

3^{ème} Rencontre de la Chaire: [La vie privée en contexte, regards croisés Asie – Amérique du Nord](#)

Overview of the discussion

The discussion focused on the following aspects:

To what extent should the law regulate privacy? Helen Nissenbaum highlighted that the law has an important role to play. One thing which is interesting in US law is that it is sectorial. That is, privacy rules are different for education, commerce, etc. Potentially, law can focus on rules for contextual integrity. Education is obviously also important, but it is less clear what can be done.

Could commercial rights replace civil rights to efficiently regulate privacy protection? Helen Nissenbaum pointed out that it would be a dead-end approach. First, to imagine a market place for privacy is already a mistake. What people should say is let's have a market place for personal information. Second, this idea of trading personal information can be viewed as related to the concept of ownership. But the ownership is never an absolute one, e.g., if someone owns a piece of land s/he still has to allow the public a right of way. It is the same for intellectual property rights. Society has developed these limitations based on social utility. So this is no different for personal information, and there cannot be a "free" market for personal information.

Ambiguity of "social utility" and contextual integrity. For example, there is the project of a genetic data bank of Icelandic citizens, as well as for research and to sell data to big pharmaceutical companies. If a citizen opts out, his data will still be stored but hidden. The question of opting out is not so easy if one considers the negative consequences of opting out for social utility: both the public health and national income of Iceland are affected negatively. Helen Nissenbaum highlighted that such sensible questions do not have a unique answer, and invited us again to think in terms of the flow of this genetic information. For example, it would have dire consequences in the US because people could lose their health protection if this information was released. But this is different to the Icelandic health care system.

Alternatives to liberal globalization and autonomy. A possible alternative may relate to ontological interdependence. A suggestion was made that the analysis of autonomy of the subject would benefit from a comparative study between autonomy and inter-subjective agency. Perhaps the concept of "oneness" (or the person constituted in and through membership of the whole) is more appropriate than

the concept of autonomy. Bregham Dalgliesh pointed out that he used the concept of autonomy in a (Western) Kantian sense of maturity, that is as independence in our thought and action. However, such a conception of independence as a condition for thinking about privacy leads to a kind of methodological individualism. The idea that we can step back from the process of globalization and then rearticulate it as interdependence between independent actors, as equals, implicitly pushes a framework of individualised solutions to essentially structural problems. Finally, Bregham Dalgliesh pointed out that he used the notion of transcendence to show how the subject, in Japanese culture, is not located within the body but intersubjectively fashioned, which is one possible alternative to the autonomous agent.

Conjunction between subjectivity in different cultures and privacy issues. We can take an example of Mixi, a Japanese social network. It has a particular way of allowing privacy by allowing silence: one can visit other users' profiles and although one is not invited to leave comments, one still leaves traces. Bregham Dalgliesh first made the point that he would speak of Japanese society as a supervised rather than a surveillance society. He then highlighted the difference in understanding privacy in different cultures. For example, in Japan there is clearly no access to the intimate privacy of the home, nor any discussion about personal issues in the workplace. One can reveal something to one's inner circle, but not to those in one's outer circle. That is, norms are operating, but it is not clear if one should call it privacy as it is understood in Western culture. New technologies will radically transform the situation, both in Western culture and in Japan.