

# *Futures of Privacy: un séminaire international*

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## *Privacy, civil society and surveillance-supervision seen from Japan*

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# Lecture outline

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# *Comment penser autrement? 1*

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## Insight

- Philosophers themselves, thought leaders and gurus, moral advisers and spiritual guides, or politicians and cultural figures

## Eureka moment

- Gift of grace, the ability to associate, the vision of analogy, or the serendipitous moment of discovering

## Think outside the box

- Yet only angels have wings

## Radical contrast and juxtaposition

- Confronting the limits of what we think

# *Comment penser autrement? 2*

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## *Michel Foucault, Les mots et les choses (1966)*

*The Order of Things*, Foucault (1970, ix) writes, “first arose out of a passage in Borges, out of the laughter that shattered, as I read the passage, all the familiar landmarks of my thought - our thought, the thought that bears the stamp of our age and our geography – breaking up all the ordered surfaces and all the planes with which we are accustomed to tame the wild profusion of existing things, and continuing long afterwards to disturb and threaten with collapse our age-old distinction between the Same and the Other. This passage quotes a ‘certain Chinese encyclopaedia’ in which it is written that ‘animals are divided into: (a) belonging to the Emperor, (b) embalmed, (c) tame, (d) sucking pigs, (e) sirens, (f) fabulous, (g) stray dogs, (h) included in the present classification, (i) frenzied, (j) innumerable, (k) drawn with a very fine camelhair brush, (l) et cetera, (m) having just broken the water pitcher, (n) that from a long way off “look like flies”’. In the wonderment of this taxonomy, the thing we apprehend in one great leap, the thing that, by means of the fable, is demonstrated as the exotic charm of another system of thought, is the limitation of our own, the stark impossibility of thinking that.”

[« Ce livre a son lieu de naissance dans un texte de Borges. Dans le rire qui secoue à sa lecture toutes les familiarités de la pensée – de la nôtre : de celle qui a notre âge et notre géographie –, ébranlant toutes les surfaces ordonnées et tous les plans qui assagissent pour nous le foisonnement des êtres, faisant vaciller et inquiétant pour longtemps notre pratique millénaire du Même et de l'Autre. Ce texte cite ‘une certaine encyclopédie chinoise’ où il est écrit que ‘les animaux se divisent en : a) appartenant à l'Empereur, b) embaumés, c) apprivoisés, d) cochons de lait, e) sirènes, f) fabuleux, g) chiens en liberté, h) inclus dans la présente classification, i) qui s'agitent comme des fous, j) innombrables, k) dessinés avec un pinceau très fin en poils de chameau, l) et caetera, m) qui viennent de casser la cruche, n) qui de loin semblent des mouches.’ Dans l'émerveillement de cette taxinomie, ce qu'on rejoint d'un bond, ce qui, à la faveur de l'apologue, nous est indiqué comme le charme exotique d'une autre pensée, c'est la limite de la nôtre : l'impossibilité nue de penser cela. »]

# Overview 1

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## Notes on privacy and the subject of it

## Outline of a theory of ‘Japaneseness’

- Controversial yet pervasive discourse
- Argues in favour of the uniqueness of Japanese identity

## Civil society and the spaces of privacy it affords

- Contrasts and similarities of private spaces

## Surveillance society in Japan and claims of a supervised society

- Is the threat to privacy in Japan the same as elsewhere given these different cultural conceptions of identity and civil society?

# Overview 2

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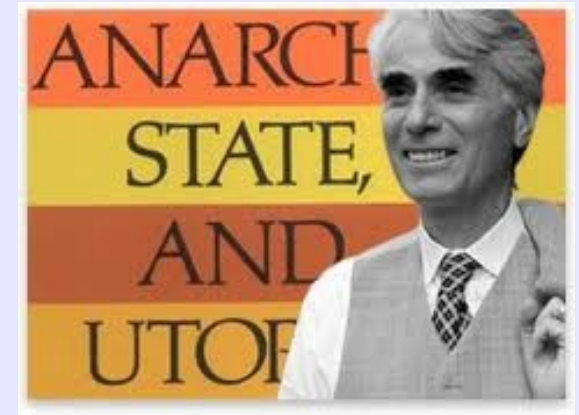
## Similar concerns to Professor Helen Nissenbaum

- Yet rather than take the problem of the subject of privacy up into context, I take it across into other modes of identity, or content

## Contextual integrity defends the one from the many

## Professor Nissenbaum's approach is a tacit criticism

- Assumption that exchange is just because of the equality and rationality of the parties in 'pair-wise contracting'
- Flawed conception of *homo economicus*
  - ♦ Assigned sovereignty over his/her choices, but rather than the expression of freedom it is a "politico-theological legitimation" designed to render market outcomes just



# Privacy and the subject of it 1

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Alan Westin, (1967) *Privacy and Freedom*

## Privacy as a *claim*

- Determine *what* information should be known to others
- Implicitly, *when* the information is to be obtained
- And *what* uses will be made of it

## Privacy as a *right*

- Recognised in law or by social convention
- Louis Brandeis and Samuel D. Warren
- “The Right to Privacy,” *The Harvard Law Review* (1890)

“[T]o protect Americans in their beliefs, their thoughts, their emotions and their sensations ... [the Founding Fathers of the American constitution] conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.”

# Privacy and the subject of it 2

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## What might any ‘invasion’ of privacy look like?

### ‘Personal autonomy’

- Right to decide for ourselves about all ‘self-regarding actions’

### ‘Self-determination’

- Right to control the flow of information about ourselves

### ‘Consummatory’ claims

- Right to dignity, or privacy as an end that screens one from surveillance in extreme, compromising or unforeseen circumstances

### ‘Strategic’ intent

- Right to secrecy about final intentions and ends, hence privacy as a means to safeguard and promote self-interest



# Privacy and the subject of it 3

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## Core aspect of these definitions

- Mediation of the relation between the individual and the state (or a third party via regulations put in place by the state) through a right
- Individual's corporeal sovereignty in need of protection from a constitutional arbitrary violence
- Enjoyment of individual freedoms (of conscience, thought and speech) without interference or influence by others
- Radical transformation by surveillance technology of privacy (and, we must add, our self-understandings as subjects)

## Common denominator is the Western subject

- Authors, knows, decides, creates, imagines, envisions, chooses
- Right to be sovereign in a private realm of thought and action

# Privacy and the subject of it 4

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What happens to privacy when there is no ghost in the machine?



# Origins of *Nihonjinron* 1

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## *Wakon yōsai* (‘Japanese spirit, Western technology’)

- Foundation of an essentialist culture of ‘Japaneseness’
- Heian Period (794-1185) and the first encounters with China
- Early Shōwa Period (1912-1945), too, though this time as a nationalist reaction against the ‘Western Other inside Japan’

## Meiji Restoration (1868)

- Pure realm of unique Japanese ‘spirit’, of *Volksgeist*, oversees a superficial realm of Western ‘technē’, of extra-identity
- *Nihonjinron* perspective, the West has no place within Japan other than as a means for the aggrandizement of the end, ‘Japaneseness’

# Origins of *Nihonjinron* 2

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## Emile Durkheim (1895), *The Rules of Sociological Method*

While Japan may borrow Western ‘technē’ and economic and political organisation, “it will not cease to belong to a different species from France and Germany.”

## Ruth Benedict (1946), *The Chrysanthemum and the Sword: Patterns of Japanese Culture*

The “Japanese are, to the highest degree, ... both militaristic and aesthetic, ... submissive and resentful of being pushed around, loyal and treacherous, ... conservative and hospitable to new ways.”

# Origins of *Nihonjinron* 3

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*Nihonjinron* → origins in two non-Japanese ethics

## Confucianism

- Self-consciousness through others via fulfilling social roles
- Identity is not within the individual, nor the end of autonomy
- Being an individual is selfish, or lacking full moral identity

## Buddhism (especially, Zen Buddhism)

- Identity is conceived of in terms of an extra-corporeal self
- In contradistinction to Confucianism, the essence of identity continues beyond the death of the body through reincarnation
- Any sense of an autonomous individual is a delusion of separateness (or hubris by the human to think it can interrupt a transcendental – in modern vocabulary, structural – process)

# Origins of *Nihonjinron* 4

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*Nihonjinron* → origins in Japanese ethics

## Samurai ethic (Tokugawa Period, 1603-1807)

- Loyalty, discipline and sincerity are key to identity
- The ideal self is a strong self, or *seishin*
  - ♦ Forged through severe physical and mental training
  - ♦ Produced the capacity for loyalty and *self*-sacrifice
- Bifurcated subject
  - ♦ Self-discipline transcends – literally, subjugates – the self
  - ♦ Nietzschean process of self-overcoming, though not for the purposes of autonomy or (aristocratic) governing,
  - ♦ Purpose is pure obedience to to the group, to the point of *harakiri*

# Theories of *Nihonjinron* 1

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The subject: identity is not dependent on a fully developed ego, independent person or individuality

- Amae
  - ♦ A unique psychological inclination to seek emotional satisfaction by prevailing upon and depending on one's superiors
- Ganbaru
  - ♦ Persistence and endurance – even tenacity and dogged determination – enables the overcoming of any individual identity
- Consequence
  - ♦ Irrelevance of the concept of the individual in Japanese ontology
  - ♦ It is the interpersonal relationship itself, or *kanjin*, not the individuals that constitute the relationship, that is crucial
  - ♦ The self does exist, but in *aidagara*, or the extra-corporeal space (or *milieu*, cf. Augustin Berque) between individuals (Watsuji 1961)

# Theories of *Nihonjinron* 2

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## Interpersonal (intra-group): interaction is aligned with a group, not creating a self or individuality

- Group's orientation is focused on harmony within the group
- Harmony requires careful cultivation and maintenance of relations between superiors and inferiors
- Status within the group a function of the length of membership
- Finally, within the group itself, strong interpersonal ties are cultivated within one's hierarchical chain of command, such that vertical loyalties are paramount



# Theories of *Nihonjinron* 3

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## A Japanese question for Western concepts of privacy oriented around an autonomous individual

- If the subject's sense of self is non-corporal, yet mediated by the interaction of two bodies, we might readily call it a virtual self in reality, for whom privacy *qua* bodily integrity can make no sense
- Why, after all, would anyone claim ownership of ideas, feelings, emotions, thoughts, preferences or personal information, which after all is the condition of possibility for the right to privacy, if it is only ever intersubjectively constituted and extra-corporeally located in face-to-face interaction, the group or language?

# Theories of *Nihonjinron* 4

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## Another Japanese question for Western concepts of privacy oriented around an autonomous individual

- What are the consequences for surveillance that targets extra-corporeal (biometrics notwithstanding) subjects, or (Gilles Deleuze's concept of) *dividual* (N.B. Latin *individuus* ← from *in-* 'not' + *dividuus* 'divisible')?
- To what extent does an element of intersubjective self-identity, in which the goal is the group and meaning is dispersed and radically localised in linguistic contexts – and subjectivity is a function of *mileu* – escape surveillance?
- Similarly, to what extent is a self-centred identity more liable to have its privacy violated by surveillance because data, information, preferences and interests are centrally 'stored' in an individual?

# Japanese civil society and spaces of privacy 1

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Notions of *ohoyake* (“publicness”) in Japan have evolved through and so always been state-centric

- Initially, the key distinction was that of size
  - ♦ *Ohoyake* was a large and *woyake* a smaller public space
- Size matters, as it leads to public/private dichotomy
  - ♦ With the adoption of Chinese law in the 8th century, which already distinguished private and public, Japanese *watakushi* (“privateness”)
  - ♦ Always in relation to and dependent upon the centralised power
- One consequence of the strong ties between public space – and its derivative of private space – and the state is that, with the introduction of neoliberal processes, such as deregulation and individualisation, there *might* be less resistance to it ... .

# Japanese civil society and spaces of privacy 2

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## State-civil society relations in Japan

- Most civil society organisations are small in membership (38% have none at all), have a small number of full-time staff (on average 20), operate on a small budget and are restricted in influence to a small area (limited to regional activity)
- Furthermore, through the Civil Code (1986) and Nonprofit Organisation Law (1998), the state restricts civil society organisations to public interest functions
- There are over 300,000 Neighbourhood Associations, with 92% of Japanese citizens belonging to one → purpose is not to influence policy making, but to oversee local life (classic modern centralised state with radical institutional autonomy)

# Japanese civil society and spaces of privacy 3

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## How does the citizen fit into civil society?

- Japanese word for citizen, *shimin*, enjoys widespread usage, yet it is an etic (tainted) concept

## An emic vernacular concept, *seikatsu*, is also used

- Better approximates to local intuitions and self-understandings

## *Seikatsusha* the citizen who practices it *seikatsu*

- “Livelihood/everyday life” → today’s Japanese *seikatsusha* or citizen constructs a series of autonomous spheres (from government interference and capitalist market forces) in which to pursue consumption, recreation, work and quality of life issues.
- Japanese civil society is a grass-roots, folk activist and heterogeneous ensemble of co-operative groups and voluntary associations interacting in jealously protected public spheres

# Japanese civil society and spaces of privacy 4

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## Take the example of (36.5m) Tokyo

- Tokyo Metropolitan Government (high profile) governor, below which are 23 wards (ku) or boroughs or arrondissements.
- NHAs (*choukai*) and shopkeepers' associations (*shoutenkai*)
- Formal policing is shared between the National Police Agency (NPA) and the Tokyo Metropolitan Police Authority
  - ♦ However, there are only 363 NPA cameras in Japan
  - ♦ Operated by local governments, corporations and NHAs and SKAs
- Camera surveillance has increased due to several local events
  - ♦ Aum Shinrikyo gas attacks on the Tokyo metro in 1996
  - ♦ 2002 World Cup to target foreign hooligans and illegal vendors
  - ♦ Community Security and Safety Development Ordinance of 2003
- The method has not been that of the centralisation of Tokyo's governmental levels, but their responsabilisation for surveillance

# Surveillance and supervised society in Japan 1

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## Bauman, *Globalisation: The Human consequences*

- Zygmunt Bauman distinguishes the tourist and the vagabond

- ♦ At the global level, the tourist that searches for new experiences adopts strategies of movement that take advantage of privileged rights of passage in an exclusive world of time divorced from space
- ♦ At the other extreme, the tourist's alter ego, the vagabond, precisely because of the absence of any privileges, pursues strategies of survival to escape the ever present threat of 'stigmatising' and assignment to the 'underclass', which historically and today is an anonymous human mass to be dealt with by any means possible



# Surveillance and supervised society in Japan 2

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## Tourists and vagabonds applied to Japan

- With regard to Japan, and so at the national (not global) level, the tourists = the Japanese citizen and the vagabond = non-Japanese
- Techniques of stigmatising follow an onto-technological logic
- On the one hand, the vagabond is the target of a strategic technological intent (Western technē guided by Japanese spirit!), or surveillance and exclusion from the technological devices that constitute the identity of the Japanese domestic tourist
- On the other hand, the tourist is the target and effect of the unintentional effects of ICT (Japanese spirit constituted by Western/global technē!)

## Friendly authoritarianism

- We might speak of the strategic surveillance of the vagabonds and the supervision of the tourists, or friendly authoritarianism



# Surveillance and supervised society in Japan 3

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## Yoshio Sugimoto (2010), *An Introduction to Japanese Society*

Japan uses “friendly authoritarianism,” which unlike in other societies, “exerts a powerful centripetal force. It is authoritarian to the extent that it encourages each member of society to internalise and share the value system which regards control and regimentation as natural, and to accept the instructions and orders of people in superordinate positions without questioning.”

In terms of “authoritarianism,” this system employs four main mechanisms of micro-management

However, the administering of these authoritarian mechanism is “friendly”

# Surveillance and supervised society in Japan 4

**Table 10.3** Some specific examples of friendly authoritarianism in Japan

Sphere of control	Type of control			
	Mutual surveillance within small groups	Visible and tangible power	Manipulative ambiguity	Moralizing and mind correctness
Law	Family registration; resident-card system	<i>Kōban</i> (police box)	Constitution; supplementary jail system	<i>Shimatsusho</i> (apology letters)
Community	Neighborhood associations	Police household checks	Extensive gift-giving practices	Sanction of <i>seken</i>
Business	TQC movement	Long working hours; service overtime	Unaccounted expenses; <i>dangō</i>	Company songs; company mottoes
Education	<i>Han</i> groups in class	Corporal punishment; <i>katei hōmon</i> (teachers making calls at pupils' homes)	School textbook authorization system	Classroom cleaning; military attention

# Concluding comments 1

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Cannot divorce problem of privacy from a questioning of western modernity and its current manifestation as neo-liberal globalisation

- Learn from the outside, but not just respecting difference because that is tantamount to liberal toleration, or apartheid of separate development that doesn't involve opening up and going over to the other side

Beware of thinking privacy is a global issue

- Concepts are applied through blindness and we miss how activities that may resemble and differ from what we do are taken up differently and perhaps with some insights for what we do