). Defining PII is simply the inverse question of defining anonymity. If data contains PII, it is not anonymous.



⁵ As new data is gathered, *hao* or some other word may find a place in the juxtaposition diagram.

It is clear that in both China and the U.S., there has been a change in the nature of anonymity as human interaction shifts to the electronic, networked environment. The “no one knows you’re a dog” *New Yorker* cartoon epitomizes the early common wisdom on Internet interactions, that many of them were fundamentally untraceable. This apparent abundant anonymity led to its strong association with democracy (Akdeniz, 2002) but also to excesses such as “flaming” (Alonzo, 2004) where one or more discursive participants would engage in highly uncivil discourse, confident any improprieties or transgressions would have highly limited reputational fallout. Today, the sentiment appears close to reversing itself, where instead of everything we do online being anonymous, everything we do appears to go into some massive digital dossier, forever haunting us with economic, political and social karma, both just and unjust (Solove, 2004; O’Harrow, 2006; Solove, 2007).

Anonymity, while apparently simple in meaning on the surface, is a highly complex concept. It is often understood that anonymity is supposed to relate to some absolute condition of non-identifiability, while the word “pseudonym” is used to indicate the gray areas where one may be known or knowable to some, but not to all. Although it is easy to understand what we mean when we say a given piece of data is anonymous, it is more difficult to judge whether such a proposition is logically valid. One way to anonymize data is simply to remove obvious personal identifiers such as full names, social security numbers, and drivers’ license numbers. Data stripped of such obvious identifiers, however, may still be PII, especially if the data includes enough specific attributes of a person to uniquely distinguish them from the greater population.

The contents of messages may, on their own, have enough information to allow particular individuals to be identified, as a number of Americans learned when AOL made a year of its search logs publicly available in an “anonymized” form. Individual records of particular search queries were identified with unique numbers, but no data linking these numbers to personal identifiers such as names or SSNs was released. Still, enough information was often available within the language of the search to trace it back to a particular individual. *The New York Times* published an article identifying one searcher, number 4417749, as Thelma Arnold:

. . . search by search, click by click, the identity of AOL user No. 4417749 became easier to discern. There are queries for “landscapers in Lilburn, Ga.,” several people with the last name Arnold and “homes sold in shadow lake subdivision Gwinnett county Georgia.”

It did not take much investigating to follow that data trail to Thelma Arnold, a 62-year-old widow who lives in Lilburn, Ga., frequently researches her friends’ medical ailments and loves her three dogs. “Those are my searches,” she said, after a reporter read part of the list to her (Barabaro & Zeller, 2006, paragraphs 3-4).

Within computer science, a number of algorithms have been developed to determine whether individuals can be identified via the distribution of attributes within a data set, but their reliability and validity remains a point of dispute (Sweeney, 2002; Machanavajjhala et al., 2006; Li, Li & Venkatasubramanian, 2007).

In the course of electronic transactions, an individual may be identified by a range of attributes including the IP address of the device they are using to access the network or by a more formal authentication scheme. Whether the IP address makes someone's transaction identifiable depends on the manner in which IP addresses are linked to individual identities in extant systems of records. If your ISP stores your IP address with your personal information in a customer database, anyone with access to that database can use the IP address as a personal identifier.

In March of 2007, Google publicly announced a new policy to "anonymize" its search records after a period of 18-24 months.

When we implement this policy change in the coming months, we will continue to keep server log data (so that we can improve Google's services and protect them from security and other abuses) — but will make this data much more anonymous, so that it can no longer be identified with individual users, after 18-24 months. ("Taking steps," 2007, paragraph 1)

Google's public announcement that it had made its search logs "more anonymous" provides a useful glimpse into just how confused the notion of anonymity has become. Google's anonymization process consists of erasing a portion of the source IP address for the query and altering the unique cookie ID attached to the search in an unspecified way. Google admits, however, that this process does not guarantee that the government will not be able to identify a specific computer or user.

What is the relationship between anonymity and privacy? Is one necessary for the other? Anonymity, especially in the context of Internet interactions, does not necessarily lead to privacy. As Schneier (2007) has pointed out, the contents of anonymous packets sent over the Internet can still be read by malicious individuals and institutions unless they are otherwise encrypted. U.S. government officials have begun to suggest citizens should give up their anonymity vis-à-vis the government while trusting them to respect their privacy (Single, 2007). Although there was a predictable uproar in privacy circles, it remains to be seen whether the broader American public is paying much attention. Meanwhile, in China, there are growing signs that anonymity, at least among the young Internet generation, has a value that supersedes its role in the U.S.

In a recent poll conducted by J. Walter Thompson, Chinese netizens were far more likely to claim that they experimented with alternate identities online than were their American counterparts. They also appear to value online anonymity more, obviously a key resource in the negotiation of personal boundaries that may allow for such experimentation.

Chinese respondents were also more likely than Americans to say they have expressed personal opinions or written about themselves online (72% vs. 56%). And they have expressed themselves more strongly online than they generally do in person (52% vs. 43% of Americans).

That's largely because of the anonymity that the Internet offers, a key attraction for the Chinese. Chinese respondents were almost twice as likely as Americans to agree that it's good to be able to express honest opinions anonymously online (79% vs. 42%) and to agree that online they are free to do and say things they would not do or say offline (73% vs. 32%).

"One of the biggest differences between American and Chinese youth is in attitudes toward anonymity," says Doctoroff. "In the U.S., with its cult of celebrity, young Americans see the Internet as a way of getting known, of building their personal brand; many regard the Internet as a kind of personal broadcasting medium. But whereas publicizing your name, face and opinions is seen as a step toward success in the U.S., in China it has been a surefire way of veering into dangerous territory. So for young Chinese, the Internet is the ideal place to air opinions and hear what others think without crossing the line." ("China leads the U.S.," Nov. 23, 2007, n.p.)

Although there is considerable appreciation for the role that anonymity can play in society (at least among the young), there is a very healthy respect for the importance of accountability and reputation, and recognition that anonymity can add unacceptable risk to certain kinds of social transactions. The public, for example, seems to have responded positively to the opening of the national identity registry database. Accessible via cell phone short messaging service and the Web, anyone residing in China can log in with a person's name and ID number to verify their identity. If the ID matches the provided name, the database sends back a photo of the ID holder to help verify that the ID is held by the authorized user ("China provides," 2007). Angry Chinese blogger suggests that the reaction to the new system has been positive among a wide range of business owners such as hoteliers and store owners, but is marked by suspicion and concern within the "activist and industry insider" community ("Confirm a friend," 2006).

Chinese authorities on IPV6

Some Chinese authorities have expressed an interest in the potential role of the new Internet transfer protocol, IPV6, in eliminating online anonymity. During a March 2006 visit to Paris, Hu Qiheng, chair of the Internet Society of China, told an *International Herald Tribune* writer, "There is now anonymity for criminals on the Internet in China With the China Next Generation Internet project, we will give everyone a unique identity on the Internet" (Crampton, 2006, paragraph 3). Just how significant the role of IPV6 could be in anonymity online is open to some debate.⁶ Internet policy discourse about the topic tends to point out that the protocol has considerable room for built-in anonymity, but it depends on specific implementations. Chinese ISPs could conceivably implement the protocol in ways that make it much easier to identify people via their IP addresses. Interestingly, intelligence analyst James Mulvenon has argued that as China moves to IPV6 with the U.S. still using IPV4, network traffic coming from China can become difficult or impossible to track (Worthen, 2006).

⁶ See RFC 3041, available at <http://www.apps.ietf.org/rfc/rfc3041.html>

Attitudes toward real-name registration

An online poll conducted in December 2005 by *China Youth Daily* and *Sohu.com* found that 45% (of 1911 respondents) favored the use of real-name registration policies for cell phones while 42% disapproved ("China to hasten," 2006). A year later, however, public opposition for a similar policy proposal for blogs doubled this amount.

The Chinese government's attempt to manage the identities of its online population in 2007 ended in failure, as the state seemed forced to yield to public disfavor after it floated the idea of registering the real names of all bloggers. Chinese media first began to note the proliferation of popular software tools on the mainland that allowed Internet users to create and use fake ID credentials online (Bandurski, 2007). Public resistance entered the mainstream when the newspaper *China Youth Daily* published a survey indicating that 83.5% of the Chinese public was against the implementation of a mandatory real-name registration for bloggers ("Realname online," 2007). When the government-supported industry association Internet Society of China (ISC) released its "draft self discipline code" for bloggers in May 2007, real-name registration was listed as "encouraged" rather than mandatory (Chen, 2007).

Collective and individual anonymity

Hertz (2001) suggests two possible Chinese translations for anonymity:

In the Shanghai Renmin Chubanshe English-Chinese dictionary, anonymity is translated either as *niming* (hidden or concealed name) or *wuming* (without a name, but also indefinable, indescribable). These two terms are generally used not as nouns but as adjectives, as in "an unknown hero" (*wuming de yinxiong*) or an "anonymous letter" (*niming xin*). Note that the two translations have very different connotations: in the first example, the anonymous (*wuming*) hero has been violently stripped of his . . . particular identity (name), literally and figuratively sacrificed to the collective cause; in the second example, the anonymous (*niming*) letter writer has chosen to conceal her identity, indeed her face, for reasons that are eminently personal, not collective. (p. 280)

While it is important and helpful to note the distinctions between *wuming* and *niming*, it is premature of Hertz to assume that *niming* could only be in the interest of the individual and not the collective. The increasing salience of *niming*, or online anonymity, can be understood as more than a simple increase in the valuation of individual rights and needs that has accompanied modernization and digitization.

Xiamen PX chemical plant protest

If we consider a recent event of interest in Chinese history, the successful protest of more than a million anonymous citizens against a planned chemical plant, we can begin to get a sense of the complex ways that anonymity might mediate the relation between *gong* and *si*, (or perhaps even better, the tripartite relation between *guan*, *gong* and *si*). We can also begin to think about the often tenuous nature

of anonymity, both as it relates to technology and social space, and its role as a resource when individuals find their interests in tension with those of the state. In the spring of 2007, citizens in the seaside city and special economic zone, Xiamen, began to become concerned over a new 11 billion yuan (USD\$1.4 billion) industrial project in the city's Haicang district designed to produce large amounts of xylene.⁷ Although the project had overwhelming support from the city government, citizens in Xiamen were able to make use of Internet bulletin boards, e-mail and short messaging services to organize a public protest of more than ten thousand people at the city center on June 1st and 2nd, leading to the temporary abandonment and eventual halting of the project there.

A few months after the protest, the city government announced draft rules banning anonymous Web postings for city residents (Dickie, 2007). The move caused considerable controversy and reignited the debate over the seemingly shelved national policy requiring mainland Chinese bloggers to register their real names.

It appears that the new regulation was a unilateral action by the city government, which stands to lose significant tax revenue from the lost project. Guangzhou city's *South Metropolis News* quoted He Bing of the China University of Political Science and Law in Beijing saying, "Only the National People's Congress has the right to legislate on this issue." It is also doubtful whether the city alone can enforce such a measure online, which also includes new rules for pre-publication vetting of content.

One could argue that Chinese citizens in Xiamen that day took advantage of their anonymity in online forums such as BBS and chat groups to engage in organizational actions which would otherwise be highly constrained. Although the individual actions were justified based on the way anonymity protected them from state harm, the result was the concerted voice of a collective *gong* that overpowered the more *si*-like *guan* (official) interests. It was this collective crowd of otherwise *wuming* (nameless) citizens out in public that electronic *niming* (concealed identity) made possible.

The Xiamen PX demonstration, perhaps, was dependent less on actual anonymity and more on perceived anonymity. Whether or not the initial organizers were truly anonymous as they began to send out the short messages and BBS notices that would help bring millions to the streets, their perceived anonymity likely emboldened them to take the actions that quickly crystallized into a highly visible public. Those people who chose to take to the streets were videotaped and could easily be identified later, but the numbers being what they were nothing much could be done.

Conclusion

One danger is that we remain satisfied with merely juxtaposing such concepts; the second is that we thereby remain in such an early stage of an intercultural dialogue,

⁷ According to the U.S. labor Department's *Occupational Safety and Health Guideline for Xylene*, "Chronic exposure to xylene may cause central nervous system depression, anemia, mucosal hemorrhage, bone marrow hyperplasia, liver enlargement, liver necrosis, and nephrosis [Clayton and Clayton 1981, p. 3295]."

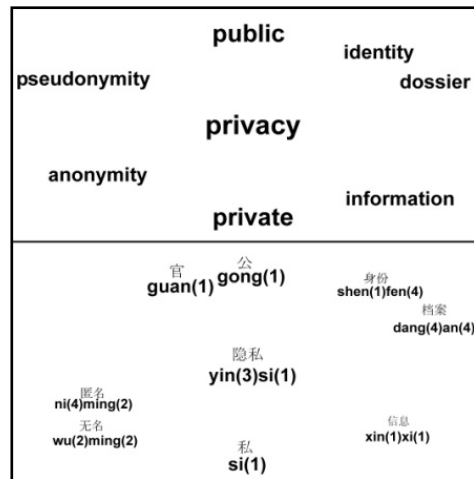
defined by what may only look like a common ground or an incompatible view — a common ground or incompatible view that in light of further dialogue, however, will dissolve into far more complex inter-relationships. (Capurro, 2005, p. 45)

A complex plural society will speak a complex plural language; or, rather, a plurality of specialized languages, each carrying its own biases as to the definition and distribution of authority, will be seen as converging to form a highly complex language, in which many paradigmatic structures exist simultaneously, debate goes on between them, individual terms and concepts migrate from one structure to another, altering some of their implications and retaining others. (Pocock, 1971, p. 221 in Rowe [1990], p. 324)

What might we gain by challenging the basic assumption that the conceptualization of “privacy” flows in one direction, from West to East? What insights might there be gained from understanding China’s contemporary and historical thinking on the matter, facilitating the “travel of words and ideas between languages” that Liu (1995) speaks of (above)? It should be clear after this brief exploration that questions about privacy can effectively be moved to an intercultural domain that benefits all participants while helping to build global schema of resistance (boundary resources) to extreme forms of institutional surveillance.

A great deal of both modern and traditional Chinese thought and culture is relevant to this struggle in Western discourse over how to define and value privacy. If neo-liberal arguments that privacy is merely instrumental to other individual and social goods such as security and prosperity continue to gain political legitimacy, basic individual and small group interests become vulnerable in a way that may comprise the viability of future social systems. Aspects of Chinese thought and culture, including Confucianism and its more modern variant, Neo-Confucianism, may offer insight into how to make arguments that the loss of privacy would significantly impact the society level as well.

Any honest assessment of the “reasonable expectation” of privacy in China and the U.S. should find that the notion plays a role in both countries, and, more importantly, that this notion is in constant flux and is unlikely to serve as the basis for strong legal protection for privacy. Much might be made about the fact that the Chinese right to privacy is legally subordinated to the public interest. Nevertheless, few scholars in the West attempt to maintain that privacy trumps all other values. There appears to be room for a common, abstract notion of reasonable privacy as inherent in a continuously negotiated dialectic tension in information flow that forms the basis of more contextual, culturally embedded experiences.



The notion of territorial privacy is highly relevant to both the U.S. and the Chinese experience. While the U.S. legal system is dealing with an intensifying rupture in the link between territorial and information privacy first felt in the early 20th century, the Chinese have been adjusting to increases in real space that have been a major factor in increasing privacy expectations. Further, while the idea of privacy in public still has not been sanctioned within U.S. legal discourse, the Chinese public appears to have had at least some influence on the emergence of municipal CCTV surveillance laws.

The semantic link between the words *gong* and “public” to the notion of public opinion is not uniformly associated with physical public space such as a town square. In Chinese discourse, *gong* is often deployed to signal the abstract, non-spatial notion of society's collective interests. The public-private distinction in Western discourse often includes spatial entailments (outside and inside), making it generally less abstract than the *gong-si* opposition. Perhaps the disorientation relative to the public private distinction felt in Western discourse is not as acute in Chinese discourse, since the term is more abstract (protean) to begin with. Further, it appears that Chinese youth may value the new electronic domain of personal and social life to a greater degree than their American counterparts.

Chinese Internet and cell phone users are clearly concerned with the issue of spam and frustrated that individual companies can sell their addresses and phone numbers to other countries. It is probably far more likely for this public sentiment to translate into a nationwide law that significantly restricts the sharing of PII across private firms than it would be in the United States, in which business interests have a more direct claim on politics.

China does not share the U.S. tradition of politically neutral NGOs acting in the public interest, and is in fact only a few decades removed from the oppressive excesses and stifling mass surveillance programs of the Cultural Revolution, but the public today has begun to assert itself in significant ways. Since the September 11 terrorist attacks, Americans in general seem to be more aware of the tensions between security and privacy than their Chinese counterparts. More detailed study of demographic trends in both countries is needed to help envision more long-term scenarios. An important aspect of public sentiment to watch over time will be “trust in government.” In the United States, polls show that a large percentage of Americans lack even basic trust in their government. For example, a Scripps Howard/Ohio University poll conducted in the summer of 2006 found that more than one third of respondents believed “that federal officials assisted in the 9/11 terrorist attacks or took no action to stop them so the United States could go to war in the Middle East” (Hargrove, 2006). Would we find similar or greater numbers of basic distrust in China? This question is difficult to answer, as Chinese generally refrain from direct, public discursive attacks on the government for obvious reasons. Nevertheless, a number of scholars have offered data suggesting that Chinese trust in government is quite strong in both urban and rural areas (Chen, 2004; Li, 2004; Wang, 2005; Fewsmith, 2007).

Whether or not it is possible for any individual to be truly anonymous when they engage in communication and information retrieval online is one of the “hard problems” of information science. Nevertheless, among young Chinese, the belief that their activities can be anonymous clearly has an impact on their willingness to engage in certain kinds of behavior. Further, it is quite clear that identification and authorization systems run by both public (state) and private entities, systems such as

national ID cards, blogger real name registration, cookies, and RFID tags, have a great deal to do with the answer. The more people are required to use various forms of identification before acting (engaging in financial transactions, traveling, reading and sending e-mail) the more these actions are likely to involve the production of PII.

Cross cultural utility of abstract theories

Discursive positions which see privacy as purely instrumental provide less protection for privacy resources than does the dialectic model presented by Altman and easily discernible with China's traditional cultural and intellectual history. Abstract theories of social change which sit at least partially out of the social sphere, such as systems theory and complexity, might be applicable across cultures and help to demonstrate how the availability of boundary resources for individuals is ultimately beneficial to the system as a whole. A boundary resource might be embodied in the form of software such as the personal ID data generation tool used by Chinese netizens to avoid registering online with their real names, or a piece of hardware that renders RFID chips inoperable. It might be a new privacy law or use of words that implicated parties find useful in negotiating their interests. Useful classifications and taxonomies of these resources might lead to their cultivation and protection while facilitating their exchange.

One potentially promising avenue is to explore how individual boundary resources facilitate the production of individual creativity and innovation, cultural variety, and how these resources can become part of a pool available worldwide. Without boundary resources, thought tends toward the mean, reducing total variety available to the global social system and subsequently its ability to adapt to change.

What kind of balance in available resources are we moving toward? What changes will the younger generations establish in mainstream culture as they grow older? How might increased cross-cultural interaction between the two countries affect the global discursive network surrounding this dynamic "privacy" concept? These are questions for further research.

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